1971-1972

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No. 1

STATE OF ALASKA

WILLIAM A. EGAN, Governor

DEPARTMENT OF HEALTH AND WELFARE

OFFICE OF THE COMMISSIONER — POUCH H—JUNEAU 99801

MEMORANDUM

TO: The Honorable William Moran
Chairman, House Judiciary Committee

FROM: Frederick McGinnis, Commissioner
Department of Health and Welfare

SUBJECT: House Bill 5

DATE: February 3, 1971

Mr. F. E. Kester, Registrar of Vital Statistics, has raised a significant point in relation to the filing of death certificates should HB 5 (Alaska Probate Code) become law. His specific concerns are outlined in the attached memorandum.

It is requested that Mr. Kester be afforded the opportunity to appear before your Committee in order that he might speak to these concerns.

FM:JFM:smb
cc: Office of the Attorney General
Division of Administrative Services

MEMORANDUM

State of Alaska

RECEIVED

1971

Office of the Commissioner

TO: Frederick P. McGinnis, Commissioner
Department of Health and Welfare

Thru: V.L. Iverson, Director
Division of Administrative Services

DATE : February 1, 1971

FROM: F. E. Kester, State Registrar
of Vital Statistics

SUBJECT: HB 5, Probate Code

HB 5 revises and codifies the Alaska Probate Code. It is the same bill introduced in 1968 (HB 349) and in 1969 (HB 39). It repeals many existing statutes, among them AS 20.05.130(b), which is quite vital in determination of presumptive death after six years disappearance. We cannot find that this has been adequately replaced in the new proposed code.

The present statute says in part "If a missing person is not heard from for a period of six continuous years, he is presumed to be dead ....." This combined with AS 09.55.050 gives an authority for filing a certificate of death in these cases. Both the Bureau of Vital Statistics and the Supreme Court (Rule 5, Probate Rules) have implemented this, and the resulting death certificates have proven very useful in the settling of estates and other claims.

There are several references to such presumption of death and missing persons in the proposed code; for example:

AS 13.16.070	page 19
AS 13.16.075	20
AS 13.16.085(3)	21
AS 13.36.010	72
AS 13.36.400(b)	87
AS 13.36.410(3)	87

However, no place states specifically that the court may make a finding of presumptive death; nor does it set a standard such as the six years in the present statute.

Possibly the proposed wording is sufficient. We do not feel that this should be assumed. If it is not sufficient authority, we will again have a group of persons for whom we cannot file a death certificate.

I suggest that we call this to the attention of the House Judiciary Committee to see if they have considered this angle. I would like to discuss this rather involved matter with the Committee.

The American Assembly
Columbia University

The Ombudsman

Report of the Thirty-second American Assembly
October 26-29, 1967
Arden House
Harriman
New York

PREFACE

On October 26, 1967, the Thirty-second American Assembly —on *The Ombudsman*—opened at Arden House, on the Harriman (New York) campus of Columbia University. There were 72 participants from the worlds of business, education, communications, labor, and government, and from the clerical, legal and military professions.

For three days, in small discussion groups, they considered in depth various aspects of citizen grievance and redress vis-à-vis government (local, state, and federal); and on the fourth day in plenary session they reviewed and approved the report contained in these pages.

As background for their discussions participants read a volume entitled *Ombudsmen for American Government?* prepared under the editorial supervision of Dr. Stanley V. Anderson of the University of California at Santa Barbara, with chapters and authors as follows:

Chapter 1 —*The Spread of the Ombudsman Idea*—Donald C. Rowat, Carleton University, Ottawa, Canada.

Chapter 2 —*Transferring the Ombudsman*—William B. Gwyn, Tulane University.

Chapter 3 —*State Government and the Ombudsman*—John E. Moore, University of California (Santa Barbara).

Chapter 4 —*The Ombudsman and Local Government*—William H. Angus and Milton Kaplan, State University of New York at Buffalo.

Chapter 5 —*Proposals and Politics*—Stanley V. Anderson.

Appendix —*Annotated Model Ombudsman Statute*—Walter Gellhorn, Columbia University.

Regional Assemblies on *The Ombudsman*, making use of the above-named chapters and The American Assembly conference technique, will be held across the nation with the cooperation of other educational institutions.

The report of The Thirty-second American Assembly reflects the views of the participants in their private, not their official, capacities. The American Assembly itself, a nonpartisan educational organization, takes no position on matters it presents for public discussion, and The Ford Foundation, which generously provided support for this program, similarly takes no official position on the opinions contained herein.

CLIFFORD C. NELSON
President
The American Assembly

Ombudsmen for American Government? (ed. Stanley V. Anderson) will be published by Prentice-Hall, Inc., Englewood Cliffs, New Jersey, in January 1968.

FINAL REPORT

of the

THIRTY-SECOND AMERICAN ASSEMBLY

At the close of their discussions the participants in the Thirty-second American Assembly on *The Ombudsman* reviewed as a group the following statement. The statement represents general agreement; however no one was asked to sign it, and it should not be assumed that every participant necessarily subscribes to every recommendation.

Millions of Americans view government as distant and unresponsive, if not hostile. Though often the targets of the resentment which ensues, government officials are usually not the cause of remoteness, but sometimes its victims. Dehumanized government derives from the impersonality of modern mass society. Improving the means by which individual citizens can voice dissatisfaction with governmental action or inaction will make for a more democratically effective society.

Many devices—governmental and private, formal and informal—already serve to amplify the voice of the individual in the halls of government. Administrative agencies may provide him internal avenues of appeal. Courts may hear his case. Elected representatives may handle his complaint. Public legal aid may be available. News media or private organizations may take up his cause.

All these means of access to government are useful. We should strive further to improve them. Because these existing devices have important functions to serve other than handling citizens' complaints, there is a need in today's large and complex government for mechanisms devoted solely to receiving, examining, and channeling citizens' complaints, and securing expeditious and impartial redress. We believe that

American utilization of the Ombudsman concept will help to fill that need.

What is an Ombudsman?

The Ombudsman is an independent, high-level officer who receives complaints, who pursues inquiries into the matters involved, and who makes recommendations for suitable action. He may also investigate on his own motion. He makes periodic public reports. His remedial weapons are persuasion, criticism and publicity. He cannot as a matter of law reverse administrative action.

What Does an Ombudsman Do?

When the Ombudsman receives a complaint which seems to him to have validity, he asks the agency for an explanation. If necessary he consults further with the complainant and again with the agency. He reports his findings to those concerned. He may suggest a specific remedy to correct individual injustices and he may suggest an improvement in agency procedure.

After consideration, if he finds a complaint to be unfounded, he may discover that the agency has failed adequately to explain its action to the citizen. In this case he may urge the agency to improve its techniques of communication. In other cases he may report to the complainant why his grievance was unfounded. In addition to handling individual complaints, the Ombudsman may make studies and recommendations for the improvement of administration.

The Ombudsman proceeds without cost to the complainant. He is able to operate informally and expeditiously without formal hearing procedures.

Establishment of an Ombudsman

We recommend that Ombudsman offices be established in American local and state governments. We do not recom-

mend the establishment of a single office of Ombudsman for the entire federal government, but we do recommend that applications of the concept be undertaken at the federal level.

The Ombudsman must be selected in a manner which assures public confidence in his independence, impartiality and professional attainments. He should be given a salary which will reinforce his high status in the community.

The Ombudsman should designate his own subordinates. The Ombudsman's term of office should be sufficiently long to minimize his preoccupation with reappointment and should not be coterminous with that of the selecting authority. Provision for his removal from office for cause should be made in such manner as not to interfere with his independence while in office.

The authority of the Ombudsman should extend to public agencies exclusive of courts, legislatures and chief executives. On the other hand, the experience of California and other states with a commission on judicial qualifications—an ombudsmanlike institution—should be given serious consideration as a means for reducing the abuse of judicial authority.

Since American local governments vary greatly in size, population, and legal structure, no uniform design need be followed and advantages are to be derived from experimentation. Such experimentation should include meaningful accessibility to the Ombudsman by all sectors of society.

How Far Does the Ombudsman Go?

An Ombudsman, concerned with mistaken or imperfect action, is a valuable resource. But an Ombudsman often can not provide all the help a citizen may need when confused by or in conflict with the officials who administer public affairs.

At times the citizen must have recourse to an active advocate who can press a demand on his behalf or plan

a defense against governmental action. This need is for adequate legal services. Then, too, citizens require information about governmental services. This need is more properly provided by easily accessible information and referral agencies.

Of course, neither an Ombudsman nor legal and information services can eliminate profound social and economic injustice, which calls for essentially political solutions.

While the Ombudsman does not make policy, his office has two important indirect effects on policy-making. First, the Ombudsman's findings provide the Legislature and the Executive with additional significant information and advice upon which to base major policy improvements. Secondly, the legislative process is enhanced to the extent that the Ombudsman's existence permits and encourages legislators to give increased attention to lawmaking.

Conclusion

We urge the prompt enactment of laws to create the special office required to handle citizens' complaints—the Ombudsman.

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ABOUT THE AMERICAN ASSEMBLY

The American Assembly was established by Dwight D. Eisenhower at Columbia University in 1950. It holds nonpartisan meetings and publisnes authoritative books to illuminate issues of United States policy.

An affiliate of Columbia, with offices in the Graduate School of Business, the Assembly is a national, educational institution incorporated in the State of New York.

The Assembly seeks to provide information, stimulate discussion, and evoke independent conclusions in matters of vital public interest.

American Assembly Sessions

At least two national programs are initiated each year. Authorities are retained to write background papers presenting essential data and defining the main issues in each subject.

About 60 men and women representing a broad range of experience, competence, and American leadership meet for several days to discuss the Assembly topic and consider alternatives for national policy.

All Assemblies follow the same procedure. The background papers are sent to participants in advance of the Assembly. The Assembly meets in small groups for four or five lengthy periods. All groups use the same agenda. At the close of these informal sessions participants adopt in plenary session a final report of findings and recommendations.

Regional, state, and local Assemblies are held following the national session at Arden House. Assemblies have also been held in England, Switzerland, Malaysia, Canada, the Caribbean, South America, Japan and the Philippines. Over ninety institutions have co-sponsored one or more Assemblies.

Arden House

Home of The American Assembly and scene of the national sessions is Arden House, which was given to Columbia University in 1950 by W. Averell Harriman. E. Roland Harriman joined his brother in contributing toward adaptation of the property for conference purposes. The buildings and surrounding land, known as the Harriman Campus of Columbia University, are 50 miles north of New York City.

Arden House is a distinguished conference center. It is self-supporting and operates throughout the year for use by organizations with educational objectives. The American Assembly is a tenant of this Columbia University facility only during Assembly sessions.

American Assembly Books

The background papers for each Assembly program are published in cloth and paperbound editions for use by individuals, libraries, businesses, public agencies, non-governmental organizations, educational institutions, discussion and service groups. In this way the deliberations of Assembly sessions are continued and extended.

The subjects of Assembly programs to date are:

1951 — United States-Western Europe Relationships
1952 — Inflation
1953 — Economic Security for Americans
1954 — The United States' Stake in the United Nations
The Federal Government Service
1955 — United States Agriculture
The Forty-Eight States
1956 — The Representation of the United States Abroad
The United States and the Far East
1957 — International Stability and Progress
Atoms for Power
1958 — The United States and Africa
United States Monetary Policy
1959 — Wages, Prices, Profits, and Productivity
The United States and Latin America
1960 — The Federal Government and Higher Education
The Secretary of State
Goals for Americans

1961 — Arms Control: Issues for the Public
— Outer Space: Prospects for Man and Society
1962 — Automation and Technological Change
— Cultural Affairs and Foreign Relations
1963 — The Population Dilemma
— The United States and the Middle East
1964 — The United States and Canada
— The Congress and America's Future
1965 — The Courts, the Public, and the Law Explosion
— The United States and Japan
1966 — State Legislatures in American Politics
— A World of Nuclear Powers?
— The United States and the Philippines
— Challenges to Collective Bargaining
1967 — The United States and Eastern Europe
— Ombudsmen for American Government?
1968 — Uses of the Seas
— Law and The Changing Society

The American Assembly

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HENRY M. WRISTON	New York

Strong and Lundt were the sole owners of both corporations, the payments were made by one corporation and the cross-petition was filed by the other. Strong and Lundt deny personal liability herein and did not join Guardian in its cross-petition. It is their position that they signed for the corporation in a representative capacity. The contract itself would seem to indicate otherwise, but in view of our holding on the plaintiff's action and the position of Strong and Lundt, it is not necessary to discuss or meet that issue.

We affirm the judgment of the trial court dismissing both the petition and the cross-petition.

AFFIRMED.

STATE OF NEBRASKA, APPELLEE, V. JUDITH WAYNE GOODSEAL, APPELLANT.

— N. W. 2d —

Filed January 29, 1971. No. 37605.

1. **Criminal Law: Constitutional Law: Statutes.** The definition of crimes and the penalties for their violation are statutory in this state, and a statute which has the effect of delegating to a private person the punishment to be assessed for a crime is subject to constitutional objection.
2. **Criminal Law: Constitutional Law: Self-Defense.** The Nebraska Self-Defense Act, section 29-114, R. S. Supp., 1969, is unconstitutional and void in that it delegates to a person asserting self-defense the determination of the amount and extent of the force to be used in defending his person as a legal justification for crime.
3. **Constitutional Law: Statutes: Appeal and Error.** Where an unconstitutional statute is relied on to sustain the position of one or more of the parties, this court will, in a proper case, notice the plain error in the premise on which the case was tried and declare the unconstitutionality of the act even though that issue was not raised by the parties.
4. **Criminal Law: Self-Defense.** Killing in self-defense is grounded upon necessity. It exists only in extremity where no other practical means exists to avoid death or great bodily harm apparent to the person resorting to it.
5. ———: — ——. In order to excuse or justify a killing in self-

Re HB 40

defense, the accused must not only have entertained the belief that his life was in danger or that he was in danger of suffering great bodily harm, but the belief must have been reasonable and in good faith.

6. ———: ———. Whether or not an accused killed in fear of death or great bodily harm, or whether or not the killing was motivated by anger, punishment, or vengeance is an issue of fact to be determined by the jury.

7. ———: ———. The bad character of the accused and the fact that she was an acknowledged prostitute does not deprive her of the right of self-defense, but such facts are circumstances to be considered in determining the necessity for and the extent and reasonableness of the force used in connection with the other evidence in the case.

8. Criminal Law: Trial. It is the province of the jury to determine the circumstances surrounding the crime charged; and if, assuming as proved the facts which the evidence tends to establish, they can be accounted for upon no rational theory which does not include the guilt of the accused, the proof cannot, as a matter of law, be said to have failed.

9. Criminal Law: Trial: Appeal and Error. After a jury has considered the evidence in the light of the rule regarding circumstantial evidence and returned a verdict of guilty, the verdict on appeal may not, as a matter of law, be set aside for insufficiency of the evidence if the evidence sustains some rational theory of guilt.

10. Trial: Instructions. It is not error to refuse a tendered instruction where its content is covered by other instructions given by the court.

11. ———: ———. A party may not properly complain of an instruction given by the court when such instruction is more favorable to him than that to which he was entitled.

Appeal from the district court for Douglas County: DONALD BRODKEY, Judge. Affirmed.

Paul E. Watts and Michael N. Schirber, for appellant.

Clarence A. H. Meyer, Attorney General, and Harold Mosher, for appellee.

Heard before WHITE, C. J., CARTER, SPENCER, BOSLAUGH, SMITH, McCOWN, and NEWTON, JJ.

CARTER, J.

The defendant, Judith Wayne Goodseal, was charged

in the district court for Douglas County with murder in the second degree for the killing of Dick Edgar Williams on July 8, 1969. The jury returned a verdict of guilty and the trial court imposed a sentence of 10 to 15 years imprisonment at hard labor in the Nebraska Reformatory for Women. The defendant has appealed.

On July 8, 1969, the body of Williams was found on the street edge of the sidewalk in front of a vacant building at 5208 South 28th Street in Omaha. It was later determined that he had been shot five or six times with .32 caliber bullets. That Williams was the victim of a homicide seemed apparent. The defendant admitted shotting the deceased and asserted that it was done in self-defense.

The deceased and Lee Dunbar were employed at a service station in Omaha. After closing the station in the evening of July 7, 1969, deceased suggested that they go out on the town. They went to several bars, purchased and drank some beer, and finally drove to the Eldorado Club at about 1 a.m. Deceased had previously inquired of a taxi driver as to where they might find some women. They parked Dunbar's car near the Eldorado Club where deceased accosted the defendant who was driving a car leased to Larry W. Pullian and after some negotiation offered $20 for her intimate association. Deceased purported to give defendant two $10 bills which she soon discovered to be two $1 bills and returned them to him. She told him to get out of the car and, according to her testimony, he proceeded to force his desires upon her.

The defendant was 24 years of age, was married, and separated from her husband. She had her two small children in her custody. She had been living with Larry W. Pullian, a single man, for about a year. She admitted that she had engaged in prostitution and admitted further that she had negotiated with deceased for such an act with him. Pullian testified that he had a .32 caliber pistol that he had taken as security for a loan. He stated

that he had placed the pistol on the floor of his car under the driver's seat, but had no knowledge as to whether or not it was loaded. Defendant testified that she did not know there was a gun in the car until immediately before the shooting.

Dunbar testified that after deceased entered defendant's car, defendant and deceased drove around the block and Dunbar followed in his car. Defendant parked her car and Dunbar parked his car about 5 to 10 feet behind it. After some delay he approached the car driven by defendant and made some inquires during the course of which deceased asked him if he had his gun. On signal from the deceased, he answered in the affirmative although he had no gun. Some time later, Dunbar heard five or six pops somewhat similar to exploding firecrackers. He saw defendant drive away and attempted to follow. He saw a man in the back seat but was unable to follow the car. He made an anonymous call to the police and informed them that there had been a shooting in the area. He gave the police the color and license number of the car. The call was verified and answered by the police, but evidence of a shooting was not discovered until the body was later found on the sidewalk in front of 5208 South 28th Street.

Defendant testified that deceased said he did not have $20. She said he tried to force her to remove her clothing which she resisted. She did not testify to making an outcry or to any attempt to open the car door or to leave the car. He finally spun her around with her legs toward him and was threatening to strike her which he did not do. He partially removed his own clothing. She said that she was afraid of deceased and fearful because she knew the man following them had a gun. As he turned her around in the seat, she said her left hand dropped down and came in contact with a gun. She got the gun in her left hand, pointed it at deceased, and squeezed it until all the bullets in the automatic pistol were fired. Deceased slumped back against the door of

the car. She drove the car back in front of the Eldorado Club, honking the horn to attract the attention of Pullian. As she came in front of the Eldorado Club, Pullian came out and, seeing the deceased in the car and the blood on defendant, signaled her to pull over to the curb. She went on, turned the corner, and stopped. He followed and when he reached the car he opened the front door on the right-hand side and the body fell out on the edge of the sidewalk where it was later found by the police. He then got in the back seat because, as he testified, the front seat was covered with blood.

Defendant and Pullian drove away and went home without reporting the incident to anyone. On arrival at their home, Pullian put the gun away and produced it in court at the trial. He washed the floor mats and upholstering to remove the blood stains. The floor mats and upholstering were still damp and the odor of vinegar was noticeable when the car was searched that afternoon by the police.

We point out that defendant admits shooting the deceased with a .32 caliber automatic pistol which she found under the seat of the car. She claims that she squeezed the trigger of the gun until all its shells were fired into the body of the deceased. She contends that she did the shooting while in fear of the deceased and Dunbar who admittedly had followed the Pullian car and had told the deceased in defendant's presence that he had a gun. The evidence is clear that defendant and Pullian had left the body of deceased on the sidewalk in front of a vacant building at 5208 South 28th Street. They left the scene immediately and did not report the killing of the deceased to anyone. On arriving home, the gun was put away and the floor mats and upholstering washed to remove the blood stains and thereby remove evidence of the killing. There is evidence that would sustain a finding of self-defense. On the other hand, there is evidence that defendant attempted to conceal her participation in the killing, an indication of guilt. It was for

the jury to determine under all the facts and circumstances whether or not defendant purposely and maliciously killed Williams without deliberation and premeditation or whether or not she killed him in self-defense as that defense is defined by the law of this state. The jury resolved these issues against the defendant and thereby found beyond a reasonable doubt that defendant did not kill Williams in self-defense and found also that the evidence shows beyond a reasonable doubt the defendant did kill Williams purposely and maliciously but without deliberation and premeditation.

The defendant contends the rule as to the weight to be given to the circumstantial evidence supports the assignment of error that the evidence was insufficient to sustain the conviction. The jury was properly instructed on the circumstantial evidence rule by instruction No. 15 and its giving is not assigned as error. The jury considered the circumstantial evidence in the light of this instruction and concluded that the facts and circumstances tend to connect the accused with the crime charged and were of such a conclusive nature as to exclude to a moral certainty every rational hypothesis except that of guilt. After a verdict of guilty in part on circumstantial evidence and on appeal therefrom for insufficiency of the evidence, the verdict may not be set aside as a matter of law for insufficiency of the evidence if the evidence sustains some rational theory of guilt. State v. Reeder, 183 Neb. 425, 160 N. W. 2d 753; State v. Williams, 183 Neb. 257, 159 N. W. 2d 549; State v. Ohler, 178 Neb. 596, 134 N. W. 2d 265. The evidence is sufficient to sustain the finding of the jury.

Defendant assigns as error the trial court's refusal to give her requested instruction applicable to the law of self-defense. The requested instruction is: "Defendant contends that she acted in self-defense. Self-defense is defined as the use of such force by any means necessary to repel an attack as at the time appeared to defendant to be necessary, although she may have been

mistaken as to the extent of the actual danger, if a reasonable person would also have been so mistaken. The defendant was justified in acting upon the facts as they appeared to him and is not to be judged by the facts as they actually were.

"When a person is threatened or attacked in such a manner that it causes him to believe he is in danger of receiving bodily injury, he may use self-defense to defend himself.

"It is necessary for conviction that the state prove beyond a reasonable doubt that the defendant was not acting in self-defense, and there is no burden on the defendant to prove that she was acting in self-defense."

The foregoing requested instruction was given verbatim by the trial court as instruction No. 9, except that the court inserted a paragraph between the second and third paragraphs of the tendered instruction. The inserted paragraph stated: "However, when the person threatened or attacked uses more force than permitted by the above definition of self-defense, she is guilty of unlawful conduct and is criminally responsible therefor." It is the contention of the defendant that it was error for the trial court to give an instruction which requires the jury to weigh the type and degree of force and means used.

The defendant relies upon the defense of self-defense as defined by section 29-114, R. S. Supp., 1969, referred to herein as the Nebraska Self-Defense Act. The requested instruction tendered by the defendant is based upon the Nebraska Self-Defense Act which became effective on June 5, 1969. The State relies solely upon an interpretation of the act. It is readily apparent that the constitutionality of the act is not raised by either the State or the defendant.

The pertinent part of the act provides: "No person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting, by any means necessary, himself, his family, or his real or personal property, or

when coming to the aid of another who is in imminent danger of or the victim of aggravated assault, armed robbery, holdup, rape, murder, or any other heinous crime." § 29-114, R. S. Supp., 1969. The State argues that the language of the statute preserves the concept of the use of reasonable force only in defending one's person or property. On the other hand, the defendant argues that the act provides that a person may use unlimited force in repelling an aggressor and that the common law rule that one may use only reasonable force has been abrogated by the act. It is shown that amendments by the Legislature were twice offered and defeated to change the words "any means necessary" to "any reasonable means necessary." It was clearly the intention of the Legislature to eliminate the word "reasonable" from the common law rule and it would be an act of legislation for this court under such circumstances to place it back in the act by judicial pronouncement. On the other hand, we do not subscribe to defendant's view that the words "by any means necessary" were an opening of the door for the use of extreme and brutal force by an aggressor in every case to protect against minor infringements of personal and property rights. Necessary force does not mean unnecessary force. Nor does "any means necessary" mean "any reasonable means necessary" under the legislative history here shown.

Killing in self-defense is grounded upon necessity. The right exists only in extremity where no other practicable means to avoid the threatened harm is apparent to the person resorting to it. If there is no real or apparent necessity for the killing, the defense fails. In order to be entitled to assert self-defense as an excuse or justification for the killing, the defendant must have been in imminent danger of death or great bodily harm at the time of the commission of the act. In order to justify or excuse a killing in self-defense, the accused must not only have entertained the belief that his life was

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HB-7 and HB-17

March 19, 1971

The Honorable William J. Moran,
Chairman
Judiciary Committee
House of Representatives
Pouch V
Juneau, Alaska 99801

SUBJECT: Ombudsman

Dear Bill:

As state chairman of the American Bar Association Committee on the Ombudsman I am enclosing for your information a copy of the report of the 32nd American Assembly on the Ombudsman and a brief outline on the Ombudsman prepared by the Ombudsman Committee of the American Bar Association.

As you are a member of the Judiciary Committee I am also enclosing a copy of an article, "The Ombudsman and Human Rights", by Bernard Frank, a reprint from the Administrative Law Review of April, 1970.

Although I understand that at least one key committee chairman is opposed to the enactment of any Ombudsman legislation by this legislature, I hope that our furnishing you with this material may induce legislative leaders to permit both committee and floor action on the Ombudsman bills now before the legislature.

Although Alaska is a small state and aggrieved citizens have much more than the usual opportunity to obtain informal relief through the political process, I still believe that Alaska needs and should have an Ombudsman. Hawaii, a state which also has a small population, has reported outstanding success with their new Ombudsman.

I believe that Alaska should place its Ombudsman, for administrative purposes, under the Legislative Council or, if the Legislative Audit Committee is upgraded, under the aegis of that committee. Indeed, historically, the Ombudsman function developed out of the Legislative Audit role of the Swedish Parliament.

Even though this session is drawing to a close, I hope that you will be able to act on the Ombudsman bills and, if floor action cannot be completed, that the bills could be assigned to the Legislative Council or to other committees for interim studies.

Sincerely,

Barry W. Jackson

Barry W. Jackson

BWJ:pb

Encl. (3)

HB-7 and
HB-17

AMERICAN BAR ASSOCIATION
ADMINISTRATIVE LAW SECTION
OMBUDSMAN COMMITTEE

THE OMBUDSMAN

1. **Definition**

   The Ombudsman is an independent governmental official who receives complaints against government agencies and officials from aggrieved persons, who investigates, and who, if the complaints are justified, makes recommendations to remedy the complaints.

2. **Basic Concept**

   The Ombudsman system is one of the institutions essential to a society under the Rule of Law, a society in which fundamental rights and human dignities are respected. Human rights are not protected simply by constitutions or legislation, by guarantees or speeches, by proclamations or declarations, but primarily by the availability of remedies. The Ombudsman system is one of the remedies which seeks to preserve human rights.

3. **Reasons for Ombudsman**

   (a) The post-World War II growth of the welfare state. Government grew in size and extensive powers were given to agencies. Protection is needed against executive and administrative mistake and abuse of power.

   (b) The activities of public administration have become so comprehensive and the power of the bureaucracy so great that the legal status of the individual needs additional protection.

   (c) Existing mechanism — courts, legislatures, the executive, administrative courts, and administrative agencies — are not sufficient to cope with the grievances of the aggrieved and there is a need for a supplementary institution.

   (d) The presence of the Ombudsman has psychological value. His office gives the citizen confidence that there exists a watchdog for the people who will hold government accountable.

   (e) The legislature traditionally concerned with the observance of laws and rulings by public officials has at the same time extensively delegated powers to the administrative authorities. The Ombudsman can serve to aid the legislature in its function of supervising the executive and administrator.

   (f) The Ombudsman gives the citizen an expert and impartial agent without personal cost to the complainant, without time delay, without the tension of adversary litigation, and without requirement of counsel or the intervention of those highly placed.

4. **Types of Action or Inaction Which Give Rise to Complaints**

(a) The Ombudsman investigates complaints arising from administrative action or inaction as a result of which any person has been aggrieved. Such types of action or inaction are:

(1) Injustice.
(2) Failure to carry out legislative intent.
(3) Unreasonable delay.
(4) Administrative error.
(5) Abuse of discretion.
(6) Lack of courtesy.
(7) Simple clerical error.
(8) Oppression.
(9) Oversight.
(10) Negligence.
(11) Inadequate investigation.
(12) Unfair policy.
(13) Partiality.
(14) Failure to communicate.
(15) Rudeness.
(16) Maladministration.
(17) Unfairness.
(18) Unreasonableness.
(19) Arbitrariness.
(20) Arrogance.
(21) Inefficiency.
(22) Violation of law or regulations.
(23) Abuse of authority.
(24) Discrimination.
(25) Disability to act.
(26) Errors, mistakes, carelessness.
(27) Disagreement with discretionary decisions.
(28) Inconsistent with general course of an agency's function.
(29) Mistakes in law or arbitrary in ascertainment of facts.
(30) Based on irrelevant consideration.
(31) Unclear or inadequately explained when reason should have been revealed.
(32) Inefficiently performed.
(33) All other acts of injustice that frequently the governors inflict upon the governed, intentionally or unintentionally.

(b) The Ombudsman may also recommend clarification, amendment, or initiation of legislation and administrative rules and regulations.

5. American Bar Association Resolution

The following Resolution dealing with the establishment of an Ombudsman was adopted by the American Bar Association at the Midyear Meeting of the House of Delegates in 1969:

Be it Resolved, That the American Bar Association recommends:

1. That state and local governments of the United States should give consideration to the establishment of an ombudsman authorized to inquire into administrative action and to make public criticism.

2. That each statute or ordinance establishing an ombudsman should contain the following twelve essentials: (1) authority of the ombudsman to criticize all agencies, officials, and public employees except courts and their personnel, legislative bodies and their personnel, and the chief executive and his personal staff; (2) independence of the ombudsman from control by any other officer, except for his responsibility to the legislative body; (3) appointment by the executive with confirmation by a designated proportion of the legislative body, preferably more than a majority, such as two-thirds; (4) independence of the ombudsman through a long term, not less than five years, with freedom from removal except for cause, determined by more than a majority of the legislative body, such as two-thirds; (5) a high salary equivalent to that of a designated top officer; (6) freedom of the ombudsman to employ his own assistants and to delegate to them, without restraints of civil service and classification acts; (7) freedom of the ombudsman to investigate any act of failure to act by any agency, official, or public employee; (8) access of the ombudsman to all public records he finds relevant to an investigation; (9) authority to inquire into fairness, correctness of findings, motivation, adequacy of reasons, efficiency, and procedural propriety of any action or inaction by any agency, official, or public employee; (10) discretionary power to determine what complaints to investigate and to determine what criticisms to make or to publicize; (11) opportunity for any agency, official, or public employee criticized by the ombudsman to have advance notice of the criticism and to publish with the criticism an answering statement; (12) immunity of the ombudsman and his staff from civil liability on account of official action.

3. That for the purpose of determining the workability of the ombudsman idea within the federal government, the Administrative Conference should (a) experiment by constituting itself an ombudsman for limited areas of federal activity, and (b) encourage and study experimentation by particular agencies with the ombudsman idea.

4. That establishment of a federal government-wide ombudsman system, whether or not designed to assist congressmen in handling constituents' complaints about administration, should await findings based upon the experimentation recommended.

Be it Further Resolved, That the Section of Administrative Law is authorized to present the views of the Association and to encourage the establishment of ombudsmen in accordance with the provisions of this Resolution, by all necessary and appropriate means.

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12. Ombudsmen-1967. A Compilation of State Proposals, United States Senate, Subcommittee on Administrative Practice and Procedure, November, 1967, U. S. Government Printing Office.

Attention is called to the following Bibliographies:

1. Bibliography on the Ombudsman by Randy Hamilton, School of Public Administration, University of Southern California, University Park, Los Angeles, California, 90007.

2. Ombudsman-Citizen Defender, Bibliography prepared by Charles L. Smith for the Friends Committee on Legislation of California, 2160 Lake Street, San Francisco, California.

7. Ombudsman Committee

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Washington, D. C.

Ombudsman Committee
Chairman, Bernard Frank
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For further information with respect to the Ombudsman, write to Chairman, Bernard Frank.

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HB-7 & HB-17

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An effort is made to survey the current status of the ombudsman throughout the world. The author is deputy chairman of the Federal Bar Association's Committee on the Ombudsman.—The Editors.

THE OMBUDSMAN AND HUMAN RIGHTS

By
BERNARD FRANK*

The Geneva Conference on World Peace Through Law in 1967 recommended that the World Peace Through Law Center "disseminate widely information about the role which an ombudsman can perform in protecting citizens against violation of their rights by administrative authorities; and seek to assist financially or otherwise projects designed to encourage research on the establishment of ombudsmen."[1] It is, therefore, appropriate to discuss at this Bangkok World Conference on World Peace Through Law the subject, "Man, Rights and Law (Ombudsman)."

WHAT IS AN OMBUDSMAN?

The "Ombudsman" is an independent governmental official who receives complaints against government agencies and officials from aggrieved persons, who investigates, and who, if the complaints are justified, makes recommendations to remedy the complaints. To this definition must be added the basic concept that the Ombudsman system is one of the institutions essential to a society under the Rule of Law, a society in which fundamental rights and human dignities are respected. Therefore, our frame of reference when we discuss the Ombudsman is concern with the preservation of human rights.

EXISTING NATIONAL OMBUDSMAN INSTITUTIONS

Today there are national Ombudsman officials in Sweden, Finland, Denmark, Norway, New Zealand, Guyana, Tanzania, Great Britain, and Northern Ireland. Space limitations will permit only a mini-analysis of the institution in each country.[2] This work paper has excluded consideration of Military Ombudsmen in Norway and West Germany.

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*Deputy Chairman, Federal Bar Association Committee on Ombudsman; Member, American Bar Association Committee on Ombudsman.

[1]World Peace Through Law Center, Programs for Progress Toward Peace Through Law, Future Work Program, Topic II, Human Rights, 28-29.

[2]Publications of particular relevance are GELLHORN, OMBUDSMEN AND OTHERS (1966); ROWAT, ed., THE OMBUDSMAN, (2d ed. 1968); THE OMBUDSMAN OR CITIZEN'S DEFENDER:

A. Sweden.[3]

In 1968, the offices of the Justitieombudsman (created in 1809) and the Militieombudsman (concerned with military affairs since 1915) were combined into one institution with three seperate Ombudsmen each known as Justitieombudsman: Alfred Bexelius, handling social and institutional welfare; Hugo Henkow, who is in charge of military and taxation matters, shares the task of controlling the courts, the prosecutors, and the police, with Ulf Lundvik, who also supervises sheriffs, local government, and the rest of civil administration.[4] The Ombudsmen with a common staff do not operate as a committee, each working separately and deciding his own cases.[5] The following selected characteristics of the office are noted: *Principal duties*-to supervise observance of laws by courts, public officials, and military officers; *Jurisdiction*-includes all officials (except members of the Cabinet, and the Chancellor of Justice), judges (with some limitations where members of the Supreme Court of Justice and the Supreme Administrative Court are concerned), municipal boards and officials (except elected members of municipal councils), clergymen of the State Lutheran Church, and military officers and officials; *Complaints*-may be made by anyone in writing or investigation may be initiated by Ombudsman, who also has discretion to decide which complaints shall be investigated; *Investigations*- has power to investigate with access to files and minutes of courts and agencies, and call upon officials for assistance; *Remedies*-may prosecute or commence disciplinary proceeding but the most frequent device used is a letter of admonition or reminder; has no power to change a decision of a court or an administrative agency; *Defects in laws*-may call attention to defects in laws and suggest amendments or

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A MODERN INSTITUTION, Annals, Vol. 377 (May 1968); ANDERSON, ed., OMBUDSMEN FOR AMERICAN GOVERNMENT; Remedies Against the Abuse of Administrative Authority—Selected Studies, United Nations, 1964, ST/TAO/HR/19; Ombudsman, Hearing Before the Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary, U.S. Senate, 89th Cong., 2d Sess., pursuant to Senate Resolution 190 (1966).

[3]Effective Realization of Civil and Political Rights at the National Level—Selected Studies, United Nations, 1968, BEXELIUS, The Ombudsman, 27; Bexelius, The Swedish Ombudsman, 17 U. Toronto L.J. 170 (1967); Jagerskiold, The Swedish Ombudsman, 109 U. PA. L. REV. 1077 (1961); The Swedish Parliamentary Ombudsmen, Annual Report for 1968, Summary in English; GELLHORN, supra note 2, 194; WENNERGREN, The Rise and Growth of Swedish Institutions for Defending the Citizen Against Official Wrongs, Annals, supra note 2, 1; Bexelius, The Origin, Nature, and Functions of the Civil and Military Ombudsmen in Sweden, Annals, supra note 2, 10.

[4]Ombudsman Annual Report for 1968, supra note 3, 1-2.

[5]Letter from Alfred Bexelius to Bernard Frank, April 8, 1969.

ask an administrative agency to change a practice; *Inspection*-may make inspections of courts, police, prosecutors, agencies, and institutions; *Discretionary decisions*-may review but does so only in exceptional cases; *Exhaustion of other remedies*-not required; *Parliament*-annual reports are made to Parliament; each year administration is examined by a committee of Parliament; *Election*-elected by 48 electors of the Riksdag for a term of four years or term of Parliament and may be reelected; *Case load*-in 1968, received 2120 complaints and originated 494 on their own initiative; about 80% of the cases are unfounded or without evidence.

B. Finland.[6]

Risto Leskinen, the Finnish Parliamentary Commissioner (an office created in 1919) has functions which are to a great extent comparable with the Chancellor of Justice appointed by the President. Most of the selected characteristics of the Swedish Ombudsman are applicable and separate comment need be made only with respect to the following: *Principal duties*-to see that "laws, decrees and official regulations are observed by judges and other officials."; *Jurisdiction*-public administration, including judges, members of the Cabinet, local officials, military officers, and ecclesiastical organizations or organs functioning with the responsibility of public officials;[7] *Discretionary decision*-may be reviewed if the official exceeds his discretionary power, raising a question of legality; *Reopening cases*-can request the Supreme Court or the Supreme Administrative Court to annul prior decisions and reconsider a case if there "has been a fault in the procedure, if the evidence was based on perjury or false documents," if there is "new relevant evidence or if the application of the law has been evidently erroneous";[8] *Election*-elected by Parliament for a term of four years and may be reappointed; *Case load*-in 1967, received 1294 complaints, took up 136 on his own initiative, and the Chancellor of Justice referred 136.[9]

C. Denmark.[10]

The Parliamentary Commissioner for Civil and Military Government

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[6] LESKINEN, THE POSITION AND FUNCTIONS OF THE FINNISH PARLIAMENTARY OMBUDSMAN (1965); GELLHORN, supra note 2, 48; KASTARI, The Chancellor of Justice and the Ombudsman, ROWAT, supra note 2, 58; HIDEN, Finland's Defenders of the Law, Annals, supra note 2, 31.

[7] Letter from Mikael Hiden, Secretary, Eduskunnan oikeusasiamies, to Bernard Frank, April 1, 1969.

[8] Hiden, supra note 7.

[9] Hiden, supra note 7.

[10] HURWITZ, The Ombudsman, The Danish Institute for Information (1968);

has been held by its only incumbent, Professor Stephan Hurwitz, since 1955. The office differs appreciably from Sweden's, as is apparent from the following selected characteristics: *Principal duties*-to keep "himself informed as to whether any person within his jurisdiction pursues unlawful ends, takes arbitrary or unreasonable decisions or otherwise commits mistakes or acts of negligence in the discharge of his or her duties";[11] *Jurisdiction*-all Ministers, civil servants, and all other persons acting in central government service (except judges) including military administration, local government (with some limitation), and civil servants of the Lutheran Church (except in matters which involve tenets or preachings); *Complaints*-as far as possible in writing with name and address and with a one year statute of limitations; has discretion to decide which complaints he shall investigate; *Investigation*-can investigate with all government (state and local) officials required to give information and supply documents and records (subject to limitations regarding state secrets and rules in the Administration of Justice Act); *Remedies*-cannot prosecute but does give his views, has no power to change an administrative decision; *Defects in laws*-may call attention to defects in existing legislation or administrative regulations; *Inspections*-may inspect any state agency (subject to limitations set forth in Administration of Justice Act) and may inspect premises of local government in connection with a case involving local government; *Discretionary decisions*-criticizes such decisions when supported by experts and "when as far as can be ascertained, there exists reliable documentary evidence of an arbitrary or unreasonable decision;"[12] *Exhaustion of other remedies*-except in cases where the Ombudsman has acted on own initiative, complaints against decisions which may be set aside by a higher administrative authority may not be brought before him until the higher authority has given its decision; the Ombudsman has pointed out that this restriction applies only to "decisions" and not to mistakes made in the treatment of cases by subordinate authorities or the conduct of the officials concerned;[13] *Civil servants*-a civil servant has the right when complained against to have his case removed to disciplinary investigation by the agency concerned; *Election*-elected after every general Parliamentary election for term of Parliament and may be

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CHRISTENSEN, The Danish Ombudsman, 109 U. PA. L. REV. 1100 (1961); GELLHORN, supra note 2, 5; ABRAHAM, The Danish Ombudsman, Annals, supra note 2, 55; PEDERSEN, Denmark's Ombudsmand, ROWAT, supra note 2, 75.

[11] Article 3, Directives for the Parliamentary Commissioner for Civil and Military Administration, HURWITZ, supra note 10, 45.

[12] HURWITZ, supra note 10, 9.

[13] HURWITZ, supra note 10, 13.

re-elected; *Parliament*-annual reports and special communications to Parliament are made through a Parliamentary Committee; *Case load*-about 1000 cases a year with only 10% to 15% found justified.

D. Norway.[14]

In 1962, the Ombudsman for Public Administration was established, an office held by Andreas Schei. Norway was influenced by both the Swedish and the Danish systems but more particularly by Denmark, as is indicated by the following selected characteristics: *Principal duties*-to "endeavour to ensure that the public administration does not commit any injustice against any citizen and that civil servants and others in the service of the administration do not commit errors or neglect their duties";[15] *Jurisdiction*-covers government administrative organs, Cabinet Ministers as heads of ministries, civil servants, and others in the service of the government, as well as local government (since January 1, 1969), but excludes Cabinet decisions, the courts, the Auditor of Public Accounts, and matters which come within the province of the Military Ombudsman; *Complaints*-must be in writing and signed (but with a one year statute of limitations) from someone personally wronged; has discretion to dismiss a complaint obviously unfounded; since the Ombudsman can investigate on own initiative, can take up cases which lack the necessary personal interest or which are stale;[16] *Investigation*-has power to investigate, with the right to obtain information from all officials and with access to documents and records (but not internal work papers); *Remedies*-only sanction is to express an opinion with no power to compel compliance or to change or make an administrative decision; *Defects in laws*-may call attention to defects in acts, administrative regulations, or administrative practices; *Inspections*-no general inspection duties but may visit or inspect agencies in course of an investigation; *Discretionary decisions*-can review and give opinion concerning discretionary decisions which are "manifestly unreasonable or otherwise contrary to proper administrative practices"; *Exhaustion of remedies*-administrative remedies must be exhausted unless there is a particular reason for the Ombudsman to handle without delay; *Election*-selected by Parliament after each general election for four years or until the next general election; *Parliament*-barred from dealing with a

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[14] THUNE, The Norwegian Ombudsmen for Civil and Military Affairs, Annals, supra note 2, 41; OS, The Ombudsman for Civil Affairs, ROWAT, supra note 2, 95; WALNUN, The Norwegian Ombudsman, article, No. 21, published by the Royal Ministry of Foreign Affairs, Oslo, Norway (1967); GELLHORN, supra note 2, 154.

[15] Rules for the Storting's Ombudsman for the Administration, issued 1968, Sec. 1.

[16] Walnun, supra note 14, 1.

complaint if subject is one under consideration by Parliament or the Standing Committee on Parliamentary Control, Ombudsman makes annual and special reports; can be referred cases from Parliament; *Case load*-about 1000 complaints annually; about 15% are justified.

E. New Zealand.[17]

Sir Guy Powles is the Parliamentary Commissioner, an office created in 1962. New Zealand was influenced by the Danish system but the first country outside of Scandinavia to transplant the Ombudsman did so with striking variations, again illustrated by selected characteristics: *Principal function*-"to investigate any decision or recommendation made (including any recommendation made to a Minister of the Crown), or any act done or omitted, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by any person of the Departments or organizations named in Parts I and II of the Schedule to this Act, or by any officer, employee, or member thereof in the exercise of any power or function conferred on him by any enactment";[18] *Jurisdiction*—limited to government departments and other organizations enumerated in a Schedule to the Act; has no direct power over Ministers but can investigate a recommendation to a Minister and may apply to the Supreme Court for a declaratory order where a question arises as to jurisdiction; noteworthy among omissions are the local government, administrative tribunals, and the courts; in 1968, the Ombudsman obtained jurisdiction over Education and Hospital boards; jurisdiction is limited with respect to members of the Armed Forces; the powers conferred on the Commissioner may be exercised notwithstanding any provision in any enactment as to finality of an administrative act or that there shall be no right of appeal or that no proceeding or decision shall be challenged, reviewed, quashed or questioned; *Complaints*-must be written; requires payment of two dollars (which can be waived); has discretion not to investigate including where complainant had knowledge of matter for more than twelve months before complaint received by Commissioner or does not have sufficient personal interest in the subject matter; can investigate on his own motion; *Investigation*-has the power to investigate (must be in private) and to obtain information from such

[17] NORTHEY, New Zealand's Parliamentary Commissioner, ROWAT, supra note 2, 127; SAWER, The Ombudsman and Related Institutions in Australia and New Zealand, Annals, supra note 2, 62; GELLHORN, supra note 2, 91; Powles, Address, Canadian Bar Association (1964), reprinted in U.S. Senate Document, supra note 2, 207.

[18] Parliamentary Commissioner (Ombudsman) Act 1962, Section 11 (1). A 1968 Amendment 11 (2) relates to Part III of the Schedule adding Specified Local Organizations.

persons as he thinks fit; has the power to require production of documents or papers and to compel attendance of officials and complainants to be examined on oath, subject to the right of the Attorney General to certify that certain limited matters should not be disclosed; *Remedies*-limited to reporting his opinion and recommendations to the department and the Minister concerned and if no action is taken which he considers adequate may report to the Prime Minister and Parliament; the grounds on which he may make a report and recommendation are broad: contrary to law; unreasonable, unjust, oppressive, or improperly discriminatory in accordance with a rule of law, statute, or practice that is or may be unreasonable, unjust, oppressive, or improperly discriminatory; based wholly or partially on mistake of law or fact; or was wrong; *Defects in laws*-in any case, can call attention to altering of practices or reconsideration of law; *Inspections*-during investigations can make on site inspection; *Discretionary decisions*-can investigate where discretionary power has been exercised for an improper purpose or on irrelevant grounds or with irrelevant considerations or where reason should have been given for decision; *Exhaustion of remedies*-cannot investigate an administrative act which could be appealed on its merits to any court or administrative tribunal; *Parliament*-makes annual and interim reports to Parliament; any Committee of the House of Representatives may refer to him for investigation and report petitions; *Election*-appointed on recommendation of House of Representatives by Governor General for three or four year term (depending on session at which recommendation is made) and may be reappointed; *Case load* in the year ending March 31, 1968, received 631 complaints, handled a total of 555 cases, found 56 justified, and issued formal recommendations in six cases.[19]

F. Guyana.[20]

The 1966 Constitution of Guyana established the office of Ombudsman, a position held by Gordon S. Gillette. The Guyana Ombudsman is generally based on the New Zealand system, but again in the process of transplantation variations were made, as indicated in the following selected characteristics: *Principal Function*-to investigate any administrative action taken on or after May 26, 1966, by any department of government, other authorities, or by Ministers, officers or

[19]Report of the New Zealand Ombudsman, 31 March 1968, 5-6.

[20]Report of the British Guiana Commission of Inquiry, Racial Problems in the Public Service, International Commission of Jurists (1965); The Constitution of Guiana and Related Constitutional Instruments (May 1966); Guyana Act No. 17 of 1967, Ombudsman Act, 1967; 1968 Report of the Guyana Ombudsman.

members of such a department or authority (but excluding courts); *Jurisdiction*-a First Schedule to the Constitution sets forth action and matters not subject to investigation; *Complaints*-must be in writing and allege that the complainant has sustained injustice in consequence of a fault in administration; has discretion not to investigate including where complainant had knowledge of action for more than twelve months before complaint received by Ombudsman; may investigate on own initiative; a Minister or a member of the National Assembly may request an investigation by the Ombudsman; *Investigation*-must be in private; may obtain information from such persons as he thinks fit; can require the production of documents or papers and to compel attendance of witnesses to be examined under oath; *Remedies*-recommendations only and if, within a reasonable time, no satisfactory action has been taken, may report the matter to the National Assembly; *Inspection*-for purposes of investigation, has power to inspect after prior notice, subject to certain limitations; *Exhaustion of Remedies*-cannot investigate any action if there is remedy in court or right of appeal to a tribunal but has discretion to investigate if satisfied that in the particular circumstances not reasonable to expect the complainant to take or to have taken such proceedings and is not precluded from investigation because the complainant may apply to the High Court for redress under the Constitution for contravention of provisions for the protection of fundamental rights and freedoms; *National Assembly*-annual report to National Assembly; *Election*-appointed for a four year term by the Governor General acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition; *Case load*-in 1968, received 192 cases and handled four from the previous year. Seventeen cases were found to be justified.[31]

G. The United Republic of Tanzania.[32]

The Interim Constitution and Act 25 of 1966 provides for a Permanent Commission of Enquiry in the one party state of Tanzania. The present Commissioners are E.A.M. Mang'enya, Chairman, Sheikh Mohamed Ramiya, and K.M. Kikwete. There are many variations from

[31] 1968 Report of the Guyana Ombudsman, supra note 20, 3-5; letter from Gordon S. Gillette to Bernard Frank, April 14, 1969.

[32] Annual Report of the Permanent Commission of Enquiry, June 1966–June 1967, Dar Es Salaam (1968); Account of the Origin, Practice and Procedure of the Permanent Commission of Enquiry in Tanzania, The Tanzania Standard, Dar Es Salaam, May 15, 1968, p. 4, and May 16, 1968, p. 4 and 7; Mang'enya, 'Watch-Dog' Guards the Rights of All Tanzanians, The Tanzania Standard, Dec. 6, 1968, p. XII; and The Nationalist, Dar Es Salaam, July 17, 1969 and July 18, 1969.

the other Ombudsman systems as indicated in the following selected characteristics: *Principal Functions*-"to enquire into the conduct of any person to whom this section applies in the exercise of his office or authority, or in abuse thereof".[33] The Commission deals with "arbitrary decisions or arrests, omissions, improper use of discretionary powers, decisions made with bad or malicious motive, a decision that has been influenced by irrelevant considerations, unnecessary and unexplained delays, obviously wrong decisions, misapplications and misinterpretations of laws, by laws, and regulations";[34] *Jurisdiction*-central and local government officials, party office holders, local government authorities, and, in addition, commissions, corporate bodies, public authorities or boards listed in a First Schedule to the Act 25 of 1966; excluded are decisions made by the courts or tribunals in exercise of their judicial functions; included are administrative decisions made by members of the judiciary, the administration (including Ministers and the Second Vice President but excluding the President and the First Vice President), party officials and scheduled organization officials; *Complaints*-may be made orally or in writing or the Commission may investigate on its own initiative; in all instances, the President can direct that there be no investigation; the President may also request investigation; the Commission has discretion not to investigate including if case is too old; *Investigation*-conducted in private; the Commission has the power to examine anybody who can give testimony or produce documents, subject to the right of the President to limit the production of information or documents which might prejudice security, defense, or Cabinet deliberations; *Remedies*-the Commission can express an opinion only and, make a report to the President; *Exhaustion of remedies*-the Commission will decline a case if under the law or existing administrative practice there is an adequate remedy or right of appeal which has not been exhausted; *Defects in laws*-not within the jurisdiction of the Commission; *Commission action*-when a Commissioner does not agree with his fellow Commissioners on any report to the President, the report contains a statement of the disagreement; *Finality*-except on ground of lack of jurisdiction, no action of the Commission can be challenged, quashed, or questioned; *Election*-members are appointed by the President to serve for two years with a right of reappointment for another two years; *Reports*-annual reports are made to the President who places them before the National Assembly; *Case Load*-in the year ending June 30, 1968, the Commission dealt with 443 left over from the

[33] Interim Constitution of Tanzania, Sec. 67 (1).

[34] Mang'enya, supra note 22, XIII.

previous year, received 783 cases, completed 585, and found 114 justified.

H. Great Britain.[25]

The British Parliamentary Commissioner Act 1967 created the office of Parliamentary Commissioner for Administration which is held by Sir Edmund Compton. The Act is a blend of the Scandinavian Ombudsman, New Zealand Ombudsman, and the British Comptroller and Auditor-General systems, with the following selected characteristics: *Principal function*-to receive complaints through members of the House of Commons from persons who claim to have sustained injustice in consequence of maladministration as the result of action by a government department or other authority; *Jurisdiction*-limited to departments and authorities listed in a Schedule Two and covering roughly the central government excluding local government, nationalized industries and independent boards. A Schedule Three sets forth types of action by the central government which are excluded; *Complaints*-must be in writing and must come only through a M.P.; has discretion not to investigate; unless special circumstances exist will not investigate a complaint which was made later than twelve months from day on which complainant first had notice of the matters alleged in complaint; has no power to initiate investigation on own motion; *Investigation*-may obtain information from such persons and in such manner and make such inquiries as he thinks fit; can compel furnishing of information and production of documents; has access to all departmental documents including internal papers and records (except proceedings of the Cabinet); *Remedies*-reports results of investigation only with no power to prosecute or invoke sanctions; *Discretionary decisions*-cannot question discretionary decision taken without maladministration but in 1968 accepted a recommendation of the Select Committee on the Parliamentary Commissioner for Administration that if he found a decision which judged by its effect on an aggrieved person appeared to him to be thoroughly bad in quality, he might infer there had been an element of maladministration in the decision;[26] *Exhaustion of Remedies*-

[25] Frank, The British Parliamentary Commissioner for Administration—The Ombudsman, 28 FED. B.J. 1 (1968); Friedmann, Commons, Complaints, and the Ombudsman, 21 Parliamentary Affairs 38, 1967-68; Friedmann, The British Ombudsman: Evaluation of the Institution After Its First Year of Operation, a paper read at the Canadian Political Science Ass'n (1968); Garner, The British Ombudsman, 18 U. TORONTO L.J. 158 (1968); Wade, The British Ombudsman, 20 AD. L. REV. 409 (April 1968).

[26] Second Report from the Select Committee on the British Parliamentary Commissioner for Administration, Session 1967-68, VI-VIII.

will normally not investigate a case where the complainant has or had a remedy by way of appeal to a tribunal or by way of proceeding in a court of law but has discretion to act if satisfied there are special circumstances which prevent or prevented the complainant from seeking such a remedy; *Reports*-special interim and annual reports to Parliament which are received and acted upon by the Select Committee on the Parliamentary Commissioner for Administration; *Election*-appointed by the Crown and holds office during good behavior or until year of service in which he attains age 65; *Case load*-from April 1, 1967, to December 31, 1967, received 1069 complaints of which he completed 849 and found maladministration in 19 cases;[27] during the calendar year of 1968 he received 1120 complaints and had a carryover of 220 from 1967, making a total of 1340 cases of which he completed 1181, finding maladministration in 38 cases.[28]

l. Northern Ireland.

The Parliamentary Commissioner Act (Northern Ireland) 1969, virtually identical with the British Parliamentary Commissioner Act 1967, came into operation on July 1, 1969 by an Order in Council of the Governor. The designation of Sir Edmund Compton, British Parliamentary Commissioner for Administration, to serve as Northern Ireland Parliamentary Commissioner for Administration, had earlier been announced by the then Prime Minister, Captain O'Neill. Sir Edmund Compton assumed office on July 1, 1969, and presented his first report to the Parliament of Northern Ireland on September 30, 1969. He revealed that for the three-month period he had received eight complaints from six of the 56 members of the House of Commons, which he noted was in recess. He promised not to be an absentee Ombudsman.[28.1]

THE OMBUDSMAN SYSTEM—ITS PRINCIPAL ELEMENTS

Since the Ombudsman is easily adaptable to the differing needs of various countries, each nation has made its Ombudsman to its own fashion. However, an analysis reveals a number of principal elements common to the institution. The Ombudsman:

1. Is an arm of the legislature, except in Tanzania.

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[27] Fourth Report of the British Parliamentary Commissioner for Administration, Session 1967-1968, Annual Report for 1967, 3-5.

[28] Second Report of the British Parliamentary Commissioner for Administration, Session 1968-1969, Annual Report for 1968, 3-5.

[28.1] First Report of the Northern Ireland Parliamentary Commissioner for Administration, p. 3-4 (1969).

2. Is generally independent even of the legislature although there may be controls over finances and staff and examination by a legislative committee.
3. Is a figure of prestige and influence based upon his independence, objectivity, competence, and fairness.
4. Receives complaints of abuse by government departments or agencies from the public or acts on his own initiative, except in Great Britain where complaints are channeled through the M.P.
5. Conducts an impartial investigation, calls upon all persons for information, requires the production off documents, and has access to governmental records, subject in some countries to specific limitations.
6. Uses fast, inexpensive, and informal procedures.
7. Has no power to give orders or impose sanctions, except in Sweden and Finland. The Ombudsman has no right to quash or reverse a decision or order of any official and can only report or recommend or suggest. But, even in Sweden and Finland, the most potent weapon of the Ombudsman is an expression of his opinion.
8. Issues annual and in some countries more frequent reports of the results of his investigations.
9. Gives reasons for dismissal of a complaint if a complaint is unfounded or beyond his jurisdiction.
10. Has the power to inspect agencies, institutions or departments either as a general power or as a power in connection with investigation of a complaint.
11. Is easily accessible: The complaint procedures are without cost to the complainant, do not require counsel, and once filed the Ombudsman is the moving party.
12. Generally may suggest changes or improvements in administrative procedures or changes in legislation.

WHY THE OMBUDSMAN?

The roll call of grievances against abuses of government grows larger each day. Complaints arise out of acts or the failure to act of officials and range from simple clerical errors to oppression and include oversight, negligence, inadequate investigation, unfair policy, delay, partiality, failure to communicate, rudeness, maladministration, unfairness, unreasonableness, arbitrariness, arrogance, inefficiency, improper motivation, violation of laws or regulations, abuse of authority, discrimination, disability to act, errors, mistakes, carelessness, and all of the other acts of injustice that frequently the governors inflict upon the governed, intentionally or unintentionally.

Why was it determined that a political institution founded in 1809 in

Sweden, not adopted next until 1919 in Finland, and today existing in seven other countries, three Canadian provinces and two states in the United States would help to adjust complaints of citizens? There are many reasons and the most pertinent are summarized below:

1. The post World War II growth of the Welfare State resulted in the proliferation of administrative agencies. As the State assumed a multitude of functions in welfare, education, medical care, social security and housing, government grew in size and extensive powers were given to agencies. The growth of the Welfare State made necessary new protection against executive and administrative mistake and abuse of power.

2. The traditional concern for the guaranty of the legal rights of the individual has become even greater in modern society. The activities of public administration have become so comprehensive and the power of the bureaucracy so great that the legal status of the individual needs additional protection.

3. The legislature traditionally concerned with the observance of laws and rulings by public officials has at the same time extensively delegated powers to the administrative authorities. The Ombudsman can serve to aid the legislature in its function of supervising the executive and administrator.

4. The presence of the Ombudsman has psychological value. His office gives the citizen confidence that there exists a watchdog for the people who will hold government accountable.

5. The Ombudsman can best be engrafted upon the political and legal systems of a country.[29]

6. Existing mechanisms for adjusting grievances are inadequate.

(a) The legislator (if he investigates complaints) is taken away from his main function of studying and passing legislation. His role in adjusting complaints is frequently limited because of lack of sufficient funds and staff and inability to have direct access to files and information. He must of necessity rely in most cases upon a reply from the agency or department he is investigating. Party consideration may affect his role in handling grievances.

(b) The courts everywhere play a major role in the correction of abuses by government. But litigation is expensive, tension creating, protracted and slow moving and, in many cases, the citizen bears with injustice because he cannot afford or does not wish litigation. Courts may be precluded from hearing appeals either by law or by technicalities

[29]Seminar on the Effective Realization of Civil and Political Rights at the National Level, Kingston, Jamaica, April 25-May 8, 1967, p. 55, paragraph 258, United Nations, 1967, ST/TAO/HR/29.

of form, time, standing, jurisdiction, nature and extent of interest, the character of the administrative act, and the wording of statutes. Review of administrative acts may be limited by such questions as to whether the agency acted within its powers, was the ruling supported by substantial evidence or was the action reasonable and not arbitrary. Courts cannot conduct informal investigations and are limited by rules for the production of evidence. Courts are limited to basically adversary party proceedings.

(c) Administrative courts even using procedures as informal as possible still follow court-like adversary procedure. Legal representation is the normal rule. Such courts frequently move slowly and there is great delay in ensuring the execution of the judgment when delivered. Grievances must concern an administrative decision and must be brought before local courts or regional courts initially, even in France, except in certain cases.

(d) The executive may frequently handle grievances but is in essence investigating himself and in great part relying on the reply from the agency or official against whom the complaint was made. Party affiliation of the person making the complaint may be important. Executive complaint agencies lack the essential characteristic of independence from the executive.

(e) Administrative agencies may have within their structure channels for complaint but such a system lacks impartiality. The appeal system, if one exists, is expensive and time consuming.

7. The Ombudsman gives the citizen an expert and impartial agent without personal cost to the complainant, without time delay, without the tension of adversary litigation, and without requirement of counsel or the intervention of those highly placed.

Objections to the Adoption of the Ombudsman System

No study of the Ombudsman would be complete without a list of objections that have been stated against the Ombudsman:

1. The Ombudsman can work only in small countries with homogeneous populations.
2. Concentration on the adjustment of grievances of individuals bogs down the processes of government and places undue emphasis on relatively minor matters.
3. Legislators who receive complaints are already performing the functions of Ombudsmen. The relatively large number of legislators is more effective to bridge the gap between the citizenry and government than a single Ombudsman or even several.

4. Courts, administrative courts and tribunals are adequate and, where required, reforms can be made to make them more responsive.
5. Too much power is placed in a single individual. There is little or no review of the Ombudsman's actions.
6. The executive grievance handling machinery is adequate and, if not, can easily be corrected or adjusted.
7. The Ombudsman causes the civil servant to be cautious and timid. Emphasis may be on keeping records rather than action.
8. The Ombudsman system simply creates another bureaucratic institution with more red tape.
9. The Ombudsman is a generalist who attempts to do more than he is qualified to do.
10. The Ombudsman will not obtain the support and assistance of administrators whose support he needs to function successfully.
11. The system impedes progress toward strengthening existing institutions.
12. Administrators and legislators are inclined to treat his general proposals for reform as impractical.
13. After a while the Ombudsman becomes government-minded.
14. The system interferes with the doctrine of ministerial responsibility.
15. The Ombudsman's accomplishments are exaggerated. He does not really do an effective job.
16. The institution cannot successfully be transplanted from the Scandinavian countries.
17. In a large country, the Ombudsman could not handle the vast number of complaints without an equally vast bureaucratic organization.
18. The Ombudsman may cause officials who believe they are correct to agree with him not because his judgment is valid but because of his status and prestige. This does not make for good government.
19. The Ombudsman attempts to apply a rule of conscience as opposed to the rule of law.[30]
20. The Ombudsman tends to create the illusion that all is well with government.
21. The Ombudsman is part of the "Establishment."
22. The office of Ombudsman ignores the desirability of participation by the people themselves in the processes of revision and reform.[31]
23. The Ombudsman after all deals only with relatively little matters.
24. Most complaints are unfounded and the system encourages filing of such complaints.

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[30] MacLeod, The Ombudsman, Ad. L. Rev. Vol. 19, 93, 95 (1966).

[31] Rosenblum, Controlling the Bureaucracy of the Antipoverty Program, Vol. 31, Law and Contemporary Problems, 187, 195, Duke University School of Law (1966).

25. The office is adaptable only to parliamentary countries.
26. The Ombudsman works best in a society that doesn't need him.
27. The Ombudsman stays away from the pertinent social problems and keeps to the safe subjects.

GROWTH OF THE OMBUDSMAN SYSTEM

Interest in the Ombudsman has grown in recent years. It has been discussed at numerous seminars and conferences by two major groupings:

1. The regional seminars sponsored by the United Nations Division of Human Rights on the general topic of judicial and other remedies against the abuse of administrative authority in Ceylon (1959), Buenos Aires (1959), and Stockholm (1962). In April-May, 1967, the United Nations Division of Human Rights in co-operation with Jamaica organized a Seminar on the Effective Realization of Civil and Political Rights at the National Level which endorsed the Ombudsman system.[32]
2. The conferences and congresses of the International Commission of Jurists, including: the South-East Asian and Pacific Conference in Bangkok (1965),[33] the Colloquium on the Rule of Law at Colombo (January, 1966),[34] and the Conference on the Individual and the State held at Strasbourg (October, 1968).[35]

A survey of developments throughout the world shows that the Ombudsman has been placed on the world agenda for most serious consideration.

A. Canada.

Proposals have been put forward on the Federal level and on the province level.[36] Three of the ten provinces have Ombudsmen: W.T. Ross Flemington, New Brunswick, since October 11, 1967; George B. McClellan, Alberta, since September 1967; and Louis Marceau, Quebec,

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[32]Seminar on the Effective Realization of Civil and Political Rights at the National Level, supra note 29; see also 9 Journal of the International Commission of Jurists, 90-91 (June 1968).

[33]The Dynamic Aspects of the Rule of Law in the Modern Age, Report on the Proceedings of the South-East Asian and Pacific Conference of Jurists, Bangkok (1965), 184.

[34]Working Papers, Ceylon Colloquium on the Rule of Law, Colombo, Ceylon, Jan. 10-16, 1966, International Commission of Jurists (Ceylon Section).

[35]European Conference of Jurists on the Individual and the State, "The Essential Legal Elements to Ensure the Protection of the Individual," Strasbourg, 26-27 Oct. 1968, Conclusion 17; 36 Bulletin of the International Commission of Jurists, 7-8 (Dec. 1968).

[36]ROWAT, supra note 2, Preface x-xii; and ANDERSON, CANADIAN OMBUDSMAN PROPOSALS (1966).

since May 1, 1969. The Manitoba Legislature enacted an Ombudsman Bill on September 30, 1969.

B. Ghana.

The new Constitution of Ghana adopted in 1969 contains provisions requiring the establishment of the Ombudsman system by Parliament.

C. Great Britain.

Prime Minister Wilson announced in Parliament on July 22, 1969 that an Ombudsman system would be established to investigate complaints of maladministration by local government. It would be separate from the Parliamentary Commissioner for Administration system but the scope and relationship to local government would be similar to the scope of the Parliamentary Commissioner for Administration in central government affairs. In addition, the Prime Minister approved in principle a Health Commissioner to look into complaints against the National Health Service.[37]

D. Greece.

In June 1968, the Greek Government announced it would appoint an Ombudsman answerable personally to the Prime Minister and later to Parliament.[38] In July 1969, the Greek Government announced the appointment of Maj. Gen. Spyridon Vellianitis as an Administration Commissioner, or Ombudsman, to keep an eye on the Administration to see that it is "honest, just and fair," according to the decree creating the position. The Commissioner is empowered to investigate any state employe's behavior "as regards the discharge of his duties and his demeanor in society, as related to morals, dignity and honesty."[39] Necessary legislation is pending.[40]

F. Hong Kong.

On June 23, 1969, a question was put in the British House of Lords to the Minister of State, Foreign and Commonwealth Office, concerning the appointment of an Ombudsman for consultation with the underprivileged Chinese. The reply was made that very careful consideration had been given by the Minister of State and the Governor of Hong Kong to the matter of the Ombudsman and that both regarded the City District Officer scheme as "perhaps the first step in such a system."[41]

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[37] The Times (London), July 23, 1969.
[38] The Times (London), June 13, 1968, p. 6.
[39] New York Times, July 3, 1969, p. 6.
[40] Letter from S. Vellianitis to Bernard Frank, Oct. 29, 1969.
[41] 732 HANSARD, HOUSE OF LORDS, 1 and 2 (1969).

Under date of July 12, 1969, the Hong Kong Branch of Justice (the British Section of the International Commission of Jurists) issued a report urging the appointment of an Ombudsman, pointing out that the "system has a strong backing in Chinese History and its introduction can well be explained in terms of the Censorial System of Ancient China."

F. Indonesia.

In October 1967, six associations—the Indonesian Judges Association, the Indonesian Jurists Association, the Association of Prosecutors, the Association of Scholars of Political Science, the Indonesian Bar Association, and the League of Human Rights, formed the Pengabdi Hukum to handle "complaints by individuals of treatment by public authorities as well as by society itself." The institution is entirely private and consists of a joint secretariat, the executive of which is manned by six members each appointed by the respective organization. During its first year from October 1967 through December 1968, it handled 202 complaints, settling 154.[42]

G. India.

Establishment of a two tier system of Ombudsmen has been proposed by the Government: the Lok Pal would be appointed by the President after consultation with the Chief Justice and the Leader of the Opposition, and the Lokayutkas by the President after consultation with the Lok Pal. Jurisdiction would cover complaints of injustice due to maladministration or complaints alleging corruption based on actions of all central government public servants including Ministers and Secretaries.[43]

H. Ireland.

A Commission has issued a report recommending a major reorganization of the public services in Ireland. Included is a proposal for the creation of an Ombudsman.[44]

I. Israel.

The State Controller without express legal authority deemed himself the institution to handle complaints because he had "also to examine whether the inspected bodies have operated efficiently, economically, and in a morally irreproachable manner."[45] In 1966, the Knesset formed a

[42] Paper, Abdulkadir Besar, Bangkok World Peace Through Law Conference (1969).
[43] Weekly India News, May 24, 1968, p. 4.
[44] The Times (London), Sept. 24, 1969, p. 3.
[45] The State Comptroller of Israel and His Office at Work, Jerusalem (1963), p. 9.

committee to look into the handling of public complaints and to determine whether to set up an Ombudsman as a separate institution or whether to delegate this task to the State Controller by statutorily broadening his power. In November 1968, the Committee reported that the office of Ombudsman be created to be operated by the State Controller through a special division of his office; a recommendation was adopted by the Cabinet on December 15, 1968. A draft law is in preparation.

The City of Jerusalem has had an Ombudsman, Shelomo Kaddar, since July 1967. From July 1967 to March 1968 inclusive, he handled 532 complaints and found 262 justified.[46] Tel Aviv similarly has an Ombudsman.

J. Jamaica.

The Jamaican Section of Justice has issued a report recommending the establishment of the Ombudsman system in Jamaica.

K. Malaysia.

On the invitation of the Government of Malaysia, the New Zealand Ombudsman, Sir Guy Powles, spent nearly four weeks in Malaysia in February—March, 1968, and completed and delivered a report to the Malaysian Government on the desirability and practicability of setting up an Ombudsman system in that Country. However, the Malaysian Government has apparently concluded the adoption of the Ombudsman system would not be expected to produce better results than that already achieved by the Anti-Corruption Agency set up in 1958 as a unit of the Prime Minister's Department. This Agency was reorganized in 1967 and was set up with headquarters in Kuala Lumpur and a branch office in every state capital effective October 1967. The director is senior member of the Legal Service and the staff of the Agency is drawn from the Legal Service, the Administrative Service and the police. The Agency has two functions: research and prevention of corruption and the investigation and prosecution of all cases of corruption under the criminal laws.[47]

L. Mauritius.

The Mauritius Constitution provides for an Ombudsman. The Legislative Assembly enacted supplementary provisions for the proper functioning of the Office of Ombudsman on May 13, 1969 (Ombudsman Act, 1969).

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[46]The Ombudsman of Jerusalem, Shelomo Kaddar, Public Administration in Israel and Abroad 1968, Jerusalem (1969), p. 176.

[47]Report of the New Zealand Ombudsman, 1968, p. 10; and letter from M. Ben Haron, First Secretary, Embassy of Malaysia, Washington, D.C., to Bernard Frank, July 9, 1969.

M. The Netherlands.

In June 1969, the Dutch Government submitted to Parliament a proposal that an Ombudsman be appointed by Parliament. The jurisdiction of the Ombudsman would be restricted to complaints about the administration of the Central Government and would exclude complaints about generally binding regulations and about matters of general government policy. Complaints would be referred to the Ombudsman by the Committees for Petitions in both Chambers of Parliament. Complaints received directly by the Ombudsman would be dealt with after authorization by the Committee for Petitions of the Second Chamber.[48]

N. Northern Ireland.

Legislation was introduced in the House of Commons on September 30, 1969, to appoint a Commissioner for Complaints to investigate complaints from persons who claim to have sustained injustice in consequence of maladministration in connection with action taken by local and public bodies outside the sphere of central government.[49]

O. Singapore.

A special Constitution Commission recommended an Ombudsman but the Government has put aside the recommendations for five years.[50] Complaints of corruption or uncivil behavior by Government employees may be referred to the Anti-Corruption Bureau whose officials are answerable only to the Attorney General.

P. The United States.

Interest in the United States in the Ombudsman has become widespread. Federal legislation was proposed in the last Congress by Senator Edward Long for a Federal Administrative Ombudsman, a District of Columbia Ombudsman, and a Missouri Ombudsman. Congressman Henry Reuss has introduced in the 91st Congress his three-times-before-introduced bill for a Congressional Ombudsman handling complaints only through Congress. Legislation has been introduced in most of the

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[48] Letter from H.E. Th. L. Mathon, First Secretary, Royal Netherlands Embassy, Washington, D.C. to Bernard Frank, July 11, 1969; and letter from P.J.P. Verloop, Secretary, Netherlands Section of the International Commission of Jurists, to Bernard Frank, Sept. 2, 1969.

[49] The Times (London), Oct. 2, 1969, p. 2; and letter from K.P. Bloomfield to Bernard Frank, Nov. 17, 1969.

[50] Letter from Hing Yong Cheng to Bernard Frank, March 29, 1969; Republic of Singapore, Report of the Constitutional Commission, p. 18-22 (1966).

states and passed in two. In Hawaii, Herman S. Doi took office on July 1, 1969, as Ombudsman under Act 306 passed in 1967. During his first three months in office he received 218 complaints, 153 of which were received by telephone.[51] The Nebraska Act creating the office of Public Counsel was approved on July 29, 1969. In Oregon, Marko L. Haggard was appointed by the Governor to fill the post of Ombudsman created by executive action on July 1, 1969. The American Assembly of Columbia University devoted its October 1967 Conference to the Ombudsman and in its final report recommended state and local Ombudsmen with experimentation on a Federal level, essentially the same conclusion reached by the American Bar Association in January 1968. The National Conference of Commissioners on Uniform State Laws is preparing to start work on a uniform Ombudsman law. The National Commission on Violence and Law Enforcement in its report issued on November 1, 1969, recommended independent citizens' grievance agencies on a state and local level and that consideration be given to a federal citizens' grievance agency to act on complaints against federal employees and departments.

Proposals have been made for Ombudsmen in New York City, Newark, Philadelphia, Minneapolis, and other cities. Citizens' complaint offices exist in a number of local communities including Nassau County, New York, and Buffalo where the Citizens' Administrative Services is a project of the University of Buffalo Law School. In the United States there are proposals for college and university, consumer, airport, corporation, union, department store, newspaper, TV and radio station Ombudsmen. The most noteworthy of these are the "action line" activities of the press, radio, and TV and the emergence of Ombudsmen on at least three dozen or so campuses.

Consideration of Several Special Problems With Respect to the Ombudsman

A study of the Ombudsman brings to mind several special problems for brief discussion:

A. Should the Ombudsman be a Commission or Board?

It should be noted that the national Ombudsman is a single individual except in Tanzania where there is a Commission of three and in Sweden where there are three Ombudsmen. It was concluded at the Ceylon Colloquium on the Rule of Law that whether there should be one

[51] Herman S. Doi, speech delivered in Oct. 1969.

Ombudsman or several depends on the constitutional structure of the country concerned and the size and distribution of the population.[82] The real problem is not the number but whether the Ombudsmen are part of a committee operating on majority vote or individuals operating independently in a geographic or subject area. The Ombudsman generally everywhere relies on his power to persuade—he has no power to compel compliance (except in Sweden and Finland). A two-to-one recommendation by a commission signals some doubt as to whether or not there was abuse of a citizen. Government will not easily be persuaded to comply where even the Ombudsmen disagree.

B. Is the Ombudsman a Device in Bridging the Gap Between Government and Youth?

Recently a study for the United Nations stated that student demonstrations in more than 50 countries during 1968 represented only a warning of bigger and bolder protests to be expected from youth in the future. Young people are concerned with bureaucratization, bigness, and dehumanization of society (concerns shared equally by adults, of course). A lack of responsiveness by government to their demands is felt by the young who conclude that direct action is necessary. The question may be asked whether the Ombudsman would bridge the gap between the "Establishment" and youth? Certainly, the Ombudsman—considered by some as part of the "Establishment"—would not be of any help with those who have as a goal the destruction of present society's institutions. But to those youth still "with us," the Ombudsman with his informal, easily accessible, inexpensive, machinery in the handling of complaints may be a "bridging the gap" factor if the Ombudsman can convince the youth he is independent and will listen and give redress to legitimate complaints. On the other side of the coin is the inability of the Ombudsman to enforce his decisions which may render him an ineffective institution in handling problems of frustrated and impatient youth in dealings with bureaucracy. Perhaps the only answer is to experiment because not to have tried may be a greater fault.

C. Can the Ombudsman System Help the Poor?

The problem of poverty has become one of the greatest problems of modern society, even in the affluent countries, and the greatest problem of poverty has been the inability of the law to earn the respect of the poor because, as has been stated by a United States Federal Judge, "Rather than helping the poor surmount their poverty, the law has all

[82] 26 Bulletin of the International Commission of Jurists, 8 (June 1966).

too frequently served to perpetuate and even exacerbate their despair and helplessness."[83]

The National Commission on the Causes and Prevention of Violence in recommending independent citizens' grievance agencies said it supported this recommendation upon "evidence that the poor experience special frustrations in their relationship with the government and that these frustrations breed disrespect for law."

To the extent that the use of other existing remedies to handle complaints of the aggrieved requires financial resources and sophistication, the Ombudsman system with its lack of cost and easy access is of help. But is this sufficient? Can an institution which can recommend only be effective when complaints run contrary to public attitudes or to the views of a bureaucracy intent on its own conception of handling the problems of the poor? Can an institution which may only persuade, not compel, be effective if its enters into cases involving intense social problems, frequently with political overtones? It has been said that "Ombudsmanship promises the poor a good deal more than it can deliver."[84] Briefly stated objections which are said to impair its utility are: that he is part of the "Establishment," ignores the participation of the poor in the process of revision and reform, that an Ombudsman will fail because his recommendations would run counter to public attitudes towards the rights of the poor, that selection of cases of a nonpolitical nature would eliminate from scrutiny most administrative injustices perpetrated upon the poor, that injustices are so great that an Ombudsman system would be overwhelmed; and that only basic reform will achieve justice for the poor.[85] Yet even critics conclude that the fact that "the Ombudsman alone cannot cope with all the problems of the administrative state is hardly an adequate reason for arguing against its establishment as a supplement to other devices."[86]

Society is today threatened by its failure in the past to have recognized fully that poverty is inconsistent with democracy. Society has, therefore, nothing to lose and may gain if it experiments with the adoption of the Ombudsman system.

D. Can the Ombudsman Help in Aiding Minorities Against Discrimination?

The reports of the Scandinavian Ombudsmen and the British Parliamentary Commissioner do not indicate any special and pressing

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[83] Wright, The Courts Have Failed the Poor, The N.Y. Time Magazine, March 9, 1969, p. 26.

[84] Cloward, An Ombudsman for Whom?, 12 Social Work, p. 117, 118 (April 1967).

[85] Rosenblum, supra note 31; Cloward & Elman, Poverty, Injustice, and the Welfare State, The Nation, Feb. 28, 1966 and March 7, 1966.

[86] Rosenblum, supra note 31, 194.

concern with the treatment of minorities. The New Zealand Ombudsman in his report for the year ended March 31, 1968, indicates that out of 555 cases, 8 involve Maori affairs, of which 2 were not justified, 1 discontinued, 1 declined, 3 withdrawn, and 1 under investigation. The Tanzania Commission Chairman has stated that very few non-Africans (Asians and Europeans) have lodged complaints to the Commission and queries as to the reason for this, speculating one reason is that the non-African communities are suspicious of the Commission and another reason is that these people do not like to jeopardize their stay in Tanzania.[57] In Guyana, the racial imbalance with resulting racial discrimination resulted in the recommendation for an Ombudsman by the International Commission of Jurists. In the 1967 report, the Ombudsman stated that he received 161 complaints of which only one alleged racial discrimination and that one was unjustified.[58] Mauritius, with a multi-racial population, has provided in its Constitution for an Ombudsman and it was thought that the system would be valuable in protecting minorities against discrimination, but as yet no Ombudsman has been named. In Northern Ireland, where there is great religious antagonism between the Catholic and Protestant population, Sir Edmund Compton, the British Parliamentary Commissioner, has also taken office as the Northern Ireland Parliamentary Commissioner. It has been suggested that "given the religious antagonism in Ulster, the only way of choosing an acceptable neutral was to bring in someone from outside."[59]

We conclude that the Ombudsman has not developed an effective record of protecting minorities because in homogeneous populated countries no serious problem has evolved and in the heterogeneous populated countries the Ombudsman appears not to have been utilized. Nevertheless, there is a belief in some countries that the system will help to relieve tension where there is serious possibility of conflict between people.

As before, we wonder at the efficacy of an institution to help with intense problems where it can recommend only. The fight against discrimination requires more—anti-discrimination legislation and anti-discrimination agencies—with the Ombudsman as a supplement. As before we conclude that experimentation with the Ombudsman system is required before a definitive answer can be given.

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[57] Mang'enya, supra note 22, p. XIV.

[58] 1967 Report of the Guyana Ombudsman, supra note 20, 5.

[59] Letter from Rudolf Klein, Chief Leader Writer, Observer, London, to Bernard Frank, March 31, 1969.

E. Can the Ombudsman Work Only in Small Developed Countries With Homogeneous and Stable Populations?[200]

One of the most frequent criticisms of the Ombudsman system is that it will work only in a small country with a stable and homogeneous population. Today there are Ombudsmen in small countries with homogeneous populations (the Scandinavian countries and New Zealand), with multi-racial populations (Guyana and Tanzania), and with a mixed religious population (Northern Ireland). Great Britain is the first populous country to establish the system. But to say that because the system evolved in small developed countries with homogeneous and stable populations it cannot be properly transplanted is (as has been said frequently by others) to "stand logic on its head." A more pertinent question is why such countries required an Ombudsman? And from this question deduce that big or small countries, developing or developed, homogeneous or mixed, require an external supervisor to supplement existing institutions. Nevertheless, the problems of the reluctance of minorities to use the Ombudsman because of lack of confidence or the possibility of the receipt of an overwhelming number of complaints with the necessity of greater bureaucratization of the office, must not be overlooked.

EVALUATION

Evaluation of the Ombudsman system based upon its operation in nine countries is not premature.

Existing mechanism—courts, legislatures, the executive, administrative courts, and administrative agencies—are not sufficient to cope with the grievances of the aggrieved and there is a need for a supplementary institution. The Ombudsman system provides an informal, independent, and impartial public official who, with relative speed and without cost to the complainant, investigates, with access to governmental records, and recommends relief when the complaint is justified. The system can be transplanted and since its form is not rigidly fixed can be varied to suit the characteristics and needs of each country.

The Ombudsman cannot accomplish all of the promises of some of his most enthusiastic proponents. He is not a super-administrator and does not make policy. He cannot remake society or cure its problems. The Ombudsman generally can recommend only and whether this is a

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[200] CHENG, Emergence and Spread of the Ombudsman Institution, Annals, supra note 2, 20, 26-29; CAIDEN, Ombudsmen for Under-Developed Countries, Public Administration in Israel and Abroad 1967, 100, Jerusalem (1968).

virtue or defect cannot be conclusively determined at this early date in the life span of the system. But a tentative conclusion would lean toward the deficit side of the ledger. He can only supplement existing institutions which must be strengthened and made more responsive to the grievances of the citizens. But he does serve a steam valve function, permitting the release of frustration by the mere fact of complaint.

Officials also are the beneficiaries of the Ombudsman system. Unjustified complaints against them are determined to be such by an impartial adjudicator. Civil servants have also utilized the machinery for their own complaints, an interesting by-product of the system. In addition, officials are ofttimes influenced by the mere fact of the existence of the Ombudsman and make an effort to anticipate him and make changes earlier rather than later. A result which may weaken the effectiveness of officials is the willingness to agree with the Ombudsman on occasion even though they believe him to be wrong because they do not wish to tilt with the Ombudsman because of his status and prestige.

The Ombudsman does not appear to be flooded with complaints in any country which means not that grievances are non-existent but that many aggrieved are not aware of the Ombudsman or do not know how to invoke his aid or do not care to.

CONCLUSION

The Ombudsman, with his limitations and weaknesses, is on the world agenda for serious consideration. The growing list of countries, provinces, states, and local governments adopting the system indicates its great appeal. We believe this to be because it has long been evident that human rights are not protected simply by constitutions or legislation, by guarantees or speeches, by proclamations or declarations, but primarily by the availability of remedies. The Ombudsman system is one of the remedies which seeks to preserve human rights.

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in danger or that he was in danger of suffering great bodily harm, but the belief must have been reasonable and in good faith. 40 Am. Jur. 2d, Homicide, §§ 151 to 159, pp. 439 to 447. Ordinarily a woman is justified in taking human life in protecting her chastity where she has been placed in fear for her life or great bodily harm. Here the defendant was admittedly engaged in prostitution and had negotiated with the deceased to engage in an act of prostitution with him for the sum of $20. It was for the jury to determine whether or not she killed in fear of death or of suffering great bodily harm, or on the other hand, whether or not the killing was motivated by anger, punishment, or vengeance. The character of the defendant and the fact of her engaging in prostitution did not deprive her of the right of self-defense, but they were circumstances to be considered by the jury, along with all other facts and circumstances shown by the evidence in determining the necessity for and the extent of the force used. The jury and not this court was charged with the duty of deciding these issues of fact.

Common law crimes are unknown to the law of this state. The definition of crimes and the punishment to be assessed for their violation are fixed by statute. If section 29-114, R. S. Supp., 1969, means ,as the defendant contends, that any person who finds it necessary in his own judgment to protect his person or property from another, no matter how great or trivial the invasion of his rights may be, to use force to the fullest extent, even beyond all reason, the punishment of the aggressor is placed with the person claiming self-defense and not with the state. Without fixing the amount of force that may properly be exercised in resorting to justifiable self-defense, over and above which is criminal, the Legislature has delegated the fixing of the punishment to the person asserting self-defense which it cannot do. The criminal laws under which we live in our social order are prescribed by the state through the Legislature and the

penalties for their violation are likewise prescribed by legislative enactment. Any attempt to delegate either of such powers to private persons with the excesses that naturally follow when crime or punishment are placed elsewhere than with the state, is violative of the powers placed exclusively with the Legislature by our state Constitution.

The argument has been advanced that section 29-114, R. S. Supp., 1969, when properly interpreted, has not changed the preexisting rule which has long been upheld in this state and elsewhere. We cannot accept the basis of this argument for two reasons, first, because unless the amendment here put in isuse was intended to change the existing law there would have been no reason for enacting section 29-114, R. S. Supp., 1969, and second, amendments were twice offered and rejected in the Legislature to properly limit the defense of self-defense. The intent of the Legislature, which we are required to determine and follow, is clear and not constitutionally acceptable.

We cannot in effect rewrite the statute to meet constitutional requirements. On the other hand, the constitutionality of the act is not raised which ordinarily precludes us from a consideration of that question. But where the invalidity of the act is plain, and such a determination is necessary to a reasonable and sensible disposition of the issues presented, we are required by necessity to notice the plain error in the premise on which the case was tried. Consequently we hold that section 29-114, R. S. Supp., 1969, is unconstitutional and void.

Instruction No. 9 contains no error prejudicial to the rights of the defendant, in fact, the instruction was more favorable to the defendant than she was entitled to. Defendant's requested instruction herein discussed was in effect given by inclusion in instruction No. 9 and it was properly denied by the trial court. The evidence is sufficient to sustain the verdict of the jury and the

judgment of the trial court ought to be and is affirmed.

AFFIRMED.

SPENCER and BOSLAUGH, JJ., dissenting.

The majority opinion herein violates a fundamental principle of constitutional construction. Neither the State nor the defendant raise an issue as to the constitutionality of the Self-Defense Act, section 29-114, R. S. Supp., 1969. Yet the majority opinion declares the statute invalid without the benefit of briefs or arguments upon the issue of constitutionality.

The following from Stanton v. Mattson, 175 Neb. 767, 123 N. W. 2d 844, indicates the extent of this abrupt departure from well-defined precedent: "All acts of the Legislature are presumed to be constitutional. The courts will not declare an act of the Legislature unconstitutional except as a last resort on the facts before the court. Courts will not decide questions of constitutionality unless they have been raised by a litigant whose interests are adversely affected. A court has no power to summarily pass upon the constitutionality of an act of the Legislature."

It is unnecessary to reach any question of the constitutionality of section 29-114, R. S. Supp., 1969, in this case. The instruction relating to self-defense, which was given in this case, advised the jury that self-defense was "the use of such force *by any means necessary* to repel an attack as at the time appeared to defendant to be necessary." (Emphasis supplied.) The instruction conformed to the statute in that the only limitation placed upon the force that might be used was that it be "necessary."

The instruction as given also conformed to the instruction requested by the defendant except that the trial court included a paragraph, taken from NJI 14.33, stating that a person who uses more force than that permitted by the definition contained in the instruction is criminally responsible therefor. The defendant contends that this part of the instruction was erroneous.

The Self-Defense Act does not authorize the use of unlimited force nor does it provide that persons who use more force than necessary should be immune from prosecution. The defendant's criticism of the instruction given is without merit.

IRENE NEEMAN, APPELLEE, V. OTOE COUNTY ET AL., APPELLEES, IMPLEADED WITH AETNA INSURANCE COMPANY, APPELLANT.

MAURICE V. KARSPECK, APPELLEE, V. OTOE COUNTY ET AL., APPELLEES, IMPLEADED WITH AETNA INSURANCE COMPANY, APPELLANT.

RUTH M. WILLIAMS, APPELLEE, V. OTOE COUNTY ET AL., APPELLEES, IMPLEADED WITH AETNA INSURANCE COMPANY, APPELLANT.

LORETTA H. BASSINGER, APPELLEE, V. OTOE COUNTY ET AL., APPELLEES, IMPLEADED WITH AETNA INSURANCE COMPANY, APPELLANT.

— N. W. 2d —

Filed January 29, 1971. Nos. 37631, 37632, 37633, 37634.

1. Workmen's Compensation: Insurance. Rule XI of the Rules of Procedure of the Nebraska Workmen's Compensation Court requiring that notice of cancellation of compensation insurance be filed within 10 days after cancellation of the policy is primarily for the protection of claimants entitled to compensation.
2. ———: ———. Where a workmen's compensation insurance policy is canceled and is replaced by a new policy issued and certified by another insurance company and effective on the date of cancellation of the old policy, a failure to file notice of cancellation with the Nebraska Workmen's Compensation Court within the time supecified by Rule XI does not in and of itself invalidate the cancellation.
3. ———: ———. A new compensation insurance carrier has no standing to complain of a delay by the former carrier in complying with Rule XI. The new carrier should be held solely responsible for payment of workmen's compensation liability arising on or after the effective date of its policy and after the date of cancellation of the replaced policy.
4. Workmen's Compensation: Words and Phrases. A workmen's

HB-40

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

February 9, 1971

Mr. Jack W. Rodgers
Director of Research
Nebraska Legislative Council
State House
Lincoln, Nebraska 68509

Dear Mr. Rodgers:

A local news article mentioned that your self-defense statute was held invalid by your supreme court on January 29. Please send a copy of the court's decision. Presumably the statute in question is sec. 29-114 of the Nebraska Revised Statutes, Supp. 1969. If not, please send a copy of the right statute too.

Our legislature is presently considering enactment of a more-or-less similar statute (using the phrase "reasonably necessary force" rather than "by any means necessary"), and your early reply would be much appreciated. Thank you.

Yours truly,

Arthur H. Peterson
Revisor of Statutes

AHP/sm

re HB 40

Nebraska Revised Statutes, Supp. 1969

shall have been issued, nor shall any person be prosecuted, tried or punished for any misdemeanor or other indictable offense below the grade of felony, or for any fine or forfeiture under any penal statute, unless the indictment, information or action for the same shall be found or instituted within one year and six months from the time of committing the offense or incurring the fine or forfeiture, or within one year for any offense the punishment of which is restricted by a fine not exceeding one hundred dollars and to imprisonment not exceeding three months; *Provided*, nothing herein contained shall extend to any person fleeing from justice; *provided further*, where any suit, information or indictment for any crime or misdemeanor is limited by any statute to be brought or exhibited within any other time than is hereby limited, then the same shall be brought or exhibited within the time limited by such statute; *and provided further*, where any indictment, information or suit shall be quashed or the proceedings in the same set aside or reversed on writ of error, the time during the pendency of such indictment, information or suit so quashed, set aside or reversed, shall not be reckoned within this statute so as to bar any new indictment, information or suit for the same offense.

Source: G.S. p. 783; R.S.1913, § 8910; C.S.1922, § 9931; C.S.1929, § 29-110; R.S.1943, § 29-110; Laws 1965, c. 147, § 1, p. 489.
Effective date November 18, 1965.

29-113. Convicts of other states; disqualifications enumerated; general pardon; effect. Any person who shall have been actually imprisoned in the penitentiary of any other state or territory of this Union, under sentence for the commission of any crime which, by the laws of this state, is punishable by imprisonment in the Nebraska Penal and Correctional Complex, shall be deemed incompetent to be an elector or juror, or to hold any office of honor, trust or profit within this state, unless such convict shall have received a general pardon from the Board of Pardons of the state in which he may have been imprisoned, agreeably to the laws thereof.

Source: G.S. p. 783; R.S.1913, § 8913; C.S.1922, § 9934; C.S.1929, § 29-113; R.S.1943, § 29-113; Laws 1951, c. 86, § 2, p. 240; Laws 1969, c. 236, § 1.
Effective date December 25, 1969.

29-114. Legal jeopardy; self defense; aiding another; indemnification; reimbursement. No person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting, by any means necessary, himself, his family, or his real or personal property, or when coming to the aid of another who is in imminent danger of or the victim of aggravated assault, armed robbery, holdup, rape, murder, or any other heinous crime.

When substantial question of self defense in such a case shall exist, which needs legal investigation or court action for the full determination of the facts, and the defendant's actions are subsequently found justified under the intent of this section, the State of Nebraska shall indemnify or reimburse such defendant for all loss of time, legal fees, court costs, or other expense involved in his defense.

Source: Laws 1969, c. 233, § 1.
Effective date June 5, 1969.

ARTICLE 2
POWERS AND DUTIES OF CERTAIN OFFICERS

29-204. Constables; powers and duties.

Constables have authority to execute writs and process throughout the county. State v. Carpenter, 181 Neb. 639, 150 N.W.2d 129.

29-206. City and village marshals; general powers and duties.

Police officers had the right to stop motor vehicle outside the limits of city where circumstances indicate commission of crime. State v. Carpenter, 181 Neb. 639, 150 N.W.2d 129.

ARTICLE 4
WARRANT AND ARREST OF ACCUSED

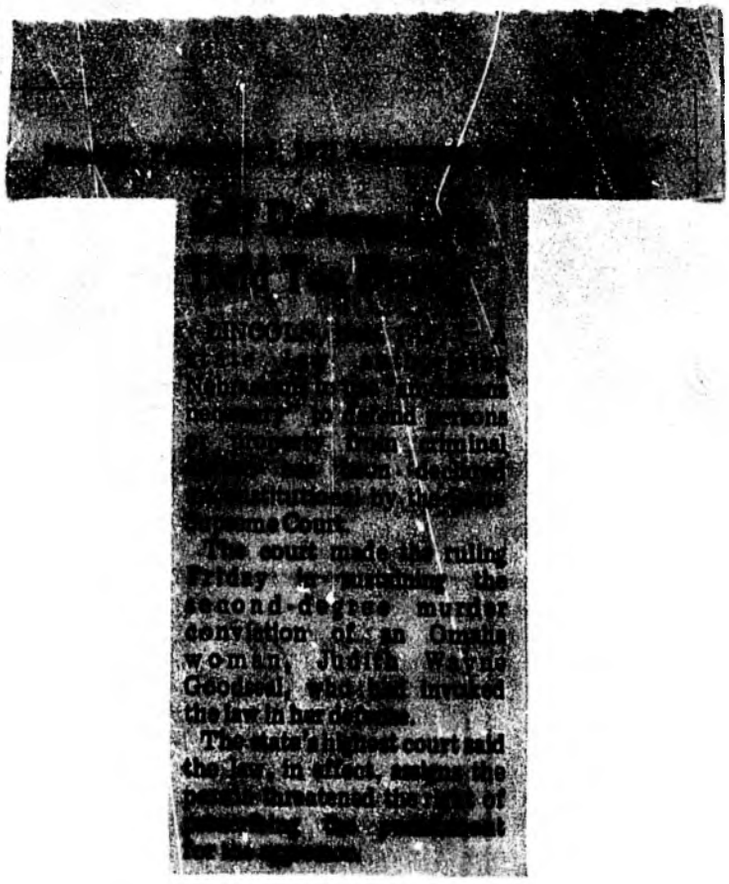
Section.
29-401. Law violators; arrest by sheriff or other peace officer.
29-404. Complaint; county attorney; Attorney General; other complainant with consent of county attorney; filing; consent to filing when given; warrant; issuance.
29-404.01. Warrant; supplemental act.
29-404.02. Warrant; arrest; when not required.
29-404.03. Warrant; reasonable cause for arrest; conditions.
29-411. Warrants; execution; powers of officer; direction for executing.

29-401. Law violators; arrest by sheriff or other peace officer. Every sheriff, deputy sheriff, constable, marshal or deputy marshal, watchman, police officer, or peace officer as defined in subdivision (17) of section 49-801, shall arrest and detain any person found violating any law of this state, or any legal ordinance of any city or incorporated village, until a legal warrant can be obtained.

Source: G.S. p. 789; R.S.1913, § 8937; C.S.1922, § 9961; C.S.1929, § 29-401; R.S.1943, § 29-401; Laws 1967, c. 175, § 1, p. 490.
Effective date April 19, 1967.

Firing of shots at tires of speeding automobile was justified in making arrest. Reese v. Newman, 179 Neb. 878, 140 N.W.2d 805.

29-404. Complaint; county attorney; Attorney General; other complainant with consent of county attorney; filing; consent to filing when given; warrant; issuance. No complaint shall be filed with the magistrate, unless such complaint is in writing and upon oath, signed by the county attorney or by any other complainant. If the complainant be other than the county attorney he shall either have the consent of the county attorney or shall furnish to the magistrate a bond with good and sufficient sureties in such amount as the magistrate shall determine to indemnify the person complained against for wrongful or malicious prosecution. Whenever a complaint shall be filed with the magistrate, charging any person with the commission of an offense against the laws of this state, it shall be the duty of such magistrate to issue a warrant for the arrest



Supreme Court.

The court made the ruling Friday in upholding the second-degree murder conviction of an Omaha woman, Judith Wayne Gogsell, who had invoked the law in her defense.

The state's highest court said the law, in effect during the [illegible]

MEMORANDUM State of Alaska

TO: John E. Havelock
Attorney General

DATE: February 2, 1971

SUBJECT: HB 47 (Rep. Colletta)

FROM: M. Gregory Papas
Assistant Attorney General

The following comments were made by me during a hearing of the House Judiciary Committee, held on January 29, 1971, in response to an invitation to the department to offer testimony regarding the above-mentioned bill. I made no recommendations as to what type of bill the department would wish to see enacted but limited myself to a statement of the arguments pro and con which have developed in the current judicial examination of the felony-murder rule. This discussion is in outline form since taken from my pre-hearing notes.

1. Alaska does not presently have a genuine felony-murder rule due to the use of the word "purposely" in our murder statute, AS 11.15.010.
   a) Gray v. State, 463 P.2d 902 (1970) points out this fact clearly.
   b) Smith v. Myers, (Pa. 1970) 261 A.2d 550 interpretes the Ohio statute, after which the Alaska Statute was patterned, as not being a true felony-murder rule.

2. HB 47 is a true felony-murder statute.
   a) Effect of rule at common law: To imply malice aforethought in a murder which occurred during the commission of one of the named felonies.
   b) Effect of HB 47: (1) Imputes the act of killing to the felon, whether he is the physical killer or not. This was not common in the United States until about 30 years ago.
      (2) Imputes the element of malice aforethought to raise a criminal homicide to murder in the first degree.
   c) Applications of the felony-murder rule:
      (1) i, felon kills victim
          ii, felon kills co-felon
          iii, felon kills resister (cop/ 3rd person)
          iiii, felon kills bystander

(2) i, victim kills felon
ii, cop kills felon
iii, cop or victim kills bystander
iiii, unusual situations
(victim kills co-victim)

d) Under those situations denominated as c(1), above, successful prosecution does not depend entirely upon the felony-murder doctrine; whereas in those situations denominated as c(2), above, the felony-murder rule is essential if stern prosecution is desired.

3. Many states still follow the rule that any killing which is perpetrated in the commission or attempt to commit one of the enumerated felonies, even if accidental or unintentional, is first degree murder.

a) The wording of section B of the bill (HB 47) makes completely unnecessary proof of a strict causal connection between the felony and resultant homicide.

b) The only specific intent is that needed to commit the felony involved.

c) Courts in states following this concept apply the civil tort concept of "proximate cause", i.e. a felon is criminally responsible for the natural or reasonably foreseeable results of his felonious undertakings.

4. Theoretical criticisms of the broad rule which are applicable, equally, to HB 47.

a) The extension of the common law doctrine to its present stage is based on a misinterpretation of the word "murder" to mean "killing". The common law application was, first, to classify the killing as murder, manslaughter or justifiable or excusable homicide and, if found to be murder, then to characterize it as in the first degree. That is, under a proper application of the rule as taken from the common law malice aforethought may be imputed to the felon but not the act of killing; that the mere coincidence of homicide and felony is not enough to satisfy the requirements of the felony-murder doctrine. Under this view the rule is limited in application to situations where the felon is the physical killer. See Clark & Marshall, section 10.07.

b) The presumption which is utilized when imputing the act of killing to the felon in cases where he provokes another person to kill is subject to possible Constitutional strictures.

(1) Background: the U.S. Supreme Court has rejected the idea that a state legislature has the power to create any presumtion it wishes. The constitutional right to a fair trial and the presumption of innocence requires the prosecution to prove beyond a reasonable doubt

every element of the offense charged; that is, there can be no directed verdicts of guilty in a criminal case. Purely arbitrary presumptions violate these rights.

(2) Premise: a criminal statutory presumption must be regarded as irrational or arbitrary, and hence unconstitutional, unless it can at least be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend. Leary v. U.S., 395 US at 36.

(3) In HB 47 the proved fact is the commission of a felony, the presumed fact is that the felon committed the act of killing.

(4) HB 47 glosses over the numerous distinctions between types of homicides by use of this presumption and lumps them all together as murder first.

c) The concept of proximate cause in connection with felony-murder has been abolished in Penn. and Calif.; other states have recognized numerous limitations in its application.

(1) Smith v. Myers, supra, held that the concept of proximate cause has undergone great expansion in recent years; utilizing this concept in prosecutions for criminal homicide would be to extend possible criminal liability to persons chargeable with unlawful or reckless conduct in circumstances not generally considered to present the likelihood of a resultant death.

(2) People v. Washington, (Calif. 1965) 402 P.2d 130 held that the felony-murder doctrine expresses a highly artificial concept that deserves no extension beyond its required application, thus by implication rejecting the proximate cause argument.

(3) Later Calif. cases have rejected the rule's use in situations where the underlying felony is assault with a deadly weapon, on the basis of the "included in fact" test, in

an effort to preserve distinctions between types of homicides. 22 Stan. L. Rev., No. 5, 1970.

d) The felony-murder concept is legally unsound.
(1) A crime is generally defined as the unity or joint operation of an act (declared unlawful) and intent (to do that act).
(2) It is argued that the unity of act and intent that exists when the felony-murder doctrine is utilized is fictitious at best for it is the combination of the intent to do one act (the felony) with the commission of another act (the homicide).
(3) The presently accepted theory is characterized as particularly unsound when it is carried one step further by considering a homicide to be murder when the actual, physical killer (cop/victim/3rd person) has no legal or moral culpability. The argument is that the felon's guilt should be no greater than the actual killer's.

e) Absence of Mens Rea.
(1) Homicides are distinguished on the basis of the state of mind of the perpetrator; that is, whether his act is wilfull, deliberate and premeditated, upon a sudden heat of passion, in the commission of an unlawful act, or constitutes culpable negligence.
(2) The felony-murder rule sweeps all these distinctions away, notwithstanding the facts of the particular case. It thus imposes the most serious penalties in cases otherwise meriting lesser punishment.

5. Arguments which favor application of the rule in its broadest terms.

a) Underlying each of the arguments in support of the rule is the statement of justice Oliver Wendell Holmes in The Common Law:
"Acts should be judged by their tendency under the

known circumstances, not by the actual intent which accompanies them. . . the object of the law is to prevent human life being endangered or taken. . . the law requires [men] at their peril to know the teachings of common experience, just as it requires them to know the law. . . the test of murder is the degree of danger to life attending the act under the known circumstances of the case".

b) The moment that a person forms the intent to commit a felony which is inherently dangerous to human life he develops a man endangering state of mind, which is malice aforethought. Thereafter any killing is a product of that malice. The law does this very thing in other circumstances. Example - it is first degree murder to shoot and kill one man even though the actor's intent was to kill another person.

c) A killing (done by any person) is initiated by the felon since: (1) he is committing an act in itself dangerous to human life and (2) the killing would not have occured but for the provocation of the felony. The law does not measure the delicate scruples of a felon but rather imputes to him the knowledge that he is inviting dangerous countermeasures.

d) The legislature may properly classify murders committed with premeditation, or by torture, poison, or lying in wait as first degree. It may also classify murders during heinous felonies as first degree.

e) America is experiencing a rampant crime wave, which necessitates, for the protection of society in general, sentences which are commensurate punishment for the crime. This means severe sentences which will act as a deterrent to prospective and repeating criminals. The argument implies that the sentence for robbery, for example, should be more severe when a killing occurs than when no harm is caused.

APPENDIX A

During the course of the discussion, in which I characterized the arguments against the felony-murder rule as somewhat theoretical and those in support as a hard-line approach, it became apparent that the bulk of the committee were not overly impressed with those theoretical arguments. One of the committee members commented that a victim or bystander is just as dead whether killed by the felon or some other person. Chairman Moran, Mr. Hillstrand, Mrs. Banfield and one other seemed to prefer the view that a felon be charged with the consequences of his act. However, each member seemed to grasp the validity of some of the arguments against the rule and expressed a desire to avoid the pitfalls which are becoming evident. The Chairman thereupon inquired if the department has any recommendation, to which I responded that none had formally been agreed upon. However, as a point of discussion, I threw out the formulation of the rule which I proposed in my January 27 memo to you. This statement, plus a committee substitute for HB 47, are currently under consideration. The chairman expressed a wish to proceed judiciously and has agreed to accept further testimony from this department regarding our suggested approach to the problem. My specific request for additional time during which you will be able to formulate the department's position was granted. At this point the committee awaits your pleasure.

One suggestion that I would make, in view of the committee's attitude, is to adopt my suggestion of January 27, 1971 (which is a restatement of HB 496, 6th Legis. - Second Session, introduced at the request of the governor) which fixes the felon's responsibility for his direct acts. In combination with this AS 11.15.080 (negligent homicide) might be beefed up to refer specifically to situations where a felon provokes another person to kill when the killing occurs as a result of resistance to the commission of the felony or during the apprehension of the felons. This approach is, I feel, preferable to the features of CSHB 47 which would necessitate the exploration of what is a probable result of the commission of a felony.

MGP:slb

CC: Secretary of
House Judiciary Committee

HB-47

THE SUPREME COURT OF THE STATE OF ALASKA

ARLIE ROY POPE,

Appellant,

v.

STATE OF ALASKA,

Appellee.

File No. 1127

OPINION

[No. 660 - December 21, 1970]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Ralph E. Moody, Judge.

Appearances: James R. Clouse, Jr., Anchorage, for Appellant. G. Kent Edwards, Attorney General, Juneau, Harold W. Tobey, District Attorney, and Richard R. Felton, Assistant District Attorney, Anchorage, for Appellee.

Before: Boney, Chief Justice, Dimond, Rabinowitz, Connor and Erwin, Justices.

ERWIN, Justice.
CONNOR, Justice, concurring in part and dissenting in part.

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 Pavlovich 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, 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.

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[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 the 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.

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

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2 [Contd.]

> 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, 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."
>
> * * *
>
> "(c) 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).

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).

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, 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, 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, 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-finding process is not affected by our holding. It is an act of responsible citizenship for individuals to give whatever information they may have to aid in law enforcement. In such situations the compelling

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[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.

> atmosphere inherent in the process of in-custody interrogation is not necessarily present. 384 U.S. at 477-78, 16 L.Ed.2d at 725-26.

In interpreting Miranda various courts have had to draw lines between what are permissible investigative interviews and custodial interrogations. The United States Supreme Court itself has made it plain that custodial interrogation could take place outside the station-house where one was "not free to go where he pleased but was 'under arrest.'" Orozco v. Texas, 394 U.S. 324, 325, 22 L.Ed.2d 311, 314 (1969). The courts must determine, therefore, in each case whether the atmosphere and setting of an interrogation are of such coercive effect or indicate such significant restraint as to trigger the need for a Miranda warning. There is not always agreement about the criteria for such a determination.

But the case at bar is a strong one for applying the "on-the-scene questioning" exception to the Miranda warning requirement. The officer here was presented with a situation of great emergency. A crime of violence had occurred, the victim was lying on the ground dead. There was more than one person present. Both to protect his own safety and that of others, the officer had to elicit information about what had happened, and about the gun which had obviously been used in the killing. For the same reason the officer also had the right to conduct a strictly limited search ("frisk") of Pope's person for weapons under the rule of Terry v. Ohio, 392 U.S. 1, 20 L.Ed.2d 889 (1968),

which he did.[5] To hold 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.

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

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[5] See Maze v. State, 425 P.2d 235, 238 (Alaska 1967).

[6] Harris v. United States, 390 U.S. 234, 236, 19 L.Ed.2d 1067, 1069 (1968); Creighton v. United States, 406 F.2d 651 (D.C. Cir. 1968); Klockenbrink v. State, 472 P.2d 958, 961 (Alaska 1970). See Stevens v. State, 443 P.2d 600, 602 (Alaska 1968).

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.

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.

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]

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

[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 146 (1968).

[9] For a similar action by a federal court, see Ramer v. United States, 390 F.2d 564 (9th Cir. 1968).

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

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[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, 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, 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, 456 P.2d 797 (Idaho 1969).
FOR M'NAGHTEN: State v. Malumphy, 461 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, 410 P.2d 240 (Ore. 1966); Commonwealth v. Rightnour, 253 A.2d 644 (Pa. 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, 214 F.2d 862 (D.C. Cir. 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).

complete presentation on the issue in the trial court and ultimately in this court.[13]

The judgment of the Superior Court is hereby affirmed.

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[13] Once before this court has refused to review the test for insanity for Alaska based on an inadequate record. See Dimmick v. State, 449 P.2d 774, 776 (Alaska 1969).

CONNOR, J., 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 those 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 these cases. He is properly entitled to a decision on those questions.

The majority of my colleagues feel that the burden of proof question and the substantive test of insanity are interrelated. I agree. But for that very reason I believe that both topics logically can, and properly should, be determined by the court.[1/]

The lack of an adversary presentation of the legal arguments bearing upon the proper test of insanity in criminal cases should not be an impediment to decision in this particular instance. Ultimately one must read a large body of legal and

1/ For a case in which a distinguished court took a relaxed view of the manner in which counsel raised the question of the proper test of insanity in the trial court, see United States v. Freeman, 357 F.2d 606 (2d Cir. 1966). The failure of trial counsel in that case to object to the insanity test itself was not deemed critical.

psychiatric material even to become conversant with these subjects. Appellate briefs are of much less value here than in the resolution of more usual questions.[2] Surely this would not be the first time that this court decided a case on grounds or under a doctrine not fully presented in the briefs.[3]

There is another reason why we should decide these questions now, not later. In my opinion the test currently obtaining under Chase v. State, supra, is so inherently unfair as to dissuade either defendants or their counsel from raising the defense of insanity, or adducing evidence in support of it. Thus it is difficult to get the insanity question before us on appeal.

The insanity defense is much like a confession and avoidance. One virtually admits all factual elements of the crime but claims insanity as a special ground of exoneration. One claiming that he did not commit the offense, but who alternatively claims that he was insane when he did commit it, has little hope of success. While such an approach is procedurally permissible, as a practical matter it is a foolhardy strategy.

2/ The question of the test of insanity as a criminal defense has already been briefed in Chase v. State, 369 P.2d 997 (Alaska 1962). There the state urged that if the M'Naghten test was not employed, the American Law Institute test (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.

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/] At the trial the medical witnesses and the court had been influenced by the writings and

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

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

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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.

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

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

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.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 wrcng 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

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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. 4,161 (1955).

9/ Matheson v. United States, 227 U.S. 540 (1913); Davis v. United States, 165 U.S. 373 (1897); Sauer v. United States, 241 F.2d 640 (1957), cert. denied 354 U.S. 940; 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, 110 N.E. 945 (N.Y. 1915), per Cardozo, J.

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 Okla. 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

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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.

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'Naghten 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

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12/ "But 'glory' doesn't mean 'a nice knockdown 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.

14/ 10 C[illegible], at 717, 63 P. at 961.

15/ Re[illegible]old, 16 How. St. Tr. 695, 764 (1724).

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

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.

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 psyciatry. 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.

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.

One great developmental breakthrough occurred with the famous decision in Durham v. United States, 214 F.2d 862 (D.C. Cir. 1954). There Judge Bazelon laid down a test under which a defendant was to be held not responsible "if his unlawful act was the product of mental disease or mental defect." 214 F.2d at 874. This was an adaptation of a rule which had previously existed solely in New Hampshire, and which had developed under the influential work of Dr. Ray. State v. Pike, 49 N.H. 399 (1870). While Durham represents a courageous attempt to state a modern standard of responsibility, certain deficiencies were encountered in its administration. For example, the use of the term "product" created difficult problems of causation.[20/] And as Judge (now Chief Justice) Burger complained, concurring in Blocker v. United States, 288 F.2d 853, 860 (D.C. Cir. 1960), the test in many cases put the legal determination in the hands of psychiatric witnesses rather than judge and jury. Finally, in Washington v. United States, 390 F.2d 444 (D.C. Cir. 1967), Judge Bazelon noted certain shortcomings of the Durham test, in that it allowed the psychiatrist to make too many legal and moral judgments which should be within the province of the jury. In substance, he appears to have acceded at least partially to the view of Judge Burger that psychiatrists should no longer be permitted to render an opinion on whether the act was a "product" of mental disease. A lengthy form of instruction was adopted to clarify the respective functions of expert

20/ Weihofen, "The Flowering of New Hampshire," 22 U. of Chi. L. Rev. 356, 360 (1955).

witness and jury.

Shortly after the Durham rule was announced, the American Law Institute promulgated 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. March, 1970)(en banc). The M'Naghten test has now been overthrown in all but the First Circuit.[21] These

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21/ In addition to the above cited cases, see United States v. Currens, 290 F.2d 751 (3rd Cir. 1961); Blake v. United States, 407 F.2d 908 (5th Cir. 1969) (en banc); United States v. Smith, 404 F.2d 720 (6th Cir. 1968); United States v. Shapiro, 393 F.2d 680 (7th Cir. 1967) (en banc); Pope v. United States, 372 F.2d 710 (8th Cir. 1967) (en banc), vacated on other grounds, 392 U.S. 651 (1968); Wion v. United States, 325 F.2d 420 (10th Cir. 1963) (en banc), cert. denied, 377 U.S. 946 (1964). While not all of these cases embrace the A.L.I. test totally, they reject the

cases contain excellent disquisitions on the M'Naghten rule, its deficiencies, and the legal and psychiatric framework underlying 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, 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 in current thinking on this subject. It is the standard

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21/ [cont'd] M'Naghten rule and include a test whereby the effect of mental illness on one's capacity to conform his conduct to law is stressed. Judge (now Chief Justice) Burger, in his separate concurring opinion in Blocker v. United States, 288 F.2d 853 (D.C. Cir. 1960), laid great emphasis on a test which would focus on the relationship between mental illness and one's capacity to refrain from wrongdoing.

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

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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, 390 F.2d 444 (D.C. Cir. 1967). 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, 142 So.2d 899 (Ala. 1962); Alaska, Chase v. State, 369 P.2d 997 (Alas. 1962); Arkansas, Kelley v. State, 242 S.W. 572 (Ark. 1922); California, People v. Monk, 363 P.2d 865 (Calif. 1961); Delaware, Longoria v. State, 168 A.2d 695 (Del. 1961); Georgia, Ross v. State, 124 S.E.2d 280 (Ga. 1962); Iowa, State v. Drosos, 114 N.W. 2d 526 (Iowa 1962); Kentucky, Tungent v. Commonwealth, 198 S.W.2d 785 (Ky. 1947); Maine, State v. Park, 193 A.2d 1 (Me. 1963); Minnesota, State v. Finn, 100 N.W.2d 508 (Minn. 1960); Missouri, State v. King, 375 S.W.2d 34 (Mo. 1964); Montana, State v. DeHann, 292 P. 1109 (Mont. 1930); Nevada, State v. Behiter, 29 P.2d 1000 (Nev. 1934); New Jersey, State v. Kudzinowski, 147 A. 453 (N.J. 1929); North Carolina, State v. Swink, 47 S.E.2d 852 (N.C. 1948); Ohio, State v. Stewart, 198 N.E.2d 439 (Ohio 1964); Oregon, 14 Ore. Rev. Stat. 136.390 (1960); Pennsylvania, Commonwealth v. Updegrove, 198 A.2d 534 (Pa. 1964); Rhode Island, State v. Gunnites, 161 A.2d 818 (R.I. 1960); South Carolina, State v. Tidwell, 84 S.E. 778 (S.C. 1915); Texas, Carrell v. State, 283 S.W.2d 793 (Tex. 1951); Virginia, Christian v. Commonwealth, 117 S.E.2d 72 (Va. 1960); Washington, State v. Mays, 395 P.2d 758 (Wash. 1965); West Virginia, State v. McCauley, 43 S.E.2d 454 (W. Va. 1947). See 17 A.L.R.3d 146 (1968).

courts, the accused need only show some evidence of insanity. The prosecution must then prove his sanity beyond a reasonable doubt.[24/]

Those who place the burder 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

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24/ Those states following the federal rule are: Arizona, State v. Schantz, 403 P.2d 521 (Ariz. 1965); Colorado, Castro v. People, 346 P.2d 1020 (Colo. 1959); Connecticut, State v. Joseph, 115 A. 85 (Conn. 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, 364 P.2d 159 (Idaho 1961); Illinois, People v. Robinson, 174 N.E.2d 820 (Ill. 1961); Indiana, Whitaker v. State, 168 N.E.2d 212 (Ind. 1960); Kansas, State v. Penry, 368 P.2d 60 (Kan. 1962); Maryland, Jenkins v. State, 209 P.2d 616 (Md. 1965); Massachusetts, Commonwealth v. McHoul, 226 N.E.2d 556 (Mass. 1967); Michigan, People v. Eggleston, 152 N.W. 944 (Mich. 1915); Mississippi, McGarrh v. State, 148 So.2d 494 (Miss. 1963); Nebraska, Thompson v. State, 68 N.W.2d 267 (Nebr. 1955); North Dakota, State v. Barry, 92 N.W. 809 (N.D. 1902); New Hampshire, State v. Bartlett, 43 N.H. 224 (N.H. 1861); New Mexico, State v. Roy, 60 P.2d 646 (N.M. 1936); New York, People v. Kelley, 99 N.E. 2d 552 (N.Y. 1951); Oklahoma, Whisenhunt v. State, 279 P.2d 366 (Okla. 1954); South Dakota, State v. Waugh, 127 N.W.2d 429 (S.D. 1964); Tennessee, Jordan v. State, 135 S.W. 327 (Tenn. 1911); Utah, State v. Green, 40 P.2d 961 (Utah 1935); Wisconsin, State v. Esser, 115 N.W.2d 505 (Wis. 1962); Wyoming, State v. Pressler, 92 P. 806 (Wyo. 1907). The District of Columbia also follows this rule: Jones v. United States, 284 F.2d 245 (D.C. Cir. 1960). See 17 A.L.R.3d 146 (1968).

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, 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 (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.

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

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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.

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 (1952):

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

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.

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.

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

January 27, 1971

MEMORANDUM

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

FROM: Arthur H. Peterson AHP
Revisor of Statutes

SUBJECT: HB-47, felony-murder, insanity and mens rea

I.

You will find attached as Appendix A a draft of a committee substitute for HB-47, adopting an "aggravated offense" approach as an alternative to the broad, common law felony-murder doctrine, as requested by the committee. (Regarding the present Alaska law, see Gray v. Alaska, 463 P 2d 897 (Alaska, 1970).) Concerning four basic purposes of the criminal law -- deterrence, punishment ("an eye for an eye"), rehabilitation, and isolation -- the felony-murder doctrine appears quite inadequate with regard to the first (because, even if the gas station robber, for example, knowsthe law, it is usually not his intent that anybody be killed in connection with the robbery), it is unnecessary and frequently results in great injustice with regard to the second (as illustrated during earlier committee discussions), it appears to be irrelevant to the third, and while it results in isolating the defendant from the community it often does so without benefit to the community and without justice to the defendant.

In 1968 the legislature provided for an additional penalty if a firearm is used or carried during the commission of specified offenses. As a further deterrent to the use of weapons in the commission of these offenses, sec. 3 of the committee substitute changes "firearm" to read "dangerous weapon". (Regarding the latter, see Berfield v. Alaska, 458 P 2d 1008 (Alaska, 1969) and Ransom v. Alaska, 460 P 2d 170 (Alaska, 1969).)

Note that sec. 3 goes so far as to impose the additional penalty for merely carrying the weapon. In light of the Berfield and Ransom cases, supra, holding that boots on a person's feet may be considered dangerous weapons, the committee may wish to consider again whether it wants to make this change in AS 11.15.295.

HB-47

Also, see Whitton v. Alaska, 479 P 2d 302 (Ak. 1970)

Sec. 1 of the committee substitute deals specifically with the case of a reasonably foreseeable death occurring during the commission of or attempt to commit specified offenses and in which situation the offender is not guilty under the provisions on first degree murder, second degree murder, manslaughter or negligent homicide. (See Appendix B, which sets out the text of those provisions, along with various assault provisions and the section on carrying or using a firearm during the commission of certain crimes.)

Sec. 2 deletes the felony-murder concept from the first degree murder provision. It also deletes the specific reference to poison, on the understanding that it is not necessary to enumerate the means of effecting the killing and that use of poison is just one means. And it deletes the somewhat anomolous reference to "sound memory and discretion" appearing in the present wording of the provision. (See Item 7 on page 3 of the attached Appendix C, which is a memorandum from Don Craddick, the Assistant Public Defender for Juneau, to Herbert Soll, the Alaska Public Defender.) However, this section does not delete the word "deliberate", as the committee had requested. Upon reading the annotations under AS 11.15.010 and the definition of the word in Black's Law Dictionary (4th Edition, 1957), it appears to have some merit in that section, being something more than simply a repetition of the concepts embodied in "purposely" and "premeditated malice". Appendix C presents a summary of Mr. Craddick's January 16 testimony before the committee, and is helpful in understanding felony-murder and the attached committee substitute.

II.

Black's Law Dictionary (4th Edition, 1957) defines "mens rea" simply as "A guilty mind; a guilty or wrongful purpose. Guilty knowledge and wilfulness. United States v. Greenbaum, C.C.A.N.J., 138 F. 2d 437, 438." Related to the idea of the "guilty mind" is insanity -- a condition usually thought to preclude formation of the guilty mind and, when made an issue in a criminal proceeding, is usually raised as a defense to the charge. Thus the legal system is faced with the task of establishing criteria for determining insanity. The 1962 Annual Survey of American Law (at page 72) describes the Alaska Supreme Court's efforts in establishing the criteria in Chase v. Alaska, 369 P 2d 997 (Alaska, 1962): "Our next to newest state, Alaska, had the opportunity to choose any test it desired, without the fetters of case precedent. It chose a test no one could have foreseen. M'Naghten plainly exculpates a defendant who does not know the nature and quality of his act or the wrongfulness of his act. Alaska's highest court ... concluded that the defendant cannot be exculpated unless both his knowledge of the nature and quality of the act and his knowledge of the wrongfulness of the act are obliterated." (Emphasis in original.)

The dissenting opinion of Justice Connor in Pope v. Alaska, Ak. Sup. Ct. Opin. No. 660 (Dec. 21, 1970), presents a good explanation and historical review of mens rea and the defense of insanity, and

there is no need for a repetition of that here. (And since you distributed copies of the case to all committee members it is not attached to this memorandum.) At page 13 of his dissent, Justice Connor indicates his preference for the American Law Institute's Model Penal Code insanity-defense formulation because it "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." See Mod. P. Code, sec. 4.01, quoted at page 12 of the dissent.

Norval Morris and Gordon Hawkins, in their The Honest Politician's Guide to Crime Control (Univ. of Chicago Press, 1970), rather persuasively offer a different approach -- abolish the insanity defense altogether. Pages 174 -- 185 of their book are attached as Appendix D. Their point calls to mind the comments of Justice Connor at page 16 of his dissent, where he discusses the question of who has the burden of proof on the sanity issue. He states "... once sanity is in issue it is a fact to be established like any other ultimate fact essential to culpability. *** 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." However, whereas Justice Connor, agreeing with Justice Frankfurter's statement that "Behind a muscular contraction resulting in another's death there must be culpability to turn homicide into murder.", apparently would view a successful insanity defense as exculpating the defendant, Prof. Morris and Mr. Hawkins introduce the term "insane mens rea" (at page 180, stating that it is not a contradiction in terms) and argue for the greater justice (practically and morally) of their approach. A summary here could not do justice to their theory, and a close, critical reading of Appendix D is suggested.

The majority of the Alaska Supreme Court in the Pope case refused to decide the insanity issues, and we are left with the rule of the Chase case unless the legislature resolves the matter -- perhaps along the lines of the American Law Institute approach (as suggested by Justice Connor) or perhaps along some other lines. The Morris-Hawkins book and the Model Penal Code, as well as other materials, are available to committee members wishing to study the matter. A bill will be prepared at the committee's request.

APPENDIX A

Original Sponsor: Colletta

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 47

For an Act entitled: "An Act relating to first degree murder and crimes involving dangerous weapons; and providing for an effective date."

BE IT ENACTED . . .

* Section 1. AS 11.05 is amended by adding a new section to read:

Sec. 11.05.160. ADDITIONAL PENALTY FOR CERTAIN OFFENSES. If a person is killed during the commission of or the attempt to commit arson, burglary, kidnapping, rape, or robbery, and the killing is a reasonably foreseeable consequence of the crime, the person committing or attempting to commit the crime is punishable by imprisonment for not more than five years in addition to the penalty specified for the crime. This provision does not apply if the person committing or attempting to commit a crime listed in this section has violated AS 11.15.010, 11.15.030, 11.15.040, or 11.15.080, and is punishable under one of those sections.

* Sec. 2. AS 11.15.010 is repealed and re-enacted to read:

Sec. 11.15.010. FIRST DEGREE MURDER. A person is guilty of first degree murder if he kills another person purposely, deliberately and with premeditated malice. A person who is convicted of first degree murder shall be sentenced to imprisonment for not less than 20 years to life.

* Sec. 3. AS 11.15.295 is amended to read:

Sec. 11.15.295. USE OF DANGEROUS WEAPON /FIREARM/ DURING THE COMMISSION OF CERTAIN CRIMES. A person who uses or carries a

dangerous weapon /FIREARM/ during the commission of a robbery, assault, murder, rape, burglary, or kidnapping is guilty of a felony and upon conviction for a first offense is punishable by imprisonment for not less than 10 years. Upon conviction for a second or subsequent offense in violation of this section, the offender shall be imprisoned for not less than 25 years.

Sec. 11.15.010. First degree murder. A person who, being of sound memory and discretion, purposely, and either of deliberate and premeditated malice or by means of poison, or in perpetrating or in attempting to perpetrate, rape, arson, robbery, or burglary kills another, is guilty of murder in the first degree, and shall be sentenced to imprisonment for not less than 20 years to life. (§ 65-4-1 ACLA 1949; am § 4 ch 132 SLA 1957; am § 5 ch 43 SLA 1964; am § 4 ch 68 SLA 1965)

Sec. 11.15.030. Second degree murder. Except as provided in §§ 10 and 20 of this chapter, a person who purposely and maliciously kills another is guilty of murder in the second degree, and shall be sentenced to imprisonment for a term of not less than 15 years to life. (§ 65-4-3 ACLA 1949; am § 7 ch 43 SLA 1964; am § 6 ch 68 SLA 1965)

Sec. 11.15.040. Manslaughter. Except as provided in §§ 10—30 of this chapter, a person who unlawfully kills another is guilty of manslaughter, and is punishable by imprisonment in the penitentiary for not less than one year nor more than 20 years. (§ 65-4-4 ACLA 1949; am § 8 ch 43 SLA 1964)

Sec. 11.15.080. Negligent homicide. Every killing of a human being by the culpable negligence of another, when the killing is not murder in the first or second degree, or is not justifiable or excusable, is manslaughter, and is punishable accordingly. (§ 65-4-8 ACLA 1949)

Sec. 11.15.160. Assault with intent to kill or commit rape or robbery. A person who assaults another with intent to kill, or to commit rape or robbery upon the person assaulted, is punishable by imprisonment in the penitentiary for not more than 15 years nor less than one year. (§ 65-4-16 ACLA 1949)

Sec. 11.15.190. Assault while armed. A person who assaults, or assaults and beats another with a cowhide, whip, stick or like thing, having at the time in his possession a pistol, dirk, or other deadly weapon, with intent to intimidate and prevent the other person from resisting or defending himself, is punishable by imprisonment in the penitentiary for not more than 10 years not less than one year. (§ 65-4-19 ACLA 1949)

Sec. 11.15.200. Careless use of firearms. (a) A person who intentionally, and without malice, points or aims a firearm at or toward a person, or discharges a firearm so pointed or aimed at a person, or points and discharges a firearm at or toward a person or object without knowing the identity of the object and maims or injures a human being, is guilty of the careless use of firearms, and upon conviction is punishable by a fine of not more than $1,000, or imprisonment for not more than one year, or by both.

(b) If death ensues from the maiming or injuring, the person discharging the firearm may, in the discretion of the prosecuting officer or grand jury, be charged with the crime of manslaughter.

(c) This section does not apply to a case where firearms are used in self-defense or in the discharge of official duty, or in case of a justifiable homicide. (§ 65-4-20 ACLA 1949)

Sec. 11.15.220. Assault with dangerous weapon. A person armed with a dangerous weapon, who assaults another with the weapon, is punishable by imprisonment in the penitentiary for not more than 10 years nor less than six months, or by imprisonment in jail for not more than one year nor less than one month, or by a fine of not more than $1,000 nor less than $100. (§ 65-4-22 ACLA 1949)

Sec. 11.15.230. Assault and assault and battery. A person not armed with a dangerous weapon, who unlawfully assaults or threatens another in a menacing manner, or unlawfully strikes or wounds another, is punishable by a fine of not more than $500, or by imprisonment in a jail for not more than six months, or by both. (§ 65-4-23 ACLA 1949)

Sec. 11.15.295. Use of firearms during the commission of certain crimes. A person who uses or carries a firearm during the commission of a robbery, assault, murder, rape, burglary, or kidnapping is guilty of a felony and upon conviction for a first offense is punishable by imprisonment for not less than 10 years. Upon conviction for a second or subsequent offense in violation of this section, the offender shall be imprisoned for not less than 25 years. (§ 1 ch 144 SLA 1968)

APPENDIX C

MEMORANDUM State of Alaska

TO: Herbert D. Soll
Public Defender
Anchorage

DATE : January 18, 1971

SUBJECT: House Bill 47
(First Degree murder;
amendment to A.S. 11.15.101)
DD

FROM: Donald L. Craddick
Assistant Public Defender
Juneau

Friday, January 15, I received a call from the secretary of the House Judiciary Committee, Mrs. Mason (586-1303) who advised that the committee was holding a hearing on House Bill 47 Saturday morning at 10:00 a.m. and wished to have someone present from the Public Defender Agency to present the position of that agency with reference to the bill. I tried to reach you on this matter, but my call to the Anchorage office was not returned.

Saturday morning I appeared before the committee, which is chaired by Representative William Morran. I advised the committee that as I had not been able to contact the Anchorage office, I was not presenting an official position of the Public Defender Agency on the bill but would be glad to give my views as an Assistant Public Defender if they were interested. They were, and we then proceeded, for approximately 45 minutes, to discuss the following aspects of the bill:

1. The bill was generated by the Alaska Supreme Court decision in Gray v. Alaska, (Jan. 16, 1970) 463 P. 2d 897 and by strong public opinion as a result of two recent incidents in Anchorage involving shootings during armed robberies. (Mr. Colletta, sponsor of the bill, was present and advised that these were the reasons for the bill being introduced.)

2. The bill removes the "purposeful" killing requirement for there to be a felony murder. I advised that if the felony murder concept is to be retained, then this is a good aspect of the bill as homicides occurring during the commission of felonies are accidental (the felon never having intended any such occurrence); more over, whenever a "purposeful" killing can be shown there is true murder without having to resort to the felony murder concept.

3. This bill removes the requirement that the killing be performed by the person ultimately charged as the felony murderer. I advised that this would be in keeping with the standard felony murder concept.

4. This bill enlarges the category of crimes to be included under the felony murder rule by adding escape and lewd or lascivious acts toward a child. In this regard we discussed the matter of crimes which should be covered: namely, those involving inherently dangerous acts. It was pointed out that an escape from prison could be such an act but hardly so if performed by a person who merely ran away from a police officer who had just made an arrest and where no violence or remote possibility of violence was involved; also, the absurd lewd or lascivious act possibilities were illustrated by committee member Mike Rose who pointed out that a child frightened by an exhibitionist might run out into a street and be killed by a passing car, which could result in a first degree murder charge being brought against the exhibitionist.

5. I argued against retention of the felony murder concept in the State of Alaska on the grounds that it did not serve any salutary purpose and could lead to absurd results. I gave the following illustrations:

   A. The get-away car driver (outside in the street) in an armed robbery situation who could be charged with first degree murder if a store owner shot down his cohort (in the store) in armed robbery. Note: This is an actual case which was handed down by the California Supreme Court in Taylor v. Superior Court (Dec. 1970). (See the Criminal Law Reporter, Volume 8, Pg. 1049, 2216-2217.) I left a copy of this decision with the committee.

   B. The bank robber who could be charged with first degree murder if a bank guard shot at him and killed an innocent bystander.

6. I suggested that if the legislature nonetheless felt it desirable to direly punish a person involved in a crime when the commission of that crime led in a natural dequence of events to the dealth of another person, then they could use an "aggrevated crime" approach---perhpas something as simple as adding additional years on the sentence in such a situation. The precedent for this could be the recently enacted gun laws which add additional penalties when a fire arm is used in

connection with a crime. (For example: see Alaska Statute 11.15.295)

In this regard, however, I advised the committee that they should bear in mind that there is a very strong doubt that any legislation such as the felony murder rule or even an aggrevated crime approach would act as a deterent to homocides during the perpetration of felonies; the reason being that it is one thing to deter an intentional act, such as the carrying of a fire arm, but entirely another to try to deter an event which was never intended to happen in the first place but happened because things got out of hand.

7. The last aspect of the bill considered was the deletion by the bill of the language contained in the present first degree murder statute that the person involved must be of "sound memory and discretion" before he is guility of any kind of first degree murder.

I made the following comments on this:

a. The phrase which is usually used in a civil context, such as the drafting of wills, has no place in the criminal laws dealing with insanity.

b. This language actually makes it possible for a person who is not insane even under the most liberal rule (Durham) to avoid a conviction of first degree murder.

c. Therefore, what is needed is a statute governing criminal responsibility in all cases and denotes the test of insanity to be applied.

You will be pleased to know that the committee appeared to be in agreement with this and is going to undertake to write up such a statute. The committee did not seem to be too taken with the McNaughton test of knowing right and wrong and seemed to be disturbed over Alaska's even more stringent rule as set forth in the Chase v. Alaska case (1962) 369 P 2d 997.

The committee chairman referred the committee to the recent decision in Pope v. Alaska (Dec. 21, 1970) Opinion 660, File 1127, in which Justice Conner, in the dissent, reviews and criticizes the development of Alaska's present law of insanity and emphasizes the desirability of adopting the American Law Institute Model Penal Code Provision, Sec. 4.01 (final draft 1962)....see page 12 of the Pope decision, wherein this test is set out verbatim.

I suggested to the committee that one of the contributing factors which might have led to the Chase decision could be (though it is not discussed in the opinion) the lack of facilities in Alaska to care for the insane should a less stringent rule apply in Alaska and should there be a result in the increase in the number of persons needing institutionalization.

You might consider writing to the committee as Public Defender should you wish to have the agency take a position on this bill. It seems to me it would be very ehlpful if the agency were also to take a position or make recommendations with reference to the legal test of insanity. We need not necessarily go as far as the Durham rule, but it is certainly time to move beyond the almost medieval concept of the McNaughton tests. Of the present alternatives I favor the American Law Institute approach.

Donald L. Craddick

DONALD L. CRADDICK

Norval Morris and Gordon Hawkins

the honest politician's guide to crime control

The University of Chicago Press • Chicago and London

The accused is, we are informed, "psychotic," and should therefore not be convicted of a crime. Further, though "acquitted" because of his mental illness, he is "dangerous" and should therefore be detained until he is both "cured" of his malady and no longer "dangerous." Lewis Carroll, in *Through the Looking-Glass*, offered a fine commentary on the superficialities involved in such a traditional response to the psychologically disturbed offender:

> "What sort of insects do you rejoice in, where *you* come from?" the Gnat inquired.
>
> "I don't *rejoice* in insects at all," Alice explained, "because I'm rather afraid of them – at least the large kinds. But I can tell you the names of some of them."
>
> "Of course they answer to their names?" the Gnat remarked carelessly.
>
> "I never knew them to do it."
>
> "What's the use of their having names," the Gnat said, "if they won't answer to them?"
>
> "No use to *them*," said Alice; "but it's useful to the people that name them, I suppose. If not, why do things have names at all?"

Our program on crime and the psychiatrist is designed both to eliminate our present futile name-calling from the criminal justice system and to engage the psychiatrist in the treatment of certain dangerous criminals, a task he now eschews. We achieve these results by three ukases:

1. The defense of insanity shall be abolished. The accused's mental condition will be relevant to the question of whether he did or did not, at the time of the crime, have the *mens rea* of the crime of which he is charged. His mental condition will, of course, also be highly relevant to his sentence and his correctional treatment if he is convicted.
2. High priority shall be accorded to research aimed at the definition of social dangerousness and the development of prediction tables designed to deal with the "dangerous," psychologically disturbed offender.
3. Special institutions for the treatment of "dangerous" psychologically disturbed offenders, on the lines set out in this chapter, shall be established in all states.

The vast literature dealing with psychiatric or psychoanalytic criminology ranges from detailed studies of particular cases to attempts to explain all criminal behavior in terms of psychopathy. Yet apart from providing a profusion of new labels the practical contribution that psychiatry has made to the problems of defining and treating the offender is very limited. This is in part, but by no means entirely, the fault of psychiatrists themselves. There is no doubt, however, that the leaders in corrections and in criminal law policy accord the psychiatrist a slim role indeed in treating the behavior disorders that come to the courts, the prisons, and other correctional agencies. The slight attention given to the role of the psychiatrist in the report of the President's Crime Commission, *The Challenge of Crime in a Free Society*, and in the same commission's task force report on corrections, is recent testament to this neglect. Let us be clear about this. We are not suggesting that the judges, academic and practicing lawyers, correctional administrators, and criminologists prominent in the criminal justice system are reactionary, or that they fail to keep up with the literature in the social sciences; their attitude to psychiatry is not usually one of ignorance, it is rather a thoughtful rejection. They see psychiatrists, as too frequently psychiatrists see themselves, merely as diagnosticians, classifiers, separating out from the bulk of criminal offenders those whose psychological disturbance is at the level of psychosis. Where, it is asked, are psychiatrists successfully treating criminal offenders? The psychiatrist is useful, it is agreed, in classification and in staff training, but he is not seen as a serious ally in the correctional process.

We do not share this view. We believe there has been gross failure both by leading forensic psychiatrists and by those responsible for the criminal justice system sufficiently to mobilize psychiatric resources for the prevention and treatment of crime. We believe part of the fault lies in our national monomania, our *folie à collective*, concerning criminal responsibility and the defense of insanity. This has distracted us from many important tasks, two of which we shall deal with in this chapter – first, the task of defining the dangerous offender for sentencing and treatment purposes, and second, the task of better mobilizing psychiatric and other clinical resources for the treatment of such criminals. We believe these three themes – the defense of insanity, the definition of dangerousness, and the mobilization of clinical resources for the treatment of criminals who are dangerous and psychologically disturbed – are closely interconnected. The importance of all three issues must be recognized if the psychiatrist is to assist appreciably in efforts to protect the community and to treat the criminal.

Abolition of the Defense of Insanity

Rivers of ink, mountains of printers' lead, and forests of paper have been expended on an issue that is surely marginal to the chaotic problems of the effective, rational, and humane prevention and treatment of crime. We determinedly insulate ourselves from the realities we are facing – the role of psychological disturbance in criminality and the measures we might effectively and fairly use to deal with psychologically disturbed and dangerous criminals. We do not propose here to contribute to the wastage or to pursue the traditional minutiae. Our view is that the defense of insanity itself is moribund and should be interred. We are not suggesting amendments to the rules concerning fitness to plead; that issue is relevant to our present topic, but it is not one we now wish to consider.

The suggestion that the defense of insanity should be abolished is not original. Many authorities including Lady Barbara Wootton, Professor H. L. A. Hart, and Chief Justice Joseph Weintraub of New Jersey among others have advocated its abolition, though for diverse reasons and with diverse substitutes for it. We do not propose to marshal and analyze their reasons and their suggestions. We have put forward a ukase on this topic and we shall here advance some of the reasons underlying it, a few of which are not to be found in the writings of the authorities on this subject.

Why should there be a defense of insanity?

The question strikes deep into the social function of the criminal law. Over the years, we have found the traditional answers less and less convincing – such as the uncritical acceptance of what is by the Royal Commission on Capital Punishment:

> It has for centuries been recognized that, if a person was, at the time of his unlawful act, mentally so disordered that it would be unreasonable to impute guilt to him, he ought not to be held liable to conviction and punishment under the criminal law. Views have changed and opinions have differed, as they differ now, about the standards to be applied in deciding whether an individual should be exempted from criminal responsibility for this reason; but the principle has been accepted without question.

Or the answer in the American Law Institute's Model Penal Code:

> What is involved specifically is the drawing of a line between the use of public agencies and public force to condemn the offender by conviction, with resultant sanctions in which there is inescapably a punitive ingredient (however constructive we may attempt to make the process of correction) and modes of disposition in which that ingredient is absent, even though restraint may be involved. To put the matter differently, the problem is to discriminate between the cases where a punitive-correctional disposition is appropriate and those in which a medical-custodial disposition is the only kind that the law should allow.

Or that offered by Sir Owen Dixon:

> Now it is perfectly useless for the law to attempt, by threatening punishment, to deter people from committing crimes if their mental condition is such that they cannot be in the least influenced by the possibility or probability of subsequent punishment; if they cannot understand what they are doing or cannot understand the ground upon which the law proceeds.

Or that in the Durham case:

> Our collective conscience does not allow punishment when it cannot impose blame.

Our position, putting aside the difficult and important issue of fitness to plead – competency to be tried – is very simple. The accused's mental condition should be relevant to the question of whether he did or did not, at the time of the crime, have the *mens rea* of the crime of which he is charged. There should be no special rules of the M'Naughten or Durham types. The defense of insanity being abrogated, evidence of mental illness would be admissible on the *mens rea* issue to the same limited extent that deafness, blindness, a heart condition, stomach cramps, illiteracy, stupidity, lack of education, "foreignness," drunkenness, and drug addiction are admissible. In practice, such cases are rare, and they would remain rare were mental illness added to the list. There would not merely be a shifting of psychiatric testimony to the *mens rea* issue with the same problems as beset the courts which hear it in the defense of insanity. A quite different issue would be raised, and one traditionally within the competence of the

finder of fact. The convicted person's mental condition would, of course, be highly relevant to his sentence and to his correctional treatment if he were convicted.

Historically the defense of insanity made good sense. The executioner infused it with meaning. And in a larger sense, all criminal sanctions did so too, since they made no pretense of being rehabilitative. In the present context of the expressed purposes and developing realities of both the criminal justice system and the mental health system this defense is an anachronism. In the future, this defense would be not only anachronistic, it would be manifestly inefficient as well.

Let us offer a small statistical point before turning to the moral issue. In this country the defense of insanity is pleaded in about 2 percent of the criminal cases which come to jury trial. Overwhelmingly, of course, criminal matters are disposed of by pleas of guilty and trials by a judge sitting without a jury. Only the exceptional case goes to trial by jury. And of these exceptional cases, in only two of every hundred is this defense raised. In the United Kingdom, for the period on which the Royal Commission on Capital Punishment reported, the situation was very similar. The verdict of "guilty but insane" was returned, over a five-year period, in 19.8 percent of murder trials, whereas over the same period it was returned in only 0.1 percent of trials for other offenses. Does anyone believe that this measures the significance of gross psychopathology to crime? Let him visit the nearest criminal court or penitentiary if he does. Is not this defense clearly a sop to our conscience, a comfort for our failure to address the difficult arena of psychopathology and crime?

The practical difference between traditional tests of insanity and modern revisions was recently empirically tested. Various juries were given instructions based on the M'Naughten rules, the Durham test, and the following simple and uncluttered formula: "If you believe the defendant was insane at the time he committed the act of which he is accused, then you must find the defendant not guilty by reason of insanity." The juries failed to see any operative differences in the three instructions. Do we need to labor another century and a half to produce a mouse of such inconsequence?

Yet the moral issue remains central. Should we exculpate from criminal responsibility, or from "accountability" to use the preferable European concept, those whose freedom to choose between criminal and

lawful behavior has been curtailed by mental illness? It is too often overlooked that the exculpation of one group of "criminal actors" confirms the inculpation of others. Why not a defense of "dwelling in a Negro ghetto"? This defense would not be morally indefensible. Such an adverse social and subcultural background is statistically *more* criminogenic than is psychosis, and it also severely circumscribes the freedom of choice which a nondeterministic criminal law (and that describes all present criminal law systems) attributes to accused persons.

True, a defense of social adversity would be politically intolerable; but that does not vitiate the analogy for our purposes. Insanity, it is said, destroys, undermines, or diminishes man's capacity to reject the wrong and adhere to the right. So does the ghetto – more so. But surely, you might ask, you would not have us punish the sick? Indeed we would, if you insist on punishing the grossly deprived. To the extent that criminal sanctions serve punitive purposes we fail to see the difference between these two defenses; to the extent that they serve rehabilitative, treatment, and curative purposes, we fail to see the need for the difference. Some reply: it is not a question of freedom or morality, it is a question of stigmatization, and to this we shall return; but let us not brush aside the moral issue so lightly.

In Shavian terms: Vengeance is mine, saith the Lord – which means that it is not the Lord Chief Justice's! It seems to us clear that there *are* different degrees of moral turpitude in criminal conduct and that the mental health or illness of an actor is relevant to an assessment of that degree – as are many other factors in the social setting and historical antecedents of a crime. This does not mean, however, that society is obliged to measure any or all of these pressures for purposes of a moral assessment which will lead to conclusions concerning criminal responsibility.

In a few cases the question of moral irresponsibility is so clear that there is no purpose in invoking the criminal process. The example of accident, in its purest and least subconscious accident-prone form, is a situation where there is little utility in invoking the criminal process. The same is true of a person who did not know what he was doing at the time of the alleged crime. But to exculpate him there is no need for the M'Naughten or Durham rules for he falls clearly within general criminal law exculpatory rules. He simply lacks the *mens rea* of the crime. Thus, it seems to us that all we need to achieve within the

area of criminal responsibility and psychological disturbance is already achieved by existing and long-established rules of mental intent and crime, and we would allow a sane or insane *mens rea* to suffice for guilt.

Perhaps an example of this principle may help. The *Hadfield* case will serve our purpose admirably. Hadfield had been severely wounded in the head in the Napoleonic wars and subsequently decided that it was necessary for the salvation of the world that he kill George III. He equipped himself with a blunderbuss and secreted himself in the Drury Lane Theatre in a position from which he hoped to shoot George III as he waddled into the royal box. Hadfield saw the flabby creature in the royal box and discharged his blunderbuss in the direction of the king, unfortunately missing him.

There was no doubt of Hadfield's brain damage or of his psychosis, his gross psychological disturbance. He did, however, clearly intend to kill the king. He had the insane *mens rea* of murder, and indeed of treason. We do not regard the phrase "insane *mens rea*" as a contradiction in terms. Had his psychological disturbance led him to think that he was discharging the blunderbuss to start the performance on the stage, or to burst a balloon, he would have lacked the *mens rea* of murder and of treason. But he saw himself as sacrificing himself for the good of the world -- and he may not have been far wrong. We do not deplore the fact that Hadfield was held to be not guilty on the grounds of insanity. We do, however, maintain that there would be no greater injustice involved in convicting in such a case and applying the psychological diagnosis to the decision how to treat the offender than in convicting in any of the other thousands of cases that daily flow through our criminal courts.

Clearly the crucial question in this context is: what are the consequences of the defense of insanity? Is there an operative difference between peno-correctional and psychiatric-custodial processes which renders benefit to the accused who is found not guilty on the grounds of insanity? To this important inquiry we offer two replies. First, the differences if they exist are marginal; and second, the defense of insanity is an extraordinarily inefficient mechanism of deciding on the allocation of psychiatric treatment resources.

The American Law Institute's recommended modification of the M'Naughten rules in its Model Penal Code was accompanied by a recommendation requiring the indeterminate commitment of those found not guilty by reason of insanity. Likewise, within a month of the adoption of the Durham rules in the District of Columbia, Congress provided that being found not guilty on the grounds of insanity should be followed, mandatorily, not in the discretion of the court, by indeterminate commitment to Saint Elizabeth's Hospital until such time as the person so committed could meet the requirements that he prove, beyond reasonable doubt, his freedom from "any abnormal condition" and that he is not likely to repeat the act which resulted in his insanity acquittal. Dr. Winfred Overholser, the late superintendent of the mental hospital to which the recipients of this benevolence in the District of Columbia are sent, put the matter precisely: "The notion that a verdict of not guilty by reason of insanity means an easy way out is far from the truth. Indeed the odds favor such a person spending a longer period of confinement in the hospital than if the sentence was being served in jail."

Facilities and practice differ from country to country, and in this country from state to state. The point we wish to stress is that it is error to *assume* benevolence and to assume that there are more psychiatric treatment resources, better physical conditions, and earlier release practices pursuant to a finding of not guilty on the grounds of insanity than pursuant to a conviction. It all depends. We know of systems where there are more facilities per patient for psychiatric treatment in the penitentiary holding psychologically disturbed prisoners than in the nearby state mental hospitals. Frequently the converse is true.

Let us offer a final point on the sometimes assumed benevolence of the defense of insanity. It is more than a straw in the wind, more than a suggestion that this is not a liberal, benevolent, humanely exculpating defense, when one finds the prosecution alleging at trial the insanity of the accused at the time of the crime while the defense urges his sanity; but this has occurred in both the United Kingdom and this country. Lady Barbara Wootton has discussed at least six cases in which "the witness called by the Crown to rebut evidence of diminished responsibility sought to establish that the accused was in fact insane." And in a judgment in the House of Lords, Lord Denning said: "The old notion that only the defense can raise a defense of insanity is now gone. The prosecution are entitled to raise it and it is their duty to do so rather than allow a dangerous person to be at large."

It might be suggested that our attack on the defense of insanity mis-

conceives the problem. The task of the law, it might be suggested, is mainly to protect the community, and the defense of insanity will indeed permit better psychiatric treatment and, if necessary, longer custodial supervision of the disturbed and dangerous criminal. Later in this chapter we shall deal with the definition and prediction of social dangerousness; in the meantime, it suffices to note that the defense of insanity started on moral premises different from this, and that the defense is both unnecessary and inefficient to achieve this protective purpose.

A more sophisticated critic might suggest that we are missing the point in a different way. Criminal processes are, he might say, public morality plays. They have deterrent purposes, perhaps, but they certainly aim dramatically to affirm the minimum standards of conduct society will tolerate. By public ceremonial and defined liturgy, criminal trials stigmatize those who fail to conform to society's standards. In short, the criminal justice system is a name-calling, stigmatizing, community superego reinforcing system. And, it could be urged, we should not stigmatize the mentally ill. They are mad not bad, sick not wicked; it is important that we not misclassify them. Is there a rebuttal to this defense of the defense of insanity? We believe there is – the fact of "double stigmatization."

Consider the question, Are psychologically disturbed criminals seen by prison authorities only as "criminal," and are the mentally ill who have committed or have been charged with crime seen only as "mentally ill" by the hospital authorities? Or are the former seen as "mentally ill criminals" and the latter as "criminal and mentally ill"? Are the systems separate or confused in the minds of the staff and of the "patients"? It is clear that some belief in the separateness and purity of the two systems infects the position of those who advocate retention of the defense of insanity. Yet the fact is that the prison authorities regard their inmates in the facilities for the psychologically disturbed as both criminal and insane, bad and mad; and the mental hospital authorities regard their inmates who have been convicted of crime or even arrested and charged with crime as both insane and criminal, mad and bad.

In mental hospitals the fact that an inmate was arrested for a crime seriously influences the date of his likely discharge. Note, it is an arrest without a conviction that has this effect. Likewise the conditions of incarceration in the psychiatric divisions of correctional systems are

frequently less desirable than elsewhere in the system and the chances of obtaining parole are substantially lower. The truth is that our present intellectually loose approach to this problem inflicts gratuitous extra suffering both on those who are categorized as criminal and mentally disturbed and those who are categorized as mentally disturbed and criminal. The police power of the state and the mental health power of the state are surely sufficient unto themselves, separately, to control questions of dangerousness and the upper limits of power over individual citizens. It is mutually corruptive and a potent source of injustice loosely and thoughtlessly to blend these two powers, and thus to gloss over in each the proper balance between state power and the freedom of the individual.

There is one concept common to both, the concept of social dangerousness. The problem for both the prison authorities and the mental health authorities is reasonably and effectively to make assessments of social dangerousness and to design a process by which that assessment can be fed into the releasing procedure. We do not facilitate this difficult task by making a porridge, a farrago, out of the two powers – the mental health power and the police power – and using this mess to avoid facing and trying to dispose of a genuinely difficult problem.

Thus, in terms neither of the morality of punishment nor of stigmatization is the defense of insanity now essential or operative. Similarly, it is neither a necessary nor effective principle around which to mobilize clinical resources for the rational treatment of the psychologically disturbed criminal actor. It is, however, in our view, a political issue of some difficulty and the politics are concerned with the stigmatizing role of the criminal law.

While the hangman, or in this country the fryman, and the capital punishment controversy lurk in the background, the issue of criminal irresponsibility in relation to homicide is intractable. Yet, in the five years 1964, 1965, 1966, 1967, and 1968, the number of executions in this country was, respectively, 15, 7, 1, 2, and 0. Our ukase on this matter does no more than hasten the inevitable. Moreover, when one looks at the pattern of capital punishment for murder in the world, it becomes clear that this is a rapidly declining sanction. We can reasonably exclude it from our consideration of the future. What remains then is the question of stigmatization of conduct as either wicked or the product of sickness, as either bad or mad. This difference in stigmatization may result in different treatments but the differences are neither

essential to our system of criminal justice nor necessarily involved in either our correctional or mental health systems. The essential difference is the difference of nomenclature, of overt public stigmatization.

For our part, we look toward a future in which moral outrage and name-calling will not so significantly influence our reaction to the behavior of others. This is a generation that despoils our natural resources and prepares to terminate human life on this planet; but if the ruination of our environment and the eliminating of our species are avoided, if aggressions are controlled in favor of decency and creativity, we do not believe that systems of justice in which name-calling and vengeance figure so prominently can long survive. If this be so, then the issue becomes one of how we can, as rapidly as the traffic will allow, destigmatize our criminal law processes.

There is a choice. We could follow the pattern of a gradual extension of the exculpatory and allegedly destigmatizing processes of the defense of insanity, opening it more and more widely to cover larger and larger slices of criminal conduct until most criminal behavior is encompassed. Many of those working in this field, men whom we respect, favor that engulfing process. We do not oppose their purpose; but we think their political judgment wrong. It seems to us that we should not make an artificial and morally unjustifiable exception to a false general rule and allow the exception to swallow the rule. It seems to us better to support the advance that is now taking place, certainly in theory and rhetoric, in the treatment of all criminal conduct, and to a degree in correctional practice. In other words, to put it aggressively, we think society will move faster toward a rational system of criminal justice through honesty than by self-deception; and we think it dishonest to creat an artificial, morally unjustifiable, practically ineffective exception to the general rules of criminal responsibility. We think the English judges went wrong in the nineteenth century and that it is time we got back to earlier and truer principles.

We find it impossible morally to distinguish the insane from others who may be convicted though suffering deficiencies of intelligence, adversities of social circumstances, indeed all the ills to which the flesh and life of man is prey. It seems to us that our approach better accords with the total role of the criminal law in society than does a system which makes a special exculpatory case out of one rare and unusual criminogenic process, while it determinedly denies exculpatory effects to other, more potent processes. In the long run we will better

handle these problems, as well as the whole and more complex problem of criminality in the community, if we will recognize that within crime itself there lies the greatest disparity of human wickedness and the greatest range of human capacities for self-control.

Our perennial perseverations about the defense of insanity impede recognition of this diversity, since they push us to a false dichotomy between the responsible and the irresponsible. They should be abandoned. One occupation for the energies thus released might be suggested, a task in which the psychiatrist has an important role to play: the defining of those categories of psychologically disturbed criminals who are serious threats to the community and to whom special treatment measures should therefore be applied.

On Defining and Predicting Dangerousness

The policeman, the prosecutor, the jury, the judge, the probation officer preparing a presentence report, the clinician in the diagnostic and classification center, the correctional officer planning the inmate's treatment and custody, the parole board and the parole officer — all, like it or not, must make predictions about the possible social dangerousness of the offender they confront. This is frequently a complex and difficult task to which psychiatric insights are often relevant. It involves at least two interacting issues: what kinds of behavior are sufficiently threatening to be called "dangerous" and with what degree of certainty must the prognosis establish the likelihood of recurrence of the kind or kinds of behavior designated "dangerous" and over what period of time?

The task of conceptualizing and providing methodologically sound processes for reaching decisions on these twin aspects of "dangerousness" is of central importance to the development of the criminal law. It is critical at every level of the criminal justice system. The report of the President's Crime Commission stresses the

> necessity for identifying those dangerous or habitual offenders who pose a serious threat to the community's safety. They include those offenders whose personal instability is so gross as to erupt periodically in violent and assaultive behavior, and those individuals whose long-term exposure to criminal influences has produced a thoroughgoing commitment to criminal values that is resistive of superficial efforts to effect change. . . .

HB-47

ALASKA LEGISLATIVE COUNCIL

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE OVERSIGHT OF THE

ADMINISTRATION OF STATUTES

Review of

Judicial and Administrative Opinions

and

Administrative Regulations

JANUARY 1972

THE ALASKA LEGISLATIVE COUNCIL

and the

LEGISLATIVE AFFAIRS AGENCY

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John M. Elliott
Executive Director

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AS 24.20.065(a) requires the legislative council to examine annually administrative regulations, published opinions of state and federal courts and of the Department of Law that rely on state statutes, and final decisions adopted under the Administrative Procedure Act (AS 44.62) to determine whether or not

1) the courts and agencies are properly implementing legislative purposes;

2) there are court or agency expressions of dissatisfaction with state statutes;

3) the opinions or regulations indicate unclear or ambiguous statutes.

Under AS 24.20.065(b) the council is to make a comprehensive report of its findings and recommendations to the members of the legislature at the start of each regular session. The discussions on the following pages are not intended as in-depth analyses of the cases or issues involved, but merely present matters suggesting legislative action.

JOHN M. ELLIOTT
Executive Director

January 1972

A. ALASKA SUPREME COURT OPINIONS

This report is based on a review of Alaska Supreme Court Opinions Nos. 585, dated November 3, 1969, through 718, dated September 14, 1971, and No. 737, dated November 15, 1971.

(1) Harmon v. North Pacific Union Conference Association of Seventh Day Adventists, 462 P 2d 432 (Opin. No. 591, 12/15/69):

Facts. After its appeal to the Greater Anchorage Area Borough's board of equalization was denied, the appellee, a religious organization, brought an action against officials of the Greater Anchorage Borough and the borough itself, seeking a declaratory judgment that three parcels of residential property owned by the appellee were, under AS 29.-10.336, exempt from real property taxation. Of the three parcels, one was used by a minister of the church who also served as president of the church's statewide operations, another was used by another minister of the church who also served as treasurer of the statewide operations, and the third was used by a non-minister who was the principal of the church's parochial school. The lower court granted the church's motion for summary judgment, declaring the property in question to be exempt from real property taxation. The borough and its officials appealed, arguing (1) that because the church brought an action for declaratory judgment instead of directly appealing the decision of the board of equalization it was barred from litigating the claimed tax exemption, and (2) that the property in question was not exempt from taxation. The substantive aspect of the case turned upon the interpretation of AS 29.10.336, and the supreme court expressly stated, in its footnote 1, that it was not determining the constitutional validity of religious property tax exemptions.

Statute. The pertinent parts of the statute central to the substantive aspect of this case (AS 29.10.336) state:

> "(a) Property . . . used exclusively for nonprofit religious . . . purposes . . . [is] exempt from [property] taxation.
>
> (b) The term 'property used exclusively for religious purposes' includes the following types of property owned by a religious organization:
>
> (1) the residence of the pastor, priest, rabbi, minister, or religious order, which residence is owned by a recognized religious organization;

(2) a structure, and the land it stands on, which is used for public worship, solely charitable purposes, religious education, or a nonprofit hospital;

(3) the furniture and fixtures in a structure used exclusively for religious purposes;

(4) lots adjacent to a structure or residence mentioned in (1) or (2) of this subsection and which are reasonably necessary to the convenient use of the structure;

(5) lots required by local ordinance for parking in connection with the structure as defined in (2) of this subsection.

(c) Property or part of the property described in (a) or (b) of this section from which rentals or income are derived is not exempt from taxation under (a) of this section, unless the rentals or income are derived from the rental of the property by religious or educational groups for classroom space."

Decision. After ruling that the church's terming its action before the superior court an original action for declaratory relief instead of an appeal from the board of equalization did not bar litigation of the exemption issue, a majority of the supreme court held that the three pieces of property involved are not exempt from taxation. The exemption provision was rewritten in 1964, and the majority of the court stated "We view the action of the legislature in deleting the language 'and other property of the organization not used for business, rent, or profit,' as narrowing the type of residence which can be exempt from property taxation under AS 29.10.336(b)(1), as it now reads." The majority further stated, with reference to that provision, "To us the words 'the residence of the pastor,' etc., imply that only those residences may qualify that have some direct relationship to a structure used primarily as a house of worship. If the legislature desires a broader form of exemption, it may amend the statute." (Court's emphasis; footnote omitted.)

One justice concurred with the majority's opinion on the procedural issue but dissented from that opinion on the substantive issue. He stressed the difficulty in determining legislative intent, noting (in his footnote 7) that "Not untypically, the legislature has failed to provide an adequate record of the legislative history of the questioned amendments."

Legislative action. First of all, the legislature should continue its trend toward including more explanatory committee

reports in the legislative journals in order to furnish an interpretative aid to the public, administrative officers, lawyers, and the judiciary. Secondly, if the legislature believes that the court has construed the religious property exemption too narrowly, AS 29.10.336(b)(1) could be amended to read "a residence of a pastor . . ." or "residences of pastors. . ." with the addition of a phrase such as "or other employee or member of the religious organization". It should be noted, however, that the constitutionality of religious property tax exemptions is at least questionable. In Walz v. Tax Comm. of the City of New York, 395 US 957, 23 L ed 2d 744, 89 S Ct 2105 (6/16/69), the United States Supreme Court has granted review to determine this question.

(2) Inglima v. Alaska State Housing Authority, 462 P 2d 1002 (Opin. No. 594, 1/2/70):

Facts. The appellee filed condemnation proceedings to acquire land owned by the appellants in order to carry out an urban renewal project occasioned by the 1964 Alaska earthquake. The master's award exceeded the amount deposited in court by the appellee and the latter appealed to the superior court; the property owner did not appeal to the superior court. After the jury had been selected but before the trial began, the housing authority (appellant in the superior court) filed notice of dismissal of its appeal, to which the property owner objected, arguing that the right to a jury trial vested in both parties to the eminent domain proceeding when either party filed a notice of appeal. The superior court took the question of dismissal under advisement, but ordered the trial to proceed. At the close of trial, the jury awarded an amount greater than the master's award, but the superior court allowed the housing authority's dismissal and entered judgment for the amount awarded by the master. The property owner then appealed to the supreme court.

Statute. The statute which governs generally the rights of the parties upon appeal from a master's award is AS 09.-55.320, which provides:

> "An interested party may appeal the master's award of damages and his valuation of the property, in which case there shall be a trial by jury on the question of the amount of damages and the value of the property, unless the jury is waived by the consent of all parties to the appeal."

Decision. The supreme court reversed and remanded with directions that judgment be entered on the verdict of the jury, stating "We believe that the legislature intended in these circumstances that the owner against whom appeal is

taken is entitled to look forward to a jury trial as a matter of right, even though he may be the passive party. We are persuaded by the argument that the proceedings after the master's report are an appeal in name only and that the right to a jury trial vests by operation of law in all parties to the appeal."

Legislative action. To remove an ambiguity in the statute, the legislature could amend AS 09.55.320 by adding a sentence such as "The appeal may not be dismissed without the consent of all parties to it." if that would effectuate the legislative intent. This would make clear that not only does each party have a right to a jury trial, when there is a trial, but that he has a right to a trial in the first place.

(3) Gray v. Alaska, 463 P 2d 897 (Opin. No. 595, 1/16/70); and Pope v. Alaska, 478 P 2d 801 (Opin. No. 660, 12/21/70), rehearing denied 480 P 2d 697:

Summary. The Gray case involved two brothers who burglarized a liquor store in which a police officer was hiding. One brother, who was not carrying a weapon, was shot in the leg by the officer, and, as he lay on the floor, his brother shot and killed the officer. Both brothers were convicted of first degree murder, and one of the main issues in the case involved application of the felony-murder theory which states, essentially, that a killing occasioned by the commission of a felony is murder, rather than manslaughter, negligent homicide, etc. Formulations of the rule vary, but traditionally it does not require that an intent to kill be present. However, because of the wording of Alaska's first degree murder statute (AS 11.15.010), which includes a felony-murder provision, the court overturned the felony-murder convictions (issues separate from the other, respective murder convictions of the two brothers). Introduction of the Seventh Legislature's House Bill No. 47, substantially rewriting AS 11.15.010, was a response to this ruling.

Related to this bill and the Gray case, with regard to the matter of criminal intent, is the Pope case. In it, the defendant raised the defense of insanity, in response to a murder charge; the dissenting justice presented a good explanation and historical review of mens rea (guilty mind) and the defense of insanity and urged the overruling of Chase v. Alaska, 369 P 2d 997 (Alaska, 1962). He also indicated his preference for the American Law Institute's Model Penal Code insanity-defense formulation.

Material concerning HB 47 and these and related cases is in the files of the House Judiciary Committee, as is a

draft of a proposed committee substitute. The re-revision of the criminal code, to be introduced during the 1972 legislative session at the request of the Alaska Legislative Council, is based on the Model Penal Code and covers the points involved in these cases. Of substantial value to legislators considering a criminal code revision is Norval Morris' and Gordon Hawkins' The Honest Politician's Guide to Crime Control (Univ. of Chicago Press, 1970), which also specifically discusses mens rea.

(4) Thorsheim v. Alaska, 469 P 2d 383 (Opin. No. 611, 5/22/70):

Facts. The plaintiff, as administratrix of her husband's estate, filed a claim for death benefits under the Alaska Workmen's Compensation Act (AS 23.30). Her husband, employed by a flying service which was under contract to the Alaska Department of Administration, was killed while flying an agent of the Department of Fish and Game on a stream survey flight. The flying service did not carry workmen's compensation insurance, and the claimant argued that the State of Alaska, as a prime contractor, was liable under AS 23.30.045(a). The Workmen's Compensation Board and the superior court denied the claim, and the question for the supreme court was whether the state was a "contractor" and the flying service was a "subcontractor" under AS 23.30.-045(a).

Statute. The relevant portion of AS 23.30.045(a), referred to as the "contractor-under" provision, states:

> "If the employer is a subcontractor, the contractor is liable for and shall secure the payment of the compensation to employees of the subcontractor unless the subcontractor secures the payment."

Decision. A majority of the supreme court affirmed the superior court's denial of the claim, holding that the state was not a contractor in the circumstances of this case. The majority stated that the absence of statutory definitions of the terms "contractor" and "subcontractor" posed especial difficulty, and employed the following for the purposes of interpreting AS 23.30.045(a): "contractor" means "a person who undertakes, by contract, the performance of certain work for another, including the furnishing of goods and services", and "subcontractor" means "a person to whom a contractor sublets all or part of his initial contractual undertaking."

One justice dissented, suggesting that "contractor" be defined "in terms of fitness to perform the function envisaged by the legislature, not in terms of the common law meaning of the semantic root of the word 'contractor'." He said it

should be construed to mean "one whose regular occupation is to undertake for others to do jobs by contracting with third persons for all or part of the performance."

Legislative action. The legislature should add a new subsection to AS 23.30.045, defining "contractor" and "subcontractor" for the purposes of that section. The suggestion in the majority opinion or in the dissent could be used.

(5) Glasgow v. Alaska, 469 P 2d 682 (Opin. No. 616, 5/29/70):

Facts. The appellant was convicted of two counts of an indictment charging four counts of larceny in a building. The main issue before the supreme court was the appellant's right to a "speedy trial" under the United States and Alaska Constitutions. Excluding those periods of time that can properly be attributed to the appellant, trial was delayed some 14 months.

Decision. Attempting to maintain a proper balance "between the needs of the accused and the commitments of the judicial process," the court stated "We think 14 months' delay is an improper balance to strike." The conviction was overturned. In its opinion, the court observed that in Alaska there is "no statutory provision by which to measure the definite time within which trial must be held." Footnote 9 states "Virtually all of the leading authorities who have studied the matter, however, agree that the right to speedy trial should be fixed in terms of days or months running from a specified event, excluding certain periods of necessary delay or delays at the instance of the defendant, which should also be identified precisely." Several states were cited as having such provisions, and the court referred to the "Standards Relating to Speedy Trial", sec. 2.1, Approved Draft, A.B.A. Project on Minimum Standards for Criminal Justice (1968).

Legislative action. The legislature should consider specifying, probably somewhere in AS 12.45, a statutory time limit for permissible delay. In most jurisdictions which so specify, the permissible delay ranges between 75 days and six months. (See the court's footnote 12.)

(6) Searfus v. Northern Gas Company, Inc., 472 P 2d 966 (Opin. No. 630, 7/31/70):

Facts. The appellant brought an action for personal injuries against the appellee Northern Gas Company. The gas company denied any negligence on its part, asserted that the appellant was contributorily negligent, and contended that since appellant was its employee at the time of the

injury her sole remedy was under the Alaska Workmen's Compensation Act (AS 23.30). The superior court jury specially found that she was an employee of the gas company, and returned a general verdict in favor of the company. The main issue on appeal involved the definition of the word "employee".

Statute. In the present wording of Alaska's Workmen's Compensation Act, AS 23.30.265(11) defines "employee" as "an employee employed by an employer as defined in paragraph (12)", and AS 23.30.265(12) defines "employer" as "the state or its political subdivision or a person employing one or more persons in connection with a business or industry coming within the scope of this chapter and carried on in this state." These definitions are of little help in resolving the frequent question whether a person is an employee or is a contractor or subcontractor.

Decision. While holding that the superior court's jury instruction defining "employee" was not prejudicial error, and affirming the judgment, the supreme court rejected the common law definition of "servant" as the definition of "employee" for workmen's compensation purposes and adopted instead the "relative nature of the work" test. The court stated, "Designation of the precise boundaries of, and the relevant factors involved in, the 'nature of the work' test must, absent legislative definition, await further development through judicial decision."

Legislative action. The legislature should consider amending AS 23.30.265(11) to distinguish "employee" from "independent contractor". The court and authorities cited by it discuss factors relevant to evaluating the nature of the work, and in footnote 12 the court quotes AS 23.20.-525(a)(4)(A), (B), and (C), the Alaska Employment Security Act's definition of "employment" at the time the decision was written. All of this, plus the present wording of AS 23.-20.525(a), should provide guidance in selecting language for the amendment.

(7) Dimmick v. Alaska, 473 P 2d 616 (Opin. No. 632, 8/7/70):

Summary. In this appeal from a conviction of robbery, one of the main issues was whether the appellant's accomplice's testimony was inadmissible because the police had obtained a statement from him in violation of the standards for custodial police interrogation set out in Miranda v. Arizona, 384 US 436, 16 L ed 2d 694 (1966). When the appellant was arrested he was with his accomplice who was not arrested (because the victim could not identify him), but both were advised of their right against self-incrimination and their right to have an attorney. The accomplice requested an attorney but

then made a confession without having one. One police officer testified, "the decision was made to go ahead and interview [the accomplice] after he had requested an attorney full-well knowing that then this confession could not be used against him but merely for the value of the confession against Mr. Dimmick."

With one vacancy on the supreme court, two justices favored affirming the superior court's conviction and two favored reversal, the result of which was to affirm the lower court. The affirming opinion reasoned that "The focus of Miranda was upon the right of an individual not to be compelled to incriminate himself," stating that the "constitutional prohibition against compelling any person in a criminal case 'to be a witness against himself'" is personal in nature and that the right "pertains only to the person from whom a statement is obtained." Thus, since the accomplice's illegally obtained confession was to be used against the appellant and not against the accomplice himself, his testimony was held admissible.

This opinion rejected the suggestion, made (in a separate opinion) by one of the two justices favoring reversal, that affirming the conviction would encourage the police to conduct "incommunicado custodial police interrogation, with concomitant violations of the constitutional rights of the persons subjected to questioning." The two affirming justices said that those whose constitutional rights are violated by reason of police activity may seek redress under the federal Civil Rights Act (see 42 U.S.C., sec. 1983), and that "Furthermore, Alaska's legislature is not without the authority, if it chooses to exercise it, to make certain types of police conduct a crime, or even to extend the exclusionary rule of Miranda and provide that statements obtained in violation of that rule are inadmissible against anyone for any purpose."

Each of the two justices favoring reversal wrote a separate opinion, and the final resolution of the main issue on which they disagree with the controlling opinion in this case will have to be achieved in a future decision which avoids the two-to-two split. Whatever the judicial outcome may be, the legislature could "make certain types of police conduct a crime, or. . . extend the exclusionary rule of Miranda."

(8) Delahay v. Alaska, 476 P 2d 908 (Opin. No. 648, 11/2/70):

Summary. The appellant questions the legality of his termination as a district judge of Alaska and the validity of the appointment of his successor. His termination resulted from 1966 and 1967 legislation changing the method of selection

and retention of district judges and terminating the appointments of all district judges sitting on a specified date. See ch. 138 SLA 1966 and ch. 117 SLA 1967.

The main question of legislative intent involved sec. 2 of the latter Act (AS 22.15.170(a)), which provided in part that "The governor shall fill a vacancy in an office of district judge by appointing one of two or more persons nominated by the judicial council." Under this provision, the judicial council nominated four persons for the three district judgeships in the fourth judicial district, interpreting the "two or more persons" requirement as meaning that the governor could select from among all four nominees for the first position, from among three for the second, and between two for the third. Referring to the proceedings of the Constitutional Convention which indicate an intent "to maximize the role of the judicial council in selection of judicial candidates", the supreme court agreed that the judicial council's action in sending the governor only one more nominee than the number of positions to be filled constituted compliance with the statute. The decision of the superior court, rejecting the appellant's position, was affirmed.

The legislature may wish to consider whether this interpretation of that part of AS 22.10.170(a) quoted above does, in fact, implement the legislative intent, especially since that language is virtually identical to that in the Alaska Constitution regarding selection of supreme court justices and superior court judges (art. IV, sec. 5).

(9) Lynch v. McCann et al., 478 P 2d 335 (Opin. No. 659, 12/18/70):

Facts. Paul and June Lynch had been in partnership with Joseph and Margaret Reilly in the ownership and operation of an Anchorage bar, which the latter couple wished to expand by adding a restaurant. The Lynches did not wish to do so, and the Reillys bought them out, borrowing some money from a bank upon the security of a deed of trust and executing a second deed of trust to the Lynches. After the trust deeds had been recorded, the Reillys began construction of an addition to the existing bar building and began refurbishing the old building. The addition was about one-seventh the size of the old building. The appellees furnished labor and materials, and subsequently the Reillys defaulted on their obligations to the Lynches and to the appellees. After the Lynches foreclosed their deed of trust and purchased the property at the foreclosure sale, the appellees instituted foreclosure actions on their respective mechanics' liens. The lower court granted the lienors foreclosure insofar as the new addition was concerned, stating that as to that property their liens were prior and paramount to all other interests of the other parties.

Statutes. The appellants would have priority under AS 34.20.090(b), which provides:

> "The purchaser at a [foreclosure] sale, his heirs and assigns are, after the execution of a deed to him by the trustee, entitled to the possession of the premises described in the deed as against the party executing the deed of trust or any other person claiming, through or under him, after filing the deed of trust for record in the recording district where the property is located."

The appellees would have priority under AS 34.35.-060(c), which provides:

> "A lien created by secs. 50 - 120 of this chapter in favor of a person actually performing labor upon or furnishing material used in a building or other improvement in its original construction is preferred to a prior lien, mortgage, or other incumbrance upon the land on which the building or other improvement is constructed."

Decision. Stating that the basic issue was whether the addition to the old building constituted "original construction" under AS 34.35.060(c), the supreme court held that it was not, and reversed the judgment in favor of the lienors. Observing that "Alaska's use of the phrase 'original construction' appears to be sui generis in the lien laws of this country," the court stated "Analysis of the text of AS 34.35.060(c) discloses a legislative intent to limit the priority granted generally to situations where the construction preceded all other construction in and upon a given area of vacant or cleared land." The court discussed Judge Ritchie's opinion in Wagner v. Shaw, 6 Alaska 647 (1922), as further evidence of legislative intent, but mentioned that "In the absence of a clearer indication as to the legislature's intent, more precise definition of the term must await decisional delineation."

Legislative action. The legislature should consider adding a definition of "original construction" to AS 34.35.-060 or amending AS 34.35.060(c) to delete that phrase and state the priority in terms of its basic purpose. Again, a legislative committee report, explaining the measure and giving some clue to the motivation behind it, would be helpful.

(10) Application of Park, 484 P 2d 690 (Opin. No. 690, 4/30/71):

Summary. The petitioner passed the Alaska bar examination and met all other requirements for admission to the bar,

except that he was not a citizen of the United States as required by AS 08.08.130(a)(1) and Alaska Bar Rule II. The Alaska Supreme Court did not reach the question of the constitutional requirement of equal protection, but held that AS 08.08.130(a)(1) violated the Alaska Constitution's art. IV, sec. 1, which vests the judicial power of the state in a supreme court, superior court and courts established by the legislature. In a consistent line of decisions, the court has ruled that it can not be required to admit attorneys "on standards other than those accepted or established by the court" and that admission requirements must have "a rational connection with one's fitness to practice law in Alaska." In the instant case, the citizenship requirement was held unacceptable to the court, after reviewing several arguments made in its defense. (The court also held the same requirement stated in its own Alaska Bar Rule II to be of no force and effect.) The court went on to suggest, however, that lawful residence and a sincere intent to become a citizen could be required, and Supreme Court Order No. 147, dated November 23, 1971, amended Alaska Bar Rule II to so provide.

AS 08.08.130(a)(1) should be amended to read: "is a citizen of the United States, or is a resident alien in the United States who intends to become a citizen of the United States." A section proposing this amendment will be included in the 1972 general revisor's bill. The legislature should also consider repealing or amending other United States citizenship requirements where they still exist in occupational licensing statutes (e.g., AS 08.62.100(2), 08.80.110(1) and 08.88.211(a)(5) and (b)(4)).

(11) Alvarado v. Alaska, 486 P 2d 891 (Opin. No. 704, 7/6/71):

Facts. The appellant sought reversal of his conviction for rape of his sister-in-law, contending that the jury which found him guilty was improperly constituted because of the long-standing practice in the third judicial district of selecting all prospective jurors from the area within a radius of 15 miles of Anchorage. (Neither did he live within that area nor was the location of the alleged crime in that area.) The result of this practice was the almost total exclusion from jury service of village residents. The appellant asserted that this deprived him of his constitutional rights to an impartial jury and to due process of law.

Statutes. Closely related to the problems involved in this case, but not interpreted in it, are AS 09.20.050 and 22.10.030. The relevant part of the latter is quoted below, in the discussion of the court's decision. In AS 09.20.050, subsection (b) specifies the sources of the names for the jury lists: persons who purchased a resident hunting, fishing or trapping license, persons who filed a state income

tax return showing an Alaskan address, and persons who have registered to vote. AS 09.20.050(a) provides as follows:

> (a) At such times as need may require, but not later than March 15 of each year, the administrative director of courts shall prepare for each judicial district a list of the names of the residents of the district who are qualified by law for jury service. If the superior court is located in different cities in the same judicial district, the administrative director shall prepare for each location of the court a list of the names of the qualified residents of that portion of the district considered by him to be appropriate.

Decision. After reviewing authority and considering pertinent sociological and anthropological factors in some depth, the supreme court reversed and remanded, holding that "an individual should not be forced, against his will, to stand trial before a jury which has been selected in such a manner as to exclude a significant element of the population of the community in which the crime was allegedly committed." The court stated that "in determining whether the source from which a given jury is selected represents a fair cross section of the community, we must adhere to a notion of community which at least encompasses the location of the alleged offense", observing that two alternatives would be selection from among residents of the entire judicial district (see the court's footnote 26) in which the crime is alleged to have occurred or from among residents of the senate district in which the crime is alleged to have occurred.

In connection with this second alternative, the court (in its footnote 40) referred to ch. 126 SLA 1971 (see AS 22.10.030(d)) which requires that the actual place of trial in criminal cases be "in an election district within the judicial district at a location which would best serve the convenience of the parties and witnesses," pointing out that the "administrative and financial impact of selecting jurors from within the [senate] district in which the crime occurred will be considerably diminished given the fact that trial will at any rate have to be held within the district." Affirming the notion that expense does not "justify the perpetuation of a system which denies to a large segment of our citizens the opportunity to participate in our system of justice," the court quoted from its earlier decision in Baker v. City of Fairbanks, 471 P 2d 386 (Alaska, 1970), to the effect that:

> "If an individual right is vested by the Constitution, the overriding demands of governmental efficiency must be of a compelling nature and must be identifiable as flowing from some enumerated constitutional power. To

allow expediency to be the basic principle would place the individual constitutional right in a secondary position, to be effectuated only if it accorded with expediency.

"This would negate our entire theory of constitutional government."

Legislative action. AS 09.20.050(a) could be amended to require the administrative director of courts to prepare jury lists by senate district, which the court seems to prefer to judicial districts or election districts while still meeting constitutional requirements. Also, for the sake of consistency, AS 22.10.030(d) (added by ch. 126 SLA 1971) could be amended to refer to "senate district" rather than "election district". (The Alaska Constitution's distinction between these two terms should be borne in mind. In art. XIV, sec. 1, for example, "election district" means "house of representatives election district", and in art. XIV, sec. 2, senate districts are described in terms of their component election districts. This usage of the terms seems to be consistent in our constitution; see, e.g., art. XV, sec. 10.)

(12) RLR v. Alaska, 487 P 2d 27 (Opin. No. 706, 7/9/71):

Summary. This is one of several recent significant decisions in the long constitutionally neglected area of children's rights. (Also see, e.g., Doe v. Alaska, 487 P 2d 47 [Opin. No. 707, 7/9/71]; In re EMD, 490 P 2d 658 [Opin. No. 737, 11/15/71]; and In re GMB, 483 P 2d 1006 [Opin. No. 687, 4/8/71].) On the main issue in this case -- that of a child's right to a jury trial -- the court stated "We hold that whenever a child in a delinquency proceeding is charged with acts which would be a crime, subject to incarceration if committed by an adult, the Alaska Constitution guarantees him the right to jury trial," and in its footnote 35 added "To the extent In re White, 445 P 2d 813 (Alaska 1968), is inconsistent with this opinion, it is overruled. Implicit in our holding is that AS 47.10.070 is unconstitutional insofar as it denies the right to a jury trial to the child in the adjudicative phase of the delinquency proceeding." The supreme court did not reach the issue whether this unconstitutionality required reversal; it vacated and reversed the superior court's adjudicative and dispositive orders, however, on the grounds that the procedures below were a blatant violation of Children's Rule 12(c)(1) which requires the presence of the child at the child hearing.

The portions of AS 47.10.070 which most clearly require legislative action in light of this case state:

"The court may conduct the hearing in an informal manner in the courtroom or in chambers. All hearings under this chapter are without a jury and the usual rules of evidence do not apply. . . . The public shall be excluded from the hearing, but the court, in its discretion, may permit individuals to attend a hearing, if their attendance is compatible with the best interests of the minor."

The court's footnote 74 contains the statement that "The statute providing for exclusion of the public from juvenile hearings is procedural, so is outside the scope of legislative authority unless two-thirds of each house of the legislature votes to change the rule promulgated by the supreme court in this matter. Alaska Const. art. IV, sec. 15." Since the statutory language was enacted in ch. 145 SLA 1957, before the effective date of the Alaska Constitution and before adoption of the Alaska Rules of Court Procedure and Administration and adoption of the Alaska Statutes, this statement appears to overrule the decision made in the preparation of those two bodies of material; the 1963 foreword to the Court Rules states (on its fourth page) "The objective of this [recodification] program was to separate all procedural law from the existing statutes, recodify the remaining substantive law into new titles and promulgate the procedural provisions as rules of court." Using that approach, what is now AS 47.10.070 was left in the statutes.

The July 1971 decision in this case, then, suggests that the legislature not deal with this point unless it does so as a change of the Court Rules under art. IV, sec. 15 of the Alaska Constitution. That special handling is not required in order to repeal AS 47.10.070 or delete the quoted language in line with the RLR case. However, the legislature may wish to go further than simply delete this language which denies a child the right to a public trial by jury; the entire section could be rewritten and AS 47.10.075, providing for "young adult advisory panels", could be amended to provide for actual jury service by minors (an issue mentioned but not decided by the court). (Cf. AS 09.20.050.)

(13) In re EMD, 490 P 2d 658 (Opin. No. 737, 11/15/71):

Summary. In this case the court was called upon to decide whether a minor who has been adjudged a "child in need of supervision", under AS 47.10.080(j), could be institutionalized. "Child in need of supervision" is a category created in 1970 to lie between "dependent child" and "delinquent child". As defined in AS 47.10.290(7), the term does not describe a child who has committed a crime. (See AS 47.10.010(a)(2), (3) and (6).) Under our statutory arrangement, only a child who violates a law, ordinance or regulation, i.e., a delinquent child, may be institutionalized. (See AS 47.10.080, 47.10.290(2) and 47.10.010(a)(1).)

The state argued that since AS 47.10.080(j)(1) allows any order for a child in need of supervision which is authorized for a dependent child (see AS 47.10.080(c)) and since one of those authorized orders is commitment to the Department of Health and Social Services, the department may institutionalize a child in need of supervision under AS 47.10.190 which provides:

> "When the court commits a minor to the custody of the department, the department shall arrange to place the juvenile in a detention home, facility or another suitable place which the department designates for that purpose. A juvenile detained in a jail or similar institution at the request of the department shall be held in custody in a room or other place apart and separate from adults."

The supreme court held that the department does not possess broader powers of commitment than does the trial court. In the supreme court's view, AS 47.10.190 "prescribes conditions of confinement after the court has lawfully determined that a child should be confined in an institution." (Footnote omitted.) The legislature could amend that section to reflect more clearly that interpretation.

B. ALASKA SUPERIOR COURT OPINIONS

All superior court opinions published in the Alaska Law Journal in 1970 and through May 1971 have been reviewed. However, none of those reported has been found to be relevant to this report. The last Alaska Law Journal was issued in May 1971, but will again be published in 1972. Therefore, any relevant opinions handed down between May and December 1971 will be included in the oversight report covering 1972. One unpublished superior court opinion which is a matter of special interest to the legislature is the March 15, 1971 opinion in the case of Bozanich v. Noerenberg, (No. 70 - 389 Civil).

The plaintiffs, Bozanich, et al., challenged the constitutionality of ch. 186 SLA 1968 (relating to persons eligible to obtain fishing gear licenses) in an action for a declaratory judgment and for a permanent injunction against the enforcement of the law (see AS 16.05.536, 16.05.540 and 16.05.250(12)). The plaintiffs based their challenge to the law on art. I, secs. 1 and 7, and art. VIII, secs. 3, 15 and 17, Constitution of Alaska.

Some of the plaintiffs had earlier challenged the same law in the U. S. District Court and a three-judge panel ruled the act was unconstitutional as being in violation of the United States Constitution and the Alaska Constitution. Bozanich v.

Reetz, 297 F. Supp. 300 (D. Alaska 1969). The three-judge U. S. District Court decision was set aside by the United States Supreme Court as violating the doctrine of abstention. Reetz v. Bozanich, 397 U.S. 82, 25 L.Ed. 2d 68 (1970). The supreme court did not consider the merits of the case but remanded it to the district court, staying proceedings in order for the parties to litigate the Alaska Constitutional questions in the Alaska courts.

The plaintiffs' motion for summary judgment in the subsequent state court action was granted by Judge Victor Carlson and the law was held unconstitutional. The court found that the statute violated the equal protection guarantee of art. I, sec. 1, the common use provision of art. VIII, sec. 3, and the prohibition of an exclusive right of special privilege of the fishery provision of art. VIII, sec. 15, Constitution of Alaska. The court stated that the "general meaning of the words of the constitutional provision require that no distinction between persons equally situated is to be made with regard to fish in their natural state." The case has not been appealed to the Alaska Supreme Court and it is anticipated that the invalid language will be removed by the 1972 general revisor's bill.

Another unpublished superior court opinion, also by Judge Carlson, which is of interest to the legislature is that in the case of Bomhoff v. Boucher, (No. 70-359 Civil).

The plaintiffs, Bomhoff, et al., brought suit to enjoin the lieutenant governor from issuing a call for a constitutional convention based on the results of the referendum proposition approved by the Alaska electorate on November 3, 1970, and to have the following proposition placed on the ballot in the next general or special election: "Shall there be a Constitutional Convention?" with appropriate boxes for marking "yes" or "no".

The challenged referendum proposition on the November 3, 1970, general election ballot was set out, punctuated but not spaced or set in the following type:

Referendum
As required by the
Constitution of the State of Alaska
Art. XIII, Sec. 3
Shall there be a constitutional
convention?

YES [ ]
NO [ ]

The court, in finding for the plaintiffs, held that the language of art. XIII, sec. 3, is mandatory and specific in the form of the question that is to be submitted to the voters when it says: "If during any ten-year period a constitutional convention has not been held, the secretary of state shall place on the ballot for the next general election the question: 'Shall there

be a Constitutional Convention?'" Since the proposition required by the constitution was not presented to the voters, the lieutenant governor was held to have no election results on which to base a call for a constitutional convention, and was therefore enjoined from doing so.

The court further found that the unauthorized introductory words in the proposition were misleading and confusing and held that "the election process is to be kept free from taint and the suggestion of impropriety, however unintentional. . . . The electorate should be given the opportunity to cast their ballots free from confusing, extraneous, or superfluous verbiage in the proposition."

A new election was ordered to be held at the next general election in 1972.

C. OPINIONS OF UNITED STATES DISTRICT COURT, DISTRICT OF ALASKA

First National Bank of Fairbanks v. Camp, 326 F. Supp. 541 (1971):

Facts. Plaintiff, First National Bank of Fairbanks, filed suit for declaratory judgment and injunctive relief with respect to approval by the defendant, Camp (Comptroller of the Currency), of an application of the First National Bank of Anchorage to open a branch in Fairbanks. On cross motions for summary judgment, the district court held that the defendant was not required to follow interpretive declarations by the state banking director with respect to an Alaska statute governing approval of branch banks, that the approval had rational basis in light of the state statutory requirements and that the plaintiff was not denied administrative due process by failure of the defendant to state reasons for his approval. Summary judgment for defendant.

Statute. Congress has authorized the Comptroller of the Currency to approve the establishment and operation of branch offices by national banks "if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks." (12 U.S.C. 36(c)(2)).

The director of the division of banking and securities of Alaska is, in authorizing state banks to operate a branch, subject to the provisions of AS 06.05.415, which provides in pertinent part that

> "The department shall issue a certificate of authority to operate a branch bank ... if (1) the department determines

that the addition of the proposed facilities in the community is not detrimental to a sound banking system;"

Decision. The part of the court's decision relevant to this oversight report is that in which the court, in deciding the issue of whether the defendant's decision to allow the establishment of a branch bank had rational basis in the light of state statutory requirements, stated:

> "No Alaska statute or cases have been found which define what is meant by 'a sound banking system' or which suggest factors, proof of which would show that a proposed branch was or was not 'detrimental to a sound banking system.' In the absence of any binding State standard and because the Comptroller had sufficient evidence from which to determine whether or not the new branch would be detrimental to the soundness of Fairbanks' banking system, his construction of that criterion cannot be upset."

Legislative Action. The legislature may wish to remove the ambiguity in AS 06.05.415(1) which allowed the Comptroller of the Currency to substitute his own standards of what is meant by a "sound banking system" for those of the state. This action should be in the nature of legislatively prescribed standards of what constitutes a "sound banking system."

D. ATTORNEY GENERAL OPINIONS

There have been no numbered, formal opinions issued by the Office of the Attorney General since 1969. It is the understanding of the Legislative Affairs Agency that formal opinions of the attorney general will again be issued and numbered beginning in 1972 and that certain informal opinions issued in 1970 and 1971 will be given numbers and published as formal opinions. All of these opinions will be reviewed for the oversight report covering 1972.

E. ADMINISTRATIVE REGULATIONS

(1) Revision of Alaska Administrative Code:

Again, this year's report does not contain a review of administrative regulations because in prior years the staff has reviewed the regulations of all administrative agencies of the state and because the revision of the Alaska Administrative Code, under 1967 Senate Concurrent Resolution No. 15 and sec. 2, ch. 70 SLA 1966, is still in progress. As part of this project, the Drafting Manual for Administrative Regulations has been revised; this fourth edition is dated August 1971.

In actions related to this project, the attorney general recently designated a "regulations attorney" under AS 44.62.125, and a member of the lieutenant governor's staff is now working on coordinating the regulation-adopting efforts of the various state agencies and encouraging adoption of revisions of their respective regulations. In addition, information is being gathered and bid specifications being prepared for eventual professional publication of the Alaska Administrative Code and Alaska Administrative Register (the quarterly supplement to the code). The following indicates the present status of the revision project:

Preface -- revised at least twice and presently in good shape.

Title 1 (General Provisions) -- old title repealed and a new title prepared but not yet adopted.

Title 2 (Department of Administration) -- no regulations ever filed for publication in the AAC. However, the department is completing preparation of the state personnel rules for voluntary filing under AS 44.62.-120. In addition, the department's Division of Supply is drafting some regulations to be included in the AAC.

Title 3 (Department of Commerce) -- revision almost completed, with a couple of batches yet to go.

Title 4 (Department of Education) -- revision completed.

Title 5 (Department of Fish and Game) -- revision completed, and revised again.

Title 6 (Governor's Office) -- revision virtually complete.

Title 7 (Department of Health & Social Services) -- a large, unrevised title with little spots of revision.

Title 8 (Department of Labor) -- a relatively large, unrevised title.

Title 9 (Department of Law) -- no regulations ever filed for publication in the AAC.

Title 10 (Department of Military Affairs) -- four pages of old regulations were recently repealed and have not been replaced.

Title 11 (Department of Natural Resources) -- a large, unrevised title with little spots of revision.

Title 12 (Professional and Vocational Boards and Commissions) -- partially revised. There are 17 of these licensing

agencies, not counting the Alaska Bar Association (which is not required to file its regulations under the Administrative Procedure Act [AS 44.62] for publication in the Alaska Administrative Code. In 1963, however, the bar association's regulations were published in the AAC as chapter 2 of Title 12 [12 AAC 2], where they remain, unrevised. The relationship between these regulations and the association's bylaws and the supreme court's Alaska Bar Rules is not entirely clear.) Of the 17, regulations of only the Collection Agencies Board and the Board of Nursing have been neither revised nor reviewed. During the past three-and-a-half years, regulations of the remaining 15 have been revised by or revisions of them have been reviewed by the staff of the Legislative Affairs Agency; these are: Board of Public Accountancy, Board of Barber Examiners, Board of Chiropractic Examiners, Board of Hairdressing and Beauty Culture Examiners, Board of Dental Examiners, Board of Electrical Examiners, Board of Engineers and Architects Examiners, State Medical Board, Board of Examiners in Optometry, Board of Pharmacy, Board of Marine Pilots, Board of Psychologist Examiners, Real Estate Commission, Board of Veterinary Examiners, Board of Welding Examiners. Of these 15, revised regulations of only six have actually been adopted; these are for the chiropractors, dentists, doctors, optometrists, marine pilots, and veterinarians. Adoption of the regulations is, of course, the responsibility of these individual agencies.

Title 13 (Department of Public Safety) -- revision completed.

Title 14 (Department of Public Works) -- a relatively small, unrevised title.

Title 15 (Department of Revenue) -- a relatively small, unrevised title.

Title 16 (Department of Economic Development) -- revision completed. Before the October 1971 register, there were no regulations in this title. The few pages of new ones are in the new format.

Title 17 (Department of Highways) -- revision apparently completed.

Title 18 (Department of Environmental Conservation) -- a new title with new regulations in the new format.

This summary does not take into account corrections that should be made in various revised titles, nor does it consider the absence of required regulations.

(2) A special regulation:

A regulation handled somewhat differently from those discussed above is the one adopted April 13, 1971 by the commissioner of highways in his Order No. 71-1. This document prohibits the operation of a motor vehicle equipped with studded snow tires upon a paved portion of the state highway system between May 1 and September 15 of each year. AS 19.-05.010, 19.05.020, 19.10.060 and 28.05.020 were cited as authority for the regulation.

The order also stated that the regulation was adopted in accordance with AS 44.62.040 and 44.62.290 (sections in the Administrative Procedure Act). The latter is the provision exempting from the effective date, notice, hearing, etc., requirements regulations which are not required to be submitted to the lieutenant governor under the Administrative Procedure Act. The former section, in its (a)(2), states that submission under the APA is not required for a regulation which "relates to the use of public works, including streets and highways, under the jurisdiction of a state agency if the effect of the order is indicated to the public by means of signs or signals." The seasonal ban on studded snow tires has been indicated on large signs posted on the edge of highways throughout the state.

This regulation has been treated as exempt from the APA, and therefore the APA requirements of notice and public hearing have not been followed. The legislature should consider whether this properly implements the legislative intent in enacting AS 44.62.040(a)(2). It should be noted that under the Department of Highways' interpretation of this provision, virtually every regulation pertaining to use of highways could be adopted without notice or a public hearing, so long as the regulation was proclaimed by means of a sign or signal. Two consequences of this would be the circumvention of the Administrative Procedure Act and the cluttering of the roadside with hundreds or thousands of signs. Perhaps the original intent of AS 44.62.040(a)(2) covered only such things as stop signs and lights, and indication of no-passing zones, one-way streets and speed limits.

- - - - -

HB 52

MARCH 23, 1971

MEMO TO THE MEMBERS OF THE HOUSE

RE: ATTACHED LETTER

THE ATTACHED LETTER IS ONE THAT MR. R[illegible]
TOOK FROM THE ANCHORAGE TIMES, DATED FEBRUARY
3, 1971, AND HAD PLACED ON YOUR DESK.

Anch Times 2/3/71

LETTERS

'M' Stands For Methodist

Dear Editor:

I was dismayed by the interview with Lewi
Simpson as reported in Thursday's Times. Simp
son, head of Alaska Methodist University's presi
dential search committee, said some things tha
could not help but disturb anyone interested in th
survival of the only avowedly Christian universit
in the State of Alaska. In such a choice positio
AMU should be able to give moral and spiritua
leadership, not only to its students, but also to th
state. In a day and age when young and old alik
are grasping for firm belief and solid foundations
AMU should be free, as the only sectarian school i
the state, to take the lead boldly and creatively

Simpson said the new president must b
supreme in being a politician, a fund raiser, an
administrator. He said nothing about the new pres
ident's concern for students or about his integrit
and honesty or about his moral leadership qualitie
or about his vision or about his personal achieve
ments. It would seem to me that if AMU could b
creatively sectarian it could challenge and inspir
the students so that its life would not have to rel
upon a politician-fund raiser-administrator for it
continuance.

Simpson said that AMU places no emphasi
upon religion courses and is attempting to be trul
non-sectarian. Why is there no emphasis upo
good, creative, challenging religion courses tha
cause people to think and grow? AMU is the onl
university so far in this state that ha
the freedom to be openly and unapologetically
sectarian. Why shouldn't it be? Is someone afra
religion might be offensive to some sensitive ath
ist? A church-related university without an em
phasis upon the faith which founded it is an oc
kind of animal to say the least.

As for being non-sectarian — that is ridiculous
The University carries Methodist in its name.
has a Methodist instructor of religion and philos
phy. It was built at the behest of the United Met
odist General Conference — a national body of th
United Methodist Church. It was admitted in th
article that $1 million is being sought from Unite
Methodist people in the Southeastern Jurisdictio
of the United Methodist Church. It is on the ad
anced special giving list of every church and co
ference in United Methodism. Whether Simpso
likes it or not, sectarian interests provide a gre
deal of the bread and butter for AMU.

In a day and age when the drug culture is bein
dropped by great numbers of kids because the
find more offered them in the Christian faith or,
least, in some form of belief, the position of Sim
son seems to be especially cowardly and unenlig
tened. Personally, I hope they go for someone wi
is less interested in success than he is in goo
honest, creative, sectarian leadership in high
education.

It is interesting to note that Simpson's two so
attend Pacific Lutheran -- an avowedly sectaria
school operated unashamedly by the America
Lutheran Church. I wonder why?

Robert D. Bowers, Pastor
Church of the New
Covenant (United Methodist)
Kenai

HB-52

March 23, 1971

Dear Bill Moran

Admittedly, my concern for the financial condition of Alaska Methodist University has prompted me to write this letter, but there are other, more important reasons that I urge you to ensure the passage of the legislation known as the "Tuition Remission Bill" and the "Contractual Services Bill", House Bill 52.

I am a graduating senior in Business Administration at AMU and I am also a second-generation Alaskan. Because I am concerned for the welfare of all Alaskans, I am shocked at the unwillingness of the members of the legislature to favor the program I have mentioned.

If the purpose of state government is to benefit the citizens of the state, then one wonders why the elected officials refuse to assist in implementing the financial aids program. One part, as I understand it, will provide supplimentary funds to ALASKA RESIDENTS in order to assist them to earn a college degree In The State Of Alaska. If one can assume that most, if not all of those given assistance will remain in Alaska, then can it not be said that their education will benefit the entire population of the state? I feel that the financial aids proposition can only help the state. Why then, are the legislators so hesitant?

I feel I can say without fear of contradiction that Alaska Methodist University is a beneficial entity in the Anchorage (and for that matter, Alaskan) environment. If it is also true that the cost (not the income from students)

of educating a resident for one year at the University of Alaska is nearly $3,600.00 , and the program provides for something less than $1,200.00 in aid to AMU and Sheldon Jackson, then it is evident that the state will spend less to educate a student because private institutions are willing to charge the state less for furnishing the same services. The State Government spends less money, and thus saves money, does it not?

I have heard no valid reasons for opposing the program to provide financial aid to the private sector of Education in Alaska, while I have heard many impressive arguments favoring the program. I have stated only a few of my own observations. I hope that the elected officials of the state will see fit to hasten the passage of this legislation for the benefit of all Alaskans.

Respectfully,

Don Karabelnikoff

Don Karabelnikoff
7603 Old Harbor Avenue
Anchorage, Alaska 99504

WESLEY DRIVE, ANCHORAGE, ALASKA 99504

ALASKA METHODIST UNIVERSITY

23 March 1971

HB 52

THE SEVENTH LEGISLATURE, FIRST SESSION
State of Alaska
Pouch V, State Capitol
Juneau, Alaska 99801

Dear Bill —

Please forgive this format. However, we wish to address each member of the Seventh Legislature and believe this the most expeditious means of communication open to us.

In 1960 (RAF) and 1962 (SAF) we came to Alaska from the Midwest and Europe to serve on the Faculty of Alaska Methodist University. We have taught in the fields of history, art and speech to Alaskans (young and old) and students from other states and foreign countries. We have now seen ten graduating classes many of whose members have remained in the Great Land to serve the growing edge of civilization in the North. Along the way, each of us have given something of our talents and time to Alaska-at-Large. We have come to love AMU and Alaska. If at all possible, we wish to continue our work in this State.

As members of the teaching profession and as citizens, each of us believes that higher education in our new State should provide for a variety of institutions and curricula. This is why, after conferences with Dr. Patty, then President of the University of Alaska, officials of our state university encouraged the Board of National Missions to found AMU. In the years since, Alaskan and non-Alaskan private citizens and the Methodist Church have contributed millions of dollars of non-tax monies for Alaskan higher education. Such monies would not otherwise be contributed for these purposes if AMU and Sheldon Jackson College did not exist. For the record it should be remembered that Sheldon Jackson was the first educational institution in Alaska's American period.

As long as Sheldon Jackson College and AMU continue to live, private monies will continue to be invested in Alaskan higher education. The Tuition Equalization Act of the last session and HB52 now before this Legislature would make the State of Alaska a partner in the lives of these two important educational endeavors. It should be remembered that the physical plants and operating costs heretofore have not been financed with State funds nor would the State's share ever amount to the full amount necessary for year-to-year operation. Each of us is optimistic that the passage of HB52 and new leadership will assure a successful partnership in the years ahead. It is our opinion that HB314 should not be passed without a full hearing or prior to a Legislative study of higher educational institutions in Alaska. We urge the passage of HB52 in this Session.

Respectfully,

Robert A. Frederick
Professor of History

Respectfully,

Saradell A. Frederick
Professor of Art and Speech

WESLEY DRIVE, ANCHORAGE, ALASKA 99504

ALASKA METHODIST UNIVERSITY

March 23, 1971

HB #52

Representative William J. Moran
Pouch V
Juneau, Alaska 99801

Dear Representative Moran:

It is with surprise and dismay that I learn that (1) CSHB 52 has been returned to the House Finance Committee, and (2) HB 314 has been written. The former is a model of progressive legislation which will be of great benefit, not only to the people of Alaska, but because of its national significance, to the people of our nation. HB 314, relatively, is retrogressive legislation and effectively maintains the status quo. Maintenance of the status quo is sometimes good, but in the case of higher education such a position cannot be justified in light of the volumes of material available which collectively call for substantial changes in our approach to higher education.

Let me explain why I conclude that CSHB 52 should be acted on positively by you and your colleagues. In doing so, I will only mention its relationship to AMU, Sheldon Jackson and the University of Alaska. These are cogent and valid arguments to be sure, but I am sure that you are familiar with them. Instead, I should like to concentrate my remarks on what I think is the most important facet of the bill and one which has not been mentioned very often.

If we agree that higher education, public or private, is of fundamental importance to a democratic style of governing ourselves and, therefore, of intrinsic value to our society, it follows that the citizens of that society have a right to choose a form of education best suited to their needs and aspirations. This, of course, is the constitutional basis for taxation of peoples for a purpose which is not required of nor available to the whole. The important word, to me, is choice. For the first time in the history of Alaska, HB 52 will allow, within the limits of institutional accommodation and public funds, an honest choice to Alaska citizenry, not only between public and private higher education, but more important between styles of education. The present system of public support for higher education is grossly unfair not only to the taxpayer, but to the student, an unfairness which HB 314 will maintain and CSHB 52 eliminates.

To a graduating high school senior, the present system says the following: "You have the credentials to enter an institution of higher learning; we, therefore, through taxation, offer you a $7,000 scholarship for each year you attend." (I am unsure as to the cost/year/student at the University of Alaska.) "However, if the University of Alaska does not offer a program or the caliber of program to your choosing, we will not give you a scholarship."

Although we commonly do not use the term scholarship as synonymous with free tuition, they are the same in this case.

Thus the student who qualifies for Harvard, Princeton, Stanford, etc. is patently dismissed from financial aid from the state because he does not choose the University of Alaska.

This stance, I maintain, is unfair to the taxpayer, the student (who may be a taxpayer), prohibits the important element of choosing a personally compatible program of study, and can lead to empire building by state universities because a monopoly on higher education aspirants.

Other states have recognized the value of private higher education to their citizens. Recently the United States Congress recognized the value of choice when they ruled that private schools of higher education should be included in the educational support for the Native student (in effect, HB 52 gives the non-native student the same choice as the native student). By doing so they have recognized the intrinsic value of choice as a fundamental aspect of our society. I ask you to give Alaskans that choice by passing CSHB 52 and rejecting HB 314.

Cordially yours,

Ross G. Schaff

Ross G. Schaff
Professor of Geology

RGS/dkr

HB-54

AFV

AL532
AB
AFA 066 NL PDF
ANCHORAGE ALASKA 27
HONORABLE MIKE ROSE
HOUSE OF REPRESENTATIVES JUN
RE HOUSE BILL 54. THANK YOU FOR SENDING ME COPY OF
BILL. THIS BILL ATTEMPTS TO NULLIFY THE LAW AS LAID
DOWN BY OUR SUPREME COURT IN PHILLIPS VERSUS STATE.
NOT ONLY IS THIS UNFAIR TO THE MOTORISTS OF THE
STATE AND ENCOURAGES NEGLIGENCE ON THE PART OF EMPLOYEES
OF THE STATE HIGHWAY DEPT BUT IT IS PROBABLY BEYOND THE
POWER OF THE LEGISLATURE, WHICH CAN ONLY LEGISLATE WITH
RESPECT TO PROCEDURE IN SUITS AGAINST THE STATE,
UNDER ARTICLE 2 SECTION 21 OF THE ALASKA CONSTITUTION.
ACCORDINGLY THIS BILL AND THE PRESENT RESTRICTIONS IN THE
LAW ARE FAR TOO RESTRICTIVE AND PROBABLY
UNCONSTITUTIONAL BECAUSE THEY VIOLATE THE SECTION OF THE
CONSTITUTION JUST CITED. SUGGEST PRESENT STATUTE BE REPLACED
BY A SIMPLE LAW PROVIDING THAT THE STATE OF ALASKA MAY BE
SUED IN THE SAME MANNER AND FOR THE SAME CAUSES AS ANY
PRIVATE PERSON. THIS WAS THE LAW IN EFFECT WITH RESPECT
TO THE TERRITORY OF ALASKA WHEN THE CONSTITUTIONAL
PROVISION REFERRED TO ABOVE WAS ADOPTED AND WAS UNDOUBTLY
WHAT THE FFRAMERS OF THE CONSTITUTION HAD IN MIND.
ALSO, DISCRIMINATORY REQUIREMENT OF COST BONDS SHOULD BE
ELIMINATED ENTIRELY AS IT IS REGULARLY USED TO DEFEAT
OR IMPEDE MERITORICUS CLAIMS BY POOR PERSONS AGAINST
THE STATE. ALSO SUGGEST ENACTMENT OF A GENERAL LAW PERMITTING
POOR PERSONS TO SUE OR PROCEED IN ANY COURT OF THE STATE
WITHOUT PRE-PAYMENT OF OR SECURITY FOR FILING FEES OR
COSTS OF ANY KIND. RESPECTFULLY,
EDGAR PAUL BOYKO

54 2 21.

HB 113

THE SUPREME COURT OF THE STATE OF ALASKA

In the Matter of)	
)	File No. 1524
E.M.D.)	
)	O P I N I O N
A Minor Child.)	
)	[No. 737 - November 15, 1971]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Harold J. Butcher, Superior Court Judge.

Appearances: Herbert D. Soll, Public Defender, and Bruce A. Bookman, Assistant Public Defender, Anchorage, for the minor child. John E. Havelock, Attorney General, Juneau, Seaborn J. Buckalew, Jr., District Attorney, and Robert L. Eastaugh, Assistant District Attorney, Anchorage, for the State of Alaska.

Before: Boney, Chief Justice, Dimond, Rabinowitz, Connor, and Erwin, Justices.

RABINOWITZ, Justice.

In this appeal we are called upon to decide whether a minor who has beer adjudged a child in need of supervision can be institutionalized under our children's code.

Both Alaska's statutes relating to children's proceedings and the rules of procedure governing such proceedings establish three distinct categories of children. Thus, a child can be declared a dependent minor, a child in need of supervision, or a delinquent minor. AS 47.10.290(7) defines a "child in need

of supervision" as a minor whom the court determines is within the provisions of AS 47.10.010(a)(2), (3), or (6). Those provisions include a minor who:

> (2) by reason of being wayward or habitually disobedient is uncontrolled by his parent, guardian, or custodian;
>
> (3) is habitually truant from school or home, or habitually so conducts himself as to injure or endanger the morals or health of himself or others;
>
> . . . .
>
> (6) associates with vagrant, vicious or immoral people, or engages in an occupation or is in a situation dangerous to life or limb or injurious to the health, morals, or welfare of himself or others.[1]

Regarding the dispositive phase of children's proceedings, Alaska's children's code provides that if the court determines the minor is a child in need of supervision, it shall make any of the following orders of disposition regarding the minor's supervision, care, and rehabilitation:

> (1) any order which is authorized under (c) of this section; or
>
> (2) order the minor placed on probation under those conditions and limitations that the court may prescribe.[2]

Under section (c) of AS 47.10.080, the court is

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[1] Compare R. 12(b), Rules of Children's Procedure.

[2] AS 47.10.080(j).

empowered to order the minor committed to the Department of Health and Welfare or order the minor released to his parents, guardian, or some other suitable person.[3]

In the case at bar, the superior court found that E.M.D., a 14-year-old-runaway girl, was a child in need of supervision. The court's findings were made after several hearings before a master and the superior court, and were based largely upon the master's findings of fact and recommendations. In the dispositive portion of the trial court's judgment, it was ordered that E.M.D. be

> committed to the custody of the Department of Health and Welfare for an indeterminate period . . . .

The court further ordered that E.M.D.

> be placed by the Department in a correctional or detention facility

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[3] AS 47.10.080(c) reads in part as follows:

> (1) order the minor committed to the department for an indeterminate period of time not to exceed the date the minor becomes 19 years of age, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment;
>
> (2) order the minor released to his parents, guardian, or some other suitable person; if the court releases the minor, it shall direct the department to supervise the care and treatment given to the minor; the department's supervision may not extend past the date the minor becomes 19 years of age, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment . . . .

> as defined in AS 47.10.080(b)(1), to be held in that facility until released therefrom upon a showing by an officer of the Division of Corrections that the minor has completed a program of rehabilitation and has been amenable thereto, and that the Court has been advised in writing that such release is contemplated.

In this appeal it is argued that the superior court exceeded its authority in ordering the institutionalization of E.M.D. who was found to be a child in need of supervision. We are in agreement with the minor's contentions. As mentioned at the outset, Alaska's pertinent statutory provisions and procedural rules distinguish between categories of children for purposes of administering our children's laws. Of controlling significance here is that each class or category mandates distinct differences regarding the permissible content of any dispositional order the trial court can enter.

Study of our childrer's laws leads to the conclusion that the legislature has authorized institutionalization only where the child is found to be a delinquent minor. The term "delinquent minor" is defined as a child who has violated a law of the state, or an ordinance or regulation of a political subdivision of the state.[4] As to the appropriate disposition once the child has been determined to be a delinquent minor, the

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[4] AS 47.10.290(2).

legislature has in part provided that the court shall order the minor committed to the Department of Health and Welfare for an indeterminate period and

> may direct the minor's placement in a juvenile correctional school, detention home, or detention facility designated by the department. . . . .[5]

Thus the only instance under our children's laws authorizing institutionalization or incarceration is when the child has violated the laws of the state, or any of its political subdivsions, and in turn has been adjudged a delinquent minor. Since the runaway child in the case at bar was found to be a child in need of supervision, not a delinquent minor, no legal basis existed for her incarceration.[6]

In reaching this conclusion, we have rejected the state's contention that the trial court's order of incarceration is sustainable in light of the legislature's broad policy declaration to the effect that protection of children is the paramount purpose governing its enactment of laws pertaining

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[5] AS 47.10.080(b)(1).

[6] Cf. Fish v. Horn, 14 N.Y.2d 905, 200 N.E.2d 857 (1964).

to children's courts and institutions.[7] In another context we recently held that the benevolent social theory supposedly underlying children's court acts does not furnish justification for dispensing with constitutional safeguards.[8] As to the case at bar, it is equally appropriate to note that notions of benevolent protective policies cannot be used to validate departures from positive law relating to the adjudicative and dispositive phases of children's proceedings.

We also reject the suggestion that the Department of Health and Welfare possesses the authority to institutionalize any minor, including one who has been declared a child in need of supervision, who has been committed to its custody. We find it unreasonable to construe our children's statutes in a manner which would result in the grant to the Department

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[7] AS 47.10.280 provides:

> The purpose of this chapter is to secure for each minor the care and guidance which is as nearly as possible equivalent to that which should be given him by his parents. The principle is recognized that minors under the jurisdiction of the court are wards of the state, subject to its discipline and entitled to its protection, and that the state may act to safeguard them from neglect or injury and to enforce the legal obligation due to them and from them.

[8] RLR v. State, 487 P.2d 27, 30-31 (Alaska 1971).

of Health and Welfare of broader powers of commitment than possessed by the trial court.[9] In our view the statute relied upon by the state for this construction prescribes conditions of confinement after the court has lawfully determined that a

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[9] The state argues that even if the trial court lacks power to institutionalize a child in need of supervision, it can order the child committed to the Department of Health and Welfare which in turn can place the child in a detention facility. The argument is that under AS 47.10.080(c)(1) a minor can be committed to the Department of Health and Welfare. The state argues that AS 47.10.190 permits the department to institutionalize any minor committed to them. AS 47.10.190 reads as follows:

> When the court commits a minor to the custody of the department, the department shall arrange to place the juvenile in a detention home, facility or another suitsuitable place which the department designates for that purpose. A juvenile detained in a jail or similar institution at the request of the department shall be held in custody in a room or other place apart and separate from adults.

child should be confined in an institution.[10]

One additional aspect of this appeal should be discussed for we think it appropriate that an explanation be given as to why this matter has been treated as an appeal rather than coming before us for review. Counsel for the minor sought to invoke our discretionary review jurisdiction in the belief that appeal was unavailable for two reasons. First, he cites In re White, 445 P.2d 813, 815 (Alaska 1968) (Rabinowitz, J., concurring). There this court interpreted AS 22.20.022, which allows peremptory disqualification of a superior court judge in a civil or criminal action. A majority of the court in White said:

> While juvenile proceedings have some of the characteristics of both civil and criminal actions, we hold that they are basically different from both, and that the words 'civil or criminal' as used in AS 22.20.022 must be strictly construed. The trial judge was correct

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[10] We note with approval the state's candor in briefing the issues in this case. The state, in its brief, initially conceded that if this court looks only to the express language of AS 47.10.080(j) and 47.10.080(c), a strong argument can be made that the judgment entered below exceeded the court's disposition jurisdiction. The final portion of the state's brief concludes on the following note:

> Nevertheless, it is the belief of the Department of Law that the judgment ordering petitioner detained exceeded the authority of the court below. This belief is founded on the State's concern that courts should comply with their granted powers even where, as here, the factual circumstances cry out for a disposition beyond the fingertips of the lower court.

> in holding that peremptory challenge procedure applied only to civil and criminal actions and not to juvenile proceedings.

Counsel for the minor reads White as requiring the filing of a petition for review because the final judgment rule embodied in Supreme Court Rule 6 applies only to civil or criminal actions.[11] Such an expansive reading of White, assuming without deciding its continued validity in light of several of our recent decisions which vindicated certain constitutional and procedural rights of children in children's proceedings,[12] would result in precluding any review of children's decisions. For the rules which delineate this court's review jurisdiction limit such jurisdiction to "any order or decision of the superior court, not otherwise appealable under Rule 6, in any action or proceedings, civil or criminal . . . ."[13] Adoption

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[11] In regard to what may be appealed, Supreme Ct. R. 6 states:

> An appeal may be taken to this court from a final judgment entered by the superior court or a judge thereof in any action or proceeding, civil or criminal, except that the state shall have a right to appeal in criminal cases only to test the sufficiency of the indictment or on the ground that the sentence is too lenient.

[12] Doe v. State, 487 P.2d 47 (Alaska 1971); RLR v. State, 487 P.2d 27 (Alaska 1971).

[13] Supreme Ct. R. 23.

of counsel's interpretation of White would also conflict with AS 22.05.010 which places final appellate jurisdiction in all cases in the supreme court.[14] We think White should be limited to its interpretation of the peremptory disqualification statute. On the other hand, we hold that the right to appeal from the type of disposition order which was entered in this children's proceeding has been clearly established by the legislature. In this regard, AS 47.10.080(i) provides:

> A minor, his parent, or guardian acting on his behalf, or the department may appeal a judgment or order or the stay, modification, setting aside, revocation, or enlargement of a judgment or order issued by the court under this chapter.

The dispositive provisions of the superior court's judgment are set aside and the matter is remanded for such further disposition proceedings as are necessary and the entry of an appropriate disposition order.

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[14] For a discussion of another facet of this court's final appellate jurisdiction see State v. Browder, 486 P.2d 925, 929-33 (Alaska 1971).

272-9461

HB-132

ANCHORAGE COMMUNITY HOSPITAL
825 L Street, Anchorage, Alaska 99501

March 24, 1971

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

Dear Sir:

I strongly support and urge you to support House Bill 132 and Senate Bill 42, an act authorizing state loans from a revolving loan fund, for hospitals and related health facilities and providing for an effective date.

This legislation is necessary to the future development of health resources for the people of the State of Alaska. This is good legislation as it perserves the principle of State funds intact, earns interest income for the State and results in expanded health service for the people of the State.

We also strongly support a separate bill "an act authorizing state grants for hospitals and related health facilities, and providing for an effective date".

House Bill 276 could be supported if the new language being added to the bill was changed to include the words "or non-profit facility" following the words "local government", and other changes as shown in the attached proposed substitute for House Bill 276.

Sincerely,

Robert O Byrnes

Robert O. Byrnes
Administrator

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.

Alaska Legislation
HB 164

February 23, 1971

Mr. Carl W. Jones (3)
O f f i c e

Reference is made to your communication of February 22, 1971, with its attached House Bill No. 164.

I only wish to add two comments to my memo of March 17, 1970.

1. I honestly believe that passage of HB 164 can only unreasonably stifle economic growth and development of the resources in Alaska. HB 164 as its predecessor SB 392 makes every combine operating on the North Slope illegal. I believe the same is true for the contemplated Alaskan pipeline.

2. Sec. 45.51.080. EXEMPTION FOR COMMERCIAL FISHING. In substance, commercial fishing is exempt from the provisions of HB 164. For economic and growth reasons, it makes as much sense to exempt the Petroleum industry.

Lewis J. Ottaviani

March 26, 1970

Re: SB 392 - Alaska Legislature
An Act Prohibiting Monopolies
and Combinations in Restraint
of Trade

Mr. W. W. Hopkins
Alaska Oil and Gas Association
c/o Baranof Hotel
Second & Franklin Street
Juneau, Alaska 99801

Dear Mr. Hopkins:

Phillips Petroleum Company has asked one of our most experienced antitrust lawyers to review the bill. He has described it as ambiguous, confusing, onerous and generally poorly written. Whether by design or not, it will undoubtedly foster much irresponsible treble damage litigation with attendant great expense to all major business enterprises. Some of the comments expressed by our antitrust attorney are as follows:

Sec. 45.51.010. This provision is obviously taken from Sec. 1 of the Sherman Act of 1890. In interpreting Sec. 1 of the Sherman Act the courts have long since held that not every contract in restraint of trade is illegal--only those which unreasonably restrain trade. It seems to me that an 1890 act should be improved upon in 1970 by reciting the test in the act itself. Accordingly, this provision should be amended to read: "Each contract, combination in the form of trust or otherwise, or conspiracy, in (unreasonable) restraint of trade or commerce is illegal." For 60 years the Supreme Court has been holding that the legislators in 1890 must have intended that only unreasonable restraints are illegal. A 1970 legislature should make this test clear on the face of the act.

Sec. 45.51.020. PROHIBITED ACTS. Subsections (1) through (7) and subsection (b) should be deleted since they add nothing that is not already covered in the preceding paragraph. If these specific prohibitions remain, I fear that in the long run the court may hold that the legislators must have intended that these specifics be per se illegal.

Subsection (a) of Sec. 45.51.020 is ambiguous. It appears that it may be intended to exclude bathtub or intracorporate conspiracies from coverage. If so, this is desirable from our standpoint since parents and their subsidiaries have been found to have conspired under the federal law. This provision should be deleted as written and Sec. 45.51.020 should simply contain an exclusion from the act's coverage for single business entities and their subsidiaries.

Sec. 45.51.020. ACTS PERMITTED. The acts "permitted" by subsections (1) through (4) are taken away by the first three lines of the section. As written, subsections (1) through (4) permit reasonable specified activity for a legitimate business purpose for a reasonable time and area but only if competition is not substantially lessened. Under the comparable federal statute, the activities in subsections (1) through (4) are considered reasonable restraints and therefore lawful (whether or not competition is substantially lessened) because the objective and purpose is the protection of legitimate business rights for a reasonable time and over a reasonably limited area. Accordingly, the words "Unless the effect . . . in any part of the state" should be deleted.

Sec. 45.51.040. MERGERS, ACQUISITIONS, HOLDINGS, AND DIVESTITURES. In part, subsection (a) is ex post facto. It includes mergers, acquisitions, etc. "whether or not acquired before the effective date of this act." Further, although this is patterned after Sec. 7 of the Clayton Act, ultimately it will be more onerous than Sec. 7. Sec. 45.51.040 prohibits any merger, etc., which may substantially lessen competition or tend to create a monopoly in any line of commerce in any section of the state. In Alaska, this could mean that an acquisition of a single jobber, single dealer, or even a single service station may well be illegal in some town, village, or hamlet.

Subsection (b) is poorly written. The test of illegality under subsection (a) is "may be substantially to lessen competition," etc. Yet, under subsection (b) the court is to order divestiture if the court finds that the effect of the acquisition "is substantially to lessen competition." In other words, the test of illegality concern probability but divestiture depends upon a finding of actual substantial lessening of competition.

Sec. 45.51.050. INTERLOCKING DIRECTORATES AND RELATIONSHIPS. In essence, this is copied from Sec. 8 of the Clayton Act. However, it also adds "officer," "partner" or "trustee" whereas Sec. 8 relates to directors. In addition, the federal provisions (Sec. 8) prohibit interlocking directorates when any one of the "corporations" . . . "has capital, surplus, and undivided profits aggregating more than $1,000,000 . . ." Sec. 45.51.050 in the long run will be very onerous since it is an absolute bar to interlocking directorates, officers, partners, trustees regardless of the size of the business entities, regardless of the commerce involved. Accordingly, the only test of illegality depends upon whether the business entities "are or shall have been theretofore . . . competitors."

I am unable to determine the full import of subsection (b) which does not appear in the comparable federal statutes. However, it would in my view virtually prevent a bank officer from being on the board of a company that borrows money from the bank. In our case, I believe that a Phillips employee would have a most difficult time justifying his being a member of the board of a partially owned jobber or dealer company. This subsection (b) coupled with subsection (a) authorizing private suits would virtually dictate that Phillips not be represented on the board of any majority or minority owned retail subsidiary.

Sec. 45.51.110. SUITS BY PERSONS INJURED. This provision is patterned after the federal statute which authorizes treble damage actions. However, Sec. 45.51.110 authorizes trebel damage actions even in connection with interlocking directorates. As the federal provision, this provision also permits the successful plaintiff to recover costs and attorney fees. However, the successful defendant is not entitled to costs or attorney fees. Such a situation will encourage spurious lawsuits and legal blackmail just as the federal provision has.

Sec. 45.51.120. SUITS BY STATE OR LOCAL GOVERNMENT. Under the federal law, the federal government can only recover actual damages although states suing under the federal law can recover treble damages. The state or local governments, etc., suing under their own statutes should be limited to actual damages. This is particularly so in this instance since it will be relatively simple to find violations of this statute.

If subsection (b) means what it says, it will be much cheaper not to do business in the State of Alaska. As I read this provision, if the State of Alaska has a cause of action, then the Attorney General may undertake class actions on behalf of everybody and everything. This includes the state, counties, all political subdivisions, municipalities, governmental agencies, businessmen, and each and every citizen of the State of Alaska. Such suit can be maintained for violating the federal antitrust law as well as Alaska's, and the latter's clearly includes treble damages for everyone even under the merger and interlocking directorate provision. A defendant will never even know who the Attorney General represents except by class designations.

Sec. 45.51.130. PENALTY FOR VIOLATION. This provision converts the entire act into a criminal statute. The fine of $10,000 and/or one year in jail applies with equal force to merger situations and interlocking directorates as well as the basic restraint of trade provision. This, of course, is not the case under the federal statute. Only violations of Secs. 1 and 2 of the Sherman Act subject an individual or corporation to criminal penalties.

Sec. 45.51.140. JUDGMENT IN FAVOR OF THE STATE AS EVIDENCE IN ACTION; SUSPENSION OF LIMITATION. This provision is patterned after the federal statute but is much more onerous. The federal statute only applies to final judgments or decrees rendered after evidence has been taken or to guilty pleas. Consent judgments or decrees entered before evidence is taken are excluded under the federal provision. The Alaskan bill only excludes consent judgments or decrees entered before any complaint is filed.

Members of Congress have for many years tried to include the nolo plea and consent judgments and decrees within the prima facie category. Each time the Department of Justice and the Antitrust Division have opposed such proposals primarily because it would virtually eliminate inducements to plead nolo or to consent to judgments and thus substantially increase the number of cases that would go on to trial.

Sec. 45.51.130. ANTITRUST FUND. Obviously, this provision will set up a permanent war chest which will continually breed antitrust litigation. This is particularly onerous in view of Sec. 45.51.120 which empowers the Attorney General to sue on behalf of virtually every resident and entity in the State of Alaska. Thus, it will be a war chest for private actions as well as state actions.

Yours very truly,

Thomas M. Blume
Division Chief Attorney

MEMORANDUM

April 7, 1971

Statement of James Waters to House Judiciary Committee on

HB 164

H.B. 164 would enact a general antitrust statute for Alaska. In brief summary it would cover agreements in restraint of trade and certain acquisitions and management interlocks, with injunctive, treble damage and criminal sanctions for violation of any of the substantive provisions. For reasons detailed below, this bill should not be enacted without substantial revision.

Section 10. This section uses the language of section 1 of the Sherman Act to forbid "each contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade * * *." Although section 1 of the Sherman Act uses the same language, the Supreme Court has held that it forbids only "unreasonable" restraints of trade. It reached that result because any commercial arrangement to some extent restrains trade, and therefore the statute properly should be limited to agreements that effect unreasonable restraints. To make sure that this fundamental "rule of reason" would be applied in Alaska, the word "unreasonable" should be inserted in section 10 before the word "restraint" in line 15, page 1.

Another difficulty with section 10 is its failure to define the market in relation to which "trade or commerce" may be restrained. It is impossible to measure the reasonableness or unreasonableness of a restraint of trade except with reference to a market. The relevant market or geographic area in which suppliers may sell the particular product or service in effective competition with one another is not, of course, necessarily coterminous with the boundaries of Alaska. Therefore in determining whether challenged conduct unreasonably restrains trade it would be desirable to include the entire area in which the suppliers can effectively compete for sales. This can be achieved by designating the present substantive provision of section 10 as part ("a") and by adding part ("b") as follows: "(b) In deciding whether conduct unreasonably restrains trade or commerce determination of the relevant market or effective area of competition shall not be limited by the boundaries of this state."

Section 20. This section sets forth seven categories of unlawful agreements in restraint of trade, and is obviously designed to particularize specific examples of restrictive agreements within the scope of section 10. Section 20 provides as follows:

> "(a) No person, exclusive of members of a single business entity consisting of sole proprietorship, partnership, corporation or other single business entity, may agree, combine, or conspire, with any other person or persons, or enter into, become a member of, or participate in any understanding, arrangement, contract, pact, or trust, directly or indirectly, to
>
> (1) create or carry out restrictions in trade or commerce;
>
> (2) limit or restrict the production, or maintain or increase the price of any article of trade;
>
> (3) prevent competition in the harvesting, extraction, production, manufacturing, making, transportation, sale or purchase of any article of trade;
>
> (4) fix any standard of quality in respect to any article of trade intended for sale, barter, use or consumption in this state, whereby its price to the public, consumer or purchaser of any kind shall be in any manner controlled, maintained or increased;
>
> (5) agree not to sell, dispose of or transport any article of trade below a common standard, figure or fixed value;
>
> (6) agree to keep the price of any article of trade at a fixed or graduated figure;
>
> (7) establish or settle the price of any article of trade so as to preclude a free and unrestricted competition in the sale or transportation of such article of trade;

(b) Nothing in subsection (a) of this section shall limit the generality of sec. 10 of this chapter."

In view of the breadth of section 10 there is really no need for section 20. All of the conduct attempted to be particularized would violate section 10 if it satisfied the basic test by effecting an unreasonable restraint of trade. Moreover, the confusing and antiquated language of section 20 is of doubtful meaning and could be applied in anticompetitive rather than procompetitive ways.

For example, the introductory language, describing the persons who may not combine or conspire, expressly exempts agreements between "members of a single business entity consisting of sole proprietorship, partnership, corporation or other single business entity." This language implies that it would be improper for a parent company and its subsidiaries to agree upon such things as prices and the areas in which each shall market, although such arrangements could have no anticompetitive effect in any relevant market.

The specific categories, numbered 1 through 7, are substantially the same as those used to define unlawful "trusts" under California's Cartwright Act (Cal.Bus.& Prof. Code § 16720). Since the Cartwright Act has no provision comparable to section 1 of the Sherman Act or section 10 of S.B. 392, it made sense to attempt a particularization of those agreements or arrangements sought to be prohibited. But it is undesirable and unnecessary to do so if the basic principle of regulation is stated as in section 10.

In addition, the wording of many of the categories in section 20 is so obscure that it could lead to unsound decisions. In the first place, none of these categories is modified by the term "unreasonable," which could lead to condemnation of ordinary commercial arrangements having no unduly restrictive effects. To take an obvious example, any contract for the purchase of goods or services, whatever its duration or quantities, restricts trade because the buyer has committed himself to a particular supplier, which to that extent prevents other suppliers from filling the buyer's needs. But even though the usual supply contract should not be condemned under the antitrust laws, it could be held to fall within subpart (1) of section 20. Similarly, subparts (5) and (6) could be construed to forbid ordinary and wholly innocuous supply arrangements merely because they

establish the prices at which the products will be sold or the cost of their transportation.

It is therefore recommended that section 20 be dropped in favor of reliance on the appropriately broad language of section 10 (amended to add "unreasonable") which will outlaw each of the particularized kinds of conduct to the extent that it would effect an unreasonable restraint of trade.

Section 30. This section would exempt certain agreements from sections 10 and 20 if they do not "substantially lessen competition or * * * create a monopoly in any line of commerce in any part of the state." Exempted are certain agreements by the seller of a business not to compete with the buyer, by a partner not to compete with the partnership following his withdrawal, by a licensee restricting his use of leased property, and by an agent restricting his use of the principal's trade secrets.

Apart from the vague and obscure wording of these stated exemptions,* they would be most unfortunate because there are numerous other arrangements that have been approved under the Sherman Act and comparable state legislation as lawful restraints when they are reasonably ancillary to legitimate business goals and are not seriously anticompetitive.**

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* E.g., subpart (1) refers to an agreement "not to compete" without indicating with what the covenantor is not to compete; the word "for" in subpart (2) should presumably be "after"; and subpart (3) refers to restricting the use of leased property "to certain business or agricultural areas," whatever that may mean. Note also that subpart (4) would forbid the use of trade secrets only if used in competition with their owner. In contrast, the general rule at common law protects against any unauthorized appropriation and use. 2 Restatement, Agency 2d, §§ 395,396.

** See generally United States v. Addyston Pipe & Steel Co. (6 Cir. 1898) 85 Fed. 271, 280-283, affirmed (1899) 175 U.S. 211; 2 Restatement, Contracts, § 516. See also, Snap-On Tools Corporation v. F.T.C. (7 Cir. 1963) 321 F.2d 825, 837; Nelson Gas Stations Number Six, Inc. v. Shell Oil Company (4 Cir. 1962) 307 F.2d 306, certiorari denied (1963) 372 U.S. 911.

The development of these exceptions was begun at common law and has continued under the Sherman Act's "rule of reason" concept. It is therefore recommended that the advantage of this adaptability be taken in Alaska by inserting "unreasonable" in section 10, as noted above, and by eliminating section 30 as too restrictive, confusing, and indeed superfluous.

Sections 40 and 50. These sections would largely enact for Alaska the essence of sections 7 and 8 of the Clayton Act which, respectively, regulate acquisitions and interlocking directorates.* Thus, section 40 states, subject to limited exemptions, that no corporation may acquire the whole or any part of the stock or assets of another corporation (even if acquired before passage of this bill!) if the effect "may be substantially to lessen competition or to tend to create a monopoly in any line of commerce in any section of the state." If the court finds that the effect of the acquisition "is substantially to lessen competition or tends to create a monopoly" it shall order divestiture if that is "necessary to eliminate" such effect and if the assets "are reasonably identifiable and separable, and the disposition can be done without causing undue hardship on the economic entity."

No good reason has ever been put forward why a state should have an antimerger provision in the nature of section 7 of the Clayton Act. In the first place, any merger within Alaska that threatened monopoly or an unreasonable restraint of trade, would be cognizable under the general language of section 10. Moreover, in view of the Federal courts' liberal interpretation of what is interstate commerce, it is likely that any merger of this kind would violate Clayton 7 and hence would be subject to the expert and experienced staffs both of the Antitrust Division of the United States Department of Justice and of the Federal Trade Commission. Thus, it seems reasonable to conclude that any merger or acquisition in Alaska not subject to section 10 of this bill or Clayton 7 would have only a de minimis effect on the state's commerce. A provision with no more utility than that would merely burden the courts with trivial claims having no significant bearing on free competition in the state.

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* 15 U.S.C. 18, 19.

Section 50 is equally unnecessary for the proper regulation of a state's commerce. The general provision of section 8 of the Clayton Act forbids any person to be a director in two or more corporations any one of which has capital, surplus and undivided profits aggregating more than $1 million, which are engaged in any interstate commerce, "if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the antitrust laws." Proposed section 50 would go beyond what the Federal Government has seen fit to prohibit, by dropping any requirement as to the size of the businesses involved and by covering not only a director but an "officer, partner, or trustee in any two or more firms, partnerships, trusts, associations, or corporations" if they or any combination of them "are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination [of competition?] by agreement between them would constitute a violation of this chapter."

No evidence has ever been presented or is likely to be found that there are interlocking management relationships between entities which threaten the effectiveness of intrastate competition. Thus, at most, section 50 appears to be an unnecessary and even more encompassing imitation of Clayton 8. Here as with the proposed antimerger provision, it is likely that the chief result of section 50 would be to burden the judiciary with trivial claims whose resolution would be of no importance to the free economy of Alaska.

It should be borne in mind in connection with sections 40 and 50 that the antitrust enforcement efforts of the states have been minor compared with those of the Federal government. It seems clear that one reason for this is the typical proliferation of state trade regulation statutes, which must dilute and impede the effective enforcement that could otherwise be given to an appropriate general prohibition against unreasonable restraints of trade.

Section 60 seeks to exempt labor organizations and apparently also agricultural cooperatives from the operation of this antitrust act. At least some of the language appears now to be antiquated (e.g., the requirement that labor organizations not have capital stock) or vague,

and hence these appropriate objectives could be more effectively achieved by using the following language for section 60:

> "(a) This Chapter does not forbid the existence or operation of labor, agricultural or horticultural organizations created for the purpose of mutual help, and not conducted for profit, or forbid or restrain members of such organizations from lawfully carrying out the legitimate objects thereof; nor are those organizations or members illegal combinations or conspiracies in restraint of trade under the provisions of this Chapter.
>
> "(b) Nothing contained in this Chapter shall be construed to forbid actions or arrangements authorized or regulated under those acts of the United States which exempt such actions or arrangements from the antitrust laws of the United States or under the following statutes of this state.
>
> (1) AS 10.15 (3) AS 31.05.100 [*]
>
> (2) AS 21.87 (4) AS 31.05.110."*

Section 100 states that any contract or agreement violating the statute "is void and is not enforceable at law or in equity." In view of the substantial sanctions proposed by S.B. 392 (discussed below), this provision is unnecessary. Moreover, it could lead to undesirable results. For example, the Supreme Court of the United States has held (see, e.g., Kelly v. Kosuga (1959) 358 U.S. 516) that ordinary supply arrangements are not made unenforceable merely because, for example, the goods sold were subject to a combination or conspiracy to affect their price. The Court has reasoned that in view of the adequate and independent antitrust sanctions available to the Government and to private parties, it is not necessary to create an additional sanction at the cost of rendering ordinary commercial transactions unenforceable. Thus, section 100 should be deleted.

Section 110 provides in part that "A person who is injured in his business or property by reason of anything forbidden or declared unlawful by this chapter" may sue to enjoin the unlawful practice and may recover threefold the

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* Oil or gas drilling units and unitization arrangements authorized under either of these sections should be included. The express exemption provided in AS 31.05.110 (1) might be held not to apply to a later antitrust statute or to drilling units under AS 31.05.100.

damages sustained, along with costs and a reasonable attorney's fee. Even though damages are mandatorily trebled for violations of the Federal antitrust laws, there is reason to believe that the inflexibility of this punitive sanction has in many cases caused severe economic hardship well beyond any appropriate redress of the wrong committed. It would therefore seem desirable to provide for the recovery of actual damages subject to the court's discretion to increase the award up to three times that amount in cases of wilful and substantial violations. This would permit the court to assess the degree of the wrong and to award an appropriate judgment in the light of all circumstances. The damage sanction would remain an adequately strong deterrent, for in cases of wilful and substantial wrongs the court would be expected to increase the damages commensurately. This change could be accomplished by omitting "threefold" in line 24, and by adding after "suit" in line 26 these words: "provided that the court in its discretion may in cases of wilful and substantial violations increase damages to an amount not in excess of 3 times the actual damages sustained."

Subpart (a) (2) of section 110 authorizes private injunctive proceedings. This unduly terse provision should be expanded to make clear that the court will be guided by traditional equitable principles in granting such relief. It is therefore recommended that the following language be substituted for present lines 29 through 2?:

> "(2) may bring proceedings for injunctive relief, temporary or permanent, against threatened loss or damage to his property or business by a violation of this Act, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue. If the court issues a permanent injunction, the plaintiff shall be awarded reasonable attorneys' fees together with the cost of suit."

It would also be desirable to amend section 110 to limit suits for multiple damages to plaintiffs other than the state or its governmental agencies. The purpose of providing multiple damages is to encourage enforcement of the

statute through private suits. No such encouragement is necessary when the plaintiff is the state itself or one of its political subdivisions or agencies. This is particularly true where, as here, the Attorney General is authorized to bring damage actions in behalf of "the state or any of its political subdivisions or governmental entities." This limitation can be achieved by inserting after "person" in the first line of section 110 the following parenthetical statement: "(other than a governmental body, the state, or any of its political subdivisions or public agencies)," and by amending section 120 as noted below.

Section 120. This section would give the state and any of its governmental entities injured by an antitrust violation the same remedy provided in section 110, i.e., to recover threefold the damages sustained. For the reasons stated above, this would be inappropriate and therefore subpart (a) of section 120 should be amended by inserting the words "it may sue for the actual damages by it sustained, and the cost of suit, as determined by the court" in place of the words "it shall have the same remedies provided in sec. 110 of this chapter."

Subpart (b) of section 120 authorizes the Attorney General to sue "on behalf of any citizen or class of citizens of the state if the state or its political subdivision also has a cause of action, to enforce the provisions of this chapter, or any comparable provisions of federal law." A comparison of this provision with Rule 23 of the Federal Rules of Civil Procedure indicates that it is far too brief and general to be workable. In short, no effort should be made to provide antitrust class actions without appropriate criteria to govern when a class action would be appropriate, e.g., whether the members of the class are too numerous to be joined as plaintiffs, whether there are common questions of law or fact that predominate over questions affecting only certain members of the class, whether the plaintiff's interest is such that the interests of the other members of the class will be fairly and adequately protected, etc. But apart from these difficulties, there does not appear to be any reason why there should be recommended to the Attorney General the added burden of prosecuting antitrust class actions in behalf of private parties. Nothing comparable has been done with respect to the Department of Justice or the Federal Trade Commission.

Section 150 would provide that any person or his agent who violates sections 10, 20, 40 or 50 "is punishable, if a natural person, by a fine not exceeding $10,000 or by imprisonment not exceeding one year, or by both; if the person is not a natural person then by a fine not exceeding $20,000." Under the Federal antitrust laws there are no criminal penalties for violations of section 7 or 8 of the Clayton Act, but only for violations of the Sherman Act. Nor should there be any criminal sanctions for violations of the proposed comparable sections 40 and 50, which as noted above, should be deleted for other reasons. But even if the substantive provisions of this bill were appropriately narrowed to the restraint of trade prohibitions of section 10, there would seem to be no reason to characterize such violations as crimes. Particularly is this true where, as with section 10, the language is broad enough to be applied ex post facto to new developments not defined as violations when the conduct was initiated. This problem has been handled under the Sherman Act by the Antitrust Division's declining to bring criminal proceedings except where clear cut flagrant violations are involved. There can be no assurance, however, that like restraint would be exercised by a state attorney general. The problem can be obviated, while providing a fully adequate deterrent, simply by limiting the sanctions to "civil penalties" in stated amounts to be imposed for "substantial and wilful violations" of section 10. This would also avoid the more cumbersome and formalistic criminal proceeding in favor of a relatively simple and efficient civil action to recover the penalties. It would also seem desirable to reduce the maximum fine for individuals to $5,000 per violation. This should prove an adequate deterrent without the crushing prospect that the larger fine could present for many individual defendants.

The foregoing changes could be effected by substituting for lines 24 through 27 of section 150, page 7, the following language:

> "shall if an individual pay to the state a civil penalty of not more than $5,000, and shall if a corporation, association, firm or partnership pay to the state a civil penalty of not more than $20,000."

Section 160. This section provides that "A final judgment or decree rendered in any civil or criminal proceeding brought by the state under this chapter shall be

prima facie evidence against the defendant in any other action or proceeding brought by any other party under this chapter, or by the state, a city or borough, under sec. 120, as to all matters respecting which the judgment or decree would be an estoppel between the parties in such other action or proceeding." This provision should be amended in several respects for, unlike the comparable Clayton Act provision,* it (1) does not limit the state proceedings to those brought to obtain an injunction or penalties, as distinguished from governmental damage actions, and (2) it is not required that the final judgment or decree be to the effect that the defendant has violated the state's antitrust law.

No reason appears why a state's provision of this kind should be broader than the Federal one. Subpart (a) could be brought into conformity with the comparable provision of the Clayton Act by amending it as follows:

> "A final judgment or decree rendered in any civil proceeding for injunctive relief or civil penalties brought by the state under this chapter to the effect that a defendant has violated this chapter shall be prima facie evidence against such defendant in any action or proceeding brought by any other party against such defendant under this chapter or by the state, a city or a borough, under sec. 120, as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto."

Subpart (b) of section 160 provides that the prima facie effect provision would not apply to consent judgments or decrees "entered before any complaint has been filed." This provision, like its Federal counterpart, is designed to save the enforcement resources of the government by encouraging compromise and settlement. But you cannot have a "consent judgment or decree" unless a complaint is on file to which it can relate. Therefore, following the Federal provision, the words in line 14 should be changed to read "entered before any testimony has been taken." Under Federal cases judgments upon pleas of nolo contendere have been held to be "consent judgments" within the meaning of the comparable Federal exception.

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* Section 5(a), 15 U.S.C. 16(a).

Subpart (d), however, would provide that judgments rendered upon nolo contendere pleas would be given prima facie effect in subsequent proceedings. While it was recommended above to eliminate the proposed criminal sanctions, it should be noted that if retained, subpart (d) should be eliminated. Judgments upon pleas of nolo contendere serve the same function of compromise in criminal proceedings as consent decrees do in civil proceedings. No reason appears why this useful enforcement method should be vitiated.

Subpart (c) of section 160 should be deleted. It provides that for 60 days after a consent decree is filed any one "interested" under section 110 (private plaintiffs) or section 120 (governmental plaintiffs) may file "exceptions" to the form or substance of the decree which will be resolved by the court after a full hearing. There is no reason to believe that the executive discretion lodged in the Attorney General is inadequate to protect the public interest or should be subjected to review by plaintiffs free themselves to sue if they see fit. Note also that the proposed power of the court, after hearing, to "modify" the consent decree is incongruous. The court could not properly issue an unconsented to decree or judgment except upon the record after a full trial.

Section 170. This would bar any proceeding under the bill "unless commenced within four years after the claim accrues."* But this section goes on to provide that "a claim for a continuing violation is deemed to accrue at any time during the period of the violation."

There are two objections to section 170. The first is that the word "claim" in line 7 is not as clear as the words "cause of action," which are used in the comparable provision in section 4 B of the Clayton Act (15 U.S.C. 15b). The second objection is that if a claim for a continuing violation is deemed to accrue at any time during the period of the violation, it can be argued that if any damage was sustained within

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* Except when the statute is suspended under section 160(c) which, like section 5(b) of the Clayton Act, suspends the statute of limitations during the pendency of civil or criminal government proceedings, and for one year thereafter, as to any private damage action based in whole or in part on any matter complained of in the government proceeding.

four years of commencement of the action then all damages deriving from the same course of conduct could be recovered even if they accrued decades before the action was brought. This would contradict the provision's purpose to prevent litigation over stale claims. The second sentence of section 170 should be deleted. Its apparent purpose is simply to provide that a plaintiff can recover for damages sustained within four years of commencement of his suit even if the continuing unlawful conduct was initiated more than four years prior to such commencement. This same result is reached under the general language of section 4 B of the Clayton Act.

Humble Oil comments 4-24-71

March 22, 1971

Re: 1971 Alaska Legislature
H.B. 154

H.B. 154 would enact a general antitrust statute for Alaska. The scheme of the bill is to adopt some of the general language of the Sherman Act, but to combine with it some particularized prohibitions found in the statutes of other states. This is an illogical combination which will cause much confusion and rob the statute of effectiveness.

Sections 10, 20 and 30. Section 10 adopts the language of Section 1 of the Sherman Act, prohibiting every contract, combination or conspiracy in restraint of trade or commerce. Of course, such a general prohibition cannot be literally applied, because every contract made in the ordinary course of business restrains trade in the strictest sense. For instance, the owner of an article can sell it but once, and when he contracts to sell it to another, the contract restrains him from selling it to any third person. Recognizing this, the federal courts have established the "rule of reason" which is the cornerstone of the great body of antitrust law of the nation. It is this rule which gives the courts the flexibility necessary to apply the principles of the antitrust laws to constantly changing business practices and patterns. To make certain that the fundamental rule of reason will be applied in Alaska, the word "unreasonable" should be inserted in Section 10 before the word "restraint."

Section 20 adds prohibitions against seven specified types of conduct, apparently patterned after California's Cartwright Act (Cal. Bus. & Prof. Code, §16720). There is some need for such provisions in the Cartwright Act because it contains no general prohibitions against restraints of trade like Section 1 of the Sherman Act and Section 10 of H.B. 154. But with this general prohibition in H.B. 154, the particularized prohibitions of Section 20 are unnecessary and can only cause confusion. For instance, Section 20 literally applies to every person "exclusive of members of a single business entity consisting of sole proprietorship, partnership, corporation or other single business entity." Taken literally, this would apply the provisions of Section 20 to the most ordinary relations between a parent and subsidiary corporations, even though these could not possibly involve any objectionable restraint of trade. The language of the various subsections is extremely vague and confusing and could only cause the courts great trouble in applying the act. For instance, no less than four of the seven subsections deal with price-fixing in varying language (subsections 2, 5, 6 and 7). Taken literally, Section 20 would

prohibit even the most ordinary and innocent business transaction. Any contract of sale might be said to "create ... restrictions in trade" (subsection 1) or to "establish or settle the price of any article of trade" (subsection 7).

All of the actually anticompetitive arrangements which Section 20 are designed to deal with would in fact be covered by the general language of Section 10 with the addition of the word "unreasonable" as recommended above. Section 20 should be deleted entirely.

Section 30 is designed to except from the effect of Sections 10 and 20 certain specified transactions, "(u)nless the effect ... shall be to substantially lessen competition or to create a monopoly ...." The exceptions specified would permit the sellers of businesses and withdrawing partners to agree not to compete, would permit leases of business property to contain certain restrictions upon the use of property by the lessee and the lessor (assuming that the word "lessee" in the third line of subsection 3 is a misprint, intended to read "lessor") and would permit an employee to agree not to use his employer's trade secrets in competition with the employer. These exceptions, in themselves, are reasonable, but they fail to include various other arrangements which have been found by the courts not to be anticompetitive in effect, yet which might be held to be condemned by the literal language of Section 20.* It is very undesirable to attempt the specification of exceptions to the literal language of the statute, when the list will undoubtedly be incomplete, thereby raising serious questions about the legality of perfectly innocent conduct. This merely illustrates further how unwise it is to attempt the particularization of prohibited acts such as is found in Section 20. It shows the wisdom of relying, instead, upon a statement of general principle such as Section 1 of the Sherman Act and Section 10 of H.B. 194 (with the addition of the word "unreasonable"), which will much more effectively accomplish the actual purposes of the bill.

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* See generally United States v. Keystone Pipe & Steel Co. (5 Cir. 1898) 85 Fed. 271, 280-83, affirmed (1899) 175 U. S. 211; 2 Restatement, Contracts, § 516. See also, Snap-On Tools Corporation v. F.T.C. (7 Cir. 1963) 321 F.2d 825, 837; Savon Gas Stations Number Six, Inc. v. Shell Oil Company (4 Cir. 1962) 309 F.2d 305, certiorari denied (1962) 372 U.S. 911.

Section 50. This section provides that no person may at the same time be a director, officer, partner or trustee of two or more corporations or other entities which are competitors. It was patterned after Section 8 of the Clayton Act, but it goes further than the Clayton Act in two respects: No minimum size criterion is provided; and Section 50 applies not only to directors, but also to officers, partners and trustees. It seems doubtful that the state needs any such statute as Section 50, because combinations in unreasonable restraint of trade would be reached by Section 10, and interlocking directorates of any significance would be reached by the federal law. If such provision is to be enacted, it certainly seems reasonable that it should not go beyond the provisions of the Clayton Act, and especially that it should provide some minimum size criterion (although the Clayton Act's standard of $1 million might be too high).

Sections 50 and 70. These sections provide exemptions for labor organizations and certain cooperative associations. It is most important that language be added to include actions or arrangements authorized or regulated under AS 31.05.100 and AS 31.05.110, which authorize oil and gas drilling units and unitization arrangements. AS 31.05.110 contains an antitrust exemption, but this should also be expressed in the antitrust statute itself, to avoid any question about the effect of the later statute and any question about the effect on AS 31.05.100. Cmp. AS 38.05.180

Section 100. This section provides in the most general language that any agreement in violation of any provision of the chapter is void and unenforceable. The literal application of this language would go well beyond the effect of the federal antitrust laws, which are held to avoid contracts only if the enforcement of them would give effect to the illegal provisions themselves. Kelly v. Kosuga, 358 U.S. 516. Section 100 could have two very unfortunate effects: (1) it could give a windfall to guilty parties, for instance, by allowing them to refuse to pay for goods sold and delivered; and (2) it could result in antitrust defenses being raised in a great many ordinary suits arising out of commercial transactions, which would unduly burden the courts and might result in serious distortion of the antitrust laws by forcing the courts to interpret them in cases between private litigants where the public interest is not properly represented by any public official. Section 100 should be deleted, leaving the Alaska courts to follow the federal law on this subject, refusing to enforce provisions of contracts which actually constitute unreasonable restraints of trade under Section 10.

Section 120. Subsection (b) provides that the attorney general not only may bring actions on behalf of the state or any political subdivision but also "on behalf of any citizen or class of citizens of the state" if the state or any political subdivision also has a cause of action. There is no such provision as this in the federal law and no need for it has ever appeared. It would surely burden the attorney general unduly to require him to represent private parties. But the most serious defect in this provision is that it attempts to provide for class actions in the few words quoted above, without providing any criteria whatever to guide the courts in determining whether a class action is appropriate or feasible. Experience under Rule 23 of the Federal Rules of Civil Procedure shows that it is essential that such criteria be provided. The above quoted provision of Subsection (b) should be deleted.

Section 160. This section provides that judgments in proceedings brought by the state shall be prima facie evidence against the same defendant in private actions. It goes beyond Section 5(a) of the Clayton Act in that it is not limited to actions brought by the state for injunction or penalties. It could apply judgments in simple damage suits brought by the state. Subsection (a) should be modified to read "in any criminal proceeding or injunction suit brought by the state."

Subsection (b) provides that the Section shall not apply to consent judgments or decrees entered "before any complaint has been filed." It is not apparent how a judgment could be entered before any complaint is filed. Apparently this language should be changed to read "before any testimony has been taken," like the Clayton Act.

Subsection (c) of Section 160 apparently would authorize the court to modify consent decrees without the consent of the parties. This, of course, should not be done, since no final judgment can be entered without the consent of the parties, except after trial of the case.

Section 170. This Section provides a four-year statute of limitations, but in the provision preserving causes of action for continuing violations, language is used which could be construed to authorize recovery of damages accrued more than four years before commencement of the action, if the violation has continued to a time within the four-year period. This should be changed to accord with 50 U.S.C.A. §15b to make it plain that even though causes of action for continuing violations extending to a time within the statute are preserved, damages accrued more than four years before commencement of the action cannot be recovered.

K. C. Minter

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HB 164

UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D.C. 20530

Address Reply to the
Division Indicated
and Refer to Initials and Number

June 7, 1971

RWMcL:DIB:BG
60-03-13

Mr. Arthur H. Peterson
Revisor of Statutes
The Legislature
State of Alaska
Pouch Y - State Capital
Juneau, Alaska 99801

Dear Mr. Peterson:

This is in response to your letter of March 26, 1971, requesting the Antitrust Division's comments on Alaska House Bill No. 164 (7th Leg., 1st Sess.).

We are pleased to learn that Alaska is considering the enactment of state antitrust legislation. Many forms of anticompetitive conduct, injurious to the economy of a state and the welfare of its citizens, do not clearly affect interstate commerce and may therefore be outside the scope of the federal antitrust laws. This may be particularly true with respect to local service industries, which are a major source of today's inflationary pressures.

We have analyzed the various provisions of House Bill No. 164 and, pursuant to your request, shall indicate below a number of suggestions which we believe would make this particular legislation more effective. Initially, however, a few general comments may be helpful.

The goal of a state antitrust law should be effective enforcement at a low cost. This implies several points. First, excessive detail and complexity should be avoided in draftsmanship. Complex statutes have tended to bog down antitrust enforcement in many states, as the courts have attempted to deal with a maze of overlapping or conflicting statutory provisions of great specificity. Therefore, in view of this experience, we feel that simplicity without omission should be the goal in a statute which attempts to create a basis for effective state antitrust enforcement. Secondly, the substantial existing body of federal case law should be utilized by the states, wherever appropriate. This can be done by use of substantive statutory provisions following closely the federal provisions or by statutory language and legislative history making clear the intent of the Alaskan legislature to adopt this body of federal jurisprudence. This should be of significant assistance to the courts of the state as they attempt to apply the law to specific factual situations. Thirdly, the importance of relief and investigative provisions in an antitrust statute should not be underestimated; state enforcement officers must be provided with effective means by which to discover violations of the statute if vigorous enforcement is to be achieved. Finally, the private sector, properly motivated, can be a significant aid to state enforcement. The theme of these very general comments will reoccur in the ensuing discussion of specific provisions of the proposed statute.

I. Substantive Provisions

Section 45.51.010

Section 10 of the proposed bill declares contracts, combinations and conspiracies in restraint of trade to be illegal in language virtually the same as that used in the first sentence of Section 1 of the Sherman Act (15 U.S.C. 1). The use of such language will probably imply to the

Alaska courts a legislative intent to adopt the body of jurisprudence which has evolved under Section 1 of the Sherman Act. However, the use of a general prohibition in Section 10 and both specific and general prohibitions in Sections 20, 40 and 50 could cause certain confusion with respect to relief and enforcement. Thus, if the major purpose of Section 10 is to indicate a legislative intent to adopt federal antitrust precedent, this intention could be made even more explicit by substituting for the proposed general language more specific language such as that found in New Jersey's recent antitrust law, N.J.S.A. 56: 9-18, which requires that the state statute be interpreted in harmony with federal antitrust precedent.

Therefore, we would suggest that Section 10 read as follows:

> Section 45.51.010 - Construction. This Act shall be construed in harmony with judicial interpretations of comparable Federal antitrust statutes.

Sections 45.51.020. 45.51.040. 45.51.050

The enumerations in these sections which, along with Section 10, comprise the substantive portion of the statute, illustrate the difficulties which have resulted from unnecessary attempts to be overly precise in drafting this kind of legislation. For example, in Section 20, the first of the seven prohibited acts of agreement is to "create or carry out restrictions in trade or commerce." This seems intrinsically as broad as the Sherman Act formulation in Section 10, but brings to the bill none of the accumulated judicial interpretations which have given the Sherman Act certain specific meanings including

the essential "rule of reason" construction and a list of "per se" violations. The third prohibited act, to "prevent competition," is too narrow because antitrust violations restrain competition; they seldom prevent it. The sixth and seventh prohibited acts are confusingly similar definitions of price fixing.

Sections 40 and 50 are modeled after provisions of the federal antitrust laws and, like those laws, contain imprecise terms and significant weaknesses. Section 40 would be applicable only to corporations, and thus might be too narrow in scope. Section 50 contains some confusing provisions concerning designees.

Section 20 could, in our opinion, be usefully employed to both broadly prohibit participation in anticompetitive agreements and the agreements themselves, and to enumerate, in plain language specific anticompetitive acts. Section 20 could also be used to incorporate the substance of Section 3 of the Clayton Act (15 U.S.C. 14) which is directed at tie-in sales, exclusive dealing, requirements contracts, and "full line forcing." Each of these is a serious anti-competitive practice not now covered by the bill except as it may constitute a generalized restraint of trade. Finally, Section 20 could incorporate the anti-merger provisions and the interlock provisions of the bill now contained in Sections 40 and 50. The remedial provisions of Sections 40 and 50 could more clearly be stated in a general relief section. Section 20 could, therefore, read as follows:

Section 45.51.020 - Prohibited Acts

(A) It shall be a misdemeanor for two or more persons to enter into an agreement with each other for the purpose of restraining trade or lessening competition by establishing, determining, or substantially influencing, as to any commodity or service,

(1) the price or other consideration which any person shall cha·ge or pay;

(2) the quantity which any person shall produce, sell or buy, or in which such person shall deal;

(3) the portion or share of the total supply or demand in any transaction to be produced, sold, bought, dealt in or accounted for by any person;

(4) the geographical area in which any person may produce, sell, buy, deal or conduct transactions; or

(5) the person or persons to whom sales may be made, or from which purchases may be made, or with whom dealings may be had or transactions conducted.

(B) It shall be a misdemeanor for any person to monopolize or attempt or conspire to monopolize trade in any commodity or service.

(C) It shall be a violation of this Act:

(1) for any person to do anything prohibited by subsections (A) or (B);

(2) for any person to enter into any agreement with the purpose, or with the effect, of unreasonably restraining trade or lessening competition in any commodity or service;

(3) for any person to sell, purchase or lease any commodity or service on the condition, express or implied, that the other party to the transaction, or any other person,

(a) purchase, sell, or lease any additional commodity or service from or to such person, or any person designated by him; or

(b) not purchase, sell, or lease any commodity from or to any other person;

where the effect may be to substantially lessen competition in any line of commerce in the State of Alaska or any part thereof;

(4) for any person to, at the same time, be a director, officer, partner, manager or trustee in (a) any two or more firms if such firms are or shall have been theretofore, by virtue of their business and location or operation, competitors, or (b) in any two or more firms where the effect may be to substantially lessen competition or tend to create a monopoly; or

(5) for any person to acquire, directly or indirectly, an asset from any person if the effect may be to substantially lessen competition in any line of commerce in the State of Alaska or any part thereof.

Section 20 as proposed above would be divided into three subsections. The first, 45.51.020(A), is basically limited to those actions which are per se violations of federal antitrust statutes. Thus, it prohibits price fixing, output limitations, production and territorial sharing, and group boycotts. The anticompetitive effects of these practices are most serious and their illegality under federal antitrust law is clearly established; therefore criminal prosecution is appropriate.

The second subsection, 45.51.020(B), is based upon Section 2 of the Sherman Act and would make criminal monopolization, and attempts or conspiracies to monopolize.

The third subsection, 45.51.020(C), contains the remainder of the substantive provisions of the statute. It is contemplated that violations of this subsection would be subject to civil remedies -- injunctive relief or actions for damages -- since the legality of the practices prohibited therein and not covered in subsections (A) or (B) may turn upon an analysis of their competitive effect under particular market conditions. It should be noted that subsection (C) includes all the acts enumerated in subsection (A) or (B). Thus, violations of subsections (A) or (B) could be proceeded against by criminal and/or civil process. Subsection (C)(3) covers tie-ins, reciprocity, exclusive dealing arrangements and negative covenants. Subsection (C)(4) covers interlocks, making interlocks illegal, irrespective of proof of anticompetitive effect if the firms are or could be direct competitors, and applying the Clayton Act competitive effect standard to all other interlocks. This permits the dissolution of interlocks, and thus increases the possibility of competition, between potential competitors. Finally, subsection (C)(5) covers acquisitions, but unlike Clayton Act §7 (15 U.S.C. 18), it is not limited to acquisitions by and from a corporation. Any acquisition made by a person, as defined infra, is subject to the law, whether the vendor or purchaser is a corporation or not.

Section 45.51.030

Section 30 sets forth four kinds of acts which will be presumptively lawful unless the effect "shall be to substantially lessen competition or to create a monopoly." Since most of these practices have traditionally been found to be legal with respect to the federal antitrust laws, it seems unnecessary and perhaps unwise to single them out from other legal practices.

II. Enforcement Provisions

Section 45.51.100

Section 100 would render void and unenforceable agreements violative of the Act. As currently worded, Section 100 could allow businessmen to use the antitrust laws as a means of avoiding normal contract responsibilities, i.e., payment for goods already received, where it was to their advantage to do so. Thus, we feel that the provision is overly broad and might result in courts refusing to find a violation in order to avoid an inequitable decision between the private litigants. On the other hand, the provision has some obvious usefulness as a deterrent. Therefore, we would suggest altering this provision so that a party could not refuse to pay for goods already received, but could refuse to continue performing under a contract which violated this Act. Cf. Kelly v. Kosuga, 358 U.S. 512 (1959). Such a provision might read as follows:

> Section 45.51.100 - Contracts Voidable. A contract or agreement in violation of any provision of this chapter is voidable by either party as to any future performance by either party, except for payment for goods already received, and such future performance, except for payment for goods already received, may not be enforced at law or in equity.

Section 45.51.120

Section 120 provides the state and its subdivisions the same injunctive and treble damage remedies provided private litigants under Section 110. This is a departure from federal law (15 U.S.C. 12a) which limits the United States' recovery to single damages for its injuries.

Section 45.51.130

Section 130 provides that the Attorney General may bring proceedings to enjoin violation of this Act. Consideration might be given to providing borough attorneys with concurrent enforcement jurisdiction. Such a measure might create a mechanism for effective enforcement. Under a system of dual enforcement responsibility, however, the Attorney General should be allowed to assume control of any litigation initiated by borough officials. We would suggest the following language:

> Section 45.51.130 - Enforcement. Jurisdiction to enforce this Act, in addition to that noted in Section 110, is vested concurrently in the Attorney General and borough attorneys. When a borough attorney brings an action under this Act, however, the Attorney General may assume full control of the investigation and litigation by giving appropriate notice to the borough attorney.

Section 45.51.150

Section 150 provides the penalties for violation of the Act. As drafted, it does not seem to us to take into account the differences between the actions which would violate this statute. There has also been a belief in some quarters that inflexibly harsh penalties discourage effective enforcement of state antitrust statutes. We

feel that criminal penalties should be limited to the clearly illegal activities of violators, and that injunctive relief should be flexible and left to the discretion of the court. We would suggest the following language:

> Section 45.51.150 - Penalties for Violation
>
> (A) A violation of Section 20(A) or (B) of this Act shall constitute a misdemeanor, and shall be punishable by fine of up to $50,000, or by imprisonment for up to one year, or both.
>
> (B) A finding of a violation of Section 20(A),(B) or (C) of this Act shall empower the superior court to issue such judgment or decree as it considers necessary to remove the effects of any violation which it finds, and to prevent such violation from continuing or from being renewed in the future. The court may, at its discretion, exercise all equitable powers necessary for this purpose, including, but not limited to, injunction, divestiture of property, termination of business relationships, divorcement of business units, dissolution of corporations or associations, and suspension or termination of a license, franchise, or charter issued under the authority of this state.

In view of the size of many potential violators, we have suggested making the maximum fine $50,000 rather than $20,000 in order to provide a more meaningful deterrent.

Section 45.51.160

Section 160 contains the prima facie provisions, giving such effect in subsequent cases to final judgments obtained by the state. These provisions parallel §5 of

the Clayton Act (15 U.S.C. 16). Unlike the Clayton Act, the state itself would be able to rely on its final judgment in a subsequent damage action. Section 160(b) makes the basic provision inapplicable to "consent judgments or decrees entered before any complaint has been filed." We doubt that the state would submit, or a court accept, a consent judgment without an accompanying or previously filed complaint. Indeed, a court might lack jurisdiction under those circumstances. We therefore suggest a return to the Clayton Act language, "consent judgments or decrees entered before any testimony has been taken." We would favor rewording these provisions as follows:

> Section 45.51.160 - Judgment in Favor of the State as Evidence in Action. The final judgment or decree rendered in any action brought by the State of Alaska under Section 20, to the effect that defendant has violated Section 20, shall be prima facie evidence against such defendants in any action brought by any party against said defendants under Sections 110 or 120, as to all matters respecting which said judgment would be an estoppel as between the parties thereto. This Section shall not apply to consent judgments or decrees entered both before any testimony has been taken and before any finding of illegality by the court, but shall apply to judgments or decrees entered on pleas of nolo contendere.

III. Investigatory Provisions

Effective enforcement requires comprehensive investigation before civil or criminal proceedings are initiated. Enforcement officers should have the power to obtain information necessary to make a responsible

decision as to whether to initiate formal proceedings. H.B. 164 does not confer any specific discovery powers upon the Attorney General. If the proposed law is to be effective, this omission must be rectified.

Since 1962, the Antitrust Civil Process Act (15 U.S.C. 1311-1314) has allowed the Department of Justice, prior to the institution of an action, to serve a civil investigative demand upon any legal entity, requiring it to produce documents for examination. Several states have such provisions, but they vary widely in scope. Some are similar to the federal statute, e.g., N.C. Gen. Stats. §75-10, and some are broader, e.g., N.Y. Gen. Bus. Law §343.

The federal statute has some significant limitations. It applies only to documents, and only to persons under investigation. This obviously limits the effectiveness of the provision in compiling adequate investigatory records from which decisions on the initiation of formal proceedings must be made. In contrast, the recently-enacted New Jersey Antitrust Act contains a very broad investigatory provision, giving the Attorney General discretionary power to institute investigation, subpoena witnesses and compel the production of documents. N.J.S.A. 56:93 (1970).

We believe that the appropriate provision for a state antitrust statute would be somewhere in between these two examples. The enforcing officer should not be limited to compelling the production of documents but should also be permitted to depose individuals for relevant information. With the proper safeguards, the enforcing officer should also be able to compel documents and testimony from individuals who are not themselves being investigated but who have information necessary to a properly instituted investigation. Therefore, we would suggest that any statute finally adopted include the following provisions:

(A) The Attorney General shall have the power to investigate alleged or suspected violations of this Act and to (1) compel the appearance and examination under oath of any person under such investigation, including the officers and directors of any corporation under such investigation, and (2) to compel the production of, and to inspect and copy, any or all tangible documents or recordings in the possession of or under the control of any person under such investigation, or any officer or director of any organization under such investigation.

(B) Upon a showing to the superior court that such is reasonably necessary to an investigation under subsection (A) of this Section, the Attorney General shall have the power to (1) compel the appearance and examination under oath of any person, and (2) to compel the production of, and to inspect and copy, any and all tangible documents or recordings.

The statute should also contain provisions for the enforcement of these discovery powers, as well as provisions which would take into account the possibility of the privilege against self-incrimination being raised as a bar to production of documents or testimony. See, e.g., 38 Ill. Rev. Stats. §§60-7.6, 60-7.7.

IV. Definitions

If the above suggestions were to be adopted, the bill should include the following definitions in an appropriate section:

"Person" shall mean any natural person, or any corporation, partnership or association of persons.

"Asset" shall include any property, tangible, real, personal, or mixed, and wherever situate, and any other thing of value.

"Commodity" shall mean any kind of real or personal property.

"Service" shall mean any activity not covered by the definition of "commodity" which is performed in whole or part for the purpose of financial gain.

We hope that our comments have been responsive to your request. If we can be of any further assistance to you in this or other matters related to our experience, you can count on our continued cooperation.

Sincerely yours,

RICHARD W. McLAREN
Assistant Attorney General
Antitrust Division

By: Donald I. Baker
Acting Director of Policy Planning

HB-164

RE: Proposed Antitrust Legislation

My general feeling is that the antitrust bill which has passed the House is unduly vague for an area of the law which has as much history as antitrust. I am thoroughly in agreement with the recommendations of the U. S. Department of Justice which were mailed to Arthur H. Peterson, Revisor of Statutes, in connection with this bill. However, if we wish to continue with this existing bill which has passed the House I would want to recommend the following amendments:

1. A provision utilizing the juris prudence which is involved under the Sherman Act should be inserted. An example is provided by the U. S. Department of Justice: "This act shall be construed in harmony with judicial interpretations of comparable federal antitrust statutes."

2. HB 164 states:

> Sec. 45.51.010(c) In deciding whether conduct unreasonably restrains, monopolizes or attempts to monopolize trade or commerce, the determination of the relevant market or effective area of competition shall not be limited by the boundaries of this state.

It would seem to be understood that where the relevant market goes beyond the State of Alaska that relevant market should be considered. Thus, this paragraph would seem to be

unnecessary, unless the promoters are seeking to use it for the purpose of reading in a legislative intent not to prosecute multi-state companies located in Alaska.

For example, the oil companies have operations in the other northwest states. In those other states there is a competitive oil and gas distribution situation. In Alaska, however, there are only a few competitors of which Standard Oil of California is clearly dominant. Normally one would interpret the relevant market for gasoline and oil products to be a market in which the consumer has the opportunity to choose from which to purchase. However, by adding this provision those companies could argue, assuming they were accused of monopolization, that since their total market is competitive they are exempt from the Alaska antitrust law.

Reasoning such as this could destroy the usefulness of the antitrust law in the case of multi-state corporations but retain its usefulness for corporations which operate only in Alaska. Such discrimination does not seem reasonable and thus the provision, paragraph (c), would be better left out.

3. AS 45.51.020 refers to contracts voidable. This provision has a danger of allowing businessmen to use antitrust laws as a means of avoiding normal contract responsibilities. Thus, where such a provision is included, it should be very specific. Here again I suggest the Justice Department provision:

> A contract or agreement in violation of any provision of this chapter is voidable by either party as to any future performance by either party, except for payment for goods already received, and such future performance, except for payment already received, may not be enforced at law or in equity.

OKH:agm

BB 164

RE: Antitrust Legislation

The United States Department of Justice, Antitrust Division, made some comments on Alaska's proposed antitrust bill. Their revisions were based on the following premises:

> The goal of a state antitrust law should be effective enforcement at a low cost. This implies several points. First, excessive detail and complexity should be avoided in draftsmanship. Complex statutes have tended to bog down antitrust enforcement in many states, as the courts have attempted to deal with a maze of overlapping or conflicting statutory provisions of great specificity. Therefore, in view of this experience, we feel that simplicity without omission should be the goal in a statute which attempts to create a basis for effective state antitrust enforcement. Secondly, the substantial existing body of federal case law should be utilized by the states, wherever appropriate. This can be done by use of substantive statutory provisions following closely the federal provisions or by statutory language and legislative history making clear the intent of the Alaskan legislature to adopt this body of federal jurisprudence. This

should be of significant assistance to the courts of the state as they attempt to apply the law to specific factual situations. Thirdly, the importance of relief and investigative provisions in an antitrust statute should not be underestimated; state enforcement officers must be provided with effective means by which to discover violations of the statute if vigorous enforcement is to be achieved. Finally, the private sector, properly motivated, can be a significant aid to state enforcement. The theme of these very general comments will reoccur in the ensuing discussion of specific provisions of the proposed statute.

This principles are sound and are given to us by an organization with much more expertise than we can find within the state.

Attached is a draft of an antitrust bill using provisions they have suggested plus a few additions especially pertinent to Alaska.

OKH:agm

Attachment

PROPOSED AMENDMENTS TO HOUSE BILL NO. 164, entitled
"An Act prohibiting monopolies and combinations in
restraint of trade."

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

Section 1. AS 45 is amended by adding a new chapter to read:

CHAPTER 51. MONOPOLIES: RESTRAINT OF TRADE.

ARTICLE 1. SUBSTANTIVE PROVISIONS.

[Amend section 10 as follows:]

Sec. 45.51.010. UNREASONABLE RESTRAINTS OF TRADE OR COMMERCE, MONOPOLIES PROHIBITED. (a) Every contract, combination in the form of trust or otherwise, or conspiracy, in unreasonable restraint of trade or commerce is unlawful.

(b) It is unlawful for any person to monopolize or attempt to monopolize trade or commerce in the relevant market for the specific purpose of excluding competition or controlling, fixing or maintaining prices.

(c) In deciding whether conduct unreasonably restrains, monopolizes or attempts to monopolize trade or commerce, the determination of the relevant market or effective area of competition shall not be limited by the boundaries of this state.

[Delete present sections 20 through 50.
Renumber as section 20 and amend present
sections 60, 70 and 80 as follows:]

Sec. 45.51.020. EXEMPTION OF LABOR ORGANIZATIONS, CERTAIN COOPERATIVE ORGANIZATIONS, CERTAIN SPECIALLY REGULATED INDUSTRIES AND COMMERCIAL FISHING. (a) This chapter does not forbid the existence or operation of labor, agricultural or horticultural organizations created for the purpose of mutual help, and not conducted for profit, or forbid or restrain members of such organizations from lawfully carrying out the legitimate objects thereof; nor are those organizations or members illegal combinations or conspiracies in restraint of trade under the provisions of this chapter.

(b) Nothing contained in this chapter shall be construed to forbid actions or arrangements authorized or regulated under those acts of the United States which exempt such actions or arrangements from the antitrust laws of the United States or under the following statutes of this state.

(1) AS 10.15
(2) AS 21.87
(3) AS 31.05.100
(4) AS 31.05.110

(c) Persons engaged in the business of commercial fishing may act together in associations, corporate or otherwise, with or without capital stock, in collectively handling and marketing fish without violating the provisions of this chapter. Such associations may have marketing agencies in common; and such associations and their members may make the necessary contracts and agreements to effect such purposes.

ARTICLE 2. ENFORCEMENT PROVISIONS.

[Delete present section 100. Renumber and amend present section 110 as follows:]

Sec. 45.51.100. SUITS BY PERSONS INJURED. (a) A person (other than a governmental body, the state, or any of its political subdivisions or public agencies) injured in its business or property by reason of a violation of the provisions of this chapter

(1) may recover actual damages sustained, and reasonable attorneys' fees and the costs of the suit. The court in its discretion may in cases of wilful and substantial violations increase damages to an amount not in excess of three times the actual damages sustained; and

(2) may bring proceedings for injunctive relief, temporary or permanent, against threatened loss or damage to his property or business by a violation of this chapter, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings; and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate,

a preliminary injunction may issue. If the court issues a permanent injunction, the plaintiff shall be awarded reasonable attorneys' fees together with the costs of suit.

(b) The remedies provided in this section are cumulative and may be sought in one action.

[Renumber as section 110 present sections 120 and 130, and amend as follows:]

Sec. 45.51.110. SUITS BY STATE OR LOCAL GOVERNMENT. (a) The attorney general may institute proceedings to prevent and restrain violations of this chapter. In addition to granting prohibitory injunctions and other restraints for a period and upon terms and conditions necessary to deter the defendant from, and insure against, the committing of a future violation of this chapter, the court may grant mandatory injunctions reasonably necessary to restore and preserve competition in the trade or commerce affected by the violation. The court may issue temporary restraining orders or prohibitions. The court may enter consent decrees.

(b) A governmental body, the state, or any of its political subdivisions or public agencies injured in its business or property by reason of anything forbidden in this chapter may recover the actual damages by it sustained and the cost of

suit, as determined by the court. The attorney general on behalf of the state or any of its political subdivisions or public agencies, or the political subdivision or public agency at the direction of, or with the permission of the attorney general, may institute this action or damage action for a violation of comparable federal law.

[Renumber present section 140 as 120.]

Sec. 45.51.120. JURISDICTION OF COURT. Actions allowed by this chapter shall be brought in the superior court.

[Renumber as section 130 present section 150, and amend as follows:]

Sec. 45.51.130. PENALTY FOR VIOLATION. (a) A person who violates section 10 of this chapter, including any principal, manager, director, officer, agent, servant or employee, who has engaged in or has participated in the determination to engage in an activity that has been engaged in by any association, firm, partnership, trust or corporation, which is in violation of section 10 of this chapter, shall if an individual pay to the state a civil penalty of not more than $5,000, and shall if an association, firm, partnership, trust or corporation pay to the state a civil penalty of not more than $20,000.

(b) Whenever a corporation violates section 10 of this chapter, the violation shall be deemed to be also that of the individual director, officer or agent of the corporation who has authorised, ordered or done any of the acts constituting in whole or in part such violation.

[Renumber as section 140 present section 160, and amend as follows:]

Sec. 45.51.140. JUDGMENT IN FAVOR OF THE STATE AS EVIDENCE IN ACTION: SUSPENSION OF LIMITATION. (a) A final judgment for injunctive relief or civil penalties brought by the state under this chapter to the effect that a defendant has violated this chapter shall be prima facie evidence against such defendant in any action or proceeding brought by any other party against such defendant under this chapter or by the state, a city or a borough under sec. 110(b), as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto.

(b) This section does not apply to consent judgments or decrees entered before any testimony has been taken.

(c) Whenever a proceeding is instituted by the state to prevent or restrain violations of this chapter, or to recover civil penalties therefor, the running of the statute of limitations in respect of each private right of action arising under sec. 100 (a) (1) of this chapter, and based in whole or in part on any matter complained of in the proceeding, shall be suspended during the pendency thereof, including any appeal, and for one year thereafter; provided, however, that whenever the running of the statute of limitations in respect of a cause of action arising under sec. 100(a) (1) of this chapter is suspended hereunder, any action to enforce such cause of action shall be forever barred unless commenced either within the period of suspension or within four years after the cause of action accrued.

[Renumber as section 150 present section 170, and amend as follows:]

Sec. 45.51.150. LIMITATION OF ACTIONS. An action under this chapter is barred unless commenced within four years after the cause of action accrued, except as otherwise provided in sec. 140 of this chapter. No cause of action barred on the effective date of this chapter is revived by this chapter.

ARTICLE 3. GENERAL PROVISIONS.

Sec. 45.51.200. DEFINITIONS. In this chapter

(1) "article of trade" includes, but is not limited to, goods, merchandise, natural resources, whether or not severed, extracted, harvested or produced, agricultural products, produce, choses in action, commodities, and any other article of commerce; it includes trade or business in service trades, transportation, insurance, banking, lending, advertising, bonding and any other business whether or not that business furnishes a personal service;

(2) "purchase" or "buy" includes "contract to buy," "lease" and "contract to lease";

(3) "sale" or "sell" includes "contract to sell," "lease" and "contract to lease."

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / POUCH K — STATE CAPITOL
JUNEAU 99801

April 6, 1971

The Honorable Walter M. Hickel, Chairman
House Commerce Committee
Alaska State Legislature
Rm. Y, Capitol Building
Juneau, Alaska

Re: House Bill No. 104, Your Letter of March 26, 1971 Requesting Comments

Dear Representative Hickel:

I regret that our shorthanded staff and the many requirements on this Department have prevented me from answering this letter earlier and from answering it in the detail which we would prefer. However, there is some question whether much time need be spent lingering over those provisions which are taken from the historic body of federal anti-trust law. The objections made have been made in one form or another since 1890 and have been discussed more adequately on many previous occasions than I could do here. The basic opposition to anti-trust legislation comes not from individuals or corporations who feel that a particular section is onerous, unwieldy or unworkable, but from those who feel that no anti-trust legislation should be adopted.

With regard to the specific points raised:

1. "Passage of HB 104 can only unreasonably stifle economic growth and development of the resources in Alaska."

This criticism is based on the premise that the opportunity to engage in combinations in restraint of trade tend to monopolize industry in the State of Alaska have contributed to the economic growth and development of

the State. Nothing could be further from the truth. [illegible] is a predatory, non-free enterprise system enactment. It is based on the assumption that economic growth and development will take place at the optimum rate if the State acts to inhibit the activity of those who prefer not to trust in the workings of the laissez-faire system, but wish to establish new ground rules.

2. "S 104 makes every combine operating on the North Slope illegal. The same is true for the Alaskan pipeline."

I am sure this is not true, otherwise, the federal authorities would have moved in by now. They will certainly be so later as the product of this effort moves into interstate commerce. Needless to say, I could not rule on the legality of any arrangement on the North Slope in the absence of it being specifically brought to my attention. However, from my existing status familiarity with operations in that area, I know of no obvious violations. The actual [illegible] operators on the North Slope and Alyeska Pipeline Service Company make it all but impossible for [illegible] to avoid the impact of federal anti-trust. I would submit that these major companies are quite careful to conduct themselves with circumspection in the vicinity of the subject of these laws.

3. "S 104 exempts commercial fishing from the [illegible] of the act. For economic and growth reasons, it would seem sound to exempt the [illegible] industry."

I am sure that the commercial fishermen of Alaska [illegible] this analogy with [illegible]. The reason the commercial fishing industry is exempted is that commercial fishing in Alaska is [illegible] of thousands of very small operations. The commercial fisherman is much more analogous in his relations to [illegible] to the individual workman who, in effect is selling his own labor. At the same time, his prosperity [illegible] upon his ability to bargain with far larger economic units [illegible] the fish processing industry. The exemption for the fishermen is put in the act for much the same reason labor unions are exempt under the federal act.

4. As to S.1.010 should improve on the Sherman Act by inserting, the word "unreasonable" before "restraint of trade."

As the commentator points out, for 60 years the Supreme Court of the United States has been holding that this is generally what the 1890 Legislature intended. There is an enormous advantage in adopting the wording of a statute from another jurisdiction in toto. With that wording, the patina of interpretation of the courts grown up over a period of years is accepted. When that language is altered, it opens the door to new arguments about what the new legislative enactment might be. All anti-trust lawyers know what the Sherman Act prohibition means. We would have a whole new line of litigation testing the meaning of the new act if this wording was changed.

5. "The specific enumeration of prohibited acts under proposed AS 45.51.020 adds nothing and may be subject to misconstruction by the courts."

The absence of these provisions might also be misconstrued by the courts. Again, these are provisions from federal anti-trust law and our courts might draw some negative implication from their absence.

Any act of this nature, which is now part of the entire common law of anti-trust, represents some kind of balance between general terms and specific terms. The meaning of the former is really restricted to lawyers skilled in the law, knowing how the courts have interpreted the terms, would have much less of the nature of their application. Specific prohibitions can be addressed to specific practices. They are warnings to industrialists as well as lawyers, as to specific matters which the general proposition contemplates.

In addition, the decisions give additional details with regard to the specific provisions which also would be helpful to be referred to as the common law develops. To now borrow only the specific items of prohibited practices without the general definitions and specifications which have been based on practices of the past may be misleading. These provisions are intended to apply in Alaska.

6. "Proposed AS 45.51.040 is ambiguous. It does not state that it may be intended to exclude bona fide cooperative conspiracies from coverage. This is explicitly provided under federal law, parents and their subsidiaries

...have been found to have conspired. The provision should be deleted and rewritten to exclude from the act's coverage single business entities and their subsidiaries.

A careful reading of the provision does not find the exclusion anywhere near so broadly. The provision is intended to exclude from the impact of the section agreement between partners in the same business entity, corporate officers, etc. The provision grants no exclusion to "single business entities and their subsidiaries." The author of the provision obviously wants to expand the scope of the exemption.

7. "Proposed AS 45.51.040 contradicts itself by ... certain types of conduct while at the same ti... ...the effects of the permission with the proviso that ... conduct is lawful 'unless the effect shall be to substantially lessen competition or create a monopoly.'"

There is a substantial difference between declaring certain conduct per se legal and declaring that it is not per se legal. The purpose of the proviso is to prevent people from stretching covenants not to compete, etc., beyond their legitimate purposes as instruments of monopoly.

8. "Proposed AS 45.51.040 is an ex post facto law."

This provision merely recognizes that the ... of a monopoly position or the maintenance of ... ...on which substantially lessens competition may be ... to the act of acquisition which pre-dates the effective ... of the act. The maintenance of the monopoly or the ...ination on trade must be subsequent to the effective ... of the act for the act to be effective on it.

9. "The effect of proposed AS 45.51.040 ... ...an acquisition of a single jobber, single dealer, or ... single service station may well be illegal in some ... village, or hamlet."

First, the court will have to define the relevant ... through interpreting "in any section of the state." ... a specific set of circumstances, where the market ... ascertainable only as the particular town or village, ... acquisition may be in violation of the act. However, ... the years a number of doctrines have grown up aroun...

the anti-trust laws which preserve the public interest in the application of Section 7 of the Clayton Act, from which it is taken, and it is obvious that a number of these doctrines will be applied to local Alaska conditions. Perhaps new doctrines will be promulgated following the rule of reasonableness. One of the most obvious exceptions is the "failing business doctrine" which allows an acquisition even though it may result in a monopoly or lessening of competition when the business being acquired is in poor shape. Other cases have held that where the convenience and needs of a community to be served by a merger clearly outweigh any anti-competitive effects, the proposed merger may be made.

16. "Subsection (a) of proposed AS 45.51.060 prohibits mergers the effect of which 'may be substantially to lessen competition'. Yet, under (b), the court is to order divestiture if the court finds that the effect of an acquisition is substantially to lessen competition.' Thus, in one case, the test of illegality concerns probabilities whereas the other depends upon a finding of actual substantial lessening of competition."

Statutes frequently distinguish between what is prohibited before action by injunction and what a court will authorize to be undone after the act has been done. There is no necessary inconsistency here between subsection (a) which allows injunction where the effect of the acquisition may be to lessen competition, but subsection (b) will only undo the merger which has already taken place where there is a finding that the merger has in fact substantially lessened competition, etc.

17. "Proposed AS 45.51.050 is broader than the federal enactment."

The application of the principles of Section 8 of the federal Act from which this is taken, obviously will have to be modified to apply to conditions prevailing in Alaska. Presently interlocking commercial ventures of almost any description are outside of the limitation on the conduct of "directors" and the conduct of officers, partners, or trustees only recognizes the corporate reality. A dual officer is far more influential in obtaining the elimination of competition by agreement than an interlocking director. Even in the wider Alaska conditions of today, the application of this section to multi-million dollar

...orations. A limitation of convenience under the federal ... the effects of conduct limiting competition can be as severe in the smaller, isolated markets of Alaska with corporations under the million dollar line.

12. "Proposed AS 45.51.050(b) would prevent a representative of a distributor from being represented on the board of a retail subsidiary."

This would sometimes be true if the subsidiary and the distributor were in competition and if agreement between them would eliminate that competition. We see nothing offensive about such a provision. I would gather that the criticism of the attorney that his chart does ... with its own retailers.

13. "The statute should provide that a successful defendant is entitled to costs or attorney's fees ... these spurious lawsuits and legal blackmail will be discouraged." (directed at proposed AS 45.51.110.)

This criticism is evidently based on ignorance of ... Alaska law which entitles the prevailing party to recover his costs including an attorney's fee, whether ... plaintiff or defendant.

14. "AS 45.... allows the State to recover ... damages under it ... state although the federal ... can only recover actual damages under the federal ... here can recover treble damages under the ... statute under existing law.)"

This is a policy question for the legislature. ... damages provisions are intended to be an additional deterrent against violations of the act which would ... others. If the legislature believes that ... damages would be a sufficient deterrent, then it ... amend this law to suit the criticism raised.

15. "Proposed AS 45.51.120(b) will frighten ... States out of Alaska because it gives the Attorney General the authority to undertake class actions."

I believe that much of this authority, as applied ... anti-trust, is available to an Attorney General ... The purpose of this kind of provision is to avoid a ... of suits which clog the courts and to join

...e causes of action of a number of plaintiffs whose individual damages may be too small to justify the expense of a ...wyer so that they will recover the damages done to them. ...e see no policy reason why this authority should be stricken. ...s unlikely, to say the least, that any business is going to be so intimidated by this section that it will refrain ...om doing business in Alaska. Of course, any Attorney General can go on a rampage under any existing law in such a manner as to do damage to the business climate. The political system acts as an effective restraint on this type of conduct.

16. "The penalty provision is broader than the Sherman Act since it provides for criminal penalties for the full range of violations."

This is necessary because, through the Federal Trade Commission, the federal anti-trust laws provide for a wide range of administrative enforcement techniques including criminal penalties for the violation of administrative orders. As a practical matter, no Attorney General would find it feasible to bring a proceeding for the enforcement of the criminal penalty in an 040 or 050 situation and no court is going to enforce criminal sanctions in such cases without proof of specific intent.

17. "The use of consent judgments in evidence in ...ivil actions is more onerous than the equivalent federal ...rovision."

True, the state law is stricter. As the letter suggests, this aspect of federal law has been quite controversial but the argument has had two sides. There has been criticism of the federal provision as giving the Attorney General too much leeway to excuse violations at the expense of injured parties.

18. Proposed AS 45.51.180 is not included in the ...rrent draft and the criticism is therefore irrelevant.

I hope this information is of some service to you.

Sincerely,

John E. Havelock
Attorney General

...ajt

HB-164

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / POUCH K — STATE CAPITOL JUNEAU 99801

April 23, 1971

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

Re: Anti-Trust Legislation

Dear Representative Moran:

We have reviewed the proposed change in HB 164 and the statement of James Waters to the House Judiciary Committee on April 7, 1971 and have the following comments:

In Section 10, of the proposed amendment to the legislation, an attempt is made to define the marketing area to determine the reasonableness or unreasonableness of the restraint of trade. In this connection, it is suggested that in deciding whether conduct reasonably restrains trade or commerce determination of the relevant market or effective area of competition should not be limited by the boundaries of this state.

It would be the position of the Department of Law, that the legislation should not contain an express invite to enlarge marketing areas beyond the State of Alaska. Alaska is geographically separate from the rest of the continental United States and has shown unique marketing problems. The area can best be developed through the use of case law and if the defendants are able to persuade the court that the actual marketing area is indeed broader than the State of Alaska, it should be handled through the judicial process on a case by case basis. It is therefore our recommendation that no definition of marketing area be included in the legislation.

The comments relative to sections 20, 30, 40, and 50, can be summarized by stating: that these sections set forth certain types of prohibited activity. Anti-trust laws require judicial interpretation which sets

forth the specific and basic guidelines for construction. It must be presumed that the courts will follow and interpret the legislation in the light of economic and practical realities. This fact is noted in the statement of Mr. Waters wherein he indicates that the Supreme Court has placed the word "unreasonable" in front of all violations.

It is also suggested in the proposed amendments to these sections, that the State of Alaska not adopt the legislation, as there is federal legislation and the matter should be left to the staff of the Federal Government. The primary purpose of a state adopting its own anti-trust laws is to regulate those activities which are not large enough in scope for the federal intervention, or which do not involve inter-state commerce. In addition, some cognizance must be given to the fact that Alaska's geographical location and economic base which may result in cases not sufficiently large to interest the justice department, or which are not within the Clayton Act, because of the lack of assets. However, these cases would nevertheless under Sections 20-50 of proposed legislation, be actionable under the proposed State Anti-trust law.

The remainder of the comments in Mr. Waters' bill go to the remedies available, which include section 100 and subsequent sections. It should be noted in here that again an obscure example is cited for the unenforceability of contracts made in violation of the State's proposed anti-trust law. If these and the subsequent suggestions for modification were adopted, the act in summary would provide for the following remedies:

> The contract, although made in violation of the proposed State Anti-trust law, would still be enforceable.
> The treble damage provision, except for wilful and substantial wrongs, would be eliminated and actual damages awarded.

Under these provisions it would appear that there is little, if any, incentive to comply with anti-trust laws as the violation only requires the return of those actual damages sustained with the contract still enforceable.

Section 120 of the Act, contains various authority by the Attorney General to bring suit on behalf of others. Such a provision could be desirable in that the Attorney

General would have the information available, which may not be available to other parties or they may not even be aware of the action. However, this should be a matter of legislative determination on whether or not they wish the Attorney General to exercise such authority. It should be noted that in the basic area of consumer protection, such as the legislation last session on the consumer protection act, clearance by the Attorney General is required prior to a class action also the act recognizes the Governments duty to protect its private citizens from certain wrongdoing.

From the foregoing it is the Department of Law's position that:

1. The legislation should not set forth the proposed market areas, but they should be left to a matter of judicial determination on whether or not a market area exceeds the physical boundaries of the State of Alaska.

2. Sections 20,30,40, and 50 should be retained in the Act as a legitimate State function within the State of Alaska as pointed out many corporations which for one reason or another are not subject to sanction by the Federal Trade Commission or the Anti-trust Division of the Justice Department, because of geographical and economical problems, would be subject to the State of Alaska jurisdiction.

3. Contracts made in violation of the Act should be unenforceable and the treble damage provision should be maintained in order to insure adequate penalty for violation of the Act.

Very truly yours,

JOHN E. HAVELOCK
ATTORNEY GENERAL

By
Donald J. Beighle
Assistant Attorney General

JEH:DJB:dmt

HB-164

FAULKNER, BANFIELD, BOOGREVER & DOOGAN
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PHONE 586-2210
JUNEAU, ALASKA 99801

March 12, 1971

The Honorable Jalmar M. Kerttula
Chairman, Commerce Committee
House of Representatives
Juneau, Alaska 99801

Dear Mr. Chairman:

Re: H.B. No. 164, Anti-Trust Bill

I previously wrote to you on February 23, as a representative of American Mutual Insurance Alliance, stating I would investigate the impact which H.B. No. 164 would have on the insurance industry in Alaska and report to you.

Congress has the right to regulate the insurance industry by reason of the fact that it is engaged in interstate commerce. In 1945, it passed the McCarran-Ferguson Act (15 USCA 1011, et seq), which provides that the business of insurance shall be subject to the laws of the several states which relate to the regulation and taxation of the industry. It also provided that the Sherman Anti-Trust Act, the Clayton Act, the Federal Trade Commission Act and the Robinson-Patman Anti-Discrimination Act would not apply to the business of insurance until June 30, 1948, and after that date said Acts shall be applicable to the business of insurance "to the extent that such business is not regulated by state law." Therefore, the states have the right to regulate monopolies and combinations in restraint of trade in the insurance industry. Many states have anti-trust statutes such as proposed by H.B. 164, but New York is the only state which did not exempt the insurance industry. However, when New York did enact such a law on January 1, 1970, it specifically exempted the setting of rates through rating bureaus. The reason various states other than New York have not attempted such regulation is that the Insurance Departments have complete control over discrimination, unfair trade practices, etc., under the Insurance Code. The Insurance Departments, therefore, have control insofar as they care to exercise it, but they recognize that rating bureaus are an absolute necessity. There are other practices in the industry which might be said to be combinations in restraint of trade, such as formulating and adhering to standard insurance policies, the content of which are, in turn, under the control of the State Commissioners. The State Commissioners have their own

association to which the industry goes for guidance with the result that the standard fire insurance policy is used everywhere and any deviations from it can be used only with the approval of the State Director of Insurance. You can understand what a chaotic situation would be created, especially for the consumers, if you had 200 different types of insurance policies in Alaska and how difficult it would be for the Director to regulate the industry.

The reason the companies use rating bureaus to recommend how much they should charge and the State Commissioners use the same bureaus to ascertain what they should allow to be charged, is because the loss experience of all the companies in an area especially under standard policies, is more reliable for rate making than individual loss experience. Therefore, our Director is a subscriber to and pays to support the various bureaus which specialize in rate making for particular purposes. These must be continued, but H.B. No.164 would prohibit such use of, rating bureaus.

From the foregoing, I think it is evident that the industry should be exempt from H.B. No. 164 since it is completely regulated in the same respects by the Insurance Code. If the state should decide to do like New York and prohibit monopolies and regulate the insurance industry under a bill of this type, then it is necessary to work out some specific exemptions such as has been done in New York. Whereas New York is the state in which most of the big companies are incorporated and it is the insurance center of the Western Hemisphere, Alaska is at the opposite end of the spectrum and is in no position to competently regulate the insurance industry except through its Director of Insurance. Therefore, unless the industry is exempt from the provisions of this bill there is a need for specific amendments which can be patterned after the recent New York law. I am furnishing to your staff and particularly Mr. Rhode, a copy of a report made by Mr. Edwin M. Zimmerman, of Washington, D.C., who talked on "Insurance Underwriting Under Antitrust" at a meeting of the 1970 Mutual Insur-

ance Technical Conference at Philadelphia, last November. It will give him some idea of the complexity of the subject of trying to regulate insurance companies under limited exemptions such as are contained in the New York Act.

Yours very truly,

N. C. Banfield

c.c. Mr. Charles A. Brown
Mr. Kenneth H. Nails
Mr. F. O. Eastaugh
Mr. W. W. Fritz
NCB:k

No. 2

HB-172

IN THE_____COURT OF THE STATE OF ALASKA

_____JUDICIAL DISTRICT

AT_____

_____ _____ Plaintiff, vs. _____ _____ Defendant.	Civil Action No._____ WRIT OF EXECUTION ON DEFAULT JUDGMENT (Or Where Debtor Not Represented by Counsel)

THE STATE OF ALASKA

TO: Any Officer Serving Process

GREETINGS:

Whereas, a Judgment has been issued by this Court on the_____day of_____, 19____, adjudging that_____, judgment debtor, is justly indebted to_____, judgment creditor, in the amount of $_____,

NOW THEREFORE,

You are hereby COMMANDED to seize and safely keep the personal property subject to execution of the said Judgment Debtor, and if sufficient personal property cannot be found, to seize and safely keep real property of the Judgment Debtor subject to execution belonging to the said Judgment Debtor when the Judgment becomes a lien or thereafter, so that the said property may be held in custody of the Court for the period prescribed in A.S. §09.35.035 and that thereafter final execution may be made thereon, and of this Writ make due service and return.

AND IT IS ORDERED FURTHER that if you find earnings owed to the said Judgment Debtor you shall not seize more

than the amount permitted by 15 U.S.C. §1673 and the regulations prescribed thereunder.

DONE at_____, Alaska, this_____day of _____, 19____.

_____
Clerk of Court

By_____
Deputy Clerk

JUDGMENT DEBTOR FORM

IN THE _____ COURT FOR THE

STATE OF ALASKA _____JUDICIAL DISTRICT

_____
_____,
Plaintiff,

vs. CIVIL ACTION NO._____

_____
_____,
Defendant

NOTICE AND ASSERTION
OF EXEMPTIONS

PART I: NOTICE OF EXECUTION

The _____ Court of the State of Alaska, _____ Judicial District, has issued a judgment that you must pay to _____ the sum of $_____: A Writ of Execution on the Judgment has been issued against you, a copy of which is attached to this form. This Writ is an order of the Court by which your property can be taken from you and sold in order to pay the Judgment and any court costs which have been assessed against you.

The following property, believed to be yours, has been seized and is now being held by the Court:

DESCRIPTION	PERSON IN POSSESSION AT TIME OF LEVY	DATE OF LEVY

Final sale or disposition of this property will be sought FIFTEEN (15) DAYS after you have received this Notice.

Some of the property listed may be exempt from execution under either State or Federal law. A general explanation of these exemptions is given in Part II of this form. If you have any questions or desire a more detailed explanation after reading Part II carefully, you should contact your lawyer, your local legal services office, or other local agency providing legal advice.

If any of the property listed above is exempt, you may prevent loss of that property by doing all of the following things within FIFTEEN (15) days of the time you receive this Notice:

Step 1: Fill out Part II of this form, following the directions carefully. Please type or print carefully. This is to notify the court of your property you claim as exempt.

Step 2: Read carefully the paragraph headed STATEMENT and sign the form.

STEP 3: Mail or deliver one copy of the form to this address:

Clerk of Court

_____, Room_____

_____, Alaska _____

The other copy is for you. Keep it for your records. Keep also the copy of the Writ of Execution which came with the form.

Step 4: Fill out the notice form which came with this form, and mail it as instructed by the information sheet.

If these steps are followed within FIFTEEN (15) days of the date you receive this Notice, the Court will hold a hearing to determine whether the property you claim as exempt is actually exempt under the law. You will be notified of the time and place of the hearing, to which you should come.

NOTE: IF YOU DO NOT FILL OUT PART II OF THIS FORM AND TURN IT IN TO THE CLERK OF THE COURT, YOU WILL LOSE YOUR EXEMPTIONS, AND ALL OF THE PROPERTY LISTED WILL BE SOLD OR DISPOSED OF.

PART II: EXEMPTIONS

The word "property" as used in this form means anything you own, including such things as:

a. Real Estate;

b. Personal property of any kind (whether in your possession or held by someone else);

c. Your money (whether in your possession or in a bank);

d. Money that is owed to you (such as your wages that have not been paid yet).

Property subject to execution or garnishment means anything the Court can take from you to pay the Judgment; exempt property is property which you may keep, provided you claim your exemption on this form.

You do not have to claim your exemptions. If you do not wish to claim any, simply do nothing further with this form, and all of the property listed in Part I will be sold or disposed of. If you do not wish to claim some particular exemption, simply leave that item blank on this form.

This form is used to claim exemptions only for property listed in Part I. The Writ of Execution is not being used to take any of your property which is not listed.

If the property listed in Part I includes any of the following items, you may claim your exemptions by filling in the blanks according to the directions accompanying each item.

A. INCOME:

You may claim at least some of your income (wages, salary, etc.) as exempt. There are two laws which provide this kind of exemption: State and Federal. You must figure your **State Law** exemption yourself in Item I below. Your **Federal Law** exemption is an automatic exemption, because the Writ of Execution does not allow the exempt part of your income to be seized.

Item 1: How to Figure Your Exemption Under State Law.

a. Look back to the list of property in Part I of this form and find the date of levy listed for your wages, salary or other income. Count back 30 days from that date.

b. Add up all of the wages, salary, tips, or commissions you were actually paid (take-home pay after withholding) for work done during those 30 days. Write the total here: $_____

c. Add up all money you received during those 30 days from any other source except wages, salary, tips, or commissions. For instance, if you are renting out any property, receiving interest on any money, receiving stock dividends, etc., add these items in. Write the total here: $_____

d. Add up all of the money (take-home pay) which you should have been paid for work done during those 30 days only, which you have not yet received (unpaid back wages, etc.). Write the total here: $_____.

e. Add up all of the money which you paid out during those 30 days which you were required to pay by order of any court. Include such things as alimony, child support, payments on a property settlement or any other court judgment. Write the total here: $_____.

f. Add the amounts in blanks b, c, and d together. Write the total here: $_____.

g. Subtract the amount in blank e from the amount in blank f. Write the result here: $_____.

h. If you <u>are</u> the <u>head of a family</u>, and your family is supported either partly or completely by your income, your <u>State Law</u> exemption is the amount in blank g, <u>unless</u> that amount is <u>more</u> than $350.00. If the amount shown in blank g is <u>more</u> than $350.00, your state law exemption is $350.00.

If you <u>are</u> the <u>head of a family</u>, write your state law exemption here: $_____. If you are <u>not</u> the head of a family, skip this blank.

i. If you are not the head of a family, your state law exemption is the amount shown in blank g, unless that amount is more than $200.00. If the amount in blank g is more than $200.00, your State law exemption is $200.00.

If you are not the head of a family, write your state law exemption here: $_____. If you are the head of a family, skip this blank.

Item 2: Your Automatic Exemption under Federal Law.

Under Federal law, you must get a certain automatic minimum exemption on your wages, salary or other earnings. Under the Writ of Execution, only that part of your earnings which is not exempt under Federal law should be listed in Part I. In order for the court to check on this and make sure that you have received your automatic federal exemption, please fill in these blanks:

a. If you are employed, check here how often you get paid.

☐ Once each week

☐ Once every two (2) weeks

☐ Twice each month

☐ Other (explain)_____

_____

b. Each time you get paid, how much money do you get? Write the amount here: $_____.

c. Do you get any pension or retirement payments?

☐ Yes

☐ No.

d. If you checked "yes" in blank c, how often do you get your pension or retirement payments? _____.

If you checked "no" in blank c, skip this blank.

e. If you checked "yes" in blank c, how much money do you get each time you get a pension or retirement payment? Write the amount here: $_____. If you checked "no" in blank c, skip this blank.

B. CHILD SUPPORT:

Item 1. Payments to court trustee.

If you have been ordered by any court to pay child support to a court trustee, you may claim this money as exempt by filling in these blanks.

a. Write here how much you pay to the Trustee each month: $_____.

b. Fill in the title of the court which ordered the payments: _____Court of the State of _____.

c. Write here the date of the decree or order: _____, 19____.

d. Write here the case number of the child support case: _____.

If you do not make your payments to a court trustee, you may not claim any exemption under Item 1.

Item 2: Child Support Payments Made by Your Employer.

If any court of Alaska has ordered child support payments to be withheld from your pay and paid to a court trustee or clerk of the court by your employer, you may claim these payments as exempt by filling in these blanks:

a. How much is each payment: $_____.

b. How often is the payment made: _____.

c. Fill in the title of the court which ordered the payments: _____ Court of the _____ Judicial District.

d. Write here the date of the decree or order: _____, 19____.

e. Write here the case number of the child support case: _____.

If your child support payments are not withheld from your pay by your employer, you may not claim any exemption under Item 2.

C. PERSONAL PROPERTY:

If any of these things listed below have been seized and listed in Part I of this form, you may claim an exemption for them by checking the boxes which apply:

☐ 1. Books, pictures, and musical instruments belonging to you up to $300 in value.

☐ 2. Wearing apparel (clothing, shoes, etc.) which is needed for your use or for your family's use.

☐ 3. Your watches or jewelry up to $200 in value.

☐ 4. Things which you need to earn a living, including cars, trucks or other vehicles if you use them in your work or to get to work; tools, books you use in your business, office furniture, business files, laboratory equipment, farm animals or other working animals, and a supply of food for the animals. If you claim any of these things, and use them to earn a living, check this box. You will not be allowed to keep more of these things than have a total value of $1,800.

☐ 5. Household goods, furniture, and utensils used by your family; animals used by your family; food for these animals, and food for yourself and your family. The total value of these items which you are allowed to keep will not be greater than $1,200, and you may keep only enough food to

support you and your family, and the animals, for 6 months. If you claim <u>any</u> of these things, check this box. ☐

WARNING: You may <u>not</u> claim an exemption for any of the things in the list above if the Judgment under which the thing seized was for the purchase price of that thing. For example, if the Judgment is for the purchase price of your car (Box 4), you could not claim any exemption for that car; but you could claim any of the other exemptions on the list.

D. LIQUOR LICENSE

Do you own a liquor license?

☐ Yes

☐ No

If you own one, you can claim your liquor license as exempt by filling in the <u>number</u> of the license here:

_____

E. HOMESTEADS

There are three (3) laws under which you might be able to claim a homestead exemption: the State homestead exemption law, and two (2) Federal laws. Read the three items below and check all boxes which you believe apply to you:

<u>Item 1</u>: <u>State Homestead Exemption Law</u>

Please answer these questions:

a) Do you own the home you live in?
If there is a mortgage on your home, you may still answer "yes."

☐ Yes

☐ No

b) Does your family live in your home with you?

☐ Yes

☐ No

c) Is the judgment mentioned in Part I of this form a judgment to foreclose a mortgage or deed of trust on your home?

☐ Yes

☐ No

If you answered "yes" to questions a and b and "no" to question c, you may claim an exemption on your home under state law. If you claim this exemption, check here: ☐

Note: This exemption may not completely protect your home. If your home is worth more than $8,000, it may still be sold or part of your land may be sold. If the entire homestead is sold, you still will get to keep $8,000 of the price under this exemption. If you live outside a town or city and your homestead is larger than 160 acres, only 160 acres is exempt. If you live in a town or city and your homestead is larger than 1/4 acre, only 1/4 acre is exempt under state law.

Item 2: The Federal Homestead Law

Please answer these questions:

a) Do you have a homestead which you obtained under the Federal Homestead Law (by filing and proving-up, etc.)?

☐ Yes

☐ No

b) Is the judgment mentioned in Part I of this form a judgment for a debt which arose before you received a patent on your homestead from the Government?

☐ Yes (If you have not received a patent, check "yes.")

☐ No

If you answered both questions a and b "yes," you may claim an exemption on your entire homestead. If you claim this exemption, check here: ☐

Item 3: Native Homesteads and Townsites

Please answer these questions:

a) Are you an Alaskan Native (Alaskan Indian, Aleut or Eskimo)?

☐ Yes (If you are only part Alaskan Native, you may still answer "yes.")
☐ No

b) Do you have a Native Homestead Allotment from the Department of the Interior?

☐ Yes
☐ No

c) Do you own land in a Native Village under a Restricted Title from the Department of the Interior?

☐ Yes
☐ No

If you have a Native Homestead Allotment or own land in a Native Village under a Restricted Title, your land is not exempt under Federal law, but you may still claim your State homestead exemption (Item 1 above).

F. CEMETERY LOTS

If you own a cemetery lot which you purchased from a cemetery association, and you bought the lot for burial purposes only, you may claim it as exempt. You may not claim this exemption if you are holding the lot to sell again for profit. If you claim this exemption, check here: ☐

G. UNEMPLOYMENT

If you have received Unemployment Payments, you may claim an exemption for all of this money if you have kept it separate from your other money. You may not claim this exemption if the judgment mentioned in part I of this form is a judgment for the price of necessities (food, clothing, rent, etc.) bought by you or your family during the time you were unemployed.

1. If you claim this exemption, check here: ☐

2. Write the amount of your unemployment payments here_____.

H. WORKMEN'S COMPENSATION

If you have received or are receiving Workmen's Compensation payments, please check here: ☐

Write the amount of your Workmen's Compensation payments here_____.

These payments are exempt.

I. INSURANCE BENEFITS

In some cases, the benefits from insurance policies may be exempt from execution. If you have received or are receiving benefits from any of the kinds of insurance policies listed here, please check the boxes which apply to you. At the hearing on your exemptions, the Court will decide whether your benefits are exempt under the law.

Have you received, or are you receiving benefits under any of these kinds of policies (if benefits are due to you, but have not been paid yet, you should check the box which applies):

☐ 1. Group Life Insurance

☐ 2. Disability Insurance

☐ 3. Annuity Policy

J. TEACHER'S RETIREMENT

Please answer these questions:

1. Are you a retired Schoolteacher?

☐ Yes

☐ No

2. Are you receiving teacher's retirement payments from the State of Alaska?

☐ Yes

☐ No

3. If you answered "yes" to questions 1 and 2, write the amount of your teacher's retirement payments here_____.

K. PUBLIC EMPLOYEES' BENEFITS

Please answer these questions:

1. Are you a retired public employee of the State of Alaska?

☐ Yes

☐ No

2. Are you the widow of a public employee of the State of Alaska?

☐ Yes

☐ No

3. Check the block which applies to you if you are receiving any of the following benefits from the State of Alaska:

☐ Public Employees Retirement

☐ Public Employees Widow's Pension

☐ Public Employees Disability Pension (Either occupational or non-occupational).

If you checked <u>any</u> of the blocks under question 3, the money you receive under this program <u>cannot be seized before it is paid to you</u>. You may <u>not</u> claim any exemption for money you have already received from the State.

L. WELFARE

If you are receiving or have recently received any of these kinds of welfare payments, you may claim an exemption for them by filling in the blanks under the kind of payment which you receive:

Item 1. <u>General Relief</u>

a) If you claim an exemption for relief money, check here: ☐

b) Write here the amount of money you receive on relief each month._____

Item 2. <u>Old Age Assistance</u>

a) If you claim an exemption for Old Age Assistance money, check here: ☐

b) Write here the amount of money you receive from Old Age Assistance each month._____

Item 3. Aid to the Blind

a) If you claim an exemption for money you receive as Aid to the Blind, check here: ☐

b) Write here the amount of money you receive each month as Aid to the Blind._____

Item 4. Aid to the Permanently and Totally Disabled

a) If you claim an exemption for money you receive as Aid to the Permanently and Totally Disabled, check here: ☐

b) Write here the amount of money you receive as Aid to the Permanently and Totally Disabled each month._____

M. OTHER FEDERAL EXEMPTIONS

Under Federal law, certain kinds of wages, benefits and other money may be claimed as exempt. Please read the following items and fill in any which apply to you.

Item 1. Federal Employees (Civil Service) Retirement Benefits

a) Are you receiving Federal Employees Retirement Benefits:

☐ Yes

☐ No

If you are, these payments are exempt.

b) How much do you receive each month? $_____

Item 2. Military Annuities

a) Are you the surviving spouse or child of a deceased person who was retired from the armed forces:

☐ Yes

☐ No

b) If you answered "yes" to question a, are you receiving an annuity from the military?

☐ Yes

☐ No

c) If you are, the amount of your annuity is exempt. Write the amount you receive each month here: $_____.

Item 3. Foreign Service Retirement

a) Are you retired from the Foreign Service of the United States?

☐ Yes

☐ No

b) Are you receiving retirement benefits from the Foreign Service?

☐ Yes

☐ No

These benefits are exempt. Write in the monthly amount you receive here: $_____

Item 4. Federal Judicial Survivor's Annuity

a) Are you the widow or child of a Federal Judge who has died?

☐ Yes

☐ No

b) Are you receiving an annuity from the Judicial Survivor's Annuity Fund?

☐ Yes

☐ No

Monthly amount: $_____

These annuities are exempt.

Item 5. Longshoreman and Harborworkers

a) Are you receiving benefits under the Longshoreman's and Harborworkers Compensation Act?

☐ Yes

☐ No

b) If you are, you may claim them as exempt by checking here ☐ and writing in the amount you receive each month here: $_____

Item 6. Veteran's Benefits

a) Do you receive Veteran's Benefits of any kind from the Veteran's Administration?

☐ Yes

☐ No

b) You may claim your exemption for these benefits by checking here: ☐

c) Write the amount of your benefits here: $_____

Item 7. Social Security

a) Do you receive Old Age or Survivor's Benefits under Social Security?

☐ Yes

☐ No

b) How much do you receive each month? $_____

These benefits are exempt.

Item 8. Railroad Retirement Benefits

a) Are you a retired railroad worker?

☐ Yes

☐ No

b) Do you receive benefits under the Railroad Retirement Act?

☐ Yes

☐ No

c) How much do you receive each month? $_____

These benefits are exempt.

Item 9. Railroad Worker's Unemployment

a) Do you receive benefits from Railroad Workers' Unemployment Insurance?

☐ Yes

☐ No

b) How much do you receive each month? _____

These benefits are exempt.

Item 10. CIA Retirement Act

If you are a retired member of the Central Intelligence Agency, and you receive benefits under the CIA Retirement Act of 1964 for Certain Employees, your benefits are exempt. If you claim such an exemption, check here: ☐ Enter the monthly amount of your benefits here: $_____

Item 11. Bankruptcy

If you have ever gone into bankruptcy in the Federal Court, you may have some additional exemptions. In order to help the court decide on this, please answer these questions:

a) Have you ever gone into Bankruptcy in a Federal Court?

☐ Yes

☐ No

b) If you are now involved in a bankruptcy case, check here: ☐

c) If you have gone through bankruptcy in the past write the date your bankruptcy proceeding ended here:_____

d) Write the number of your bankruptcy case here:

_____

e) Where did you go through bankruptcy? (City and State) _____

Item 12. Fishermen and Seamen

a) Are you a fisherman who works on a fishing boat?

☐ Yes

☐ No

b) Are you a seaman?

☐ Yes

☐ No

If you checked "yes" under either a or b, you may claim an exemption for any back wages owed

to you for working on a fishing boat or as a seaman. If you claim this exemption, check here: ☐

Write the amount of back wages owed to you here_____

STATEMENT

PLEASE READ THIS CAREFULLY: I have read this form in full, or had it read to me. The answers I have given are true. I know that I will be required to swear under oath before the Court at my hearing that my answers are true to the best of my knowledge. I also know that the Court must decide, at my hearing, whether the property I have claimed as exempt really is exempt under the law, and that some of my claimed exemptions may not be allowed to me if the Court finds that they are not legally exempt.

_____

Sign your name here

1971 HB 172

JOURNAL

SUPPLEMENT

HOUSE - SUPPLEMENT NO. 3 February 13, 1970

"Judiciary Committee Report

on

HOUSE BILL NO. 363

This bill modifies the procedural requirements for execution upon the assets of a judgment debtor, where no attorney has appeared or where judgment was obtained by default. In such cases many people, particularly the indigent or unlearned, are completely unaware that state and federal law exempt a basic minimum of property from execution to satisfy a judgment. Existing law, however, also permits execution without any notification to the judgment debtor of those rights.

This defeats the established policy of this State, which is intended to enable judgment debtors to retain minimal income and property for their support. A more effective procedure is needed to insure the use of existing exemption rights by indigents and those unaware of their rights.

First, the bill prohibits property from being sold or otherwise disposed of pursuant to a writ of execution for a period of 15 days. This waiting period will not unduly burden the judgment creditor in that assets capable of movement or seizure will be protected by the court.

Second, it provides for a prompt hearing on exemptions claimed, if possible within three days after the judgment debtor has received notice.

Third, the debtor in such cases must receive a notice specifying the property seized or to be sold, which notice must be filed in court with proof of service. The notice must contain an explanation, capable of being understood by a layman, of the various exemptions which exist and a form on which the claimed exemptions may be asserted.

The bill provides that the Alaska Supreme Court prescribe the proper forms to be used. Attached to this report are sample forms, noted with approval by the committee, and it is urged that such forms be adopted by the court to the extent consistent with existing style and form of pleadings and other papers prescribed by the court.

Barry W. Jackson
Chairman
House Judiciary Committee"

SAMPLE NOTICE FORM

IN THE _____ COURT OF THE STATE OF ALASKA

_____ JUDICIAL DISTRICT

Plaintiff,
v.
Defendant.

No. _____

A Writ of Execution has been issued against you. The following property claimed to be your property has been seized:

_____

_____

_____

_____

A copy of the Writ of Execution is attached to this notice.

Final sale or disposition of this property will be sought fifteen (15) days after you receive this notice.

Certain of your property may be exempt from execution under Alaska or federal law. These exemptions are explained below. If the execution is directed against exempt property, you may prevent loss of this property by following these steps within fifteen (15) days:

1. Fill out the attached "Assertion of Exemption" form, indicating which of the property stated in the Writ of Execution you claim as exempt, and sign the form.

2. Mail or deliver the form to the clerk of the court _____, room _____, _____, Alaska.

3. Mail or deliver copies of the form to the plaintiff or his attorney. (See above.)

4. Mail or deliver a copy of the form to any person having possession of any property you claim as exempt. For instance, your employer, if you claim that your wages are exempt.

If these steps are followed within fifteen (15) days of the date you received this notice, the property you claim as exempt will not be disposed of. You will then be notified that a hearing will be held to determine whether the property is exempt.

Explanation of Exemptions:

The form is used only to claim an exemption as to property stated in the Writ of Execution.

If the property stated in the Writ of Execution includes any of the following items, fill out the forms and deliver or mail copies as explained above.

The first item on the form, A.1., should be checked and filled in if the Writ of Execution states that your wages, or other money owed to you, is to be attached. A single person may keep $90 after taxes, in any thirty (30) day period, the head of household may keep $120 after taxes. Therefore, add all the money you have earned, even if you haven't been paid, from all sources in the last thirty (30) days.

Items A.2., A.3., A.4., A.5. refer to exemptions of other personal property. If the Writ of Execution specifies any of these items, check the appropriate places on the form.

Item B. is for exemption of money paid to you as child support under a court order. If the Writ of Execution is against any money you have received for

child support, under a court order, whether you have the money or it is in the bank, this item should be checked.

Item D. is your homestead exemption. If the Writ of Execution states that the place where you live, and which you or a member of your family owns, is to be attached, this item should be checked.

Item E. should be checked if the Writ of Execution is directed to any money you have received as unemployment benefits in Alaska. This may only be used if the money has been kept separate from your other money.

Item F. should be checked if the Writ of Execution is directed to money you have received as an award for Workmen's Compensation in Alaska, even if you have put it in the bank.

Item G. includes various exemptions you are allowed under federal law. If the Writ of Execution states that any money is to be attached and you got the money from a Federal pension, soldier's bonus, railroad retirement or soldier's savings, this item should be checked.

_____
ATTORNEY FOR PLAINTIFF

SAMPLE EXEMPTION FORM

IN THE _____ COURT OF THE STATE OF ALASKA

_____, JUDICIAL DISTRICT

Plaintiff,

v.

Defendant,

No. _____

ASSERTION OF EXEMPTION

Notice of execution was received by me _____ _____ on _____ _____, 19__; Of the property specified in the notice for which execution is sought, exemption is claimed to the following extent, and by the following authority:

A. A.S. 9.35.080

( ) 1. In the past 30 days I have earned $_____, after taxes, from all sources. I therefore claim as exempt the sum of $_____. (In a thirty-day period, you are entitled to $200 as a single person, $150 as head of a household. It doesn't matter if you haven't been paid yet.)

( ) 2. Books, pictures and musical instruments up to $300 in value.

( ) 3. Clothing for the use of the family, or watches and jewelry to $200 in value.

( ) 4. Tools, equipment or vehicles used in earning a living, up to $1800 in value.

( ) 5. Furniture, household goods, utensils or animals used by family, to $12,000 in value.

B. A.S. 9.35.080

( ) The sum of $_____ which was paid to me under order of court as child support. The child support case is No. _____.

C. A.S. 9.35.087

( ) A liquor license owned by me.

D. A.S. 9.35.090

( ) The home owned by a member of the family, to the value of $8,000, consisting of up to 160 acres if outside a city or town, or up to 1/4 acre if within a city or town.

E. A.S. 23.20.405

( ) The sum of $_____ received by me as a benefit under the Alaska Employment Security Act, (unemployment payments), which sum has been kept separate from any other funds.

F. A.S. 23.30.160

( ) The sum of $_____ received by me as a payment of compensation under the Alaska Workmen's Compensation Act,

G. Federal exemptions

( ) Under federal law, the sum of $_____ exempt as _____.
(Exemptions allowed are pension money - 38 USC 454a; soldier's bonus - 38 USC 618, 618c; homestead 43 USC 175; railroad retirement - 45 USC 228 a-y; soldier's savings - 10 USC 906.)

The claim which gave rise to this execution notice is not based on the purchase price of any property claimed as exempt under Items A(2), A(3), A(4), or A(5).

The above statements of indicated exemptions are correct and valid to the best of my knowledge.

DATED at _____, Alaska,

this _____ day of _____, 19 __.

_____

SB-112
HB-172

April 16, 1971

To: Representative Moran

From: Senator Ziegler

Re: SB 112

Bill:

You and I are probably in accord that Chapter 170, SLA 70 is one of the world's most abominable pieces of legislation, although I am sure we were well-intended at the time it was passed.

This bill, of course, refers to execution of judgments, notice to the non-represented default judgment defendant.

The courts, the clerks thereof, the lawyers, plaintiffs and defendants are all in agreement that the bill does absolutely nothing except create work for everybody and that it does not help those people which it was designed to help.

Attached are many documents which will give you all the back-up material in the world you will need to push SB 112 through. It is an absolute repealer of the 70 statute, coupled with a written guarantee of the Supreme Court of the state of Alaska that a new form of summons will be promulgated by the Court which will tell the defendant that in addition to the fact that a default judgment might be taken against him, that he has certain rights and privileges and what he must do to excercise the same.

I could go on, but if you'll take the time to read the attachments, I think you'll agree with me that the obliteration of the statute plus a more comprehensive summons is a better way to go than Harris's HB 172, which merely conforms to existing statutory law but would shorten the 19-page document which plaintiff's counsel must currently complete and serve.

Bob

Alaska State Legislature

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

POUCH V
JUNEAU, ALASKA 99801

Senate

MEMBER
RULES
COMMERCE
LEGISLATIVE COUNCIL

JUDICIARY

February 18, 1971

Alaska State Supreme Court
941 Fourth Avenue
Anchorage, Alaska 99501

Alaska Bar Association
941 Fourth Avenue
Anchorage, Alaska 99501

Anchorage Bar Association
c/o Everett Harris, President
425 G Street
Anchorage, Alaska 99501

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

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

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

Gentlemen:

The legislature in its wisdom enacted into law last year a statute pertaining to executions. Chapter 170 SLA 1970 is now AS 09.35.035.

Almost everyone seems to think that the concept of acquainting a judgment debtor with all his rights is good, but according to all the information the committee can glean, the rigamarole with which everyone must contend to carry out the provisions

of the chapter are much too onerous upon all hands--the plaintiff, the defendant and the judiciary.

I recently introduced SB 112 which would repeal the entire act, thereby putting us back in the position which existed prior to 1970. By no means do I contend that this is the ideal solution, but I think it's preferable to existing law pertaining to executions and the attendant cumbersome procedures.

It has been suggested that the standard form for summonses be modified to spell out in more detail what will happen to a defendant if he doesn't avail himself of his rights. Those rights presumably could be spelled out in less than 19 pages which, of course, a plaintiff must correctly complete and serve upon an unrepresented default defendant under existing law.

The Senate Judiciary committee would appreciate hearing from everyone as to recommended courses of action.

It has also been suggested that a repealer might well be indicated and that the Supreme Court might consider supplementing the repealer with a new form of summons which will alert the debtor to the fact that dire things might happen to him (other than a default judgment being taken against him) if he doesn't assert his rights within a time certain.

Very truly yours,

Robert H. Ziegler, Sr.

RHZ/pks

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ANCHORAGE ALASKA 10

SEN ROBERT ZEIGLER

~~CAPITOL HOTEL JUN~~ Room V

RESEARCH COMPLETED ON PROBLEM WITH EXECUTION EXEMPTIONS IF ALASKA STATUTE REPEALED SIMPLIFIED PROCEDURE CAN BE ESTABLISHED EXTENSIVE LETTER FOLLOWS BY PECIAL DELIVERY MONDAY

ROBERT ERWIN.

LW/WC 1140A

CHIEF JUSTICE
GEORGE F. BONEY

ASSOCIATE JUSTICES
JOHN H. DIMOND
JAY A. RABINOWITZ
ROGER G. CONNOR
ROBERT C. ERWIN

Supreme Court

State of Alaska

941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

April 12, 1971

The Honorable Robert H. Ziegler, Sr.
Alaska State Senator
c/o Baranof Hotel
Juneau, Alaska 99801

Dear Senator Ziegler:

I am enclosing herewith a copy of a memorandum which I had prepared for me by our staff, concerning the Federal requirements in the execution process.

After review of this matter, it appears that we can satisfy all Federal requirements, even those which we anticipate may come in the future by expanding somewhat on the summons concerning the fact that default judgment may be taken against a party and execution will issue if he does not answer, by including in the execution documents to the police officer a statement of the Federal standards, and by requiring notice of default being given to each judgment debtor before execution issues.

The only basic change that would be required would be an expansion of language in the summons and the execution itself, and a change in the rule which requires notice of default only be sent in those cases where an attorney is present. The same three-day period could be retained, but it would be expanded to include all cases.

While there is distinctly a problem with regard to Federal law and the notice requirements as set down in Sniadach v. Family Finance Corp., 395 U.S. 337 (1969), we

feel that it would be better to be safe in anticipating Federal standards with the notice of default than to ignore this probability and possible case law which would require notice before the execution could be issued.

We realize that we are on the safe side of this particular issue and we are attempting to anticipate the movement of either Federal case or statutory law. An argument can be made either way. However, the Supreme Court is interested in solving the rather difficult problem posed by the statute requiring us to explain all exemptions to the judgment debtor (which practically is impossible while still complying with federal standards expressed in both federal case law and new federal statutes.

Sincerely,

Robert C. Erwin
Associate Justice

District Court
State of Alaska
FIRST JUDICIAL DISTRICT
BOX 707
KETCHIKAN, ALASKA
99901

February 18, 1971

Senator Robert H. Ziegler, Sr.
Alaska State Senate
Pouch U
Juneau, Alaska 99801

Re: Opinions on Alaska Statute 09.35.035:
Default Judgment or NonAppearance of Attorney
for Judgment Debtor

My dear Senator Ziegler:

My comments with respect to the Alaska Statute your Senate Bill No. 112 would repeal are in addition to those sent in by my Clerk, Mrs. Doris Volzke. I can only amplify what she has said because she is actually the person to whom I have delegated the onerous work made necessary by the passage of Chapter 175 of the Session Laws of 1970. This added Alaska Statute 09.35.035 to our Code of Civil Procedure.

This law in the main affects persons in Small Claims Court which now involve amounts up to $1,000.00. Generally, such claims are prosecuted by nonlawyers against persons who do not employ a lawyer. The intent of a Small Claims Court is to settle disputes involving small amounts of money without the expense, time, or technical procedures required in the employment of attorneys. The basic idea has always been for two people to come into a court and informally advise the judge of the nature of the complaint and to have the judge settle the matter for them. Very seldom does an attorney appear in Small Claims Court. This, of course, was the situation prior to the passage of the instant legislation which resulted in the appearance of a 19-page document emanating from the Alaska Supreme Court. This document is so complicated and so detailed that I have never been able to read it at one sitting. Attorneys who have seen it have refused to use it without first conferring with an accountant. The average layman to whom it is referred is immediately struck with the complexity of the document.

Through the use of the form setting forth exemptions to which the defendants are entitled, the burden of the proof is shifted to the plaintiff, who must prove that the defendant is not entitled to certain exemptions, and therefore, the money the plaintiff has found is subject to payment of the debts. There is no provision for service. The cost of service required by the delivery of the document to the defendant is added to the defendant's cost and, therefore, compounds his indebtedness. Although there is an acknowledgment section of the document for the defendant acknowledging that he has received this, there is no onus upon him to actually fill this out and return it to the court.

The personnel of the court are required to give legal advice in all cases to persons required as plaintiffs to provide these documents and as defendants to know what they have in their hand. The clerks are not lawyers. I do not think that it is the intent of this particular piece of legislation to call upon the courts to provide free legal advice for small claims matters to this extent.

The instant statute also requires the court to designate a Trustee, and provides that the funds attached be handled in a special manner by this Trustee. This places upon the Trustee a burden entailing liability for the proper and special handling of the funds. This is an increasing burden upon the Clerk of the Court in handling Small Claims, which are supposed to be handled in a simplified manner.

Not only is the court required to give advice and educate people on the meaning of these forms, but at the same time the court is required to maintain a supply of the forms, to store them, to provide them, and to charge for them, in accordance with the orders of the Administrative Director of the courts.

In view of the fact that the Supreme Court of the State of Alaska has in the past not provided instructions for the operation of the Small Claims Court, I feel that this implementation of the instant statute is an extremely technical, work-producing and unnecessary facet of Small Claims into which the Court has thrust itself, complicating and destroying the entire intent of the mechanism of this particular branch of the District Court.

I hope that somewhere in this material which I am forwarding to you, you will find points of justification for the repeal of Alaska Statute 09.35.035. I am certain the the repeal of this statute will benefit all parties concerned, including the parties defendant who were intended to be protected thereby.

Very truly yours,

HCK:el

HENRY C. KEENE, JR.
DISTRICT JUDGE

District Court

State of Alaska

FIRST JUDICIAL DISTRICT

BOX 707

KETCHIKAN, ALASKA

99901

18th February 1971

The Honorable R. H. Ziegler, Sr.
Senator
Alaska State Senate
Pouch U
Juneau, Alaska 99801

RE: HB 363 am S

SENATE BILL NO. 112

Dear Bob:

This is in reference to HB 363 am S passed some months ago relating to the executions of judgment. Effective date of said bill was September 7, 1970.

Prior to passage of this bill, the work load in this District Court office pertaining to civil was 60%, criminal case load 25%, other 5%.

Since September 1970, paper work pertaining to civil cases(closed) has increased threefold in that;

The HB-363-am-S bill reqires that for every execution issued that a nineteen(19) page form be filled out by the defendant, form furnished by the plaintiff; the 19 page form with all questions to be answered by the defendant scares the defendant and he feels by this time he must obtain an attorney; which means additional cost for an attorney, costs of service fees of said writ to be served to employer and copy of writ to be served to the defendant, end results--costs added to defendants bill;

if the defendant signs the for claiming exemptions, a hearing date must be set by the court-additional cost of serving notice of hearing--all this time and typing of course is time consuming by staff of the courts.
Hearing is held--decisions rendered--more paper work by the clerk, more filing cabinet space needed.

The intent of this bill is to protect the judgment debtor. Todate it has caused confusion, added costs to judgment debtor, added work

to the court and staff, and as Clerk of this District Court for 11 years I see no advantage of this bill.

I personally thank you for introducing SENATE BILL NO. 112.

Passage of Senate Bill No. 112 will lessen civil case load of the courts and I know that all persons concerned will be ever grateful.

Thanking you in advance for your time and effort, I remain,

Sincerely,

Doris M. Volzke

(Mrs) Doris M. Volzke
Clerk-District Court
P. O. Box 707
Ketchikan, Alaska 99901

3/24/71

COMMENTS ON HOUSE BILL NO. 180

"AN ACT RELATING TO MARINE RADIO COMMUNICATIONS"

In an effort to determine whether the proposed Act was in conflict with existing regulations, either international or domestic, I have reviewed the laws covering the use of radiotelephone on vessels of varying sizes. Extracts from the International Safety of Life at Sea (SOLAS), The Communications Act of 1934, and the Federal Communications Commission's Rules and Regulations are attached.

It would appear that a gap exists in these regulations so far as requiring radiotelephone capability on the bridge of vessels which are required to be equipped with radiotelegraph by international law. There further appears to be no clear-cut requirement for small cargo vessels to be equipped with radiotelephone.

There is another section of the regulations that seems to leave some doubt as to what is actually required or intended.

In the attached FCC regulations, Section 83.223 and Section (b) reads in part, "...shall, during its hours of service for telephony, maintain an efficient watch for the reception of A3 and A3H emissions on the authorized carrier frequency 2182 kc/s,..." I have requested from the FCC clarification of the "...hours of service for telephony,..." but have not yet received a reply.

The proposed bill has been discussed with the Engineer in Charge for the FCC in Alaska, who offered the suggestion that the Act be referred to the FCC for review and comments. Such a procedure would, of course, take considerable time.

The intent of House Bill No. 180, to insure better communications between itinerant and local vessels, is certainly in the best interest of all concerned. Some minor changes in the wording might be helpful in clarifying the requirements of the proposed Act; for instance, line 21 could be made to read:

"With at least five channels, including standard VHF calling and distress frequencies,..."

Lines 23 and 24 could read:

"...channels, including standard radiotelephone calling and distress frequencies is installed and capable of being operated from the bridge or wheelhouse of the vessel."

Line 26 could read:

"...times on the applicable standard calling and distress frequency by a person qualified to operate radio equipment of the type..."

Section 30.07.020 appears to be blanket authority for the Department of Commerce to write regulations controlling all marine communications in the State. I doubt that this is either necessary or desirable.

C. L. Buck, Director
Division of Communications

Attachments:
I - SOLAS
II - The Communications Act of 1934
III - FCC Rules and Regulations, Part 83

Attachment I

EXCERPTS FROM

INTERNATIONAL SAFETY OF LIFE AT SEA

(SOLAS)

March 24, 1971

Regulation 3 - Radiotelegraph Station

Passenger ships irrespective of size and cargo ships of 1,600 tons gross tonnage and upwards, unless exempted under Regulation 5 of this Chapter, shall be fitted with a radiotelegraph station complying with the provisions of Regulations 8 and 9 of this Chapter.

Regulation 4 - Radiotelephone Station

Cargo ships of 300 tons gross tonnage and upwards but less than 1,600 tons gross tonnage, unless fitted with a radiotelegraph station complying with the provisions of Regulations 8 and 9 of this Chapter shall, provided they are not exempted under Regulation 5 of this Chapter, be fitted with a radiotelephone station complying with the provisions of Regulations 14 and 15 of this Chapter.

Regulation 5 - Exemptions from Regulations 3 and 4

(a) The Contracting Goverrments consider it highly desirable not to deviate from the application of Regulations 3 and 4 of this Chapter; nevertheless the Administration may grant to individual passenger or cargo ships exemptions of a partial and/or conditional nature, or complete exemption from the requirements of Regulation 3 or Regulation 4 of this Chapter.

(b) The exemptions permitted under paragraph (a) of this Regulation shall be granted only to a ship engaged on a voyage where the maximum distance of the ship from the shore, the length of the voyage, the absence of general navigational hazards, and other conditions affecting safety are such as to render the full application of Regulation 3 or Regulation 4 of this Chapter unreasonable or unnecessary. When deciding whether or not to grant exemptions to individual ships, Administrations shall have regard to the effect that exemptions may have upon the general efficiency of the distress service for the safety of all ships. Administrations should bear in mind the desirability of requiring ships which are exempted from the requirement of Regulation 3 of this Chapter to be fitted with a radiotelephone station which complies with the provisions of Regulations 14 and 15 of this Chapter as a condition of exemption.

(c) Each Administration shall submit to the Organization as soon as possible after the first of January in each year a report showing all exemptions granted under paragraphs (a) and (b) of this Regulation during the previous calendar year and giving the reasons for granting such exemptions.

Regulation 7 - Watches--Radiotelephone

(a) Each ship which is fitted with a radiotelephone station in accordance with Regulation 4 of this Chapter shall, for safety purposes, carry at least one radiotelephone operator (who may be the master, an officer or a member of the crew holding only a certificate for radiotelephony) and shall, subject to the provisions of paragraph (b) of this Regulation, while at sea, maintain continuous listening watch on the radiotelephone distress frequency, in the place on board from which the ship is usually navigated, using a loud-speaker or other appropriate means.

(b) Listening may be discontinued

(i) when the receiving equipment is being used for traffic on another frequency and a second receiver is not available; or

(ii) when, in the opinion of the master, conditions are such that maintenance of the listening watch would interfere with the safe navigation of the ship.

Listening watch should, however, as far as possible be maintained during the silence periods provided for in the Radio Regulations.

Regulation 14 - Radiotelephone Stations

(a) The radiotelephone station shall be in the upper part of the ship and so located that it is sheltered to the greatest possible extent from noise which might impair the correct reception of messages and signals.

(b) There shall be efficient communication between the radiotelephone station and the bridge.

(c) A reliable clock shall be securely mounted in such a position that the entire dial can be easily observed from the radiotelephone operating position.

(d) A reliable emergency light shall be provided, independent of the system which supplies the normal lighting of the radiotelephone installation, and permanently arranged so as to be capable of providing adequate illumination of the operating controls of the radiotelephone installation, of the clock required by paragraph (c) of this Regulation and of the card of instructions required by paragraph (f).

(e) Where a source of energy consists of a battery or batteries, the radiotelephone station shall be provided with a means of assessing the charge condition.

(f) A card of instructions giving a clear summary of the radiotelephone distress procedure shall be displayed in full view of the radiotelephone operating position.

Regulation 15 - Radiotelephone installations

(a) The radiotelephone installation shall include a transmitter, a receiver and a source of energy.

(b) The transmitter shall be capable of transmitting on the radiotelephone distress frequency and on at least one other frequency in the bands between 1,605 kc/s and 2,850 kc/s, using the class of emission assigned by the Radio Regulations for these frequencies. In normal operation the transmitter shall have a depth of modulation of at least 70 per cent, at peak intensity.

(c) (i) In the case of cargo ships of 500 tons gross tonnage and upwards but less than 1,600 tons gross tonnage the transmitter shall have a minimum normal range of 150 miles; i.e., it shall be capable of transmitting clearly perceptible signals from ship to ship by day and under normal conditions and circumstances over this range* (Clearly perceptible signals will normally be received if the R.M.S. value of the field strength produced at the receiver by the unmodulated carrier is at least 25 microvolts per metre):

(ii) In the case of cargo ships of 300 tons gross tonnage and upwards but less than 500 tons gross tonnage--

for existing installations the transmitter shall have a minimum normal range of at least 75 miles;

for new installations the transmitter shall produce a power in the aerial of at least 15 watts (unmodulated carrier).

(d) The transmitter shall be fitted with a device for generating the radiotelephone alarm signal by automatic means. The device shall be capable

---

*In the absence of field strength measurements, it may be assumed that this range will be obtained by a power in the aerial of 15 watts unmodulated carrier) with an aerial efficiency of 27 per cent.

Regulation 15 - Radiotelephone Installations (cont'd)

of being taken out of operation at any time in order to permit the immediate transmission of a distress message. The Administration may delay the application of the requirement for the device in the case of existing installations for a period not exceeding three years from the date of coming into force of the present Convention.

(e) The device required by paragraph (d) of this Regulation shall comply with the following requirements:--

(i) The tolerance of the frequency of each tone shall be ± 1.5 per cent;

(ii) The tolerance on the duration of each tone shall be ± 50 milliseconds;

(iii) The interval between successive tones shall not exceed 50 milliseconds;

(iv) The radio of the amplitude of the stronger tone to that of the weaker shall be within the range 1 to 1.2.

(f) The receiver required by paragraph (a) of this Regulation shall be capable of receiving the radiotelephone distress frequency and at least one other frequency available for maritime radiotelephone stations in the bands between 1,605 kc/s and 2,850 kc/s, using the class of emission assigned by the Radio Regulations for these frequencies. In addition, the receiver shall permit the receiption of such other frequencies, using the class of emission assigned by the Radio Regulations, as are used for the transmission by radiotelephony of meteorological messages and such other communications relating to the safety of navigation as may be considered necessary by the Administration. The receiver shall have sufficient sensitivity to produce signals by means of a loudspeaker when the receiver input is as low as 50 microvolts.

Regulation 15 - Radiotelephone Installations (cont'd)

(g) The receiver used for maintaining watch on the radiotelephone distress frequency shall be preset to this frequency, or so arranged that setting to the frequency may be carried out in a rapid and precise manner and that, when set to this frequency, the receiver shall not easily be detuned accidentally. The Administration may delay the application of the requirements of this paragraph in the case of existing installations for a period not exceeding three years from the date of coming into force of the present Convention.

(h) To permit rapid change-over from transmission to reception when manual switching is used, the control for the switching device shall, where practicable, be located on the microphone or the telephone handset.

Attachment II

EXCERPTS FROM

THE COMMUNICATIONS ACT OF 1934

AS AMENDED

March 24, 1971

Section 351. Ship Radio Installations and Operations

(a) Except as provided in Section 352 hereof it shall be unlawful--

(1) For any ship of the United States, other than a cargo ship of less than five hundred gross tons, to be navigated in the open sea outside of a harbor or port, or for any ship of the United States or any foreign country, other than a cargo ship of less than five hundred gross tons, to leave or attempt to leave any harbor or port of the United States for a voyage in the open sea, unless such ship is equipped with an efficient radio installation in operating condition in charge of and operated by a qualified operator or operators, adequately installed and protected so as to insure proper operation, and so as not to endanger the ship and radio installation, as hereinafter provided, and in the case of a ship of the United States, unless there is on board a valid station license issued in accordance with this Act: Provided, That the Commission may defer the application of the provisions of this section for a period not beyond January 1, 1955, with respect to cargo ships of less than sixteen hundred gross tons not subject to the radio requirements of the Safety Convention when it is found impracticable to obtain or install equipment necessary for compliance therewith;

(2) For any ship of the United States of sixteen hundred gross tons, or over, to be navigated outside of a harbor or port, in the open sea, or for any such ship of the United States or any foreign country to leave or attempt to leave any harbor or port of the United States for a voyage in the open sea, unless such ship is equipped with an efficient radio

Section 351. Ship Radio Installations and Operations (cont'd)

direction finding apparatus (radio compass) properly adjusted in operating condition as hereinafter provided, which apparatus is approved by the Commission: Provided, That the Commission may defer the application of the provisions of this section with respect to radio direction finding apparatus to a ship or ships between one thousand six hundred and five thousand gross tons for a period not beyond November 19, 1954, if it is found impracticable to obtain or install such direction finding apparatus.

(b) A ship which is not subject to the provisions of this part at the time of its departure on a voyage shall not become subject to such provisions on account of any deviation from its intended voyage due to stress of weather or any other cause over which neither the master, the owner, nor the charterer (if any) has control.

Section 354. Operators, Watches--Radiotelephone Equipped Ships

(a) Each cargo ship fitted with a radiotelephone installation in accordance with section 356 shall, for safety purposes, carry at least one qualified operator who may be a member of the crew holding only a certificate for radio telephony.

(b) Each cargo ship of the United States fitted with a radiotelephone installation in accordance with section 356 shall, while being navigated outside a harbor or port, keep a listening watch in such manner and during such periods as determined by the Commission.

Section 356. Technical Requirements--Radiotelephone Equipped Ships

Cargo ships of less than sixteen hundred gross tons may, in lieu of the radiotelegraph installation prescribed by section 355, carry a radiotelephone installation meeting the following requirements:

(a) The ship's radiotelephone installation shall be in the upper part of the ship and, unless situated on the bridge, there shall be efficient communication with the bridge.

(b) The radiotelephone installation shall be capable of transmitting and receiving on the frequencies and with types of emissions designated by the Commission pursuant to law for the purpose of distress and safety of navigation.

(c) The transmitter shall be capable of transmitting clearly perceptible signals from ship to ship during daytime, under normal conditions and circumstances, over a minimum normal range of one hundred and fifty nautical miles.

Section 381. Radio Installations on Vessels Carrying Passengers for Hire

Except as provided in section 382, it shall be unlawful for any vessel of the United States, transporting more than six passengers for hire, to be navigated in the open sea or any tidewater within the jurisdiction of the United States adjacent or contiguous to the open sea, unless such vessel is equipped with an efficient radiotelephone installation in operating condition.

Section 385. Radio Installations on Vessels Carrying Passengers for Hire.

The Commission shall make such inspections as may be necessary to insure compliance with the requirements of this part.

Attachment II

EXCERPTS FROM

THE COMMUNICATIONS ACT OF 1934

AS AMENDED

March 24, 1971

Section 351. Ship Radio Installations and Operations

(a) Except as provided in Section 352 hereof it shall be unlawful--

(1) For any ship of the United States, other than a cargo ship of less than five hundred gross tons, to be navigated in the open sea outside of a harbor or port, or for any ship of the United States or any foreign country, other than a cargo ship of less than five hundred gross tons, to leave or attempt to leave any harbor or port of the United States for a voyage in the open sea, unless such ship is equipped with an efficient radio installation in operating condition in charge of and operated by a qualified operator or operators, adequately installed and protected so as to insure proper operation, and so as not to endanger the ship and radio installation, as hereinafter provided, and in the case of a ship of the United States, unless there is on board a valid station license issued in accordance with this Act: Provided, That the Commission may defer the application of the provisions of this section for a period not beyond January 1, 1955, with respect to cargo ships of less than sixteen hundred gross tons not subject to the radio requirements of the Safety Convention when it is found impracticable to obtain or install equipment necessary for compliance therewith;

(2) For any ship of the United States of sixteen hundred gross tons, or over, to be navigated outside of a harbor or port, in the open sea, or for any such ship of the United States or any foreign country to leave or attempt to leave any harbor or port of the United States for a voyage in the open sea, unless such ship is equipped with an efficient radio

Section 351. Ship Radio Installations and Operations (cont'd)

direction finding apparatus (radio compass) properly adjusted in operating condition as hereinafter provided, which apparatus is approved by the Commission: Provided, That the Commission may defer the application of the provisions of this section with respect to radio direction finding apparatus to a ship or ships between one thousand six hundred and five thousand gross tons for a period not beyond November 19, 1954, if it is found impracticable to obtain or install such direction finding apparatus.

(b) A ship which is not subject to the provisions of this part at the time of its departure on a voyage shall not become subject to such provisions on account of any deviation from its intended voyage due to stress of weather or any other cause over which neither the master, the owner, nor the charterer (if any) has control.

Section 354. Operators, Watches--Radiotelephone Equipped Ships

(a) Each cargo ship fitted with a radiotelephone installation in accordance with section 356 shall, for safety purposes, carry at least one qualified operator who may be a member of the crew holding only a certificate for radio telephony.

(b) Each cargo ship of the United States fitted with a radiotelephone installation in accordance with section 356 shall, while being navigated outside a harbor or port, keep a listening watch in such manner and during such periods as determined by the Commission.

Section 356. Technical Requirements--Radiotelephone Equipped Ships

Cargo ships of less than sixteen hundred gross tons may, in lieu of the radiotelegraph installation prescribed by section 355, carry a radiotelephone installation meeting the following requirements:

(a) The ship's radiotelephone installation shall be in the upper part of the ship and, unless situated on the bridge, there shall be efficient communication with the bridge.

(b) The radiotelephone installation shall be capable of transmitting and receiving on the frequencies and with types of emissions designated by the Commission pursuant to law for the purpose of distress and safety of navigation.

(c) The transmitter shall be capable of transmitting clearly perceptible signals from ship to ship during daytime, under normal conditions and circumstances, over a minimum normal range of one hundred and fifty nautical miles.

Section 381. Radio Installations on Vessels Carrying Passengers for Hire

Except as provided in section 382, it shall be unlawful for any vessel of the United States, transporting more than six passengers for hire, to be navigated in the open sea or any tidewater within the jurisdiction of the United States adjacent or contiguous to the open sea, unless such vessel is equipped with an efficient radiotelephone installation in operating condition.

Section 385. Radio Installations on Vessels Carrying Passengers for Hire.

The Commission shall make such inspections as may be necessary to insure compliance with the requirements of this part.

Attachment III

EXCERPTS FROM

FEDERAL COMMUNICATIONS COMMISSION

RULES AND REGULATIONS, PART 83 SHIPBOARD MARITIME SERVICE

March 24, 1971

Section 83.103 Location of station.

All components of a station on board ship subject to this part, including the antenna(s), antenna supporting structures, and source(s) of power used to energize the station equipment, shall be located on board the vessel identified in the station license, even though the vessel be temporarily moored. For purposes of communication, no component of a ship station shall be connected by wire line directly or indirectly to any equipment, apparatus, or facilities which are not located entirely on board the vessel identified in the station license: Provided, That the limitations of this section shall not apply (a) when the station is being operated in an emergency under provisions of Section 83.75, or (b) when it is necessary, while the ship is temporarily moored, to energize one or more components of a main installation or an emergency installation by means of a source of power not located on board the ship, for the purpose of assuring compliance with any applicable safety radio requirement of law.

Section 83.104 Operating controls.

(a) In each ship station, operating controls shall be readily available at the principal operating location of the station for instant use by the authorized operator in accordance with the provisions of Section 83.154, whenever the station is being used for transmission, capable of being used to:

(1) Commence and discontinue normal operation of the station;

(2) Change normally from each operating radio-channel to any other associated operating radio-channel in the same characteristic portion of the spectrum; and

(3) Change normally from transmission to reception and vice-versa.

(b) Every ship station using telegraphy for normal traffic shall be provided with a device permitting changeover from telegraph transmission to telegraph reception and vice versa without manual switching. In addition, these stations should be able to listen on the reception frequency during the course of periods of transmission.

(c) Every ship station using telephony shall, when an authorized operator is present at the principal operating location, be capable of change-over from telephone transmission to telephone reception and vice-versa within a total period of two seconds under circumstances which do not require a change in operating radio-channel at the same time.

(d) Every ship station shall, during its hours of service and when the authorized operator is present at the principal operating location, be capable of:

(1) Commencing operation within one minute after the need to do so occurs;

Section 83.104 Operating controls (cont'd).

(2) Discontinuing all emission within five seconds after emission is no longer required or after the necessity arises for emission to cease.

(e) Each ship station using a multichannel installation for telegraphy (except equipment intended for use only in emergencies on frequencies below 515 kc/s) shall, when the authorized operator is present at the principal operating location, be capable of changing, after the need to do so occurs, from each operating radio channel to any other operating radio channel for transmission or reception by means of telegraphy within:

(1) A period of five seconds if the particular radio channels are within the same characteristic portion of the spectrum; or

(2) A period of fifteen seconds if the particular radio channels are not within the same characteristic portion of the spectrum.

(f) Every ship station and marine-utility station using a multi-channel installation for telephony shall, when the authorized operator is present at the principal operating location, be capable of changing, after the need to do so occurs, from one operating radio-channel to another operating radio-channel for transmission or reception by means of telephony within:

(1) A period of five seconds, when changing from the calling frequency to a working frequency and vice versa within the band 1600-4000 kc/s; or

(2) A period of three seconds, when changing from the calling frequency to a working frequency and vice versa within the band 156-174 Mc/s.

(g) Whenever the same carrier frequency is used for radiotelephone transmission and reception, means shall be provided so that transmission may be either automatically "voice-controlled" or controlled manually by the person whose speech is being transmitted.

Section 83.104 Operating controls (cont'd).

(h) (1) Subject to the provisions of subparagraph (2) of this paragraph, each ship station using telegraphy on frequencies within the band 405 kc/s to 535 kc/s must, with respect to the use of any transmitter capable of a plate input power in excess of 450 watts and completed in construction subsequent to January 1, 1952, be provided with an arramgenent readily permitting the use of a plate input power for telegraphy which is not in excess of 200 watts. Each such transmitter shall be furnished with a durable nameplate with the month and year of its completion permanently inscribed thereon.

(2) The requiremen. of subparagraph (1) of this paragraph shall not apply when there is available in the same station a duly authorized radiotelegraph transmitter capable of operation on the international calling frequency 500 kc/s and at least one working frequency within the band 405 kc/s to 485 kc/s, capable of being energized by a source of power other than an emergency power supply installed for compliance with applicable provisions of treaty or statute, and not capable of a plate input power in excess of 450 watts when operated on such frequencies.

(i) The frequency selector switch on transmitters employing single sideband shall automatically provide for A3H emission when the transmitter is operated on 2003 (in the Great Lakes area), 2182 or 2638 kc/s.

Section 83.106 Required frequencies for radiotelephony.

(a) Each ship radiotelephone station licensed to operate in the band 1605 to 3500 kc/s shall be able to transmit A3 or A3H emission[1] and receive A3 emission[1] on the carrier frequency 2182 kc/s, and, if used for other than safety communication, shall be capable also of transmitting A3 or A3H emission[1] and receive class A3 emission[1] on at least two other frequencies within that band.

(b) Each ship station equipped with radiotelephony to work in the authorized bands between 156 and 162 Mc/s shall be able to transmit and receive Class F3 emission on:

(1) The Distress, Safety and Calling frequency 156.800 Mc/s;

(2) The primary Intership Safety frequency 156.300 Mc/s;

(3) One or more working frequencies; and

(4) All other frequencies necessary for its service;

(5) Exceptionally, however, single or dual channel equipment which otherwise conforms to the technical requirements of this part, may be used solely for navigational communications on a ship's bridge, on a frequency designated for such navigational purposes, in those cases where such ships have no requirement for other VHF communications.

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[1] Subject to the limitations set forth in Section 83.132.

NOTE: The licensee of a ship station authorized prior to September 3, 1968, for single channel or dual channel equipment may continue to use such equipment in the same station until January 1, 1974.

Section 83.153 Location of operator.

When an operator is required for the operation of a station subject to this part, such operator shall, whenever the transmitting apparatus is being operated, be on duty at the principal operating position or a control point of the station and, subject to the lawful authority of the master, shall be in charge of the station.

Section 83.155 Operator(s) required by Title III of Communications Act of 1934.

(a) Each passenger ship of the United States which in accordance with Part II of Title III of the Communications Act is equipped with a radiotelegraph station shall for safety purposes carry at least one radio officer holding a radiotelegraph first-class operator license, and in addition at least one radio officer holding a radiotelegraph first- or second-class operator license or a temporary limited radiotelegraph operator license: Provided, That the holder of a radiotelegraph second-class operator license or a temporary limited radio-telegraph operator license may not act as chief radio officer.

(b) Each cargo ship of the United States which in accordance with Part II of Title III of the Communications Act is equipped with a radiotelegraph station, which is not fitted with a radiotelegraph auto alarm in proper operating condition, shall for safety purposes carry at least two radio officers, each of whom shall hold a radiotelegraph first- or second-class operator license or a temporary limited radiotelegraph operator license: Provided, That the holder of a radiotelegraph first- or second-class operator license or a temporary limited radiotelegraph operator license may not act as chief radio officer until he has had at least 6 months satisfactory service in the aggregate as a qualified radiotelegraph operator in a station on board a ship or ships of the United States.

(c) Each cargo ship of the United States which in accordance with Part II of Title III of the Communications Act is equipped with a radiotelegraph station, which is fitted with a radiotelegraph auto alarm in proper

Section 83.155 Operator(s) required by Title III of Communications Act of 1934 (cont'd).

operating condition, shall for safety purposes carry at least one radio officer holding a radiotelegraph first- or second-class operator license or a temporary limited radiotelegraph operator license, who has had at least 6 months' satisfactory service in the aggregate as a qualified radiotelegraph operator in a station on board a ship or ships of the United States.

(d) Each cargo ship of the United States which in accordance with Part II of Title III of the Communications Act is equipped with a radiotelephone station shall for safety purposes carry at least one qualified operator. Where the power of the station does not exceed 250 watts carrier power or 1,000 watts peak envelope power, such operator shall hold a radiotelephone third-class operator permit or higher class of operator authorization. Where the power of the station exceeds 250 watts carrier power or 1,000 watts peak envelope power, such operator shall, as a minimum, hold a radiotelephone second-class operator license.

(e) Each vessel of the United States transporting more than six passengers for hire, which in accordance with Part III of Title III of the Communications Act is equipped with a radiotelephone installation, shall for safety purposes carry at least one qualified operator. Where the power of the station does not exceed 250 watts carrier power or 1,000 watts peak envelope power, such operator shall hold a radiotelephone third-class operator permit or higher class of operator authorization. Where the power of the station exceeds 250 watts carrier power or 1,000 watts peak envelope power, such operator shall, as a minimum, hold a radiotelephone second-class operator license.

Section 83.156 Operator(s) required by the Safety Convention.

(a) Each ship of the United States which is not subject to Part II of Title III of the Communications Act but which in accordance with the radio provisions of the Safety Convention is equipped with a radiotelegraph station, shall for safety purposes carry at least the number of radio officers specified in subparagraphs (1) and (2) of this paragraph:

(1) If fitted with a radiotelegraph auto alarm in proper operating condition:

(i) Each cargo ship, and each passenger ship carrying or certificated to carry 250 passengers or less, or more than 250 passengers but engaged on a voyage of less than 16 hours duration between two consecutive ports, shall carry at least one radio officer holding a radiotelegraph first- or second-class operator license or a temporary limited radiotelegraph operator license; who has had at least 6 months' satisfactory service in the aggregate as a qualified radiotelegraph operator in a station on board a ship or ships of the United States;

(ii) Each passenger ship carrying or certificated to carry more than 250 passengers and engaged on a voyage exceeding 16 hours duration between two consecutive ports, shall carry at least two radio officers, each of whom shall hold a radiotelegraph first- or second-class operator license or a temporary limited radiotelegraph operator license: Provided, That the holder of a radiotelegraph second-class operator license or a temporary limited radiotelegraph operator license may not act as chief radio officer until he has had at least 6 months' satisfactory service in the aggregate as a qualified radictelegraph operator in a station on board a ship or ships of the United States;

Section 83.156 Operator(s) required by the Safety Convention (cont'd).

(2) If not fitted with a radiotelegraph auto alarm in proper operating condition:

(i) Each cargo ship shall carry at least two radio officers, each of whom shall hold a radiotelegraph first- or second-class operator license or a temporary limited radiotelegraph operator license: Provided, That the holder of a radiotelegraph first- or second-class operator license or a temporary limited radiotelegraph operator license may not act as chief radio officer until he has had at least 6 months' satisfactory service in the aggregate as a qualified radiotelegraph operator in a station on board a ship or ships of the United States;

(ii) Each passenger ship shall carry at least one radio officer holding a radiotelegraph first-class operator license, and in addition at least one radio officer holding a radiotelegraph first- or second-class operator license or a temporary limited radiotelegraph operator license: Provided, That the holder of a radiotelegraph second-class operator license or a temporary limited radiotelegraph operator license may not act as chief radio officer.

(b) Each cargo ship of the United States which is not subject to Part II of Title III of the Communications Act but which in accordance with the radio provisions of the Safety Convention is equipped with a radiotelephone station, shall for safety purposes carry at least one qualified operator. Where the power of the station does not exceed 250 watts carrier power or 1,000 watts peak envelope power such operator shall hold a radiotelephone third-class operator permit or higher class of operator authorization.

Where the power of the station exceeds 250 watts carrier power or 1,000

Section 83.156 Operator(s) required by the Safety Convention (cont'd).

watts peak envelope power such operator shall, as a minimum, hold a radiotelephone second-class operator license.

Section 83.159 Operator requirements for noncompulsory stations.

Description of station	Minimum Operator Authorization
Public ship telegraph, all categories	T-2 or TLT
Limited ship telegraph	T-3
Public or limited ship telephone, more than 250 watts carrier power or 1,000 watts peak envelope power	P-2
Public or limited ship telephone, not more than 250 watts carrier power or 1,000 watts peak envelope power	P-3
Public or limited ship telephone, not more than 100 watts carrier power or 400 watts peak envelope power	RP
Marine utility ship	RP
Ship radiolocation-test, using radar only	P-2, with ship-radar endorsement.

Section 83.173 Authority of the master.

(a) Except as may be regulated by law or international agreement or by the rules of the Commission, the service of each station on board ship shall at all times be under the supreme control of the master, who shall require that each operator of such station comply with the International Radio Regulations in force and that the ship station for which the operator is responsible is used, at all times, in accordance with those regulations.

(b) However, during any period in which the Department of Defense lawfully may exercise and is in fact lawfully exercising emergency controls over United States merchant shipping, no provisions of the Commission's rules and regulations shall prevent the master of any ship of the United States from taking any action whatsoever in regard to the radio installation, the operators, the transmission and receipt of messages, and the radio service of the ship whenever in his discretion such action is necessary to carry out instructions of the Department of Defense.

Section 83.183 Hours of service of ship stations.

(a) Ship stations whose service is not continuous may not close before:

(1) Finishing all operations resulting from a distress call, or urgency or safety signal;

(2) Exchanging, so far as practicable and within the scope of their normal operation, all traffic originating in or destined for public coast stations situated within their range and mobile stations which, being within their range, have indicated their presence before the actual cessation of communication.

Section 83.202 Watch required on vessels subject to the Communications Act.

(a) Each ship of the United States which is equipped with a radiotelegraph station for compliance with part II of title III of the Communications Act shall, while being navigated in the open sea outside of a harbor or port, keep a continuous and efficient watch on 500 kc/s by means of radio officers: Provided, however, That in lieu thereof on a cargo ship equipped with a radiotelegraph auto alarm in proper operating condition an efficient watch on 500 kc/s shall be maintained by means of a radio officer for at least 8 hours per day in the aggregate; i.e., for at least one-third of each day or portion of each day that the vessel is navigated in the open sea outside of a harbor or port.

(b) Each cargo ship of the United States which is equipped with a radiotelephone station for compliance with part II of title III of the Communications Act shall, while being navigated in the open sea outside of a harbor or port, keep a continuous and efficient watch on 2182 kc/s in the room from which the vessel is normally steered while at sea, whenever such station is not being used for authorized traffic. Such watch shall be maintained by at least one officer or member of the crew of the vessel who has been designated by the master to do so. The person designated by the master may simultaneously perform other duties relating to the operation or navigation of the vessel, provided such other duties do not interfere with the effectiveness of the watch.

(c) Each vessel of the United States transporting more than six passengers for hire, which is equipped with a radio-telephone installation for compliance with part III of title III of the Communications Act shall, while being

Section 83/202 Watch required on vessels subject to the Communications Act (cont'd).

navigated in the open sea or any tidewater within the jurisdiction of the United States adjacent or contiguous to the open sea, keep a continuous and efficient watch on 2182 kc/s in the case of an installation operating in the 1605-3500 kc/s band, or on 156.8 Mc/s in the case of an installation operating in the 156-174 Mc/s band, whenever such installation is not being used for authorized traffic. Such watch shall be maintained by at least one officer or member of the crew of the vessel who has been designated by the master to do so. The person designated by the master may simultaneously perform other duties relating to the operation or navigation of the vessel, provided such other duties do not interfere with the effectiveness of the watch.

83.203 Watch required on vessels subject only to the Safety Convention.

(a) Each ship of the United States which is equipped with a radiotelegraph station for compliance with the Safety Convention, but which is not fitted with a radiotelegraph auto alarm in proper operating condition, shall while at sea keep a continuous and efficient watch on 500 kc/s by means of radio officers. If fitted with a radiotelegraph auto alarm in proper operating condition, such watch shall be kept while at sea as follows:

(1) Each cargo ship, and each passenger ship carrying or certificated to carry 250 passengers or less, or more than 250 passengers but engaged on a voyage of less than 16 hours duration between two consecutive ports, at least 8 hours watch a day in the aggregate;

(2) Each passenger ship carrying or certificated to carry more than 250 passengers and engaged on a voyage exceeding 16 hours duration between two consecutive ports, at least 16 hours watch a day in the aggregate.

(b) Each cargo ship of the United States which is equipped with a radiotelephone station for compliance with the Safety Convention shall, while at sea, keep a continuous and efficient watch on 2182 kc/s in the manner prescribed by Section 83.202 (b).

Section 83.223 Watch on 2182 kc/s.

(a) Each ship station on board a ship navigating the Great Lakes and licensed to transmit by telephony on one or more frequencies within the band 1605 to 3500 kc/s shall, during its hours of service for telephony, maintain an efficient watch for reception of A3 and A3H emissions on the authorized carrier frequency 2182 kc/s, whenever the station is not being used for transmission on that frequency or for communication on other frequencies.

(b) Except for stations on board vessels required by law to be fitted with radiotelegraph equipment, each ship station (in addition to those ship stations specified in paragraph (a) of this section) licensed to transmit by telephony on one or more frequencies within the band 1605 to 3500 kc/s shall, during its hours of service for telephony, maintain an efficient watch for the reception of A3 and A3H emissions on the authorized carrier frequency 2182 kc/s, whenever such station is not being used for transmission on that frequency or for communication on other frequencies. When the ship station is in Region 1 or 3, such watch shall, insofar as is possible, be maintained at least twice each hour for 3 minutes commencing at x h. 00 and x h. 30, Greenwich mean time.

Section 83.224 Watch on 156.800 Mc/s.

Each ship station, or, if more than one maritime mobile station is being operated from a vessel than at least one station, licensed to transmit by telephony on one or more frequencies within the band 156-162 Mc/s shall, during its hours of service for telephony in this band, maintain an efficient watch for the reception of F3 emissions on the authorized carrier frequency 156.800 Mc/s whenever such station is not being used for transmission on other frequencies: Provided, however, That ship stations licensed under the provisions of Section 83.106 (d) (5) or operating under the provisions of the note to Section 83.106 of the rules are exempt from the watch requirements on 156.800 Mc/s.

ALASKA STATE
MEDICAL ASSOCIATION
519 WEST EIGHTH AVENUE ANCHORAGE, ALASKA 99501 TELEPHONE 277-6891

April 2, 1971

Senator Lowell Thomas, Jr.
Pouch V
Juneau, Alaska 99801

HB 186

Dear Senator Thomas:

The A.S.M.A. opposes HB 186, an act relating to physical examination of nonresident employees.

Frankly, we were totally unaware of AS 18.15.060-110, which HB 186 amends. None of us has ever seen the health certificate referred to.

The intent of the original statute in 1949 must have been to exclude individuals with important contagious diseases such as tuberculosis, diphtheria, smallpox, and syphilis. Certainly the intent was not to detect minor contagious diseases such as viral respiratory infections or athlete's foot, though the language of the statute does not make this clear.

The present incidence of dangerous communicable infectious diseases is so low that pre-employment examinations to detect them are not worthwhile in terms of cost and inconvenience.

The emphasis rather should be to discover conditions such as heart disease, syncope, defective vision, defective hearing, hernias, back conditions, accident proneness, alcoholism, drug addiction, sociopathy, and other mental disease which could be costly to the individual, employer, and public alike. An aim should be to reduce workmen's compensation claims.

There is no medical reason to distinguish between resident and non-resident prospective employees.

Responsible employers have pre-employment examination programs for these purposes. All employers should be encouraged to provide such examinations, though it may not be appropriate to require owners of small business to do so, particularly for temporary positions.

In summary we see no merit in HB 186 and none in the original xenophobic statute. AS 18.15.060-110 should either be repealed as archaic and wasteful of people's time and money or extensively modified to protect against the conditions described above.

Sincerely,

Rodman Wilson, M.D., Chairman
Legislative Committee

RW/lps

cc: Senator Jay Hammond
Senator John Butrovich
Senator C. R. Lewis
Rep. Joe McGill
Rep. William Moran
Commissioner Henry Benson
Commissioner Fred McGinnis

seattle-northwest securities corporation

HB 204

March 24, 1971

The Honorable Members of the House of Representatives
State of Alaska
Juneau, Alaska

Subject: House Bill 204

Gentlemen:

With Alaska municipalities anticipating the need for tremendous sums to finance capital improvements, we find it difficult to understand the introduction of legislation that would limit the sources of bond financing.

As we understand it, House Bill 204 would prohibit a person who provides financial or programming assistance to a political subdivision from bidding on the bonds at public sale or negotiating for their purchase at a private sale. Admittedly, such a restriction might not harm the marketability of the municipal bonds issued by the larger municipalities, but it could very materially limit the marketability of bonds issued by the smaller municipalities. As you know, Anchorage and Greater Anchorage Area Borough have locally adopted such restrictions. The City and Borough of Juneau has restricted the financial consultant from purchasing bonds on a negotiated basis, but the financial consultant is allowed to bid at a public sale. Such local regulation is entirely proper since it allows each municipality to determine whether the restriction will be harmful to its particular bond issues.

To our knowledge, no state law restricts a financial consultant from bidding at a public sale. At one time this was true in Oregon, but that is no longer the case.

As a firm specializing in underwriting Alaska and Northwest municipal bonds, we feel very strongly that the municipal corporation should not be restricted by state law in the available methods of marketing their bond issues.

Very truly yours,

James C. Pierce
President

JCP:lh

1000 LOGAN BUILDING / 500 UNION STREET / SEATTLE, WASHINGTON 98101 / MU 2-4040

Form SA 1

MEMORANDUM State of Alaska

TO: The Honorable William J. Moran
Chairman, House Judiciary Committee
Alaska State Legislature
Juneau, Alaska 99801

DATE : March 18, 1971

FROM: Eric E. Wohlforth, Commissioner
Department of Revenue

SUBJECT: House Bill 204 - An Act Relating to the Sale of Public Bonds

Some background of the structure of the market for State and municipal bonds is necessary in analyzing the bill.

1. In general the State and Municipal bond market is a high volume market growing in size almost every month. In the year 1970 a total of $17,761,645,833 in municipal bonds were sold surpassing the previous yearly high of $16,374,332,960. In the month of January, 1971 financing by State and local governments reached an all time high of $2,599,020,490.

In contrast, during the calendar year 1970 the State of Alaska issued $35,726,000 in bonds or a fraction of .020141 of the total amount of municipal bonds issued during 1970 throughout the country.

2. As the Committee knows, all Alaska State bonds are sold at public sale. The mechanics of sale and marketing of bonds are very roughly as follows.

Each time an issue is announced prior to its legal advertisement historical accounts of bond underwriters meet with tentative price suggestions. These underwriters include the large commercial banks as well as investment banking houses which specialize in the underwriting of municipal issues. Pricing ideas are developed among account members sometimes until the last hour before sealed bids are submitted. Account members may drop out because of dissatisfaction with the price, and late economic developments such as Federal discount prime rate increases or decreases may dramatically alter the price which the underwriting syndicate is willing to pay.

Although members of the account may run into the hundreds, one or more majors are usually designated to submit the bid in behalf of the account after a syndication agreement is signed by the members of the account.

Once the bid is submitted and the apparent winning bid is known, the bond underwriters begin a strenuous sales effort towards selling the bonds at the agreed on price at the final syndicate meeting. If the bonds are priced correctly from the underwriters point of view the complete issue may be sold within a matter of hours after submission of the apparent winning bid.

The prime objective of the underwriters is to achieve a sale as soon as possible and distribution ability is the key to market success given the correct price.

The actual profit which the underwriting group makes on a bond sale is ascertainable by comparison of the yield spreads translated into price for each maturity of the bonds in the winning bid with the yields stated in the re-offering advertisement as published in the national financial journals. Usually, the national financial journals point out how rapidly the bonds sell and a rough estimate can always be made of the underwriting spread.

3. In my opinion and in my experience it is clear that an investment house which has aggressively bid for and purchased Alaska issues has by far the best feel of the market. It is also clear that the market for Alaska municipal bonds has broadened very substantially since the oil lease sale with many first time owners of Alaska municipal bonds.

An intimate knowledge of the structure of the market for Alaska municipal bonds is of extreme value to the State Bond Committee.

Someone with this knowledge can tell the Bond Committee of the length and amount of an issue which the market may accept. This was dramatically illustrated with the recent conflicting advice received from two financial houses prior

to the last State bond sale. The bond advisors selected for the most recent General Obligation bond issue of $21,325,000 advised us that the market could support an issue of this size with the maturity schedule running it up to 22 years. Other advice cautioned against a sale of this size and also indicated that combining bonds with maturity limitations of 6% with limitations of 7% would confuse the market and make for fewer bids.

The attached copy of Revenue News of the Department of Revenue dated February 16, 1971 shows that the advice to sell the $21,325,000 issue out to 22 years was correct. Five bids were received from four of the largest banks in the country and as noted in the article the winning bid was the best rate received on Alaska bonds in over three years.

The bond advisor was a member of one of the accounts bidding for the bonds which was unsuccessful in their bid. The spread between the bid of the group in which Nuveen was a manager and the winning bid was .0922%.

It is interesting to note that the bidding and marketing practices in the municipal bond field have never drawn an anti-trust prosecution. Attorney General Kennedy in the 1960's drew some national attention to the possibility of collusive bids but no prosecution resulted.

4. Denying us the expertise of an underwriting firm acting as financial or fiscal advisor could hamper our bond issuing operations. We need access to a firm which can give us the best advice on maturities and amount of issue as well as analysis of when we should go to market. In my opinion the few firms that provide financial advice but do not bid on the bonds are simply not close enough to the market to materially assist us.

In conclusion, I do not feel that with the active competition for Alaska State bonds the danger exists of a financial advisor somehow of structuring the issue to fit his own needs rather than the market in general. The test of the

financial advisors experise is his ability to structure an issue to gain the widest possible interest and the maximum number of bids. The informational media available in the municipal bond field are so extensive that there is no opportunity whatsoever to cut down the amount of publicity given to a bond issue. Our most recent bond sale was publicized in the Bond Buyer which is a trade journal of the municipal bond financing as well as through announcement in financial papers and advertisement here in Alaska. 1,086 copies of the Official Statement were sent out to potential purchasers.

I enclose a chart showing the activity of three of the leading purchasers of Alaska State bonds over a period of time. I may mention that permitting the financial advisor to bid for bonds has been uniform practice since Statehood.

EEW/ge
Enclosures

Revenue News

A Monthly Publication by the Alaska State Department of Revenue
Pouch S, Juneau, Alaska 99801

FEBRUARY 16, 1971 No. 1

This is the first publication of the Department of Revenue designed to provide more complete information to Alaskans on the activities of the department. We welcome any suggestions as to format and content of future issues, directed to Pouch S, Juneau, Alaska 99801. Our district offices are located at the following addresses and stand ready to assist you in tax or motor vehicle services.

Location	Address	Phone Number
Anchorage	800 E Street	272-1581
Fairbanks	604 Barnette Street	452-1511
Ketchikan	107 Stedman	Canal 5-4116
Nome	Front Street	443-2441
Juneau	240 S. Franklin	586-1870

OIL LEASE SALE PROCEEDS

The Department of Revenue reports that as of January 27, 1971, the total investments in the General Fund held both in the Bank of America and in Alaska amount to $904,491,680. This compares with the figure of $923,202,321 which was the amount in the General Fund on November 30, 1970. These figures represent the principal or par value of the securities held. The market value of the investments, that is, the price they would command if sold, was $925,147,103.86 as of January 1, 1971.

It is still correct to refer to $900,000,000 in the General Fund, but very shortly the Fund will fall below this amount. Figures supplied by the Department of Administration based on our current budget now indicate that the Fund will fall to $814,905,600 (par value) by the end of this fiscal year, which is June 30, 1971. This figure represents the effect of charges against the Fund. The cash balance should be much higher. By the next year, that is, by June 30, 1972 it is estimated, based on the proposed budget, that the Fund will fall to $709,144,200 and will steadily drop thereafter to a balance of under $100,000,000 by June 30, 1976.

The increase of our State expenditures each year should increase and benefit the quality of life in Alaska. In a very real sense the question of what the 900 million dollars is doing for the State of Alaska is answered by the fact of increased annual expenditure for education, health and other State services and programs. The direct Alaskan investment of the General Fund includes $100,000,000 in five-year State deposits with Alaska banks, $6,805,000 in Alaska local government bonds and in mortgages purchased by the State.

With the necessity of spending portions of oil lease sale proceeds in the General Fund to maintain or improve the quality of life in Alaska, it becomes vitally important that we determine exactly how much money we can devote to long-range programs to carry through until the time when increased revenue becomes available. The existing

Mortgage Loan Participation program has been temporarily suspended while we evaluate whether purchase of mortgages through the banking system has the actual or potential effect of significantly reducing the cost of housing in Alaska. At the same time we are developing a series of computer projections to determine a high-low estimate of the Fund balance on differing expenditure and rates-of-return assumptions. This computer model will have the capacity to receive information such as the amount of a suggested program or a delay in anticipated oil revenues and tell us in minutes what effect this has on the balance in the general fund.

MONEY MARKET OPERATIONS

As bonds and notes now held in the fund mature, they can only be re-invested in securities yielding less interest under current market conditions. This is because the nation is experiencing a period of easy money with an active Federal Reserve policy to make more credit available through the banking system. On November 30, 1970 the average yield to maturity of the Fund was 7.34%, today the average yield is 7.22%. One year ago the prime commercial bank rate, that is, the rate charged "best quality borrowers" was 8-1/2%, currently it is 6%. With very substantial maturities scheduled during 1971, the fund should experience a further reduction in average yield due to a lowering of interest rates available for re-investment of maturing securities.

We can, however, increase the amount of dollars earned by the Fund by selling some of the present holdings which are now worth much more than their original purchase price and re-invest in other securities offering a higher rate of return over the remaining period of the original holdings. In this way more actual dollars will accrue to the portfolio even though the average yield on holdings in the manner reported in the past would decline somewhat. We will set up a new method of reporting yields to give effect to capital gains profit in investment performance. In our opinion the most significant feature of investment management is the actual increase in dollars to the Fund rather than the yield alone. We are continually evaluating conservative investment opportunities to maximize return on our holdings and further capital gains.

GENERAL OBLIGATION BOND SALE

On February 2, 1971 the State Bond Committee received five bids for a total of $21,325,000 of State bonds, representing the largest issue of State general obligation bonds sold to date. The winning bid of 5.07% submitted by The Chase Manhattan Bank and Salomon Brothers of New York City was the best interest rate on Alaska bonds in over three years. In addition the sale was a departure from recent policy of short-term issues with maturities scheduled out to twenty-two years corresponding more nearly to the useful life of the projects. The chart below illustrates the extent of improvement in the market for Alaska bonds represented by this issue:

Date of Sale	Daily Bond Buyer Average Reported Nearest to Sale Date	State Bonds Average Net Interest Cost	Maturities	Amount of Issue
May 1, 1967	3.79	4.5016	1967-92	$15,325,000
Sept. 1, 1967	4.07	4.903	1968-92	$10,200,000
April 1, 1968	4.31	5.1867	1968-88	$14,525,000
May 1, 1969	5.10	5.75	1970-79	$ 8,200,000
May 28, 1969	5.10	6-3/8	1972-89	$ 2,225,000*
July 1, 1969	5.68	5.69	1970-79	$10,500,000
Sept. 17, 1969	6.37	3 (HUD)	1970-79	$ 2,030,000**
Sept. 17, 1969	6.37	5-5/8	1970-79	$ 8,200,000
March 4, 1970	6.00	5.49	1971-80	$11,501,000
July 1, 1970	6.79	5.90	1971-75	$12,900,000
Sept. 1, 1970	6.16	5.87	1971-85	$11,325,000
Feb. 2, 1971	5.13	5.0719	1972-92	$21,325,000

* International Airport Revenue
** University of Alaska Bonds

NEW DEVELOPMENTS IN TAXATION
MULTISTATE TAX COMMISSION

The Multistate Tax Commission, which Alaska joined on July 1, 1970, was formed for the purpose of establishing uniformity among state and local governments for the taxation of interstate business, an area of acute concern in Alaska tax administration.

Currently the Multistate Tax Commission is trying to formulate a comprehensive plan for taxation of interstate business which would serve as a backup plan in case Congress should reconsider Federal legislation in this field. The idea here is to establish an accord among the various states for a plan that would be acceptable to business and states alike for presentation to Congress if it decides to act in this area. Development of appropriate interstate tax legislation is vital if Alaska is to capture its fair share of revenue in the oil development of the 1970's.

The Multistate Tax Commission has also formed an audit capability who will also coordinate the activities of the various states in conducting joint audits. This program will result in a greater consistency of audit programs, a greater compliance among the various companies, and should produce an increase in income for many of the states involved. At the same time, it will help the various companies who are involved in interstate business since they will be confronted with only one audit group rather than being audited by all of the states in which they do business. They will also receive more consistent treatment from the auditors.

This recent information comes from the winter meeting of the Multistate Tax Commission which was held January 24 through 26 in Washington, D. C., and was attended by alternate delegate Fred Boetsch, Director of the Audit Division. Although many of the substantive provisions of the "plan" were not resolved to everyone's satisfaction, the progress made in the Audit Committee was excellent.

INCOME TAXES

The first group of 1970 refund warrants consisting of 158 warrants amounting to $12,011.67 was made January 22, 1971.

Starting with the next group, we will be utilizing a new data processing system which will further speed up refund processing. This new system will eliminate several edit routines and will also eliminate the handling of given punch cards several times as has been done in the past. This will simplify the operation from

the standpoints of those having manual control over the refunds and the computer operators. In addition, a new scanning system developed by the Audit Division should permit us to put through refunds at a much faster rate. We estimate that these systems will reduce refunding time by about three weeks.

The Audit Division has also announced that a completely new system for informing the taxpayer of adjustments to his tax liability has been instituted. In the past a taxpayer has simply been provided with a debit and credit memo and a brief explanation of the reason for the change. Taxpayers and their accountants have been concerned that they could not reconcile the amount of tax shown on the adjustment with the amount of tax originally computed on the return. Under the new system the taxpayer will receive a photocopy of his return which for 1970 provides a column in which the Department may make any audit changes. This will show him just exactly what figures were changed and by how much. This copy will be accompanied by a covering letter explaining in detail the reason for the audit change. This improvement has been brought about primarily by the utilization of MT/ST equipment in preparing these audit adjustment letters. We believe that these letters will better inform the public as to the reasons underlying any change, and enable them to see just exactly where the changes have been made. This will contribute immensely to our public relations programs and, we believe, provide a tremendous increase in the quality of our taxpayer service.

MISCELLANEOUS TAXES

A new data processing system has also been set up in the Business License field which will result in a much faster turnaround time in the issuance of business licenses. Under the previous system, an application for licensing was received and audited, then a license issued. This required batching the applications and scheduling data processing time for a print-out of the actual licenses. Under the new system the licenses have all been pre-printed and a number pre-assigned to each individual business. This number was also indicated on the Business License Applications which were sent out. As these applications come back it will be a simple matter of auditing the applications and then pulling the correct license from the file and mailing it to the taxpayer. Turnaround time here should be reduced to about 10 to 14 days from six to eight weeks under the old system.

The Miscellaneous Tax Section is also considering a new type of withholding tax form which will provide a greater convenience to the businessman in submitting his quarterly withholding report and remittance. This new form envisions a package being sent to the businessman-employer which would include a self-addressed envelope to the Department and pre-printed data on the forms. We will have more information on this form in our next newsletter.

RECEIVED
DEC 28 1970
DEPARTMENT OF REVENUE
STATE OF ALASKA
JUNEAU

RECAP OF ACTIVITIES OF THREE MAJOR UNDERWRITERS
(Issues Managed or Co-Managed by Each Firm)

Year	JOHN NUVEEN & CO. (INC.) Par Value	JOHN NUVEEN & CO. (INC.) No. of Issues	Bank of America, N.T. & S.A. Par Value	Bank of America, N.T. & S.A. No. of Issues	Blyth & Co., Inc. Par Value	Blyth & Co., Inc. No. of Issues
1970	$ 56,640,000	8	$30,456,000	6	$ -0-	0
1969	17,900,000	5	14,250,000	2	10,615,000	3
1968	29,590,000	8	10,500,000	1	15,500,000	1
1967	25,535,000	6	16,500,000	1	15,700,000	3
1966	10,135,000	3	-0-	0	5,400,000	2
1966-1970	$139,800,000	30	$71,706,000	10	$47,215,000	9

HB-219

FORM 10-62-16

State of Alaska

TO: The Honorable George Hohman, Chairman
House Finance Committee
Alaska State Legislature

DATE : April 16, 1971

FROM: M.R. Charney, Director
Division of Budget & Management
Department of Administration

SUBJECT: House Bill 219

Pursuant to your recent request, the following information is transmitted concerning original project proposals under Capital Improvement bond issues for which appropriations are requested in HB 219.

Section 1. $12,690,000 from the "1970 School Construction Fund". Chapter 170, SLA 1970 authorized a bond issue totaling $20,300,000 for the following projects:

Regional and Area Schools at:

Dillingham	$ 720,000
Bristol Bay	720,000
McGrath	540,000
Bethel	749,000
Anchorage	2,025,000
Fairbanks	1,500,000
Tok	495,000
Forth Yukon	630,000
St. Mary's or Bethel	2,625,000
Aleutian area	1,000,000
Contingency	96,000
Total Regional and Area Schools	$11,100,000

Bethel 7 million

State Schools:

Annette	2 Classrooms, storage area	$ 150,000
Bethel	Gymnasium, music and related facilities	1,400,000
Bethel	10-classroom Elementary school	1,500,000
Galena	Elementary school and quarters	1,000,000
Healy	Resource center	100,000
Levelock	Teacher housing	30,000
Sand Point	2 Elementary rooms, 2 quarters	300,000

Relocatables

Bradfield Canal	1 classroom and quarters	$ 50,000
Cape Pole	1-1/2 classroom and quarters	80,000
Coffman Cove	1-1/2 classroom and quarters	80,000

Relocatables (cont.)

El Capitan	1 classroom and quarters	$ 50,000
Exchange Cove	1 classroom and quarters	50,000
Gildersleve	1 classroom and quarters	50,000
Port Alice	1 classroom and quarters	50,000
St. John's Harbor	1 classroom and quarters	50,000
Whale Pass	1 classroom and quarters	50,000
Deep Bay	1 classroom and quarters	50,000
Thorne Island	1 classroom and quarters	50,000
Glennallen	Administrative area and storage	$ 113,500
Igiugig	1 classroom and quarters (R)	80,000
New Stuyahok	2 classrooms and quarters	120,000
Nikolai	1 quarters	30,000
Northway	Resource center, 2 classrooms	250,000
Thorne Bay	Administration and storage	40,000
Gakona	2 classrooms and 1 quarters	225,000
Akutan	1 classroom and kitchen	80,000
Anderson	4 quarters (R)	80,000
Aniak	1 quarters	30,000
Artic Village	1 classroom	60,000
Bettles	1 kitchen and storage (R)	50,000
Newhalen-Nondalton	Secondary school	1,210,000
Angoon	Secondary school	500,000
Nelson Island	Secondary school	1,241,500
	Total State Schools	$ 9,200,000

Section 2. $1,500,000 from the "1970 Alaska Senate Housing Program Construction Fund". Chapter 1970, SLA 1970 authorized a bond issue totaling $3,000,000 to acquire, construct, equip and make other Capital Improvements to Alaska Remote Housing facilities.

Section 3. $1,722,500 from the "1970 State Recreational Facilities Construction Fund". Chapter 181, SLA 1970 authorized a bond issue totaling $2,300,000 for the following projects:

Red Shirt Lake Access Road	$ 212,500
Valdez Glacier Wayside Expansion	50,000
Chena River Recreation Area Master Plan	50,000
McHugh Creek Wayside Expansion	10,000
Ft. Abercrombie Master Plan	50,000
Chugach Mountains Master Plan	50,000
Hatcher Pass Master Plan	50,000
Lake Louise Master Plan	30,000
City of Eagle Preservation Plan	25,000
Renovate Potlach House, Ketchikan	50,000
Captain Cook Campground (1972)	125,000

...cy Lake ... Visitor Center, Office, Warehouse (1972)	$ 250,000
Willowcreek Wayside Expansion (1972)	25,000
Deadman Lake Development (1972)	75,000
Nancy Lake Land Acquisition (1972)	125,000
Wayside, Mt. McKinley Viewpoint on Fairbanks Highway (1972)	50,000
Nancy Lake Loop Road, Design & Clearing (1972)	250,000
Chilkoot Trail Master Plan (1972)	20,000
Anchor River Campground Expansion (1972)	25,000
Moon Lake Campground Expansion (1972)	25,000
Fort Abercrombie State Park (1972)	450,000
Dry Creek Campground (1972)	75,000
Wood River - Tikchik Master Plan (1972)	50,000
Stormy Lake and Swanson River Road Access (1972)	125,000
Contingency	52,500
TOTAL	$ 2,300,000

Section 4. $1,500,000 from the "1970 State Health and Welfare Correctional Facilities Construction Fund". Chapter 183, SLA 1970 authorized a bond issue totaling $8,600,000 for the following projects:

McLaughlin Youth Center, Phase I	$ 502,500
Phase II	417,700
Phase III	963,400
Regional Correctional Institution in Anchorage	5,216,000
and Fairbanks	1,510,500

Section 5. $2,100,000 from the "1970 State Health and Medical Facilities Construction Fund". Chapter 190, SLA 1970 authorized a bond issue totaling $5,600,000 for the following projects:

Rehabilitiation Building - A.P.I.	$ 180,000
Occupational Therapy Addition - A.P.I.,	306,000
Maintenance Building - Harborview Memorial Hospital	100,000
Health Centers at Nome, Tok Junction, Sitka, Craig, Bethel	1,240,800
Child Care Center, Location T.B.D.	422,000
Projects to Match Hill-Burton Funds	
Mentally Retarded Facility (1971)	75,000
Mentally Retarded Facility (1972)	75,000
Mental Health Center (1971)	75,000
Mental Health Center (1972)	75,000
General Hospitals (1971)	1,500,000
General Hospitals (1972)	1,500,000
TOTAL	$ 5,600,000

Section 6. $5,500,000 from the "1970 Highway Maintenance Facilities Construction Fund". Chapter 221, SLA 1970 authorized a bond issue totaling $5,500,000 for the following projects:

Livingood Shop	$ 314,000
Fairbanks District Shop	884,000
Juneau District Complex	2,170,650
Manley Shop	125,200
O'Brien Shop	152,250
Eagle Shop	152,560
Cascade Shop	258,000
Silvertip Shop	341,800
Broad Pass Shop	406,000
Seward Shop	269,480
Palmer Warm Storage	117,850
Ruby Shop	147,310
Unallocated	160,900
TOTAL	$ 5,500,000

Section 7. $10,000,000 from the "1970 Airport Construction Fund. Chapter 222, SLA 1970 authorized a bon issue totaling $10,000,000 for the following projects:

(State Funds Only)	
Dillingham Runway	$ 1,200,000
Hooper Bay	225,000
Birchwood - Pave Runway & Apron	80,000
Craig-Klawock - Design & Land Acq.	60,000
Aniak - Design only	40,000
Wales - Design	10,000
Pt. Hope - Design	20,000
Harding Lake - Design & Land Acq.	40,000
Kwigillingnok - Design & Land Acq.	25,000
Girdwood	38,000
Marshall	60,000
Andreafski	400,000
Wrangell - Lighting & Maint. Bldg. & Apron Expansion	180,000
Shageluk - Reconstruction including road	120,000
Bettles - Apron construction	60,000
Nunapitchuk - Kasigluk - Design & Land	25,000
Sitka - Design	150,000
Cold Bay Quarters	160,000
Nightmute	180,000
Craig-Klawock	550,000
Kwigillingnok	240,000
Kongiganak	200,000

Napahiak	$ 100,000
Napashiak	100,000
Harding Lake	150,000
Wales - construction	275,000
Pt. Hope	150,000
Seldovia - Land Acq. & Ext.	400,000
Sheldon's Point	100,000
Nulato - Reconst. & Road	120,000
Clarks Point	20,000
Noatak - stabilize ground	80,000
Newtok - Design	15,000
Nunap Itchuk - Kasigluk - construction	200,000
Teller	40,000
Aniak	600,000
Sand Point	60,000
Kotzebue - Land Acq. & Obs. Removal	110,000
Petersburg - lighting	40,000
Huslia - stablize	80,000
Diomede - Investigate possible design	40,000
Sitka - Ext. Rwy.	1,220,000
Quarters and Maintenance Buildings	250,000
Floats, etc., in Southeastern	147,000
Planning and Contingencies	1,620,000
GRAND TOTAL	$10,000,000

*Bush Airport Program

HB 223

MEMORANDUM

TO: All Legislators
Members of the Judicial Council
Justices of the Supreme Court
Judges of the Superior Court
Department of Health and Welfare

Date: January 7, 1971

Subject: Proposed Amendment to Children's Code A.S. 47.10.010--290

FROM: Harold J. Butcher
Superior Court Judge
Family Court Division

The Alaska State Legislature, during the 1970 Session, amended Section 47.10.080 (Children's Code) to empower a Judge of the Superior Court to declare a minor under the age of 18 years who comes before the Court under the provisions of Sec. 47.10.080, a "child in need of supervision." This classification, i.e. child in need of supervision, was intended to make it possible to declare those minors who had not been involved in serious criminal conduct to be handled other than under the harsh declaration of delinquency.

The idea for the declaration of "child in need of supervision" came from the Colorado Children's Code where such a classification is included in the code. This classification is also found in the children's codes of many other states, sometimes called "persons in need of supervision," as in Hawaii.

In any event, the 1970 amendment, as adopted by the Alaska Legislature, limits the treatment process to that treatment afforded a dependent minor under 47.10.080(c), plus authority to place a minor declared "a child in need of supervision" on probation under those conditions and limitations that the Court may prescribe.

The Colorado Children's Code, as well as that of Hawaii and the other states referred to, in addition to the provisions authorizing the declaration of a minor as a "child in need of supervision" and placing him under conditions of probation in the home of his parents or a foster home, grants the Court authority in cases where the minor cannot be supervised in the home of his parents or a foster home, and will not abide by conditions of probation, to place him in a juvenile correctional school or detention facility.

It was the intention of the Judge of the Family Court in recommending the adoption of the 1970 amendment, to have it contain a provision permitting the Court to place a minor declared "a child in need of supervision" in an institution when circumstances and conditions, and the character of the minor, requires treatment in a correctional institution.

Many minors in Alaska will not accept supervision in the home of their parents or in a foster home, and, in fact, many minors without

necessarily violating the law become so incorrigible and so rebellious against authority that they refuse to live in the homes of their parents or in foster homes, and continue to slip around without supervision of either parents or probation officers. There is grave danger that these minors will injure themselves or others, which in fact they do rather frequently, thus some stronger kind of discipline and correction is necessary than that presently available in the 1970 amendment, if we are to change them in the direction of responsibility and good citizenship. Many instances of such rejection of authority could be cited in which minors, male and female, are at large in the Anchorage area, as well as other areas of Alaska, who have been placed under conditions of probation in the home of their parents or in foster homes and have refused to stay in those homes, in some instances even over night, and who have refused to be supervised under any conditions of probation or other controls. They have become a constant source of concern for police authorities and officers of the Division of Corrections, as well as the Court, and are corrupting other minors with whom they come in contact. We have concluded that the only solution in such cases is to place the minor in a correctional institution such as McLaughlin Youth Center, or the Alcantra Center at Wasilla, or some other available facility where the minor's supervision and rehabilitation can be exercised in a confined setting.

We have attached to this memorandum a proposed amendment to the 1970 enactment to provide an additional power to the Court to be applied in handling a minor declared a "child in need of supervision" who cannot be handled by conventional methods. The law, as it now stands, provides institutional placement only for the minor declared <u>delinquent</u>.

Thus, the only change in the existing code recommended for adoption would be to include 47.10.080(b)(1) as an additional method of treatment for a minor declared a "child in need of supervision" who cannot otherwise be treated.

Under the terms of the 1970 amendment as it presently stands, <u>only</u> those minors who have been declared delinquent for violating a Federal, State, or Municipal Law may be placed in an institution, and minors declared a "child in need of supervision" may <u>only</u> be placed on probation.

Bvb
Attach

cc: Alaska Bar Association
Anchorage Bar Association
Fairbanks Bar Association
Juneau Bar Association
Ketchikan Bar Association
Division of Corrections
McLaughlin Youth Center
Members of the Family Court and Law Committee (Alaska Bar)

PROPOSED CHANGE IN CHILDREN'S CODE -- 47.10.080

1970 Amendment

Sec. 47.10.080. Judgments and orders. (a) The Court, at the conclusion of the hearing, or thereafter as the circumstances of the case may require, shall find and enter a judgment that the minor is or is not a delinquent, or a child in need of supervision, or dependent minor.

(b) * * * * *

(c) * * * * *

(d) * * * * *

(e) * * * * *

(f) * * * * *

(g) * * * * *

(h) * * * * *

(i) * * * * *

(j) If the court finds the minor is a child in need of supervision it shall make any of the following orders of disposition for his supervision, care and rehabilitation:

(1) any of which is authorized under (c) in this section; or

(2) order the minor placed on probation under those conditions and limitations that the court may prescribed; or

Additional Clause Proposed

(3) order the minor's placement in a juvenile correctional school, detention home, or detention facility designated by the department; the minor may be released from placement or detention and placed on probation on order of the court.

---

(3) above is identical to the present Section 47.10.080(b)(1) and is presently applicable only in cases where a minor has been declared a delinquent.

The purpose of the proposed amendment is to make institutional treatment available to a minor who has been declared a "child in need of supervision" who will not submit to supervision, and not being supervised is likely to injure himself and others.

1-7-71

HB-228

CITY OF ANCHORAGE ALASKA

International
Polar air crossroads of the world

POST OFFICE BOX 400
ANCHORAGE, ALASKA
99501

March 19, 1971

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

Dear Bill:

I note House Bill No. 228 appropriates $10 million for airport projects, and that $5,072,000 is for priority projects at twenty-six general aviation airports throughout the State.

As you know, Merrill Field has, in recent years, reached the saturation point with operations having ranged from 250,000 to 300,000 a year. In 1968, the Federal Aviation Administration pointed out the need for another general aviation airport in this area because Merrill Field had reached its safe optimum operations and International Airport and the Lake Spenard/Lake Hood complex could not absorb the growth in the years ahead. There is no greater concentration of aircraft or greater need for general aviation airport construction anywhere else in the State. The Mayor and Council discussed this need with a number of Anchorage area legislators prior to the current session.

This letter is being written to all members of the House of Representatives from this district with the request that an effort be made to either include Anchorage among the priority projects listed in House Bill 228 or otherwise provide funding for another general aviation airport to serve this area. House Bill No. 228 apparently appropriates all of the airport bond funds approved last Fall. This, coupled with the fact that availability of General Fund moneys are likely to be scarce for capital improvements, prompts this request for concerted action by the Anchorage delegation in the House of Representatives.

The Alaska Department of Public Works, Greater Anchorage Area Borough, and the City of Anchorage have agreed to do an airport system study to determine an appropriate location for another general aviation airport to serve the Greater Anchorage area. The estimate to improve the existing Campbell Airstraip runway is $2.6 million (approximately 40%, or $1,040,000, would be non-Federal share).

AIRMAIL IS FASTER

We do not know that the Campbell location will be selected, but we do know this will be the minimum amount needed for building another general aviation airport here.

We feel that unless there is a commitment now, before all of the bond funds are appropriated, Anchorage's needs may go wanting for some time to come.

Your assistance will be appreciated by the air industry and aircraft users of the Anchorage area.

Sincerely yours,

Robert E. Sharp

Robert E. Sharp
City Manager

cc: Mayor and City Council

KENNETH J. HUSEBY, P.E.
ARTHUR R. JACOBS, P.E.

PHONE 277-8133

HUSEBY AND JACOBS
STRUCTURAL ENGINEERS
523 8TH AVENUE
ANCHORAGE, ALASKA 99501

HB-239

24 March 1971

The Honorable William Moran,
Chairman, House Judiciary Committee
Alaska State Legislature

Dear Sir:

I understand you have un'er consideration HB 239, which relates to the registration of Architects, Engineers, and Land Surveyors by the State of Alaska. I am writing to urge that you bring this bill back to the floor of the House with a 'do pass' recommendation from your committee.

Passage of this act will make possible better and more efficient regulation of the professions involved, to the end that service to the public will be improved. These professions have always been self-supporting, in that funds collected in licensing fees exceed those expended in administration. Under the proposed law this situation would continue.

The proposed new law has the endorsement of the Alaska Chapter of The American Institute of Architects, The Alaska Society of Professional Engineers, and the Alaska Society of Professional Land Surveyors. Again may I urge you to bring this bill back to the House as soon as possible.

Sincerely,

Arthur R Jacobs PE
National Director for ASPE

HB 239

March 22, 1971

The Honorable Genie Chance
The House of Representatives
Juneau, Alaska 99801

Dear Madame:

At a time when most professionals recognize the need of sharing responsibility in less technical areas of their endeavors in order that they might more effectively utilize their own resources; one professional group in Alaska is attempting to stake out an all-inclusive area of responsibility.

House Bill number 239 (An Act relating to Architecture and Engineering) is such an attempt and is unacceptable for many reasons. Among which are:

Sec. 08.48.011. GENERAL PROVISIONS. Which states in part: In order to safeguard life, health and property, and to promote the public welfare, the practice of the profession of architecture, engineering and land surveying in this state is hereby declared to be subject to regulation in the public interest. Yet, in Sec. 08.48.011 (3), buildings used by two families or less are exempted!

I submit that the rights of Designers, such as myself, would be unjustly abridged by this section. The exclusion of buildings used by two families or less is very arbitrary! Why not exclude buildings used by sixteen families or less, or eight families or less or six families or less? Furthermore, persons living in or owning buildings housing two or less families certainly have the right to protection of life, health, property and welfare. The best possible way to protect the rights of persons living in or owning a building exempted from this Act is through the statewide adoption of uniform building codes. Not the suppression of free enterprise.

Sec. 08.48.151. POWERS OF THE BOARD. States in part: the board, under the hand of its president and the seal of the board, may subpoena witnesses and compel their attendance, and also may require the submission of books, papers, documents or other pertinent data, in disciplinary matters or alleged violations of this chapter.

Sec. 08.48.161. INJUNCTIVE RELIEF. States: The board is authorized in the name of the state to apply for relief by injunction in the established manner provided in cases of civil procedure, without bond, to enforce the provisions of this chapter. Or to restrain an alleged violation of this chapter. In these proceedings it is not necessary to allege or prove that either an adequate remedy at law does not exist, or that substantial or irreparable damage would result from the continued violation. The members of the board are not personally liable under this proceeding.

All or portions of these two sections may be in violation of individual rights pursuant to the constitution of the United States and of the state of Alaska.

In Sec. 08.48.191. VIOLATIONS AND PENALTIES. The penalty imposed upon conviction of violating this Act is set at not more than a sum of $10,000.00 or by imprisonment for not more than one year or both. The penalty set forth in Sec. 08.48.400 of the existing statute is $500.00 or six months imprisonment, and to my knowledge very few, if any, convictions have been recorded. Seemingly, this would make a penalty of $10,000.00 or one year imprisonment seem unnecessarily excessive.

Sec. 08.48.301. DEFINITIONS. Reads in part: The practice of Architecture means a person "who holds himself out as able to perform or who does perform any service or work the board shall by regulation determine to be the practice of architecture." The ramifications of this section are obvious.

Because many architectural firms already are compelled to send most of their actual production work to associates in other states, legislation which restricts the practice of Building Design in Alaska will only create more jobs in those states.

The existing practice of Building Designers working in association with registered engineers (who assume professional responsibility under existing statutes) has proven successful in Alaska and is common practice in many states including Oregon, California and Washington.

The profession of Building Design is recognized throughout the nation and is represented by the American Institute of Building Design, a professional organization of individuals and firms interested in advancing the design of buildings through improved planning and design.

I am sure other Alaska members of the A.I.B.D., as well as many concerned citizens, agree that House Bill 239 is unacceptable and is a self-serving document not in the public interest.

Carlin Williams

Carlin Williams A.I.B.D.

HB-249

MODEL WHITE CANE LAW

[Note: This draft proposal was prepared by Russell Kletzing, an experienced legal practitioner, and by Professor Jacobus tenBrock, an experienced law teacher and writer. Both are blind. They performed the work on behalf of the National Federation of the Blind, the nationwide organization of blind men and women.

This draft is distributed in the hope that it will commend itself to the legislatures of the various states and that they will enact it into law.

The draft is an outgrowth of an article by Professor tenBroek published in the May 1966 issue of the California Law Review entitled "The Right to Live in the World–the Disabled in the Law of Torts." Copies of that article may be secured gratis from the Berkeley office of the National Federation of the Blind, 2652 Shasta Road, Berkeley, California 94708. The article contains a detailed analysis of existing white cane laws and other relevant legislation and judicial decisions. It provides support for the enactment of the model law.]

MODEL WHITE CANE LAW

1: It is the policy of this State to encourage and enable the blind, the visually handicapped, and the otherwise physically disabled to participate fully in the social and economic life of the State and to engage in remunerative employment.

2(a): The blind, the visually handicapped, and the otherwise physically disabled have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places;

2(b): The blind, the visually handicapped, and the otherwise physically disabled are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats or any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons;

2(c): Every totally or partially blind person shall have the right to be accompanied by a guide dog, especially trained for the purpose, in any of the places listed in section 2(b) without being required to pay an extra charge for the guide dog; provided that he shall be liable for any damage done to the premises or facilities by such dog.

3: The driver of a vehicle approaching a totally or partially blind pedestrian who is carrying a cane predominantly white or metallic in color (with or without a red tip) or using a guide dog shall take all necessary precautions to avoid injury to such blind pedestrian, and any driver who fails to take such precautions shall be liable in damages for any injury caused such pedestrian; provided that a totally or partially

blind pedestrian not carrying such a cane or using a guide dog in any of the places, accommodations or conveyances listed in section 2, shall have all of the rights and privileges conferred by law upon other persons, and the failure of a totally or partially blind pedestrian to carry such a cane or to use a guide dog in any such places, accommodations or conveyances shall not be held to constitute nor be evidence of contributory negligence.

4: Any person or persons, firm or corporation, or the agent of any person or persons, firm or corporation who denies or interferes with admittance to or enjoyment of the public facilities enumerated in section 2 or otherwise interferes with the rights of a totally or partially blind or otherwise disabled person under section 2 shall be guilty of a misdemeanor.

5: Each year, the Governor shall take suitable public notice of October 15 as White Cane Safety Day. He shall issue a proclamation in which:

(a) he comments upon the significance of the white cane;

(b) he calls upon the citizens of the State to observe the provisions of the White Cane Law and to take precautions necessary to the safety of the disabled;

(c) he reminds the citizens of the State of the policies with respect to the disabled herein declared and urges the citizens to cooperate in giving effect to them;

(d) he emphasizes the need of the citizens to be aware of the presence of disabled persons in the community and to keep safe and functional for the disabled the streets, highways, sidewalks, walkways, public buildings, public facilities, other public places, places of public accommodation, amusement and resort, and other places to which the public is invited, and to offer assistance to disabled persons upon appropriate occasions.

6: It is the policy of this State that the blind, the visually handicapped, and the otherwise physically disabled shall be employed in the State Service, the service of the political subdivisions of the State, in the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved.

* * * * * * * * * * * * *

Release NFB-13; 66-20
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FORM SA-1B

HB-251

MEMORANDUM

State of Alaska

DEPARTMENT OF COMMERCE

TO:

The Honorable Kenneth W. Kadow
Commissioner

DATE : March 4, 1971

FROM:

Robert E. Butler REB
Deputy Commissioner

SUBJECT: Banking Legislation

There were certain items in the whole package sent to Donna Spragg last week that I questicned either from a policy or legal standpoint. Only these matters are discussed herein.

1. In legislation concerning the commercial banks, an amendment is being proposed to change the liability of stockholders from twice the amount of their investment to an amount not to exceed their investment after payment of losses up to $20,000 per customer by FDIC. This is in line with the single liability imposed on stockholders of national banks.

The intent of this above referred to legislation is clear, but in my view, the new language is ambiguous and has the effect of absolving the stockholders of all liability.

Other corrective language has been suggested to Donna Spragg and Don Beighle, and they are amending this provision to make stockholders liable to the extent of their investment.

2. There is some opposition to the definition of "branch bank" as now proposed. One State bank is contending strongly that a Grandfather's Right's clause be included.

Apparently, limited facility bank charters were granted in the past. These facilities, according to one national bank president, did not fit within the definition of branch bank, and there is an implication that these facilities are possibly illegal. The new legislative proposal is an attempt to straighten this situation out. I suggest we look into it further.

3. In legislation concerning mutual savings banks, there is proposed legislation enabling those banks to invest all of their "free" capital in bank buildings.

My remarks go only to maintenance by these banks of a safe and liquid enough position to withstand runoffs and periods of crisis. It is not inconceivable that Alaska (Anchorage and Fairbanks) could in the future have many vacant houses, such as has happened in Seattle.

The legislation proposed would allow a bank to invest all of its "pure" capital (that is capital exclusive of debentures and capital notes) in bank facilities. Assuming that a bank used all of its capital for a building, or buildings, its capital would then be non-liquid. Since the mutual banks here have had a tendency to invest heavily in conventional mortgages, to that extent their loans and (used) deposits are unliquid also.

The rationale behind allowing this heavy an investment in bank building facilities and presumably providing a safety factor is:

A. Conventional loans can only be made to 80 per cent of deposits (20 per cent cushion between home value and mortgage amount);

B. A mutual can only invest in mortgages up to 80 per cent of deposits (20 per cent cushion against total withdrawals);

C. Mutuals have the authority to borrow from the Federal Home Loan Bank and other sources to any extent necessary to protect depositors.

I understand that the Federal Savings and Loan Association Law is as liberal in its approach as this proposed legislation in the amount of capital that can be used for bank buildings.

To me, however, it is inconsistent to insist on the essentiality of reserves against (conventional) loan losses and then contend on the other hand that loans (without a secondary market) can be sold timely and without loss to restore capital.

4. In another proposal for mutual savings banks, they would be allowed to invest 10 per cent of a bank's capital in the stock of a service corporation which would handle data processing and computer work. This is a cost savings idea and a good sharing device for banks. However, since this stock will be closely held by banks, it presumably is unmarketable. In the sense of its marketability, the stock resembles a debt, and its cost value should be deducted when evaluating the bank's "free" capital.

5. In another proposal, we are allowing mutuals to get into

mobile home financing including dealer paper and flooring to the extent of a maximum of 10 per cent of assets. There are two areas of possible opposition to this proposal. One is from commercial banks who may not like an invasion of their commercial business.

The second is from the savings and loan associations who got into this area last year, but are limited to investments of this kind to the maximum extent of 5 per cent of assets. Since there is a direct competition between S&L's and mutuals the S&L's may feel that the mutuals are being given a competitive edge.

These are some areas that we may want to pursue further with John Robertson.

MEMORANDUM State of Alaska

TO: The Honorable William J. Moran
State House of Representatives

DATE: April 20, 1971

FROM: Robert P. Isaac
Assistant to the Commissioner
Department of Education

SUBJECT: Rural School Deficiencies

In reference to the list of deficiencies in State-operated schools dated February 27, 1970, this information is a little more than a year old and does not reflect the work and projects completed or under construction since that time.

In my comments I will not react to allegations of inadequate libraries. While the reports, in this respect may be true, the degree of adequacy or inadequacy is a subjective judgment; secondly, libraries are not a maintenance matter.

Ivanof Bay -- 16 pupils

Last year's proposals for a well were exorbitant. New proposals are being solicited this year. The existing facilities are quite new but it is quite probable storage space is short.

Gustavus -- 10 pupils

In all probability the facilities need maintenance. This school has been on the verge of closing for several years (opened this year at the last moment), and it is likely some maintenance has been deferred. Interior and exterior painted June 1970.

Pilot Point -- 10 pupils

This is a former BIA school and is now 30 to 35 years old. The report is probably correct.

Holy Cross -- 52 pupils

This school was formerly a Catholic school. It was closed by the church in 1969 and made available to the State on a lease. The site and building were purchased by the State in 1971.

The facility does need some rehabilitation and modernizing. A project is being developed to resolve the major problems.

Teller -- 56 pupils

This is a new school with no apparent maintenance or design deficiencies.

Anaktuvuk Pass -- 35 pupils

A regular water system (well) has not been successful so far; however, the report is probably accurate. The State has entered into an engineering contract with an engineering firm for water and sewer systems design.

Sunrise Creek -- 14 pupils

The school is rented from the Galla Logging Company and is a marginal facility. It should be replaced with a relocatable classroom. No State-owned facilities are programmed at the present time.

Hughes -- 23 pupils

The Hughes school (one classroom and quarters) was originally completed several years ago. It is possible the stove needs replacement. A second classroom and school lunch kitchen were added in 1970. A new electric stove was installed September 10, 1970, and the school extensively modernized in 1970.

Belkofski -- 17 pupils

This school was originally constructed by the BIA several years ago. The facilities are considered "good."

Kobuk -- 19 pupils

A new school was completed last year. Apparently it had some "bugs" that needed to be corrected.

Kaltag -- 76 pupils

This school was transferred to the State by the BIA last year. I am not familiar with the scope of facilities and, consequently, am not in a position to comment on the report.

Squaw Harbor

This school was closed due to low enrollment.

Portage Creek (now Ohgsenakale) -- 23 pupils

A water well was constructed in 1970.

Russian Mission -- 28 pupils

This school was constructed about five years ago and is in good condition. A complete school kitchen was added in 1970.

Dot Lake -- 12 pupils

No comment.

Atmautluak -- 39 pupils

This community moved from Nunapitchuk about 1969. At that time the State leased a church building for the school. A new school, (two classrooms, school kitchen, and quarters) is scheduled for 1971 construction at an estimated cost of $180,000.

Nikolai -- 31 pupils

This school is about 15 years old, probably in "fair" condition. A new well was drilled in 1970.

Kongiganak -- 61 pupils

This community moved from Kwigillingok about 1958-59. Neither the State nor the BIA operated a school at this location prior to 1968. An application was received by the State for a school in 1968; subsequently, a log, two-classroom school was constructed jointly by the Department of Education and Rural Development Agency. The well, provided by the Public Health Service in 1969, failed and hand carrying of water is necessary. The estimated cost to develop a sewage system is $100,000. Two 50kw generators were added in 1970. The State has entered into an engineering contract with an engineering firm for water treatment and sewage disposal systems design.

Chignik Lake -- 38 pupils

Certain school equipment will be in need of replacement.

Chignik Lagoon

School probably needs repainting. Most schools in the Aleutian area weather rapidly. School was rebuilt after hot water tank exploded in 1967.

Aleknagik -- 49 pupils

Two classrooms and one quarters were constructed about three years ago. The original school, about 40 years old, is still in use. When the road between Dillingham and Aleknagik is reconstructed and suitable for year-round use, it is expected upper elementary and high school pupils will be transported daily to Dillingham, thus permitting the old school to be phased out.

Northway -- 71 pupils

No comment.

Bradfield

Rented facilities.

Minto -- 37 pupils

Since the report was made, Minto moved to a new location. The Department provided two classrooms and quarters. PHS is to provide water. The project will be completed this summer.

Ekuk -- 15 pupils

No facilities deficiencies at the present time, however, quarters are limited. School kitchen was added in 1970.

Manokotak -- 71 pupils

Former BIA school transferred to the State in 1967. Two classrooms were added in 1969. Furniture may need replacement.

Brown's Court -- 39 pupils

Three classrooms and one quarters are leased by the State. This school serves the Brown's Trailer Court (adjacent to Clear Air Force Base). When inadequacies are reported to the Department, we try to have them corrected before renewing lease.

Chitina

This school is closed.

Whittier -- 15 pupils

Space is leased from the Corps of Engineers. No comment on adequacy of library.

Kenny Lake -- 66 pupils

School is housed in several buildings. Two of the classrooms and quarters were completed in the last three years.

Kokhanok -- 25 pupils

This school is about 20 years old, quite typical of the one classroom-teacher's quarters structures of that day. A water well has been drilled, however, it has proven unsatisfactory.

Copper Center -- 32 pupils

Two large classrooms, one quarters were constructed by BIA about 1956. Report is probably correct. The heating system was rebuilt, appliances repaired in 1970.

Atka -- 27 pupils

Constructed by BIA in 1968-69. Furniture may need replacement but should have been new and in good condition as of 1969

Stoney River -- 27 pupils

Two classrooms, one quarters, hot lunch kitchen were added in 1970. Furniture may need replacement. Most small schools do not have adequate storage.

Glennallen -- 256 pupils

This is a sizable school which employs 19 staff members. Housing is limited, but State is not in a position to provide housing for this number. Since the report, the old school mentioned has been excessed.

Glennellan should be a city or borough rather than a "State" community.

Fortuna Ledge -- 38 pupils

Two classrooms and quarters were constructed in the last four years. So far no success in obtaining a well; school lunch and new generators were added in 1970.

Platinum -- 30 pupils

One classroom and quarters - 1969; school kitchen added 1970; one classroom to be added in 1971.

Cantwell -- 28 pupils

Older school constructed about 1955. Utilities have always been difficult to maintain at this location.

Tanana -- 171 pupils

This is a sizable facility currently employing 11 teachers. Several classrooms and a gymnasium are now under construction. Four relocatable teacherages were installed in 1970.

Usibelli, Vitro, Healy, Otto Lake, Lignite, Ferry, Suntrana

The school serving these railroad-mining communities is now at Healy. Several relocatable classrooms have been completed. A $530,000 basic school facility is in design. Limited housing is provided, however, a six-unit apartment building is to be constructed by local people this year.

Sand Point -- 93 pupils

School was remodeled last year. A gymnasium was added. Additional classrooms are being designed to accommodate upper grades and high school. Hopefully, the grounds can be improved as part of the current project.

Coffman Cove -- 25 pupils

State leases classrooms from logging company (two-classroom mobile unit).

Chignik -- 17 pupils

New building completed by BIA. Storage space may be inadequate, however, we are not involved in their design process.

Tok -- 221 pupils

Shop and supplemental classrooms are scheduled for this location. Storage situation should be improved when new facilities are available.

Tuxekan -- 8 pupils

Facilities are leased from logging company.

Chalkyitsik

Report is correct.

Georgetown

School is closed due to low enrollment.

Port Alice -- 17 pupils

Facilities are leased from logging company. A mobile home will be provided by the State in 1971.

Togiak -- 133 pupils

Former BIA school transferred to the State in 1967. Originally had four classrooms, two quarters. Four classrooms, multipurpose room, two sets of quarters were added by BIA in 1970. The facilities are now considered adequate.

New Stuyahok -- 68 pupils

Former BIA school. Classrooms and quarters are scheduled for 1971.

Ambler -- 44 pupils

Three classrooms and two quarters. School is located on a high bluff overlooking river. Geological conditions indicate little likelihood of developing a well, except at great expense.

Koyukuk -- 48 pupils

The Koyukuk school is quite old. The original school was constructed about 30 years ago. Several additions have been made by the State. Report is probably accurate.

Bethel -- 872 pupils

Fifty-three staff members are currently employed in the Bethel schools. Housing is limited, however, it has eased since the report was written. A number of unoccupied houses constructed by ASHA have been released to teachers.

The housing problem will increase when the regional school is completed. The number of staff members could expand to 100 or more within two to three years.

Alcantra Youth Camp

The camp is managed by the Correctional Division, however, the school is operated by the State school system. A new school is being constructed by the State this year.

Thorne Bay -- 105 pupils

The school consists of a complex of six classrooms, library, administrative space, etc. Two mobile homes for teachers are provided by the State. Other quarters are available through the logging company. Storage and administrative space is very limited.

A covered play area is to be constructed this year.

Huslia -- 49 pupils

A new school is to be constructed this year.

Tanacross -- 8 pupils

The building was constructed by the BIA in the mid 50's. It should have adequate space for storage since only eight pupils are enrolled.

Delta -- 430 pupils

Twenty-six staff members are employed. There is no State housing available. At one time general State housing was authorized but was rejected by local

people as they believed housing should be provided by private enterprise.

Anvik

Buildings painted, both interior and exterior, in 1970.

Whale Pass -- 20 pupils

Facilities are leased by State from logging company.

McGrath -- 134 pupils

Since the report was written, a gymnasium, revised water system, and classrooms have been completed. A new project for additional classrooms is now in design.

Perryville -- 14 pupils

School originally constructed by BIA in mid 50's.

Gildersleeve

School is leased by State.

Healy

See prior statement. Quarters mentioned in report no longer in use. Since the report, five relocatable teachers' quarters, three relocatable classroom units, and a kitchen and dining unit have been added.

Twin Hills

New facility under construction.

Stevens Village -- 15 pupils

Report is correct.

Chuathbaluk -- 34 pupils

Two classrooms, teachers quarters, log construction constructed in 1967-68 as a joint project with Rural Development Agency. Report is probably correct. New generators and relocatable kitchen and dining facilities installed in 1970.

Nondalton -- 73 pupils

School constructed by BIA; last addition completed in 1970. Presumably, the well and other inadequacies were corrected at the time the addition was completed.

Nulato -- 126 pupils

New school scheduled for Nulato, however, community may move to new location this year. Project will not be started until new site is agreed upon.

Akutan -- 17 pupils

Former BIA school transferred in early 50's. Report is probably correct.

Port Heiden -- 23 pupils

Report is probably correct.

Circle

Comments correct.

Anderson -- 94 pupils

No comments.

Allakaket

School is to be replaced in 1971.

Annette

Housing is very limited; some mobile homes have been provided. Relocation of airport to Ketchikan may reduce number of pupils and FAA families, thus creating new housing possibilities.

McGrath

See other comments on page 8.

Koyuk -- 44 pupils

Presumably these deficiencies have been corrected by now.

Sleetmute

Facility operational.

RPI:mg

cc: Division of Buildings
Mr. Gilbertson, State-Operated Schools, Anchorage

File: 600, State
023.1

HB-265

CARBEE
1966 YEARBOOK of SCHOOL LAWS

Chapter 5

SCHOOL PROPERTY

OWNERSHIP AND CONTROL

Title.—The title to school property is, on occasion, the subject of litigation. Because education is a state function, it follows that schools are state institutions and school property is state property. While it is generally held that title to school property is vested in the school district,[1] it is also held that "school lands are held in public trust."[2] This means that while the title is held by the district or the board, the property is actually held in trust. In California, for example, it has been held that "a [school] district is but the trustee of school property . . . , the state the beneficial owner."[3]

In Wisconsin, in a case involving the ownership of certain assets of a school district, it was held that the term "school property," as used in a statute providing that when a unified school district was created it got possession of all school property of a city school district operating under a city school plan, included money received after the formation of the unified district, for tuition, for the school year preceding the unification.[4]

Control.—The control over school property is ultimately in the

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[1]*Canal National Bank* v. *School Administrative District*, 203 A. (2d) 734 (Me.).
[2]*Saidel* v. *City of Seward*, 133 N.W. (2d) 390 (Neb.).
[3]*Yreka Union High School District* v. *Siskiyou Union High School District*, 39 Cal. Rptr. 112.
[4]*City of Racine* v. *Unified School District*, 129 N.W. (2d) 240 (Wis.).

state. As was stated in Chapter 2, the district has no territorial integrity. It owes its existence to the state and its boundaries are constantly subject to change. As a result, "'the state may . . . [without a district's consent] take without compensation its property.'"[5] In Illinois, in a recent case, a school board sought to prevent the annexation of two territories, lying within the district, to a special charter district. The plaintiff contended that, since it had a property right in the revenue from these territories, the statute authorizing such annexation was unconstitutional because it had the effect of depriving the district of property without due process of law.[6] The court, in rejecting this contention, quoted with approval from the earlier *Deatherage* case (401 Ill. 25, 81 N.E. (2d) 581), which is frequently cited as precedent. (See *Yearbook of School Law 1950*, p. 17.) It said: "'A . . . school district established under enabling legislation, is entirely subject to the will of the legislature thereafter. . . . [E]ven without notice or hearing, the State may take the school facilities in the district, without giving compensation therefor, and vest them in other districts or agencies.'" From this it is clear that a school district has no property rights in the property whose title is vested in it. This, as was said, is because it holds the property in public trust.

The authority of the district to control its property is a delegation of power from the legislature. Generally, the legislature vests this authority in the district's governing body—the board of education. Where this is the case, it has been held that the taxpayers have no voice in the making of decisions concerning school buildings. Consequently it has been held that if the taxpayers and/or electors approve the issuance of bonds, the board can, within the limitation of the statement of the overall purpose of the bond issue, decide how the money is to be spent, and the taxpayers cannot complain.[7]

In exercising its control over school property, a board may decide the use to which its property is to be put, and, if it acts

[5] *Board of Education* v. *Winne*, 129 N.W. (2d) 255 (Neb.).
[6] *Board of Education* v. *Special Charter School District*, 205 N.E. (2d) 459 (Ill.).
[7] *Hicker* v. *Board of Education*, 398 P. (2d) 416 (Utah).

reasonably, the court will not
one interested in selling and
to a board policy, the natur
to the use of school premis
instruments.[8] Without ruling
held that plaintiff was not a
of a statute that authorized su
of education from a decision

Control by the Municip
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municipal zoning ordinance
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several principles of law appl
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zoning ordinance that barred
in which the Roman Catholic
on which it intended to erect
boys. The Diocese brought th
numerous grounds, including
arbitrariness. It should be note
the construction of public a
residential areas. A statute fo

[8] *Demers* v. *Collins*, 201 A. (2
[9] *Roman Catholic Diocese* v.
(2d) 161.

reasonably, the court will not overrule its decision. In Rhode Island one interested in selling and servicing musical instruments objected to a board policy, the nature of which was not revealed, relating to the use of school premises for the sale and rental of musical instruments.[8] Without ruling on the legality of the policy, the court held that plaintiff was not an aggrieved party within the meaning of a statute that authorized such a one to appeal to the commissioner of education from a decision of the school committee.

Control by the Municipality.—Since it is generally recognized that the ultimate control of school property is vested in the legislature, and the local district exercises that control which has been granted to it, either expressly or impliedly, it is quite often believed that the school board has exclusive control over school property. This is frequently questioned by other agencies of government which attempt to exercise some control over school property also. This is particularly true of municipalities, such as villages and cities, within whose boundaries school property is located. Such a question may arise when a municipality attempts to administer a zoning plan so as to exclude schools from certain residential areas. The courts are in disagreement regarding the validity of such action. In New Jersey a case was recently brought attacking the legality of a municipal zoning ordinance that attempted to do this.[9] While this case involved a private or parochial school, the court enunciated several principles of law applicable to public schools as well. This case had its origin when a borough adopted an amendment to a zoning ordinance that barred all schools from one residential area in which the Roman Catholic Diocese owned a parcel of 20 acres on which it intended to erect a regional high school for some 1,500 boys. The Diocese brought this action, assailing the amendment on numerous grounds, including the denial of due process of law and arbitrariness. It should be noted that the zoning ordinance permitted the construction of public and parochial schools in three other residential areas. A statute forbade discrimination between public

[8] *Demers* v. *Collins*, 201 A. (2d) 477 (R.I.).
[9] *Roman Catholic Diocese* v. *Ho-Ho-Kus Borough*, 42 N.J. 556, 202 A. (2d) 161.

and private day schools by zoning ordinances, but discrimination was not a point at issue. The lower court held that a municipality cannot zone with respect to public schools and therefore it cannot zone with respect to private schools. On appeal by the borough, the decision of the trial court was reversed. The higher court pointed out that if public schools were beyond the reach of zoning ordinances, the statute forbidding discrimination was meaningless. It noted that while the legislature could place public schools beyond the zoning power of municipalities, it had not done so. Neither was there a statute making public schools subject to such zoning authority. It also noted that, while a municipality may consider revenues in its plans for a well-balanced community, "[i]t is another matter to bar tax-exempt facilities on the ground that they are financially burdensome," since the state gives them that status because of the contribution they make to the public good. It is significant that Judge Francis, in a dissenting opinion, said: "The courts of New Jersey have never been called upon to decide the specific question whether a municipality has authority to control the location of a public school by means of a zoning ordinance. In my judgment no such authority exists and . . . the provision of the . . . ordinance [in question] . . . is *ultra vires* and invalid."

A very similar type of case arose in Pennsylvania, and the court's decision was in agreement with that of the New Jersey case just mentioned.[10] This was an appeal by the City of Philadelphia from the decision of a lower court which held the School District of Philadelphia was exempt from the zoning provisions of the City of Philadelphia. When the school district applied to the zoning board for a permit to erect a school building on a certain site, the permit was denied on the ground that the planned structure did not meet certain criteria. For example, it would be 50 feet in height, as opposed to a 35-foot maximum for this district; the plans made no provision for a back yard, whereas zoning regulations required a rear yard at least nine feet in depth; and finally it provided no off-street parking, whereas the ordinance required at least one

[10] *School District of Philadelphia* v. *Zoning Board of Adjustment*, 207 A. (2d) 861 (Pa.).

parking space for each 1000 square feet of gross floor area. The plaintiff district contended that the statute, providing for a zoning board, "did not intend for the City to interfere with the construction of public school buildings," that the sole administration of the school building program is vested in the district, and that to permit municipal interference would amount to the regulation of public schools on the part of the city. The court disagreed, saying:

> In the first place, we do not consider the imposition of a zoning regulation, enacted for the protection of the health, safety and general welfare of the community, requiring off-street parking to avoid traffic congestion to be regulation of public schools. . . . As we view the term "Regulating public schools," this deals more with the quality of public education than with the physical structures required to provide it. . . . That there is some additional cost to the educational system does not mean *ipso facto* that there is regulation of schools.

In the absence of statute specifically freeing the school district from the zoning board's requirements, the court held the school district was without power to oppose the zoning board's actions. It said: "We . . . find, in view of the School District's lack of police power, the failure of the legislative [sic] to provide minimum standards, and the lack of state preemption in this field, that the School District is not immune from such ordinances and that it must comply therewith." Again, there was a dissenting opinion in this case.

One other zoning case appeared during the year.[11] In this case the City of Chicopee, Massachusetts, was successful in enjoining defendants from using a building located in a "Residence 'A'" zone for conducting classes in painting ceramics, and defendants appealed. The ordinance in question prohibited the use of any building or premises located in a "Residence 'A'" zone for "'trade, manufacturing, or commercial purposes or for other than one or more of the following purposes' one of which is '[s]chools, colleges, public libraries, public museums.'" A statute provided that no zoning

[11] *City of Chicopee* v. *Jakubowski*, 202 N.E. (2d) 913 (Mass.).

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

File

STATE OF ALASKA,

Plaintiff,

vs.

FAIRBANKS NORTH STAR BOROUGH ASSEMBLY and HAROLD GILLAM, Borough Chairman,

Defendants.

No. 67-257

FILED in the Superior Court
State of Alaska, Fourth District

JUN 19 1967

OLGA T. STEGER, Clerk

.....Deputy

MEMORANDUM OPINION

Plaintiff, State of Alaska, seeks an injunction prohibiting defendants from inviting or accepting bids for the construction of the proposed new Ryan Junior High School at Fairbanks and for requiring defendants to approve or disapprove the design for said school submitted by the Fairbanks North Star Borough District Board of Education. At the time of filing the complaint, plaintiff also moved for a preliminary injunction requesting the same relief sought in the complaint. A hearing on the motion for preliminary injunction was held on the 12th day of June, 1967, before this Court.

Plaintiff seeks injunctive relief on the basis that Section 16, Article III, Constitution of the State of Alaska, permits the Governor to institute legal proceedings to restrain any violation of constitutional or legislative power, right or duty of any officer, department, or agency of the State or

or its political subdivisions. The alleged violation is the failure of the defendants to secure approval by the Commissioner of Education of the plans for the proposed school prior to inviting bids thereon contrary to the provisions of a Department of Education regulation. The oral arguments of and memoranda filed by the parties reveal the controversy to be centered around the asserted absence in the school plans of any provision for physical education facilities enabling the proposed school to comply with certain supposed minimum requirements established by the Department for physical education activities as part of the State's minimum course of study. It is apparent, therefore, that at the heart of the matter the State, through its Department of Education, seeks to enjoin the construction of the proposed Ryan Junior High School because of a fear that there will be no compliance with regulations for the minimum requirement for physical education activities in the proposed school directly due to the lack of any provision for physical education facilities in those plans on which the Borough is now inviting bids.

Title 14, Alaska Statutes, governs education in this State and contains, inter alia, the powers and duties of the Department of Education of which the State Board of Education and the Commissioner of Education are a part; pursuant to AS 14.07.010, AS 14.07.020(4) prescribes as one of the Department's duties: to "prescribe by regulation a minimum course of study for the public schools." AS 14.07.060 directs the Department to make regulations in accordance with the Aministrative Procedure Act necessary to carry out the provisions of Title 14.

From these two statutes alone, it is obvious the Department not only may but must prescribe minimum study requirements by way of regulation among which it is reasonable to assume would be included certain minimum requirements for physical education activities. It is apparent the State, through its Department of Education, would have a vital interest in securing strict compliance with such a regulation for the benefit of the children in this school district. In that connection, it should be noted that AS 14.07.070 prohibits State funds from being paid to a school district which fails to comply with the school laws of the State or with the regulations promulgated by the Department. In addition, AS 14.07.020(6) imposes on the Department the duty to "accredit those public, private and denominational schools which meet accreditation standards prescribed by regulation by the department." The withholding of either State funds or accreditation or both from a public school appear available as effective methods of enforcement and as sanctions against a recalcitrant, non-complying school district which fails to provide minimum physical education activities due to the inability of a district board of education and the funding authority, as reasonable and mature men and women, to come to a satisfactory and understanding agreement in the construction, operation and management of the public schools in their district.

The question before this Court, however, is not whether the defendants have refused or intend refusing to comply with department regulations concerning a minimum course in physical education in the proposed school. The Court does not even have before it either a set of the school plans or the minimum course requirements for physical education. Neither does the Court have before it any evidence or indication that

the course of study in the proposed school, when opened, would be below minimum standards; or that a physical education complex will not be constructed in time for use when the proposed school opens; or for that matter that when opened the school will not itself have sufficient facilities for the offering of minimal physical education activities.

The only issues before this Court on the present motion for a preliminary injunction are whether or not defendants must secure approval of the proposed plans for the new Ryan Junior High School from the Commissioner of Education before inviting bids for the construction thereof and, if so, whether the invitation and acceptance of bids without such approval will cause the plaintiff immediate and irreparable harm without other adequate remedy thereby entitling plaintiff to a preliminary injunction.

As noted at the outset, the State premises its argument on the proposition that invitation of bids for construction of a new school prior to approval by the Commissioner of the plans, violates State law in the form of a Department of Education regulation codified as Section 22(a), Title 4, Alaska Administrative Code. Section 22 reads as follows: "The Commissioner must approve plans from an educational point of view for new schools, additions, and major rehabilitation, before bids are invited." In its memorandum, the State represents Section 22(a) to have been promulgated pursuant to authority contained in AS 14.07.020(1)[1], and AS 14.07.060(a)[2].

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[1]"The department shall exercise general supervision over the public schools of the State except the University of Alaska."
[2]"The department shall promulgate regulations which are necessary to carry out the provisions of this title."

The "History" to Section 22 lists the effective date thereof as October 24, 1965, but the effective date of both Statutes cited by the State as authority for Section 22 was not until July 1, 1966. Further, as its "authority" Section 22 lists AS 14.10.140(1)[3] and AS 14.10.150(6)[4]; it does not list the statutes cited by the State as enabling the promulgation of Section 22. Both AS 14.10.140(1) and AS 14.10.150(6) were repealed by Section 59, Ch.98, SLA 1966 effective July 1, 1966 which is the chapter also repealing and revising entire Title 14 on education.

Chapter 98 SLA 1966 completely revised Title 14 governing public education within the State of Alaska. The 1966 legislation basically reorganized the administration of public schools to conform with a change in the local government system of mandatory boroughs. City school districts, borough school districts, and a State-operated school district were substituted for the former city, incorporated, independent, rural and special school districts. At the same time, however, new Title 14 reveals an increased delegation of control over the local school districts to the districts. Repealed AS 14.05.100 provided that, "The public school system shall be administered by the Department of Education and the local school

[3] "The department shall require annually, or at other times as it determines, a report of such facts, arranged in such form as it prescribes, from the teacher, president, superintendent or principal of each public school and other educational institution and the school board of each school district receiving state aid."

[4] "The department may * * *construct, purchase, build or rent the necessary schoolhouses or schoolrooms and maintain and equip them."

boards." There is no comparable section in the new Title 14. Repealed AS 14.15.030 provided that "each . . .independent school district . . .has a school board of five members elected as provided. The school board has the exclusive management and control of school matters in the district, subject to the State school laws and regulations promulgated by the Department of Education." (Emphasis Added) AS 14.12.020 makes no such qualification to the control over schools by the local districts. Further, repealed AS 14.10.140(6) required the Department to "prescribe rules and regulations for the general government of the public schools necessary to secure efficiency and promote the interests of the public schools." There are no sections in the new Title 14 comparable to these latter two sections. While under repealed AS 14.10.100 the Department had exclusive control over the selection of textbooks used in the schools, the present AS 14.07.050 differs in that the Department can no longer dictate what textbooks will be used in the schools other than those in the State-operated school district. In short, a comparison of the duties and powers of the Department under repealed AS 14.10.140 and AS 14.10.150 with the present duties and powers listed in AS 14.07.020 and AS 14.07.030 clearly indicate a restriction in the powers and duties of the Department and an increase in the same for the local school districts, while still remaining under the jurisdiction of the Department certain statewide functions such as certification of teachers, accreditation of schools, administration of State funds, and control of State-operated schools. Nothing in the new Title 14 in-

dicates that, although charged with the general supervision of the public schools, the Department is obligated or has the power to administer the public schools, other than in the State-operated district, with respect to matters not specifically set forth in AS 14.07.020 and AS 14.07.030 or elsewhere.

See 44.27.020 (1)(2)(3)

With respect to the construction of school facilities, repealed AS 14.10.150(6), one of the Statutes pursuant to which Section 22 was promulgated, gave the Department unqualified power to construct, purchase, build, rent, maintain and equip necessary schoolhouses. Although under repealed AS 14.15.750 as well as present AS07.15.330(a),(e) through (g) and AS 07.25.040(3) the local school districts have the power to construct school buildings, the present power of the Department to construct school buildings is strictly limited by AS 14.07.030(3) to State-operated schools. The design of and plans for construction of school facilities in the borough districts is governed by AS 07.15.330 and supervision of construction is governed by AS 07.25.040(3) neither of which Statutes mentions the Department of Education. Further, the borough assembly, under AS 14.12.020(c), is required to provide the funds for maintaining and operating the district schools. Consequently, this Court can find no enabling legislation supporting Section 22(a), Title 4, Alaska Administrative Code as a reasonable and necessary Department regulation especially in view of the fact that the former enabling Statutes were repealed with no new comparable sections.

See 14.07.020 (2)

There is no evidence or indication before the Court

that State funds are or would be used in the construction or design of the proposed Ryan Junior High School. The only apparent interest the Department has in the proposed school is the effect the supposed absence in the school plans for physical education facilities might have in the too distant future upon compliance with the Department's minimum standards for physical education. As mentioned above, there is no immediacy extant in the present situation in that respect.

Injunctive relief against a governmental body in favor of another governmental body is an extraordinary remedy and should be granted only where clearly appropriate. This is especially so with regards to a preliminary injunction. Even if the Department could validly require plans for new schools to be approved by the Commissioner before bids are invited, (which this Court finds it cannot,) there is still nothing before the Court to indicate the necessity for injunctive relief at this time when there is no showing that immediate and irreparable harm would result in the absence of an injunction as prayed for or that there exists no other adequate remedies available to the Department as previously noted.

Therefore, and in view of the foregoing, it is the Court's opinion that the plaintiff's motion for a preliminary injunction should be denied.

DATED at Fairbanks, Alaska, this 19th day of June, 1967.

EVERETT W. HEPP
Superior Court Judge

HB-265

R.C.

DRAFT

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

FROM: Robert P. Isaac

SUBJECT: House Bill 265 - "Relating to the duties of the department" (Regulation of school construction)

The State, through the cigarette tax and more recently shared revenue provisions and large direct appropriations, supports school construction on a very liberal basis. Consequently, the State does have a considerable financial interest in most school facilities.

Even during the years the cigarette tax was the only consistent approach to school construction financial support, the State's financial interest was substantial. (The annual distribution of cigarette tax has averaged $1.2 million plus for many years.)

However, the State's authority (Legislature) to regulate school construction is not necessarily related to the degree of State support for school facilities. Public school facilities, constructed with public funds, are State property and the Legislature has plenary authority in legislating whatever controls or regulation it believes necessary ~~and~~ within constitutional provisions. For this reason, and especially since SUBSTANTIAL EFFORT IS BEING MADE BY THE STATE more ~~liberal~~ approaches ~~are being made~~ to support school construction, it may be appropriate to enact more definitive law in respect to regulation of school construction than currently exists.

Copy attached

I have reviewed the material relating to the 1967 court case in Fairbanks and while I do not agree with the conclusions reached by the court as stated on page 8, it appears the current regulation pertaining to approval of school plans by the Department may not have adequate legal basis. With this in mind, we would recommend appropriate

legislation. In our opinion, House Bill 265 resolves this problem but should be revised.

AS 14.07.020 is amended by adding a new paragraph reading:

"(8) prescribe by regulation that each school district shall observe such standards and planning criteria as the Department may prescribe for school buildings and other school facilities."

In our opinion the references to building codes, specifications and penalties should be omitted as adequate provision could be made for these items in the regulations.

A most effective penalty provision already exists under

"AS 14.07.070. Withholding state funds. No state funds may be paid to a school district or teacher who fails to comply with the school laws of the state or with the regulations promulgated by the department."

HB-265

DISTRICT ONE EDUCATION ASSOCIATION

Feb. 27, 1970

LIST OF FACILITIES DEFICIENCIES IN RURAL STATE OPERATED SCHOOLS

The information contained herein was furnished by respondents to a questionnaire composed by James Ede, a member of the Executive Committee. The questionnaires were sent out December 18, 1969, and responses were received December through February.

The results were compiled and edited by Max G. Drsier of the Anchorage Regional Office of the Alaska Education Association.

IVANOF BAY

Library inadequate

Very little storage room

No water supply

GUSTAVUS

Library inadequate

School building last painted perhaps 10 years ago

Washer and drier in very poor condition

Quarters last painted perhaps 10 years ago

Storage is inadequate; school should have 3 times the storage space.

PILOT POINT

Needs new roof and water pipes

HOLY CROSS

Library inadequate

Very limited storage; bathrooms when installed will take up present storage space.

Quaters, (2), one of which is not suitable for human habitation

Appliances: One quarters has no washing machine and a barely working refrigerator.

School closed 3 weeks because power from village inadequate and no standby generator provided.

Hot water heating system with no running water in the school

Outhouses about 40 years old.

TELLER

Library inadequate

ANAKTUVUK PASS

Library inadequate

No storage space

Water source: ice. "If a heated tank were installed the water system could be much improved and cost the state less.

SUNRISE CREEK

Library inadequate

Plumbing: Toilet and sink

Water Source: Creek behind school

HUGHES

Library inadequate; very few new books.

Storage space very limited

Oil cook stove is a "headache"

BELKOFSKI

Library inadequate, many outdated books

KOBUK

Library inadequate

Errors in building that caused plumbing freezing are being corrected.

KALTAG

Needs one more classroom, as there are now 4 teachers and 3 classrooms.

SQUAW HARBOR

Library inadequate; all books burned last Easter 1969.

No storage space

No state owned quarters. Teacher was put in a shack. Faulty oil stove caused a chimney fire Dec. 13 (1969) No work has been started on promised new school and teacherage.

PORTAGE GREEK

Library inadequate, 40 books.

No plumbing; Water Source: rain water

RUSSIAN MISSION

Library inadequate

Washer and oil range in poor condition

Teachers quarters are used by cook to prepare snacks, hence lack of pricacy. Also refrigerator must be shared with snack program.

DOT LAKE

Library inadequate

ATMAUTLUAK

Hopefully large new school to be built next year

No typewriter

No storage space

Honey bucket plumbing; water source from river

NIKOLAI

Very little storage space

Well ran out of water at Christmas (1969) so facilities are water barrel (river water) and honey bucket.

Furniture in very poor condition.

Major problem is small size of living quarters

KONGIGANAK

Library inadequate

Kohler diesol power plant, 10kw., in very poor condition

No plumbing; water source is rain water, swamp water, ice in winter

Washing machine, 1 refrigerator, and 1 oil range in poor condition

Furniture in poor condition

Poor household utensils

CHIGNIK LAKE

Movie projector, filmstrip viewers, record player, and tape recorder very old.

CHIGNIK LAGOON

Not much storage space.

School building needs paint

ALEKNAGIK

3 separate buildings. One building about 1/3 mile from others-no plumbing in it. Two buildings have outhouses.

Water source for newer building is a well. No indication as to source for others.

NORTHWAY

Library inadequate, 125 books

BRADFIELD

Library inadequate, 30 books

MINTO

no sewage; tub plumbing inadequate

Water source: River

Furniture in poor condition

EKUK

Library inadequate

Well now (12-29-69) being installed; water truck now, but pump for well on order.

MANOKOTAK

Furniture in poor condition

BROWN'S COURT

School never painted, 8 yrs. old. Quarters painted maybe 6 or 7 yrs. ago.

Furniture in poor condition

Repair work and custodial service inadequate

CHITINA

Library inadequate, 50 books

No washer or drier; laundromat in town

WHITTIER

Library inadequate; 200 very old books

KENNY LAKE

Library inadequate

Storage inadequate

Deep well supplies community; people haul water. Very good water.

KOKHANOK

Classroom too small

Library OK in supplementary reading, inadequate in fiction and picture books.

KOKHANOK (con't)

Type of plumbing:"Run with water bucket."

Water source: Lake Illiamna

"For two summers I boxed up my personal effects as the school was to be redecorated. Neither summer was it touched. I face the same problem for the summer of 1970."

COPPER CENTER

Library inadequate

Washer, drier, and refrigerator in poor condition

Very poor water

Poor heating system. (It is supposed to be rebuilt in the near future.)

ATKA

Poor furniture

STONY RIVER

Storage space too small

Furniture in poor condition

GLENNALLEN

Library inadequate, but improves yearly

Quarters: Only supt. had quarters until this year. Condemned building used for other new teachers. There is no adequate housing available to teachers, especially a family man.

FORTUNA LEDGE (MARSHALL)

Library inadequate

Storage space inadequate

Of the three classrooms, one is old and small

One set of quarters in a house very near the schoolneeds rececorating and plumbing and water.

PLATINUM

Library inadequate

CANTWELL

Sewer froze every year, but they think it may be fixed now.

TANANA

Library inadequate

No washer or drier, except for one new trailer

No preventative maintenance on the housing. We need a qualified person in the different areas to serve as a maintenance man for the schools and the housing.

USIBELLI, VITRO, HEALY, OTTO LAKE LIGNITE, FERRY SUNTRANA

Housing tights and expensive

Library inadequate

4 sets of quarters - conditions vary. Some are pitifully inadequate, others are suitable. One teacher is without quarters furnished while all others have some type of furnished quarters.

SAND POINT

Clothes drier won't run. Needs new motor. Has been requested (12-29-6

Needs a duplex for teachers.

Apartment and trailer house both need painting inside.

More gravel needed around building and playground equipment.

Need better surface on playground; now either mud or large sharp rocks.

COFFMAN COVE

Library inadequate

Storage space extremely inadequate

Water piped from creek; modern plumbing

CHIGNIK

Library inadequate

No storage room for books or school supplies (Building is new, 4 mo. ol

TOK

Library inadequate

Storage space inadequate, virtually none

TUXEKAN

Library inadequate

The trailer we were to move into was being used by a logging family. A

we had a camper trailer we brought it out. However, it would be nice if these quarters were reserved for teachers.

CHALKYITSIK

Library inadequate

Water hauled from river 1/2/mile away

GEORGETOWN

Classroom too small

3 movie projectors, none work

Inadequate library

No storage space

One room quarters. Response to description of quarters, "Indescribable!"

No plumbing; water source - river

Washer and cook stove in very poor condition, as is refrigerator

Quarters are WWII quonset. The physical plant is terrible.

Furniture in poor condition

Classroom is frigid - cannot maintain heat.

Nothing works correctly.

PORT ALICE

Library inadequate

Storage space most unsatisfactory. We are using an outhouse for chemical toilets during unfrozen up weather. Plus the community recreation hall.

Plumbing, indoor. But sewers freeze up in winter. Then have to use honey bucketaffair and haul refuse for dumping in bay. No other disposal facilities available for the camp have been arranged.

Water source: Piped from creek across bay. Also freezes up in cold weather. Then water is hauled in plastic garbage cans.

School building not up to specifications of state-owned schools in such matters as lighting, floor space, air volumn per child. Ceilings are low; windows very small; no tile on hardboard floor. Ceiling painted with gloss enamel causing a horrible glare. Lighting bad.

New laundry equipment has been installed which requires 50¢ per load to wash and 25¢ for 10 minutes of drying time. We all consider this very unreasonable, but no one has been able to do anything about it.

TOGIAK

Library inadequate

Extra Classrooms (to be built this summer) are needed along with more living quarters, to solve problem of 130 children, 6 teachers and 4 classrooms.

NEW STUYAHOK

Library inadequate

AMBLER

Library inadequate (about 100 books)

Water carried from river; Plumbing: water drain.

Washer and drier in poor condition.

KOYUKUK

Storage inadequate

Plumbing: Drains, septic tanks

Water source: River - ice contract in season

Furniture in poor condition. It was very cheap when purchased and has not held up.

The school and quarters are set on pilings about 3 feet above the ground. The floors tend to be quite cold in winter and heavy footwear is required even inside.

BETHEL

Housing conditions generally poor, no running water or sanitation

Storage space inadequate

School owned quarters will accommodate only 1/4 of the staff

Furniture of poor quality

ALCANTRA YOUTH CAMP

Storage space small - most things stored in classrooms

Age of school building unknown; it is a 1940-45 quonset hut. The Camp needs a new school

THORNE BAY

Inadequate library

No storage space

Clothes drier not working (12-29-69)

HUSLIA

Inadequate storage

Needs new school

TANACROSS

Inadequate library

Storage space: attic only

Wringer type washing machine and oil cook stove in poor condition

DELTA JUNCTION

No school-owned quarters; local housing very tight

ANVIK

School building 10 yr. old; painted only once that teacher knows of

Quarters need paint

WHALE PASS

Inadequate library

Absolutely no storage space

Inside plumbing; water source: dam

Good furniture but very little of it.

McGRATH

Library inadequate

Virtually no storage space

Poor water (Does have regular plumbing & well)

PERRYVILLE

Washer, refrigerator, cook stove in poor condition; should have a small freezer and clothes drier.

Children use outdoor toilets at present. There is a chance that indoor lavatories will be installed plus new tile floor laid this summer.

GILDERSLEEVE LOGGING CAMP #2

Library inadequate. Indicates this material on order.

Small storage space, but inadequate

HEALY

One set of quarters very old, barely adequate. Has been assumed for years that quarters will no longer be used, but continue to be.

TWIN HILLS

Library inadequate

No storage space

Quarters extremely small

Mo plumbing; water source, river

Condition of furniture,poor.

STEVENS VILLAGE

Plumbing: Honey bucket; Water Source: River

CHUATHBALUK

No standard typewriter, need one very badly

No storage in classroom; storage in quarters only

Sheet iron roofing has not been put on school building

Power plant does not function properly. Mechanic has worked on plant two times this year (69-70) (as of Dec. 23, 1969) but still isn't working properly.

Floor tile should be installed in quarters and classroom; nothing in either.

NONDALTON

No library

Inadequate storage

35' well very poor and inadequate

Furniture is junk

NULATO

Library only partially adequate

Inadequate storage space

Water & plumbing: Ice & spring water. High school: drains, honey bucket. Others have no drains, have honey bucket

AKUTAN

Water source: Dam on creek that flows near school

Furniture: Every piece needs replacing

PORT HEIDEN

School needs painting

CIRCLE CITY

Library inadequate

Plumbing: "Non-creative" sinks and tub plumbing, but no toilets

Water source: Purchased and hauled from a riverside well source; about 1000 gal. storage capacity.

ANDERSON

Library inadequate

ALLAKAKET

Classrooms too small for the enrollment of the school

Library inadequate

Inadequate storage space

No Plumbing (except a drain in the kitchen sink)

Water source: River

Washing machine in poor condition; furniture is pathetic

ANNETTE

No library

Water source: lake; modern plumbing

Housing available for only two couples. Other teachers are in very inadequate housing.

ADDITIONAL 1970 NOTES: DECEMBER 1970

McGRATH

Some emergency exit lights are not operative

Should a second boiler be installed to handle facility in event of a break down? Entire school now depends on single boiler.

KOYUK

Repairs needed on boiler and hot water tank

The number one generator is not operational

The two water distillation units are not operational

SLEETMUTE

The new 25kw light plant has not yet been made operational

HOLY CROSS

There seems to be inadequate maintenance of the new water and sewer system, our reports indicate an early breakdown will likely occur.

ANIAK

The new housing unit has been installed 1 foot above ground and local observers indicate that annual floods are usually 2-3 feet deep at this spot. This was pointed out at time of installtion.

These observations presented directly to NEA-Alaska staff members 12-30-

HB-265

DISTRICT ONE EDUCATION ASSOCIATION

1427 "M" St.,
Anchorage, Alaska 99501

April 8, 1971

Honorable Eugene Guess, Speaker
Alaska State House of Representatives
Pouch V,
Juneau, Alaska 99801

Dear Mr. Speaker:

Attached are the Alaska Department of Health and Welfare sanitation regulations pertaining to Alaskan Schools. I would like to urge you to study them carefully as to their validity. You will probably discover as we did that these regulations are somewhat outdated but never the less they are the regulations that have been in effect for some time.

As you read these regulations please keep in mind the condition of the schools in your area and especially the rural schools operated by the state. You are aware that the physical condition of many of our rural schools leaves much to be desired and that it has been the responsibility of the Department of Health and Welfare to enforce these regulations. It is also the responsibility of the Department of Public Works Division of Buildings to maintain State Operated Rural Schools in conformity with the state sanitation regulations.

Seldom, if ever to our knowledge, has the Department of Health inspected any of the small rural schools to insure that these regulations are adhered to.

It is the opinion and feeling, after considerable investigation and first hand experience in rural schools by members of the Executive Board of the District One Education Association, that virtually all rural schools are in violation of at least one of these regulations and most of the schools are in violation of many of these regulations, outdated as they may be.

As an elected public official, you are well aware of the high infant mortality rate in rural Alaska and the low rate of life expectancy of our rural citizens. Perhaps the State through strict application of its sanitation regulations in its public facilities should set an example for others to follow, namely the children in our schools. These children deserve the same chance at life, education and suc-

cess that their more fortunate urban counterparts enjoy.

Hopefully you and your colleagues will use your influence to require the Department of Health and Welfare and the Department of Public Works to enforce sanitation regulations in every Alaskan School which are minimal at best.

Sincerely,

James Ede

James Ede, President
District One Education Association

Enclosure

cc: To All Members of The House of Representatives

JE/jw

SUBCHAPTER 11.

SCHOOLS

PART 2.

Sections

1210. Definitions.
1211. Construction or remodeling of school buildings.
1212. Sanitary features.
1213. Disease control.
1214. Right to make inspection.
1215. Penalty.

1210. Definitions.

The following definitions shall apply in the interpretation and enforcement of these regulations:

(a) "School" shall mean any or all education institutions owned and/or operated by federal, state or local governments, religious organizations, private agencies or individuals.

(b) "Health Officer" shall mean the Commissioner of Health and Welfare for the state of Alaska or his authorized representative.

(c) "Alaska Drinking Water Standards" shall mean standards as set forth in Title 7, Division 1, Chapter 2, Subchapter 1 of the Alaska Administrative Code.

(d) "Alaska Sewage Disposal Standards" shall mean the regulations as set forth in Title 7, Division 1, Chapter 2, Subchapter 2 of the Alaska Administrative Code.

(e) "Alaska Food Handling Standards" shall mean the regulations as set forth in Title 7, Division 1, Chapter 2, Subchapter 3 of the Alaska Administrative Code.

(f) "Alaska Plumbing Code" shall mean the regulations as set forth in Title 7, Division 1, Chapter 2, Subchapter 11, Part 1 of the Alaska Administrative Code.

Authority. A. S. Title 18; Health & Safety

History. In effect on and before July 28, 1959, effective date of Alaska Administrative Procedure Act.

1211. Construction or remodeling of school buildings.

On and after the effective date of these regulations, all school buildings or appurtenances which are constructed or remodeled shall be constructed or remodeled in accordance with the standards set forth in

these regulations.

No governmental agency, school district, city, town, church organization, individual, firm, corporation or officer or employee thereof, or other person, shall install or contract for the construction, alteration, or remodeling of any school building or part of the school physical plant until plans and specifications, together with an engineering report supporting in detail the design set forth in such plans, shall have been submitted to and approved by the Department of Health and Welfare, such approval shall be evidenced by the signature and official registration seal of the Chief Engineer of the Department of Health and Welfare.

After such plans and specifications have been approved by the Department of Health and Welfare, no material changes in the location, plans, construction, or operation of any such school building or physical plant may be made without first submitting to said Department a detailed statement of such proposed changes and receiving its approval.

All such plans hereafter to be submitted to the Department of Health and Welfare for its approval shall have been prepared by or under the supervision of an architect or professional engineer legally registered in the state of Alaska, be certified by him and bear his official seal of registration.

1212. Sanitary features.

(a) Buildings and grounds. The building shall be located, constructed and maintained to protect the health of the students. The school grounds shall be of such size, topography, cleanliness, and arrangement to encourage wholesome recreation.

Commentary

Public health reason: Multi-storied buildings without proper exits and containing unsatisfactory plumbing or buildings which are improperly oriented may entirely offset the advantages of good planning throughout the remainder of the school plant. Even though a water supply or sewer system may be properly planned and constructed, unless the plumbing is equally well planned and constructed, and the water supply protected against cross connection with an unsafe or questionable water supply, safety hazards and communicable disease may exact unnecessary illness and possibly death among school children. Improper drainage, inadequate play space, traffic hazards, unsightly debris, refuse and wastes, and other similar physical inadequacies may foster the spread of communicable disease and jeopardize the health and safety of the school children.

Satisfactory compliance: This item shall be deemed satisfied if:
The school buildings exemplified through its design and appearance, beauty and good taste are properly a part of the activities within.

The greatest practical reduction in number of stories is made and where possible an open type plan which permits expansibility and flexibility is used.

Corridors are carried through so that they may be extended when addi-

tions are necessary. Stairs are placed at right angles to corridors. Indispensable windows are not located at points where expansion may be necessary; boiler rooms are constructed so as to provide room for expansion; oversize water supply and sewage disposal systems are provided and kept well away from possible areas for additions. Plumbing, heating, electrical systems, etc., are planned so that they may operate safely and may provide for eventual expansion.

Class room widths do not exceed 20 to 25 feet or the width of rooms usable for instruction or study not greater than twice the distance from the floor to the top of the glass windows. A minimum clear height of spaces for pupil use, such as corridors, toilet rooms, is at least eight feet, six inches and at least 20 square feet of floor space per pupil is provided in all classrooms. (Cloak rooms shall not be considered class room area.)

Surface, subsoil and permafrost conditions are such that the school building physical plant including sanitary facilities and necessary access ways may be constructed in such a manner as to prevent the creation of health and safety hazards.

The site is dry or can be well drained, protected from flooding, snow slides, land slides, and is located a reasonable distance from railroads, highways, airports, or other facilities which may provide traffic hazards.

Reasonable play space is provided and suitable drive and parking areas, walk-ways, and play areas are designated. Topographical conditions, in some instances, may not permit the provision of a sufficient amount of play area.

(b) Floors. The floors of all the rooms shall be adequate in size, properly insulated, of easily cleanable material, shall be smooth, and in good repair; proper cleaning methods shall be employed systematically after school, and floors shall be kept clean.

Commentary

Public health reason: Adequate floor space is a factor in determining proper ventilation. Insulated or warm floors provide the necessary comfort. Suitable construction is a prerequisite for good maintenance. Smooth floors facilitate good maintenance for smooth floors in good repair can be more easily kept clean and are, therefore, more likely to be kept clean. Proper cleaning methods minimize dust and promote cleanliness.

Satisfactory compliance: This item shall be deemed satisfied if:
The floor space requirements of part (a) of section 1212 are met.

Direct air currents are absent from the floor.

Floors of all the rooms in the school are of such construction as to be easily cleaned, are smooth and in good repair. Floors may be of concrete, terrazo, tile, matched hardwood, or equal composition. Waxing of floors is to be encouraged. Wax produces a flexible surface and protects the floor from wear. Wood floors may be waxed or treated and made water repellent. Floors in toilet rooms should be of impervious material.

Wooden floors containing cracks, broken or poorly fitted planks containing slivers, or which otherwise fail to be tight, do not comply with this item.

Dustless methods of floor cleaning are used, or dust arresting sweeping compounds and push broom are employed. Where commercial sweeping compounds are not available, ordinary sawdust may be saturated with floor oil or moistened with water and used as a sweeping compound. The application of oils directly to the floor in excessive amounts is to be discouraged. School rooms should never be dry swept. All except emergency floor cleaning shall be done after school hours. Provisions shall be made to keep floors dry near water fountains and hand washing facilities.

All floors are kept clean and free from litter. Each room should have a metal container for paper and trash.

(c) Walls and ceilings. The walls and ceilings shall be smooth, tight, and in good repair. Walls and ceilings shall have surfaces of light color and dull finish. Walls and ceilings shall be kept clean.

Commentary

Public health reason: Smooth, tight walls in good repair are more easily kept clean and are, therefore, more likely to be kept clean. Light colored walls and ceilings reflect a greater amount of desirable light. The finish shall be dulled to prevent glare and eye strain. Clean walls and ceilings reflect more light than dirty ones and are conducive to general sanitation.

Satisfactory compliance: This item shall be deemed satisfactory if:

Walls and ceilings in all the school rooms are tight, smooth, and in good repair. Beaded wains-coating is not considered satisfactory for walls or ceiling material.

Walls and ceilings of all school rooms have a light, dull finish and are refinished as often as necessary in a manner approved by the health authorities. Suggested colors of paint for walls: light cream, light buff, or light yellow, flat finish paint. The reflecting factor for flat paint on the walls should be from 40 to 60%. Suggested colors for ceilings: white, ivory or light cream, flat finish paint. Ceiling reflection factor should be at least 65%. There should be no glare.

Walls are clean.

Inside window glass, door glass, and frames are clean. Shades are clean.

(d) Doors and windows. Outside doors shall be self-closing and shall open outward. Only panic proof hardware shall be used on all building exits. When flies or insects are present during the school season, all openings to the outer air shall be screened effectively, unless other effective means are provided to prevent the entrance of insects.

Commentary

Public health reason: Flies, mosquitoes and other insects may not

only annoy school children but may also spread infection to food, water or individuals, thus nullifying the effectiveness of all other public health safeguards.

Satisfactory compliance: This item shall be deemed satisfied if:
All openings to the outer air are effectively screened with not less than 16 mesh wire or plastic cloth and all doors are self-closing, free swinging, and outer screen doors open outward in areas where insects are present.

Flies or other insects are absent.

In places where outside opening doors are unusable because of snow accumulations, other arrangements may be made for unhampered exits of students from the school building in case of fire. Where other unhampered arrangements cannot be made, the section requiring that doors open outward may be excepted.

(c) Lighting. All rooms used for class rooms or study rooms shall be well lighted. Adequate artificial light shall be provided at times when natural light is inadequate. Storage rooms must be sufficiently lighted to permit good housekeeping.

Standards defining and providing for school lighting as reflected in the current official report "American Standard Practice for School Lighting" published by the Illuminating Engineering Society, 1860 Broadway, New York 23, N. Y., are hereby adopted by reference as school lighting standards of the Department of Health and Welfare.

Commentary

Public health reason: Ample soft light prevents eye strain and promotes cleanliness.

Satisfactory compliance: This item shall be deemed satisfied if:
The lighting is properly distributed, shadows and glare are absent from reading and working surfaces. Direct rays of the sun are controlled.

Adequate light shall be provided on all working surfaces. When adequate natural light is not available, artificial light must be provided to supplement the daylight so that high level, well diffused, glareless illumination is available at any hour of the day, any day in the year. Unshaded electric bulbs cannot give proper illumination.

Light fixtures must be designed so that they will obtain softness of light, absence of shadows, satisfactory distribution of light at various angles, pleasing appearance of the installation, and they must be easily maintained. Investigation has shown that in many schools with adequate lighting equipment, the actual illumination in the rooms falls far below the required standard because of inadequate maintenance. If the effectiveness of the lighting equipment is to be maintained, the following recommendations must be followed:

All fixtures and bulbs should be dusted at least once a month and washed once every three months.

Bulbs of less than the specified wattage must not be used.

The use of 1000 hour bulbs is recommended.

Inside frosted bulbs are preferable, and with indirect lighting are essential.

Interior decoration should not be allowed to deteriorate, as such deterioration reduces the quantity of illumination in a room.

Competent staff for janitorial work, electrical maintenance, and interior decoration should be maintained and is essential if the effectiveness of the lighting equipment is to be maintained.

It is recommended that periodical inspections be made and reports submitted to the school official in charge or other responsible authority on the quality and intensity of illumination in the school.

Where lighting units are of the enclosed focal glass style, with ceilings 12 feet or less, they should be mounted as close to the ceiling as possible. If, however, the ceilings are quite low or slanting, the control of the brightness versus fields of vision presents special problems. This uncontrolled brightness produces seeing losses, especially at low mounting heights.

Direct, indirect and fluorescent lighting may be used. In general, the following points should be remembered in use of these types of lighting. Direct lighting is not recommended as conducive to best seeing results, but circumstances in some cases are such that it may be used. Indirect lighting in a majority of cases is the best type of lighting for class room or library study; however, this type of lighting will prove unsatisfactory unless the lighting fixtures are cleaned as often as specified in a previous sentence. Fluorescent type lights are about 14 times the desirable brightness for luminous objects that are in the field of vision of students and teachers in the class room. Consequently, the only fluorescent luminars that are suitable for class room use are those that incorporate louvers, opal glass, white plastic or other diffusing media, or shields so designed as to shade the naked fluorescent lamp from the direct view of the children and the teacher.

Slight variations in power used to operate fluorescent lights may cause flickering and distracting, as well as unsatisfactory lighting. Therefore, fluorescent lights should not be used where power sources may fluctuate in any considerable amount. Fluorescent type lights are not very suitable for use with small home power plants.

(f) Heating and ventilation. All rooms of the school shall be properly heated so that the inside temperature four feet above the floor does not fall below 68° F. Ventilation shall be sufficient to provide proper circulation of air, even distribution of heat and to remove undesirable odors.

Commentary

Public health reason: Supplemental artificial heat is necessary when the natural temperature is 68° F. or less for comfort and to avoid exces-

sive clothing and strain on the vital organs of the body. Proper ventilation reduces bacterial concentration in the air, odors, condensation upon interior surfaces, and provides adequate oxygen for respiration. In the ordinary occupied spaces, harmful chemical impurities may be contributed from certain types of cooking and heating appliances including carbon monoxide, from imperfect combustion, which may be a serious hazard to life and health. When the only source of contamination is a human occupant, the minimum quantity of air appears to be that required to remove objectionable body odors or tobacco smoke. With adequate air space the rate of air change should be from 10 to 30 cubic feet per minute per person. In rooms occupied by only a few persons, such a rate of air change will be automatically attained in cold weather by normal leakage around doors and windows while it can easily be secured in warm weather by the opening of windows. In more crowded rooms the whole picture changes. Cubic space per person is less and the size of the room makes it impossible to admit untempered outside air without drafts. Here mechanical ventilation is essential. It is even more essential for thermal than for chemical reasons. It is control of thermal properties of air in order to effect the removal of the heat produced by human bodies rather than dilution of chemical poisons, which must govern practice. An equally important consideration is the aid in the prevention of the spread of upper respiratory diseases by the providing of adequate ventilation. Proper ventilation is necessary to protect and maintain the health of school children.

Satisfactory compliance: This item shall be deemed satisfied if:

The heating equipment maintains the temperature evenly throughout the classroom at 68° F. Electric current, hot water, steam and hot air furnaces are desirable sources of heat. The registers are to be so located as to maintain a uniform temperature. The central heating plant of the hot water, steam, or hot air type is recommended as most desirable. The equipment should be provided with thermostatically controlled, automatic heating equipment. Preferably the heating plant should not be located under that section of the school building in which class rooms are placed. For a small school where central heating cannot be provided, a jacketed stove is recommended. The jacketed stove consists of a stove that is enclosed in a sheet metal cylinder that is opened at the top and bottom. A fresh air duct runs from the outside of the building and is terminated beneath the jacket. In operation, this unit draws cold fresh air up between the jacket and stove and the air is warmed and discharged above to go out over the room. Some of the room air which has cooled and fallen to the floor level is also drawn into the jacket and rewarmed. Air change is insured by means of an exhaust duct with an opening at the floor level. This duct connects to a chimney or better encloses chimney, and heated gases in chimney warming the exhaust air maintain the flow of exhaust air. Dampers should be provided in both the inlet and exhaust duct.

All oil or gas heating units should be effectively vented to the outside. All stoves, furnaces, etc., should be maintained in good repair to prevent combustion gases from entering the school building.

The room is not overheated. There shall not be more than 5° F. difference in temperature at the four feet above the floor on a movable stand or moved about the room in at least four places so that temperature in the various parts of the school room may be checked. Thermometers shall record temperature accurately within 2° F. between the range of 50° F. to 80° F. Temperature records should be kept with at least four read-

ings per day at all schools where automatic heat control is not in use.

The air contains a sufficient amount of humidity to avoid dryness. Steam jets, water sprays or vaporizers, or water evaporators should be provided so that the relative humidity will be maintained above 30% in study or class rooms. Care should be taken, however, to prevent school room air from being so moist that furniture is covered with condensed moisture and windows are rendered opaque by it. Generally speaking, proper ventilation will provide the desired humidity.

Direct air currents are absent. Caution is to be observed in circulating the air. Windows open from the bottom which cause direct current of air on children, shall have window ventilators or deflectors. All windows should be adjusted at the top and bottom, and when this is the only means of ventilation, at least one half of the windows should be capable of opening from both top and bottom. Ducts and fans in connection with mechanical ventilation shall be so arranged and controlled as to eliminate objectionable air currents directly on the children. When mechanical ventilation is provided, it is not desirable to open windows.

A minimum of 30 cubic feet of air is supplied per capita per minute either through building leaks, natural ventilation or mechanical ventilation. This requirement may be waived where a minimum of 300 cubic feet of room volume is provided per capita.

Condensation on walls and windows is prevented. Condensation may be prevented by proper control of temperature and humidity providing adequate insultation is provided in the building structure. With a pressure ventilation system humidifying equipment can and should be provided. For small schools heated by conventional warm air furnaces or jacketed stoves, some humidification can be obtained by keeping the furnace water pan filled. Special radiator pans are available for hot water or steam radiators. If a room feels uncomfortably cool despite high dry bulb thermometer reading, humidity probably is too low. Dry air at a relatively high temperature feels cooler than humid air of considerably lower temperature. Condensation on walls will occur under certain conditions if humidity is too high. For example, surface condensation will occur if the relative humidity is 64% or over, if the inside temperature is 70° F. and the outside temperature is -10° F. in frame buildings having the usual frame construction with a heat transfer coefficient of 0.26 B.T.U.'s per hour per square foot per degree F. temperature. Condensation will occur on double windows at a relative humidity of about 45% for a dry bulb temperature of 70° F. inside and -10° F. outside. This is because glass has a greater heat transfer coefficient. If condensation occurs, either the humidity inside must be decreased, the walls further insulated, or the inside temperature increased. Under low temperature conditions, the humidity inside may be rapidly decreased by increasing the circulation of the much dryer cold air into the school room.

The following table shows the approximate relationship between relative humidity and wet and dry bulb thermometer readings for air movement or turbulence of 15 to 25 feet per minute:

Relative Humidity Chart

	(Relative Humidity)			
Dry Bulb Reading	68°F.	70°F.	72°F.	75°F.
Wet Bulb Reading	10%	10%	10%	10%
45	25%	20%	15%	10%
50	40%	35%	30%	25%
55	65%	55%	50%	40%
60	85%	80%	70%	60%
65	100%	95%	85%	75%
68		100%	90%	80%
70			100%	90%
72				100%
75				

The air exchange due to temperature difference, inside to outside, is a chimney effect, causing air to enter two openings at lower levels and to leave at higher levels. Although it is not appreciable in moderate climates in low buildings, this loss should be considered in tall, single story buildings with openings near the ground level and near the ceiling and in all buildings where extremely low temperatures occur. This infiltration outside air due to temperature difference causes the air to change under average conditions in the school room. It is this air change which provides the necessary circulation in rooms without mechanical ventilation which may accommodate up to 50 persons. It is generally assumed in frame buildings of a type similar to small schools used throughout Alaska that the air changes taking place as shown in the table below may be used as a guide in determining air provided for ventilation through infiltration.

Kind of Room or Building	No. of Air Changes Taking Place Per Hour
Rooms one side exposed	1
Rooms two sides exposed	1½
Rooms three sides exposed	2
Rooms four sides exposed	2
Rooms with no windows or outside doors	½ to 3/4
Entrance halls	2 to 3
Reception halls	2
Toilet rooms	

(It is quite possible that these air changes may be increased somewhat under extremely low temperature conditions.)

(g) Toilet facilities. Each school shall be provided with adequate and properly constructed and located toilet facilities. All toilet and waste disposal facilities shall conform to the provisions of the Alaska Administrative Code, Title 7, Div 1, Chapter 2. The doors of all toilet rooms shall be self-closing. Toilet rooms shall be kept in clean condition, in good repair, well lighted and ventilated. Hand washing signs shall be posted in each toilet room. In case privies or chemical closets are used, they shall be of a sanitary type, constructed and operated in conformity with the standards of the Department of Health and Welfare.

Commentary

Public health reason: Human excreta is potentially dangerous and must be properly disposed of. The organisms causing typhoid fever, paratyphoid fever, diarrhea, or dysentery may be present in the body discharges of cases or carriers. Sanitary toilet facilities are necessary to protect school lunches and physical equipment from fecal contamination by insects, rodents and hands or clothing. When the toilet facilities are of a satisfactory type and kept clean and in good repair, the opportunities for the spread of communicable diseases by the above means are minimized.

Satisfactory compliance: This item shall be deemed to have been satisfied if:

Adequate toilet facilities of the water flush type desirably located and separated and complying with the Alaska Plumbing Code are provided for both large and small children, and for each sex, and sewage wastes are disposed of by discharge into a community sewer system. In instances where sewage cannot be disposed of in a community sewerage system, waste disposal facilities designed and constructed in accordance with the Alaska Administrative Code, Title 7, Div. 1, Chapter 2, shall be provided. Water flush toilets, sewered to a community sewerage system or a treatment unit of proper design are most desirable. Sewage disposal by use of the sanitary privy is next most desirable (however, this method is somewhat impractical under extremely low temperature conditions.) The chemical toilet properly arranged and operated is the third choice for waste disposal methods. The box and can system, although undesirable is in some instances the only method which is practical at the present time. At points where no other waste disposal systems are practical, a properly operated box and can waste disposal system may be considered satisfactory.

Toilet rooms may be considered satisfactory if the finish of the floors and walls, fixtures provided, etc., are of non-absorptive materials. Floor drains should be provided, and all floors should be covered and extend at least six inches up the wall to facilitate cleaning. An abundance of natural light through outside windows and means for positive ventilation are a necessity.

Adequate fixtures are provided.

The toilet room and fixtures are kept clean, sanitary, in good repair and free from flies.

The toilet room is well lighted and ventilated to the outside air.

The toilet room doors for inside toilets are provided with springs or checks to make them self-closing.

Durable, legible signs are posted conspicuously in each toilet room and privy, directing students to wash their hands immediately after finishing at the toilet.

An ample supply of toilet paper is on hand at all times.

The best practice in use of water supply and waste disposal facilities is provided except in areas where climatic and topographic conditions may prevent the use of the most desirable facilities. In no instance should sanitary privies, chemical toilets or the box and can privy system be used when the enrollment exceeds 200. If facilities other than water flush fixtures are used, the same proportion of privy seats shall prevail as required for water closets. Urinals are to be provided and they should be constructed with at least the minimum requirements. Concrete, porcelain and metal are desirable materials. Approximately four feet of urinal space is required for each fifty male pupils.

(h) Hand washing facilities. Hand washing facilities shall be of such a type that the washing of hands under running water may be accomplished. Waste water shall be drained away to a satisfactory disposal system. The hand washing facilities shall be conveniently located and should be in close proximity with the toilets. In schools where hand washing facilities are not located in the toilet rooms, one lavatory or hand washing faucet and basin shall be provided for each school room.

Powdered or liquid soap and individual towels shall be provided and made available at all times. Hand washing facilities shall be kept clean and in good repair.

Commentary

Public health reason: The use of hand washing facilities and sanitary towels is essential to personal cleanliness and disease prevention.

Satisfactory compliance: This item shall be deemed to have been satisfied if:

Hand washing facilities are of such type that the washing of hands under running water may be accomplished.

In schools where it is not presently practicable to provide water under pressure and to provide conventional hand washing facilities in the toilet room, hand washing facilities shall be provided for each school room. In schools having water under pressure, lavatories shall be provided. It is highly desirable to locate lavatories in addition to the above in all primary school rooms.

Hand washing facilities shall be adequate and convenient. Soap and individual cloth or paper towels are provided. Most new commercial soap dispensers are satisfactory. When commercial dispensers are not available, improvised dispensers may be used. No student should return from the toilet to school activities without first washing hands. Hands should

be washed before lunch.

Hand washing facilities shall be kept clean and in good repair.

Powdered or liquid soap and single service or other type of individual towels shall be provided and made available at all times. Single service paper towels are highly desirable for use with school hand washing facilities. Cloth towels if used should not be used by more than one person and should be stored, laundered and cared for in a sanitary manner. The use of individual cloth towels is to be discouraged.

(i) Water supply. Each school building shall be provided with an ample supply of water which conforms with the Alaska Drinking Water Standards and Title 7, Div. 1, Chapter 7, Subchapter 1 of the Alaska Administrative Code. If a satisfactory community supply is not available, facilities shall be provided at the school to maintain a satisfactory water supply. The school water supply system shall be in a good working order at all times so as to adequately supply the water demands of the school.

Any water supply provided for the school shall comply with the Department of Health and Welfare minimum standards for the location, construction and operation of water supply systems.

Samples from school drinking water supplies shall be submitted regularly to the Department of Health and Welfare at such intervals as the Health Officer may require, and results shall show no evidence of dangerous contamination upon regular bacteriological analysis. The water supply should produce no disagreeable odors or tastes and should be clear and colorless in appearance.

Water shall be dispensed by means of sanitary fountains or covered water coolers and individual cups. The dipping of water from open containers will not be approved. The use of common drinking cups is prohibited. If paper cups are used they should be stored and dispensed in a sanitary manner.

Commentary

Public health reason: The location, source, protection and operation of the water supply are important factors in providing safe water. Adequate water encourages its use. Approved service is essential to safeguard the water.

Satisfactory compliance: This item shall be deemed to have been satisfied if:
Adequate water supply is available from an approved community supply.

Water is obtained from a properly constructed and operated school water supply such as a drilled well, dug well, bored well, spring, or cistern. Pumps, pipes, buildings, etc., should be maintained in good repair at all times.

In communities where one of the above-mentioned sources of water supply is not available to the school, because of climatic or geological conditions, a surface supply such as melted ice or snow water from a lake or stream may be used provided the ice, snow, pond or lake is protected

from human contamination and such water is either boiled or adequately treated. However, a supply of this type will not be approved for school use except during emergencies and in instances where a more desirable water source is not available.

The water supply meets the Department of Health and Welfare minimum standards for bacteriological quality, construction, location and operation.

Samples from the school drinking water supply are submitted regularly to the Department of Health and Welfare at such intervals as the Health Officer may require and results show no evidence of dangerous contamination upon bacteriological analysis.

Water samples should be submitted to the Department of Health and Welfare only in containers provided by the Department. Containers for water samples will be provided by the Department of Health and Welfare upon request. It shall be the responsibility of the local person in charge of each school to request and secure sufficient samples of the school water supply for bacteriological analysis. There is no charge to schools for the analysis of water samples. The cost for sending water samples from the school to the Department of Health and Welfare shall be borne by the school or its agency. No water samples will be analyzed by the Department of Health and Welfare without a proper description of the sample. Forms are provided by the Department of Health and Welfare for complete description of each sample. These forms accompany each sample container.

Water shall be dispensed by means of sanitary fountains or covered water containers and single service cups or individual cups. The dipping of water from open containers will not be approved. The use of common drinking cups is prohibited. Paper cups should be stored and dispensed in such a manner as to keep them clean at all times. Only angle stream jet type drinking fountains will be accepted provided they are equipped with a suitable guard to prevent touching the lips to the jet from which the water issues.

The use of individual single service paper cups is deemed to be most desirable for school use.

(j) Hot lunch equipment. In schools where hot lunches are prepared and served, adequate equipment shall be provided. The hot plate or stove shall have a sufficient number of burners. Water heating equipment shall be capable of furnishing water of the required temperature during the entire dish washing period. Kitchen utensils, pots, pans and similar devices shall have smooth, non-corrosive surfaces free from rust and foreign deposits and shall be maintained in a sanitary condition. Table dishes shall be free from cracks or chips and free from film. Silverware shall be free from corrosion. Tables and work benches shall have smooth surfaces which are free from cracks. Dishes following washing and sanitization shall be stored in such a manner as not to expose them to contamination.

All utensils, glasses or other dishes other than single service containers used in the serving of food or drink shall be thoroughly washed and cleansed after each separate use in hot water of not less than 110° F.

containing a suitable detergent or other effective cleaning agent so as to remove all foreign matter. Such utensils, glasses or other dishes shall then be either immersed in hot water at a temperature of 170° F. for at least two minutes immediately after washing or subjected to a thorough clear water rinse by immersion or a spraying process after which they shall be completely immersed for a period of at least two minutes in clear water containing a suitable chemical disinfecting agent. Drying cloths, if used, shall be clean and shall be used for no other purpose.

Where a community sewerage system is not available, liquid wastes shall be disposed of into a private system which includes a sanitary means of disposal, the operation of which creates neither a nuisance nor a menace to health.

All food and food service shall conform with Title 7, Division 1, Chapter 2, Subchapter 3, Alaska Administrative Code.

All milk, cream and milk products shall be of the best quality available and shall be pasteurized if such milk is available. Milk should be served in the original container as delivered by the pasteurization plant or from an approved dispenser.

All perishable food shall be stored in such a manner as to keep the temperature below 50° F. All other food stuffs shall be kept in covered containers.

Commentary

Public health reason: Numerous communicable diseases may be spread by improper food handling practice. Unless proper refrigeration, selection of foods, handling and storage of foods, and disinfection of utensils and equipment are rigidly enforced in the school food preparation unit at all times, students may be unnecessarily exposed to the dangers of food-borne illness. Approved lunch storage is necessary for protection from filth-borne diseases and to keep vermin and odors absent from the class room.

Satisfactory compliance: The proper provision for sanitation and safety in the school lunch program is highly desirable for two reasons, to protect the health and well being of both the children and the workers, and to teach the children and the workers proper sanitation and safety principles and practices. Proper attention must be given to sanitation and safety wherever school lunch programs are carried on. School lunch facilities may be in the form of hot jars, jars brought from home and warmed at school; the hot food prepared at school by teachers and pupils, and an entire lunch prepared at the school by teachers and pupils, practical workers, or professional workers. The school feeding facilities whether in the corner of the room, a single room or a complete unit, should be the cleanest area in the building. In the small one room school, storage space must be provided in a screened cupboard for storing lunches brought from home. The lunches should not be permitted to freeze or become too hot. The same cupboard may also be used for storage of cooking equipment and utensils. Staple foods such as salt, sugar, flour, etc., should be stored in well covered metal or glass containers. Canned foods must not be permitted to freeze. Matches must be kept in a tin or glass tightly closed. All work tables or other surfaces with which food

In preparing lunches, any person handling food should first wash his hands before beginning preparation of the lunch. All who handle food should wear hair nets or caps. Clothing should be protected with an apron. A separate tasting spoon should be used when cooking for the school. All food to be eaten raw should be well washed including dry fruits. Only pasteurized grade A milk or the best milk available should be used in the school. Milk bottles should be wiped carefully when they are received and before they are served. In serving the food, arrangements should be made for the children to wash their hands before lunch. Insist that each child use his own eating and drinking utensils. Make certain that children with colds or infections do not handle dishes or food to be served to others. After serving the meal, dishes should be washed carefully in accordance with the manual on eating and drinking establishments.

In certain parts of Alaska where the winter temperatures remain continuously at food preservation level, window boxes may be used for cold storage of foods. The window box, however, should not be used at any time when the outside temperature is above 30° F. In areas of Alaska where permanently frozen ground exists, it is possible to construct ice cellars or permafrost cellars as they are frequently called for storage of food and ice. A properly constructed permafrost cellar is suitable for storage of food throughout the entire year. The ice cellar may also provide a well protected and easily accessible place for storing ice for the school water supply. Where ice is cut and harvested for the school water supply, the ice should be stored in a sanitary manner. A properly constructed, drained and maintained permafrost cellar is a highly desirable means for storage of ice for the school water supply. Storage of ice above ground, where dust, dirt, dogs, and other things may contaminate the ice, will not be permitted.

Hot plates and stoves used in school lunch rooms shall have a sufficient number of burners to properly prepare food and clean up equipment. Water heating equipment shall be capable of furnishing water of the required temperature during the entire dish washing period. Kitchen utensils, pots, pans, and similar devices shall have smooth non-corrosive surfaces free from rust and foreign deposits and shall be maintained in a sanitary condition. Where a community sewer is not available, liquid wastes shall be disposed of into a private system which includes a sanitary means of disposal, the operation of which creates neither a nuisance nor a menace to health.

For help in planning school lunch programs, contact the Nutrition Section of the Department of Health and Welfare.

(k) Garbage disposal. In schools where hot lunches are prepared and served, fly-proof and watertight metal containers shall be provided for garbage. Garbage cans shall be emptied at regular intervals and never allowed to become foul smelling or a breeding place for flies or insects.

Garbage shall be disposed of in a manner which creates neither a nuisance nor a menace to health. The depositing of garbage into any lake, stream or other body of water is prohibited.

Commentary

Public health reason: All garbage, refuse and liquid waste resulting from the normal operation of a school, should be properly disposed of so as not to become [illegible] nuisance. Rodents, insects, and other disease vectors may feed upon improperly disposed of garbage and refuse. Therefore, impropor disposal of garbage will tend to create vector disease problems.

Satisfactory compliance: This item shall be deemed satisfied if:
All liquid wastes are disposed of in a public sewer or in the absence of a public sewer, by a method approved by the Department of Health and Welfare.

All plumbing complies with the Alaska Plumbing Standards and is so designed and installed as to prevent contamination of the water supply through inter-connections and back siphonage from fixtures.

All garbage is covered and kept in tight, non-absorbent, and easily washable receptacles which are covered with close fitting lids. Garbage receptacles which may be thrown away with the garbage are acceptable provided they are tight and are so constructed as to prevent depredation.

All garbage, trash and other waste materials are removed from the premises as frequently as may be necessary to prevent nuisance and unsightly conditions, and/or are disposed of in a manner approved by the Department of Health and Welfare. The most desirable means for disposal is disposal by means of a community disposal service. In areas where community disposal service is not available, sanitary fill carried on by the school officials is next best. Incineration of combustible material is satisfactory provided a safe incinerator is constructed. In many places there is not sufficient combustible material in school refuse to permit the burning of refuse and garbage without the addition of other fuels.

Careful collection and storage of refuse in areas where this material may freeze immediately upon being taken out of the school building is not desirable, but in some instances where extremely low temperature conditions exist, such a method will be approved providing at least annually all materials are buried or otherwise suitably stockpiled or removed to some remote spot where they do not create a nuisance or health hazard to the school, or the village where the school may be located.

(l) Storage. Lunches shall be stored in a clean, dry place, protected from flies and other contamination, located, preferably, outside the class room. Provision shall be made for storing outer clothing outside the class room in a well lighted and ventilated space. The general school supplies shall be stored to comply with good housekeeping. Individual service containers, if used, shall be handled and stored in a sanitary manner. Combustible or poisonous material must be stored in a manner to protect the children.

Commentary

Public health reason: Proper storage of clothing and school supplies are essential to good housekeeping and are useful in helping to prevent the interchange of infectious material. If individual service containers are not handled, stored and protected from contamination, the value of

individual service may be nullified. Approved storage of combustible and poisonous material is essential to the security of the children. Neatness, orderliness (a place for everything and everything in its place) and general good housekeeping are essential to sanitation.

Satisfactory compliance: This item shall be deemed satisfied if:
Sufficient storage space is provided to store outer clothing, rubbers, play equipment, etc. This space shall be easily accessible, well lighted and ventilated and should be so located that it can be supervised by the teacher. Lockers may be suitable in some schools, while in other schools hooks and shelves may be necessary. Garments should be hung on hooks spaced far enough apart to prevent the rubbing of one garment upon another and possible transfer of infectious material. Individual lockers or hooks should be assigned to the school children. Each child should continue to use the hook assigned to him throughout the school year. In grade schools, and for small children, it may be necessary to place the names of pupils under or on their hooks. Such an arrangement not only promotes orderliness and cleanliness, but also assists in the control of impetigo, scabies, and pediculosis.

All school supplies are stored in an approved manner.

Poisonous and combustible materials are stored so that they are inaccessible except to authorized individuals.

(m) Blackboards and furniture. The blackboards' construction, repair and location shall be such as to provide approved use. Erasers, crayon trays and furniture shall be kept clean. Blackboards and furniture shall be of a dull finish.

Commentary

Public health reason: Approved construction, good repair and correct location of the blackboards are prerequisite factors of approved use. Clean erasers and crayon trays are necessary to minimize dust. Comfortable furniture in good repair is essential to permit freedom in movement and good posture. Dull finish, clean furniture, prevents glare and promotes cleanliness.

Satisfactory compliance: This item shall be deemed satisfied if:
The material used for the blackboard is slate, composition, glass or equal construction.

The finish is smooth and no cracks exist and as few seams as possible. All blackboards which are to be refinished should be thoroughly sandpapered to remove all rough places and should be given two coats of finish.

The blackboards are not located in narrow spaces between windows; the blackboards shall be so located that they will be seen most easily by the intended user. Blackboards in primary grades must extend to within 24 inches of the floor; 28 inches of floor for intermediate grades; 32 inches of floor for upper grades.

The blackboard erasers and crayon trays are clean. This may be accomplished by cleaning the erasers daily outdoors, away from the build-

ing and cleaning the boards weekly. Only dustless chalk should be used.

The seating units are completely individualized.

The desks are so arranged that the light is admitted from the left of seated children. Many times, rows of desks beginning near the bank of windows and extending diagonally across the room provide the most advantageous arrangement. Special consideration should be given to the left handed children. Their desks should be so located that light will be over the right shoulder. When the pupil is directly seated with feet squarely on the floor, there must be no pressure from the forward edge of the seat under the knees. The height of the writing surface should be such that when the pupil is erectly seated, shoulders well down and elbows fairly close to the sides, with palms flat on the desk, both forearms in writing position will contact throughout the surface.

Provisions should be made for storing outer clothing outside of the class room. Even though a cloakroom may be constructed at the end of a class room, it should be so arranged as to be separate and should be considered separate from the instructional area or class room.

(n) Safety. All schools shall have adequate first aid facilities and fire extinguishers. The play area shall be a safe place for the children to play.

Commentary

Public health reason: The safety measures considered are essential to personal protection at school.

Satisfactory compliance: This item shall be deemed satisfied if:
Each school building has first aid material available and easily accessible. The Red Cross first aid manual (current edition) or the Boy Scout hand book are recommended as guides on technique.

At least one manually operated fire extinguisher is provided in all school buildings and so located as to be easily accessible. Each fire extinguisher should be periodically examined and kept at all times in a usable condition. School buildings which are two or more stories in height must be equipped with standard fire escapes which meet the approval of the State Fire Marshal.

All doors to the outside open outward and are equipped with panic latches. Fire drills should be held at regular intervals as specified by the State Fire Marshal.

The play area shall be such as to make a safe place for the children to play. There should be no rocks or obstructions in the area and the ground should be leveled. If the playground is situated near the road, a safety fence should be provided.

All playground equipment is well constructed and maintained in good repair. The equipment should be inspected frequently to detect defects and when found, shall be dismantled or placed out of service until repaired or replaced.

Many other safety items must be carefully noted and enforced. For example: loose boards, splintered boards, cracks and raised boards in floors should immediately be repaired or replaced. Plaster should be smooth and kept in good repair, avoiding loosening and subsequent falling. Steps within the building and leading to the building should be concrete where possible, kept in good repair, avoiding loose and rocking boards, all edges rounded, and the steps of sufficient width to give a firm tread. They should be constructed with not less than a seven-inch riser and ten-inch run. All stairs shall be provided with at least one hand rail running the full length of stairs. All elevated porches or stoops are to be enclosed with railings. All broken windows, mirrors and other glass articles should be replaced promptly. No protruding nails or other similar objects should be used.

Desks should be smooth with wide rounding edges and so constructed that they will not tip or turn over. School wiring should be frequently checked by an electrician. Damaged wiring, defective switches, fixtures and the like, should be repaired or replaced. All broken glass, rocks, cinders, dead tree limbs on trees, old boards, all dead limbs lying on the ground, all hollow trees, and all refuse should be cleared and kept cleared from the playgrounds. Some system should be worked out whereby an individual is held responsible for clearing a district school ground of weeds early in the summer before weeds are full grown, thus preventing thick heavy stubble. All abandoned holes, excavations, wells, washouts, etc., should be filled. Light poles should not be located on the school grounds. Where it is absolutely necessary to place them on the playgrounds, they should be protected by suitable padding against contact accidents.

All playground equipment should be of good design and maintained in good repair. For example, teeter-totter boards should be smooth, strong, and well secured. Foot scrapes should be recessed, or of the flat chain type, or provided with a guard over them to prevent accidents. School safety must include every precaution to prevent explosion and/or gas poisoning. Rubbish and refuse should not be allowed to accumulate; it should be removed from the school premises frequently; ashes from stoves should be placed in metal containers and removed from premises periodically. Mops, rags and other combustible material should not be stored under stairways, in closets, or other congested places. They should be stored in a separate storage room and kept in metal containers with a tight lid. Do not clean with an explosive material in school. Do not use kerosene in starting the fires.

(o) Miscellaneous. The school bus shall be cleaned and properly ventilated. The school grounds and building shall be free from rubbish and clean and orderly at all times.

Transportation of pupils by bus, car, boat or other conveyance shall be carried on in compliance with applicable safety regulations.

1213. Disease control.

No person who is affected with any disease in a communicable form or is a carrier of such disease shall work in any school, and no school board shall employ any such person or any person suspected of being affected

with any disease in a communicable form or of being a carrier of such disease.

When suspicion arises as to the possibility of transmission of infection from any employee, the Health Officer is authorized to require any or all of the following measures: the immediate exclusion of the employee from the school; adequate medical examination of the employee and his associates, with such laboratory examinations as may be indicated.

1214. Right to make inspection.

It shall be the duty of every principal, superintendent, teacher or other school official to afford the Health Officer access to any part, or all of the school, and to extend every facility for inspection purposes in the premises. Any interference with or obstruction of the Health Officer in the performance of his duties shall be a violation hereunder.

1215. Penalty.

Any person, firm or corporation violating any of the provisions of these regulations, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $500.00 or imprisonment for not more than ONE year, and each day that such person continues any such violation shall be deemed a separate offense.

Authority. A. S. Title 18; Health & Safety

History. In effect on and before July 28, 1959, effective date of Alaska Administrative Procedure Act.

HB-265

ALASKA EDUCATION ASSOCIATION

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

207 SEWARD BUILDING JUNEAU, ALASKA 99801 PHONE 586-3090

ROBERT VAN HOUTE
EXECUTIVE SECRETARY

JAMES WRIGHT, DEPUTY EXECUTIVE SECRETARY
[redacted]
REGIONAL OFFICE: 204 CENTRAL BLDG., ANCHORAGE, ALASKA 99501

ROBERT C. COOKSEY
DEPUTY EXECUTIVE SECRETARY

April 2, 1971

Members of the Legislature,
Juneau, Alaska

Members:

This report of 1970 was given to the Commission of Public Works in September 1970, to date no response has come from that department as to any corrective activity on any of the schools involved.

We do not know if these conditions have been changed in any manner. We are conducting another survey and will report to various members of the legislature when the survey is completed.

Very sincerely,

Robert Van Houte

Robert Van Houte,
Executive Secretary
NEA-Alaska

RV/jw

AIRMAIL TO ALASKA IS FASTER

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

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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

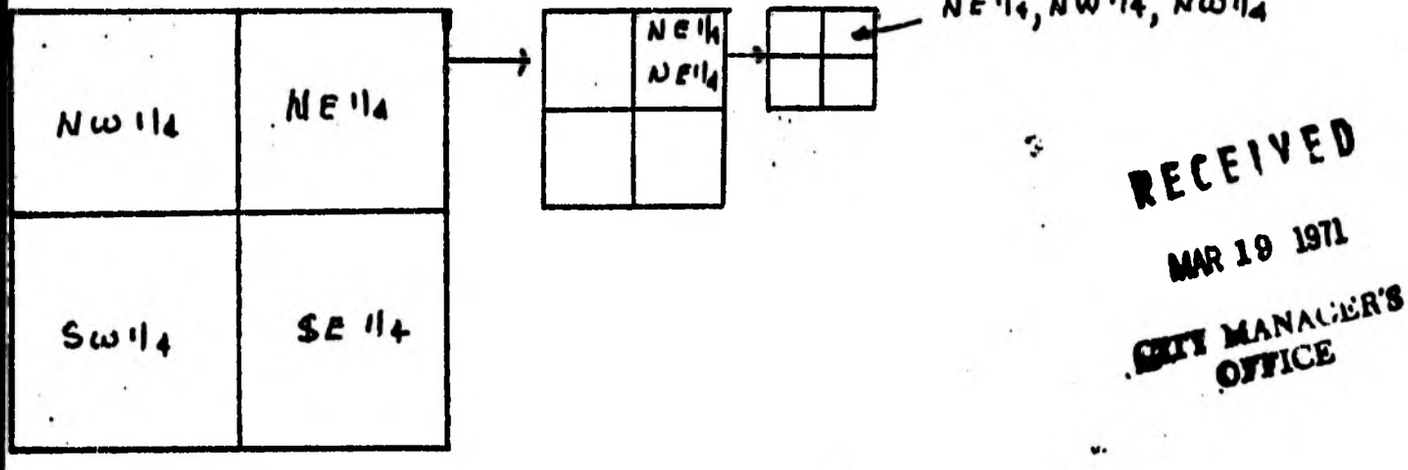
FROM: City Surveyor

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 -



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CITY MANAGER'S OFFICE

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.

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

AIRCRAFT EXEMPTIONS

[illegible]A — EXCLUDES INJURY CAUSED BY MEMBERS OF AIRCRAFT; AIRCRAFT TRADED IN OR USED WITHIN THEIR FACILITY; CARGO OR PASSENGER FLIGHTS; LIABILITY OF AIRCRAFT CO-EMPLOYEES (WORKERS' COMPENSATION) ARISING OUT OF THE OWNERSHIP, MAINTENANCE OR USE.

[illegible]A — SAME AS ALASKA

[illegible]A — EXCEPT AIRCRAFT OR CARGO OF SUCH AIRCRAFT, OR AGAINST EMPLOYER OTHER THAN EMPLOYER'S LIABILITY, ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE OF SUCH AIRCRAFT.

[illegible]A — EXCLUDES AIRCRAFT INSURANCE

[illegible]A — NO EXEMPTION

[illegible]A — SAME AS ALASKA

[illegible] — SAME AS ARIZONA

[illegible] — EXCLUDES AIRCRAFT "OWNED INTRASTATE" AND "INTERSTATE" IS REPLACED BY "COMMERCIAL INTERSTATE"

[illegible] — NO EXEMPTION

[illegible] — NO EXEMPTION

[illegible]A — SAME AS [illegible]

[illegible] — SAME AS ALASKA

[illegible] — NO EXEMPTION

[illegible]A — 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

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

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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(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)

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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)

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-

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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 § 664; RS § 3656-2; 97 v 172, § 2; 103 v 528 (Eff 7-6-); 124 v 597; 128 v 1046(1646), § 1. Eff 11-2-59.

See RC § 3905.31 which refers to this section.

§ 3905.36 Tax on unauthorized insurance company business. (GC § 664-1)

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 § 664-1; 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 § 664-2; 101 v 373, § 2. Eff 10-1-53.

Penalty, RC § 3905.99(C).

§ 3905.38 Exemptions. (GC § 664-3)

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 § 664-3; 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 § 264; 84 S 247; 89 v 88, §§ 19, 21; 97 v 3-5; 116 v 161, § 1. 128 v 894, § 1. Eff 11-10-59.

§ 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 states; 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 § 2873a; 97 v 182. Eff 10-1-53.

Research Aids

Duration of agent
Topic: 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 this state without having complied with the conditions of such statute, are to be the sole punishment for such violation of law, an insurance policy issued by a foreign insurance company which has not complied with the conditions of such statute, is valid; and accordingly, 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-

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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

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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.

ROBISON, McCASKEY, STRACHAN, HOGE, RICHARDS & FRANKEL
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
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PETER A. LEKISCH
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.

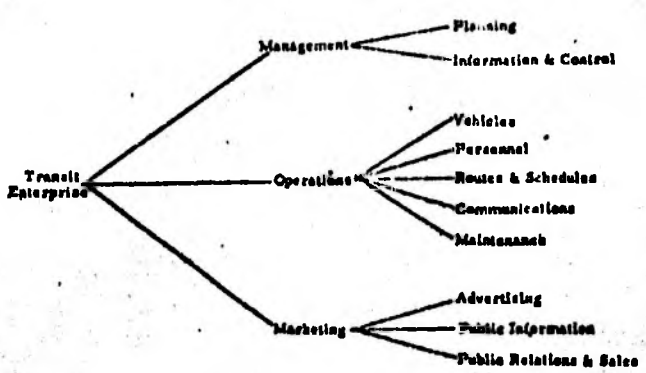
Another common problem area is transit management itself. In most cases it can best be classified as operations-oriented, management-by-reaction. Even a small transit enterprise in a small city can involve considerable complexity in operations, particularly in the scheduling of manpower and the use and 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.

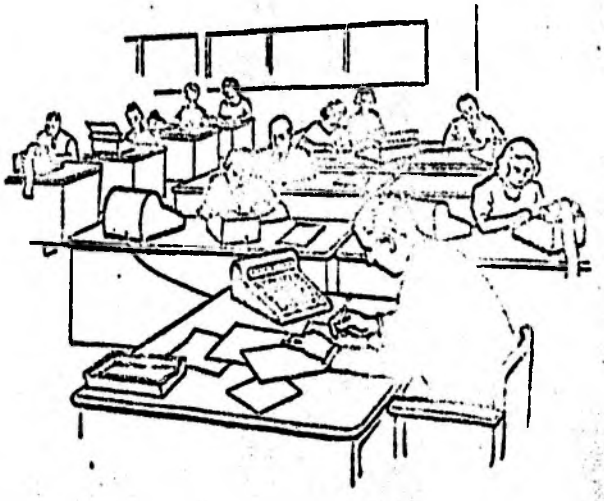
Management is the key to the survival and improvement of small-city mass transit, regardless of whether the enterprise is publicly or privately owned, subsidized to provide service, or expected to produce a return on investment. But the industry suffers from a lack of professional managers and it will 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.

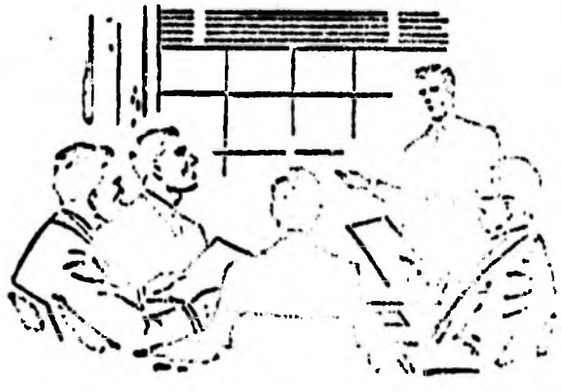
Moreover, the concept as set out here is very simple. In keeping with the scale of the enterprise. A vast and complex business or enterprise must obviously engage in systems approaches on a par with the magnitude of the effort. Batteries of engineers, scientists, and managers are needed to fit a rocket 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.

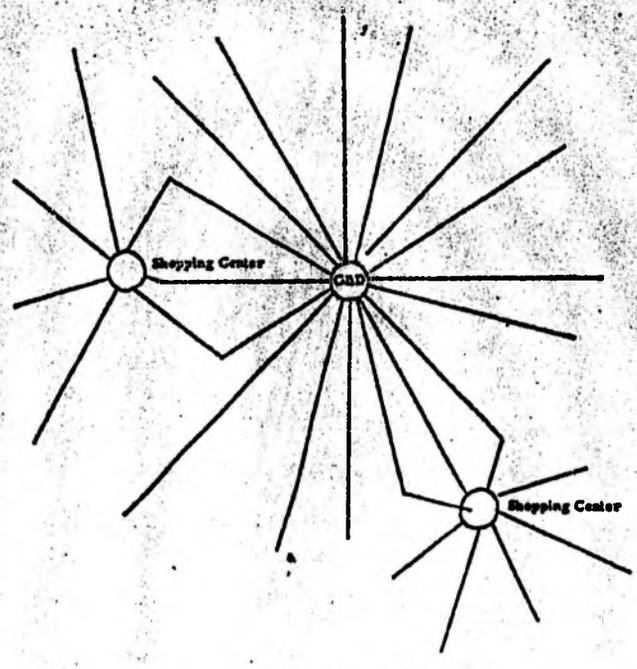
Small buses will be able to run on any residential street without needless noise and disturbance to residents; the goal of a service that successfully penetrates residential neighborhoods without offense can be realized. Wear and tear on the streets should be not much greater than that imposed by automobiles.

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

15 § 1671 COMMERCE AND TRADE

SUBCHAPTER II.—RESTRICTIONS ON GARNISHMENT

§ 1671. Congressional findings and declaration of purpose

References ...

U.S.C.A.

(a) The Congress finds:

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

(2) The application of garnishment as a creditors' remedy is usually responsible for the loss of employment of the debtor, a result disruptive of employment, production, and consumption and constitutes a substantial burden on interstate commerce.

(b) There is no uniformity among the laws of the several States relating to garnishment now in effect. Congress has the authority under the bankruptcy laws and is enhancing the purposes thereof in many areas of the country.

On the basis of the findings in subsection (a) of this section, the Congress determines that the provisions of this subchapter are necessary and proper for the execution of certain powers vested in Congress to regulate commerce and to establish uniform bankruptcy laws.

Pub.L. 90-321, Title II, § ... Stat. ...

Effective date. ... provisions of ... and ... of this ... see ... note under ...

Definitions

For purposes of this ...

(1) The term "earnings" means ... paid or ...

(2) The term "disposable earnings" means ... which remain after the deduction from those earnings of any amounts required ... payment of any taxes ...

Pub.L. 90-321, Title II, § ... Stat. ...

Effective date. ... section note under ...

Restriction on ... allowed

Except as provided in ... of this title, the maximum part of the aggregate disposable earnings of any worker for any workweek which is subject to garnishment ...

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

(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.

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

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

Appellant raises fo error in the trial bel fication is that the co dicial error in reassig from Judge Davis to out giving appellant fi

1. There was no advan of the reassignment Judge Davis to Judge of trial. It should b quent to the trial here case of Roberts v. St 310 (Alaska 1969) pol tinl problems of such gesting that this meth of a case should be avo A method should be to make assignment sufficiently in advan ing, with notice of th given to the parties, ties can be afforded AS 22.20.022 withou scheduled hearing or

2. The motion was as foll Mr. Clouse: Your H ord, at this time, I an objection to the us to go to trial at th

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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.

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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

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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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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

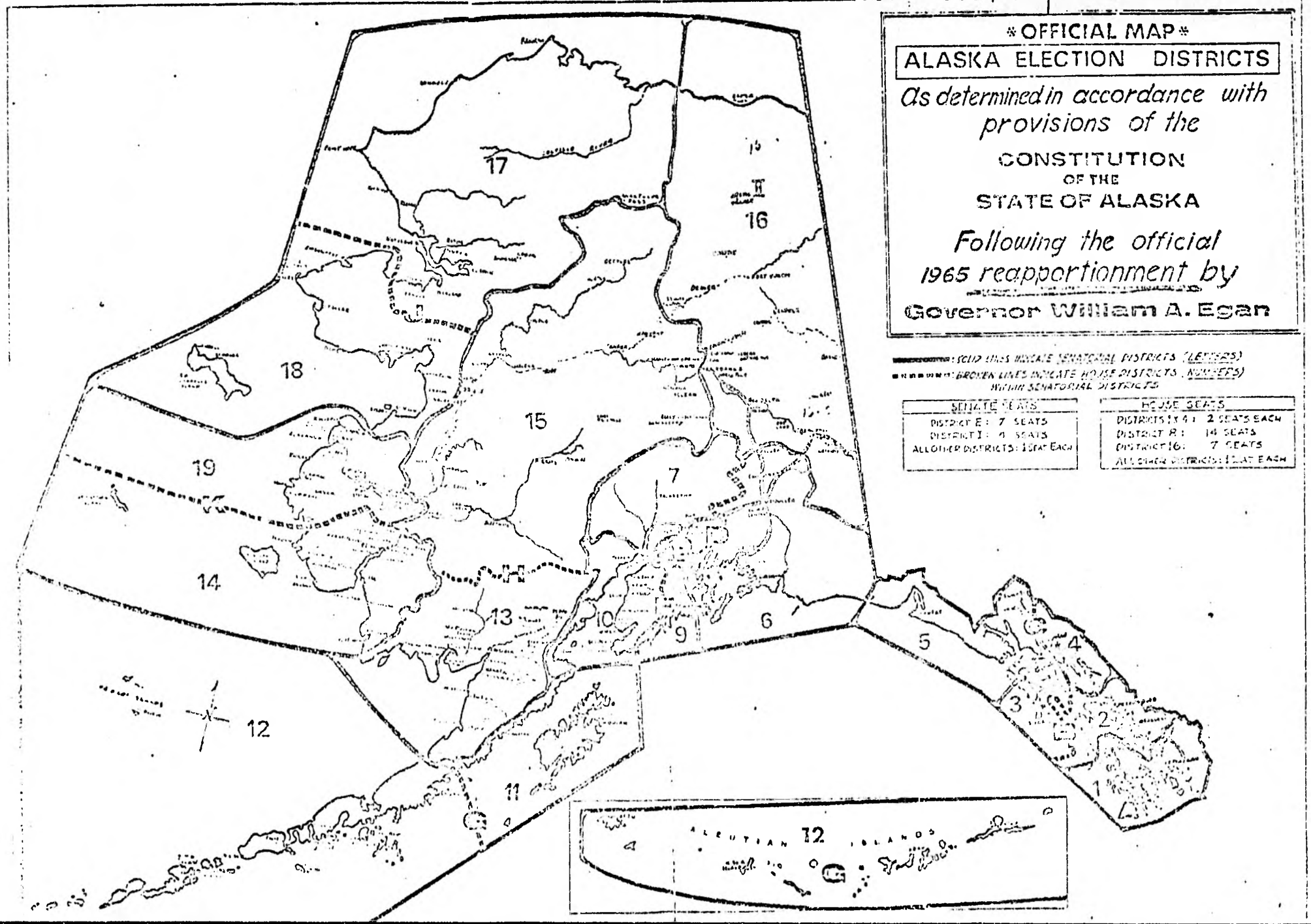
venue waives the requirements of this section.

* 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

CHIEF JUSTICE
GEORGE F. BONEY

ASSOCIATE JUSTICES
JOHN H. DIMOND
JAY A. RABINOWITZ
ROGER G. CONNOR
ROBERT C. ERWIN

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

BERING SEA

BERING STRAIT

NORTON SOUND

GULF OF ALASKA

BRISTOL BAY

PACIFIC OCEAN

ALEUTIAN ISLANDS

PRIBILOF ISLANDS

ANDREANOF ISLANDS

KOMANDORSKIE ISLANDS

ANADYRSKIY GULF

ANADYRSKIY GULF

KOLYUCHINSKAYA GUBA

Barrow

NOME

ST. LAWRENCE ISLAND

KODIAK ISLAND

FAIRBANKS

Circle

Dawson

YUKON

NORTHWEST TERRITORIES

BRITISH COLUMBIA

ALASKA

USSR

USA

1 SOUTHEAST

2 SOUTHEAST CENTRAL

3 SOUTHEAST CENTRAL

4 SOUTHEAST CENTRAL

5 SOUTHEAST CENTRAL

6 SOUTHEAST CENTRAL

7 SOUTHEAST CENTRAL

8 SOUTHEAST CENTRAL

9 SOUTHEAST CENTRAL

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18 SOUTHEAST CENTRAL

19 SOUTHEAST CENTRAL

20 SOUTHEAST CENTRAL

21 SOUTHEAST CENTRAL

22 SOUTHEAST CENTRAL

23 SOUTHEAST CENTRAL

24 SOUTHEAST CENTRAL

13A SOUTHEAST CENTRAL DISTRICT

14 ALEUTIAN ISLANDS

LITHO BY LOMMERCIAL PRINTING CO INC

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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.

Section
10. Establishment of superior court
20. Jurisdiction
30. Where actions are to be brought
40. Change of venue
50. General powers and sessions
60. Effect of adjournment
70. Seal of court
80. Process
90. Qualifications of judges
100. Vacancies
110. Oath of office
120. Number of judges
130. Appointment and duties of presiding judges
140. Chief justice may assign superior court judges

Section
150. Approval or rejection
160. [Repealed]
170. Impeachment
180. Restrictions
190. Compensation

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

No. 4

HB 451
&
HB 452

January 21, 1972

Richard Wheatley, Esquire
University Bank
Post Office Box 1067
Stillwater, Oklahoma 74074

Re: HB 451 - Uniform Foreign Money - Judgement Recognition Act
HB 452 - Uniform Enforcement of Foreign Judgements Act

Dear Mr. Wheatley:

In the First Session of the Seventh Alaska Legislature (1971), I introduced, and the House passed, the subject bills. They are now in the Senate Judiciary Committee. At the time of their introduction, I knew that both uniform acts had been adopted in Oklahoma. Although Sen. Robert H. Ziegler, Chairman of the Senate Judiciary Committee, has agreed that his committee will consider these bills, you will appreciate that they are not matters about which great interest and enthusiasm are likely to be generated. Of course, I think they would be useful additions to Alaska law.

Because of your association with the National Conference, and because of your experience with such matters in Oklahoma, I am requesting that, in the course of your visit with us later this month, you discuss these two bills with Senator Ziegler and me, and, possibly the Senate Judiciary Committee. I am enclosing copies of both bills as passed in the House.

Please accept my very personal thanks for your assistance.

Sincerely,

William J. Moran

Enclosures

WJM/dsg

File
HB 444

January 18, 1972

Mr. John M. Asplund, Chairman
Greater Anchorage Area Borough
3500 Tudor Road
Anchorage, Alaska 99507

Re: SB 174 and HB 444 - Repayment of Profit from Sale of School Bonds

Dear John:

You are certainly familiar with the subject bills for the repayment to the Greator Anchorage Borough of the really unconscionable profits realized by the State on those bonds purchased from the Borough for re-sale. SB 174 was introduced in the Senate by Senators Croft, Josephson, and Thomas; HB 444 was introduced in the House by me with the co-sponsorship of the other members from Anchorage.

I enclose a copy of the form of the Fiscal Note furnished to the Senate Finance Committee, the memorandum attached thereto reflecting that the profit to the state on the sale was $836,263. It is this sum which we seek to pay to the Borough. I am also happy to note that these proposals are finally receiving some attention in Senate Finance.

I am sending a copy of this letter and its enclosure to Joe Montgomery.

I am also herewith sending my personal greetings to both of you.

Sincerely,

William J. Moran

Enclosure

cc: Mr. Montgomery w/enclosure

The Legislature of the State of Alaska
FISCAL NOTE
Second Session - Seventh State Legislature

I. REQUEST

Bill Identification: Senate Bill No. 174 and House Bill No. 444
Title: Repayment of profits on bonds purchased by the State.
Requested by: Legislative Finance Date: 1-10-72
Return Date Requested: 1-18-72
Agency: Department of Revenue Program: Fiscal Services

II. FISCAL DETAIL

Budget Request Unit(s) Affected:

A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 72	FY 73	FY 74	FY 75	FY 76	FY 77
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL						
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	-0-					

B. FUNDING: (Thousands of dollars)

	GENERAL FUND						
	FEDERAL FUNDS						
	OTHER						

C. POSITIONS:

	PERMANENT/TEMPORARY	0 /	/	/	/	/	/
	MAN MONTHS (P./T.)	0 /	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

See Attached Memorandum indicating details of sales price received state, sum paid by state and excess in amount of $836,263.00 that would be paid to the Greater Anchorage Borough as the issuing political subdivision of bonds purchased by the state and sold subsequently at a profit.

IV. ATTACHMENTS

V. DATE: January 17, 1972 PREPARED BY:

Deputy Commissioner
Department of Revenue

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

02-001B

STATE of ALASKA

MEMORANDUM

TO:
R. D. Stevenson
Deputy Commissioner of Revenue
Department of Revenue

DATE: January 14, 1972

FROM: John M. Daugherty
Director, Treasury Division
Department of Revenue

SUBJECT: Senate Bill 174 & House Bill 444- Excess - from sales of the Greater Anchorage Borough Bonds, par value $13,350,000

June 26, 1970 — The State purchased $13,350,000 par value bonds at a cost of $12,703,818.00

Total proceeds from Bond sales of October 70 and September 71:

Sold $13,350,000 at a price of	$13,540,081.00
Less Cost of Bonds to State	(12,703,818.00)
Net excess from sale - sale price over original cost	$ 836,263.00

NFPA No.
501C
1970

ANSI
A119.2
1970

STANDARD FOR

RECREATIONAL VEHICLES

Travel Trailers, Camping Trailers, Truck Campers, Motor Homes

Installation of Plumbing, Heating, and Electrical Systems

1972

$2.00

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National Fire Protection Association
60 Batterymarch St., Boston, Mass. 02110

Recreational Vehicle Institute
2720 Des Plaines Ave., Des Plaines, Ill. 60018

Trailer Coach Association
3855 E. La Palma Drive, Anaheim, Calif. 92806

National Fire Protection Association

The National Fire Protection Association (NFPA) is a non-profit technical and educational organization to promote the science and improve the methods of fire protection. Organized in 1896, the Association has a broad-scale standards-making program to aid in its objective to reduce loss of life and destruction of property by fire. The Association publishes the standards developed under its aegis in pamphlet editions (such as this) and in what is known as the National Fire Codes (a ten-volume compilation annually updated, totaling approximately 8,000 pages). For full information about the Association and for a list of its publications, write to the Association's Headquarters.

Recreational Vehicle Institute

The Recreational Vehicle Institute is a national trade association exclusively serving the recreational vehicle industry. Its manufacturing members come from throughout the U.S.A. and produce travel trailers, truck campers, camping trailers and motor homes. The Institute sponsors and directs recreational vehicle trade shows, provides information to the consumer and the trade, issues news releases concerning industry developments and has a Standards Department which assists in the development of such national codes as this Standard. Compliance with this Standard is a mandatory requirement for membership in the RVI for those building recreational vehicles.

Trailer Coach Association

The Trailer Coach Association represents the manufacturers of mobile homes and recreational vehicles, dealers and suppliers in the Western States while drawing its members from all sections of the country. Founded in 1936, the Association sponsors mobile home and recreational vehicle shows in the major western cities and has research programs dedicated to advance the proper use of mobile homes and recreational vehicles. It has a Standards Department which works with the enforcing officials in the various Western States to encourage compliance with the recommendations contained in this standard. The Trailer Coach Association currently has a staff of 18 and a membership of 742.

American National Standards Institute

The American National Standards Institute (ANSI) is the national coordinating institution for voluntary standardization in the U.S.A. through which organizations concerned with standardization may cooperate in recognizing, establishing and improving standards in this country. Approval of a standard by the Institute is based on a consensus of those essentially concerned with its scope and provisions. The Institute has a Member Body Council, a Consumer Council, and a Company Member Council. The Member Body Council is composed of non-profit technical, professional, scientific, trade, or other membership associates, societies, or organizations which are of national scope and recognition. The National Fire Protection Association, the Recreational Vehicle Institute, and the Trailer Coach Association are Member Bodies of the ANSI.

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15M-6-70-FP Printed in U.S.A.

Standard for Recreational Vehicles

(Travel Trailers, Camping Trailers, Truck Campers, Motor Homes)

Installation of Plumbing, Heating and Electrical Systems

Proposed American National Standard A119.2 — 1970

NFPA No. 501C — 1970

This Edition of Standard for Recreational Vehicles

This Standard has been developed by the American National Standards Committee on Mobile Homes and Recreational Vehicles, sponsored jointly by the Mobile Homes Manufacturing Association, the National Fire Protection Association, the Recreational Vehicle Institute and the Trailer Coach Association. Personnel of the Committee are listed on pages 2 through 5.

This edition of the Standard was adopted as an NFPA Standard at the 74th Annual Meeting of the National Fire Protection Association on May 20, 1970, in Toronto, Canada. It has been approved by the Recreational Vehicle Institute and by the Trailer Coach Association. The Standard, in its present form, is being submitted to the American National Standards Institute for their approval. At such time as the Institute has opportunity to act upon this submittal, this Standard will be reissued, assuming such approval, as an American National Standard. Its present designation, as Proposed ANSI A119.2–1970, is to clearly indicate that the intent of this Standard is to replace the existing American Standard for Installations of Plumbing, Heating and Electrical Systems in Travel Trailers (A119.2–1963).

This edition of the Standard for Recreational Vehicles also replaces the coverage of travel trailers previously appearing in the 1964 Edition of the NFPA Standard for Fire Prevention and Fire Protection in Mobile Homes and Travel Trailers (NFPA No. 501B–1964). Attention is invited to the Standard for Mobile Homes (ANSI A119.1–1969; NFPA No. 501B–1968) for those concerned with this type of equipment.

Committee on Mobile Homes and Recreational Vehicles

An American National Standards Institute Committee (A119)

Corrected to May 20, 1970

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†Nonvoting.

This Committee functions under the auspices of the American National Standards Institute under the joint sponsorship of the Mobile Homes Manufacturers Association, the NFPA, the Recreational Vehicle Institute, Inc. and the Trailer Coach Association.

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R. E. Klingler, Holiday Rambler Corp. (Recreational Vehicle Institute)

Arthur Kretschman, Duo-Therm Division, Motor Wheel Corp. (Gas Appliance Manufacturers Association, Inc.)

Norman Latter, International Assn. of Plumbing & Mechanical Officials

Gordon B. Lemke, Employers Insurance of Wausau (American Mutual Insurance Alliance)

W. P. Marshall, Leisure Time Products, Inc. (Recreational Vehicle Institute)

Samuel J. Morano, American Society of Sanitary Engineers

Frank W. Osborn, The Coleman Co., Inc. (Air Conditioning and Refrigeration Institute)

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M . din E. Nerem, Winnebago Industries, Inc. (Alternate to W. P. Marshall)

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R. D. Watson, Canadian Standards Association Testing Laboratories (Alternate to D. M. Manson)

†Nonvoting.

Task Groups

Work on this Standard for Recreational Vehicles was greatly aided by Task Groups, which developed the basic material for the detailed consideration of a Subcommittee on Recreational Vehicles and the parent Committee on Mobile Homes and Recreational Vehicles. There follows a listing of the three Task Groups.

Electrical Task Group

Eugene L. Kilbourn, *Chairman*
Progressive Dynamics, Inc.
P.O. Box 168, 507 Industrial Road, Marshall, Michigan 49068

Don Agnew, Trailite Mfg. Co.
John C. Hewitt, Washington (State) Dept. of Labor and Industries
John C. Hufft, Coachmen Industries, Inc.
Wayne Korn, TRAVCO Corporation
Marvin E. Nerem, Winnebago Industries, Inc.
R. E. Ward, Tennessee Dept. of Insurance and Banking
Paul H. Winter, Pass and Seymour, Inc.

Heating Task Group

Bob Cooper, *Chairman*
The Coleman Company, Inc.
250 N. St. Francis, Wichita, Kansas 67201

Robert Boles, Nimrod Division, Ward Manufacturing Co.
Albert Chamberlain, Royal-DeSoto Division of DeSoto, Inc.
John Hast, National Park Service, U. S. Dept. of the Interior
Jordan Helman, Intertherm Inc.
H. Forrest Lovett, Streamline Trailer Company
Gary O'Dell, Coachmen Industries, Inc.
Darrel Reifschneider, Manchester Tank and Equipment Co.
Eldon Winkley, Oregon Chief Deputy State Fire Marshal

Plumbing Task Group

Harry S. Stuart, *Chairman*
Sure Stop Manufacturing, Inc.
16237 Minnesota Ave., Paramount, Calif. 90723

Delevan J. Arnold, TRAVCO Corp.
Weldon C. Fill, U. S. Dept. of Health, Education & Welfare
Tom S. Gable, National Sanitation Foundation Laboratory, Inc.
Ed Gerlach, TRAVCO Corporation
Norman Latter, International Assn. of Plumbing & Mechanical Officials
Marvin E. Nerem, Winnebago Industries, Inc.
Ronald J. Sargent, Thetford Corporation

Standard for Recreational Vehicles

(Travel Trailers, Camping Trailers, Truck Campers, Motor Homes)

Installation of Plumbing, Heating and Electrical Systems

Proposed American National Standard A119.2 — 1970

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Recreational Vehicles are defined as vehicular type units primarily designed as temporary living quarters for recreational, camping, or travel use which either have their own motive power or are mounted on or drawn by another vehicle. The basic types of recreational vehicles are travel trailers, camping trailers, truck campers, and motor homes. Each of these is defined further herein.

In conformance with the policies of the American National Standards Institute and the four sponsors of this project, the Committee on Mobile Homes and Recreational Vehicles is constituted as a standing Committee with continuing responsibility to maintain and improve this Standard so that it might at all times be a useful and effective document to guide manufacturers and their suppliers concerning the installation of plumbing, heating and electrical systems in recreational vehicles with the basic objective of protecting the safety and health of the owners and occupants of the vehicles. The Standard in its present form does not cover the construction of recreational vehicles or features related to the safety and performance of the vehicles when in use as a vehicle. Federal and state motor vehicle regulations are applicable to these vehicles and should be referred to in connection therewith. The Standards of the Society of Automotive Engineers are cited where appropriate.

The participation of the National Fire Protection Association as a sponsor of this project is administrative and undertaken in the sole interest of safety to life and property from fire and allied hazards. Some portions of this Standard cover areas outside the scope of NFPA's normal sphere of activity but are of interest and concern to the other sponsors and to users of recreational vehicles. The NFPA Board of Directors has authorized the Association's participation with the understanding that its responsibility extends only to those areas within its scope.

In order to aid users of this Standard, an Official Interpretations Procedure has been developed and is detailed herein.

Official Interpretations Procedure
Committee on Mobile Homes and Recreational Vehicles

1. **General.** There is hereby established an Official Interpretations Procedure for the Committee on Mobile Homes and Recreational Vehicles for the purpose of providing official explanations of the meaning or intent of any specific provision or provisions of any standard developed under the jurisdiction of the Committee.

NOTE: This Official Interpretations Procedure does not prevent any Committee Chairman or Member from commenting on the meaning or intent of any provision of any such document, provided that the comment is clearly identified as not being an Official Interpretation of the Committee.

2. **Nature of Official Interpretations.** Two General forms of Official Interpretations shall be recognized:

(a) Those making an Interpretation of the literal text.

(b) Those making an Interpretation of the intent of the Committee when the particular text was adopted.

No judgments will be rendered by the Interpretations Committee regarding compliance with any of the Committee's standards of engineering drawings.

3. **Procedures for Requesting Official Interpretations.** Those desiring an Interpretation shall direct their requests to the Chairman or Secretary of the Committee, c/o National Fire Protection Association, 60 Batterymarch Street, Boston, Massachusetts 02110, supplying five identical copies of a statement in which shall appear specific references to a single problem, identifying article, section or paragraph of the document with which they are concerned. Such a request shall be on the business stationery of the inquirer and shall be duly signed. When applications involve actual field situations they shall so state, and all parties involved shall be named.

4. **Committee Handling of Requests for Official Interpretations.** The Committee shall not be under any obligation to process requests for Official Interpretations in any specified time period nor to issue an Official Interpretation except at its own convenience. The Committee officers may process the request for an Official Interpretation exactly the way it has been submitted, or they may rephrase the question, if desired, to clarify the intent, or they may refuse to consider the request if they find it not to be in proper form or consistent with Paragraph 2. If acceptable for consideration, the request for an Official Interpretation shall be submitted to an Interpretations Subcommittee made up of five or more individuals selected by the Chairman or by the Secretary (with the approval of the Chairman). In selecting those to serve the Chairman or the Secretary will select Members of the appropriate Subcommittee having jurisdiction over the question posed and may also include up to two members of the appropriate Task Group who are not Subcommittee members, but no Member, Alternate, or Task Group representative shall be eligible for such appointment if he is directly involved in the particular case prompting the request for the Interpretation. The Personnel of each Interpretations Subcommittee may be varied with each request.

5. **Voting on Interpretations.** In any case where there is not unanimous agreement in the Interpretations Subcommittee, the request for Interpretation shall be referred to the Subcommittee having primary jurisdiction for a decision. Under these conditions, adoption of an Official Interpretation requires approval by a three-quarters majority vote of that Subcommittee. Where a three-quarters majority vote is not received, the item shall be placed on the docket

for regular processing by the Subcommittee for subsequent possible action. If the Interpretations Subcommittee unanimously agree or a three-quarters affirmative vote is secured from the Subcommittee having primary jurisdiction, the Executive Committee of the Committee on Mobile Homes and Recreational Vehicles shall be informed of the decision reached and shall be requested to ballot on said decision. If unanimous agreement is reached, the applicant shall be informed promptly and as soon as possible the Interpretation shall be published by the sponsors in the publications each distributes to its members and announced in a suitable news release by the Secretary which shall be sent to the American National Standards Institute for their information and guidance. If the Executive Committee does not concur unanimously, the question shall be placed before the full membership of the Committee on Mobile Homes and Recreational Vehicles, where a three-quarters majority vote must be secured to complete the processing of the Interpretation as indicated in the previous sentence.

6. **Action Following Issuance of Official Interpretations.** Following the issuance of an Official Interpretation, the Subcommittee shall be obliged to review the item on which the Interpretation has been issued with a view to determining whether any change may be desired in the standard to clarify or correct the condition which brought about the request for the Official Interpretation. If such a change is indicated, the Subcommittee shall process such a change in conformance with the usual procedures established under the rules of procedure of the Committee as a whole.

7. **Time Limit on Interpretations.** Any Official Interpretation issued shall apply only to the edition of the document for which the Interpretation is made.

Standard for Recreational Vehicles

Installation of Plumbing, Heating, and Electrical Systems

Proposed American National Standard A119.2 — 1970

NFPA No. 501C — 1970

Definitions Common to Parts I, II, and III

Authority Having Jurisdiction: The organization, office or individual responsible for "approving" equipment, an installation, or a procedure.

Camping Trailer: A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle and unfold at the camp site to provide temporary living quarters for recreational, camping, or travel use. (See "Recreational Vehicle")

Motor Home: A vehicular unit built on a self-propelled motor vehicle chassis, primarily designed to provide temporary living quarters for recreational, camping, or travel use. (See "Recreational Vehicle")

Recreational Vehicle: A vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are: travel trailer, camping trailer, truck camper and motor home.

Shall: Mandatory rules are characterized by the use of the word "shall."

Should: Advisory rules are characterized by the use of the word "should."

Travel Trailer: A vehicular portable unit, mounted on wheels, of such a size or weight as not to require special highway movement permits when drawn by a motorized vehicle; primarily designed and constructed to provide temporary living quarters for recreational, camping, or travel use; and of a body width of no more than eight feet (8′) and a body length of no more than thirty-two feet (32′) when factory equipped for the road. (See "Recreational Vehicle")

Truck Camper: A portable unit, designed to be loaded onto, or affixed to, the bed or chassis of a truck, constructed to provide temporary living quarters for recreational, camping, or travel use. Truck campers are of two basic types as defined below:

a. SLIDE-IN CAMPER: A portable unit designed to be loaded onto and unloaded from the bed of a pickup truck, constructed to provide temporary living quarters for recreational, travel or camping use.

b. CHASSIS-MOUNT CAMPER: A portable unit designed to be affixed to a truck chassis, and constructed to provide temporary living quarters for recreational, travel or camping use.

Part I — Plumbing Systems

1. Introduction

1.1 Those members of the engineering profession and others associated with the design, manufacturing, installation, and inspection of recreational vehicle plumbing systems have been aware of the need for uniform technical standards leading to the safe and sanitary use of this special type of equipment. They have also recognized that because of conditions of transport and use, existing plumbing standards for permanent buildings are not completely applicable to recreational vehicles. It is with these factors in mind that Part I of this Standard has been developed.

1.2 Much of the material in Part I has been taken from, or is based on, nationally recognized standards for plumbing materials, fixtures, fittings, and equipment.

2. Scope

2.1 Part I of this Standard covers the plumbing materials, fixtures, fittings, and equipment installed within or on recreational vehicles.

2.2 This Standard is not intended as a design specification or an instruction manual for untrained persons.

2.3 Wherever other nationally recognized standards for plumbing materials, fixtures, fittings and equipment and this Part differ, the requirements of the latter shall apply.

2.4 The provisions of this Standard are not intended to prevent the use of any material, appliance, installation, device, arrangement, or method of construction not specifically prescribed herein, provided any such alternative has been approved or listed. The enforcement authority shall approve such alternate if the material, appliance, installation, device, arrangement, or method of construction is at least the equivalent of that prescribed by this Part, and may require tests or proof of compliance to substantiate any claims that may be made regarding the use of any such alternate.

3. Definitions

Air Gap: The unobstructed vertical distance through the free atmosphere between the opening from any pipe or faucet supplying

potable water to a tank, plumbing fixture, or other device and the flood-level rim of the receptacle.

Approved: Means acceptable to the authority having jurisdiction.

Backflow: The flow of water or other liquids, mixtures, or substances into the distributing pipes of a potable supply of water from any source or sources other than its intended source.

Backflow Connection: Any arrangement whereby backflow can occur.

Backflow Preventer: A device or means to prevent backflow.

Body Waste: The discharge from any fixture, appliance or appurtenance containing fecal matter or urine.

Branch: Any part of the piping system other than a riser, main or vent stack.

Branch Vent: A vent connecting one or more individual vents with a vent stack.

Center: The midpoint between the right and left side of a recreational vehicle.

Certified: Means "listed" as defined herein.

Combination Compartment: A shower stall or recess that provides for or includes the installation of a toilet and is of such size and proportions that it may not be occupied by more than one person.

Common Vent. A vent connecting at the junction of fixture drains and serving as a vent for more than one fixture.

Continuous Vent: A vertical vent that is a continuation of the drain to which it connects.

Continuous Waste: A drain from two or more fixtures connected to a single trap.

Critical Level: The critical level, C-L or $\frac{C}{L}$ marking, on a backflow prevention device or vacuum breaker is a point established by the testing laboratory (usually stamped on the device by the manufacturer) which determines the minimum elevation above the flood level rim of the fixture or receptacle served on which the device may be installed. When a backflow prevention device does not bear a critical level marking, the bottom of the vacuum breaker, combination valve, or of any such approved or listed device shall constitute the critical level.

Cross Connection: Any physical connection or arrangement between two otherwise separate systems or sources, one of which con-

tains potable water and the other either water, steam, gas or chemical of unknown or questionable safety whereby there may be a flow from one system or source to the other, the direction of flow depending on the pressure differential between the two systems.

Developed Length: That length of pipe measured along the center line of the pipe and fittings.

Diameter: The nominal inside diameter designated commercially.

Drain: A pipe that carries waste, water, or water-borne wastes in a drainage system.

Drain Hose: The hose used for connecting the liquid and/or body waste drain outlet to a sewer inlet connection.

Drain Outlet: The lowest end of a main or secondary drain to which a sewer connection is made.

Drainage System: All piping within or attached to the structure that conveys body waste and/or liquid waste to the drain outlet or outlets.

Fixture Drain: The drain from the trap of a fixture to the junction of that drain with any other drain pipe.

Fixture Supply: The water supply pipe connecting a fixture to a branch water supply pipe or directly to a main water supply pipe.

Flood Level: The level in the receptacle over which water would overflow to the outside of the receptacle.

Flooded: The condition which results when the liquid in a container or receptacle rises to the flood-level.

Flush Tank: That portion of a toilet that is designed to contain sufficient water to adequately flush the fixture.

Flush Valve: A device located at the bottom of a flush tank for flushing a toilet.

Grade: See "Pitch."

Horizontal Branch: A drain pipe extending laterally, which receives the discharge from one or more fixture drains and connects to the main drain.

Horizontal Pipe: Any pipe or fitting that makes an angle of more than 45 degrees with the vertical.

Individual Vent: A pipe installed to vent a fixture drain.

Labeled: Equipment and materials bearing an inspection label, symbol, or other identifying mark of a recognized testing agency.

Length: The overall length of the recreational vehicle.

Liquid Waste: The discharge from any fixture, appliance, area or appurtenance which does not contain body waste.

Listed: Refers to plumbing materials, devices, fixtures, fittings, equipment, appliances, and accessories that are shown in a list published by a recognized agency, maintaining an adequate periodic inspection of current production of listed models, and whose listing states either that the material, device, fixture, fitting, equipment, appliance, or accessory complies with nationally recognized health and safety requirements or has been tested and found safe for use in a specified manner.

Main: The principal artery of the system to which branches may be connected.

Main Drain(s): The lowest piping of a drainage system which receives the liquid and/or body waste discharge from all the fixtures within the recreational vehicle and conducts these wastes to the drain outlet(s).

Pitch (or Grade): The fall (slope) of a pipe in reference to a horizontal plane expressed in inches per foot length.

Plumbing Fixtures: Receptacles, devices or appliances which are supplied with water or which receive liquid or liquid-borne wastes for discharge into the drainage system.

Toilet — Mechanical Seal: A toilet fitted with a water-flushing device and mechanically sealed trap.

Toilet — Recirculating Chemical: A self-contained, recirculating toilet in which the waste is chemically treated.

Toilet — Water Flush: A toilet fitted with a water flushing device and integral non-mechanical trap.

Trap: A fitting or device designed and constructed to provide a liquid seal that will prevent the back passage of air without materially affecting the flow of liquid waste through it.

Trap Arm: That portion of a fixture drain between a trap and its vent.

Trap Seal: The vertical depth of liquid that a trap will retain.

Vacuum Breaker: See "Backflow Preventer."

Vent Stack: A vertical vent pipe installed to provide circulation of air to and from the drainage system.

Vertical Pipe: Any pipe or fitting which makes an angle of 45 degrees or less with the vertical.

Waste Holding Tank: A liquid-tight tank for the temporary retention of body and/or liquid waste.

Water Distribution System: The potable water piping within or permanently attached to the recreational vehicle.

Water Service Connection: The fitting or point of connection of the vehicle water distribution system designed for connection to a potable water supply.

Water Storage Tank: A tank installed in a recreational vehicle for the purpose of storing potable water.

Wet Vent: A vent which also serves as a drain for one or more fixtures.

4. General Requirements

4.1 Minimum Requirements. Any plumbing system installed in a recreational vehicle shall conform, at least, with the provisions of this Standard. Requirements for any size, weight, or quality of material modified by the terms "minimum," "not less than," "at least," and similar expressions are "minimum standard."

4.1.1. Connections to Drainage System. All plumbing fixtures, drains, appurtenances, and appliances designed or used to receive or discharge liquid waste or body waste shall be connected to the recreational vehicle drainage system in a manner provided by this Standard.

4.1.2. Components. Plumbing materials, devices, fixtures, fittings, equipment, appliances, accessories, and appurtenances intended for use in or attached to a recreational vehicle shall be listed or certified by an approved listing agency, or be specifically approved by the enforcement authority when listing by an approved listing agency is not available.

4.1.3. Component Installations. All design, construction, and workmanship shall be in conformance with accepted engineering practices.

4.1.4. Prohibited Fittings and Practices.

4.1.4.1 Drainage or vent piping shall not be drilled and tapped for the purpose of making connections.

4.1.4.2 Except as specifically provided elsewhere in this Standard, vent pipes shall not be used as waste or drain pipes.

4.1.4.3 Fittings, connections, devices, or methods of installation that obstruct or retard the flow of liquid waste, body waste, or air in the drainage or venting systems in an amount greater than the normal frictional resistance to flow shall not be used unless their use is acceptable in this Standard or their use approved as having a desirable and acceptable function and their use of ultimate benefit to the proper and continued functioning of the plumbing systems.

4.1.4.4 Cracks, holes, or other imperfections in materials shall not be concealed by welding, brazing, or soldering or by paint, wax, tar, or other leak-sealing or repairing agents.

4.1.4.5 Piping, fixtures, or equipment shall be located so as not to interfere with the normal use or with the normal operation and use of windows, doors, or other required facilities.

4.1.4.6 Galvanized pipe shall not be bent or welded.

4.1.5 Alignment of Fittings. All valves, pipes, and fittings shall be installed in correct relationship to the direction of flow.

4.2 Protective Requirements.

4.2.1 Road Damage. Pipes, supports, drains, or outlets, or drain hoses shall not extend or protrude in a manner where they could be unduly subjected to road hazard.

4.2.2 Vermin Proofing. All exterior openings around piping shall be sealed to prevent the entrance of rodents.

5. Materials — Quality and Weight

5.1 Minimum Standards. Materials, fixtures, or devices used or entering into the construction of plumbing systems in any recreational vehicle shall be free from defect and shall conform to approved standards or the applicable standards shown in the Appendix to this Part.

5.2 Specific Usage. Each of the following sections indicates specifically the type of material presently permitted for use in the various parts of the plumbing system.

6. Joints and Connections

6.1 Tightness. Joints and connections in the plumbing system shall be gastight and watertight for the pressures required under testing procedures.

6.1.1 Assembling of Pipe. All joints and connections shall be correctly assembled for tightness. Pipe threads shall be fully engaged with the threads of the fittings. Plastic pipe and copper tubing shall be inserted to the full depth of the solder cup or welding sockets of each fitting. Pipe threads and slip joints shall not be wrapped with string, paper, putty or similar fillers.

6.1.2 Threaded Joints. Threads for screw pipe and fittings shall conform to the approved or applicable standard. All burrs shall be removed. Pipe ends shall be reamed out to size of bore, and all chips and cutting oil shall be removed. Pipe joint cement or thread lubricant shall be of approved type and applied to male threads only.

6.1.3 Solder Joints. Solder joints for tubing shall be made with approved or listed sweat solder type fittings. Surfaces to be soldered shall be cleaned bright. The joints shall be properly fluxed with noncorrosive paste type flux and made with approved or listed 50–50 solder or an approved solder having a higher melting temperature.

6.1.4 Plastic Pipe and Fittings. Plastic pipe and fittings shall be joined by installation methods recommended by the manufacturer.

7. Traps and Cleanouts

7.1 Traps.

7.1.1 Traps Required. Each plumbing fixture, except listed toilets and fixtures utilizing detachable waste holding tanks with integral traps, shall be separately trapped by approved water seal "P" traps. All traps shall be effectively vented.

7.1.2 Dual Fixtures. A two compartment sink, two single sinks, two lavatories, or a single sink and a single lavatory, with waste outlets not more than thirty inches (30″) apart and flood level rims at same level may be connected to one "P" trap and may be considered as a single fixture for the purpose of drainage and vent requirements.

7.1.3 Prohibited Traps.

7.1.3.1 A trap which depends for its seal upon concealed interior partitions shall not be used. Full "S" traps, bell traps, drum traps, crown-vented traps, and running traps are prohibited.

Exception: A trap which is an integral part of a detachable waste holding tank.

7.1.3.2 Fixtures shall not be double-trapped.

7.1.4 Material and Design. Each "P" trap shall be approved or listed.

7.1.5 Trap Seal. Each "P" trap shall have a water seal of not less than two inches (2″) and not more than four inches (4″) and shall be set true to its seal.

7.1.6 Size. "P" traps shall be not less than one and one-quarter inches (1¼″) in diameter when connected to a single fixture having no more than a two inch (2″) drain opening. A "P" trap shall not be larger than the waste pipe to which it is connected.

7.1.7 Distance from Trap to Vent. The distance between a "P" trap and its vent or vented waste line shall be in accordance with Table 2.

7.1.8 Length of Tailpiece. The vertical distance from a "P" trap to the fixture outlet shall not exceed twenty-four inches (24″).

7.1.9 Installation.

7.1.9.1 Grade of Trap Arm. The piping between a "P" trap and the fixture tee or the vented waste line shall be graded one-quarter inch (¼″) per foot and in no event shall have a slope greater than its diameter. The vent opening at fixture tees shall not be below the invert of the "P" trap outlet.

7.1.9.2 Trap Arm Offset. The piping between the "P" trap and vent may change direction or be offset horizontally with the equivalent of no more than 180 degrees.

7.1.9.3 Concealed "P" Traps. "P" traps with slip joint connections shall be accessible for repair and inspection.

7.2 Cleanout Openings.

7.2.1 Location of Cleanout Fittings.

7.2.1.1 Cleanouts shall be installed if the drainage system cannot be cleaned through fixtures or vent openings.

7.2.1.2 A full size cleanout shall be installed at the upper end of any section of drain piping which does not have the required minimum slope of a one-quarter inch (¼") per foot grade.

7.2.1.3 A cleaning tool shall not be required to pass through more than 360 degrees of fittings, excluding removable "P" traps, to reach any part of the drainage system.

7.2.2 Access to Cleanouts. Cleanouts shall be accessible through an unobstructed minimum clearance of twelve inches (12") directly in front of the opening. Each cleanout fitting shall open in a direction opposite to the flow or at right angles to the pipe. Concealed cleanouts that are not provided with access covers shall be extended to a point above the floor or outside of the recreational vehicle, with pipe and fittings installed, as required, for drainage piping.

7.2.3 Material. Plugs and caps shall be brass or approved or listed plastic, with screw pipe threads.

7.2.4 Design. Cleanout plugs shall have raised heads except that plugs at floor level shall have counter-sunk slots.

8. Plumbing Fixtures

8.1 General Requirements.

8.1.1 Quality of Fixtures. Plumbing fixtures shall have smooth impervious finishes, be free from defects and concealed fouling surfaces, be capable of resisting road shock and vibration, and shall conform in quality and design to approved or listed standards.

8.1.2 Strainers. The waste outlet of all plumbing fixtures, other than toilets, shall be equipped with a drain fitting that will provide an adequate unobstructed waterway.

8.1.3 Fixture Connections. Fixture tailpieces and continuous wastes in exposed or accessible locations shall be not less than No. 20 Brown and Sharpe gage seamless drawn-brass tubing or other approved pipe or tubing. Inaccessible fixture connections shall be constructed according to the requirements for drainage piping. Each fixture tailpiece, continuous waste, or waste and overflow shall be not less than one and one-quarter inches (1¼″) for a single fixture having a two inch (2″) maximum drain opening.

8.1.4 Concealed Connections. Concealed slip joint connections shall be provided with adequately sized unobstructed access panels and shall be accessible for inspection and repair.

8.2 Fixtures.

8.2.1 Toilets.

8.2.1.1 Each toilet shall be designed and manufactured according to approved or listed standards and shall be equipped with a water flushing device capable of adequately flushing and cleaning the bowl at each operation of the flushing mechanism.

8.2.1.2 Recirculating or mechanical seal toilets may provide for storage of liquid waste and body waste as an integral part of the unit. When a mechanical seal toilet does not contain storage for the retention of liquid waste and body waste, it shall be connected to an approved waste holding tank.

8.2.1.3 Floor or Tank Connections. Toilets, when directly connected to a waste holding tank or drainage system, shall be securely bolted to either the tank or the floor by means of an approved closet flange or other approved fitting. Bolts and screws when used shall be of brass or other noncorrosive material and shall be not less than one-quarter inch (¼″) in diameter. A watertight seal shall be made between the toilet and flange or other approved fittings by the use of a gasket or sealing compound.

8.2.2 Shower Stalls, Receptors and Enclosures.

8.2.2.1 Each shower stall shall be provided with an approved watertight receptor with sides and back extending one inch (1″) above the finished dam or threshold. In no case shall the depth of a shower receptor be less than two inches (2″) or more than nine inches (9″), measured from the top of the finished dam or threshold to the top of the drain.

8.2.2.2 The joint around the drain connection and around the toilet outlet in combination compartments shall be made watertight by a flange, clamping ring, or other approved or listed means.

8.2.2.3 Shower doors and tub and shower enclosures shall be constructed so as to be waterproof and, if glazed, be glazed with materials such as wired-glass, laminated safety glass, plastics, reinforced plastics, or other approved materials. Hinged swinging shower doors shall open outward. Glass used for glazing and classified as safety glass shall conform to ANSI Z97.1 — 1966.

8.2.2.4 Prefabricated shower stalls and receptors shall be approved or listed and shall comply with the requirements relating to plumbing fixtures, shower stalls and receptors for recreational vehicles.

8.3 Installation

8.3.1 Access. Each plumbing fixture shall be located and installed in a manner to provide access for cleaning and repair.

8.3.2 Alignment. Fixtures shall be set level. Where practical, piping from fixtures shall extend to nearest wall.

8.3.3 Brackets. Wall-hung fixtures shall be rigidly attached to walls by brackets or supports without any strain being transmitted to the piping connections. Flush tanks shall be securely fastened to toilets or to the wall with noncorrosive material.

9. Hangers and Supports

9.1 Strain and Stresses. Piping in a plumbing system shall be installed without undue strains and stresses, and provision shall be made for expansion and contraction.

9.2 Drain Piping Supports. Drain piping shall be secured at not more than 4 foot intervals, unless different spacing is recommended by the piping manufacturer, to keep the pipe in alignment and carry the weight of the pipe and contents.

9.3 Hangers and Anchors.

9.3.1 Hangers and anchors shall be of sufficient strength to support their proportional share of the pipe alignments and prevent rattling.

9.3.2 Piping shall be securely attached to the structure by proper hangers, clamps, or brackets which provide protection against damage from motion, vibration, road shock, torque in the chassis, or other unusual conditions.

10. Water Distribution Systems

10.1 Water Supply.

10.1.1 Supply Piping. Piping systems shall be sized to provide an adequate quantity of water to each plumbing fixture at a flow rate sufficient to keep the fixture in a clean and sanitary condition without any danger of backflow or siphonage.

10.1.2 Potable Water Storage Tanks. Potable water storage tanks shall be listed. If tank is installed in such a manner that it is subject to road damage, it shall be protected. Each non-pressure or gravity tank shall be equipped with a vent at the top of the tank to assist in filling and drainage.

10.1.3 The water distribution system shall be installed with a valve, drain plug or cap, located at the lowest point or points to provide for complete drainage of the system and water storage tank.

10.2 Water Outlets and Supply Connections.

10.2.1 Water Service Connection. Each recreational vehicle with a water distribution system sized as required in Table 1, which may be connected to an outside source, shall be equipped with a three-quarter inch (¾″) swivel female hose water service connection. A matching cap or plug shall be provided to close the water inlet when it is not in use and shall be attached in a substantial manner.

10.2.2 Prohibited Connections.

10.2.2.1 The installation of potable water supply piping or fixture or appliance connections shall be made in a manner to preclude the possibility of backflow.

10.2.2.2 No part of the water system shall be connected to any drainage or vent piping.

10.2.3 Rim Outlets. The outlets of faucets, spouts, and similar devices shall be spaced at least one inch (1″) above the flood level of the fixture.

10.2.4 Flushometer Valves or Manually Operated Flush Valves. An approved or listed vacuum breaker shall be installed and maintained in the water supply line on the discharge side of a toilet flushometer valve or manually operated flush valve. Vacuum breakers shall have a minimum clearance of six inches (6″) above the flood level of the fixture to the critical level mark, unless otherwise specified and approved.

10.2.5 Flush Tanks. Toilet flush tanks shall be equipped with an approved anti-siphon ball cock which shall be installed and maintained with its outlet or critical level mark not less than one inch (1″) above the the full opening of the overflow pipe.

10.2.6 Backflow Preventer. When pressure water storage tanks or reservoirs (except water heaters or flush tanks) for storing potable water are connected to the water distribution system of recreational vehicles, which have a water service connection for an outside source of supply, they shall have an approved or listed check valve or other approved or listed type backflow prevention device installed in the water-supply piping adjacent to the water service connection. An approved or listed pressure relief valve shall be required on the outlet side of the check valve.

Exception: Systems utilizing gravity-type tanks or systems not providing means for heating water or creating pressures shall not require a pressure relief valve.

10.3 Safety Devices.

10.3.1 Relief Valves.

10.3.1.1 When a check valve (see 10.2.6) or pressure regulating device is installed between the water service connection and a water heater or closed hot water tank, a listed pressure relief valve or a listed temperature-pressure relief valve, sized equivalent to the Btuh rating of the water heater or larger, shall be installed.

10.3.1.2 Pressure relief valves, when installed, shall be installed in the cold water supply pipe between the pressure regulator or the check valve and any heater or tank, and shall be so located as to be accessible.

10.3.1.3 The relief valve if located inside the recreational vehicle shall be equipped with a full size drain able to withstand 225° Fahrenheit which shall extend outside, with the end directed downward, except that no drain shall be required if the relief valve discharges into an area sealed off from the inside of the vehicle and drained and ventilated to the outside. The discharge end of the drain shall not be equipped with a thread or other means of capping or plugging.

10.3.1.4 Water storage tanks which may be pressurized by air shall be equipped with a listed air pressure relief valve set to open at not more than 125 psig or the tank manufacturer's recommended working pressure, whichever is lower. The pressure relief valve shall be located above the maximum water level of the tank.

10.4 Materials.

10.4.1 Piping Material. Water pipe shall be of standard weight brass, galvanized wrought iron, galvanized steel, Type K or L copper tubing, listed plastic, or other approved or listed material.

10.4.2 Fittings. Appropriate fittings shall be used for all changes in size and where pipes are joined. The material and design of fittings shall conform to the type of piping used.

10.4.2.1 Fittings for screw piping shall be standard weight galvanized iron for galvanized iron and steel pipe, and of brass for brass piping. They shall be installed where required for change in direction, reduction of size, or where pipes are joined together.

10.4.2.2 Fittings for copper tubing shall be cast brass or drawn copper sweat solder pattern or flare type.

10.4.2.3 Fittings for plastic water piping shall be of approved or listed brass or plastic, compatible in design for the type of plastic used.

10.4.3 Prohibited Material.

10.4.3.1 Used piping materials shall not be permitted.

10.4.3.2 Thermoplastic pipe and fittings shall not be used in water systems containing water heating devices unless such pipe and fittings are listed for use in hot water systems.

10.5 Installation of Piping.

10.5.1 Minimum Requirement. All piping equipment, appurtenances, and devices shall be installed in a workmanlike manner and shall conform with the provisions and intent of this Standard.

10.5.2 Screw Pipe. Iron pipe-size brass or galvanized iron or steel pipe and fittings shall be joined with approved or listed standard pipe threads fully engaged in the fittings. Pipe ends shall be reamed to the full bore of the pipe. Pipe-joint compound shall be insoluble in water, shall be nontoxic, and shall be applied to male threads only.

10.5.3 Solder Fittings. Copper tubing shall be joined to sweat solder fittings by means of hot solder and a noncorrosive flux. The surfaces to be soldered shall be thoroughly cleaned. The use of self-cleaning fluxes shall not be permitted.

10.5.4 Flared Fittings. A flaring tool shall be used to shape the ends of flared tubing to match the flare of fittings.

10.5.5 Plastic Pipe and Fittings. Plastic pipe and fittings shall be joined by installation methods recommended by the piping manufacturer.

10.6 Mimimum Size of Water Supply Piping. The size of water supply piping and branch lines shall not be less than sizes shown in Table 1.

10.7 Line Valves. Valves, when installed in the water supply distribution system shall, when fully opened, have a cross-sectional area at least equal to the nominal size of the pipe in which the valve is installed.

Exception: This requirement shall not apply to a valve controlling only one fixture supply.

Table 1

Minimum Size Tubing and Pipe for Water Distribution Systems*

Number of Fixtures	Tubing		Pipe
	Inner Dia. (Inches)	Outer Dia. (Inches)	Iron Pipe Size (Inches)
1	¼**	⅜**	⅜
2	¼**	⅜**	⅜
3	⅜	½	½
4	⅜	½	½
5	½	⅝	½

*Minimum size for toilet water supply line shall not be less than the size recommended by the manufacturer.

**6-foot maximum length.

10.8 Labeling. Each inlet to a potable water tank shall have an affixed label which shall read:

WARNING: POTABLE WATER ONLY. SANITIZE, FLUSH AND DRAIN BEFORE USING. SEE INSTRUCTION MANUAL.

Instructions for proper sanitizing of water distribution systems shall be furnished with each vehicle.

11. Drainage Systems

11.1 Materials.

11.1.1 Pipe. Drainage piping shall be standard weight, galvanized steel, galvanized wrought iron, brass, copper tube DWV, listed plastic, or other approved or listed material.

11.1.2 Fittings. Drainage fittings shall be recessed drainage pattern with smooth interior waterways of the same diameter as the piping and shall be of a material conforming to the type of piping used. Drainage fittings shall be designed to provide for one-quarter inch (¼″) per foot grade in horizontal piping.

11.1.2.1 Fittings for screw pipe shall be cast iron, malleable iron, brass, or approved or listed plastic, with standard pipe threads.

11.1.2.2 Fittings for copper tubing shall be cast brass or wrought copper.

11.1.2.3 Fittings for plastic piping shall be made to approved or applicable standards.

11.1.2.4 Brass adapter or wrought copper fittings shall be used to join copper tubing to threaded pipe.

11.2 Drain Outlets.

11.2.1 Main Drain Outlet. Each recreational vehicle shall have a drain outlet which shall terminate horizontally at any point within twenty-two feet (22′) of the rear, on the left (road) side or at the rear, left of the longitudinal center of the vehicle within eighteen inches (18″) of the outside wall, and shall direct its discharge toward that side or toward the rear within an angle of 90° formed between that side and the rear end of such vehicle. The drain outlet may terminate vertically when it is equipped with a quick disconnect type coupler and a companion elbow hose adapter. If more than eighteen inches (18″) above the ground it may terminate either vertically or horizontally.

Exceptions:

1. A camping trailer not more than seventeen feet (17′) in length, a motor home or a truck camper may have the drain outlet located on either side, provided the electrical and gas connections are located on the same side.

2. A recreational vehicle having a mechanical seal toilet with waste holding tank or a recirculating chemical toilet may have a separate drain which may be located at any location on the perimeter of the vehicle within eighteen inches (18″) of the outside wall and shall be provided with a full-way valve. The drain for the remainder of the plumbing system shall be considered the main drain. A fullway valve shall be provided with a standard three inch (3″) male thread and female threaded cap which is securely fastened to the vehicle and shall not be equipped with extensions or other actuating devices, or be installed in such a manner that discharge may be accomplished while the vehicle is in motion.

11.2.2 Cap.

11.2.2.1 An approved water-tight cap on the drain outlet shall be permanently attached to the vehicle.

11.2.2.2 There shall be permanently affixed near the cap in a visible, exterior location, a weatherproof label with letters of three-sixteenth inch (3/16″) minimum height, reading: "CAP MUST BE SECURELY IN PLACE WHILE THE VEHICLE IS IN MOTION."

11.2.3 Clearance from Drain Outlet. The drainage outlet and couplers shall be provided with a minimum clearance of one and one-half inches (1½″) in any direction from all parts of the vehicle and with adequate unrestricted clearance directly in front of the drainage outlet.

11.2.4 Liquid Waste Drain Outlet. Each recreational vehicle may utilize a separate drain for discharging liquid waste which shall be one and one-half inch (1½″) minimum diameter and shall be equipped with a cap securely fastened to the vehicle.

11.2.4.1 The drain may terminate on the discharge side of the full-way valve on the waste holding tank into an approved three inch (3″) fitting designed for this purpose.

11.2.4.2 A minimum one and one-half inch (1½″) drain may be utilized to drain a separate liquid waste holding tank.

11.2.4.3 If drain outlet is less than eighteen inches (18″) above the ground it shall terminate horizontally. If more than eighteen inches (18″) above the ground it may terminate either vertically or horizontally.

11.2.5 Hose Couplers.

11.2.5.1 Hose couplers for drain outlets shall be a quick disconnect type not requiring any special tools or knowledge to make the connection or remove the drain hose.

11 Fixture Connections. Drainage piping shall be provided with inl fittings for fixture connections, correctly located according to size and type of fixture to be connected.

11.4 Size of Drainage Piping.

11.4.1 Fixture Load. Drain pipe sizes shall be determined by the type of fixture and the total number connected to each drain.

11.4.1.1 One and one-half inch (1½″) minimum diameter piping shall be required for one and not more than three individually vented fixtures.

11.4.1.2 Two inch (2″) minimum diameter piping shall be required for four or more fixtures individually vented.

11.5 Wet-Vented Drainage System.

11.5.1 Horizontal Piping. All parts of a wet-vented drainage system, including the connected fixture drains, shall be horizontal except for the wet-vented vertical riser. Where required by structural design, wet-vented drain piping may be offset vertically when

other vented fixture drains or relief vents are connected to the drain piping below the vertical offsets.

11.5.2 Size. A wet-vented drain pipe shall be at least one pipe size larger than the largest connected trap or fixture drain. Not more than three fixtures may connect to a wet-vented drain system.

11.5.3 Length of Trap Arm. Fixture traps shall be located within the distance given in Table 2. Not more than one trap shall connect to a trap arm.

Table 2

Distance of Fixture Trap from Vent

Size of Trap Arm (Inches)	Distance Trap to Vent
1¼	4 feet 6 inches
1½	4 feet 6 inches
2	5 feet 0 inches
3	6 feet 0 inches

11.6 Side-Vent Drainage System.

11.6.1 A recreational vehicle that has no plumbing fixture(s) connected to the main drain other than a one- or two-compartment sink with drain opening(s) of not more than two inches (2″) in diameter may be connected to a side-vent drainage system.

11.6.2 Drainage and vent systems shall be constructed of approved or listed components with an approved baffle or directional type fixture tee.

11.6.3 A baffle or diverter tee shall be used to connect the trap arm to the side vent system.

11.6.4 "P" traps shall be one and one-fourth inch (1¼″) minimum diameter installed as close to the sink as possible with the center of the outlet not more than six inches (6″) from the bottom of the sink.

11.6.5 The center of the vent offset through the outside wall shall be located as high as the structure will permit but not less than two and one-fourth inches (2¼″) above the bottom of the sink to the center of the elbow.

11.7 Offsets and Branch Fittings.

11.7.1 Changes in Direction. Changes in direction of drainage

piping shall be made by the appropriate use of approved or listed fittings, and shall be of the following angles:

11¼, 22½, 45, 60 or 90 degrees; or other approved or listed fittings, or combination of fittings with equivalent radius or sweep.

11.7.2 Horizontal to Vertical. Horizontal drainage lines, connecting with a vertical pipe, shall enter through 45-degree "Y" branches, 60-degree "Y" branches, long-turn "TY" branches, sanitary "T" branches, or other approved or listed fittings or combination of fittings having equivalent sweep. No fitting having more than one branch at the same level shall be used, unless the fitting is constructed so that the discharge from any one branch cannot readily enter any other branch.

11.7.3 Horizontal to Horizontal and Vertical to Horizontal. Horizontal drainage lines connecting with other horizontal drainage lines or vertical drainage lines connected with horizontal drainage lines shall enter through 45-degree "Y" branches, long-turn "TY" branches, or other approved or listed fittings or combination of fittings having equivalent sweep.

Exception: A short-turn "TY" may be used as a final termination if it is mounted directly to a full-way termination valve on one side and has a quick disconnect on the other.

11.8 Slope of Horizontal Drainage Piping. Horizontal drainage piping shall be run in practical alignment and have a uniform slope of not less than one-quarter inch (¼″) per foot toward the recreational vehicle main drain outlet. Where it is impractical, due to the structural features or arrangement of any recreational vehicle, to obtain a slope of one-quarter inch (¼″) per foot, the pipe or piping may have a slope of not less than one-eighth inch (⅛″) per foot, when a full size cleanout is installed at the upper end.

11.9 Waste Holding Tank. Vehicles equipped with a waste-holding tank and a toilet shall have a mechanical seal or recirculating chemical toilet.

11.9.1 Toilet connections shall be three inch (3″) minimum pipe size and shall extend vertically. The inlet fitting may extend downward into the tank not more than one and one-half inches (1½″). The toilet connection shall be designed to receive or conform in an approved shape to a closet flange of standard dimensions or other approved fitting.

11.9.2 Drain opening shall be a three inch (3″) minimum pipe size outlet located at the lowest point in the tank and shall be fitted with a fullway valve.

11.9.3 Fullway valves referred to in 11.9.2 shall be designed for manual operation from outside the recreational vehicle and have no extension or activating device within the vehicle.

11.9.4 The tank shall be vented at the highest point in the top of the tank by one of the following methods:

a. A one and one-quarter inch (1¼″) minimum diameter individual vent pipe extending undiminished in size through the roof.

b. A continuous vent serving as a drain from one additional fixture provided the drain portion is increased one pipe size larger than the connected trap arm.

c. Two or more vented drains when at least one is wet-vented and each drain is separately connected to the top of the tank.

11.9.5 Waste holding tanks shall be securely installed in such locations as to be removable for service, repair, or replacement without the necessity of removing permanent structural, mechanical, or electrical installations.

11.10 Detachable Waste Holding System. A recreational vehicle having a sink as its only plumbing fixture may have all its liquid waste discharge into a detachable waste holding tank.

11.10.1 The fixture strainer or tailpiece shall be permanently connected by five-eighth inch (⅝″) minimum inside diameter listed drain pipe or listed flexible tubing to an inlet valve.

11.10.2 The fixture drain shall have a trap formed by an extension of the inlet pipe, of the detachable waste holding tank. The trap shall be so designed as to become effective when the tank contains liquid equal to no more than ten per cent (10%) of the capacity of the tank.

11.10.3 The inlet of the detachable waste holding tank shall have an attached cap for use during storage and/or transport of the tank.

11.10.4 Detachable waste holding tanks with an integral trap shall be vented by a minimum opening of three-sixteenth inch (3⁄16″) diameter.

11.10.5 Detachable waste holding tanks with an integral trap shall be so designed as to prevent connection of the inlet valve to the tank unless the integral trap is installed.

11.10.6 Detachable waste holding tanks shall be so designed as to allow emptying only through the inlet or the vent.

12. Vents and Venting

12.1 General. Each plumbing fixture trap shall be protected against siphonage and back pressure, and air circulation shall be ensured throughout all parts of the drainage system by means of vents installed in accordance with the requirements of this Section and/or as otherwise required by this Standard.

12.2 Materials.

12.2.1 Pipe. Vent piping shall be standard weight galvanized steel, galvanized wrought iron, brass, copper tube DWV, listed plastic, or other approved or listed materials in Table 1.

12.2.2 Fittings. Appropriate fittings shall be used for all changes in direction, size or shape, and where pipes are joined. The material and design of fittings shall conform to Table 1.

12.2.2.1 Listed rectangular tubing may be used for venting. Suitable listed transition fittings shall be used.

12.3 Size of Vent Piping.

12.3.1 Individual Vents. A one and one-quarter inch (1¼″) minimum diameter vent pipe shall be required for all individually vented fixtures with one and one-half inch (1½″) or smaller traps. The continuous vent of wet-vented drainage systems shall be one and one-quarter inch (1¼″) minimum diameter.

12.3.2 Common Vent. When two fixture traps located within the distance allowed from their vent have their trap arms connected separately at the same level into an approved double fitting, an individual vent pipe may serve as a common vent without any increase in size.

12.3.3 Intersecting Vents. Where two or more vent pipes are joined together, no increase in size shall be required; however, the largest vent pipe shall extend full size through the roof.

12.4 Grades and Connections.

12.4.1 Horizontal Vents. Each vent shall extend vertically from its fixture "T", or point of connection with the waste piping to a point not less than six inches (6″) above the extreme flood level of the fixture it is venting before offsetting horizontally or being connected with any other vent pipe. Vents for horizontal drains shall connect above the centerline of the drain piping ahead (downstream) of the trap. Where required by structural conditions, vent

piping may offset below the rim of the fixture at the maximum angle or height possible.

12.4.2 Grade. Vents shall be level or so designed to drain back to the drainage system by gravity.

12.5 Vent Terminal.

12.5.1 Roof Extension. Each vent pipe which passes through the roof shall extend through its flashing, except as otherwise permitted in 11.6, and terminate vertically, undiminished in size, not less than two inches (2″) above the roof. Vent openings shall not be less than 3 feet, 0 inch away from any motor-driven air intake that opens into habitable areas.

12.5.2 Flashing. The opening around each vent pipe shall be made watertight by an adequate flashing or flashing material.

13. Tests and Inspection (Plumbing)

13.1 Water Piping System. All pressure water piping in the water distribution system shall be subjected to a pressure test. The test shall be made by subjecting the system to air or water at 100 psi for 10 minutes without leakage or loss of pressure. An adequate and accurate pressure gage shall be used on all tests.

Exception: A recreational vehicle that has no plumbing fixtures other than a single compartment sink with a drain opening of not more than two inches (2″) shall be tested a minimum of 3 minutes.

13.2 Drainage and Vent System and Plumbing Fixtures. The waste and vent system shall be subjected to one of the following tests without evidence of leaks.

13.2.1 Water Test. Before plumbing fixtures are connected, all of the openings into the piping shall be plugged and the entire piping system subjected to a static water test for 15 minutes by filling it with water to the top of the highest vent opening.

13.2.2 Air Test. After all fixtures have been installed, the traps filled with water, and the remaining openings securely plugged, the entire system shall be subjected to a two inch (2″) (manometer) water column air pressure test.

13.2.3 Flood Level Test. The recreational vehicle shall be in a level position; all fixtures shall be connected, and the entire system shall be filled with water to the flood level rim of the toilet bowl. (Tub and shower drains should be plugged.) After all trapped air has been released, the test shall be sustained for not less than 15 minutes. The waste piping above the level of the toilet shall be tested and show no indication of leakage when the high fixtures are filled with water and emptied simultaneously to obtain the maximum possible flow in the drain piping.

13.3 Fixture Test. The plumbing fixtures and connections shall be subjected to a flow test by filling them with water and checking for leaks and retarded flow while they are being emptied.

13.3.1 Shower Stalls. Shower stalls and receptors shall be tested for leaks prior to being covered by finished material. Each pan shall be filled with water to the top of the dam for not less than 15 minutes.

APPENDIX TO PART I

Applicable Standards

Table 3. Standards for Pipe & Fittings

Description	ANSI	ASTM	FS	Other
Nonmetallic Pipe and Fittings				
Threaded Acrylonitrile-Butadiene-Styrene (ABS) Plastic Pipe Fittings, Schedule 80[1]	None	D 2465-68	None	NSF Std. 14
Socket-Type Acrylonitrile-Butadiene-Styrene (ABS) Plastic Pipe Fittings Schedule 40[1]	None	D 2468-68	None	NSF Std. 14
Socket-Type Acrylonitrile-Butadiene-Styrene (ABS) Plastic Pipe Fittings, Schedule 80[1]	None	D 2469-68	None	NSF Std. 14
Standard Specification for Plastic Insert Fittings for Polyethylene (PE) Plastic Pipe	B16.27-67	D 2609-68	None	NSF Std. 14
Standard Specification for Polyethylene (PE) Plastic Tubing	None	D2737-68aT	None	NSF Std. 14
Polybutylene (PB) Plastic Pipe (SDR-PR)	None	D2662-68	None	NSF Std. 14
Polybutylene (PB) Plastic Tubing	None	D2666-68	None	NSF Std. 14
ABS Plastic Pipe (SDR-PR and Class T)	B72.3-67	D1527-68 D2282-68	None	NSF Std. 14 CS 254-63
Flexible Polyethylene Plastic Pipe (SDR-PR)	B72.1-67	D2477-68 D2104-68 D2239-68	L-P-315a-1966	CS 255-63 NSF Std. 14
Polyethylene Pipe, Nonpressure	None	None	None	IAPMO TSC 7-62
Polyvinyl Chloride (PVC) Plastic Pipe (SDR-PR and Class T)	B72.2-67	D2241-68	None	CS 256-64 NSF Std. 14
Chlorinated Polyvinyl Chloride (CPVC) Pipe, Fittings, Solvent Cement and Adhesives for Potable Hot Water Systems	None	D2846-69	None	NSF Std. 14

Description	ANSI	ASTM	FS	Other
Nonmetallic Pipe and Fittings (Continued)				
Acrylonitrile-Butadiene-Styrene (ABS) Plastic Drain, Waste, and Vent Pipe and Fittings	None	D2661-68	L-P-322a-1966	CS 270-65 IAPMO PS-17-66 NSF Std. 14
Thermoplastic Materials, Pipe, Fittings, Valves, Traps and Joining Materials	None	None	None	NSF Std. 14
ABS Plastic Pipe Installation Standard	None	None	None	IAPMO IS 5-66
Solvent Cements for ABS Plastic Pipe and Fittings	None	D2235-67	None	NSF Std. 14
Nonferrous Pipe and Fittings				
Brass Fittings for Flared Copper Tube	B16.26-1967	None	None	None
Seamless Brass Tube	H36.1-1967	B135-67	WW-T-791(1)-1933	None
Seamless Red Brass Pipe	H27.1-1967	B43-66	WW-P-351a-1963	None
Brass or Bronze Flanges and Flanged Fittings, 150 and 300 Lbs.	B16.24-1962	None	None	None
Brass or Bronze Screwed Fittings, 125 and 250 Lbs.	B16.15-1964	None	WW-P-460c-1967	None
Cast-Bronze Solder-Joint Pressure Fittings	B16.18a-1967	None	None	None
General Requirements for Wrought Seamless Copper and Copper Alloy Pipe and Tube	H23.4-1967	B251-68a	None	None
Welded Red Brass (Copper Alloy 230) Water Tube	None	None	None	IAPMO PS 28-69
Welded Red Brass (Copper Alloy 230) Drainage Tube	None	None	None	IAPMO PS 29-69
Cast-Bronze Solder-Joint Drainage Fittings	B16.23-1960	None	None	None
Copper Pipe, Seamless, Standard Sizes	H26.1-1967	B42-66	WW-P-377d-1962	None
Copper Pipe, Threadless (TP)	H26.2-1967	B302-66a	None	None

Description	ANSI	ASTM	FS	Other
Nonferrous Pipe and Fittings (Continued)				
Seamless Copper Tube	H23.3-1967	B75-68	WW-T-797c-1963	None
Copper Water Tube, Types K, L, M	H23.1-1967	B88-66a	WW-T-799c-1967	None
Copper Drainage Tube, Type DWV	H23.6-1967	B306-66a	None	CS 229-60
Copper (Wrought) and Wrought Bronze Solder Joint Fittings	B16.22-1963	None	None	None
Flexible Copper Water Connectors	None	None	None	IAPMO PS 14-66
Wrought Copper and Wrought Copper Alloy Solder Joint Drainage Fittings	B16.29-1966	None	None	None
Pipe Nipples; Brass, Copper, Steel and Wrought Iron	None	None	WW-N-351b-1967	None
Unions, Brass or Bronze, 250 Lbs.	None	None	WW-U-516a-1967	None
Pipe Fittings, Bronze and Ferrous (Bushings, Plugs and Locknuts); Threaded	None	None	WW-P-471a (2)-1964	None
Ferrous Pipe and Fittings				
Cast Iron Soil Pipe and Fittings, Extra Heavy and Service Weights	A112.5.1-1968	A74-66	WW-P-401c-1967	CS 188-66
Cast Iron Water Pipe	A21.6-1964 & A21.8-1963	None	WW-P-421c-1967	None
Cast Iron Pipe, Drainage, Vent and Waste	None	None	WW-P-356a-1967	None
Cast Iron Pipe, Pressure (50 Lbs.) (Water)	None	None	WW-P-360a-1959	None

Description	ANSI	ASTM	FS	Other
Ferrous Pipe and Fittings (Continued)				
Cast Iron (Threaded) Pipe	A40.5-1943	None	WW-P-356a-1967	None
Cast Iron (Threaded) Fittings	B16.4-1963	None	WW-P-501d-1967	None
Cast Iron Drainage Fittings	B16.12-1965	None	WW-P-491b-1967	IAPMO PS-5-66
Galvanized Pipe and Fittings	None	None	WW-P-406b-1968	None
Malleable Iron Fittings (Threaded), 150 and 300 Lbs.	B16.3-1963	None	WW-P-521e-1964	None
Steel Pipe (Seamless and Welded, Black and Zinc Coated)	B36.1-1966 & B36.2-1966	A53-65	WW-P-404c(2)-1965	None
Stainless Steel Pipe	B36.19-1965	None	None	None
Union, Pipe Steel, or Malleable Iron, Threaded Pipe Connection 250 psi, WSP, 500 psi WOG (Cold, Nonshock)	None	None	WW-U-531c-1965	None
Unions: Malleable Iron or Steel, 300 Lbs.	None	None	WW-U-536(1)-1933	CS7-29
Wrought-Iron Pipe	B36.2-1966	A72-68	WW-P-441c(2)-1968	None
Valves, Cast iron, Gate, 125 and 250 Lbs. Threaded and Flanged	None	None	WW-V-58a(1)-1966	None
Pipe Fittings, Bronze and Ferrous (Bushings, Plugs and Locknuts); Threaded	None	None	WW-P-471a(2)-1964	None
Nipples, Pipe, Threaded	None	None	WW-N-351b-1967	CS 5-65

Table 4

Valves and Controls

Description	ANSI	ASTM	FS	Other
Backflow Preventers in Plumbing Systems	A40.6-1943	None	None	IAPMO TSC-8-63
Valve, Bronze, Gate 125–150 Lbs.	None	None	WW-V-54c-1966	None
Valve, Cast Iron Gate	None	None	WW-V-58a-1966	None
Valves, Technical	None	None	None	NSF Std. 24
Relief Valves and Automatic Gas Shut-off Devices for Hot Water Supply Systems	Z21.22a-1965	None	None	None
Combination Check and Relief Valve	None	None	None	IAPMO TSC-8-66
Pressure Reducing and Regulating Valves	None	None	None	IAPMO PS 15-66
Valves, Bronze; Angle, Check and Globe, 125 and 150 Lbs., Threaded and Flanged	None	None	WW-V-51d-1967	None
Air Gaps in Plumbing Systems	A40.4-1942	None	None	IAPMO PS 23-66

Table 5

Plumbing Fixtures & Miscellaneous

Description	ANSI	ASTM	FS	Other
Plumbing Fixtures				
Enameled Cast-Iron Plumbing Fixtures	None	None	None	None
Formed Metal, Porcelain-Enameled Sanitary Ware	None	None	None	NBS PS 5-66
Gel-Coated Glass-Fiber Reinforced Polyester Resin Bathtub	Z124.1-1967	None	None	None
Gel-Coated Glass-Fiber Reinforced Polyester Resin Shower Receptor and Shower Stall Units	Z124.2-1967	None	None	None
Plumbing Fixtures for Land Use	None	None	WW-P-541b(6)-1963	None
Prefabricated Shower Receptors and Stall Showers	None	None	None	IAPMO TSC-11-64 NSF Std. 24
Stainless Steel Plumbing Fixtures Designed for Residential Use	None	None	None	CS 243-62
Vitreous China Plumbing Fixtures	None	None	None	CS 20-63
Thermoplastic Lavatory and/or Lavatory Countertop Combinations	None	None	None	IAPMO TSC-16-67T
Mechanical Seal Toilet	None	None	None	IAPMO TSC-1-67 NSF Std. 24
Recirculating Chemical Toilet	None	None	None	IAPMO TSC-12-66 NSF Std. 24
Waste Holding Tanks	None	None	None	IAPMO TSC-2-1960 NSF Std. 24
Water Pumps — Hand-Electric	None	None	None	IAPMO TSC-14-66 NSF Std. 24

Description	ANSI	ASTM	FS	Other
Plumbing Fixtures (Continued)				
Water Storage Tanks	None	None	None	IAPMO TSC-4-1960 NSF Std. 24
Water Heaters, Gas Fired	Z21.10.1-1966	None	None	None
Detachable Waste Holding System	None	None	None	NSF Std. 24
Nonmetallic Prefabricated Combination Tank and Shower Pan Units for Recreational Vehicles	None	None	None	IAPMO TSC 17-69T
Miscellaneous				
Closet Flange	None	None	None	IAPMO TSC-5-63
Fixture Setting Compound	None	None	HH-C-536a-1954	IAPMO PS-20-65
Hand Actuated, Nonpressure Water Pump	None	None	None	IAPMO TSC-15-1966
Pressure Caps	None	None	None	IAPMO TSC-13-1966
Pressure Pumps and Systems	None	None	None	IAPMO TSC-14-1966
Tubing "P" Traps (20 Gage Minimum)	None	None	None	IAPMO PS-2-66

Notes to Tables 3, 4 and 5

Abbreviations used in Tables 3, 4 and 5 refer to standards as identified below and elsewhere in this Standard.

ANSI: American National Standards published by the *American National Standards Institute*, 1430 Broadway, New York, New York 10018. (Formerly American Standards Association and United States of America Standards Institute.)

ASME: Standards and Tentative Standards published by the *American Society of Mechanical Engineers*, 345 East 47th Street, New York, New York 10016.

ASTM: Standards and Tentative Standards published by the *American Society for Testing and Materials*, 1916 Race Street, Philadelphia, Pennsylvania 19103.

CS: Commercial Standards representing recorded voluntary recommendations of industry, issued by the *United States Department of Commerce* and obtainable from the Superintendent of Documents, Government Printing Office, Washington, D. C. 20402.

FS: Federal Specifications published by the *Federal Specifications Board* and obtainable from the Superintendent of Documents, Government Printing Office, Washington, D. C. 20402.

IAPMO: Standards and Tentative Standards TSC and UPC sponsored by *International Association of Plumbing and Mechanical Officials*, 5032 Alhambra Avenue, Los Angeles, California 90032. (Formerly Western Plumbing Officials Association.)

NBS PS: National Bureau of Standards (United States Department of Commerce), Product Standard and obtainable from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

NSF: Standards published by the *National Sanitation Foundation*, 2355 W. Stadium Boulevard, P.O. Box 1468, Ann Arbor, Michigan. 48106.

Part II — Heating Systems

1. Introduction

1.1 Those members of the engineering profession and others associated with the design, manufacturing, installation, and inspection of recreational vehicle heating systems have been aware of the need for uniform technical standards leading to the safe use of this special type of equipment and related systems. They have also recognized that, because of conditions of transport and use, existing heating equipment standards for motor vehicles or for buildings are not completely applicable to recreational vehicles. It is with these factors in mind that Part II of this Standard has been developed.

1.2 Much of the material in Part II has been based on nationally recognized standards for heat producing appliances and fuel supply systems, including standards listed in the Appendix of this Part.

2. Scope

2.1 Part II of this Standard covers the heat producing appliances and fuel supply systems within or on recreational vehicles.

2.2 This Standard is not intended as a design specification or an instruction manual for untrained persons.

2.3 Wherever nationally recognized standards for heat producing appliances and fuel supply systems and this Part differ, the requirements of the latter shall apply.

2.4 The provisions of this Standard are not intended to prevent the use of any material, appliance, installation, device, arrangement, or method of construction not specifically prescribed herein, provided any such alternative has been approved or listed. The enforcement authority shall approve such alternate if the material, appliance, installation, device, arrangement, or method of construction is at least the equivalent of that prescribed by this Part, and may require tests or proof of compliance to substantiate any claims that may be made regarding the use of any such alternate.

3. Definitions

Accessible: When applied to a fixture connection, appliance, or equipment shall mean having access thereto, but which may require the removal of an access panel, door or similar obstruction.

Air Duct: Conduits or passageways for conveying air to or from heating, cooling, air conditioning or ventilation equipment, but not including the plenum.

Appliance Branch Piping: Any run of piping or tubing, and fittings, not a part of an appliance, that is used to convey fuel from the main piping manifold to a fuel-burning appliance.

Approved: Means acceptable to the authority having jurisdiction.

Automatic Pump (Oil Lifter): A pump, not an integral part of the oil-burning appliance, that automatically pumps oil from the supply tank and delivers the oil by gravity under a constant head to an oil-burning appliance.

BTU. British Thermal Unit: The quantity of heat required to raise the temperature of one pound of water one degree Fahrenheit.

BTUH. British Thermal Units per Hour.

Burner: A device for the final conveyance of fuel or a mixture of fuel and air to the combustion zone.

Certified: Means "listed" as defined herein.

Clearance: The distance between the appliance, chimney, vent, chimney or vent connector or plenum and the nearest surface.

Connection — Gas Supply: The terminal end or connection to which a gas supply connector is attached.

Connector — Gas Appliance: A listed connector used to convey fuel gas between a gas outlet and a gas appliance.

Connector — Gas Supply: Tubing or pipe connecting the recreational vehicle to the gas supply source.

Control, Primary Safety: The automatic safety control intended to prevent the abnormal discharge of fuel at the burner in case of ignition failure or flame failure.

Fuel System: Any arrangement of pipe, tubing, fittings, connectors, tanks, controls, valves, and devices designed and intended to supply or control the flow of fuel to the appliance(s).

Heat Producing Appliance: All heating and cooking appliances and all fuel-burning appliances.

Heating Appliance: An appliance for comfort heating of a recreational vehicle or for water heating.

Labeled: Equipment or materials to which has been attached a label, symbol, or other identifying mark of a nationally recognized testing laboratory that maintains periodic inspection of production of labeled equipment or materials and by whose labeling is indicated compliance with nationally recognized standards or tests to determine suitable usage in a specified manner.

Liquefied Petroleum Gases: The terms "liquefied petroleum gases," "LPG" and "LP-gas" as used in this Standard shall mean and include any material that is composed predominantly of any of the following hydrocarbons, or mixtures of them: propane, propylene, butanes (normal butane or isobutane), and butylenes.

Listed: Equipment or materials included in a list published by a nationally recognized testing laboratory that maintains periodic inspection of production of listed equipment or materials and whose listing states either that the equipment or material meets nationally recognized standards or has been tested and found suitable for use in a specified manner.

Main Gas Piping Manifold: Gas piping which conveys gas from the gas supply connection to the first appliance branch piping.

Plenum: Air compartment or chamber to which one or more ducts are connected and which forms part of either the supply or return air systems.

Roof Jack: That portion of a venting system, including the cap, insulating means, flashing, and ceiling plate, located in and above the roof.

Safety Shutoff Device: A device that will shut off the gas supply to the controlled burner(s) in the event the source of ignition fails. This device may interrupt the flow of gas to main burner(s) only or to pilot(s) and main burner(s) under its supervision.

4. Fuel Supply Systems

4.1 LP-Gas Containers.

4.1.1 Maximum Capacity. When LP-Gas containers are provided, a recreational vehicle shall have:

a. Not more than two non-permanently mounted containers having maximum individual water capacities of 105 lbs. (approximately 45 lbs. LP-gas capacity), or

b. Not more than two permanently mounted containers having maximum total water capacity of 478 lbs. (approximately 200 lbs. LP-gas capacity).

4.1.2 Construction of Containers. Containers shall be constructed and marked in accordance with the specifications for LP-gas containers of the U.S. Department of Transportation (DOT) or the Rules for Construction of Unfired Pressure Vessels, Section VIII, Division 1, ASME Boiler and Pressure Vessel Code. ASME Containers constructed after December 31, 1967 shall have a design pressure of at least 312.5 psig.

4.1.3 Location of Containers.

4.1.3.1 LP-gas containers shall not be installed, nor shall provisions be made for installing or storing any LP-gas container, even temporarily, inside any recreational vehicle except for listed, completely self-contained hand torches, lanterns, or similar equipment with containers having a maximum water capacity of not more than 2½ pounds.

4.1.3.2 LP-gas containers with their control valves and pressure regulators shall be installed in compliance with one of the following:

a. In a recess or compartment that is vapor-tight to the inside of the recreational vehicle.

b. Mounted on the tongue of a travel or camping trailer as close to the hitch as practicable.

c. Mounted on the chassis of a motor home or chassis-mount camper, provided neither the container nor its support extends below the frame if the container is located ahead of the front axle or behind the rear axle of the recreational vehicle. Containers mounted elsewhere on the frame of a motor home or chassis-mount camper shall be installed in such a manner that the bottom of the tank and any connection thereto shall not be lower than the lowest horizontal axis of the nearest vehicle axle when the vehicle is fully loaded.

4.1.3.3 Container or container carriers shall be secured in place on the recreational vehicle by fastenings designed and constructed with a minimum safety factor of four, to withstand loading in any direction equal to twice the filled weight of the container, providing an overall safety factor of eight.

4.1.4 Container Enclosures.

4.1.4.1 Compartments shall be ventilated at or near the top and at the extreme bottom to facilitate diffusion of vapors. The compartment shall be ventilated with at least two vents having an aggregate free area equal to one square inch for each 7 lbs. of the total LP-gas fuel capacity of the container(s). The vents shall be equally distributed between the floor and ceiling of the compartment. If the lower vent is located in the access door or wall, the bottom edge of the vent shall be flush with the floor level of the compartment. The top vent shall be located in the access door or wall with the bottom of the vent within 12 inches of the ceiling of the compartment. Vents shall have an unrestricted discharge to the outside atmosphere. Access doors or panels of compartments shall not be equipped with locks or require special tools to open.

4.1.4.2 Doors, hoods, domes, housings (or portions of housings), and enclosures required to be removed or opened for replacement of containers shall incorporate means for clamping them firmly in place and to prevent them from working loose during transit.

4.1.5 Container Valves and Accessories.

4.1.5.1 Valves in a two-container assembly system shall be arranged so that replacement of containers can be made without shutting off the flow of gas to the appliance(s).

NOTE: This provision is not to be construed as requiring an automatic changeover device.

4.1.5.2 Container shutoff valves shall be protected as follows:

a. By setting into a recess of the container to prevent possibility of their being struck if container is dropped upon a flat surface, or

b. By a ventilated cap or collar, fastened to the container, capable of withstanding a blow from any direction equivalent to that of a 30-pound weight dropped 4 feet. Construction must be such that the blow will not be transmitted to the valve.

4.1.5.3 Regulators shall be connected directly to the container shutoff valve outlets or mounted securely by means of a support bracket and connected to the container shutoff valve or valves with listed high pressure flexible connections. In the case of permanently mounted containers, listed semi-rigid tubing connections may be used.

4.1.6 Safety Devices.

4.1.6.1 DOT containers shall be provided with safety relief devices as required by the regulations of the U.S. Department of Transportation. ASME containers shall be provided with relief valves in accordance with Basic Rule B.10 of ANSI Standard for the Storage and Handling of Liquefied Petroleum Gases (ANSI Z106.1 — 1969, NFPA No. 58 — 1969). Safety relief valves shall have direct communication with the vapor space of the vessel.

4.1.6.2 The delivery side of the gas pressure regulator shall be equipped with a safety relief device set to discharge at a pressure not less than two times and not more than three times the delivery pressure of the regulator.

4.1.6.3 Systems installed outside of a recreational vehicle shall be so located that discharge from safety relief devices shall be not less than three feet (3′) horizontally away from any opening into the recreational vehicle below the level of such discharge. When a system is located in a recess vaportight to the inside, vent openings in such recess shall be not less than three feet (3′) horizontally away from any opening into the recreational vehicle below the level of these vents.

4.1.7 System Design and Service Line Pressure.

4.1.7.1 Systems shall be of the vapor-withdrawal type.

4.1.7.2 Vapor, at a pressure not over eighteen inches (18″) water column, shall be delivered from the system into the gas supply connection.

4.1.7.3 Container openings for vapor withdrawal shall be located in the vapor space when the container is in service or shall be provided with a suitable internal withdrawal tube which communicates with the vapor space in or near the highest point in the container when it is mounted in service position, with the vehicle on a level surface. Containers shall be permanently and legibly marked in a conspicuous manner on the outside to show the correct mounting position and the position of the service outlet connection. The method of mounting in place shall be such as to minimize the possibility of an incorrect positioning of the container.

4.2 Oil Tanks.

4.2.1 Installation. Oil tanks installed for gravity flow of oil to heating equipment shall be installed so that the top of the tank is no higher than eight feet (8′) above the appliance oil control and the bottom of the tank is no less than eighteen inches (18″) above the appliance oil control. Listed automatic pumps (oil lifter) shall

be mounted no higher than eight feet (8′) above the appliance oil control and not less than eighteen inches (18″) above the appliance oil control.

4.2.2 Oil Supply Tank. Oil supply tanks affixed to a recreational vehicle shall be so located as to require filling and draining on the outside and shall be securely fastened in position in a place readily available for inspection.

4.2.3 Tank Compartment. If the fuel supply tank is located in a compartment of a recreational vehicle, the compartment shall be ventilated at the bottom to permit diffusion of vapors and shall be insulated from the structural members of the body. Tanks so installed shall be provided with an outside fill and vent pipe and an approved liquid level gauge.

4.2.4 Shutoff Valve. A readily accessible, approved manual shutoff valve shall be installed at the outlet of an oil supply tank. The valve shall be installed to close against the supply.

4.2.5 Fuel Oil Filters. All oil tanks, except for integrally mounted tanks, shall be equipped with an approved oil filter or strainer located downstream from the tank shutoff valve. The fuel oil filter or strainer shall contain a sump with a drain for the entrapment of water.

5. Piping Systems

5.1 Gas Piping Systems.

5.1.1 General. The requirements of this section shall govern the installation of all fuel gas piping attached to any recreational vehicle. None of the requirements listed in this Section shall apply to the piping supplied as a part of an appliance.

5.1.2 Materials. Materials used for the installation, extension, alteration, or repair of any gas piping system shall be new and free from defects or internal obstructions. It shall not be permissible to repair defects in gas piping or fittings. Inferior or defective materials shall be removed and replaced with acceptable material. The system shall be made of materials having a melting point of not less than 1,450° Fahrenheit, except as provided in 5.1.5 and 5.1.6, or of materials (used in piping or fittings) listed for the specific use intended. They may consist of one or more of the following materials, or any other material used in listed gas piping or fittings.

5.1.2.1 Gas pipe shall be steel or wrought-iron pipe complying with the American National Standard Wrought-Steel and Wrought-Iron Pipe, B36.10 — 1959. Threaded copper or brass pipe in iron pipe sizes may be used.

5.1.2.2 Fittings for gas piping shall be wrought iron, malleable iron, steel, or brass (containing not more than 75 percent copper).

5.1.2.3 Copper tubing shall be annealed Type K or L, conforming to ASTM B88–66, or shall comply with the Specifications for Seamless Copper Tube for Refrigeration Field Service, ASTM B280–66. When used on systems designed for natural gas, such tubing shall be internally tinned.

5.1.2.4 Seamless brass tubing shall be composed of not more than 75 percent copper (cartridge brass 70 percent) and shall have a minimum thickness of 0.030 inch.

5.1.2.5 Steel tubing shall have a minimum wall thickness of 0.049 inch, conforming to ASTM A539–65, and be externally corrosion protected.

5.1.2.6 Flexible non-metallic tubing shall be part of an assembly which is listed for the use intended.

5.1.3 Piping Design. Each recreational vehicle requiring fuel gas for any purpose shall be equipped with a fuel gas piping system that is designed for LP-gas only or with a natural gas piping system acceptable for LP-gas.

5.1.4 Gas Pipe Sizing. Gas piping systems shall be sized so that the pressure drop to any appliance inlet connection from the gas supply connection or connections, when all appliances are in operation at maximum capacity, is not more than 0.5 inch water column when used with natural gas if the system is designed for both natural and LP-gas, or when used with LP-gas if the system is designed for LP-gas only. Conformance may be determined on the basis of test, or the gas piping system may be sized in accordance with Table 6 or other approved method. The natural gas supply connection shall be not less than three-quarter inch (¾″) nominal pipe size.

5.1.5 Joints for Gas Pipe. Pipe joints in the piping system, unless welded or brazed, shall be screw joints that comply with American National Standard Pipe Threads (except Dryseal) B2.1 — 1960. Right and left nipples or couplings shall not be used. Unions, if used, shall be of the ground joint type. The material used for welding or brazing pipe connections shall have a melting temperature in excess of 1,000° Fahrenheit.

Table 6

Sizing of Low-Pressure Gas Piping Systems

COMBINATION LP-GAS — NATURAL GAS SYSTEM (Based on a Total Pressure Drop of ½ in. H_2O)			LP-GAS-ONLY SYSTEM (Based on a Total Pressure Drop of ½ in. H_2O)		
Main Gas Manifold			**Main Gas Manifold**		
Total Appliance Input Name Plate Rating	**Nominal Pipe Size (Inches)**		**Total Appliance Input Name Plate Rating**	**Nominal Pipe Size (Inches)**	**Tube o.d. (Inches)**
No more than:			No more than:		
7,000 Btu/hr	¼		11,000 Btu/hr	¼	⅜
27,000 Btu/hr	⅜		42,000 Btu/hr	⅜	½
56,000 Btu/hr	½		88,000 Btu/hr	½	⅝
115,000 Btu/hr	¾		183,000 Btu/hr	¾	
220,000 Btu/hr	1		340,000 Btu/hr	1	
Branch Take-Offs			**Branch Take-Offs**		
Individual Appliance Input Name Plate Rating	**Nominal Pipe Size (Inches)**	**Tube o.d. (Inches)**	**Individual Appliance Input Name Plate Rating**	**Nominal Pipe Size (Inches)**	**Tube o.d. (Inches)**
No more than:			No more than:		
25,000 Btu/hr		⅜	2,500 Btu/hr		¼
31,000 Btu/hr	¼		39,000 Btu/hr		⅜
49,000 Btu/hr		½	49,000 Btu/hr	¼	
64,000 Btu/hr	⅜		77,000 Btu/hr		½
95,000 Btu/hr		⅝	100,000 Btu/hr	⅜	
120,000 Btu/hr	½		150,000 Btu/hr		⅝
250,000 Btu/hr	¾		190,000 Btu/hr	½	
			390,000 Btu/hr	¾	

5.1.6 Tubing Joints. Tubing joints shall be made with a double flare of the proper degree or with connections, as recommended by the tubing manufacturer; by means of approved gas tubing fittings; or, joints may be brazed with material having a melting point exceeding 1,000° Fahrenheit. Metallic ball sleeve compression-type tubing fittings shall not be used.

5.1.7 Pipe Joint Compound. Screw joints shall be made up tight with approved pipe joint compound, insoluble in liquefied petroleum gas, and shall be applied to the male threads only.

5.1.8 Concealed Tubing. Tubing shall not be run inside walls, floors, partitions or roofs except that one-quarter inch (¼″) o.d. tubing may be concealed provided it is enclosed with a metallic covering of thickness equivalent to the thickness of the tubing enclosed. Where tubing passes through walls, floors, partitions, roofs, or similar installations, such tubing shall be protected by the use of grommets that shall snugly fit both the tubing and the hole through which the tubing passes.

5.1.9 Concealed Joints. Pipe or tubing joints shall not be located in any floor, wall, partition, or similar concealed construction space.

5.1.10 Location of Gas Supply Connection.

5.1.10.1 For LP-gas only systems the supply connection shall be located at the container location, or within fifteen feet (15′) of the rear, on the left (road) side or at the rear, left of the longitudinal center of the vehicle, within eighteen inches (18″) of the outside wall.

Exception: A camping trailer not more than seventeen feet (17′) in length, a motor home or a truck camper may have the gas supply connection located on either side.

5.1.10.2 For natural gas or combination LP-gas and natural gas systems, the supply connection shall be located within fifteen feet (15′) of the rear, on the left (road) side or at the rear, left of the longitudinal center of the vehicle, within eighteen inches (18″) of the outside wall.

Exception: A camping trailer not more than seventeen feet (17′) in length, a motor home or a truck camper may have the gas supply connection located on either side.

5.1.11 Identification of Gas Supply Connections. Each recreational vehicle shall have permanently affixed to the exterior skin at or near each gas supply connection or the end of the pipe, a tag of 3 inches by 1¾ inches minimum size, made of etched, metal-stamped or embossed brass, stainless steel, anodized or alclad aluminum not less than 0.020 inch thick, or other approved material (e.g., 0.005 inch plastic laminates), which reads (as appropriate) either:

a. THIS GAS PIPING SYSTEM IS DESIGNED FOR USE OF LIQUEFIED PETROLEUM GAS ONLY. DO NOT CONNECT NATURAL GAS TO THIS SYSTEM. Securely cap inlet(s) when not connected for use. After turning on gas, except after normal container replacement, test gas piping and connections to appliances for leakage with soapy water or bubble solution.

b. THIS GAS PIPING SYSTEM IS DESIGNED FOR USE OF EITHER LP-GAS OR NATURAL GAS. BEFORE TURNING ON GAS BE CERTAIN APPLIANCES ARE DESIGNED FOR THE GAS CONNECTED AND ARE EQUIPPED WITH CORRECT ORIFICES. Securely cap this inlet when not connected for use. After turning on gas, except after normal container replacement, test gas piping and connections to appliances for leakage with soapy water or bubble solution.

5.1.12 Warning Relative to Motor Fuel and LP-Gas Refueling — Motor Homes, Truck Campers. Each motor home or truck camper having exterior combustion air inlet(s) at a level below the roof shall have the following additional wording on the tag specified in 5.1.11:

WARNING: ALL PILOT LIGHTS AND APPLIANCES SHALL BE TURNED OFF DURING REFUELING OF MOTOR FUEL TANKS AND/OR PERMANENTLY MOUNTED LP-GAS CONTAINERS.

5.1.13 Gas Supply Connectors.

5.1.13.1 Natural Gas. A listed minimum one-half inch (½″) nominal (ID) gas supply connector, with three-quarter inch (¾″) NPT terminal fittings, six feet in length, shall be supplied by the manufacturer when the fuel gas piping system is designed for the use of natural gas.

5.1.13.2 LP-Gas. A listed LP-gas flexible connector shall be supplied when the fuel gas piping system is designed for the use of LP-Gas and container(s) and regulator(s) are supplied.

5.1.14 Appliance Connections. All gas-burning appliances shall be connected to the fuel piping with materials as provided in 5.1.2 or with listed appliance connectors which do not pass through any wall, floor, ceiling or partition.

5.1.15 Valves. Shutoff valves and appurtenances used in connection with gas piping shall be of a type designed and approved for use on LP-gas.

5.1.16 Gas Inlet Cap. Suitable cap(s), to effectively close the gas inlet(s) when disconnected from the source of supply and not in use, shall be attached to the recreational vehicle.

5.1.17 Electrical Ground. Gas piping shall not be used for a grounding electrode (See Part III, 7.17.6 and 7.18.5).

5.1.18 Couplings. Where it is necessary to join sections of screw piping, right and left nipples and couplings shall not be used. Ground joint unions may be installed at appliance inlet connections.

5.1.19 Hangers and Supports. All gas piping shall be adequately supported by galvanized or equivalently protected metal straps or hangers at intervals of not more than 4 feet, except where adequate support and protection is provided by structural members. Solid-iron-pipe gas supply connection(s) shall be rigidly anchored to a structural member within six inches (6″) of the supply connection(s).

5.1.20 Testing for Leakage

5.1.20.1 Before Appliances Are Connected. Piping systems shall stand a pressure of at least six inches (6″) mercury or three (3) PSI gage for a period of not less than ten (10) minutes without showing any drop in pressure. Pressure shall be measured with a mercury manometer or slope gage, or an equivalent device, calibrated so as to be read in increments of not greater than one-tenth (1/10) PSI. The source of pressure shall be isolated before the pressure tests are made.

NOTE: Before a test is begun, the temperature of the ambient air and of the piping should be approximately the same, and constant air temperature should be maintained throughout the test.

5.1.20.2 After Appliances Are Connected. When appliances are connected to the piping system the entire system shall be pressurized to not less than ten inches (10″) nor more than fourteen inches (14″) water column and the appliance connections tested for leakage with soapy water or bubble solution.

5.2 Oil Piping Systems

5.2.1 General. The requirements of this section shall govern the installation of all liquid fuel piping attached to any recreational vehicle. None of the requirements listed in this Section shall apply to the piping in the appliance(s).

5.2.2 Materials. All materials used for the installation, extension, alteration, or repair of any oil piping system shall be new and free from defects or internal obstructions. The system shall be made of materials having a melting point of not less than 1,450° Fahrenheit except as provided in 5.2.4 and 5.2.5. They may consist of one or more of the following materials:

5.2.2.1 Pipe shall be steel or wrought-iron pipe complying with American National Standard Wrought-Steel or Wrought-Iron Pipe, B36.10 — 1959. Threaded copper or brass pipe in iron pipe sizes may be used.

5.2.2.2 Fittings for oil piping shall be wrought-iron, malleable iron, steel, or brass (containing not more than 75 percent copper).

5.2.2.3 Copper tubing shall be annealed Type K or L conforming to ASTM- B-88–66 or shall comply with the specifications for Seamless Copper Tube for Refrigeration Field Service, ASTM E280 — 1966.

5.2.2.4 Seamless brass tubing shall have a minimum wall thickness of 0.030 inch.

5.2.2.5 Steel tubing shall have a minimum wall thickness of 0.049 inch, conforming to ASTM A539-65, and be externally corrosion protected.

5.2.3 Size of Oil Piping. The minimum size of all fuel oil tank piping connecting outside tanks to the appliance shall be not smaller than three-eighth inch (⅜″) o.d. copper tubing or one-quarter inch (¼″) IPS. In those cases where No. 1 fuel is used with a listed automatic pump (fuel lifter), one-quarter inch (¼″) o.d. copper tubing may be used if specified by the pump manufacturer.

5.2.4 Joints for Oil Pipe. All pipe joints in the piping system, unless welded or brazed, shall be screw joints which comply with American National Standard Pipe Threads (except Dryseal), B2.1 — 1960. The material used for welding or brazing pipe connections shall have a melting temperature in excess of 1,000° Fahrenheit.

5.2.5 Joints for Tubing. Joints on tubing shall be made with double flare of the proper degree, as recommended by the tubing manufacturer, by means of approved tubing fittings. Joints may be brazed with materials having a melting point in excess of 1,000° Fahrenheit.

5.2.6 Pipe Joint Compound. Screw joints shall be made up tight with approved pipe joint compound, or other approved material, which shall be applied to the male threads only.

5.2.7 Couplings. Where it is necessary to join sections of screw piping, right and left nipples and couplings shall not be used. Ground joint unions may be installed at appliance inlet connections.

5.2.8 Grade of Piping. Fuel oil piping installed in conjunction with gravity feed systems to oil heating equipment shall slope in a gradual rise upward from a central location to both the oil tank and the appliance in order to eliminate air locks.

5.2.9 Strap Hangers. All oil piping shall be adequately supported by galvanized or equivalently protected metal straps or hangers at intervals of not more than 4 feet, except where adequate support and protection is provided by structural members. Solid-iron-pipe oil supply connection(s) shall be rigidly anchored

to a structural member within six inches (6″) of the supply connection(s).

5.2.10 Testing for Leakage. Before setting the system in operation, tank installations and piping shall be checked for oil leaks with fuel oil of the same grade that will be burned in the appliance. No other material shall be used for testing fuel oil tanks and piping. Tanks shall be filled to a maximum capacity for the final check for oil leakage.

6. Heat-Producing Appliances

6.1 General. Every heat-producing appliance used in recreational vehicles shall be listed by a nationally recognized testing laboratory for the application for which the appliance is intended. Fuel-burning appliances shall be specifically listed or labelled for installation in recreational vehicles.

6.2 Fuel Conversion. Fuel-burning appliances shall not be converted from one fuel to another unless converted in accordance with the terms of their listings.

6.3 Installations and Instructions.

6.3.1 The installation of each appliance shall conform to the terms of its listing as specified on the appliance and in the manufacturer's instructions. The installer shall provide the manufacturer's instructions in the recreational vehicle. Appliances shall be secured in place to avoid displacement and movement from vibration and road shock.

6.3.2 Operating instructions shall be provided with the appliance.

6.3.3 Fuel-burning heating appliances and refrigerators shall be of the vented-type and vented to the outside. In no case shall the vent of a gas-burning appliance terminate underneath the recreational vehicle.

6.3.4 Fuel-burning heat-producing appliances, except ranges and illuminating appliances, shall be designed or installed to provide for a complete separation of the combustion system from the atmosphere of the recreational vehicle. Combustion air inlets and flue gas outlets shall be listed or certified as components of the appliance.

6.3.5 A fuel-burning refrigerator shall be designed or installed to provide for complete separation of the combustion system from the atmosphere of the recreational vehicle. It shall be installed in accordance with the provisions of its approval and listing.

6.4 Venting.

6.4.1 Vents, roof jacks, and special fittings supplied as component parts of an appliance shall be installed in conformity with the terms of their listing. A single wall metal vent shall not be used unless it is a component part of a listed appliance.

6.4.2 Every joint of any vent or vent connector shall be secure, rigid, tight, and of approved design and workmanship.

6.5 Marking.

6.5.1 Information on clearances, input ratings, lighting and shutdown shall be attached to the appliances with the same permanence as the nameplate, and so located that it is easily readable when the appliance is properly installed.

6.5.2 Each fuel-burning appliance shall bear the appliance manufacturer's permanent marking designating the type(s) of fuel for which it is listed. If listed and installed for use with either LP-gas or natural gas, the appliance manufacturer's permanent instructions regarding conversion from one fuel to the other shall be supplied.

6.6 Accessibility. Every appliance shall be accessible for inspection, service, repair, and replacement without removing permanent construction. Sufficient room shall be available to enable the operator to observe the burner, control, and ignition means while starting the appliance.

6.7 Location. Heat-producing appliances shall be so located that doors, drapes, or other such material cannot be placed or swung closer to the front of the appliance than the clearances specified on the labelled appliances.

6.8 Clearances.

6.8.1 Clearances between heat-producing appliances and adjacent surfaces shall be not less than as specified in the terms of their listing. Clearance spaces shall be framed in or guarded to prevent creation of storage space within the clearance specified.

6.8.2 Ranges. Ranges shall have a vertical clearance between the cooking top and combustible material or metal cabinets, in accordance with Table 7 or the terms of their listings.

Table 7

Type of Protection Provided to Combustible Material or Metal Cabinets above Range	Top Burner Rating (BTUH)	Oven Burner Rating (BTUH)	Vertical Clearance Required above Range Top (inches)
1. No protection provided.	Any combination, number, or input.	Any	30
2. ¼-inch thick minimum asbestos millboard covered with 28 U.S. gauge sheet metal extending 9 inches beyond the sides of the range and covering the entire bottom of the material to be protected extending over the top of range. In lieu of 28 gauge sheet metal, a hood, 28 U.S. gauge sheet metal, may be used. Hood shall be not less than the width of the range and shall be centered over the range and cover the entire bottom of the material to be protected.	Any combination, number, or input.	Any	24
3. Range hood, 28 U.S. gauge, with minimum 2-inch vertical sides and provided with a bead or flange around top of hood to provide a minimum ¼-inch dead air space between hood and protected material. Hood shall be not less than the width of the range and shall be installed centered over range and cover the entire bottom of the material to be protected extending over the top of range.	Not more than four top burners — input not to exceed 6,000 BTUH each.	10,000	19½
	Not more than four top burners — input not to exceed 9,000 BTUH each.	24,000	20¾
	Two rear burners — inputs not to exceed 9,000 BTUH each and two front burners, inputs not to exceed 12,000 BTUH each.	22,000	23½
4. Same as No. 3, except no dead air space clearance provided.	Not more than four burners — input not to exceed 9,000 BTUH each.	22,000	23

6.9 Ventilation.

6.9.1 The area in which any fuel-burning cooking appliance is located shall be ventilated by a gravity vent opening not less than twelve and one-half square inches (12.5 sq. in.) in cross-sectional area, located higher than the appliance, or, by mechanical ventilating equipment that is installed in accordance with the terms of its listing and the manufacturer's instructions. Gravity or mechanical ventilation shall be installed within a horizontal distance of not more than ten feet (10′) from the vertical front of the appliance. Vent hood ducts shall be designed so that the duct outlet is located at such a point as to preclude the trapping of products of combustion. Ducts shall extend through the wall or roof to the outer air.

6.10 Air Ducts.

6.10.1 Material. Supply ducts shall be made of galvanized steel, tin-plated steel, or aluminum, or shall be listed Class I air ducts. A duct system integral with the structure may be acceptable if it is of durable construction that can be demonstrated to be equally resistant to fire and deterioration. Ducts constructed from sheet metal shall be in accordance with Table 8. Portions of return ducts directly above the heating surface of the appliance, or closer than 2 feet horizontally from the outer jacket or casing of the appliance, shall be constructed in accordance with the requirements of Table 8 or shall be listed Class I air ducts.

Table 8

Minimum Metal Thickness for Ducts*

	Diameter or Width	
	14 inches or less	Over 14 inches
Round Exposed	0.013 in.	0.016 in.
Enclosed Rectangular or Round	0.013 in.	0.016 in.
Exposed Rectangular	0.016 in.	0.019 in.

*When "nominal" thicknesses are specified, 0.003 inch shall be added to these "minimum" metal thicknesses.

6.10.2 Sizing of Ducts. Ducts shall be designed so that when a labeled forced-air furnace is installed and operated continually at

its normal input rating in the recreational vehicle, with all registers in full open position, the static pressure measured in the duct plenum shall not exceed that shown on the label of the appliance. When an air-cooling coil is installed in the system, the total static pressure of the coil and the system shall not exceed that shown on the label of the appliance. The minimum dimension of any branch duct shall be at least one and one-half inches (1½″) and of any main duct, two and one-half inches (2½″).

6.10.3 Joints and Seams. Joints and seams of ducts shall be securely fastened and made substantially airtight. Slip joints shall have a lap of at least one inch (1″) and shall be individually fastened. Tape or caulking compound may be used for sealing mechanically secure joints. Where used, tape or caulking compound shall not be subject to deterioration under long exposures to temperatures up to 200° Fahrenheit and to conditions of high humidity, excessive moisture, or mildew.

6.10.4 Airtightness of Supply Duct Systems. A supply duct system shall be considered substantially airtight when the static pressure in the duct system, with all registers sealed and with the furnace air circulator at high speed, is at least 80 percent of the static pressure measured in the furnace casing, with its outlets sealed and the furnace air circulator operating at high speed. Pressures shall be measured with a water manometer or equivalent device calibrated to read in increments not greater than one-tenth inch (1/10″) water column.

6.10.5 Supports. Ducts shall be securely supported.

6.11 Circulating Air.

6.11.1 Return Air Openings. Provisions shall be made to permit the return of circulating air from all rooms and living spaces, except toilet room(s), to the circulating air supply inlet of the furnace.

6.11.2 Return Air Ducts. The cross-sectional area of the return air duct shall not be less than 2 square inches for each 1,000 Btu per hour input rating of the appliance. Dampers shall not be placed in any return air duct, except that a diverting damper may be placed in a combination fresh air intake and return air duct so arranged that the required cross-sectional area will not be reduced at all possible positions of the damper.

6.11.3 Permanent Unclosable Openings. Living areas not served by return air ducts and closed off from the return opening of the furnace by doors, sliding partitions, or other means, shall

be provided with permanent unclosable openings in the doors or separating partitions to allow circulated air to return to the furnace. Such openings may be grilled or louvered. The net free area of each opening shall be not less than one square inch (1 sq. in.) for every five square feet (5 sq. ft.) of total living area closed off from the furnace by the door or partition serviced by that opening. Under-cutting doors connecting the closed-off area may be used as a means of providing return air area. However, in the event that doors are undercut, they shall be undercut a minimum of two inches (2″) and no more than two and one-half inches (2½″) and no more than one-half of the free air area so provided shall be considered as return air area.

APPENDIX TO PART II

Applicable Standards

Table 9

Standards for Air Conditioning and Heat-Producing Appliances and Equipment†

Type	ANSI (Formerly ASA, USASI)	UL	Other
Appliances			
Liquid Fuel-Burning Heating Appliances for Mobile Homes and Recreational Vehicles		307(a) 1965	
Gas-Heating Appliances for Mobile Homes and Recreational Vehicles	Z21.44-1968* Z21.47-1968 Z21.48-1968*	307(b) 1965	
Clothes Dryers (Gas-Fired)	Z21.5.1-1966	307(b) 1965	
Gas-Fired Gravity and Forced Air Central Furnaces	Z21.47-1968		
Gas-Fired Gravity and Fan Type Floor Furnaces	Z21.48-1968*		
Gas-Fired Gravity and Fan Type Sealed Combustion System Wall Furnaces	Z21.44-1968*		
Gas-Fired Illuminating Appliances	Z21.42-1963	307(b) 1965	
Domestic Gas Ranges, Free Standing	Z21.1.1-1968*	307(b) 1965	
Domestic Gas Ranges, Built-in Domestic Cooking Units	Z21.1.2-1968*	307(b) 1965	
Refrigerators Using Gas-Fuel	Z21.19-1966*	307(b) 1965	
Automatic Storage Type Water Heaters with Input Less than 50,000 BTUH	Z21.10.1-1966	307(b) 1965	
Incinerator, Domestic Gas Fired (toilets)	Z21.6-1968*		NSF-No. 24
Ferrous Pipe and Fittings			
Black and Hot Dipped Zinc-Coated (Galvanized) Welded and Seamless Steel Pipe for Ordinary Uses	B36.20-1966		ASTM A120-68 WW-P-406b (2) '68

Type	ANSI (Formerly ASA, USASI)	UL	Other
Ferrous Pipe and Fittings (Continued)			
Pipe Threads	B2.1-1968		
Wrought-Steel and Wrought-Iron Pipe	B36.10-1959		
Nonferrous Pipe, Tubing and Fittings			
Seamless Copper Water Tube	H23.1-1967		ASTM B88-66
Seamless Copper Tube for Air Conditioning and Refrigeration Field Service	H23.5-1967		ASTM B280-66
Metal Connectors for Gas Appliances	Z21.24-1968*		
Manually Operated Gas Valves	Z21.15-1966*		
Mobile Home Gas Connectors (Flexible Metal — Plastic Coated)			IAPMO-TSC-9-63
Seamless Copper and Copper Alloy Pipe and Tube	H23.4-1967		ASTM B251-67
Seamless Copper Pipe, Standard Sizes	H26.1-1967		ASTM B42-66 WW-P-377d '62
Miscellaneous			
Air Ducts		181-69	
Flame Tests of Flame-Resistant Fabrics		214-55	
Tube Fittings for Flammable and Combustible Fluids and Refrigeration Service		109-66	
LPG Containers and Accessories			ASME, DOT
Pigtails, Expansion Coils and Flexible Hose Connectors for LP-Gas		569-59	
Roof Jacks for Mobile Homes and Travel Trailers		311-69	
Safety Devices — Appliances	Z21.22-1965* Z21.20-1968 Z21.23-1968 (R) Z21.21-1968		
Gas Vents	A131.2-1964	441-69	
Factory-Built Chimneys	A131.1-1964	103-69	
Installation of Oil Burning Equipment	Z95.1-1968		NFPA No. 31-1968
Installation of Gas Appliances and Gas Piping in Buildings	Z21.30-1964		NFPA No. 54-1969
Storage and Handling of Liquefied Petroleum Gas	Z106.1-1967		NFPA No. 58-1969

Type	ANSI (Formerly ASA, USASI)	UL	Other
Residence Type Warm Air Heating and Air Conditioning Systems			NFPA No. 90B-1968
Chimneys, Fireplaces, and Venting Systems	A52.1-1969		NFPA No. 211-1969
Standard Glossary of Terms Relating to Chimneys, Gas Vents, and Heat Producing Appliances			NFPA No. 97M-1968

*With Addenda

†Dates shown are latest editions at time of printing including the dates of any Addenda issued.

Notes to Table 9

AGA: Standards and Tentative Standards, published by the *American Gas Association, Inc. Laboratories*, 8501 East Pleasant Valley Road, Cleveland (Independence), Ohio 44131.

ANSI: *American National Standards Institute* (formerly American Standards Association and United States of America Standards Institute), 1430 Broadway, New York, N. Y. 10018.

ASME: Standards and Tentative Standards published by the *American Society of Mechanical Engineers*, 345 East 47th Street, New York, N. Y. 10017.

ASTM: Standards and Tentative Standards published by the *American Society for Testing and Materials*, 1916 Race Street, Philadelphia, Pa. 19103.

DOT: Regulations published in the Federal Code of Regulations for the *Department of Transportation*. Title 49, Parts 171–190 of the CFR are applicable. Available from the U. S. Government Printing Office, Washington, D. C. 20234.

IAPMO: Standards published by the *International Association of Plumbing and Mechanical Officials*, 5032 Alhambra Avenue, Los Angeles, California 90032. (Formerly Western Plumbing Officials Association (WPOA)).

UL: Standards and Tentative Standards published by the *Underwriters' Laboratories, Inc.*, 207 East Ohio Street, Chicago, Illinois 60611.

NFPA: National Fire Protection Association, 60 Batterymarch Street, Boston, Mass. 02110.

Part III — Electrical Systems

1. Introduction

1.1 Electrical engineers associated with the design, manufacturing, installation, and inspection of recreational vehicle electrical systems have been aware of the need for uniform technical standards leading to the safe use of this special type of equipment. They have also recognized that because of conditions of transport and use, existing electrical equipment standards for motor vehicles or for buildings are not completely applicable to recreational vehicles. It is with these factors in mind that Part III of this Standard has been developed.

1.2 Much of the material in Part III has been taken from, or is based on the National Electrical Code (American National Standard C1 — 1968) and standards listed in the Appendix of this Part.

2. Scope

2.1 Part III of this Standard covers the electric conductors and equipment installed within or on recreational vehicles and also the conductors that connect them to a supply of electricity.

2.2 This Standard is not intended as a design specification or an instruction manual for untrained persons.

2.3 The provisions of this Standard are not intended to prevent the use of any material, appliance, installation, device, arrangement, or method of construction not specifically prescribed herein, provided any such alternative has been approved or listed. The enforcement authority shall approve such alternate if the material, appliance, installation, device, arrangement or method of construction is at least the equivalent of that prescribed by this Part, and may require tests or proof of compliance, to substantiate any claims that may be made regarding the use of any such alternate.

3. Definitions

***Accessible (as applied to equipment):** Admitting close approach because not guarded by locked doors, elevation or other effective means. (See **Readily Accessible**.)

*Definition identical to that appearing in the National Electrical Code.

Accessible (as applied to wiring methods): Not permanently closed in by the structure or finish of the recreational vehicle; capable of being removed without disturbing the recreational vehicle structure or finish. (See **Concealed** and **Exposed**.)

Air-Conditioning or Comfort Cooling Equipment: All of that equipment intended or installed for the purpose of processing the treatment of air so as to control simultaneously its temperature, humidity, cleanliness and distribution to meet the requirements of the conditioned space.

***Ampacity:** Current-carrying capacity expressed in amperes.

***Appliance:** Utilization equipment, generally other than industrial, normally built in standardized sizes or types which is installed or connected as a unit to perform one or more functions such as clothes washing, air conditioning, food mixing, deep frying, etc.

***Appliance — Fixed:** An appliance which is fastened or otherwise secured at a specific location.

Appliance — Portable: An appliance that is actually moved or can easily be moved from one place to another in normal use.

NOTE: For the purpose of this Standard the following major appliances are considered portable if cord connected: Refrigerators, clothes washers, dishwashers without booster heaters, or other similar appliances.

***Appliance — Stationary:** An appliance which is not easily moved from one place to another in normal use.

Approved: Means acceptable to the authority having jurisdiction.

***Attachment Plug (Plug Cap) (Cap):** A device that by insertion in a receptacle establishes connection between the conductors of the attached flexible cord and the conductors connected permanently to the receptacle.

***Automatic:** Self-acting, operating by its own mechanism when actuated by some impersonal influence, as for example, a change in current strength, pressure, temperature, or mechanical configuration.

***Bonding Jumper:** A reliable conductor to assure the required electrical conductivity between metal parts required to be electrically connected.

***Bonding Jumper — Circuit:** The connections between portions of a conductor in a circuit to maintain required ampacity of the circuit.

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*Definition identical to that appearing in the National Electrical Code.

***Branch Circuit:** That portion of a wiring system extending beyond the final overcurrent device protecting the circuit.

NOTE: A device not approved for branch circuit protection such as a thermal cutout or motor overload protective device is not considered as the overcurrent device protecting the circuit.

***Branch Circuit — Appliance:** A circuit supplying energy to one or more outlets to which appliances are to be connected; such circuits to have no permanently connected lighting fixtures not a part of an appliance.

***Branch Circuit — General Purpose:** A branch circuit that supplies a number of outlets for lighting and appliances.

***Branch Circuit — Individual:** A branch circuit that supplies only one utilization equipmet.

***Branch Circuit — Multiwire:** A circuit consisting of two or more ungrounded conductors having a potential difference between them and an identified grounded conductor having equal potential difference between it and each ungrounded conductor of the circuit and which is connected to the neutral conductor of the system.

***Cabinet:** An enclosure designed either for surface or flush mounting, and provided with a frame, mat or trim in which swinging doors are hung.

***Circuit Breaker:** A device designed to open and close a circuit by nonautomatic means, and to open the circuit automatically on a predetermined overload of current, without injury to itself when properly applied within its rating.

Concealed: Rendered inaccessible by the structure or finish of the recreational vehicle. Wires in concealed raceways are considered concealed, even though they may become accessible by withdrawing them.

Conductor:

***Bare:** A conductor having no covering or insulation whatsoever. (See **Conductor, Covered.**)

***Covered:** A conductor having one or more layers of nonconducting materials that are not recognized as insulation under the code. (See **Conductor, Bare.**)

***Insulated:** A conductor covered with material recognized as insulation.

*Definition identical to that appearing in the National Electrical Code.

***Connector, Pressure (Solderless):** A device that establishes the connection between two or more conductors or between one or more conductors and a terminal by means of mechanical pressure and without the use of solder.

Converter: A device which changes electrical energy from one form to another, as from alternating current to direct current.

***Cooking Unit, Counter-Mounted:** An assembly of one or more domestic surface heating elements for cooking purposes designed for flush mounting in, or supported by, a counter, and which assembly is complete with inherent or separately mountable controls and internal wiring. (See **Oven, Wall-Mounted.**)

Dead Front (as applied to switches, circuit-breakers, switchboards, and distribution panelboards): So designed, constructed and installed that no current-carrying parts are normally exposed on the front.

***Demand Factor:** The demand factor of any system, or part of a system, is the ratio of the maximum demand of the system, or part of a system, to the total connected load of the system, or of the part of the system under consideration.

***Device:** A unit of an electrical system that is intended to carry but not utilize electrical energy.

Direct Current (DC): A non-alternating flow of energy within a circuit having an electromotive force or potential (not exceeding 25 volts, for the purposes of this Standard).

Disconnecting Means: The necessary equipment usually consisting of circuit breaker or switch and fuses, and their accessories, located near the point of entrance of supply conductors in a recreational vehicle and intended to constitute the means of cutoff for the supply to that recreational vehicle.

NOTE: Receptacles used as disconnecting means shall be accessible (as applied to wiring methods) and capable of interrupting their rated current without hazard to the operator.

Distribution Panelboard: A single panel or group of panel units designed for assembly in the form of a single panel; including buses, and with or without switches and/or automatic overcurrent protective devices for the control of light, heat or power circuits of small individual as well as aggregate capacity; designed to be placed in a cabinet or cutout box placed in or against a wall or partition and accessible only from the front.

*Definition identical to that appearing in the National Electrical Code.

***Enclosed:** Surrounded by a case that will prevent a person from accidentally contacting live parts.

***Equipment:** A general term, including material, fittings, devices, appliances, fixtures, apparatus, and the like, used as a part of, or in connection with, an electrical installation.

***Exposed (as applied to live parts):** A live part that can be inadvertently touched or approached nearer than a safe distance by a person. It is applied to parts not suitably guarded, isolated, or insulated. (See **Accessible** and **Concealed.**)

***Exposed (as applied to wiring method):** Not concealed.

***Externally Operable (as applied to equipment that is enclosed in a case or cabinet):** Capable of being operated without exposing the operator to contact with live parts.

***Feeder:** A feeder is the circuit conductors between the service equipment, or the generator switchboard of an isolated plant, and the branch circuit overcurrent device.

***Fitting:** An accessory, such as a locknut, bushing, or other part of a wiring system, that is intended primarily to perform a mechanical rather than an electrical function.

***Ground:** A conducting connection, whether intentional or accidental, between an electrical circuit or equipment and earth, or to some conducting body that serves in place of the earth.

***Grounded:** Connected to earth or to some conducting body that serves in place of the earth.

***Grounded Conductor:** A system or circuit conductor which is intentionally grounded.

***Grounding Conductor:** A conductor used to connect equipment or the grounded circuit of a wiring system to a grounding electrode or electrodes.

***Grounding Conductor, Equipment:** A conductor used to connect the equipment being grounded to the service equipment enclosure.

***Isolated:** Not readily accessible to persons unless special means for access are used.

Labeled: Equipment or materials to which has been attached a label, symbol, or other identifying mark of a nationally recognized

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*Definition identical to that appearing in the National Electrical Code.

testing laboratory that maintains periodic inspection of production of labeled equipment or materials and by whose labeling is indicated compliance with nationally recognized standards or tests to determine suitable usage in a specified manner.

***Lighting Outlet:** An outlet intended for the direct connection of a lampholder, a lighting fixture or a pendant cord terminating in a lampholder.

Listed: Equipment or materials included in a list published by a nationally recognized testing laboratory that maintains periodic inspection of production of listed equipment or materials and whose listing states either that the equipment or material meets nationally recognized standards or has been tested and found suitable for use in a specified manner.

***Nonautomatic:** The implied action requires personal intervention for its control.

***Outlet:** A point on the wiring system at which current is taken to supply utilization equipment.

***Oven, Wall Mounted:** A domestic oven for cooking purposes designed for mounting in or on a wall or other surface.

Power Supply Assembly: The conductors, including the grounding conductors, insulated from one another, the connectors, attachment plug caps, and all other fittings, grommets, or devices installed for the purpose of delivering energy from the source of electrical supply to the distribution panel within the recreational vehicle.

Raceway: Any channel for holding wires, cables, or bus bars that is designed expressly for, and used solely for, this purpose. Raceways may be of metal or insulating material and the term includes rigid metal conduit, flexible metal conduit, electrical metallic tubing, underfloor raceways, cellular metal floor raceways, surface metal raceways, wireways, and busways and rigid nonmetallic conduit.

***Raintight:** So constructed or protected that exposure to a beating rain will not result in the entrance of water.

***Readily Accessible:** Capable of being reached quickly for operation, renewal, or inspection, without requiring those to whom ready access is requisite to climb over or remove obstacles or to resort to portable ladders, chairs, etc. (See **Accessible.**)

***Receptacle Outlet:** An outlet where one or more receptacles are installed.

*Definition identical to that appearing in the National Electrical Code.

***Receptacle (Convenience) Outlet:** A receptacle is a contact device installed at an outlet for the connection of an attachment plug and flexible cord.

Transformer: A device, which when used, will raise or lower the voltage of alternating current of the original source.

***Utilization Equipment:** Equipment that utilizes electric energy for mechanical, chemical, heating, lighting, or similar useful purposes.

***Ventilated:** Provided with a means to permit circulation of air sufficient to remove an excess of heat, fumes or vapors.

Voltage (of a Circuit): The greatest effective difference of potential between any two conductors of the circuit concerned.

***Watertight:** So constructed that moisture will not enter the enclosing case.

***Weatherproof:** So constructed or protected that exposure to the weather will not interfere with successful operation.

Raintight or watertight equipment may fulfill the requirements for "weatherproof". However, weather conditions vary and consideration should be given to conditions resulting from snow, ice, dust, or temperature extremes.

4. Batteries and Direct-Current Power (Twelve Volts Nominal)

4.1 Battery Circuits. Battery circuits furnished and installed by the recreational vehicle manufacturer, other than those related to braking, are subject to this Standard. Circuits supplying lights subject to Federal or State regulations shall be in accordance with applicable government regulations but shall not be lower than provided by this Standard.

4.2 Low-Voltage Wiring Materials.

4.2.1 Copper conductors shall be used for low-voltage circuits.

4.2.2 The insulation of low-voltage conductors used in battery and direct current circuits shall be rated at least 60°C.

4.2.3 Conductors furnished and installed by the recreational vehicle manufacturer shall have a minimum of one thirty-second inch (1/32") of thermoplastic insulation or equal.

*Definition identical to that appearing in the National Electrical Code.

4.2.4 The insulation of outdoor or under-chassis wire shall be moisture and heat resistant, Type THW or equivalent.

4.2.5 Single-wire, low-voltage conductors shall be of the stranded type.

4.3 Low-Voltage Wiring Methods.

4.3.1 Conductors shall be protected against physical damage and shall be adequately supported. Where insulated conductors are clamped to the structure, the conductor insulation shall be supplemented by an additional wrap or layer of equivalent material, except that jacketed cables need not be so protected. Wiring shall be routed away from sharp edges, moving parts or heat sources.

4.3.2 Splices and connections shall be made in accordance with Society of Automotive Engineers (SAE) standards and recommended practices or equivalent.

4.3.3 Battery and direct-current circuits shall be physically separated by at least a one-half inch (½″) gap, or other approved means, from circuits of a different power source. This may be accomplished by clamping, routing, or equivalent means which ensure permanent total separation.

4.4 Battery Installations. Storage batteries subject to the provisions of this Standard shall be securely attached to the vehicle and installed in an area which is ventilated directly to the exterior of the vehicle.

4.5 Overcurrent Protection.

4.5.1 Battery and direct-current circuit wiring shall be protected by overcurrent protective devices rated not in excess of the ampacity of copper conductors, as follows:

Wire Size	Ampacity	Wire Type
18	3	Stranded only
16	9	Stranded only
14	15	Stranded or solid
12	20	Stranded or solid
10	30	Stranded or solid

NOTE: For other allowable conductor ampacities, refer to the National Electrical Code (ANSI C1-1968), Table 310-12.

4.5.2 Circuit breakers or fuses shall be of the listed or approved type, including automotive types conforming to the requirements of Society of Automotive Engineers (SAE) J554 — 1968 or Underwriters' Laboratories, Inc. Standard 275b. Fuseholders shall be clearly marked with maximum fuse size.

4.5.3 Higher current-consuming direct-current appliances such as pumps, compressors, heater blowers and similar motor-driven appliances shall be installed in accordance with the manufacturer's instructions.

4.5.4 The overcurrent protective device shall be installed in an accessible location on the vehicle as close as practical to the point where the power supply connects to the vehicle circuits. If located outside the recreational vehicle, the device shall be protected against weather and physical damage.

5. Combination Electrical Systems

5.1 General. Vehicle wiring suitable for connection to a battery or direct-current supply source may be connected to a 120-volt source provided that the entire wiring system and equipment are rated and installed in full conformity to Section 7 of this Standard covering 120-volt electrical systems. Circuits fed from alternating-current transformers shall not supply direct-current appliances.

5.2 Voltage Converters (120-volt Alternating Current to Low Voltage Direct Current). The 120-volt alternating current side of voltage converters shall be wired in full conformity with the provisions of Section 7 of this Standard for 120-volt electrical systems. Converters supplied as an integral part of a listed appliance are not subject to the above. All converters and transformers shall be listed or approved by a nationally recognized testing laboratory.

5.3 Dual-Voltage Fixtures or Appliances. Fixtures or appliances having both 120-volt and low-voltage connections shall be listed or approved as dual voltage by a nationally recognized testing laboratory.

5.4 Autotransformers. Autotransformers are prohibited.

5.5 Receptacles and Plug Caps. When a recreational vehicle is equipped with separate external connections for a 120-volt alternating-current system and a battery or direct-current system, receptacles and plug caps shall be of different configurations.

5.6 Identification.

5.6.1 When a vehicle equipped with a battery or direct-current system has an external connection for low-voltage power, the receptacle shall have a configuration that will not accept 120-volt power. The vehicle shall have permanently affixed on the outside wall adjacent to the point of entrance of the power supply conductors a tag which reads:

THIS CONNECTION IS FOR LOW-VOLTAGE BATTERY OR DIRECT CURRENT ONLY. DO NOT CONNECT TO 120 OR 240 VOLTS AC.

5.6.2 The tag shall be 3 inches by 1¾ inches minimum size, made of etched, metal-stamped or embossed brass, stainless steel, anodized or alclad aluminum not less than 0.020 inch thick, or other approved material (e.g., 0.005 inch plastic laminates).

6. Generator Installations

6.1 Mounting. Generators shall be mounted in such a manner as to be effectively electrically bonded to the recreational vehicle chassis.

6.2 Generator Protection. Equipment shall be installed to ensure that the generator is disconnected when the vehicle is energized from an outside source and to ensure that the outside source is disconnected when the vehicle is energized by the generator. The generator field shall be protected by appropriately rated equipment which has been listed.

6.3 Installation of Storage Batteries and Generators. Storage batteries and internal-combustion-driven generator units (subject to the provisions of this Standard) shall be secured in place to avoid displacement from vibration and road shock and shall be installed in a compartment which is vapor-tight to the interior of the vehicle.

6.4 Ventilation of Generator Compartments. Compartments accommodating internal-combustion-driven generator units shall be provided with approved ventilation in accordance with instructions provided by the manufacturer of the generator unit.

6.5 Location of Internal-Combustion-Engine Generator Exhaust. Exhaust from generator internal-combustion engines shall not terminate adjacent to the vehicle gasoline tank filler spout inlet.

7. Nominal 120 or 120/240 Volt Systems

7.1 General Requirements. The electrical equipment and material of recreational vehicles indicated for connection to a wiring system nominally rated 120 volts, 2 wire with ground, or a wiring system nominally rated 120/240 volts, 3 wire with ground, shall be approved and installed in accordance with the requirements of the National Electrical Code (ANSI C1 — 1968).

7.2 Materials and Equipment. Electrical materials, devices, appliances, fittings and other equipment installed, intended for use in, or attached to the recreational vehicle shall be listed by a nationally recognized testing laboratory.

7.3 Circuit or Branch Circuits Required.

7.3.1 The circuit or branch circuits required in a recreational vehicle shall conform to 7.14.1 and be determined in accordance with 7.3.1.1, 7.3.1.2 or 7.3.1.3.

7.3.1.1 Recreational vehicles with not more than eight (8) lighting and receptacle outlets combined shall have either:

a. One general purpose circuit, 15 amperes, No. 14 AWG minimum, copper or listed equal, to supply these outlets, provided the total rating of fixed appliances connected to this circuit does not exceed five amperes or 600 watts, *or*

b. One general purpose circuit, 20 amperes, No. 12 AWG minimum, copper or listed equal, to supply these outlets, provided the total rating of fixed appliances connected to this circuit does not exceed nine amperes or 1,000 watts.

Vehicles wired in accordance with a. or b. shall not be equipped with electrical heating or cooking appliances.

7.3.1.2 Recreational vehicles with more than eight (8) lighting and receptacle outlets combined shall have one appliance branch

circuit, 20 amperes, No. 12 AWG minimum, copper or listed equal, *and* either:

a. One branch circuit, 15 amperes, No. 14 AWG minimum, copper or listed equal, to supply these outlets, provided this circuit does not supply receptacles in the cooking and dining area(s) or electrical heating or cooking appliances, and provided the total rating of fixed appliances connected to this circuit does not exceed five amperes or 600 watts, *or*

b. One branch circuit, 20 amperes, No. 12 AWG minimum, copper or listed equal, to supply these outlets, provided this circuit does not supply receptacles in the cooking and dining area(s) or electrical heating or cooking appliances and provided the total rating of fixed appliances connected to this circuit does not exceed nine amperes or 1,000 watts.

7.3.1.3 Calculations for Lighting and Appliance Load. When 7.3.1.2 (relative to recreational vehicles with more than eight (8) lighting and receptacle outlets combined) is not applied, the following method shall be employed in computing the power supply or feeder assembly and distribution panelboard load for the recreational vehicle:

A. *Lighting:* Length times width of vehicle (outside dimensions, exclusive of hitch and cab) times three watts per square foot, e.g.,

Length × width × 3 = _____ lighting watts.

B. *Small Appliance:* Number of circuits times 1,500 watts for each 20 ampere appliance receptacle circuit, e.g.,

Number of Circuits × 1,500 = _____ small appliance watts.

C. *Total:* Lighting watts plus small appliance watts = _____ total watts.

D. First 3,000 total watts at 100 per cent plus remainder at 35 per cent = _____ watts to be divided by voltage to obtain current (amperes) per leg.

	Amperes per Leg	
	A	*B*
Lighting and small appliance current (amperes) per leg (from D above) =		
E. Add name plate amperes for motors and heater loads (exhaust fans, air conditioners,* electric, gas, or oil heating*) =		
F. Add 25 per cent of amperes of largest motor in (E) =		

*Omit smaller of these two except include blower motor if used as air conditioner evaporator motor.

G. Add name plate amperes for:**

Disposal	_____	_____	
Water Heater	_____	_____	
Wall-Mounted Ovens	_____	_____	
Cooking Units	_____	_____	
TOTAL	_____	_____	= _____

H. Add amperes for free-standing range as distinguished from separate ovens and cooking units. Derive from following table by dividing watts by by 230 volts.

Range	Name Plate Rating	Use
(Free standing range as distinguished from separate oven and cooking units)	10,000 w or less	80 per cent of rating
	10,001–12,500 w	8,000 w
	12,501–13,500 w	8,400 w
	13,501–14,500 w	8,800 w
	14,501–15,500 w	9,200 w
	15,501–16,500 w	9,600 w
	16,501–17,500 w	10,000 w

	Amperes per Leg	
	A	*B*
I. If outlets or circuits are provided for other than factory-installed major appliances, the anticipated load shall be added for each.		
TOTAL =		

When the total for Legs A and B are unequal, use the larger to determine the distribution panel and supply cord rating.
(Service amperes shall not exceed supply cord rating. See 7.7.1.5.)

**When number of appliances is four or more use 75 per cent of total.

7.4 Receptacle Outlets Required.

7.4.1 Except in the bath and hall areas, receptacle outlets shall be installed at wall spaces two feet (2′) wide or more, so that no point along the floor line is more than six feet (6′), measured horizontally, from an outlet in that space. Except as explained in the following, receptacle outlets are not required for wall spaces occupied by kitchen cabinets, wardrobe cabinets, built-in furniture, behind

doors which may open fully against a wall surface, or similar facilities. A receptacle outlet shall be installed:

a. Adjacent to counter tops in the kitchen (at least one on each side of the sink if counter tops are on each side and are twelve inches (12″) or over in width).

b. Adjacent to the refrigerator and gas-range space, except when a gas-fired refrigerator or cooking appliance, requiring no external electrical connection, is factory installed.

c. Adjacent to counter top spaces (and built-in vanities) which cannot be reached from a receptacle required in 7.4.1. a by a cord of six feet (6′) without crossing a traffic area, cooking appliance or sink.

7.4.2 When installed adjacent to a bathroom lavatory, the receptacle outlet shall be a minimum of thirty inches (30″) from the floor. The receptacle outlet may be contained in a listed lighting fixture. A receptacle outlet shall not be installed in a tub, shower enclosure, or combination shower compartment.

7.5 Distribution Panelboard.

7.5.1 A listed and appropriately rated distribution panelboard shall be used. The distribution panelboard shall be of the insulated neutral type, with the grounding bar attached to the metal frame of the panelboard or other approved grounding means.

7.5.2 The distribution panelboard shall be installed in a readily accessible location and may be located in a closet.

7.5.3 The distribution panelboard shall be of the dead-front type and shall consist of one or more circuit breakers or shall be Type S plug fuses. A main disconnecting means shall be provided where fuses are used or where more than two circuit breakers are employed.

7.6 Branch Circuit Protection.

7.6.1 The branch-circuit overcurrent devices shall be rated:

a. Not more than the circuit conductors; and

b. Not more than 150 per cent of the rating of a single appliance rated 10-amperes or more; but

c. Not more than the fuse size marked on the air conditioner or other motor-operated appliance.

7.6.2 A 20-ampere fuse or circuit breaker shall be considered adequate protection for fixture leads, cords, or portable appliances,

and No. 14 AWG (American Wire Gage) tap conductors, not over 6 feet long for recessed lighting fixtures.

7.6.3 If more than one outlet or load is on a branch-circuit, a 15-ampere receptacle shall be considered protected by a 20-ampere fuse or circuit breaker.

7.7 Power Supply Assembly.

7.7.1 General.

7.7.1.1 Recreational vehicles wired in accordance with 7.3.1.1.a. shall use a listed 15-ampere, or higher, main power supply assembly. (See 7.8.1, 7.8.1.2.a, and 7.8.2.)

7.7.1.2 Recreational vehicles wired in accordance with 7.3.1.1.b. shall use a listed 20-ampere, or higher, main power supply assembly. (See 7.8.1, 7.8.1.2.b, and 7.8.2.)

7.7.1.3 Recreational vehicles wired in accordance with 7.3.1.2 or 7.3.1.3 shall use a listed 30-ampere, or higher, main power supply assembly. (See 7.8.1, 7.8.1.2.c, and 7.8.2.)

7.7.1.4 In accordance with 7.3.1.3, any recreational vehicle with a rating in excess of 30-amperes, 115 volts, shall use a listed 40-ampere or 50-ampere 120/240 volt power supply assembly (C 73.17 — 1966 configuration). (See 7.8.1, 7.8.1.2.d, and 7.8.2.)

Exception: When the calculated load of the recreational vehicle exceeds 30 amperes, 120 volts, a second power supply cord may be installed when permitted by the authority having jurisdiction. Where a two cord supply system is installed, they shall not be interconnected on either the line side or the load side. The grounding circuits and grounding means shall be electrically interconnected.

7.7.1.5 Dual Supply Source.

a. Where a dual supply system, consisting of a generator and a power supply cord is installed, the feeder from the generator shall be protected by an overcurrent-protective device. Installation shall be in accordance with Sections 6.1 and 6.2.

b. Calculation of loads shall be in accordance with 7.3.1.3

c. The two supply sources need not be of the same capacity.

d. If the generator source exceeds 30-amperes, 115 volts, it may be wired either as a 120 volt system or a 120/240 volt system, providing an overcurrent-protective device of the proper rating is installed in the feeder.

e. The external-power-supply assembly may be less than the calculated load but not less than 30 amperes and shall have overcurrent protection not greater than the capacity of the external power supply assembly.

7.8 Means for Connecting to Power Supply.

7.8.1 Assembly. The power supply assembly or assemblies shall be factory supplied (see 7.8.1.a.) or factory installed when of the permanently connected type as specified in 7.8.1.b.

a. **Separable.** When a separable power supply assembly consisting of a cord with a female connector and molded attachment plug cap is provided, the vehicle shall be equipped with a permanently mounted, listed or approved, male-recessed-type motor base receptacle wired directly to the distribution panel by an approved wiring method. The attachment plug cap shall be of an approved or listed type. (See 7.7.1.1, 7.7.1.2, 7.7.1.3, 7.7.1.4.)

b. **Permanently Connected.** Each power supply assembly shall be connected directly to the terminals of the distribution panel or conductors within an approved junction box and provided with means to prevent strain from being transmitted to the terminals. The conductors between each junction box and the terminals of each distribution panel shall be equal to the ampacity of the power supply cord. The supply end of the assembly shall be equipped with an attachment plug of the type described in 7.8.1.2. Where the cord passes through the walls or floors, it shall be protected by means of conduit and bushings or equivalent.

7.8.1.1 Cord. The cord set shall be listed as suitable for use with recreational vehicles.* The cord shall be not less than 20 feet as measured from the point of entrance to the recreational vehicle or the face of the motor base attachment plug nor more than 26½ feet in length overall to the face of the attachment plug at the supply end.

7.8.1.2 Plug Caps.

a. Recreational vehicles having only one 15-ampere branch circuit as permitted by 7.3.1.1.a. shall have an attachment-plug cap which shall be two-pole, three-wire, grounding type, rated 15-amperes, 125 volts, conforming to American National Standard C73.11 — 1966.

b. Recreational vehicles having only one 20-ampere branch circuit as permitted in 7.3.1.1.b. shall have an attachment-plug cap which shall be two-pole, three-wire, grounding type, rated 20-amperes, 125 volts, conforming to American National Standard C73.12 — 1966.

c. Recreational vehicles wired in accordance with 7.3.1.2 or 7.3.1.3 shall have an attachment-plug cap which shall be two-

*Until such time as cord sets so listed become available, this requirement may be met by cord sets listed as suitable for use with travel trailers.

pole, three-wire, grounding type, rated 30-amperes, 125 volts, conforming to American National Standard C73.13 — 1966, intended for use with units rated at 30-amperes, 125 volts, for 120 volt systems.

d. Recreational vehicles having a power supply assembly rated 40-amperes or 50-amperes as permitted by 7.3.1.3 shall have a 3-pole, 4-wire grounding type attachment-plug cap rated 50-amperes, 125/250 volts, conforming to American National Standard C73.17 — 1966.

7.8.2 Labeling at El .rical Entrance. Each recreational vehicle shall have permanently affixed to the exterior skin at or near the point of entrance of the power supply cord(s) a tag 3 inches by 1¾ inches minimum size, made of etched, metal-stamped or embossed brass, stainless steel, anodized or alclad aluminum not less than .020 inch thick, or other approved material (e.g., 0.005 inch plastic laminates), which reads, as appropriate, either:

a. "This connection is for 110–125 volt AC, 60 Hz (Cycles) service. Do not connect to higher voltage" or

b. "This connection is for 3-wire 120/240 volt AC, 60 Hz (Cycles), _____ ampere service."

7.8.3 Location. The point of entrance of a power supply assembly shall be located within twenty-five feet (25′) of the rear, on the left (road) side or at the rear, left of the longitudinal center of the vehicle, within eighteen inches (18″) of the outside wall.

Exception. A camping trailer not more than seventeen feet (17′) in length, a motor home or a truck camper may have the electrical point of entrance located on either side, provided the drain outlet and gas connections are located on the same side.

7.9 Wiring Methods.

7.9.1. Electrical metallic tubing, flexible metallic conduit, metal-clad cable, and nonmetallic sheathed cable with a grounding conductor, shall terminate by means of fittings, clamps or connectors approved for the purpose. Flexible metal conduit may be used as a grounding means where both the conduit and the fittings are approved for the purpose.

7.9.2 Rigid metal conduit shall be provided with a locknut inside and outside the box, and a conduit bushing shall be used on the inside. Inside ends of the conduit shall be reamed.

7.9.3 Nonmetallic outlet boxes are acceptable only with nonmetallic sheathed cable.

7.9.4 In walls and ceilings constructed of wood or other combustible material, outlet boxes and fittings shall be flush with the finished surface or project therefrom.

7.9.5 Wall and ceiling outlets shall be mounted in accordance with Article 370 of the National Electrical Code (ANSI C1 — 1968).

Exception: Snap-in type boxes or boxes provided with special wall or ceiling brackets that securely fasten boxes in walls or ceilings may be used.

7.9.6 The sheath of nonmetallic cable or the armor of metal-enclosed cable shall be continuous between outlet boxes and other enclosures.

7.9.7 Metal-clad and nonmetallic cables may be passed through the centers of the wide side of 2 inch by 4 inch studs. However, they shall be protected where they pass through 2 inch by 2 inch studs or at other studs or frames where the cable would be less than one and one-half inches (1½″) from the inside or outside surface. Steel plates on each side of the cable, or a steel tube, with not less than No. 16 Manufacturers' Standard Gage wall thickness, are required to protect the cable. These plates or tubes shall be securely held in place. When the thickness of studs or frames make it impractical or impossible to use metal plates or tubes, particular care shall be exercised in the design and production of the recreational vehicles so as to avoid contacting the cables with nails, screws, or other fasteners. Such care in design shall include appropriate routing of the cables through studs or frames at locations where the likelihood of their being contacted by nails, screws, or other fasteners subsequent to production is remote.

7.9.8 No bend shall have a radius of less than five times the cable diameter.

7.9.9 When connected with cable connectors or clamps, cables shall be supported within twelve inches (12″) of outlet boxes, distribution panelboards, and splice boxes on appliances. Supports shall be provided every four and one-half feet (4½′) at other places.

7.9.10 Nonmetallic sheathed cables are to be supported within eight inches (8″) of a nonmetallic outlet box without cable clamps.

7.9.11 Nonmetallic cable, if exposed, shall be protected from physical damage, by covering boards, guard strips or conduit. Cable likely to be damaged by stowage shall be so protected in all cases.

7.9.12 Metallic face plates shall be of ferrous metal not less than 0.030 inch in thickness or of nonferrous metal not less than 0.040 inch in thickness. Nonmetallic face plates shall be of the listed or approved type.

7.9.13 Where metallic face plates are used they shall be effectively grounded.

7.9.14 Outdoor or under-chassis wiring (120 volt) exposed to moisture and physical damage shall be protected by rigid metal conduit, or electrical metallic tubing which may be used when closely routed against frames and equipment enclosures. The conductors shall be suitable for wet location.

7.10 Conductors and Outlet Boxes.

7.10.1 Each wire in an outlet box, including grounding conductors, shall be counted as indicated below. Fixture wires, splicing wires, and conductors that do not leave the box are not counted.

No. 14 AWG — 2 cu. in. per wire

No. 12 AWG — 2.25 cu. in. per wire

No. 10 AWG — 2.50 cu. in. per wire

No. 8 AWG — 3.0 cu. in. per wire

NOTE: Where there is not sufficient space for a deeper box, see the National Electrical Code (ANSI C1-1968), Table 370-6 (a-2).

7.10.2 Outlet boxes of dimensions less than those required in Table 370-6 (a) (1) and Table 370-6 (a)(2) of the National Electrical Code may be used provided the box has been tested and approved for the purpose.

7.10.3 At least four inches (4″) of free conductor shall be left at each outlet box except where conductors are intended to loop without joints.

7.11 Painting of Wiring. During painting or staining of the recreational vehicle, it is acceptable to paint metal raceways (except where grounding continuity would be reduced) or the sheath of the nonmetallic cable. Some arrangement, however, must be made so that no paint is applied to the individual wires, as color coding may be obliterated by the paint.

7.11.1 Polarization.

7.11.1.1 The white conductors shall be employed for grounded circuit conductors only and shall be connected to the white terminal

or lead on receptacle outlets and fixtures. It shall be the unswitched wire in switched circuits.

Exception: A cable containing a white conductor may be used for single-pole, three-way or four-way switch loops where the connections are made so that other than the white conductor is the return conductor from the switch to the outlet. Painting of the terminal end of the wire is not required in such cases.

7.11.1.2 If the white conductor of a cable is used for other than grounded conductors or for other than switch loops, as explained in 7.11.1.1 (for a 230-volt circuit for example), the conductor shall be finished in a color other than white at each outlet where the conductors are visible and accessible.

7.12 Connection of Terminals and Splices.

7.12.1 Connection of conductors to terminal parts shall ensure a thoroughly good connection without damaging the conductors and shall be made by means of pressure connectors (including set screw type), solder lugs, or splices to flexible leads. No. 8 or smaller solid conductors and No. 10 or smaller stranded conductors may be connected by means of clamps or screws with terminal plates having upturned lugs, or by means of approved screwless terminals. Terminals for more than one conductor shall be of a type approved for the purpose.

7.12.2 Conductors shall be spliced or joined with approved splicing devices or by brazing, welding, or soldering with a fusible metal or alloy. Soldered splices shall first be so spliced or joined as to be mechanically and electrically secure without solder and then soldered. All splices, joints and free ends of conductors shall be covered with an insulation equivalent to that on the conductors.

7.12.3 If splices of the grounding wire in nonmetallic sheathed cable are made in outlet boxes, the splices shall be insulated.

7.13 Wall Switches.

7.13.1 Switches shall be rated as follows:

a. For lighting circuits, switches shall be rated not less than 10 amperes, 125 volts and in no case less than the connected load.

b. For motors or other loads, switches shall have ampere or horsepower ratings, or both, adequate for loads controlled. (An "AC general use" snap switch may control a motor 2 horsepower or less with full-load current not over 80 per cent of the switch ampere rating.)

7.14 Receptacles.

7.14.1 All receptacle outlets:

a. Shall be of the grounding type; and

b. Shall be installed in accordance with Sections 210-21 and 210-22 of the National Electrical Code (ANSI C1 — 1968).

7.15 Lighting Fixtures.

7.15.1 General.

7.15.1.1 Any combustible wall or ceiling finish exposed between the edge of a fixture canopy, or pan and the outlet box, shall be covered with noncombustible material of either metal equal to the thickness of the fixture or asbestos of one-sixteenth inch ($\frac{1}{16}$").

7.15.2 Shower Fixtures.

7.15.2.1 If a lighting fixture is provided over a bathtub or in a shower stall, it shall be of the enclosed and gasketed type and listed or approved for the type of installation.

7.15.2.2 The switch for shower lighting fixtures and exhaust fans, located over a tub or in a shower stall, shall be located outside the tub or shower space.

7.15.3 Outdoor Outlets, Fixtures, Air-Cooling Equipment, etc.

7.15.3.1 Outdoor fixtures and other equipment shall be listed or approved for outdoor use.

7.16 Grounding. (See also Section 7.18 on Bonding of Non-current-Carrying Metal Parts)

7.16.1 Service Grounding. The grounding conductor in the supply cord or feeder shall be connected to the grounding bus or other approved grounding means in the distribution panelboard.

7.16.2 Distribution Panelboard. The distribution panelboard shall have a grounding bus with sufficient terminals for all grounding conductors or other approved grounding means.

7.16.3 Insulated Neutral.

7.16.3.1 The grounded circuit conductor (neutral) shall be insulated from the equipment grounding conductors and from equipment enclosures and other grounded parts. The grounded (neutral) circuit terminals in the distribution panelboard and in ranges, clothes dryers, counter-mounted cooking units, and wall-mounted ovens shall be insulated from the equipment enclosure.

Bonding screws, straps or buses in the distribution panelboard or in appliances shall be removed and discarded.

7.16.3.2 Connection of electrical ranges and electrical clothes dryers utilizing a grounded (neutral) conductor, if cord connected, shall be made with 4 conductor cord and 3-pole, 4-wire grounding type plugs and receptacles.

7.17 Interior Equipment Grounding.

7.17.1 In the electrical system, all exposed metal parts, enclosures, frames, lighting fixture canopies, etc., shall be effectively bonded to the grounding terminal or enclosure of the distribution panelboard.

7.17.2 Bare wires, green-colored wires, or green wires with yellow stripe(s) shall be used for equipment grounding conductors only.

7.17.3 Where grounding of electrical equipment is specified, it may be accomplished as follows:

a. Connection by metallic raceway (conduit or electrical metallic tubing) or the sheath of metal-clad cable to metallic outlet boxes.

b. A connection between the one or more grounding conductors and a metallic box by means of a grounding screw, which shall be used for no other purpose, or an approved grounding device.

c. The grounding wire in nonmetallic sheathed cable may be secured under a screw threaded into the fixture canopy other than a mounting screw, cover screw, or to a listed grounding means (plate) in a nonmetallic outlet box for fixture mounting (grounding means may also be used for fixture attachment screws).

7.17.4 A connection between the one or more grounding conductors brought into a nonmetallic outlet box shall be so arranged that a connection can be made to any fitting or device in that box that requires grounding.

7.17.5 Where more than one equipment grounding conductor of a branch circuit enters a box, all such conductors shall be in good electrical contact with each other, and the arrangement shall be such that the disconnection or removal of a receptacle, fixture, or other device fed from the box will not interfere with or interrupt the grounding continuity.

7.17.6 Cord-connected appliances, such as washing machines, clothes dryers, refrigerators, and the electrical system of gas ranges, etc., shall be grounded by means of an approved cord with grounding conductor and grounding type plug.

7.18 Bonding of Noncurrent-Carrying Metal Parts.

7.18.1 All exposed noncurrent-carrying metal parts that may become energized shall be effectively bonded to the grounding terminal or enclosure of the distribution panelboard.

7.18.2 A bonding conductor shall be connected between any distribution panelboard and an accessible terminal on the chassis.

Exception: Any recreational vehicle which employs a unitized metal chassis-frame construction to which the distribution panelboard is securely fastened with a bolt(s) and nut(s) or by welding or riveting is considered to be bonded.

7.18.3 Grounding terminals shall be of the solderless type and listed as pressure terminal connectors recognized for the wire size used. The bonding conductor may be solid or stranded, insulated or bare, and shall be No. 8 AWG copper minimum, or equal.

7.18.4 The metallic roof and exterior covering are considered bonded if:

a. The metal panels overlap one another and are securely attached to the wood or metal frame parts by metallic fasteners, and

b. The lower panel of the metallic exterior covering is secured by metallic fasteners at each cross member of the chassis, or the lower panel is bonded to the chassis by a metal strap.

7.18.5 The gas, water and waste pipes are considered grounded if they are bonded to the chassis. (See Paragraph 7.18.2 for chassis bonding.)

7.18.6 Furnace and metallic circulating air ducts shall be bonded.

7.19 Appliance Accessibility. Every appliance shall be accessible for inspection, service, repair, and replacement without removal of permanent construction.

8. Factory Tests (Electrical)

8.1 Electrical Factory Tests. Each recreational vehicle shall be subjected to the following tests:

8.1.1 Circuits of 120 volts or 120/240 Volts. Each recreational vehicle designed with a 120 volt or 120/240 volt electrical system shall withstand the applied potential without electrical breakdown of a one-minute 900-volt dielectric strength test, or a one-second 1,080-volt dielectric strength test, with all switches closed between current carrying conductors, including neutral, and the recreational vehicle ground. The test transformer shall be adjustable. Starting at zero the applied potential shall be increased gradually in at least four steps until either the test value is reached or breakdown occurs. During the test, all switches and other controls shall be in the "on" position. Listed fixtures and permanently installed appliances shall not be required to withstand this test.

8.1.2. Battery and Low Voltage Circuits. The battery or low-voltage circuit conductors in each recreational vehicle shall withstand the applied potential without electrical breakdown of a one-minute 500-volt or a one-second 600-volt dielectric strength test. The test transformer shall be adjustable. The potential shall be applied between live and grounded conductors.

9. Examination of Equipment for Safety

9.1 The examination or inspection of equipment for safety, according to the recommendations contained in this Standard, should be conducted under uniform conditions and by organizations properly equipped and qualified for experimental testing, inspections of the run of goods at factories, and service-value determinations through field examinations.

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UNITED STATES OF AMERICA
STANDARDS INSTITUTE

STANDARD FOR
MOBILE HOMES

Body and Frame Design and Construction
Installation of Plumbing, Heating, and Electrical Systems

American National Standard

This standard is one of more than 4000 approved as either a USA Standard or as an American Standard. It became an American National Standard in October 1969 when the Institute changed its name to American National Standards Institute, Inc.

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Mobile Homes Manufacturers Association

The Mobile Homes Manufacturers Association (MHMA) is a non-profit, trade organization to serve the mobile home industry and promote industry growth by providing better tools for successful operation. It is voluntarily supported by manufacturers, suppliers, and related service organizations. It has a Standards Division with field engineering personnel to visit member plants regularly, inspecting units and assisting when necessary in the correction of any deviations from the standards applicable to mobile homes. MHMA Manufacturers must comply with the provisions of this Standard as a condition of membership.

National Fire Protection Association

The National Fire Protection Association (NFPA) is a non-profit technical and educational organization to promote the science and improve the methods of fire protection. Organized in 1896, the Association has a broad-scale standards-making program to aid in its objective to reduce loss of life and destruction of property by fire. The Association publishes the standards developed under its aegis in pamphlet editions (such as this) and in what is known as the National Fire Codes (a ten-volume compilation annually updated, totaling approximately 7,000 pages). For full information about the Association and for a list of its publications, write to the Association's Headquarters.

Trailer Coach Association

The Trailer Coach Association represents the manufacturers of mobile homes and recreational vehicles, dealers and suppliers in the Western States while drawing its members from all sections of the country. Founded in 1936, the Association sponsors mobile home and recreational vehicle shows in the major western cities and has research programs dedicated to advance the proper use of mobile homes and recreational vehicles. It has a Standards Department which works with the enforcing officials in the various Western States to encourage compliance with the recommendations contained in this standard. The Trailer Coach Association currently has a staff of 18 and a membership of 742.

United States of America Standards Institute

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United States of America

Standard for Mobile Homes

Body and Frame Design and Construction Requirements and the Installation of Plumbing, Heating and Electrical Systems

USA Standard A119.1 — 1969

NFPA No. 501B — 1958

This Edition of Standard on Mobile Homes

This Standard has been developed by a USA Standards Committee on Mobile Homes and Travel Trailers sponsored jointly by the Mobile Homes Manufacturers Association, the National Fire Protection Association, and the Trailer Coach Association. Personnel of the Committee are listed on pages A119.1-2 and A119.1-3. It has been approved by all three sponsoring organizations and approved by the United States of America Standards Institute under date of January 27, 1969. Action on behalf of the NFPA took place at the NFPA Annual Meeting, May 20-24, 1968, at Atlanta, Georgia. Tentative Interim Amendment No. 1-1968 has also been processed in accordance with NFPA procedures concerning paragraphs 10.7, 10.10 and 10.11 of Part IV and this Amendment appears on page A119.1-106.

Origin and Development of Standard on Mobile Homes

This Standard replaces the American Standard Installations of Plumbing, Heating, and Electrical Systems in Mobile Homes (A119.1-1963) and the NFPA Standard for Fire Prevention and Fire Protection in Mobile Homes and Travel Trailers (NFPA No. 501B-1964). The formation of this Committee under the aegis of the United States of America Standards Institute (formerly American Standards Association) combined the activities of the former ASA A119.1 Committee and the NFPA Committee on Trailers and Trailer Courts and resulted from action taken by the Boards of Directors of the three sponsoring organizations, with the approval of the ASA, in 1964. The principal changes made in this text as compared with the 1963 edition of A119.1 are indicated by vertical marginal rules opposite the affected paragraphs.

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Corrected to July 1, 1968

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This Committee functions as a Sectional Committee (A119) of the USA Standards Institute under the joint sponsorship of the Mobile Homes Manufacturers Association, the Trailer Coach Association, and the National Fire Protection Association.

†Non-voting.

Standard for Mobile Homes

Body and Frame Design and Construction Requirements and the Installation of Plumbing, Heating and Electrical Systems

USA Standard A119.1 — 1969
NFPA No. 501B — 1968

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Standard for Mobile Homes

BODY AND FRAME DESIGN AND CONSTRUCTION REQUIREMENTS AND THE INSTALLATION OF PLUMBING, HEATING AND ELECTRICAL SYSTEMS

USA Standard A119.1 — 1969
NFPA No. 501B — 1968

Foreword

This USA Standard has been developed by the USA Committee on Mobile Homes and Travel Trailers (A119) of the USA Standards Institute. The USA Committee is sponsored jointly by the Mobile Homes Manufacturers Association, 20 North Wacker Drive, Chicago, Illinois 60606; the National Fire Protection Association, 60 Batterymarch Street, Boston, Massachusetts 02110; and the Trailer Coach Association, 1340 West Third Street, Los Angeles, California 90017. A roster of the personnel of the Committee which developed this Standard appears herein. The Committee membership is inclusive of those having a substantial interest in the subject as consistent with the Bylaws of the USA Standards Institute.

Subcommittees handle the detail technical work with one Subcommittee responsible for each of the "Parts" of the Standard. A number of specialists have served on these Subcommittees who are not members of the USA Committee. The sponsors wish to acknowledge with appreciation their cooperation and assistance in the development of this text.

In conformance with USA Standard Institute policy, the USA Committee responsible for this work is a standing committee which will periodically review this Standard in an effort to keep the information up to date. Anyone interested is invited to make recommendations for revisions to the Chairman and Secretary of the Committee.

This USA Standard for Mobile Homes (A119.1-1969) replaces the American Standard Installations of Plumbing, Heating, and Electrical Systems in Mobile Homes (A119.1-1963) and the NFPA Standard for Fire Prevention and Fire Protection in Mobile Homes and Travel Trailers (No. 501B-1964). Currently work is proceeding on the development of a USA Standard for Recreational Vehicles and standards covering mobile home parks and recreational vehicle parks. The American Standard Installations of Plumbing,

Heating and Electrical Systems in Travel Trailers (A119.2-1963) and the NFPA Standard for Fire Protection in Trailer Courts (NFPA No. 501A-1964) may be used as reference material pending the updating of both texts.

The participation of the National Fire Protection Association as a sponsor of this project is administrative and undertaken in the sole interest of safety to life and property from fire and allied hazards. Some portions of this Standard cover areas outside the scope of NFPA's normal sphere of activity but are of interest and concern to the other sponsors and to users of mobile homes. The NFPA Board of Directors has authorized the Association's participation with the understanding that its responsibility extends only to those areas within its scope.

Part I

Body and Frame Design and Construction Requirements

1. Introduction

1.1 Those members of the engineering profession and others associated with the design, manufacturing and quality control of mobile home construction have been aware of the need for standards leading to the providing of healthful and safe housing with complete living facilities arranged and equipped to assure suitable living conditions.

1.2 Much of the material in Part I has been taken from, or is based on, nationally recognized standards for construction including those issued by the Federal Housing Administration, the Building Officials C nference of America, Inc., the Southern Building Code Congress, and the New York State Division of Housing and Community Renewal.

2. Scope

2.1 This standard covers the minimum requirements for materials, products, equipment and workmanship needed to assure that the Mobile Home will provide (a) the structural strength and rigidity, (b) the protection against corrosion, decay, insects and other similar destructive forces, (c) reasonable protection against the hazards of fire and windstorm, (d) resistance to the elements, (e) durability and economy of maintenance as set forth in the provisions of this Standard.

2.2 This standard is not intended as a design specification or an instruction manual for untrained persons.

2.3 Wherever existing standards and this standard differ, the requirements of the latter shall apply.

2.4 This standard has been prepared with the emphasis on performance as opposed to its being a specification standard. The provisions of this standard are not intended to prevent the use of any material, appliance, installation, device, arrangement, or method of construction not specifically prescribed herein, provided any such alternative has been approved or listed. An enforcement agency may approve any such alternative if it finds the proposed design is satisfactory for the purpose intended and if the material, appliance, installation, device, arrangement, and

method of work offered is, for the purpose intended, at least the equivalent of that prescribed in this Standard in quality, strength, effectiveness, durability, safety, and for the protection of life and health. An enforcement authority may require that satisfactory evidence or proof be submitted to substantiate any claims that may be made regarding the use of any such alternative.

3. Basic Principles

3.1 The principles of this standard are given as basic goals in the construction of mobile homes, which will also serve as guide lines for the understanding of this standard. These principles will serve to define the intent of this standard when considerations arise which are not covered in the body of the standard.

Principle No. 1. To provide safe, healthful and comfortable living facilities with adequate storage space and economy of maintenance.

Principle No. 2. To provide adequate natural light and ventilation.

Principle No. 3. To provide structural strength and rigidity sufficient for design loads, both in transit and on site.

Principle No. 4. To provide adequate running gear and hitch for safe transportation of the mobile home.

Principle No. 5. To provide equipment designed and installed for safety of operation, ease of service, and adequate for the intended use.

Principle No. 6. To provide installed materials of adequate specification to resist deterioration.

Principle No. 7. To provide against the entrance of water and winds at all joints, connections, and openings in exterior surfaces.

Principle No. 8. To provide arrangement of habitable spaces for fire and health safety.

4. Definitions

4.1 **Accepted Engineering Practice.** The regulations, specifications and standards listed in Table I (Accepted Engineering Practice Standards) shall be deemed to represent accepted engineering practice in respect to materials, equipment, systems or method of construction.

4.2 Habitable Room. A room or enclosed floor space arranged for living, eating, food preparation and sleeping purposes (not including bathrooms, water closet compartments, laundries, pantries, foyers, hallways, and other accessory floor spaces).

4.3 Loads.

4.3.1 Dead Load. The weight of all permanent construction including walls, floors, roof, partition, and fixed service equipment.

4.3.2 Live Load. The weight superimposed by the use and occupancy of the mobile home, including wind load and snow load, but not including dead load.

4.3.3. Wind Load. The lateral or vertical pressure or uplift on the mobile home due to wind blowing in any direction.

4.4 Hurricane and Windstorm Resistive Mobile Home. A mobile home which meets the added wind design load and anchorage requirements of Section 6.

4.5 Mobile Home. A vehicular, portable structure built on a chassis and designed to be used without a permanent foundation* as a dwelling when connected to indicated utilities.

5. General Requirements

5.1 Minimum Requirements. The design and construction of a mobile home shall conform with the provisions of this standard. Requirements for any size, weight, or quality of material modified by the terms of "minimum," "not less than," "at least," and similar expressions are minimum standards. The manufacturer or installer may exceed these standards provided such deviation does not result in any inferior installation or defeat the purpose and intent of this standard.

5.2 Workmanship. All construction methods and workmanship shall be in conformance with accepted engineering practices to insure durable, livable, and safe housing.

5.3 Structural Analysis. The strength and rigidity of the component parts and/or the integrated structure shall be determined by engineering analysis *or* by suitable load tests to simulate the actual loads and conditions of application that occur both in transit and on site. However, tests for flexural rigidity shall be made of each different design in accordance with Section 6 of this Part.

*The phrase "without a permanent foundation" indicates that the support system is constructed with the intent that the mobile home placed thereon will be moved from time to time at the convenience of the owner.

5.4 Design Approval Procedure. Approval of plans, specifications, and completed mobile homes by the authority having jurisdiction under the provisions of this standard shall be accomplished by a certificate of compliance from a firm or organization acceptable to the authority having jurisdiction, by a registered professional engineer or architect, or by a nationally recognized testing laboratory.

5.5 Hurricane and Windstorm Resistive Design. Only mobile homes which meet the requirements of Section 6 may be designated "Hurricane and Windstorm Resistive". No similar designation which would imply hurricane or windstorm resistance shall be used when the home does not meet these requirements.

5.6 New Materials and Methods. Any new material or method of construction not provided for in this standard and any material or method of questioned suitability, proposed for use in the manufacture of the structure, shall nevertheless conform in performance as outlined in 5.1 of this Part. All test specimens and construction samples shall be representative of the materials, workmanship and details used in actual practice.

5.7 Acceptability of Materials. Compliance with applicable provisions of prescribed Standards (Table I), except as otherwise prescribed in this standard, shall constitute compliance with this standard. Deviations from applicable provisions of prescribed Standards (Table I) when they meet the performance requirements of this standard shall constitute compliance with the standard.

5.8 Structural Requirements. The mobile homes shall be designed and constructed as a completely integrated structure capable of sustaining the design load requirements of this standard and shall be capable of transmitting these loads to properly designed piers or foundation without causing an unsafe deformation or abnormal internal movement of the structure or its structural parts. (See 6.2 of this Part). For in-transit condition, the integrated structure shall be capable of transmitting the loading specified to the wheel assembly, which in turn shall be designed to safely transmit these loads to the ground. (See 10.1 of this Part).

5.9 Allowable Design Stress. The design stresses of all materials shall conform to accepted engineering practice. The use of materials not identified as to strength or stress grade shall be limited to the minimum allowable stresses under accepted engineering practice.

5.10 Alternate Test Procedures. In the absence of listed and prescribed Standards, the manufacturer shall develop or cause to be developed necessary tests to demonstrate the structural properties and the significant characteristics of the method employed. Such tests shall be made by a recognized testing organization or may be made and certified to by the manufacturer. Copies of the test results shall be kept on file by the mobile home manufacturer.

6. On Site Structural Design Requirements

6.1 Design Dead Loads. Design dead loads shall be the actual dead load (see 4.3.1 of this Part) supported by the structural assembly under consideration.

6.2 Design Live Loads. The design live loads shall be as specified in 6.3, 6.4, 6.6, 6.8, and 6.9 of this Part and shall be considered to be uniformly distributed. Pier spacings on which the design is based shall be specified by the manufacturer on the manufacturer's certificate.

6.3 Wind Loads and Snow Loads. When one of the components of the live load is wind or snow load, unit stresses may be increased in accordance with standard engineering practice, but not to exceed the amounts specified herein.

6.3.1 Standard Wind.

Horizontal	15 lb/ft²
Vertical (horizontal projection)	9 lb/ft² uplift
Vertical Downward	See 6.4 Roof Loads

6.3.2 Hurricane Wind. Mobile homes which are designated "Hurricane and Windstorm Resistive" shall be designed for the following wind loads.

Horizontal	25 lb/ft²
Vertical (horizontal projection)	15 lb/ft² uplift
Vertical Downward (See 6.4 Roof Loads)	30 lb/ft²

6.4 Roof Loads. Flat, curved and pitched roofs shall be designed to resist the following live loads, applied downward on the horizontal projection:

NORTH ZONE: 30 lb/ft² (including wind and snow loads) and normal unit stresses may be increased by 15%.
MIDDLE ZONE: 20 lb/ft² (including wind and snow loads) and normal unit stresses may be increased by 25%.

HURRICANE ZONE: 30 lb/ft² (including wind and snow loads) and normal unit stresses may be increased by 33-1/3%.

See Appendix III for Zone Map of U.S.A.

The Manufacturer's Certificate posted in the mobile home (Paragraph 7.5.1 of this Part) shall state which of these structural zones of the U.S.A. the mobile home has been designed for; and the certificate shall show a reproduction of the zone map in Appendix III at no less than half scale.

6.5 Fastening of Structural Systems. Roof framing shall be securely fastened to wall framing, walls to floor structure, and floor structure to frame to secure and maintain continuity between the floor and frame (if provided), so as to resist wind overturning and sliding as imposed by design loads in 6.3.1 of this Part. (Directions for anchorage shall accompany all mobile homes.)

6.5.1 HURRICANE AND WINDSTORM RESISTIVE MOBILE HOMES shall have over-the-roof ties with provisions for distributing the load of these ties, and provisions for the attachment of anchors so as to resist wind overturning and sliding as imposed by the design loads in 6.3.2 of this Part.

6.6 Walls. The walls shall be of sufficient strength to withstand vertically, the maximum roof load requirements as defined in 6.3.1, 6.3.2, and 6.4 of this Part, without exceeding the deflections as specified in 6.9. The connections between bearing walls, floor, and roof framework members shall be fabricated in such a manner as to provide support for the material used to enclose the mobile home and to provide for transfer of all lateral and vertical loads to the floor and frame foundation

6.7 Interior Partition. Whenever an interior partition is designed to serve as a secondary structural member, it shall be constructed with values adequate for the purpose intended.

6.8 Floors. Floor assemblies shall be designed in accordance with accepted good engineering practice to support a uniform live load of 40 lb/sq. ft., plus the dead load of the materials. In addition (but not simultaneously), floor shall be able to support a 200-pound concentrated load on a 2-inch diameter disc at the most critical location with a maximum deflection not to exceed ⅛ inch relative to floor framing.

6.9 Design Load Deflections. When a structural assembly is subjected to total design live and dead loads, the deflections shall not exceed the following:

Floor L/240
Roof and Ceiling ..... L/180 (see Appendix II)
Sidewalls L/180

Where L = the clear span between supports.

6.10 Ultimate Load Tests. Every structural assembly shall be capable of sustaining its dead load plus superimposed live loads equal to 1¾ times the required live loads for a period of 12 hours without failure. Failure shall be considered rupture, fracture, or residual deflections which are greater than the limits set in 6.9 of this Part.

6.11 Basic Structural Integrity. Basic structural integrity shall be determined by the method described in Appendix I. Effective flexural rigidity of the complex mobile home structure is the basis of this requirement.

(a) For forward loading this is expressed mathematically as follows:

$$(\overline{EI})_f = 36\ L_f^3\ (P/y)_f\text{: lb-in}^2 \qquad (1)$$

where:

E = Modulus of elasticity
I = Moment of inertia
$(EI)_f$ = Effective flexural rigidity for forward span
L_f = Forward span length in feet between supports
$(P/y)_f$ = Forward spring rate, lb-in

The minimum values for acceptable performance are given in Figure 1, Appendix I.

(b) For rear loading the following shall apply:

$$\tfrac{1}{2}\ (\overline{EI})_r = \frac{575}{2}\ L_r^3\ (P/y)_r\ [1 + L_f/L_r]\text{: lb-in}^2 \qquad (2)$$

where:

$(\overline{EI})_r$ = Effective flexural rigidity for rear span
L_r = Rear span length, ft.
$(P/y)_r$ = Rear spring rate, lb-in.

The acceptable value for $\frac{1}{2}\ (\overline{EI})_r$ should be within ±30 percent of $(\overline{EI})_f$.

7. Construction

7.1 Weather Resistance. Exterior covering shall be of moisture and weather resistive materials attached with corrosion resistant fasteners to resist wind and rain. Metal coverings shall be of corrosion resistant materials.

7.2 Condensation Resistance. Spaces within outside walls and ceilings shall be ventilated and/or shall be provided with corrosion resistant vapor type barriers on the warm side of the walls and ceilings or other means shall be used to avoid condensation within these structures.

7.3 Interior Surfaces. In all habitable spaces, interior exposed ceiling, wall, and partition surfaces shall be faced with materials whose flame-spread classification shall not exceed Class C as defined in Section 6-2114 of the Code for Safety to Life from Fire in Buildings and Structures, NFPA No. 101-1967, (flame spread at more than 75 but not more than 200) when tested by the Standard Method of Test for Surface Burning Characteristics Building Materials (USAS A2.5-1963, ASTM E84-67, UL 723-1960, NFPA No. 255-1966). All wall and partition surfaces shall be capable of resisting horizontal load of not less than five pounds per square foot.

7.4 Vermin Resistance. Exterior surfaces shall be effectively sealed so as to prevent the entrance of rodents.

7.5 Heat Loss. The total calculated heat loss of the living unit at the outdoor design temperature as certified in 7.5.1 of this Part shall not exceed the following:

a. 50 Btu/hr sq. ft. of the total floor area, or 375 Btu/hr lineal ft. of the perimeter of the space to be heated to 70°F, whichever is the greater.

b. For electrically heated mobile homes 0.184 watts/hr. sq. ft., F (temperature difference), (0.628 Btu/hr, sq. ft., F), and not to exceed 40 Btu/hr, sq. ft. of floor area, whichever is less.

c. The minimum total resistance factors (R) of the wall, ceiling and floor shall never be less than the following:

Type of Fuel Use for Heating	Wall	Ceiling	Floor
Gas or Oil	5.5	8.2	5.5
Electric	6.5	13.0	12.0

The total "R" value is obtained by adding the insulation "R" value together with the "R" value of mobile home construction. Typical mobile home construction "R" values, excluding framing, have been calculated to be: Sidewalls R=2.0; Floor and ceiling R=3.0. These

CERTIFICATE

The manufacturer of this Mobile Home _____
_____, hereby certifies:

1) Model No. _____ Mobile Home is designed to meet the Heat Loss Requirements of USA Standard A119.1 (Section 7.5) which provides that heat loss does no* exceed: (Check one)

a) 50 Btu per sq. ft. of floor area
b) 40 Btu per sq. ft. of floor area if electrically heated
c) 375 Btu per lineal ft. of outside wall

with an indoor average temperature of 70°F at no more than 15 mph wind velocity and the following outdoor design temperatures:

_____°F with storm sash
_____°F without storm sash

2) The _____ Furnace installed
(Make and Model Number)
in this Mobile Home has the capacity of maintaining a 70°F average inside temperature, at wind velocities of no more than 15 mph, with an outdoor temperature of:

_____°F with storm sash
_____°F without storm sash

The liability of the manufacturer of the furnace _____
(Name)
_____ is limited to the printed warranty for the
(Address)
furnace, furnished herewith, to the purchaser.

_____
(Manufacturer)

_____
(Address)

Figure 2

typical R values are to be calculated using all component materials and spaces as outlined in the latest edition of the ASHRAE Handbook of Fundamentals (see footnote).

7.5.1 The mobile home manufacturer shall permanently affix a certificate (see Figure 2) to an interior surface of the home that is readily visible to the home owner. The certificate shall specify the following:

a. The lowest outdoor design temperature at which the mobile home heat loss complies with Paragraph 7.5.*

(1) With storm sash.
(2) Without storm sash.

b. The lowest outdoor temperature at which the installed furnace will maintain a 70°F. temperature inside the home with or without storm sash.

*Outdoor design temperature may be found in the "Handbook of Fundamentals" of the American Society of Heating, Refrigerating and Air-Conditioning Engineers, 345 East 47th St., New York, N.Y. 10017. (Price: $12.00 Members; $20.00 Non-Members). In the 1967 volume this information may be found in Chapter 22, "Weather Data and Design Conditions".

7.5.2 Wall, floor, and ceiling cavity "R" and "U" factors shall be calculated as outlined in the latest edition of the ASHRAE Handbook of Fundamentals.*

7.5.3 **Framing Heat Loss.** For the purpose of heat loss calculations, the following stud areas shall be assumed:

Wall — 20% of net wall area (less windows)
Ceiling — 5% of total ceiling area
Floor — 10% of net floor area (less duct area)

The following "U" factors shall be used when calculating stud heat loss:

Structure	"U" Factor	"R" Factor
Wall (1⅝ stud)	.32	3.12
Wall (2⅝ stud)	.23	4.35
Wall (3⅝ stud)	.18	5.55
Ceiling	.23	4.35
Floor	.32	3.12

7.5.4 **Ventilation Heat Loss.** The following shall be used to estimate ventilation heat loss:

Outdoor Design Temperature—F	Ventilation Allowance—Btu/hr
40°	3330
30°	4440
20°	5550
10°	6660
0°	7780
−10°	8880
−20°	10000
−30°	11110
−40°	12200

7.5.5 **Duct Heat Loss.** The supply duct heat loss shall be calculated separately using the actual duct surface area and the actual thickness of insulation between the duct and outside of the mobile home. If there is an air space of ½ inch or less, the heat duct shall be assumed in contact with the insulation. If there is an air space of over ½ inch between the duct and the insulation, no

*Available from the American Society of Heating, Refrigerating and Air-Conditioning Engineers, 345 East 47th St., New York, N.Y. 10017. (Price: $12.00 Members; $20 Non-Members.)

special heat loss need be calculated — if the cavity in which the duct is located is assumed to be at 70°F. The average temperature inside the supply duct shall be assumed to be at least 130°F for the purpose of calculation.

8. Design Considerations

8.1 Light and Ventilation. Adequate provisions shall be made for light and ventilation in accordance with the following:

8.1.1 Habitable Rooms. Habitable rooms shall be provided with windows or doors whose total glass area is not less than 10 percent of the floor area. An area equivalent to not less than 5 percent of the floor area shall be available for unobstructed ventilation., In addition, if the ventilation area in the kitchen is less than 3 square feet, a fan with a minimum rated capacity of 100 CFM shall be provided in the kitchen.

8.1.2 Bathroom. The light and ventilation in the bathroom shall comply with Paragraph 8.1.1. In addition, if the ventilation area is less than 1½ square feet, a fan with a minimum rated capacity of 25 CFM shall be provided.

8.2 Ceiling Height. The minimum ceiling height in the main structure of the mobile home shall be not less than 7 feet, 0 inch. Any habitable area of greater than 50 square feet, but considered as a secondary structure shall have a minimum ceiling height of 6 feet, 4 inches.

8.3 Exits. Mobile homes shall have a minimum of two exterior doors located remote from each other. Doors shall be designed for exterior use, and in no case be less than 24 inches wide. Exterior doors shall permit opening from the inside by the simple operation of a single knob or lever.

9. Tests

9.1 General. Unless based on accepted engineering design (see 5.3 of Part I) for the use indicated, all new mobile home materials, equipment, systems or methods of construction not provided for in this standard, shall be subjected to the tests specified in 5.10 of Part I.

9.2 Structural Integrity. Basic structural integrity as defined in 6.11 of Part I shall be determined by tests as described in Appendix I. This may be accomplished by the manufacturer or by a recognized testing organization.

9.3 Heat Loss. Heat loss shall be determined by accepted engineering methods or tests to assure compliance with the requirements of 7.5 of Part I.

10. Structural Design Requirements for In-transit Conditions

10.1 Chassis Assembly. The chassis assembly in conjunction with the mobile home structure shall be designed and constructed so as to be capable of sustaining the dead load plus 3 pounds per square foot floor load and the superimposed dynamic load resulting from over the road movement. (See 6.11 of Part I). The design shall be such as to insure rigidity and structural integrity of the complete mobile home structure and to insure against unsafe deformation or exceeding the allowable stresses of the materials that make up the assembly. All metal surfaces shall be protected against corrosion with an approved paint or other approved protective means.

10.1.1 Hitch Assembly. The hitch assembly which includes the "A" frame and coupling mechanism shall be rigidly constructed and securely fastened to the main structure to assure safe and adequate transfer of the maximum load between the mobile home and the hitch assembly.

10.1.2 Coupling Mechanism. The coupling mechanism which is normally of the socket type shall be securely fastened to the "A" frame in such a manner as to assure safe and adequate transfer of maximum loads including impact loads between the mobile home and hitch assembly and the towing vehicle. Couplings must be equipped with a manually operated mechanism so adapted as to prevent disengagement of the unit while in operation. In addition to this positive locking mechanism the coupling shall be so designed that it can be disconnected regardless of the angle of the mobile home to the towing vehicle. With the mobile home parked on level ground, the center of the socket of the coupler shall not be less than 20 inches nor more than 26 inches from the ground level.

10.2 Running Gear Assembly. The running gear assembly which includes springs, spring hangers, axles, bearings, wheels, brakes, rims and tires with their related hardware shall be designed in accordance with accepted engineering practice to adequately sustain the designed loads, as indicated in Paragraph 10.1, and provide for the mobility of the mobile home. The subject assembly shall transmit the mobile home load to the ground without causing unsafe deformation or internal movement of any of the

mobile home structural parts. The location of the running gear assembly in relation to the over-all length of the mobile home and its total weight including all its contents shall be such as to provide sufficient hitch weight to assure good and safe towing and braking qualities. Hitch weight should not be less than 12 per cent of the total weight of the mobile home nor more than 25 per cent. This hitch loading can normally be obtained by locating the running gear approximately 2/3 of the total chassis length to the rear of the front end.

10.2.1 Spring and Spring Hangers. Spring assemblies and hangers, shackles, bushings, and mounting bolts shall be capable of withstanding all the design loads as outlined in Paragraph 10.1 without exceeding maximum allowable stresses as set forth in the SAE Handbook† published by the Society of Automotive Engineers. Full recognition must be given both to operating stress and to fatigue life in determining the suitability of any spring suspension system. The capacity of the spring system shall be such as to assure that under maximum load conditions sufficient clearance will be maintained between tire and wheel well to provide for unimpeded wheel and tire movement.

10.2.2 Axles. Axles shall be manufactured in accordance with accepted standards to a degree of accuracy that will assure proper fit of bearings and brake mountings. The number of axles used will depend upon the total load to be carried by the undercarriage and the maximum load carrying capacity of the axle as specified by the axle manufacturer.

10.2.3 Hubs and Bearings. Hubs and bearings shall be provided in accordance with design load requirements as described in Paragraph 10.1. Bearings shall be manufactured to specific standards so as to insure interchangeability with replacement parts. Provisions for proper lubrication with properly applied seals shall be provided in accordance with good engineering practice.

10.2.4 Wheels and Rims. Wheels and rims shall be furnished and installed in accordance with the load requirements (Paragraph 10.1), the recommended practices contained in the latest edition of the Yearbook* of The Tire & Rim Association, and the recommendations of the wheel and rim manufacturer.

†Available from the Society of Automotive Engineers, 485 Lexington Ave., New York, N.Y. 10017 (Price $25.00 List).

*Available from the Tire and Rim Association, Inc., Command Building, 34 N. Hawkins Ave., Akron, Ohio 44313 (Price: $3.75).

10.2.5 Tires. Tires installed on mobile homes shall be capable of safely carrying all design loads, due consideration being given to anticipated usage.

10.2.6 Brakes. Brakes used shall be manufactured to accepted and listed standards and installed in accordance with the brake manufacturers recommendations. They shall be of the proper size, type, number and design, with method of actuation to adequately meet the stopping distance performance standards herein prescribed.

10.2.6.1 Acceptance Standards. Brakes on tractor and mobile homes shall be such that the maximum stopping distance from an initial velocity of 20 MPH shall not exceed 40 feet. (U.S. Department of Transportation Regulations)

10.2.7 Low Voltage Wiring. Electrical wiring between mobile home and towing vehicle shall comply with all applicable requirements of the U.S. Department of Transportation Motor Carrier Safety Regulations.

TABLE I

Accepted Engineering Practice Standards

Aluminum

Aluminum Construction Manual, Specifications for Aluminum Structures	AA-1967

Steel

Specification for the Design, Fabrication and Erection of Structural Steel for Buildings	AISC-1963
Specification for the Design of Light Gage Cold-Formed Steel Structural Members	AISI-1962
Standard Specifications and Load Tables Open Web Steel Joist	SJI-1966
Code for Arc and Gas Welding in Building Construction	AWS D1.0-66

Wood and Wood Products

Hardboard	USDC CS 251-63
Lumber, Structural Glued Laminated — Inspection Manual for	AITC-200-1963
Softwood Plywood — Construction and Industrial	PS 1-66
Plywood Design Specification (Form No. 66-510)	APA, 1966
Plywood Stressed Skin Panels, Design and Fabrication of (Form No. T64-370)	APA, 1965
Plywood Beams, Design and Fabrication of (Form No. T64-140)	APA, 1964
Plywood Curved Panels, Design and Fabrication of (Form No. F67-1510)	PFS, 1967
Plywood Construction Guide (Form No. 66-450)	APA, 1966
Stress Grade Lumber and Its Fastenings — National Design Specifications for	(N) FPA-1962*
Structural Design Data — Wood	(N) FPA-1957
Timber Construction Standards	AITC-100-1965
Design Specifications for Light Metal Plate Connected Wood Trusses	TPI-66

Unclassified

ASHRAE Guide and Data Book — Handbook of Fundamentals — 1967

AA — The Aluminum Association, 420 Lexington Ave., New York, N.Y. 10017

AISI — American Iron and Steel Institute, 150 East 42nd St., New York, N.Y. 10017

AISC — American Institute of Steel Construction, 101 Park Ave., New York, N.Y. 10017

*Amended July 1967

AITC — American Institute of Timber Construction, 1700 K Street, N.W., Washington, D.C. 20006
APA — American Plywood Association, 1119 A Street, Tacoma, Wash. 98401
ASHRAE — American Society of Heating, Refrigeration and Air-conditioning Engineers, 345 East 47th Street, New York, N.Y. 10017
AWS — American Welding Society, 345 East 47th St., New York, N.Y. 10017
CS — Commercial Standards — available from Sup't. of Documents, U.S. Government Printing Office, Washington, D.C. 20402
(N)FPA — National Forest Products Association (formerly National Lumber Manufacturers Assn.), 1619 Massachusetts Ave., N.W., Washington, D.C. 20036
PFS — Plywood Fabricator Service, Inc., 119 A Street, Tacoma, Wash. 98401
PS — Product Standard — available from Sup't. of Documents, U.S. Government Printing Office, Washington, D.C. 20402
SJI — Steel Joist Institute, 1346 Connecticut Ave., N.W., Washington, D.C. 20036
TPI — Truss Plate Institute, P.O. Box 253, Perrine, Florida 33157
USDC — United States Department of Commerce, Washington, D.C. 20234

Appendix I

Equipment and Procedures for Determining Effective Flexural Rigidity ($\overline{EI}$)

EQUIPMENT

The following is a description of the equipment required to perform a load-deflection test on a mobile home:

Item	Quantity Required	Description
1	2	Hydraulic jack: 5 ton.
2	2	Rear support: Heavy wall steel pipe with bearing plates welded to ends, 8 in. diameter pipe or equivalent may be used.
3	—	Steel shims: As required to level coach when on rear supports.
4	2	Forward supports: 5 ton adjustable screw jacks.
5	1	Tape measure: 50 foot.
6	2	Dial indicator: (3 in. diameter indicators having an overall range of 1 in. and reading down to 0.001 in. is suggested).
7	2	Apparatus stand with adjustable fittings for dial indicator.
8	500 lbs.	Test weight: Almost any material is suitable, such as steel shot in cloth mail bags, or lead shot is ideal for long term use.

PROCEDURE

The recommended procedure for running a load-deflection test at a manufacturers plant is given as follows. The objective of the test is to determine the spring rate, (P/y), of a mobile home. Once the spring rate is known the effective flexural rigidity, $(\overline{EI})$, can be easily calculated.

Step	Procedure
(1)	Move mobile home to test area. For best results this should be a concrete pad that will provide a firm, non-yielding surface for the forward and rear supports. The area should be selected such that a stable temperature condition can be obtained.
(2)	Jack the running gear clear of the pad and position the rear supports. For two axle systems with an equalizer link, place the support under the equalizer (see Figure 3). For three axle systems position the supports under the forward equalizer link. Spread axle system should be supported at the steel frame midway between the axles. The mobile home should be kept as level as possible.

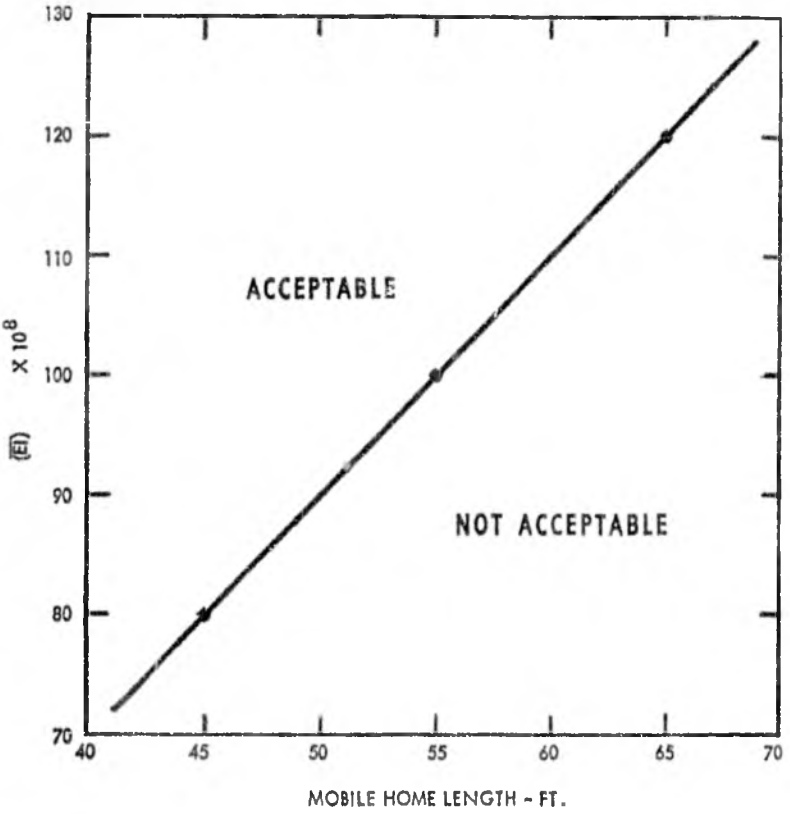


Figure 1

(3) With the mobile home leveled, position the two forward screw jack supports (see Figure 3). These are brought up hand tight against the steel frame. Once in place, the screw jack fitted to the A-frame shall be retracted.

(4) Measure the center-to-center distance between forward and rear supports. This dimension, in feet, is L_f in Equation 1-A (see also 6.11 of Part I).

(5) With L_f known, find the midspan position and scribe a mark on the steel frame on both sides of the mobile home. Also, mark the midspan position inside the mobile home on the floor.

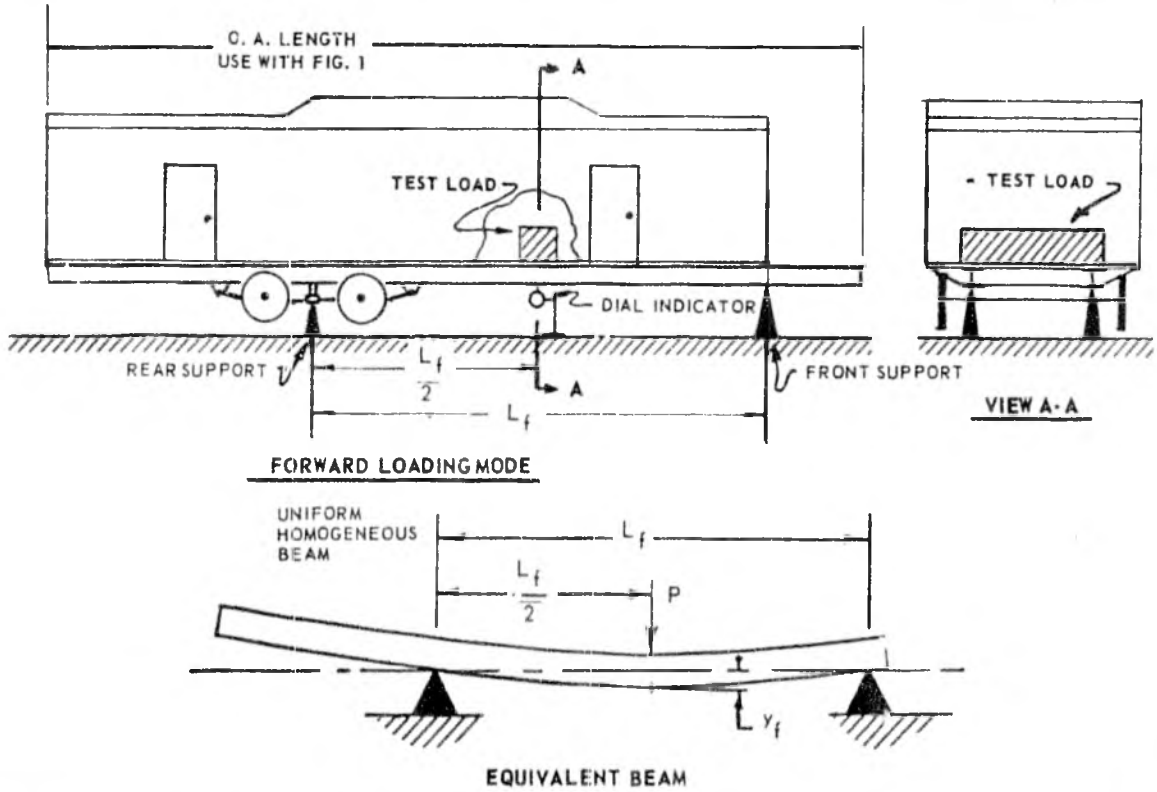

O. A. LENGTH
USE WITH FIG. 1
A
TEST LOAD
DIAL INDICATOR
REAR SUPPORT
FRONT SUPPORT
$\frac{L_f}{2}$
L_f
A
FORWARD LOADING MODE
TEST LOAD
VIEW A-A
UNIFORM
HOMOGENEOUS
BEAM
L_f
$\frac{L_f}{2}$
P
Y_f
EQUIVALENT BEAM

Figure 3

(6) Position the dial indicators at the midspan locations (see Figure 3). Deflections are required at the steel frame *only*. Preload the dial indicators to any random reading so as to insure good contact between the indicator and the frame. Make sure the apparatus stands supporting the dial indicators are on a flat surface and are weighted down to prevent movement.

(7) Note and record the initial dial indicator readings. Then, transfer 250 pounds of test weights into the mobile home and place on the floor at midspan such as shown in Figure 3. Note and record dial indicator readings. Apply another 250 pounds of weight and again take deflection readings.

(8) With above data available plot the load-deflection curves for the mobile home; these should be very close to straight lines. The slope of the load-deflection curve is the spring rate, $(P/y)_f$, for the mobile home in the forward loading mode. Two spring rates will be found, one for each side of the mobile home. The average value should be used to calculate $(\overline{EI})$.

(9) Apply the numerical values for the average forward spring rate, $(P/y)_f$, and span length, L_f, to Equation 1-A to obtain a numerical value for the forward effective flexural rigidity, $(\overline{EI})_f$.
Equation 1-A is as follows:

$$(\overline{EI})_f = 36\ L_f^3 (P/y)_f : \text{lb-in}^2 \qquad (1\text{-A})$$

Where:

E = Modulus of elasticity
I = Moment of inertia
L_f = Forward span length, ft.
$(P/y)_f$ = Forward spring rate, lb-in.

(10) A similar procedure can be carried out for the rear loading mode (see Figure 4). Equation 2-A (adjusted) applies. The limited amount of information available suggests that the numerical value for effective flexural rigidity in the rear mode, $\frac{1}{2}\ (EI)_r$, should be within ±30 percent of $(EI)_f$.
Equation 2-A is as follows:

$$\tfrac{1}{2}\ (\overline{EI})_r = \frac{575}{2}\ L_r^3 (P/y)_r\ [1 + L_f/L_r] : \text{lb-in}^2 \qquad (2\text{-A})$$

where:

L_r = Rear span length, ft.
$(P/y)_r$ = Rear spring rate, lb-in.

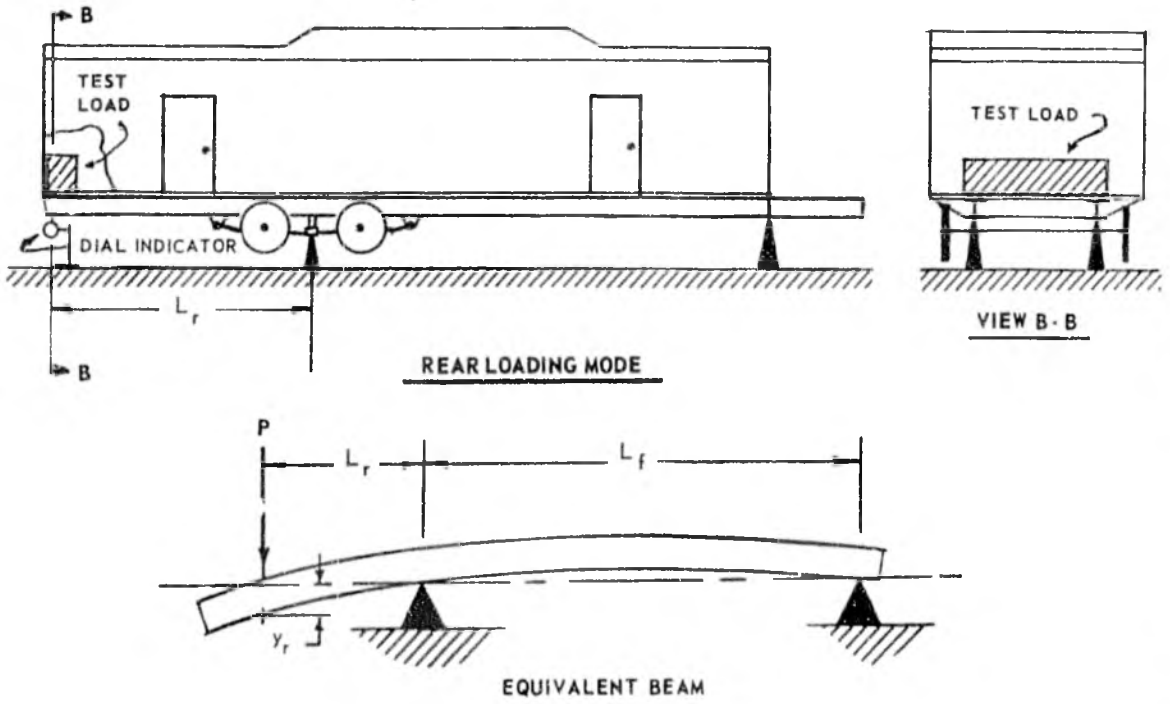

B
TEST LOAD
DIAL INDICATOR
L_r
B
REAR LOADING MODE
TEST LOAD
VIEW B - B
P
L_r
L_f
y_r
EQUIVALENT BEAM

Figure 4

Appendix II

Test Procedure for Roof Rafters or Roof Trusses

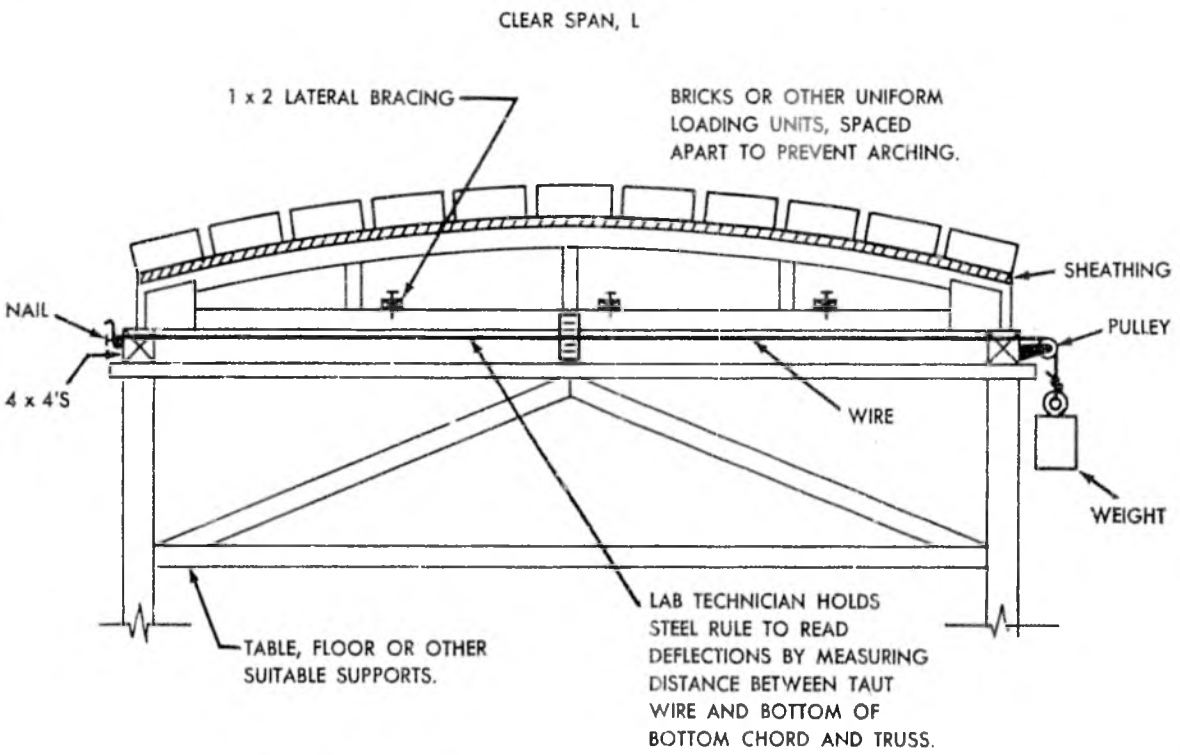
GENERAL:

Rafters and trusses may be tested in pairs, sheathed and mounted across supports, or singly in a suitable test facility. When tested in pairs, trusses shall be spaced at the design spacing. Trusses will be mounted on 4 inch by 4 inch supports accurately positioned to give the required clear span distance (L) as specified in the design of the truss. The top chord may be sheathed with the specified design sheathing or with 2 by 4 foot sheets ¼ inch plywood. Butting plywood sheets must be separated at least ⅛ inch. Design sheathing shall be attached with specified design fasteners. Plywood sheathing shall be nailed with 4d nails not closer than 8 inch on center along each top chord. The bottom chord shall be cross tied with 1 x 2 inch stripping not closer than 24 inches on center running perpendicular between trusses.

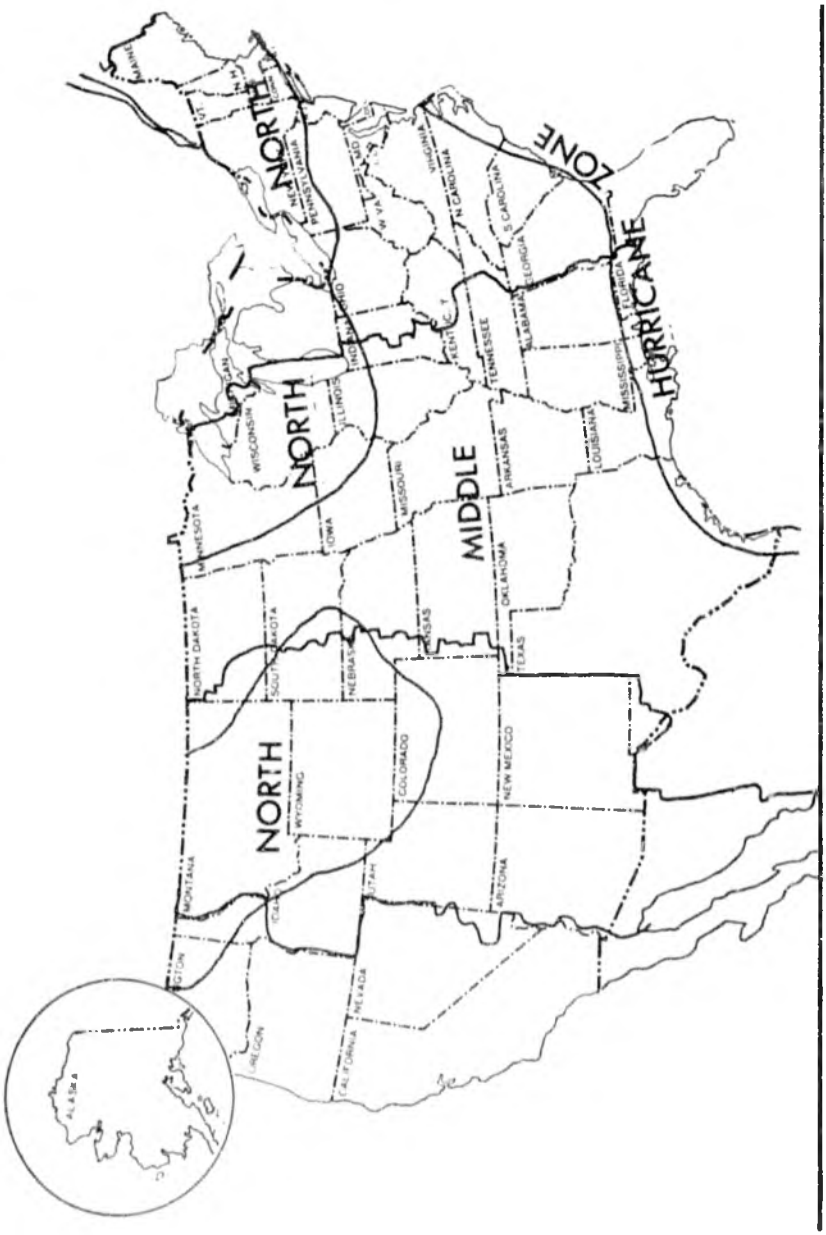
Rafter and truss deflections will be measured relative to a taut wire running over the supports and weighted at the end to insure constant tension. Deflections will be measured at the 2 quarter points and at midspan. Loading shall be applied to the top chord through a suitable hydraulic system, masonry units or weights to simulate a uniformly distributed load. Load units shall be separated so that arch action does not occur.

TEST PROCEDURE:

1. Noting the drawing, measure and record initial elevation of rafter or truss in test position at no load.
2. Apply load units to the sheathing to equal the full dead load of roof and ceiling. Measure and record the deflections.
3. Maintaining the dead load, add live load in approximate 10 lb./ft² increments. Measure the deflections after each 10 lb./ft² increment. Apply incremental loads at a uniform rate such that approximately ½ hour is required to establish the total design load condition. Measure and record the deflections.
   The maximum deflection due to design live load (deflection measured in step 3 minus step 2) shall not exceed L/180, where L is the clear span measured in same units.
4. Continue to load rafter or truss to dead load plus 1.75 times the design live load. Maintain this loading for 12 hours and inspect truss for failure.
5. Remove superimposed live load and truss shall recover to at least the L/180 position within another 12 hours.


CLEAR SPAN, L
1 x 2 LATERAL BRACING
BRICKS OR OTHER UNIFORM LOADING UNITS, SPACED APART TO PREVENT ARCHING.
SHEATHING
NAIL
4 x 4'S
PULLEY
WIRE
WEIGHT
LAB TECHNICIAN HOLDS STEEL RULE TO READ DEFLECTIONS BY MEASURING DISTANCE BETWEEN TAUT WIRE AND BOTTOM OF BOTTOM CHORD AND TRUSS.
TABLE, FLOOR OR OTHER SUITABLE SUPPORTS.

Appendix III



Part II

Plumbing Systems

1. Introduction

1.1 Those members of the engineering profession and others associated with the design, manufacturing, installation, and inspection of mobile home plumbing systems have been aware of the need for uniform technical standards leading to the safe and sanitary use of this special type of equipment. They have also recognized that because of unique conditions of transport and use, existing plumbing standards for permanent buildings are not completely applicable to mobile homes. It is with these factors in mind that Part II of this standard has been developed.

1.2 Much of the material in Part II has been taken from, or is based on, the National Plumbing Code, Uniform Plumbing Code, and other nationally recognized standards for plumbing materials, fixtures, fittings, and equipment.

2. Scope

2.1 Part II of this standard covers the plumbing materials, fixtures, fittings, and equipment installed within or on mobile homes.

2.2 This standard is not intended as a design specification or an instruction manual for untrained persons.

2.3 Wherever the American Standard National Plumbing Code, A40.8-1955, Uniform Plumbing Code, and other nationally recognized standards for plumbing materials, fixtures, fittings and equipment and Part II of this standard differ, the requirements of the latter shall apply.

2.4 The provisions of this Standard are not intended to prevent the use of any material, appliance, installation, device, arrangement, or method of construction not specifically prescribed herein, provided any such alternative has been approved or listed. An enforcement agency may approve any such alternative if it finds the proposed design is satisfactory for the purpose intended, and if the material, appliance, installation, device, arrangement, and method or work offered is, for the purpose intended, at least the equivalent performance of that prescribed in this standard considering quality, strength, effectiveness, durability, safety, and protection of life and health. An enforcement authority shall re-

quire that satisfactory evidence or proof be submitted to substantiate any claims that may be made regarding the use of any such alternative.

3. Basic Principles

The principles of this standard are enunciated as basic goals in environmental sanitation, worthy of accomplishment through properly designed, acceptably installed, and adequately maintained plumbing systems. The results desired and necessary to protect the health of the public are the same everywhere. Furthermore, as unforeseen situations arise that are not covered in the body of the standard, the principles may serve to define the intent.

Principle No. 1. Plumbing fixtures devices, and appurtenances shall be supplied with water in sufficient volume and at pressures adequate to enable them to function satisfactorily and without undue noise under all normal conditions of use.

Principle No. 2. Plumbing shall be designed and adjusted to use the minimum quantity of water consistent with proper performance and cleaning.

Principle No. 3. Devices for heating and storing water shall be so designed and installed as to prevent dangers from contamination and explosion through overheating.

Principle No. 4. Plumbing fixtures shall be made of smooth nonabsorbent material, shall be free from concealed fouling surfaces, and shall be located in ventilated enclosures.

Principle No. 5. The piping of the plumbing system shall be of durable material, free from defective workmanship, and so designed and constructed as to give satisfactory service for its reasonable life expectancy.

Principle No. 6. Each fixture directly connected to the drainage system, except for mechanically sealed water closets or recirculating chemical toilets, shall be installed with a water seal trap.

Principle No. 7. The drainage system shall be designed to provide an adequate circulation of air in all piping with no danger of siphonage, aspiration, or forcing of trap seals under conditions of ordinary use.

Principle No. 8. The plumbing system shall be subjected to tests that will effectively disclose all leaks and defects in the work, which must then be repaired.

Principle No. 9. No water closet shall be located in a room or compartment that is not properly lighted and ventilated.

Principle No. 10. All plumbing fixtures shall be so installed with regard to spacing as to be reasonably accessible for their intended use.

4. Definitions

Administrative Authority. The administrative authority is the individual official, board, department, or agency established and authorized by a state, county, city, or other political subdivision created by law to administer and enforce the provisions of this Part as adopted or amended.

Air Gap (Water Distribution System). The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture, water supplied appliance, or other device and the flood level of the receptacle.

Approved. "Approved" means acceptable to the authority having jurisdiction.

Authority having jurisdiction. The "authority having jurisdiction" is the organization, office, or individual responsible for "approving" equipment, an installation, or a procedure.

Backflow. The flow of water or other liquids, mixtures, or substances into the distributing pipes of a potable supply of water from any source or sources other than its intended sources. Back-siphonage is one type of backflow.

Backflow Connection. Any arrangement whereby backflow can occur.

Backflow Preventer. A device or means to prevent backflow.

Branch. Any part of the piping system other than a riser, main or stack.

Branch Vent. A vent connecting one or more individual vents with a vent stack or stack vent.

Center. The midpoint between the right and left side of the mobile home.

Combination Compartment. A shower stall or shower recess that provides for or includes the installation of a water closet and is of such size and proportions that it may not be occupied by more than one person.

Common Vent. A vent connecting at the junction of fixture drains and serving as a vent for more than one fixture.

Continuous Vent. A vertical vent that is a continuation of the drain to which it connects.

Continuous Waste. A drain from two or more fixtures connected to a single trap.

Cross Connection. Any physical connection or arrangement between two otherwise separate systems or sources, one of which contains potable water and the other either water, steam, gas or chemical of unknown or questionable safety whereby there may be a flow from one system or source to the other, the direction of flow depending on the pressure differential between the two systems.

Developed Length. The developed length of a pipe is the length measured along the centerline of the pipe and fittings.

Diameter. The diameter is the nominal diameter designated commercially.

Drain. A drain is a pipe that carries waste, water, or waterborne wastes in a drainage system.

Drain Hose. (See Sewer Connector).

Drain Outlet. The lowest end of the main drain to which the terminal end of the sewer connector is attached.

Drainage System. All the piping within or attached to the structure that conveys sewage or other liquid wastes to the drain outlet but does not include the sewer connector.

Fixture Drain. The drain from the trap of a fixture to the junction of that drain with any other drain pipe.

Fixture Supply. The water supply pipe connecting a fixture to a branch water supply pipe or directly to a main water supply pipe.

Flood-Level. The flood-level is the level in the receptacle over which water would overflow to the outside of the receptacle.

Flooded. The condition which results when the liquid in a container or receptacle rises to the flood-level.

Flush Tank. A water tank that contains sufficient water to adequately flush a water closet.

Flush Valve. A device located at the bottom of a tank for flushing water closets.

Flushometer Valve. A device which discharges a predetermined quantity of water to fixtures for flushing purposes and is closed by direct water pressure.

Grade. (See **Pitch**)

Horizontal Branch Drain. A drain branch pipe extending laterally from a soil or waste stack or building drain with or without vertical sections or branches, which receives the discharge from one or more fixture drains and conducts it to the soil or waste stack or to the building drain.

Horizontal Pipe. Any pipe or fitting which makes an angle of no more than 45 degrees with the horizontal.

Individual Vent. A pipe installed to vent a fixture drain. It connects with the vent system above the fixture served or terminates outside the building into the open air.

Inlet Coupling. Inlet coupling is the terminal end of the water system to which the water service connection is attached. It may be a swivel fitting or threaded pipe end.

Labeled. Equipment bearing an inspection label of a nationally recognized testing agency (see **Listed**).

Length. Length of a mobile home is the distance measured from the tip of the hitch to the part farthest to the rear.

Liquid Waste. The discharge from any fixture, appliance, area or appurtenance, which does not contain fecal matter or urine.

Listed. Refers to plumbing materials, devices, fixtures, fittings, equipment, appliances, and accessories that are shown in a list published by a recognized agency, maintaining an adequate periodic inspection of current production of listed models, and whose listing states either that the material, device, fixture, fitting, equipment, appliance, or accessory complies with nationally recognized health and safety requirements or has been tested and found safe for use in a specified manner.

Main. The principal pipe artery to which branches may be connected.

Main Drain. The principal artery of the drainage system to which drainage may be connected.

Main Vent. The principal artery of the venting system to which vent branches may be connected.

Mobile Home. A vehicular, portable structure built on a chassis and designed to be used without a permanent foundation* as a dwelling when connected to indicated utilities.

Offset. A combination of pipe and/or fittings that brings one section of the pipe out of line but into a line parallel with the other section.

Pitch. The fall (slope) of a pipe in reference to a horizontal plane expressed in inches per foot length.

Plumbing Fixtures. Plumbing fixtures are approved-type installed receptacles, devices, or appliances which (1) are supplied with water or (2) receive liquid or liquid-borne wastes for discharge into the drainage system.

NOTE: For the purpose of this standard, water closet refers to tank-bowl combination, mechanical seal, grinder, recirculating chemical, and flushometer type toilets.

Plumbing System. Includes the water supply and distribution pipes; plumbing fixtures and traps; soil, waste, and vent pipes; and water-treating or water-using equipment.

Relief Vent. An auxiliary vent which permits additional circulation of air in or between drainage and vent systems.

Sewage. Any liquid waste containing animal or vegetable matter in suspension or solution, and may include liquids containing chemicals in solution.

Sewer Connector. Consists of all pipes, fittings, and appurtenances from the drain outlet of the mobile home to the inlet of the corresponding sewer riser pipe of the sewerage system serving the mobile home.

Siphonage is the loss of water seal from fixture traps resulting from partial vacuum in the drainage system and may be of either of the following two types, or a combination of the two:

a. Self-siphonage resulting from vacuum in a fixture drain generated solely by the discharge of the fixture served by that drain, or,

b. Induced siphonage resulting from vacuum in the drainage system generated by the discharge of one or more fixtures other than the one under observation.

*The phrase "without a permanent foundation" indicates that the support system is constructed with the intent that the mobile home placed thereon will be moved from time to time at the convenience of the owner.

Standard. The word "standard" or "this standard" when used alone shall mean these requirements and subsequent amendments which the administrative authority may adopt.

Trap. A fitting or device which, when properly vented, provides a liquid seal to prevent the emission of sewer gases without materially affecting the flow of sewage or waste water through it.

Trap Arm. See Fixture Drain.

Trap Seal Depth. The vertical distance between the crown weir and the top of the dip of the trap.

Vacuum Breaker. See Backflow Preventer.

Vent Stack. A vertical vent pipe installed to provide circulation of air to and from the drainage system and which extends through one or more stories.

Vent System. That part of a piping installation which provides circulation of air within a drainage system.

Vertical Pipe. Any pipe or fitting which makes an angle of 45 degrees or less with the vertical.

Waste Pipe. A pipe receiving discharge from fixtures and conveying it to the main drain or soil pipe.

Waste Holding Tank. An enclosed tank for the temporary retention of water-borne waste.

Water Connector. Consists of all pipes, fittings, and appurtenances from the water riser pipe to the water inlet coupling of the distribution system within the mobile home.

Water Distribution System. All of the water piping within the mobile home.

Water Storage Tank. A tank installed in a mobile home for the purpose of storing potable water.

Wet Vent. A vent which receives the discharge of wastes other than from water closets.

Wet Vented Drainage System. A specially designed system of drain piping that also vents one or more plumbing fixtures by means of a common waste and vent pipe.

5. General Requirements

5.1 Minimum Requirements. Plumbing systems installed in a mobile home shall conform, at least, with the provisions of this standard. Requirements for any size, weight, or quality of material modified by the terms "minimum," "not less than," "at least," and similar expressions are "*minimum standards.*"

5.1.1 Connections to Drainage System. All plumbing, fixtures, drains, appurtenances, and appliances designed or used to receive or discharge liquid waste or sewage shall be connected to the mobile home drainage system in a manner provided by this standard.

5.1.2 Workmanship. All design, construction, and workmanship shall be in conformance with accepted engineering practices and shall be of such character as to secure the results sought to be obtained by this standard.

5.1.3 Components. Plumbing materials, devices, fixtures, fittings, equipment, appliances, and accessories intended for use in or attached to a mobile home shall be listed by a recognized agency, or be specifically approved by the administrative authority enforcing this Standard when listing by a recognized agency is not available or cannot be legally recognized.

5.1.4. Prohibited Fittings and Practices

5.1.4.1 No drainage or vent piping shall be drilled and tapped for the purpose of making connections.

5.1.4.2 Except as provided, no vent pipe shall be used as a waste or drain pipe.

5.1.4.3 No fitting, connection, device, or method of installation that obstructs or retards the flow of water, waste, sewage, or air in the drainage or venting systems in an amount greater than the normal frictional resistance to flow shall be used unless it is indicated as acceptable in this standard or is approved as having a desirable and acceptable function and is of ultimate benefit to the proper and continued functioning of the plumbing system.

5.1.4.4 Cracks, holes, or other imperfections in materials shall not be concealed by welding, brazing, or soldering or by paint, wax, tar, or other leak-sealing or repairing agents.

5.1.4.5 Piping, fixtures or equipment shall be located so as not to interfere with the normal use or with the normal operation and use of windows, doors or other required facilities.

5.1.4.6 Galvanized pipe shall not be bent or welded.

5.1.5 **Alignment of Fittings.** All valves, pipes, and fittings shall be installed in correct relationship to the direction of flow.

5.2 **Protective Requirements**

5.2.1 **Cutting Structural Members.** No structural member shall be unnecessarily or carelessly weakened by cutting or notching.

5.2.2 **Exposed Piping.** All piping, pipe threads, hangers, and supports exposed to the weather, water, mud, and road hazard, and subject to damage therefrom, shall be painted, coated, wrapped, or otherwise protected from deteriorating.

5.2.3 **Road Damage.** No pipe, supports, drain, outlet, or sewer connector shall extend or protrude in a manner where it will be subjected to damage during transit.

5.2.4. **Freezing.** All piping and fixtures subject to freezing temperatures shall be insulated or protected to prevent freezing, under normal occupancy.

5.2.5 **Vermin Proofing.** All exterior openings around piping shall be effectively closed to prevent the entrance of rodents.

6. Materials—Quality and Weight

6.1 **Minimum Standards.** Materials, fixtures, or devices used or entering into the construction of plumbing systems in any mobile home shall be free from defects and shall conform to approved or listed applicable standards.

6.2 **Applicable Standards.** Standards for plumbing system components are shown in Table II.

NOTE: All standards and specifications for materials are subject to change. Designations carrying indication of the year of issue may thus become obsolete. Table II gives the full designations of standards current at the time this standard was printed.

TABLE II
Standards for Plumbing System Components*

Materials	USASI	ASTM	FS	Other Standards
Ferrous Pipe and Fittings				
Cast-Iron Screwed Fittings	B16.4 -1963			
Malleable Iron Screwed Fittings	B16.3 -1963			
Cast-Iron (Screwed) Drainage Fittings				UPC-PS 5-66
Welded Wrought Iron Pipe	B36.2 -1966	A72 -1966		
Wrought-Steel and Wrought-Iron Pipe	B36.10 -1959			
Black and Zinc-Coated (Galvanized) Steel Pipe	B36.20 -1966	A120 -1966		
Welded and Seamless Steel Pipe	B36.1 -1966	A53 -1967		
Pipe Threads	B2.1 -1960			
Nonferrous Pipe and Fittings				
Seamless Copper Pipe, Standard Sizes	H26.1 -1963	B42 -1966		
Seamless Copper and Copper Alloy Pipe	H23.4 -1967	B251 -1967		
Seamless Copper Water Tube	H23.1 -1967	B88 -1966		
Copper Drainage Tube (DWV)	H23.6 -1967	B306 -1966		
Wrought Copper & Bronze Solder-Joint Fittings	B16.22 -1963			
Wrought Copper and Wrought Copper Alloy Solder-Joint Drainage Fittings				UPC-PS 21-65
Cast Brass Solder-Joint Pressure Fittings	B16.18 -1967			
Cast-Bronze Solder-Joint Drainage Fittings	B16.23 -1960			
Brass Fittings for Flared Copper Tubes	B16.26 -1967			
Seamless Red Brass Pipe	H27.1 -1963	B43 -1966		
Cast Bronze Screwed Fittings, 125 and 250 Lb.	B16.15 -1964			

*Dates shown are latest editions at time of printing including the dates of any addenda issued. Other standards on solvent cements, thermoplastic pipes and fittings are also available from ASTM.

Materials	USASI	ASTM	FS	Other Standards
Plastic Pipe and Fittings				
ABS Plastic Drain, Waste, and Vent Pipe and Fittings		D1527 -67	L-P-00322	CS270 -65 NSF-14 1965
PVC Plastic Drain, Waste and Vent Pipe and Fittings		D1785 -67	L-P-00320	CS272 -65 NSF-14 1965
Plastic Sewer, Drain Pipe, Fittings, Styrene Rubber (SRP)			WW-P -00380a	NSF-14 1965
ABS Plastic Pipe (SDR-PR and Class T)		D2282 -66		CS254 -63 NSF-14 1965
Polyethylene (PE) Plastic Pipe (SDR-PR)		D2239 -67		CS255 -63 NSF-14 1965
Polyvinyl Chloride (PVC) Plastic Pipe (SDR-PR and Class T)		D2241 -65		CS256 -63 NSF-14 1965
Miscellaneous				
Pipe Nipples, Threaded			WW-N-351a'60	
Backflow Preventers in Plumbing Systems	A40.6 -1943			
Air Gaps in Plumbing Systems	A40.4 -1942			
Valve, Bronze, Gate 125-150 Lb.			WW-V-54b.'62	
Valve, Cast-Iron Gate, 125 and 250 Lb.			WW-V--58(1)'46	
Plumbing — Fixture-Setting Compound			HH-C--536-a'54	
Cast Brass and Tubing P-Traps				UPC-PS 2-66
Relief Valves and Automatic Gas Shutoff Devices for Hot Water Supply Systems	Z21.22 -1965			
Solvent Cement for ABS Plastic Pipe and Fittings		D2235 -63T		
Diversion Tees and Twin Waste Elbow				UPC-PS 9-66
Flexible Copper Water Connectors				UPC-PS 14-66

Materials	USASI	ASTM	FS	Other Standards
Dishwasher Drain Airgaps				UPC-PS 23-66-T
Backflow Preventers and Relief Valves				TSC 8-66-T
Flexible Metal Mobile Home Gas Connectors				TSC 9-63
Drain Connectors for Independent Mobile Homes				TSC 10-64
Thermoplastic Joining Material				NSF 14
Plumbing Fixtures				
Plumbing Fixtures for Land Use			WW-P 541b(4)'62	
Vitreous China Plumbing Fixtures				CS-20 -63
Enameled Cast-Iron Plumbing Fixtures				CS-77 -62
Porcelain - Enameled (Glass-Lined) Hot Water Tanks				CS-115 -60
Formed Metal Porcelain-Enameled Sanitaryware				CS-144 -47
Gel-Coated Glass-Fiber Reinforced Polyester Bathtubs	Z124.1 -1967			
Gel-Coated Glass-Fiber Reinforced Polyester Resin Shower Receptor, Shower Stalls	Z124.2 -1967			
Stainless Steel Plumbing Fixtures — Residential Use				CS-243 -62
Mechanical Seal Water Closet				TSC-1 -1959
Waste Holding Tanks				TSC-2 -1960a
Water Storage Tanks				TSC-4 -1960
Drains for Prefabricated and Precast Showers				UPC-PS 4-66
Shower Drainage Fittings				UPC-PS 5-66
Cultured Marble Lavatory				UPC-PS 18-65
Prefabricated Shower Receptors, Prefabricated Stall Showers				TSC 11-64
Self-contained, Electrically Operated Recirculating, Chemically Controlled Toilet				TSC 12-65-T

Notes to Table II

Abbreviations used in Table II refer to standards as identified below and elsewhere in this standard.

AGA: Standards and Tentative Standards published by the *American Gas Association*, 1032 East 62nd Street, Cleveland, Ohio 44103.

ASA: *American Standards Association* — now *United States of America Standards Institute* (USASI), to 10 East 40th Street, New York, N.Y. 10016.

ASME: Standards and Tentative Standards published by the *American Society of Mechanical Engineers*, 345 East 47th Street, New York, N. Y. 10017.

ASTM: Standards and Tentative Standards published by the *American Society for Testing and Materials*, 1916 Race Street, Philadelphia, Pa. 19103.

AWWA: Standards and Tentative Standards published by the *American Water Works Association*, 2 Park Ave., New York, N. Y. 10016.

CS: Commercial Standards representing recorded voluntary recommendations of the trade, issued by the *United States Department of Commerce* and obtainable from the Superintendent of Documents, Government Printing Office, Washington, D. C. 20402.

FS: Federal Specifications published by the *Federal Specifications Board* and obtainable from the Superintendent of Documents, Government Printing Office, Washington, D. C. 20402.

IAPMO: Standards and Tentative Standards designated above as UPC-PS (Uniform Plumbing Code — Product Standard) and TSC (Trailer Standard) available from the *International Association of Plumbing and Mechanical Officials*, 5032 Alhambra Ave., Los Angeles, Calif. 90032 (formerly *Western Plumbing Officials Association* (WPOA).

MSS: Standards published by the *Manufacturers Standardization Society of the Valve and Fittings Industry*, 420 Lexington Avenue, New York, N. Y. 10017.

NSF: Standards and Tentative Standards published by the *National Sanitation Foundation*, Ann Arbor, Michigan 48106.

SPR: Simplified Practice Recommendations representing recorded recommendations of the trade and issued by the *United States Department of Commerce*, Washington, D. C. 20234.

TSC: See IAPMO.

UL: Standards and Tentative Standards published by the *Underwriters' Laboratories, Inc.*, 207 East Ohio Street, Chicago, Illinois 60611.

UPC-PS: See IAPMO.

USAS: *A United States of America Standard* (usually followed by a number and date) as available from or through the United States of America Standards Institute (USASI).

USASI: United States of America Standards Institute, 10 East 40th Street, New York, N. Y. 10016.

6.3 Specific Usage. Each of the following sections indicates specifically the type of material presently permitted for use in the various parts of the plumbing system.

7. Joints and Connections

7.1 Tightness. Joints and connections in the plumbing system shall be gastight and watertight for the pressures required under testing procedures.

7.1.1 Assembling of Pipe. All joints and connections shall be correctly assembled for tightness. Pipe threads shall be fully engaged with the threads of the fitting. Plastic pipe and copper tubing shall be inserted to the full depth of the solder cup or welding sockets of each fitting. Pipe threads and slip joints shall not be wrapped with string, paper, putty, or similar fillers.

7.1.2 Threaded Joints. Threads for screw pipe and fittings shall conform to the approved or listed standard. All burrs shall be removed. Pipe ends shall be reamed out to size of bore, and all chips shall be removed. Pipe joint cement or thread lubricant shall be of approved type and applied to male threads only.

7.1.3 Solder Joints. Solder joints for tubing shall be made with approved or listed sweat solder type fittings. Surfaces to be soldered shall be cleaned bright. The joints shall be properly fluxed with noncorrosive paste type flux and made with approved or listed 50-50 solder or an approved solder having a higher melting temperature.

7.1.4 Plastic Pipe and Fittings. Plastic pipe and fittings shall be joined by installation methods recommended by the manufacturer or by a recognized, approved, or listed standard. They shall not affect the potability of the water.

7.1.5 Union Joints. Metal unions shall have metal-to-metal ground seats.

7.1.6 Flared Joints. Flared joints for soft-copper water tubing shall be made with listed fittings. The tubing shall be expanded with a proper flaring tool.

8. Traps and Cleanouts

8.1 Traps

8.1.1 Traps Required. Each plumbing fixture shall be separately trapped by an approved water seal "P" trap. Water closets,

except mechanical sealed water closets and circulating chemical toilets shall have integral traps.

8.1.2 Dual Fixtures. A two-compartment sink or two single sinks or two lavatories set immediately adjacent to each other in the same room with waste outlets not more than 30 inches apart may be connected to one trap and may be considered as one fixture for the purpose of drainage and vent requirements.

8.1.3 Prohibited Traps. No form of trap which depends for its seal upon concealed interior partitions shall be used. Full "S" traps, bell traps, drum traps, and crown-vented traps are prohibited, and no fixture shall be double-trapped.

8.1.4 Material and Design. Each trap shall be self-cleaning with a smooth and uniform interior waterway. Traps shall be manufactured of cast iron, cast brass, or drawn brass tubing of not less than No. 20 Brown and Sharpe gage, or approved or listed plastic, or other approved or listed material. Union joints for a trap shall be beaded to provide a shoulder for the union nut. Each trap shall have the manufacturer's name stamped or cast in the metal of the trap, and each tubing shall show the gage of the tubing.

8.1.5 Trap Seal. Each trap shall have a water seal of not less than 2 inches and not more than 4 inches and shall be set true to its seal.

8.1.6 Size. Traps shall be not less than 1½ inches in diameter, except that a 1¼-inch diameter trap may be used when connected to a single fixture having no more than a 2-inch drain opening. No trap shall be larger than the waste pipe to which it is connected.

8.1.7 Location. Each trap shall be located as close to its vent and to its fixture outlet as structural conditions will permit.

8.1.8 Distance from Trap to Vent. The distance between a trap and its vent or vented waste line shall be in accordance with Table 3 (see 13.3.5 of this Part).

8.1.9 Length of Tailpiece. The vertical distance from a trap to the fixture outlet shall not exceed 24 inches.

8.1.10 Installation

8.1.10.1 Grade of Fixture Drain. The fixture drain piping between a trap and the fixture tee or the vented waste line shall be graded ¼ inch per foot towards the vent and in no event shall have a slope greater than its diameter. Except for water closet

drains, the vent opening at fixture tees shall not be below the invert of the trap outlet.

8.1.10.2 Fixture Drain Offset. The fixture drain piping between the trap and vent may change direction or be offset horizontally with the equivalent of no more than 180 degrees.

8.1.10.3 Concealed Traps. Traps with slip joint connections shall be readily accessible for repair and inspection.

8.1.10.4 Protection. Traps shall be adequately protected from damage during transit and from freezing, where necessary, during normal occupancy.

8.2 Cleanout Openings

8.2.1 Location of Cleanout Fittings

8.2.1.1 Cleanouts shall be installed if the drainage system cannot be cleaned through fixtures, drains, or vents. Cleanouts shall also be provided when fittings of more than 45 degrees are used to affect an offset except where long turn ells are used which provide sufficient "sweep" for cleaning.

8.2.1.2 A full size cleanout shall be installed at the upper end of any section of drain piping which does not have the required minimum slope of ¼ inch per foot grade.

8.2.1.3 A cleaning tool shall not be required to pass through more than 360 degrees of fittings to reach any part of the drainage system.

8.2.2. Access to Cleanouts. Cleanouts shall be accessible through an unobstructed minimum clearance of 12 inches directly in front of the opening. Each cleanout fitting shall open in a direction opposite to the flow or at right angles to the pipe. Concealed cleanouts that are not provided with access covers shall be extended to a point above the floor or outside of the mobile home, with pipe and fittings installed, as required, for drainage piping.

8.2.3 Material. Plugs and caps shall be brass or approved or listed plastic, with screw pipe threads.

8.2.4 Design. Cleanout plugs shall have raised heads except that plugs at floor level shall have counter-sunk slots.

9. Plumbing Fixtures

9.1 General Requirements

9.1.1 Quality of Fixtures. Plumbing fixtures shall have smooth impervious finishes, be free from defects and concealed fouling surfaces, be capable of resisting road shock and vibration, and shall conform in quality and design to approved or listed standards.

9.1.2 Strainers. The waste outlet of all plumbing fixtures, other than water closets, shall be covered with substantial metal strainers that will provide an adequate unobstructed waterway.

9.1.3 Fixture Connections. Fixture tailpieces and continuous wastes in exposed or accessible locations shall be not less than No. 20 Brown and Sharpe gage seamless drawn-brass tubing or other approved materials. Inaccessible fixture connections shall be constructed according to the requirements for drainage piping. Each fixture tailpiece, continuous waste, or waste and overflow shall be not less than 1½ inches for sinks of two or more compartments, dishwashers, clothes washing machines, laundry tubs, bath tubs, and not less than 1¼ inches for lavatories and single compartment sinks having a 2 inch maximum drain opening.

9.1.4 Concealed Connections. Concealed slip joint connections shall be provided with adequately sized unobstructed access panels and shall be readily accessible for inspection and repair.

9.1.5 Directional Fitting. An approved or listed "Y" or other directional-type branch fitting shall be installed in every tailpiece or continuous waste that receives the discharge from food waste disposal units, dishwashing, or other force-discharge fixture or appliance. Dishwasher drains shall not be connected to a sink tailpiece, continuous waste, or trap on the discharge side of a food-waste disposal unit.

9.2 Fixtures

9.2.1. Water Closet

9.2.1.1 Each water closet shall be designed and manufactured according to approved or listed standards and shall be equipped with a water flushing device capable of adequately flushing and cleaning the bowl at each operation of the flushing mechanism.

9.2.1.2 Water closet flushing devices shall be designed to replace the water seal in the bowl after each operation. Flush valves,

flushometer valves, and ball cocks shall operate automatically to shut off at the end of each flush or when the tank is filled to operating capacity.

9.2.1.3 Flush tanks shall be fitted with an overflow pipe large enough to prevent flooding at the maximum flow rate of the ball cock. Overflow pipes shall discharge into the water closet, through the tank.

9.2.1.4 Water closets that have fouling surfaces that are not thoroughly washed at each discharge shall be prohibited. Any water closet that might permit the contents of the bowl to be siphoned back into the water system shall be prohibited.

9.2.2 Shower Stalls

9.2.2.1 Each shower stall receptor shall be provided with an approved-type watertight receptor with sides and back extending 1 inch above the finished dam or threshold. In no case shall the depth of a shower receptor be less than 2 inches or more than 9 inches measured from the top of the finished threshold to the top of the drain. The wall area in shower compartments shall be constructed of smooth, noncorrosive, and nonabsorbent waterproof materials to a height not less than 6 feet above the floor level. Such walls shall form a watertight joint with each other and with the receptor or shower floor. The floor shall slope uniformly to the drain at not less than one-fourth nor more than one-half inch per foot.

9.2.2.2 The joint around the drain connection and around the water closet outlets in combination compartments shall be made watertight by a flange, clamping ring, or other approved or listed means.

9.2.2.3 Hinged shower doors shall open outward.

9.2.2.4 Prefabricated shower stalls shall be approved or listed and shall comply with all the requirements relating to plumbing fixtures and shower stalls.

9.2.3. **Fixed Shower and Tub Enclosures.** Fixed shower doors and tub and shower enclosures shall be constructed of materials such as wired-glass, laminated safety glass, fiberglass, reinforced plastics, or other listed materials.

9.2.4. Dishwashing Machines

9.2.4.1 No dishwashing machine shall be directly connected to any waste piping, but shall discharge its waste through a fixed

air gap installed above the machine. The drain connection from the air gap may connect to an individual trap, to a directional fitting installed in the sink tailpiece, or to the opening provided on the inlet side of a food waste disposal unit.

9.2.4.2 Drain from a dishwashing machine shall not be connected to a continuous waste line or trap on the discharge side of a food waste disposal unit.

9.2.5 Clothes Washing Machines

9.2.5.1 Clothes washing machines shall drain either into a properly vented trap, into a laundry tub tailpiece with watertight connections, into an open standpipe receptor, or over the rim of a laundry tub.

9.2.5.2 Standpipes shall be 1½ inches, minimum, nominal iron pipe size, or 1½ inches outside diameter nominal brass tubing not less than No. 20 Brown and Sharpe gage. Receptors shall discharge into a vented trap or shall be connected to a laundry tub tailpiece by means of an approved or listed directional fitting. Each standpipe shall extend not less than 18 inches or more than 30 inches above its trap and shall terminate in an accessible location not less than 6 inches above the highest water level of the clothes washing machine.

9.2.5.3 No clothes washing machine drain shall be connected to the tailpiece, continuous waste, or trap of any sink or dishwashing machine.

9.3 Installation

9.3.1 **Access.** Each plumbing fixture shall be located and installed in a manner to provide easy access for cleaning and repair.

9.3.2. **Alignment.** Fixtures shall be set level and in true alignment with adjacent walls. Where practical, piping from fixtures shall extend to nearest wall.

9.3.3 **Brackets.** Wall-hung fixtures shall be rigidly attached to walls by metal brackets or supports without any strain being transmitted to the piping connections. Flush tanks shall be securely fastened to water closets or to the wall with adequate size bolts or screws of brass or other noncorrosive metal.

9.3.4 **Floor Connection.** Water closets shall be rigidly bolted to the closet flange, and when screw holds are provided the bowl shall also be solidly fastened to the floor. Bolts and screws shall be adequate in size and shall be made of solid brass or other

approved or listed noncorrosive metal. An approved or listed gasket or setting compound shall be used to form a watertight seal between the fixture and the drain connection. The exposed joint between the fixture and the floor shall be made watertight, and the floor under the water closet, and to at least 6 inches around the fixture, shall be made impervious to moisture.

10. Hangers and Supports

10.1 Strains and Stresses. Piping in a plumbing system shall be installed without undue strains and stresses, and provision shall be made for expansion, contraction, and structural settlement.

10.2 Piping Supports. Piping shall be secured at sufficiently close intervals to keep the pipe in alignment and carry the weight of the pipe and contents.

10.3 Hangers and Anchors

10.3.1 Hangers and anchors shall be of sufficient strength to support their proportional share of the pipe alignments and prevent rattling.

10.3.2 Piping shall be securely attached to the structure by proper hangers, clamps, or brackets which provide protection against motion, vibration, road shock, torque in the chassis, or other unusual conditions.

11. Water Distribution System

11.1 Water Supply

11.1.1 Potable Water. Water piping shall be sized to provide an adequate quantity of running water to each plumbing fixture at a flow rate sufficient to flush and keep the fixture in a clean and sanitary condition without any danger of backflow or siphonage.

11.1.2 Hot Water Supply. Each mobile home equipped with a kitchen sink, and bathtub and/or shower shall be provided with a hot water supply system including a water heater.

11.2 Water Outlets and Supply Connections

11.2.1 Water Connection. Each mobile home with a water distribution system shall be equipped with a ¾-inch inlet coupling located within the rear third of the length of the mobile home. This connection shall be tagged or marked "Fresh Water Connection" or "Fresh Water Fill." A matching cap or plug shall be provided

to seal the water inlet when it is not in use and shall be attached with a substantial chain. A master cold water shutoff gate valve shall be installed on the main feeder line in an accessible area.

11.2.2 Prohibited Connections

11.2.2.1 The installation of water supply piping or fixture or appliance connections shall be made in manner to preclude the possibility of used, unclean, polluted, or contaminated water, mixtures, or substances entering any part of the water supply system from any tank, receptacle, equipment, or plumbing fixture by reason of siphonage, suction, or any other cause, either during normal use and operation or when any such tank, receptacle, equipment, or plumbing fixture is flooded or subject to pressure in excess of the operating pressure in the water piping system.

11.2.2.2 No part of the water system shall be connected to any drainage or vent piping.

11.2.3 Rim outlets. The outlets of faucets, spouts, and similar devices shall be spaced at least 1 inch above the flood level of the fixture.

11.2.4 Appliance Connections. Water supplies connected to clothes washing or dishwashing machines shall be protected by an approved or listed fixed air gap provided within the appliance by the manufacturer.

11.2.5 Flushometer Valves or Manually Operated Flush Valves. An approved or listed vacuum breaker shall be installed and maintained in the water supply line on the discharge side of a water closet flushometer valve or manually operated flush valve. Vacuum breakers shall have a minimum clearance of 6 inches from the flood level of the fixture to the critical level mark unless otherwise permitted in their approval.

11.2.6 Flush Tanks. Water closet flush tanks shall be equipped with an approved anti-siphon ball cock which shall be installed and maintained with its outlet or critical level mark not less than 1 inch above the full opening of the overflow pipe.

11.2.7 Critical Level. The critical level, C-L or $\frac{C}{L}$ marking on a backflow prevention device or vacuum breaker is a point established by the testing laboratory (usually stamped on the device by the manufacturer) which determines the minimum elevation above the flood level rim of the fixture or receptacle served on which the device may be installed. When a backflow prevention

device does not bear a critical level marking, the bottom of the vacuum breaker, combination valve, or of any such approved or listed device shall constitute the critical level.

11.2.8 Backflow Preventer. When pressure- or gravity-type water supply tanks or reservoirs (except water heaters or flush tanks) for storing potable water are connected to the water distribution system of mobile homes, they shall have an approved or listed spring-loaded check valve or other approved or listed type backflow prevention device installed in the water-supply piping adjacent to the inlet coupling. An approved or listed pressure relief valve shall be required on the outlet side of the check valve.

11.3 Safety Devices

11.3.1 Relief Valves

11.3.1.1 All water heaters shall be installed with approved and listed fully-automatic valve or valves designed to provide temperature and pressure relief.

11.3.1.2 Any temperature relief valve or the combined pressure and temperature relief valve installed for this purpose shall have the temperature sensing element immersed in the hottest water within the upper 6 inches of the tank. It shall be set to start relieving at a pressure not exceeding the rated working pressure of the tank and at or below a water temperature of 210 degrees F.

11.3.1.3 All relief valves shall have connected a drainpipe not smaller than the relief valve drain connection pipe size. Where the relief valve is located within the mobile home, the drain line shall extend outside, with the end directed downward in a location where the outlet end will be protected from dirt, mud and freezing. No part of the drain line shall be trapped.

11.3.2 Water Supply Tanks and Heaters

11.3.2.1 Pressure and gravity cold water storage tanks shall be constructed of sound, nontoxic, durable materials, corrosion resistant, and shall impart no taste or odor to the potable water in the system. Each pressure tank shall be capable of withstanding 200 psi minimum test water pressure.

11.3.2.2 Each storage water heater shall be provided with a three-quarter (¾)-inch pipe tapping for a combined pressure-temperature relief valve within the top 6 inches of the tank. The tapping shall be in a location which will permit easy access for installing, testing and maintenance of the valve.

11.4 Materials

11.4.1 Piping Material. Water pipe shall be of standard weight brass, galvanized wrought iron, galvanized steel, Type L copper tubing, approved or listed plastic, or other approved or listed material (see 11.4.2).

11.4.2 Plastic Piping. Mobile homes that have no provision for hot water piping or hot water faucets, or no space allotted for a water heater, may have cold water piping (only), and fittings may be constructed from approved or listed plastic.

11.4.3 Fittings. Appropriate fittings shall be used for all changes in direction or size and where pipes are joined. The material and design of fittings shall conform to the type of piping used.

11.4.3.1 Fittings for screw piping shall be standard weight galvanized iron for galvanized iron and steel pipe, and of brass for brass piping. They shall be installed where required for change in direction, reduction of size, or where pipes are joined together.

11.4.3.2 Fittings for copper tubing shall be cast brass or drawn copper sweat solder pattern or flare type.

11.4.3.3 Fittings for cold water, plastic water piping shall be of approved or listed brass or plastic.

11.4.4 Prohibited Material. Used piping materials shall not be permitted. Pipe dope, solder flux, oils, solvents, chemicals, or other substances that are toxic, corrosive, or otherwise detrimental to the water system shall not be used.

11.5 Installation of Piping

11.5.1 Minimum Requirement. All piping equipment, appurtenances, and devices shall be installed in workmanlike manner and shall conform with the provisions and intent of this standard.

11.5.2 Screw Pipe. Iron pipe-size brass or galvanized iron or steel pipe and fittings shall be joined with approved or listed standard pipe threads fully engaged in the fittings. Pipe ends shall be reamed to the full bore of the pipe. Pipe-joint compound shall be insoluble in water and shall be nontoxic.

11.5.3 Solder Fittings. Copper tubing shall be joined to sweat solder fittings by means of hot solder and a noncorrosive flux. The surfaces to be soldered shall be thoroughly cleaned. The use of self-cleaning fluxes shall not be permitted.

11.5.4 Flared Fittings. A flaring tool shall be used to shape the ends of flared tubing to match the flare of fittings.

11.5.5 Plastic Pipe and Fittings. Plastic pipe and fittings shall be joined by installation methods recommended by the manufacturer or by a listed standard.

11.6 Size of Water Supply Piping

11.6.1 Minimum Size. The size of water supply piping and branch lines shall not be less than sizes shown in Table 2.

TABLE 2

Minimum Size Tubing and Pipe for Water Distribution Systems

Number of Fixtures	Tubing		Pipe
	Inner Dia. (Inches)	Outer Dia. (Inches)	Iron Pipe Size (Inches)
1	¼*	⅜	½
2	⅜	½	½
3	½	⅝	½
4	½	⅝	½
5 or more	¾	⅞	¾

*6 feet maximum length for ¼ inch id tubing.

Exceptions to Table: ⅜ inch id nominal or ½ inch od minimum size for clothes washing or dishwashing machines, unless larger size is recommended by the fixture manufacturer.

½ inch id nominal or ⅝ inch od minimum size for flushometer or metering type valves unless otherwise specified in their listing.

No galvanized screw piping shall be less than ½ inch iron pipe size.

11.6.2 Sizing Procedure. Both hot and cold water piping systems shall be computed by the following method:

11.6.2.1 Size of Branch. Start at the most remote outlet on any branch of the hot or cold water piping and progressively count towards the water service connection, computing the total number of fixtures supplied along each section of piping. Where branches are joined together, the number of fixtures on each branch shall be totalled so that no fixture is counted twice. Following down the left-hand column of Table 2 a corresponding number of fixtures will be found. The required pipe or tubing size is indicated in the other columns on the same line.

11.6.2.2 A water heater or food waste disposal unit shall not be counted as a water-using fixture when computing pipe sizes.

11.7 **Line Valves.** Valves, when installed in the water supply distribution system (except those immediately controlling one fixture supply) and when fully opened, shall have a cross-sectional area of the smallest orifice or opening, through which the water flows, at least equal to the cross-sectional area of the nominal size of the pipe in which the valve is installed.

12. Drainage Systems

12.1 Materials

12.1.1 Pipe. Drainage piping shall be standard weight steel, wrought iron, brass, copper tube DWV, approved or listed plastic, or other approved or listed material.

12.1.2 Fittings. Drainage fittings shall be recessed drainage pattern with smooth interior waterways of the same diameter as the piping and shall be of a material conforming to the type of piping used. Drainage fittings shall be designed to provide for a ¼ inch per foot grade in horizontal piping.

12.1.2.1 Fittings for screw pipe shall be cast iron, malleable iron, brass, or approved or listed plastic with approved or listed standard pipe threads.

12.1.2.2 Fittings for copper tubing shall be cast brass or drawn copper sweat solder.

12.1.2.3 Fittings for plastic piping shall be made to listed standards.

12.1.2.4 Brass adaptor fittings shall be used to join copper tubing to threaded pipe.

12.2 Drain Outlets

12.2.1 Location of Drain. Each mobile home shall have only one drain outlet which shall terminate in the rear third section on the left (road) side. This outlet shall be tagged or marked "Drain Outlet" or "Sewer Outlet."

12.2.2 Exception. A drain outlet may terminate horizontally when it is equipped with an acceptable fitting(s).

12.2.3 Cap or Plug. A cap or plug on the drain outlet shall be permanently attached to the structure by a chain or cable.

12.2.4 **Clearance from Drain Outlet.** The drainage outlet and couplers shall be provided with a minimum clearance of 3 inches in any direction from all parts of the structure or appurtenances and with not less than 18 inches unrestricted clearance directly in front of the drainage outlet.

12.2.5 **Hose Couplers and Caps**

12.2.5.1 Hose couplers for drain outlets shall be a quick disconnect type not requiring any special tools or knowledge to make the connection or remove the drain hose.

12.2.5.2 Hose couplers and drain hoses shall not be smaller than the piping to which they are connected and shall be equipped with a watertight cap or plug matching the drainage outlet or coupler. The cap or plug shall be permanently attached to the structure by means of a substantial chain.

12.2.5.3 Drain outlet or attached drain hoses for drain piping connected to a mobile home shall be 3 inches minimum inside diameter.

12.3 **Fixture Connections.** Drainage piping shall be provided with approved or listed inlet fittings for fixture connections, correctly located according to the size and type of fixture to be connected.

12.3.1 **Water Closet Connection.** The drain connection for each water closet shall be 3 inches minimum inside diameter and shall be fitted with an iron, brass, or listed plastic floor flange adaptor ring securely screwed, soldered or otherwise permanently attached to the drain piping, in an approved manner and securely fastened to the floor.

12.4 **Size of Drainage Piping**

12.4.1 **Fixture Load.** Drain pipe sizes shall be determined by the type of fixture and the total number connected to each drain.

12.4.1.1 A 1½-inch minimum diameter piping shall be required for one and not more than three individually vented fixtures.

12.4.1.2 A 2-inch minimum diameter piping shall be required for four or more fixtures individually vented.

12.4.1.3 A 3-inch minimum diameter piping shall be required for water closets.

12.5 **Wet-Vented Drainage System.** Plumbing fixture traps may connect into a wet-vented drainage system which shall be designed and installed to accommodate the passage of air and waste in the same pipe.

12.5.1 **Horizontal Piping.** All parts of a wet-vented drainage system, including the connected fixture drains, shall be horizontal except for wet-vented vertical risers which shall terminate with a 1½-inch minimum diameter continuous vent. Where required by structural design, wet-vented drain piping may be offset vertically when other vented fixture drains or relief vents are connected to the drain piping below the vertical offsets.

12.5.2 **Size.** A wet-vented drain pipe shall be 2 inches minimum diameter and at least one pipe size larger than the largest connected trap or fixture drain. Not more than three fixtures may connect to a 2-inch diameter wet-vented drain system.

12.5.3 **Length of Fixture Drain.** Fixture traps shall be located within the distance given in Table 3 (see 13.3.5 of this Part). Not more than one trap shall connect to a trap branch.

12.6 **Offsets and Branch Fittings**

12.6.1 **Changes in Direction.** Changes in direction of drainage piping shall be made by the appropriate use of approved or listed fittings, and shall be of the following angles: 11¼, 22½, 45 or 60 degrees; or other approved or listed fittings or combination of fittings with equivalent radius or sweep.

12.6.2 **Horizontal to Vertical.** Horizontal drainage lines, connecting with a vertical pipe shall enter through 45-degree "Y" branches, 60-degree "Y" branches, long-turn "TY" branches, sanitary "T" branches, or other approved or listed fittings or combination of fittings having equivalent sweep. No fitting having more than one branch at the same level shall be used, unless the fitting is constructed so that the discharge from any one branch cannot readily enter any other branch. However, a double sanitary "T" may be used when the drain line is increased not less than two pipe sizes.

12.6.3 **Horizontal to Horizontal and Vertical to Horizontal.** Horizontal drainage lines connecting with other horizontal drainage lines or vertical drainage lines connected with horizontal drainage lines shall enter through 45-degree "Y" branches, long-turn "TY" branches, or other approved or listed fittings or combination of fittings having equivalent sweep.

12.7 **Slope of Horizonal Drainage Piping.** Horizontal drainage piping shall be run in practical alignment and have a uniform slope of not less than ¼ inch per foot toward the mobile home drain outlet. Where it is impractical, due to the structural features or arrangement of any mobile home, to obtain a slope of ¼ inch per foot, the pipe or piping may have a slope of not less than ⅛ inch per foot, when a full size cleanout is installed at the upper end.

13. Vents and Venting

13.1 **General.** Each plumbing fixture trap shall be protected against siphonage and back pressure, and air circulation shall be ensured throughout all parts of the drainage system by means of vent pipes installed in accordance with the requirements of this section and as otherwise required by this standard.

13.2 Materials

13.2.1 **Pipe.** Vent piping shall be standard weight steel, wrought iron, brass, copper tube DWV, approved or listed plastic, or other approved or listed materials.

13.2.2 **Fittings.** Appropriate fittings shall be used for all changes in direction or size and where pipes are joined. The material and design of vent fittings shall conform to the type of piping used.

13.2.2.1 Fittings for screw pipe shall be cast iron, malleable iron, plastic, or brass, with approved or listed standard pipe threads.

13.2.2.2 Fittings for copper tubing shall be cast brass or drawn copper sweat solder pattern.

13.2.2.3 Fittings for plastic piping shall be made to recognized, approved, or listed standards.

13.2.2.4 Brass adaptor fittings shall be used to join copper tube to threaded pipe.

13.2.2.5 Listed rectangular cross section pipe may be used for vent piping *only* providing it has an open cross section at least equal to the circular vent pipe required. Listed transition fittings shall be used.

13.3 Size of Vent Piping

13.3.1 **Main Vent.** The drain piping for each water closet shall be vented by a 1½-inch minimum diameter vent or rectangular

vent of venting cross section equivalent to or greater than the venting cross section of a 1½-inch diameter vent, connected to the main drain by one of the following methods:

(a) A 1½-inch diameter (min.) individual vent pipe or equivalent directly connected to the water closet drain and extended undiminished in size through the roof.

(b) A 1½-inch diameter (min.) continuous vent or equivalent indirectly connected to the water closet drain piping through a 2-inch wet-vented drain that carries the waste of not more than one fixture, or not more than two fixtures when one is a combination compartment drain.

(c) Two or more vented drains when at least one is wet-vented and each drain is separately connected to the main drain.

13.3.2 Individual Vents. A vent pipe equivalent in area to 1¼-inch tubing required for all individually vented fixtures with a 1½-inch or smaller trap. The main vent, water closet vent and relief vent, and the continuous vent of wet-vented systems shall have an area equivalent to 1½-inch tubing.

Exception: In the case of copper tube, 1¼ inch nominal size may be used for individual vents.

13.3.3 Common Vent. When two fixture traps located within the distance allowed from their vent have their trap arms connected separately at the same level into an approved double fitting, an individual vent pipe may serve as a common vent without any increase in size.

13.3.4 Intersecting Vents. Where two or more vent pipes are joined together, no increase in size shall be required; however, the largest vent pipe shall extend full size through the roof and shall have a minimum area equivalent to a 1½ inch IPS.

13.3.5 Distance of fixture trap from vent shall not exceed the values given in Table 3 (next page).

13.4 Grade and Connections

13.4.1 Horizontal Vents. Each vent shall extend vertically from its fixture "T" or point of connection with the waste piping to a point not less than 6 inches above the extreme flood level of the fixture it is venting before offsetting horizontally or being connected with any other vent pipe. Vents for horizontal drains shall connect above the centerline of the drain piping ahead (down-

TABLE 3

Distance of Fixture Trap from Vent

Size of Fixture Drain (Inches)	Distance Trap to Vent
1¼	4 feet 6 inches
1½	4 feet 6 inches
2	5 feet 0 inches
3	6 feet 0 inches

stream) of the trap. Where required by structural conditions, vent piping may offset below the rim of the fixture at the maximum angle or height possible.

13.4.2 **Grade.** Vents shall grade or drain back to the drainage system by gravity.

13.5 **Vent Terminal**

13.5.1 **Roof Extension.** Each vent pipe shall extend through its flashing and terminate vertically, undiminished in size, not less than 2 inches above the roof. Vent openings shall not be less than 3 feet, 0 inch away from any motor-driven air intake that opens into habitable areas.

13.5.2 **Flashing.** The opening around each vent pipe shall be made watertight by an adequate flashing or flashing material.

14. Test and Inspection

14.1 **Water System.** All water piping in the water distribution system shall be subjected to a pressure test before any portion is covered or concealed. The test shall be made by subjecting the system to air or water at 100 psi for 15 minutes without leakage or loss of pressure. An adequate and accurate pressure gage shall be used on all tests.

14.2 **Drainage and Vent System and Plumbing Fixtures.** The waste and vent system shall be tested by one of the following alternate methods for evidence or indication of leakage.

14.2.1 **Water Test.** Before plumbing fixtures are connected, all of the openings into the piping shall be plugged and the entire piping system subjected to a static water test for 15 minutes by filling it with water to the top of the highest vent opening. The system shall be watertight at all points.

14.2.2 Air Test. After all fixtures have been installed, the traps filled with water, and the remaining openings securely plugged, the entire system shall be subjected to a 2 inch (manometer) water column air pressure test. If the system loses pressure, leaks may be located with smoke pumped into the system, or with soap suds spread on the exterior of the piping (Bubble test).

14.2.3. Flood Level Test. The mobile home shall be in a level position; all fixtures shall be connected, and the entire system shall be filled with water to the rim of the water closet bowl. (Tub and shower drains should be plugged.) After all trapped air has been released, the test shall be sustained for not less than 15 minutes. The waste piping above the level of the water closet shall be tested and show no indication of leakage when the high fixtures are filled with water and emptied simultaneously to obtain the maximum possible flow in the drain piping.

14.2.4 Fixture Test. The plumbing fixtures and connections shall be subjected to a flow test by filling them with water and checking for leaks and retarded flow while they are being emptied.

14.3 Shower Stalls. Nonmetallic shower stall linings shall be tested for leaks prior to being covered by finish material. Each pan shall be filled with water to the top of the dam for not less than 15 minutes.

Part III

Heating Systems

1. Introduction

1.1 Those members of the engineering profession and others associated with the design, manufacturing, installation, and inspection of mobile home heating systems have been aware of the need for uniform technical standards leading to the safe use of this special type of equipment. They have also recognized that, because of unique conditions of transport and use, existing heating equipment standards for motor vehicles or for buildings are not completely applicable to mobile homes. It is with these factors in mind that Part III of this standard has been developed.

1.2 Much of the material in Part III has been taken from, or is based on, nationally recognized standards for heat producing appliances and fuel supply systems including those of the National Fire Protection Association.

2. Scope

2.1 This standard covers the heating systems and equipment installed within or on mobile homes.

2.2 This standard is not intended as a design specification or an instruction manual for untrained persons.

2.3 Wherever nationally recognized standards for heat producing appliances and fuel supply systems and Part III of this standard differ, the requirements of the latter shall apply.

2.4 The provisions of this standard are not intended to prevent the use of any material, appliance, installation, device, arrangement, or method of construction not specifically prescribed herein, provided any such alternative has been approved. An enforcement agency may approve any such alternative if it finds the proposed design is satisfactory for the purpose intended, and if the material, appliance, installation, device, arrangement, and method or work offered is, for the purpose intended, at least the equivalent in performance of that prescribed in this standard considering quality, strength, effectiveness, durability, safety, and protection of life and health. An enforcement authority shall require that satisfactory evidence or proof be submitted to substantiate any claims that may be made regarding the use of any such alternative.

3. Definitions

Accessible. When applied to a fixture, connection, appliance or equipment shall mean having access thereto, but which may require the removal of an access panel, door or similar obstruction.

Air Duct. Conduits or passageways for conveying air to or from heating, cooling, air conditioning or ventilation equipment, but not including the plenum.

Appliance Branch Piping. Any run of piping or tubing, and fittings, not a part of an appliance that is used to convey fuel from the main piping manifold to a heat-producing appliance.

Approved. The word "approved" as used in this standard means acceptable to the authority having jurisdiction.

Automatic Pump (Oil Lifter). A pump, not an integral part of the oil-burning appliance, that automatically pumps oil from the supply tank and delivers the oil by gravity under a constant head to an oil-burning appliance.

BTU. British Thermal Units. The quantity of heat required to raise the temperature of one pound of water one degree Fahrenheit.

BTUH. British thermal units per hour.

Burner. A device for the final conveyance of fuel or a mixture of fuel and air to the combustion zone.

Clearance. The distance between the appliance, chimney, vent, chimney or vent connector or plenum and the nearest surface.

Combustible Material. The term applies to materials adjacent to, or in contact with, heat producing appliances, chimney connectors and vent connectors, steam and hot water pipes, and warm air ducts. Such material is made of, or surfaced with, wood, compressed paper, plant fibers, or other material that will ignite and burn. These materials shall be considered as combustible even though flameproofed, fire-retardant treated, or plastered.

Connector-Gas Appliance. A connector used to convey fuel gas, three feet or less in length (six feet or less for ranges) between a gas outlet and gas appliance in the same room with the outlet.

Fuel Gas Piping System. The arrangement of piping, tubing fittings, connectors, valves and devices designed and intended to supply or control the flow of fuel gas to the appliance(s).

Fuel Oil Piping System. The arrangement of piping, tubing, fittings, connectors, valves and devices designed and intended to

supply or control the flow of fuel oil to the appliance(s).

Gas Supply Connection. The terminal end or connection to which a gas supply connector is attached.

Gas Supply Connector. Tubing or piping connecting the mobile home to the gas supply source.

Heat Producing Appliance. All heating and cooking appliances and all fuel burning appliances.

Heating Appliance. An appliance for comfort heating of a mobile home or for water heating.

Illuminating Appliance—Gas Fired. An appliance designed for illumination and intended for either outdoor or indoor installation and attached to a fuel gas piping system.

Liquefied Petroleum Gases. The terms "Liquefied petroleum gases," "LPG" and "LP-Gas" as used in this standard shall mean and include any material which is composed predominantly of any of the following hydrocarbons, or mixtures of them: propane, propylene, butanes (normal butane or isobutane), and butylenes.

Listed. Equipment or materials included in a list published by a nationally recognized testing laboratory that maintains periodic inspection of production of listed equipment or materials and whose listing states either that the equipment or material meets nationally recognized standards or has been tested and found suitable for use in a specified manner.

Main Gas Piping Manifold. Gas piping which conveys gas from the gas supply connection to the appliance branch piping.

Mobile Home. A vehicular, portable structure built on a chassis and designed to be used without a permanent foundation* as a dwelling when connected to indicated utilities.

Readily Accessible. Having direct access without the necessity of removing any panel, door, or similar obstruction.

Roof Jack. That portion of a mobile home heater flue or vent assembly, including the cap, insulating means, flashing, and ceiling plate, located in and above the roof of a mobile home.

Water Heater. An appliance for supplying hot water for domestic or commercial purposes other than for space heating.

*The phrase "without a permanent foundation" indicates that the support system is constructed with the intent that the mobile home placed thereon will be moved from time to time at the convenience of the owner.

4. Fuel Supply Systems

4.1 LP-Gas Containers

4.1.1 Maximum Capacity. No more than two containers having an individual water capacity of not more than 105 pounds (approximately 45 pounds LP-Gas capacity), shall be installed on or in a compartment of any mobile home.

4.1.2 Construction of Containers. Containers shall be constructed and marked in accordance with the specifications for LP-Gas containers of the U.S. Department of Transportation (DOT) or the Rules for Construction of Unfired Pressure Vessels, Section VIII, ASME Boiler and Pressure Vessel Code. ASME Containers constructed after December 31, 1967 shall be Container Type 250.

4.1.2.1 Container supply systems shall be arranged for vapor withdrawal only.

4.1.3 Location of Containers and Systems

4.1.3.1 No LP-Gas container shall be installed nor provisions made for installing or storing, even temporarily, inside any mobile home except for listed, completely self-contained hand torches, lanterns, or similar equipment with containers having a maximum water capacity of not more than 2½ pounds (approximately one pound LP-Gas capacity).

4.1.3.2 Containers, control valves, and regulating equipment shall be mounted on the chassis of the mobile home as close to the hitch as possible, or shall be installed in a compartment that is vaportight to the inside of the mobile home and accessible only from the outside. The compartment shall be ventilated at top and bottom to facilitate diffusion of vapors. The compartment shall be ventilated with two vents having an aggregate area of not less than two percent of the floor area of the compartment and shall open unrestricted to the outside atmosphere. The required vents shall be equally distributed between the floor and ceiling of the compartment. If the lower vent is located in the access door or wall, the bottom edge of the vent shall be flush with the floor level of the compartment. The top vent shall be located in the access door or wall with the bottom of the vent not more than 12 inches below the ceiling level of the compartment. All vents shall have an unrestricted discharge to the outside atmosphere. Access doors or panels of compartments shall not be equipped with locks or require special tool or knowledge to open.

4.1.3.3. Contain or container carrier shall be secured in place

on the mobile home by fastenings designed and constructed with a minimum safety factor of four, to withstand loading in any direction equal to four times the filled weight of the container.

4.1.4 Container Valves and Accessories

4.1.4.1 Valves in the assembly of a two-cylinder system shall be arranged so that replacement of containers can be made without shutting off the flow of gas to the appliance(s).

NOTE: This provision is not to be construed as requiring an automatic change-over device.

4.1.4.2 Shutoff valves on the containers shall be protected as follows, in transit, in storage, and while being moved into final utilization:

(a) By setting into a recess of the container to prevent possibility of their being struck if container is dropped upon a flat surface.

(b) By ventilated cap or collar, fastened to the container, capable of withstanding a blow from any direction equivalent to that of a 30-pound weight dropped 4 feet. Construction must be such that the blow will not be transmitted to the valve.

4.1.4.3 Regulators shall be connected directly to the cylinder valve outlets or mounted securely by means of a support bracket and connected to the cylinder valve or valves with listed high pressure flexible connections.

4.1.5 Safety Devices

4.1.5.1. DOT containers shall be provided with safety relief devices as required by the regulations of the U.S. Department of Transportation. ASME containers shall be provided with relief valves in accordance with B.10 of USA Standard for the Storage and Handling of Liquefied Petroleum Gases (USAS Z106.1-1967, NFPA No. 58-1967). Safety relief valves shall have direct communication with the vapor space of the vessel.

4.1.5.2 The delivery side of the gas pressure regulator shall be equipped with a safety relief device set to discharge at a pressure not less than two times and not more than three times the delivery pressure of the regulator.

4.1.5.3 Systems mounted on the hitch shall be so located that the discharge from the safety relief devices shall be into the open

air and not less than three feet horizontally from any opening into the mobile home below the level of such discharge. Relief valves located within liquefied petroleum gas container compartments may be less than three feet from openings provided:

(a) The bottom vent of the compartment is at the same level or lower than the bottom of any opening into the vehicle, or,

(b) The compartment is not located on the same wall plane as the opening(s) and is at least two feet horizontally from such openings.

4.1.6 System Enclosure and Mounting

4.1.6.1 Housings and enclosures shall be designed to provide proper ventilation at least equivalent to that specified in 4.1.3.2 of this Part.

4.1.6.2 Doors, hoods, domes, or portions of housings and enclosures required to be removed or opened for replacement of containers shall incorporate means for clamping them firmly in place and preventing them from working loose during transit.

4.1.6.3 Provisions shall be incorporated in the assembly to hold the containers firmly in position and prevent their movement during transit.

4.1.6.4 Containers shall be mounted on a substantial support or a base secured firmly to the vehicle chassis. Neither the container nor its support shall extend below the frame.

4.1.7 System Design and Service Line Pressure

4.1.7.1 Systems shall be of the vapor-withdrawal type.

4.1.7.2 Vapor, at a pressure not over 18 inches water column, shall be delivered from the system into the gas supply connection.

4.1.7.3 Container openings for vapor withdrawal shall be located in the vapor space when the container is in service or shall be provided with a suitable internal withdrawal tube which communicates with the vapor space in or near the highest point in the container when it is mounted in service position, with the vehicle on a level surface. Containers shall be permanently and legibly marked in a conspicuous manner on the outside to show the correct mounting position and the position of the service outlet connection. The method of mounting in place shall be such as to minimize the possibility of an incorrect positioning of the container.

4.2 Oil Tanks

4.2.1 Installation. Oil tanks installed for gravity flow of oil to heating equipment shall be installed so that the top of the tank is no higher than 8 feet above the appliance oil control and the bottom of the tank is not less than 18 inches above the appliance oil control. Listed automatic pumps (oil lifter) shall be mounted no higher than 8 feet above the appliance oil control and not less than 18 inches above the appliance oil control.

4.2.2 Auxiliary Oil Storage Tank. Oil supply tanks affixed to a mobile home shall be so located as to require filling and draining on the outside and shall be securely fastened in position in a place readily available for inspection.

4.2.3 Tank Compartment. If the fuel supply tank is located in a compartment of a mobile home, the compartment shall be ventilated at the bottom to permit diffusion of vapors and shall be insulated from the structural members of the body. Tanks so installed shall be provided with an outside fill and vent pipe and an approved liquid level gage.

4.2.4 Shutoff Valve. A readily accessible, approved manual shutoff valve* shall be installed at the outlet of an oil supply tank. The valve shall be installed to close against the supply.

4.2.5 Fuel Oil Filters. All oil tanks, except for integrally mounted tanks, shall be equipped with an approved oil filter or strainer† located downstream from the tank shutoff valve. The fuel oil filter or strainer shall contain a sump with a drain for the entrapment of water.

5. Piping Systems

5.1 Gas Piping Systems

5.1.1 General. The requirements of this section shall govern the installation of all fuel gas piping attached to any mobile home. None of the requirements listed in this section shall apply to the piping in the appliance(s).

*Such valves are listed in Underwriters' Laboratories Gas and Oil Equipment List under the classification, Valves, Shut-Off Valves, Flammable Liquid Shut-Off Valves.

†Such filters are listed in Underwriters' Laboratories Gas and Oil Equipment List under the classification, Heating and Heating-Cooling Appliance Accessories, Strainers, Oil Burner.

5.1.2 Materials. All materials used for the installation, extension, alteration, or repair of any gas piping system shall be new and free from defects or internal obstructions. It shall not be permissible to repair defects in gas piping or fittings. Inferior or defective materials shall be removed and replaced with acceptable material. The system shall be made of materials having a melting point of not less than 1,450 F, except as provided in 5.1.5 of this Part. They may consist of one or more of the materials described in 5.1.2.1 through 5.1.2.4.

5.1.2.1 Gas pipe shall be steel or wrought-iron pipe complying with USA Standard Wrought-Steel and Wrought-Iron Pipe, B36.10-1959. Threaded copper or brass pipe in iron pipe sizes may be used.

5.1.2.2 Fittings for gas piping shall be wrought iron, malleable iron, steel, or brass (containing not more than 75 percent copper).

5.1.2.3 Copper tubing shall be annealed type, grade K or L, conforming to the Specifications for Seamless Copper Water Tube (ASTM-B88-66), or shall comply with the Specifications for Seamless Copper Tube for Refrigeration Field Service, ASTM B280-66. When used on systems designed for natural gas, such tubing shall be internally tinned.

5.1.2.4 Steel tubing shall be externally corrosion protected and shall have a minimum wall thickness of 0.049 inch.

5.1.3 Piping Design. Each mobile home requiring fuel gas for any purpose shall be equipped with a fuel gas piping system that is designed for LP-Gas only or with a natural gas piping system acceptable for LP-Gas.

5.1.3.1 Where fuel gas piping is to be installed in both portions of an expandable or dual mobile home, the design and construction of the crossover shall be as follows:

(a) There shall be only one point of crossover which shall be located not more than 18 inches from either the front or rear wall and shall be readily accessible from the exterior of the mobile home.

(b) The connector between units shall be an approved type for exterior use, sized in accordance with 5.1.4 of this Part.

(c) The connection shall be made by an approved "quick disconnect" device which shall be designed to provide a positive seal of the supply side of the gas system when such device is separate

(d) The flexible connector and "quick disconnect" device shall be provided with protection from mechanical and impact damage and located to minimize the possibility of tampering.

(e) Suitable protective coverings for the "quick disconnect" device, when separated, shall be permanently attached to the device or flexible connector.

(f) A 3-inch by 1¾-inch etched, stamped, or embossed metal tag not less than 0.020 inch in thickness, of brass, stainless steel, anodized or alclad aluminum shall be permanently attached on the exterior wall adjacent to the access to the "quick disconnect" device. Each tag shall be legibly inscribed with the following information:

Do Not Use Tools to Separate the "Quick-Disconnect" Device.

5.1.4 Gas Pipe Sizing. Gas piping systems shall be sized so that the pressure drop to any appliance inlet connection from the gas supply connection or connections, when all appliances are in operation at maximum capacity, is no more than 0.5 inch water column. Conformance may be determined on the basis of test, or the gas piping system may be sized in accordance with Table 4 (next page). The natural gas supply connection shall be not less than ¾-inch nominal pipe size.

5.1.5 Joints for Gas Piping. All pipe joints in the piping system, unless welded or brazed, shall be screw joints that comply with USA Standard Pipe Threads (Except Dryseal) B2.1-1960. Right and left nipples and couplings shall not be used. Unions, if used, shall be of the ground joint type. The material used for welding or brazing pipe connections shall have a melting temperature in excess of 1,000°F.

5.1.6 Joints for Tubing. Joints on tubing shall be made with either a single or double flare of the proper degree, as recommended by the tubing manufacturer, by means of approved gas tubing fittings, or joints may be brazed with material having a melting point exceeding 1,000°F.

5.1.7 Pipe Joint Compound. Screw joints shall be made up tight with approved pipe joint compound, insoluble in liquefied petroleum gas, and shall be applied to the male threads only.

5.1.8 Concealed Tubing. Tubing shall not be run inside walls, floors, or partitions. Where tubing passes through walls, floors,

TABLE 4

Sizing Gas Piping Systems

Combination LP-Natural Gas System (Based on a Total Pressure Drop of ½ in. H_2O)			LP-Gas-Only System (Based on a Pressure Drop of ½ in. H_2O)		
Main Gas Manifold			**Main Gas Manifold**		
Total Appliance Input Name Plate Rating	**Nominal Pipe Size**		**Total Appliance Input Name Plate Rating**	**Nominal Pipe Size**	**Tube od**
No More Than:			No More Than:		
7,000 Btu/hr	¼		11,000 Btu/hr	¼	⅜
27,000 Btu/hr	⅜		42,000 Btu/hr	⅜	½
56,000 Btu/hr	½		88,000 Btu/hr	½	⅝
115,000 Btu/hr	¾		183,000 Btu/hr	¾	¾
220,000 Btu/hr	1		340,000 Btu/hr	1	
Branch Take-offs			**Branch Take-offs**		
Individual Appliance Input Name Plate Rating	**Nominal Pipe Size**	**Tube od**	**Individual Appliance Input Name Plate Rating**	**Nominal Pipe Size**	**Tube od**
No More Than:			No More Than:		
25,000 Btu/hr		⅜	2,500 Btu/hr		¼
31,000 Btu/hr	¼		39,000 Btu/hr		⅜
49,000 Btu/hr		½	49,000 Btu/hr	¼	
64,000 Btu/hr	⅜		77,000 Btu/hr		½
95,000 Btu/hr		⅝	100,000 Btu/hr	⅜	
120,000 Btu/hr	½		150,000 Btu/hr		⅝
250,000 Btu/hr	¾		190,000 Btu/hr	½	
			390,000 Btu/hr	¾	

or partitions, or similar installations, such tubing shall be protected by the use of grommets that shall snugly fit both the tubing and the hole through which the tubing passes.

5.1.9 Concealed Joints. No piping or tubing joints shall be located in any floor, wall, partition, or similar concealed construction space.

5.1.10 Location of Gas Supply Connection

5.1.10.1 For LP-Gas-only systems the supply connection shall be located at the hitch, container recess, or in the rear third of the total length of the mobile home and within 18 inches from the left (road) side wall.

TABLE 4

Sizing Gas Piping Systems

Combination LP-Natural Gas System (Based on a Total Pressure Drop of ½ in. H_2O)

Main Gas Manifold

Total Appliance Input Name Plate Rating	Nominal Pipe Size
No More Than:	
7,000 Btu/hr	¼
27,000 Btu/hr	⅜
56,000 Btu/hr	½
115,000 Btu/hr	¾
220,000 Btu/hr	1

Branch Take-offs

Individual Appliance Input Name Plate Rating	Nominal Pipe Size	Tube od
No More Than:		
25,000 Btu/hr		⅜
31,000 Btu/hr	¼	
49,000 Btu/hr		½
64,000 Btu/hr	⅜	
95,000 Btu/hr		⅝
120,000 Btu/hr	½	
250,000 Btu/hr	¾	

LP-Gas-Only System (Based on a Pressure Drop of ½ in. H_2O)

Main Gas Manifold

Total Appliance Input Name Plate Rating	Nominal Pipe Size	Tube od
No More Than:		
11,000 Btu/hr	¼	⅜
42,000 Btu/hr	⅜	½
88,000 Btu/hr	½	⅝
183,000 Btu/hr	¾	¾
340,000 Btu/hr	1	

Branch Take-offs

Individual Appliance Input Name Plate Rating	Nominal Pipe Size	Tube od
No More Than:		
2,500 Btu/hr		¼
39,000 Btu/hr		⅜
49,000 Btu/hr	¼	
77,000 Btu/hr		½
100,000 Btu/hr	⅜	
150,000 Btu/hr		⅝
190,000 Btu/hr	½	
390,000 Btu/hr	¾	

or partitions, or similar installations, such tubing shall be protected by the use of grommets that shall snugly fit both the tubing and the hole through which the tubing passes.

5.1.9 Concealed Joints. No piping or tubing joints shall be located in any floor, wall, partition, or similar concealed construction space.

5.1.10 Location of Gas Supply Connection

5.1.10.1 For LP-Gas-only systems the supply connection shall be located at the hitch, container recess, or in the rear third of the total length of the mobile home and within 18 inches from the left (road) side wall.

5.1.10.2 For combination LP-Gas and natural gas systems, the natural gas supply connection shall be located under the rear third of the total length of the mobile home and within 18 inches from the left (road) side wall. An additional connection may also be located at th hitch. The system shall be sized to provide adequate capacity from either supply connection for natural gas.

5.1.11 **Identification of Gas Supply Connections.** A 3 by 1¾ inch, etched, stamped, or embossed metal tag, not less than 0.020 inch in thickness, of brass, stainless steel, anodized aluminum, or alclad aluminum shall be permanently attached on the outside of the exterior wall of the mobile home, as close as possible to each gas supply connection or to the end of the pipe. Each tag shall be legibly inscribed with the information shown in the box o this page or at the top of the next depending on the gas system used.

LP-Gas System

This gas piping system is designed for use of liquefied petroleum gas only.

DO NOT CONNECT NATURAL GAS TO THIS SYSTEM.

CONTAINER SHUTOFF VALVES SHALL BE CLOSED DURING TRANSIT.

Before turning on gas, make certain all gas connections have been made tight, all appliance valves are turned off, and any unconnected outlets are capped.

After turning on gas, test gas piping and appliance for leakage with soapy water, and light all pilots.

5.1.12 **Gas Supply Connectors**

5.1.12.1 **Natural Gas.** A listed minimum ½ inch nominal (ID) gas supply connector, with ¾ inch NPT terminal fittings, six feet in length, shall be supplied by the manufacturer when the fuel gas piping system is designed for the use of natural gas.

5.1.12.2 **LP-Gas.** A listed LP-Gas flexible connector shall be supplied when the fuel gas piping system is designed for the use of LP-Gas and cylinder(s) and regulator(s) are supplied.

5.1.13 **Appliance Connections.** All gas-burning appliances shall be connected to the fuel piping with materials as provided in 5.1.2

Combination LP-Gas and Natural Gas System

This gas piping system is designed for use of either liquefied petroleum gas or natural gas.

NOTICE: BEFORE TURNING ON GAS BE CERTAIN APPLIANCES ARE DESIGNED FOR THE GAS CONNECTED AND ARE EQUIPPED WITH CORRECT ORIFICES. SECURELY CAP THIS INLET WHEN NOT CONNECTED FOR USE.

Before turning on gas, make certain all gas connections have been made tight, all appliance valves are turned off and any unconnected outlets are capped.

After turning on gas, test gas piping and appliances for leakage with soapy water, and light all pilots.

of this Part or with listed appliance connectors of semirigid tubing. Listed appliance connectors when used shall not run through walls, floors, or partitions. Listed appliance connectors of aluminum shall not be used externally.

5.1.14 Valves. Shutoff valves and appurtenances used in connection with gas piping shall be of a type designed and approved for use on LP-Gas.

5.1.15 Gas Inlet Cap. On gas supply systems provided with more than one connection, a suitable cap to effectively close the gas inlet not in use shall be securely attached to the mobile home.

5.1.16 Electric Ground. Gas piping shall not be used for an electrical ground.

5.1.17 Couplings. Where it is necessary to join sections of screw piping, right and left nipples and couplings shall not be used. Ground joint unions may be installed at appliance inlet connections.

5.1.18 Hangers and Supports. All gas piping shall be adequately supported by galvanized or equivalently protected metal straps or hangers at intervals of not more than 4 feet, except where adequate support and protection is provided by structural members. Solid-iron-pipe gas supply connection(s) shall be rigidly anchored to a structural member within 6 inches of the supply connection(s).

5.1.19 Testing for Leakage.

5.1.19.1 Before Appliances are Connected. Piping systems shall stand a pressure of at least six inches mercury or three pounds gage for a period of not less than ten minutes without showing any drop in pressure. Pressure shall be measured with a mercury manometer or slope gage, or an equivalent device calibrated so as to be read in increments of not greater than one-tenth pound. The source of pressure shall be isolated before the pressure tests are made.

NOTE: Before a test is begun, the temperature of the air and of the piping should be the same, and constant air temperature should be maintained throughout the test.

5.1.19.2 When appliances are connected to the piping system the entire system shall be pressurized to not less than 10 inches nor more than 14 inches water column and the appliance connections tested for leakage with soapy water.

5.2 Oil Piping Systems

5.2.1 General. The requirements of this Section shall govern the installation of all liquid fuel piping attached to any mobile home. None of the requirements listed in this Section shall apply to the piping in the appliance(s).

5.2.2 Materials. All materials used for the installation, extension, alteration, or repair of any oil piping system shall be new and free from defects or internal obstructions. The system shall be made of materials having a melting point of not less than 1,450°F, except as provided in 5.2.4. They may consist of one or more of the following materials:

5.2.2.1 Pipe shall be steel or wrought-iron pipe complying with USA Standard Wrought-Steel or Wrought-Iron Pipe, B36.10-1959. Threaded copper or brass pipe in iron pipe sizes may be used.

5.2.2.2 Fittings for oil piping shall be wrought iron, malleable iron, steel, or brass (containing not more than 75 percent copper).

5.2.2.3 Copper tubing shall be annealed type, grade K or L conforming to the Specifications for Seamless Copper Water Tube (ASTM B88-66), or shall comply with the specifications for Seamless Copper Tube for Refrigeration Field Service, ASTM B280-66.

5.2.2.4 Steel tubing shall be externally corrosion protected and shall have a minimum wall thickness of 0.049 inch.

5.2.3 Size of Oil Piping. The minimum size of all fuel oil tank piping connecting outside tanks to the appliance shall be no smaller than ⅜ inch od copper tubing or ¼ inch IPS. In those cases where No. 1 fuel oil is used with a listed automatic pump (fuel lifter), ¼ inch od copper tubing may be used if specified by the pump manufacturer.

5.2.4 Joints for Oil Piping. All pipe joints in the piping system, unless welded or brazed, shall be screw joints which comply with USA Standard Pipe Threads (Except Dryseal), B2.1-1960. The material used for welding or brazing pipe connections shall have a melting temperature in excess of 1,000°F.

5.2.5 Joints for Tubing. Joints on tubing shall be made with either a single or double flare of the proper degree, as recommended by the tubing manufacturer, by means of approved tubing fittings. Joints may be brazed with materials having a melting point in excess of 1,000°F.

5.2.6 Pipe Joint Compound. Screw joints shall be made up tight with approved pipe joint compound which shall be applied to the male threads only.

5.2.7 Couplings. Where it is necessary to join sections of screw piping, right and left nipples and couplings shall not be used. Ground joint unions may be installed at appliance inlet connections.

5.2.8 Grade of Piping. Fuel oil piping installed in conjunction with gravity feed systems to oil heating equipment shall slope in a gradual rise upward from a central location to both the oil tank and the appliance in order to eliminate air locks.

5.2.9 Strap Hangers. All oil piping shall be adequately supported by galvanized or equivalently protected metal straps or hangers at intervals of not more than 4 feet, except where adequate support and protection is provided by structural members. Solid-iron-pipe oil supply connection(s) shall be rigidly anchored to a structural member within 6 inches of the supply connection(s).

5.2.10 Testing for Leakage. Before setting the system in operation, tank installations and piping shall be checked for oil leaks with fuel oil of the same grade that will be burned in the appliance. No other material shall be used for testing fuel oil tanks and piping. Tanks shall be filled to maximum capacity for the final check for oil leakage.

6. Heat-Producing Appliances

6.1 Every heat producing appliance used in mobile homes shall be listed or certified by an approved testing agency for this application.

6.2 **Fuel Conversion.** No fuel-burning appliance shall be converted from one fuel to another unless converted in accordance with the terms of its listing.

6.3 Venting

6.3.1 Fuel-burning heating appliances, except listed ranges, ovens, and illuminating appliances not required to be vented, shall be of the vented type and vented to the outside. In no case shall the vent of a gas-burning appliance terminate underneath the mobile home.

6.3.2 Fuel-burning heat producing appliances, except ranges and illuminating appliances, shall be designed or installed to provide for a complete separation of the combustion system from the atmosphere of the mobile home. Combustion air inlets and flue gas outlets shall be listed or certified as components of the appliance.

NOTE: For liquefied petroleum gas appliances, see Division VI, Section 6.11 of the Standard for the Storage and Handling of Liquefied Petroleum Gases, USAS Z106.1-1967, NFPA No. 58-1967.

6.3.3 Vents, roof jacks, and special fittings supplied as component parts of an appliance shall be installed in conformity with the terms of their listing. A single wall metal vent shall not be used unless it is a component part of a listed appliance.

6.3.4 Every joint of any vent or vent connector shall be secure, rigid, tight, and of approved design and workmanship.

6.3.5 The area in which cooking appliances are located shall be ventilated by a metal duct which may be single wall, not less than 12.5 square inches in cross sectional area (minimum dimension shall be two inches), located above the appliance(s), or by mechanical ventilating equipment that is installed in accordance with the requirements of the testing agency and the manufacturer's instructions. Gravity or mechanical ventilation shall be installed within a horizontal distance of not more than ten feet from the vertical front of the appliance(s). Metal hoods incorporating ducts shall be designed so that the duct outlet is located at such a point

as to preclude the trapping of products of combustion. All ducts shall extend through the wall or roof to the outer air.

6.4 **Installation.** The installation of each heat-producing appliance shall conform to the terms of its listing as specified on the appliance and in the manufacturer's instructions. The installer shall leave the manufacturer's instructions attached to the appliance. Every appliance shall be secured in place to avoid displacement and movement from vibration and road shock.

6.5 **Instructions.** Operating instructions shall be provided with the appliance.

6.6 **Marking**

6.6.1 Information on clearances, input ratings, lighting and shutdown shall be attached to the appliances with the same permanence as the nameplate, and so located that it is easily readable when the appliance is properly installed.

6.6.2 Each fuel burning appliance shall bear permanent marking designating the type(s) of fuel for which it is listed.

6.7 **Accessibility.** Every appliance shall be accessible for inspection, service, repair, and replacement without removing permanent construction. Sufficient room shall be available to enable the operator to observe the burner, control, and ignition means while starting the appliance.

6.8 **Location.** Heat-producing appliances shall be so located that no doors, drapes, or other such material can be placed or swung closer to the front of the appliance than the clearances specified on the labelled appliances.

6.9 **Clearances.** Clearances between heat-producing appliances and adjacent surfaces shall not be less than specified in the terms of their listing. Clearance spaces shall be framed in or guarded to prevent creation of storage space within the clearance specified.

6.10 Air Ducts

6.10.1 **Material.** Supply ducts shall be made from galvanized steel, tin-plated steel, or aluminum, or shall be listed Class I air ducts. A duct system integral with the structure may be acceptable if it is of durable construction that can be demonstrated to be equally resistent to fire and deterioration. Ducts constructed from sheet metal shall be in accordance with Table 5. Portions of return ducts directly above the heating surface of the appliance, or closer than 2 feet horizontally from the outer jacket or casing of

the appliance, shall be constructed in accordance with the requirements of Table 5 or shall be listed Class I air ducts.

TABLE 5
Minimum Metal Thickness for Ducts*

Duct Type	Diameter 14 inches or less	or	Width over 14 inches
Round	0.013 in.		0.016 in.
Enclosed Rectangular	0.013 in.		0.016 in.
Exposed Rectangular	0.016 in.		0.019 in.

*When 'nominal' thicknesses are specified, 0.003 inch shall be added to these 'minimum' metal thicknesses.

6.10.2 Sizing of Ducts. Ducts shall be designed so that when a labeled forced-air furnace is installed and operated continually at its normal input rating in the mobile home, with all registers in full open position, the static pressure measured in the duct plenum shall not exceed that shown in Table 6 or exceed that shown on the label of the appliance. When an air-cooler coil is installed in the system, the total static pressure of the coil and the system shall not exceed that shown on the label of the appliance. The minimum dimension of any branch duct shall be at least 1½ inches, and of any main duct, 2½ inches.

6.10.3 Joints and Seams. Joints and seams of ducts shall be securely fastened and made substantially airtight. Slip joints shall have a lap of at least 1 inch and shall be individually fastened.

TABLE 6
Maximum Allowable Static Pressures in Supply Duct Systems

Input to Forced Air Furnace, Btu/hr	External Static Pressure, Inches Water Column, Temperature of Outlet Air Determined by Function of Limit Control	
	Above 165°F	165°F or Less
55,000 and under	0.10	0.20
Over 55,000 to 80,000	0.12	0.24
Over 80,000 to 100,000	0.15	0.30

Tape or caulking compound may be used for sealing mechanically secure joints. Where used, tape or caulking compound shall not be subject to deterioration under long exposures to temperatures up to 200°F and to conditions of high humidity, excessive moisture, or mildew.

6.10.4 Airtightness of Supply Duct Systems. A supply duct system shall be considered substantially airtight when the static pressure in the duct system, with all registers sealed and with the furnace air circulator at high speed, is at least 80 percent of the static pressure measured in the furnace casing, with its outlets sealed and the furnace air circulator operating at high speed. For the purpose of this paragraph and 6.10.2, pressures shall be measured with a water manometer or equivalent device calibrated to read in increments not greater than 1/10 inch water column.

6.10.5 Supports. Ducts shall be securely supported.

6.11 Circulating Air

6.11.1 Return Air Openings. Provisions shall be made to permit the return of circulating air from all rooms and living spaces, except toilet room(s), to the circulating air supply inlet of the furnace.

6.11.2 Return Air Ducts. The cross-sectional areas of the return air duct shall not be less than 2 square inches for each 1,000 Btu per hour input rating of the appliance. No damper shall be placed in any return air duct, except that a diverting damper may be placed in a combination fresh air intake and return air duct so arranged that for all possible positions of the damper the required cross-sectional area will not be reduced.

6.11.3 Permanent Unclosable Openings. Living space not served by return air ducts and closed off from the return opening of the furnace by doors, sliding partitions, or other means shall be provided with permanent unclosable openings in the doors or separating partitions to allow circulated air to return to the furnace. Such openings may be grilled or louvered. The net free area of each opening shall be not less than 1 square inch for every 5 square feet of total living space closed off from the furnace by the door or partition serviced by that opening. Undercutting doors connecting the closed-off space may be used as a means of providing return air area. However, in the event that doors are undercut, they shall be undercut a minimum of 2 inches and no more than 2½ inches, and no more than one half of the free air area so provided shall be counted as return air area.

APPENDIX TO PART III

Applicable Standards

Standards for Air Conditioning and Heat-Producing Appliances and Equipment*

Type	USASI (Formerly ASA)	UL	Other Standards
Appliances			
Liquid Fuel-Burning Heating Appliances for Mobile Homes and Travel Trailers		307(a) 1965	
Gas-Heating Appliances for Mobile Homes and Travel Trailers		307(b) 1965	
Clothes Dryers (Gas-Fired)	Z21.5.1-1966		
Commercial Gas-Fired and Electrically-Heated Hot Water Generating Equipment			NSF-5 1959
Gas-Fired Gravity and Forced Air Central Furnaces	Z21.47-1965		
Gas-Fired Gravity and Fan Type Floor Furnaces	Z21.48-1966		
Gas-Fired Gravity and Fan Type Sealed Combustion System Wall Furnaces	Z21.44-1966		
Commercial Cooking and Warming Equipment			NSF-4 1967
Gas-Fired Illuminating Appliances	Z21.42-1963		
Domestic Gas Ranges, Free Standing	Z21.1.1-1966		
Domestic Gas Ranges, Built-in Domestic Cooking Units	Z21.1.2-1966		
Refrigerators Using Gas-Fuel	Z21.19-1966		
Automatic Storage Type Water Heaters with Input Less than 50,000 BTUH	Z21.10.1-1966		
Ferrous Pipe and Fittings			
Black and Hot Dipped Zinc-Coated (Galvanized) Welded and Seamless Steel Pipe for Ordinary Uses			ASTM A-120-66 WW-P-406b(1)'64
Pipe Threads	B2.1-1960		
Wrought-Steel and Wrought-Iron Pipe	B36.10-1959		

Type	USASI (Formerly ASA)	UL	Other Standards
Nonferrous Pipe, Tubing and Fittings			
Seamless Copper Water Tube			ASTM B-88-66
Seamless Copper Tube for Air Conditioning and Refrigeration Field Service			ASTM B-280-66
Metal Connectors for Gas Appliances	Z21.24-1966		
Manually Operated Gas Valves	Z21.15-1966		
Mobile Home Gas Connectors (Flexible Metal-Plastic Coated)			TSC 9-63
Seamless Copper and Copper Alloy Pipe and Tube			ASTM B-251-67
Seamless Copper Pipe, Standard Sizes			ASTM B-42-66 WW-P-377d'62
Miscellaneous			
Air Ducts		181-67	
Flame Tests of Flame-Resistant Fabrics		214-55	
Tube Fittings for Flammable and Combustible Fluids and Refrigeration Service		109-66	
Hoods			GAL
LPG Containers and Accessories			ASME, DOT
Pigtails, Expansion Coils, and Flexible Hose Connectors for LP-Gas		569-59	
Roof Jacks for Trailer Coaches		311-58	
Safety Devices — Appliances	Z21.22-1965 Z21.20-1966 Z21.23-1965 Z21.21-1963		
Gas Vents	A131.2-1964	441-64	
Factory-Built Chimneys	A131.1-1964	103-64	
Installation of Oil Burning Equipment	Z95.1-1965		NFPA No. 31-1968
Installation of Gas Appliances, Gas Piping in Buildings	Z21.30-1964		NFPA No. 54-1964
Storage and Handlin of Liquefied Petroleum Gas	Z106.1-1967		NFPA No. 58-1967

*Dates shown are latest editions at time of printing including the dates of any Addenda issued.

Notes to Table III

Abbreviations used in Table III refer to standards as identified below and elsewhere in this standard.

AGA: Standards and Tentative Standards published by the *American Gas Association,* 1032 East 62nd Street, Cleveland, Ohio 44103.

ASA: *American Standards Association* — now *United States of America Standards Institute* (USASI), 10 East 40th St., New York, N. Y. 10016.

ASME: Standards and Tentative Standards published by the *American Society of Mechanical Engineers,* 345 East 47th Street, New York, N. Y. 10017.

ASTM: Standards and Tentative Standards published by the *American Society for Testing and Materials,* 1916 Race Street, Philadelphia, Pa. 19103.

DOT — Regulations published in the Federal Code of Regulations for the Department of Transportation. Title 49, Parts 171-190 of the FCR are applicable. Available from the U.S. Government Printing Office, Washington, D. C. 20234.

GAL: Gas Appliance Laboratories, 3134 East Olympic Boulevard, Los Angeles, California 90023.

IAPMO — Standards [designated above as TSC (Trailer Standard)] published by the *International Association of Plumbing and Mechanical Officials,* 5032 Alhambra Ave., Los Angeles, Calif. 90032 [formerly *Western Plumbing Officials Association* (WPOA.)].

UL: Standards and Tentative Standards published by the *Underwriters' Laboratories Inc.,* 207 East Ohio St., Chicago, Illinois 60611.

USASI: USA Standards approved by the *United States of America Standards Institute,* 10 East 40th Street, New York, N. Y. 10016.

Part IV

Electrical Systems

1. Introduction

1.1 Much of the material in Part IV has been taken from, or is based on, the National Electrical Code (USAS C1-1968, NFPA No. 70 — 1968).

2. Scope

2.1 Part IV of this standard covers the electric conductors and equipment installed within or on mobile homes and also the conductors that connect them to a supply of electricity.

2.2 This standard is not intended as a design specification or an instruction manual for untrained persons.

2.3 The National Electrical Code (USAS C1-1968) will prevail except as otherwise permitted or required in Part IV of the Standard.

2.4 The provisions of this Standard are not intended to prevent the use of any material, appliance, installation, device, arrangement, or method of construction not specifically prescribed herein, provided any such alternative has been approved or listed. An enforcement agency may approve any such alternative if it finds the proposed design is satisfactory for the purpose intended, and if the material, appliance, installation, device, arrangement, and method or work offered is, for the purpose intended, at least the equivalent performance of that prescribed in this standard considering quality, strength, effectiveness, durability, safety, and protection of life and health. An enforcement authority shall require that satisfactory evidence or proof be submitted to substantiate any claims that may be made regarding the use of any such alternative.

3. Definitions

Accessible (as Applied to Wiring Methods). Not permanently closed-in by the structure or finish of the mobile home; capable of being removed without disturbing the mobile home structure or finish. (See "Concealed" and "Exposed.")

Accessible (as Applied to Equipment). Admitting close approach because not guarded by locked doors, elevation, or other effective means. (See "Readily Accessible.")

Air Conditioning or Comfort Cooling Equipment. All of that equipment intended or installed for the purpose of processing the treatment of air so as to control simultaneously its temperature, humidity, cleanliness, and distribution to meet the requirements of the conditioned space.

Appliance. Utilization equipment, generally other than industrial, normally built in standardized sizes or types, which is installed or connected as a unit to perform one or more functions, such as clothes washing, air conditioning, food mixing, deep frying, etc.

Appliance, Fixed. An appliance fastened or otherwise secured at a specific location.

Appliance, Portable. An appliance that is actually moved or can easily be moved from one place to another in normal use.

NOTE: For the purpose of this standard, the following major appliances are considered portable: Refrigerators, clothes washers, dishwashers without booster heaters, or other similar appliances.

Appliance, Stationary. An appliance that cannot be easily moved from one place to another in normal use.

Approved. The word "approved" as used in this standard means acceptable to the authority having jurisdiction.

Attachment Plug (Plug Cap) (Cap). A device that, by insertion in a receptacle, establishes connection between the conductors of the attached flexible cord and the conductors connected permanently to the receptacle.

Branch Circuit. That portion of a wiring system extending beyond the final overcurrent device protecting the circuit.

NOTE: A device not approved for branch circuit protection, such as a thermal cutout or motor overload protective device, is not considered as the overcurrent device protecting the circuit.

Branch Circuit—Appliance. A circuit supplying energy to one or more outlets to which appliances are to be connected and which has no permanently connected lighting fixtures not a part of an appliance.

Branch Circuit—General Purpose. A branch circuit that supplies a number of outlets for lighting and appliances.

Branch Circuit—Individual. A branch circuit that supplies only one utilization equipment.

Cabinet. An enclosure designed either for surface or flush mounting, and provided with a frame, mat, or trim in which swinging doors are hung.

Circuit Breaker. A device designed to open and close a circuit by nonautomatic means, and to open the circuit automatically on a predetermined overload of current, without injury to itself when properly applied within its rating.

Concealed. Rendered inaccessible by the structure or finish of the mobile home. Wires in concealed raceways are considered concealed, even though they may become accessible by withdrawing them.

Connector, Pressure (Solderless). A pressure wire connector is a device that establishes the connection between two or more conductors or between one or more conductors and a terminal by means of mechanical pressure and without the use of solder.

Dead Front (As Applied to Switches, Circuit-Breakers, Switchboards, and Distribution Panel). So designed, constructed, and installed that no current-carrying parts are normally exposed on the front.

Demand Factor. The ratio of the maximum demand of the system, or part of a system, to the total connected load of the system or of the part of the system under consideration.

Device. A unit of an electrical system that is intended to carry but not utilize electrical energy.

Disconnecting Means. A device, or group of devices, or other means whereby the conductors of a circuit can be disconnected from their source of supply.

Distribution Panel. A single panel or a group of panel units designed for assembly in the form of a single panel, including buses, and with or without switches or automatic overcurrent protective devices or both, for the control of light, heat, or power circuits of small individual as well as aggregate capacity; designed to be placed in a cabinet placed in or against a wall or partition and accessible only from the front.

Enclosed. Surrounded by a case that will prevent a person from accidentally contacting live parts.

Equipment. A general term, including material, fittings, devices, appliances, fixtures, apparatus, and the like, used as a part of, or in connection with, an electrical installation.

Exposed (as Applied to Live Parts). A live part that can be inadvertently touched or approached nearer than a safe distance. It is applied to parts not suitably guarded, isolated, or insulated. (See "Accessible" and "Concealed.")

Exposed (as Applied to Wiring Method). Not concealed.

Externally Operable (As Applied to Equipment That Is Enclosed in a Case or Cabinet). Capable of being operated without exposing the operator to contact with live parts.

Fitting. An accessory, such as a locknut, bushing, or other part of a wiring system, that is intended primarily to perform a mechanical rather than an electrical function.

Ground. A conducting connection, whether intentional or accidental, between an electrical circuit or equipment and earth, or to some conducting body that serves in place of the earth.

Grounded. Connected to earth or to some conducting body that serves in place of the earth.

Grounded Conductor. A conductor that is intentionally grounded, either solidly or through a current-limiting device.

Grounding Conductor. A conductor used to connect an equipment, device, or wiring system with a grounding electrode.

Guarded. Covered, shielded, fenced, enclosed, or otherwise protected, by means of suitable covers or casings, barriers, rails or screens, mats or platforms, to eliminate the liability of contact or approach of persons or objects to a point of danger.

Identified Ground. The conductor or terminal to which it refers is to be recognized as grounded.

Isolated. Not readily accessible to persons unless special means for access are used.

Labeled. Equipment or materials to which has been attached a label of a nationally recognized testing laboratory that maintains periodic inspection of production of labeled equipment or materials and by whose labeling is indicated compliance with nationally recognized standards or the conduct of tests to determine suitable usage in a specified manner.

Lighting Outlet. An outlet intended for the direct connection of a lamp holder, a lighting fixture, or a pendant cord terminating in a lamp holder.

Listed. Equipment or materials included in a list published by a nationally recognized testing laboratory that maintains periodic inspection of production of listed equipment or materials and whose listing states either that the equipment or material meets nationally recognized standards or has been tested and found suitable for use in a specified manner.

Mobile Home. A vehicular, portable structure built on a chassis and designed to be used without a permanent foundation* as a dwelling when connected to indicated utilities.

Outlet. A point on the wiring system at which current is available to supply utilization equipment.

Power Supply Assembly. The conductors, including the grounding conductors, insulated from one another, the connectors, attachment plug caps, and all other fittings, grommets, or devices installed for the purpose of delivering energy from the service equipment to the distribution panel within the mobile home.

Raceway. Any channel for holding wires, cables, or bus bars that is designed expressly for, and used solely for, this purpose. Raceways may be of metal or insulating material and the term includes rigid metal conduit, flexible metal conduit, electrical metallic tubing, underfloor raceways, cellular metal floor raceways, surface metal raceways, wireways and busways, and rigid nonmetallic conduit.

Raintight. So constructed or protected that exposure to a beating rain will not result in the entrance of water.

Readily Accessible. Capable of being reached quickly for operation, renewal, or inspection, without requiring those to whom ready access is requisite to climb over or remove obstacles or to resort to portable ladders, chairs, etc. (See "Accessible.")

Receptacle (Convenience) Outlet. A receptacle is a contact device installed at an outlet for the connection of an attachment plug and flexible cord.

Service Equipment. The necessary equipment, usually consisting of circuit breaker or switch and fuses and their accessories located near the point of entrance of supply conductors in a mobile home and intended to constitute the main control and means of cutoff for the supply to that mobile home.

*The phrase "without a permanent foundation" indicates that the support system is constructed with the intent that the mobile home placed thereon will be moved from time to time at the convenience of the owner.

Utilization Equipment. Equipment that utilizes electric energy for mechanical, chemical, heating, lighting, or similar useful purposes.

Voltage (of a Circuit). The greatest effective difference of potential between any two conductors of the circuit concerned.

Weatherproof. So constructed or protected that exposure to the weather will not interfere with its successful operation.

4. General Requirements

4.1 The following requirements apply to mobile homes intended for connection to a wiring system nominally rated 115/230 volts, 3-wire, AC with grounded neutral.

4.2 Mobile homes shall be provided with a power supply in accordance with Section 10 of this Part.

4.3 Mobile homes shall be provided with disconnecting means and branch circuit protective equipment installed in accordance with Section 9 of this Part.

4.4 A mobile home not intended as a dwelling unit, as for example, equipped for sleeping purposes only, contractor's on-site offices, construction job dormitories, mobile studio dressing rooms, banks, clinics, mobile stores, or intended for the display or demonstration of merchandise or machinery, shall not be required to meet the provisions of this Article pertaining to the number or capacity of circuits required. It shall, however, meet all other applicable requirements of this Part if provided with an electrical installation intended to be energized from a 115 volt or 115/230 volt AC power supply system.

5. Materials and Equipment

5.1 Electrical materials, devices, appliances, fittings, and other equipment installed, intended for use in, or attached to, the mobile home shall be listed by a nationally recognized testing agency.

6. Receptacle Outlets Required

6.1 Except in the bath and hall areas, receptacle outlets shall be installed at wall spaces 2 feet wide or more, so that no point along the floor line is more than 6 feet, measured horizontally, from an outlet in that space. Except as explained in the following, receptacle outlets are not required for wall spaces occupied by

for other than motor loads or 80 percent of the branch-circuit rating for air conditioning or other motor loads;

(c) The rating of a single portable appliance on a circuit having no other outlets shall not exceed 80 percent of the circuit rating;

(d) The rating of range branch circuit shall be based on the range demand as specified for ranges in Section 8 of this Part.

(e) Where laundry facilities are provided, in a mobile home, a 20 ampere branch circuit shall be provided with a 20 ampere outlet within six feet of the intended location of the appliance.

8. Calculations for Lighting and Appliance Load

8.1 The following method is to be employed in computing the supply cord and distribution panel load for each power supply assembly for each mobile home;

A. Lighting Watts: Length times width of mobile home (outside dimensions, exclusive of hitch) times 3 watts per square foot; e.g., Length × width × 3 = ... lighting watts.

B. Small Appliance Watts: Number of circuits times 1,500 watts for each 20-ampere appliance receptacle circuit (see definition of Appliance, Portable with note); e.g.,
Number of circuits × 1,500 = ... small appliance watts.

C. Total Watts: Lighting watts plus small appliance = ... total watts.

First 3,000 total watts at 100 percent plus remainder at 35 percent = ... watts to be divided by 230 volts to obtain current (amperes) per leg.

D. Total load for determining power supply is the summation of:

(1) Lighting and small appliance load as calculated in and B.

(2) Name plate amperes for motors and heater loads (exhaust fans, air conditioners,* electric, gas, or oil heating).**

(3) Add 25% of current of largest motor in (2).

(4) Total of nameplate amperes for: Disposal, Dishwasher, Water heater, Clothes dryer, Wall-mounted oven, Cooking units.

*Omit smaller of these two, except include blower motor if used as air conditioner evaporator motor.

**When an air conditioner is not installed and a 40-ampere power supply cord is provided, allow 15 amperes per leg for air conditioning.

Where number of these appliances exceeds three use 75% of total.

(5) Derive amperes for free standing range (as distinguished from separate ovens and cooking units) by dividing values below by 230 volts.

Name Plate Rating	Use
10,000 w × or less	80 percent of rating
10,001-12,500 w	8,000 w
12,501-13,500 w	8,400 w
13,501-14,500 w	8,800 w
14,501-15,500 w	9,200 w
15,501-16,500 w	9,600 w
16,501-17,500 w	10,000 w

(6) If outlets or circuits are provided for other than factory installed appliances include the anticipated load.

NOTE: The following example is given to illustrate the application of this Method of Calculation:

Example

A mobile home is 70 × 10 feet and has two portable appliance circuits, a 1000 watt 230 volt heater, a 200 watt 115 volt exhaust fan, a 400 watt 115 volt dishwasher and a 7000 watt electric range.

Lighting and small appliance load

Lighting 70 × 10 × 3 =	2100 watts	
Small appliance 1500 × 2 =	3000 watts	
	5100 watts	
1st 3000 watts at 100%		3000
Remainder (5,100 − 3,000 = 2,100) at 35%		735
		3735

$\frac{3735}{230}$ = 16 amperes per leg

1000 watt (heater) ÷ 230 =	4.4 amp
200 watt (fan) ÷ 115 =	1.7 amp
400 watt (dishwasher) ÷ 115 =	3.5 amp
7000 watt (range) × .8 ÷ 230 =	24. amp

	Amperes per leg	
	A	*B*
Lighting and appliances	16	16
Heater (230 volt)	4	4
Fan (115 volt)	2	—
Dishwasher (115 volt)	—	4
Range	24	24
Totals	46	48

Based on the higher current calculated for either leg, use one 50 ampere supply cord.

9. Disconnecting Means and Branch Circuit Protective Equipment

9.1 Mobile homes shall contain a distribution panel having a main overcurrent protective device rated not in excess of the current carrying capacity of the power supply assembly, installed with supply cord and branch circuits wired at the factory.

9.2 The distribution panel shall be installed in a readily accessible location near the point of entrance of the supply cord.

9.3 The distribution panel may be located with its front just inside a closet door, or it may be located in a closet above any shelf or floor if the location is such that a clear space of 6 inches is maintained in front of the distribution panel. However, working space shall be provided as required by the National Electrical Code (USAS C1-1968, NFPA No. 70-1968).

9.4 An appropriately rated service equipment panel or an enclosed panel board or an enclosed panel base assembly, approved and marked, "SUITABLE FOR USE AS SERVICE EQUIPMENT," shall be used. The distribution panel shall be of the insulated neutral type, with a grounding bar bonded to the metal frame of the panel or other approved grounding means.

9.5 A distribution panel main circuit-breaker shall be rated 50 amperes and employ a 2-pole circuit breaker rated 40 amperes for a 40-ampere supply cord, or 50 amperes for a 50-ampere supply cord. A distribution panel employing a disconnect switch and fuses shall be rated 60 amperes and shall employ a single 2-pole, 60-ampere fuseholder with 40- or 50-ampere main fuses for 40- or 50-ampere supply cords, respectively. The outside of the distribution panel shall be plainly marked with the fuse size. The main circuit breakers or fuses shall be plainly marked "Main."

9.6 Plug fuses and fuseholders shall be tamper-resistant, Type "S," enclosed in dead-front fuse panels.

9.7 The provisions of Article 210, of the National Electrical Code (USAS C1-1968) shall apply to branch circuits supplying lighting or appliance loads or combinations of such loads. Where motors or motor operated appliances are connected to any circuit supplying lighting or other appliance loads, the provisions of both Article 210 and Article 430 of the National Electrical Code shall apply. Article 430 of the National Electrical Code shall apply where branch circuit supplies only motor loads.

for use with a receptacle rated 50 amperes, 125/250 volts. It shall be molded of butyl rubber, neoprene, or other approved materials which have been found suitable for the purpose, and shall be molded to the flexible cord so that it adheres tightly to the cord at the point where the cord enters the attachment-plug cap. If a right-angle cap is used, the configuration shall be so oriented that the grounding member is farthest from the cord.

*10.7 The over-all length of the power-supply assembly, measured from the end of the cord, including bared leads, to the face of the attachment-plug cap shall be no less than 21 feet and shall not exceed 26½ feet. The length of the cord from the face of the attachment-plug cap to the point where the outer jacket of the cord is removed shall be at least 20½ feet.

10.8 The power-supply cord shall bear the following marking on the manufacturer's portion of the combination label: "For use with mobile homes — 40 amperes" or "For use with mobile homes — 50 amperes."

NOTE: The "For use with mobile homes — 40 ampere" power-supply assembly is for mobile homes that are factory-equipped with gas or oil-fired heating and cooking appliances.

10.9 The point of entrance of the power-supply assembly to the mobile home shall be in the exterior wall, floor, or roof, in the rear third section (away from the hitch) of the mobile home.

*10.10 Where a separately metered appliance is installed in the mobile home, or where the calculated load of the mobile home is between 50 amperes and 100 amperes, a second 50-ampere power-supply assembly may be installed, or a service as provided for in 10.1 and 10.11. The point of entrance of this second power-supply assembly shall be located not more than 12 inches away from the point of entrance of the main power-supply assembly. They shall not be interconnected on either the line side or the load side, except that the grounding circuits and grounding means shall be electrically interconnected.

*10.11 Where the calculated load exceeds 100 amperes or where a permanent feeder is used, the supply shall be by means of:

(a) one mast weatherhead installation installed in accordance with the National Electrical Code (USAS C1-1968), and containing four continuous insulated color-coded feeder conductors, one of which shall be a grounding conductor; or,

*See Tentative Interim Amendment No. 1-1968, page A119.1-106.

(b) an approved metal raceway from the disconnecting means to the underside of the mobile home with provisions for the attachment of a suitable junction box or fitting to the raceway on the underside of the mobile home [with or without conductors as in 10.11 (a)].

11. Wiring Methods

11.1 Electrical metallic tubing, flexible metallic conduit, armored cable, and nonmetallic sheathed cable, with grounding conductor shall terminate by means of fittings, clamps, or connectors approved for the purpose.

11.2 Rigid metal conduit shall be provided with a locknut inside and outside the box, and a conduit bushing shall be used on the inside. Inside ends of the conduit shall be reamed.

11.3 Nonmetallic outlet boxes are acceptable only with nonmetallic sheathed cable.

11.4 Outlet boxes shall fit closely to openings in combustible walls and ceilings; and they shall be flush with such surfaces.

11.5 Boxes, fittings and cabinets shall be securely fastened in place.

Exception: Snap-in type boxes or boxes provided with special wall or ceiling brackets that securely fasten boxes in walls or ceilings may be used.

11.6 The sheath or armor shall be continuous between outlet boxes and other enclosures.

11.7 Metal-clad and nonmetallic cables may be passed through the centers of the wide side of 2 by 4 studs. However, they shall be protected where they pass through 2 by 2 studs or at other studs or frames where the cable or armor would be less than 1½ inches from the inside or outside surface. Steel plates on each side of the cable, or a tube, with not less than No. 16 manufacturer's standard gage wall thickness, are required to protect the cable. These plates or tubes shall be securely held in place.

Exception: Wires may be run without steel protectors through notched wall studs when the notch is on the inside (room side) of the stud, and the inside wall material is applied prior to the installation of the wiring. This exception is applicable only if there is sufficient wall stud depth

ducting faceplates (metal faceplates screws may be used with nonconducting faceplates without being grounded), or (b) grounded.

13.2 Metallic faceplates shall be of ferrous metal not less than 0.030 inch in thickness or of nonferrous metal not less than 0.040 inch in thickness.

13.3 Faceplates of insulating material shall be listed by a nationally recognized testing laboratory.

13.4 Where metallic faceplates are used they shall be effectively grounded.

14. Conductors in Outlet Boxes

14.1 Each wire in an outlet box should be spaced as indicated below. Grounding wires, fixtures splicing wires, and conductors that do not leave the box are not counted.

No. 14 AWG — 2 cu in. per wire
No. 12 AWG — 2.25 cu in. per wire
No. 10 AWG — 2.50 cu in. per wire
No. 8 AWG — 3.0 cu in. per wire

NOTE: Where there is not sufficient space for a deeper box, four No. 14 AWG conductors may enter a box with or without cable clamps and containing one or more devices on a single mounting strap.

14.2 Wiring leads in the outlet boxes shall extend at least 4 inches from the wall surface.

15. Painting of Wiring

15.1 During painting or staining of the mobile home, it is acceptable to paint metal raceways (except where grounding continuity would be reduced) or the sheath of the nonmetallic cable. Some arrangement, however, must be made so that no paint is applied to the individual wires, as the color coding may be obliterated by the paint.

16. Polarization

16.1 The identified (white) conductor shall be employed for grounded circuit conductors only and shall be connected to the identified (white) terminal or lead on receptacle outlets and fixtures. It shall be the unswitched wire in switched circuits, except that a cable containing an identified conductor (white) may be used for single-pole three-way or four-way switch loops where

the connections are made so that the *unidentified* conductor is the return conductor from the switch to the outlet. Painting of the terminal end of the wire is not required.

16.2 If the identified (white) conductor of a cable is used for other than grounded conductors or for other than switch loops as explained above (for a 230-volt circuit, for example), the conductor shall be finished in a color other than white at each outlet where the conductors are visible and accessible.

16.3 Green-colored wires or green with yellow stripe shall be used for grounding conductors only.

17. Connection to Terminals and Splices

17.1 Connection of conductors to terminal parts shall ensure a thoroughly good connection without damaging the conductors and shall be made by means of pressure connectors (including set screw type), solder lugs, or splices to flexible leads. No. 8 or smaller solid conductors and No. 10 or smaller stranded conductors may be connected by means of clamps or screws with terminal plates having upturned lugs, or by means of approved screwless terminals. Terminals for more than one conductor shall be of a type approved for the purpose.

17.2 Conductors shall be spliced or joined with splicing devices approved for the use or by brazing, welding or soldering with a fusible metal or alloy. Soldered splices shall first be so spliced or joined as to be mechanically and electrically secure without solder and then soldered. All splices and joints and the free ends of conductors shall be covered with an insulation equivalent to that of the conductors.

17.3 If splices of the grounding wire in nonmetallic sheathed cable are made in outlet boxes, the splice should be insulated to prevent contact with terminals.

18. Wall Switches

18.1 Switche shall be rated as follows:

(a) For lighting circuits, switches shall be rated not less than 10 amperes — 125 volts and in no case less than the connected load.

(b) For motors or other loads, switches shall have ampere or horsepower ratings or both adequate for loads controlled. (An

"ac general use" snap switch may control a motor 2 horsepower or less with full-load current not over 80 percent of the switch ampere rating.)

19. Receptacle Outlets

19.1 Receptacle Outlets. All receptacle outlets:

(a) shall be of grounding type;

(b) shall be installed in accordance with Section 210-7 of the National Electrical Code (USAS C1-1968), and,

(c) except when supplying specific appliances, receptacles shall be parallel blade, 15-ampere, 125-volt, either single or multiple face type.

20. Lighting Fixtures

20.1 General

20.1.1 Any combustible wall or ceiling finish exposed between the edge of a fixture, canopy, or pan and an outlet box shall be covered with noncombustible material.

20.1.2 Listed pendant-type fixtures or pendant cords may be installed in mobile homes.

20.2 Recessed Lighting Fixtures

20.2.1 Conductors having insulation suitable for the temperature encountered shall be used.

20.2.2 Fixtures having branch-circuit terminal connections that operate at temperatures higher than 60 C (140 F) shall have circuit conductors as described in 20.2.3 and 20.2.4.

20.2.3 Branch-circuit conductors having an insulation suitable for the temperature encountered may be run directly to the fixture.

20.2.4 Tap connection conductors having an insulation suitable for the temperature encountered shall be run from the fixture terminal connection to an outlet box placed at least 1 foot from the fixture. Such a tap shall extend for at least 4 feet but not more than 6 feet and shall be in a suitable metal raceway.

20.3 Fluorescent Lighting Fixtures. When fluorescent lamp fixtures require high-temperature wire, the requirements of 20.2 shall apply.

20.4 Shower Fixtures

20.4.1 If a lighting fixture is provided over a bathtub or in a shower stall, it shall be of the approved enclosed and gasketed type.

20.4.2 The switch for shower lighting fixtures and exhaust fans, located over a tub or in a shower stall, shall be located outside the tub or shower space.

21. Wiring of Expandable Units and Dual Units

21.1 Expandable or dual unit mobile homes utilizing permanently installed feeder conductors may use permanent type wiring methods and materials for connecting such units to each other.

21.2 Expandable or dual unit mobile homes not having permanently installed feeder conductors which are to be moved from one location to another, may have disconnecting means with branch circuit protective equipment in each unit when so located that after assembly or joining together of units the requirements of Par. 10.10 will be met.

21.3 Expandable or dual unit mobile homes which are to be moved from one location to another, may be connected together with cord connections using approved raintight power supply connectors or approved power supply connectors installed in protected locations. All cords used shall be approved for extra hard usage in accordance with the National Electrical Code (USAS C1-1968). Cord length shall be kept at a minimum, with outlet boxes on each unit located where circuit conductors terminate; such outlet boxes to be adjacent to each other as near as practical after units are joined together.

22. Outdoor Outlets, Fixtures, Air-Cooling Equipment, Etc.

22.1 Outdoor fixtures and equipments shall be recognized for outdoor use. Outdoor receptacle or convenience outlets shall be of a gasketed-cover type.

22.2 A mobile home provided with a receptacle outlet designed to energize heating and/or air conditioning equipment located outside the mobile home, shall have permanently affixed adjacent to the outlet receptacle, a metal tag which reads:

This Connection is for Air Conditioning Equipment Rated at Not More Than .....Volts A.C., at.....amperes.

The correct voltage and ampere ratings shall be given. The tag shall be not less than 0.020 inch, etched brass, stainless steel, anodized or alclad aluminum. The tag shall not be less than 3 inches by 1¾ inches minimum size.

23. Grounding

23.1 Service Grounding. Service grounding shall be accomplished as follows:

23.1.1 The green-colored grounding wire in the supply cord or permanent feeder wiring shall be connected to the grounding bus in the distribution panel or disconnecting means.

23.1.2 A grounding wire shall be connected between distribution panel grounding terminal and a terminal on the chassis. Grounding terminals shall be of the solderless type and listed as pressure terminal connectors recognized for the wire size employed.

23.1.3 The chassis shall be grounded. The grounding conductor may be solid or stranded, insulated or bare, and shall be an armored grounding conductor or routed in conduit if No. 8 AWG. The conductor, if No. 6 AWG or larger, may be run without metal covering.

23.1.4 The grounding conductor shall be routed so as not to be exposed to damage. Protection can be afforded by the configuration of the chassis.

23.1.5 The distribution panel shall have a grounding bus, or approved grounding means for the various grounding connections.

23.1.6 The grounding bus shall have sufficient terminals for all grounding conductors.

23.2 Insulated Neutral

23.2.1 The grounded circuit conductor (neutral) shall be insulated from the grounding conductors and from equipment enclosures and other grounded parts. The grounded (neutral) circuit terminals in the distribution panel and in ranges, clothes dryers, counter-mounted cooking units, and wall-mounted ovens are to be insulated from the equipment enclosure. Bonding screws, straps, or buses in the distribution panel or in appliances are to be removed and discarded.

23.2.2 Connection of ranges and clothes dryers utilizing a grounded (neutral) conductor shall be made with 4 conductor

vice fed from the box will not interfere with or interrupt the grounding continuity.

23.3.4 Cord-connected appliances, such as washing machines, clothes dryers, refrigerators, and the electrical system of gas ranges, etc., shall be grounded by means of an approved cord with grounding conductor and grounding type plug.

23.4 Grounding of Noncurrent-Carrying Metal Parts

23.4.1 All major exposed metal parts that may become energized, including the water, gas, and waste plumbing, the roof and outer metallic covering, the chassis and metallic circulating air ducts, shall be effectively bonded to the grounding terminal or enclosure of the distribution panel or to the metal chassis. See Paragraph 23.1.2 for bonding of the chassis to the distribution panel grounding terminal.

23.4.2 The metallic roof and exterior covering are considered grounded if:

(a) The metal panels overlap one another and are securely attached to the wood or metal frame parts by metallic fastener, and

(b) The lower panel of the metallic exterior covering is secured by metallic fasteners at each cross member of the chassis, or the lower panel is bonded to the chassis by a metal strap.

23.4.3 The gas, water, and waste pipes are considered grounded if they are bonded to the chassis. If wire is used, grounding clamps, No. 8 AWG, minimum, armored grounding cable, and solderless connectors shall be used. Alternatively, suitable grounding straps may be used.

23.4.4 The furnace and metallic circulating air ducts shall be grounded.

24. Electrical Testing

24.1 Dielectric Strength Test. The wiring of each mobile home shall be subjected to a 1-minute, 900-volt dielectric strength test (with all switches closed) between live parts (including neutrals) and the mobile home ground. Alternatively, the test may be performed at 1,088 volts for 1 second. This test shall be performed after branch circuits are complete and after fixtures or appliances are installed. Listed fixtures and permanently installed appliances shall not be required to withstand the dielectric test.

24.2 Examination of Equipment for Safety. The examination or inspection of equipment for safety, according to the recommendations contained in this standard, should be conducted under uniform conditions and by organizations properly equipped and qualified for experimental testing, inspections of the run of goods at factories, and service-value determinations through field examinations.

25. Electrical Marking

25.1 The main circuit breakers or fuses shall be plainly marked "Main." Marking of branch-circuit breakers or fuses is optional.

25.2 If a fused distribution panel is used, the maximum fuse size for the mains shall be plainly marked as follows, with lettering at least ¼ inch high where visible when fuses are changed: "Maximum Main Fuses 40 (or 50) amp."

25.3 A metal nameplate on the outside adjacent to the supply cord entrance shall read, "This Mobile Home is Wired for 115/230 Volt, 3-Wire, 60 Cycle Supply, Supply Cord 40 (or 50) amp." The voltage marking may read 120/240 Volts instead of 115/230 Volts.

This Mobile Home Is Wired for 115/230
3-Pole, 4-Wire, 60 Cycle Supply.
Supply Cord 40* Amperes

*Or 50.

Tentative Interim Amendment No. 1-1968

Effective Sept. 30, 1968

Standard for Mobile Homes

NFPA No. 501B-1968

USA Standard A119.1-1969

Part IV — Electrical Systems

1. Revise Paragraph 10.7 to insert the 36½-foot *figure for the* 26½-foot *figure to agree with Tentative Interim Amendment No. 148 of the 1968 National Electrical Code, the revised text to read:*

10.7 The overall length of the power-supply assembly, measured from the end of the cord, including bared leads, to the face of the attachment-plug cap shall be no less than 21 feet and shall not exceed 36½ feet. The length of the cord from the face of the attachment-plug cap to the point where the outer jacket of the cord is removed shall be at least 20½ feet.

2. Revise the first and second sentences of Paragraph 10.10 to read:

10.10 Where a separately metered appliance is installed in the mobile home or where the calculated load of the mobile home is between 50 amperes and 150 amperes, up to three 50 ampere power-supply assemblies may be installed or a service as provided for in 10.1 and 10.11. Additional power-supply assemblies shall be located not more than 12 inches away from the point of entrance of the main power-supply assembly.

3. Revise the figure in Paragraph 10.11 (first line) to read "150 amperes" *instead of* "100 amperes."

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To Promote the Efficient Administration of Justice

JUDICATURE

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JUDICATURE

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PRESIDENT'S PAGE

Judicial Compensation

The problem of obtaining and retaining those who are best qualified for judicial service is inescapably directly affected by the compensation provided for judicial service. Successful lawyers provide the source that must be looked to in obtaining judges. To attract these men to seek judicial office it is necessary to provide an attractive salary and reasonable retirement benefits. Failure to compete in this respect with the marketplace will deprive the judiciary of many whose talents are needed in a time of rapidly increasing complexity of contemporary life and increasing rapidity of social change. Even those states operating under merit plan of judicial selection are hampered in the obtaining of highly qualified judges if the salaries and retirement provisions are inadequate. No matter how inviting the judicial position may otherwise be, failure to provide appropriate and competitive pay demonstrably narrows the class available for judicial office.

The American Judicature Society's biannual publication of Judicial Salaries and Retirement Plans of the fifty states provides an accurate and current source of information, and comparison data on the subject. A careful study of this data indicates that a substantial number of states are not providing adequate salaries and other benefits in the light of present day needs.

The salary and retirement study presented on the following pages does not include direct reference to the substantial increase in cost of living that has occurred and continues to occur. However, all of us are aware of this cost of living increase and what has happened to the value of the dollar. It is generally recognized that salaries that at one time have been considered

attractive may no longer be so thought of in view of the current economics of the marketplace.

The judiciary is one of the three branches of our government. The judges are the judiciary. The cost to the taxpayer of maintaining the judiciary in nearly all, if not in all, of our fifty states is less than three percent of the cost of all three branches of government. The cost of the federal judiciary as noted by Chief Justice Burger in his recent address on the state of the judiciary is less than the cost of one C-5A airplane. Yet the most difficult of our modern day problems as well as extremely heavy and increasing caseloads fall upon the judiciary. In a free society such as ours these social and economic upheavals tend to wind up on the doorstep of the courts. This is not the time to be penurious in an area that can lead to a deterioration of our third branch of government. It is in the public interest to provide judicial compensation and retirement benefits clearly adequate to obtain and retain an outstanding judiciary.

Edmund B. Hunter

President

EDITORIAL

Minimum Standards of Judicial Compensation

The American Judicature Society's first comprehensive judicial compensation survey was published in the April, 1945, issue of this Journal, just 25 years ago. Some comparisons between salaries there tabulated and those here listed for 1970 and 1971 are interesting and instructive.

In 1945 salaries of state supreme court justices ranged from $5,000 in Idaho, Kentucky, and Utah to $25,000 in New York. Nine states paid the judges of their highest courts less than $7,000 a year; 21 paid from $7,000 to $9,000; and six paid $9,000 to $10,000; making 36 states paying $10,000 a year, or less.

Trial judges' salaries ranged from as low as $2,000 in some parts of Colorado, and $3,000 in some courts in Kentucky and Ohio, to $25,000 in New York. There were 15 states paying general trial court judges less than $5,000 a year, and a total of 34 paying $7,000 a year or less.

In 1945 federal district judges received $10,000, court of appeals judges $12,000, and United States Supreme Court justices $20,000. The highest judicial salary in the country was the $28,500 paid to the presiding justice of the Appellate Division of the Supreme Court of New York.

These figures are now of only historical interest. In 1945 the Office of Price Administration was fighting wartime inflation and it was considered unpatriotic to raise any price or wage just because others were going up, since that would only add to the inflation spiral. Even then, however, judicial salaries were exempt from OPA controls and it was recognized that the need for quality judicial service justified the massive nationwide program of judicial salary increases detailed in that same issue.

The upward march of prices during the intervening quarter century has necessitated continued pressure to keep judicial salaries in step. There never has been, and never will be, a nation-wide judges' strike like those which from time to time have been staged by automobile, steel, railroad, and other workers. Campaigning for salary increases is embarrassing to judges and inconsistent with judicial dignity, and ought not to be necessary.

In 1961 the American Judicature Society pledged itself to a continuing crusade for adequate judicial compensation of which its regular biennial salary and retirement surveys are a part. The Society's then president, Cecil E. Burney, declared that on the basis of price levels prevailing at that time no judge of a general trial court anywhere in the United States should be paid less than $15,000 a year. Five years later there had been a general increase of 10 per cent in the price index, leading to announcement of a minimum of $16,600 on the same basis. This was upped again to $17,000 in 1968, and now, in 1970, we assert, for the same reasons, that no judge of a general trial court in this country should be paid less than $19,000 a year. We note also that the considerations are not greatly different for the more numerous and very important judges of courts of limited and special jurisdiction.

There have been similar trends with respect to retirement compensation, which was also covered in the 1945 survey and will always be an inseparable part of the judicial compensation picture. We commend these tables to legislatures and fiscal authorities in all states, recalling from the introduction to the 1945 survey the remark that:

> "money has power, and the amount of money spent on judicial salaries does make a difference to the people in the judicial service they get."

JUDICIAL SALARIES AND RETIREMENT PLANS IN THE UNITED STATES

Adequate judicial compensation means both justice for judges and justice for litigants.

Judicial salaries in the United States have traditionally been inadequate. It is only in the past few years that compensation has even approached a level which would attract the best men to the bench without great sacrifice. What follows is our 1970 report of the status of this important area.

APPELLATE COURT SALARIES

Since the American Judicature Society's last judicial salary survey in 1968, 33 states and Puerto Rico have raised the salaries of judges of courts of last resort. These increases have varied from $1,500 in New Mexico to $14,000 ($15,500 for the Chief Justice) in New Jersey. Over 80% of the raises were between $2,000 and $5,000. Besides New Jersey, other significant raises were realized in Louisiana ($10,000) and Delaware ($9,500). This activity has increased the average supreme court salary by 12%, to $27,660, which is more than double the 1952 average. The median supreme court salary has also risen since the last survey to $26,000.

However, salaries of supreme court justices are lagging slightly behind gubernatorial salaries. The median salary for governors is $27,500, and their average salary of $29,596 is nearly $2,000 more than justices receive. As of the last survey, nine states were paying justices less than $20,000 per year. Today there are only two. The present maximums and minimums are as follows:

Highest Salaries	
New Jersey	$45,000
California	42,747
New York	42,000

Lowest Salaries	
Mississippi, Wyoming	19,000
Maine, North Dakota, Utah	20,000

The national average has also been increasing at the intermediate appellate court level. In 1967 it was $27,118, and today the average is $28,625. This however represents only a 5% increase over the 1968 survey whereas that showed a 12% increase over its immediate predecessor. Since the last survey, 12 states have increased intermediate appellate salaries. Eleven of these were in amounts between $1,000 and $5,000. Substantial increases were realized in Louisiana ($11,000) and New Jersey ($15,000). Colorado, Oklahoma, Oregon, and Washington established new intermediate appellate courts with salaries of $22,500, $19,500, $25,000, and $25,000 respectively.

Twenty three states now have intermediate appellate courts. The present maximum and minimum salaries are:

Highest Salaries	
New York (1st and 2nd Departments)	$42,100
New Jersey	42,000
California	40,016

Lowest Salaries	
Oklahoma	19,500
Tennessee	20,000
New Mexico	21,000

TRIAL COURT SALARIES

The same positive trend is evidenced at the general trial court level. Thirty-seven states and Puerto Rico increased the salaries of their trial judges. This has boosted trial court salaries 11.8% to $23,345 since the last survey. In 1952, 32 states paid less than $10,000. Today, no state pays trial judges less than $15,000 and in only 18 states and Puerto Rico can a judge earn less than $20,000. In three jurisdictions, New Jersey and the First and Second Departments of New York, trial judges earn more than $35,000. In eight jurisdictions, Cal-

ifornia, Delaware, Hawaii, Maryland, Massachusetts, South Carolina, and the Third and Fourth Departments of New York, a trial judge earns between $30,000 and $35,000 per year. The national median has also increased by $1,250 to $22,250 since the last survey. The maximums and minimums are as follows:

Highest Salaries	
New York (First and Second Departments)	$39,100
New Jersey	37,000
California	33,396
Lowest Salaries	
Mississippi	16,000
Oklahoma, Utah, Tennessee	17,500
North Dakota	18,000

SALARIES IN OTHER COURTS

While it is beyond the scope of this article to detail salary changes in minor, special, and limited courts, some highlights are worthy of mention. Thirty-one states report salary increases in their courts of limited and special jurisdiction, ranging up to $9,000. Approximately 80% of the raises were between $500 and $4,000.

The most significant raises were realized in Delaware, where judges of the Family and Common Pleas Courts received raises of $6,000 to $27,000, and in Maryland where the People's Court judges of the City of Baltimore received an increase of $6,500, bringing their salary to $25,000. A salary increase of $8,670 brought the District Magistrates of Hawaii to $23,670. County, District, and Juvenile Court judges of New Jersey are now paid $34,000, a raise of $9,000. In Rhode Island, District Court judges are now paid $20,000 ($21,000 for the chief judge) whereas previously they were paid anywhere from $4,797 to $10,933.

The maximums and minimums of some representative minor courts are as follows:

Highest Salaries	
New Jersey	
County District Court	$34,000
California	
Municipal Court	30,724
New York	
County Court	25,000-30,000
Civil and Criminal Courts of New York City	30,000
Lowest Salaries	
Tennessee	
General Sessions Court	1,800-11,800
Arkansas	
Common Pleas Court	3,100-5,900
Utah	
City Court	5,000-10,500
Alabama	
Inferior Courts	6,000-10,000

JUDICIAL RETIREMENT

Since the Society's last biennial survey, 17 states have reported changes in their retirement legislation. Two, Maryland and Nebraska, have provided alternative plans to those now in effect. Maryland has provided a contributory pension plan effective July 1, 1969. Judges appointed after July 1, 1969, must participate, and other judges previously on the bench may join. It provides benefits equal to 1/16 of 60% of the maximum salary for each year of service up to 16 years. It is applicable to all trial and appellate judges.

The new Nebraska plan, designated the future member plan, covers all judges taking office after December 25, 1969, and those judges covered under the original plan who elected to join prior to June 30, 1970. The monthly allowance under this plan is equal to 1/12 of

2½% of the total salary earned by the judge for his judicial duties between the time he started making contributions and his retirement. The judge's contribution under this plan is 6%.

An Arkansas judge may now retire at any age after 20 years service. Maine added a provision for retirement at 65 after 12 years service. Minnesota now permits District Court judges with 25 years service to retire at age 65, and Texas has reduced its eligibility requirement for retirement from 16 to 12 years. Oregon now covers its new Court of Appeals and its Tax Court and has made the plan optional for District Court judges. Washington, Oklahoma, and Colorado have brought their new appellate courts under their retirement plans, and Rhode Island has combined its District Court retirement program with that of its other courts.

Benefits have been increased in Alabama to $9,600 per year for Circuit Court judges while Indiana has increased its ceiling on retirement benefits from $4,800 to $10,000. Ohio has changed its plan so that benefits may be as high as 85% of the judges' final average salary. Oregon, instead of setting a figure, now gives 45% of the average salary for the highest five of the last ten years. Maine now gives the retiring judge ¾ of the currently effective salary of his office.

Judges' contributions to retirement funds have been increased in four states. Illinois judges now contribute 10% of their salary; Mississippi, 4½%; Ohio, to 7.7%; and Wisconsin, 2% of their monthly salary and 4½% on any earnings in excess of the amount specified as subject to social security withholding. North Carolina has accorded the judges of its Superior Court the same disability benefits as its appellate judges.

Changes were made in death benefits in five states. Colorado has reduced from five to three years the service required of a judge for his widow to be eligible for benefits. Maine has followed the modern and preferred practice by changing the widow's benefit from ⅜ of the compensation at the time of her husband's death to ⅜ of the current compensation for the judicial office that he held at the time of his death. Oregon now gives a judge's widow a percentage of a basic amount determined by his length of service. In South Dakota, a judge may now assign ⅓ of his retirement pay to his wife, the annuity commencing upon his retirement or death in office and continuing until her death or remarriage. Washington has reduced the required time that the judge and his widow were married from ten to three years.

MINIMUM STANDARDS

Three minimum standards recommended and commented upon in the American Judicature Society's last survey and included in the Model Judicial Article (June, 1963, JUDICATURE p. 11) provide a partial guide in evaluating current retirement plans.

These standards require that each plan provide a pension of at least 50% of salary for judges who retire after at least 10 years of service in addition to disability and death benefits.

Alabama, Colorado, Delaware, Mississippi, Missouri, Oregon, and Wyoming still have a maximum retirement figure below this recommended minimum. Arkansas, Indiana, Iowa, Michigan, Minnesota, New Hampshire, New Mexico, North Dakota, South Dakota, Texas, and Utah pay the bare minimum of 50%. Two-thirds of salary is allowed by six states: Arizona, Connecticut, Georgia, Nevada, North Carolina, and South Carolina. Fourteen jurisdictions pay as much as 75%; they are Alaska, California, Hawaii, Idaho, Illinois, Maine, Massachusetts, New Jersey, Oklahoma, Rhode

Island, Tennessee, Virginia, Washington, West Virginia, and Puerto Rico. Pennsylvania and Ohio give benefits of up to 85% of salary and the allowance in New York and Wisconsin is determined by actuarial rules. In Florida and Vermont, benefits may reach as high as full salary but only after 30 years service. The same applies in Kentucky and Louisiana with the service requirement being 20 years.

All states except Rhode Island and Wyoming provide disability benefits, but in Georgia and Nevada such benefits are available only through the public employees retirement system. Alabama, Missouri, North Carolina, Oklahoma, Rhode Island and Wyoming allow no widow's benefits, and Georgia has no benefits for widows of appellate judges. In addition, in 15 states the widow's benefits consist either of a refund of contributions or an optional annuity whereby the judge takes a lower pension to provide for his wife.

BENEFITS FOR JUDGES

Hospitalization. All reporting jurisdictions except Kentucky, Montana, Nebraska, North Carolina, and West Virginia have some type of hospital plan, but they vary considerably. In 14 states the judge pays the whole premium, and in 19 states the premium is shared by the state and the judge. In Connecticut the state pays ½ of the coverage for dependents, and Idaho is the only state which fully pays for family coverage.

Holidays. The number of official holidays varies from two in Arkansas and four in Virginia to fourteen in New Jersey and Tennessee and eighteen in Puerto Rico. Holidays in the federal courts generally correspond to those of the jurisdiction where the court is sitting.

Vacation. Seventeen states make the length of vacation subject to the discretion of the individual judge. The maximum vacations in the remaining jurisdictions average one month, or 21 judicial days; this being the vacation time in 20 states. The shortest vacation was two weeks—the estimated vacation time of Oklahoma judges. The longest reported vacations were ten weeks in Massachusetts, nine weeks in Kentucky, and eight weeks in Mississippi. Only Iowa reported a vacation system based on length of service; one week after one year, two after two years, three weeks after ten and four after fifteen years. The federal system has a discretionary policy of vacations up to one month.

Expense Allowances and Travel Reimbursement. Appellate and general trial court judges are generally reimbursed for their actual travel expenses. This is true in 30 states, Puerto Rico, and the federal system, but 10 qualify this "actual expense" reimbursement policy. For example, in Alabama it applies to out of state travel, and in-state travel is limited to $15 per diem. In Rhode Island, expenses are covered only for out-of-state conferences, and in the federal system the expense reimbursement may not exceed $30. Sixteen states report per diems in effect for the judges of some or all of their courts. These figures varied from $13 to $30 with $25 being the most common figure. The average mileage reimbursement was just under 10¢, the minimum being 7¢ and the maximum 12¢. Nine states reported expense allowances of specific amounts for one or more courts. By far the most generous were those provided by New York, where instead of expenses, allowances of from $3,000 to $7,000 are given to judges in some courts.

COMPENSATION OF COURT EMPLOYEES

Court Administrators. In 1955 the American Judicature Society reported that there were 16 such offices. The addition of four states—Florida, Maine, Oklahoma, and Pennsylvania—since the last survey brings the total of jur-

isdictions with full time court administrators to 34 states, the District of Columbia, the federal system, and Puerto Rico. Salaries range from $11,550 in New Mexico to $42,678 in New York with an average of $22,091. Twelve states and the federal system have deputy court administrators.

Court Clerks. The salaries of supreme court clerks in the reporting jurisdictions range from $3,000 in Maine to $29,950 in New York. Seven states—Arkansas, Delaware, Iowa, Maine, Maryland, Oklahoma, and Wyoming—pay their clerks less than $10,000 per year. California, Illinois, Massachusetts, Michigan, New Jersey, New York, Virginia, Washington, West Virginia, and the federal system pay over $20,000.

Law Clerks. Ninety per cent of the supreme courts have law clerks. Those that do not are Maine, Missouri, Nebraska, Vermont, and Wyoming. There is a one-to-one ratio of judges to clerks on 25 state supreme courts. In four states—Indiana, Louisiana, New Jersey, and Oregon—the chief justices have two clerks and the other justices have one each. In California, four law clerks are assigned to each justice and the range in Alaska is three to one. Four states—Arizona, Illinois, New York, and Pennsylvania have a ratio of two to one. Eight states—Delaware, Kansas, Mississippi, Montana, New Hampshire, North Dakota, Ohio, and South Carolina—have less than a one-to-one ratio of law clerks to judges. The salaries range from $5,000 in Mississippi to $26,148 in California for the "principal attorney." Five states—Arkansas, Mississippi, Montana, Rhode Island, and Utah—pay less than $7,000 while eleven states, Puerto Rico, and the federal system pay more than $10,000.

Court Reporters. Salaries of supreme court reporters range from $4,596 in South Carolina to $28,814 in Michigan. Twelve jurisdictions—Alabama, California, Colorado, Georgia, Michigan, Nebraska, New York, North Carolina, Oklahoma, South Dakota, Washington, and Puerto Rico—pay more than $15,000 per year. The five states which pay less than $10,000 are Arkansas, Missouri, Nevada, South Carolina, and Virginia.

Minimum Standards. Despite the major improvements in judicial compensation in recent years, there are still deficiencies. The following requirements should be met in every state:

1. A minimum salary of $19,000 should be paid to all judges.

2. Retirement benefits should equal at least 50% of the current salary of the last office the judge held, and every retirement plan should include widow and disability benefits.

3. A state-wide court administrative staff should be established with a deputy administrator in every metropolitan court system in the nation.

4. Law clerks should be provided for all supreme court judges.

5. Private secretaries should be provided for all supreme court judges, and every judge should have a full or part-time secretary.

6. Every judge should have an allowance for office expenses, and should receive travel expenses for a wide range of state and national professional activities.

7. Hospitalization and medical-surgical insurance should be provided every judge and court employee, with all premiums paid by the state.

8. Every judge should have an annual vacation of at least one month.

(Editor's Note: This compilation could not have been completed without hours of demanding work by Joseph J. Connell, Jr., a research assistant and a senior student at the University of Chicago Law School. Mrs. Clarette Bein edited the draft and prepared the final printed text, and Mrs. Joyce Pope and Miss Tiina Asperk assisted with the manuscript. The final product is the result of their efforts.)

CURRENT PROVISIONS

Following are the summaries of judicial compensation data for the 50 states, the federal system, and Puerto Rico, which have been verified by local authorities and from which the prefatory conclusions and the summary charts in this survey are drawn. Judicial salaries in the courts of each jurisdiction are then listed along with special notations of chief judge increments, local supplements, general bases for formula calculations, effective dates of changes which are not yet applicable, and explanatory notations where reliable figures could not be obtained.

The extent to which fringe benefits—hospitalization and medical-surgical insurance, vacation, holidays, expense allowances and travel reimbursements—are available to appellate and general trial court judges is then reported for each state. Other reported benefits (e.g., life insurance coverage) are noted for a few jurisdictions. The fourth part of the summary data is a description of the retirement plans applicable to judges in each state. These are updated versions of the summaries of Alice Ann Winters in *Judicial Retirement Plans,* Chicago: The American Judicature Society, 1961.

The Society will be pleased to furnish or obtain additional information on any jurisdiction. Readers are invited to supplement the data presented and to report changes as they occur for inclusion in the addenda which will be published in the interim before the Society's next biennial survey. Inquiries or contributions of new information may be sent to the Society's offices at 1155 East 60th Street, Chicago, Illinois 60637.

ALABAMA

HIGHEST COURT
- Supreme Court
  - Chief Justice $22,500*
  - Associates 22,500*

INTERMEDIATE APPELLATE COURTS
- Court of Criminal Appeals 22,000*
- Court of Civil Appeals 22,000*

GENERAL TRIAL COURT
- Circuit Court
  - State Pay 18,000*
  - Local Supplements ..... up to 6,000

LIMITED AND SPECIAL COURTS
- Recorder's Court ..... 500 to 15,000
- Inferior Courts ..... 6,000 to 10,000
- Probate Court ..... Fees
- Justice of the Peace ..... Fees
- County Courts (Probate Judge) ..... 300 to 600
- Juvenile Courts (Probate Judge) ..... —

BENEFITS

HOSPITALIZATION: Covered under State of Alabama Insurance Program.

VACATION: Court recessed from July to October; however, special sessions are held continuously.

HOLIDAYS: 12.

EXPENSE ALLOWANCE: Not more than $15 per day in state are reimbursed; outside state, actual and necessary expenses plus actual expenses for transportation.

RETIREMENT PROVISIONS

JUDGES COVERED: Supernumerary judgeship plan applies to: A. Supreme Court. B. Courts of Appeal. C. Circuit Courts.

AGE AND SERVICE REQUIREMENTS: A. 65 after 15 years of service, the last 12 of which are continuous. B. 65 after 15 years of continuous service. C. 65 after 15 years of continuous service in a Circuit Court, or 70 after 10 years of continuous service, or any age after 24 years of continuous service, or age 70 after 15 years of service as a judge in any court of record.

CONTRIBUTION: None.

RETIREMENT BENEFITS: A. $7,200. B. $7,200. C. $9,600.

DEATH BENEFITS: No specific provision.

DISABILITY BENEFITS: A. and B. 50 with 15 years continuous service, same benefits as retirement. C. 60 with 15 years continuous service, same benefits as retirement.

SERVICE AFTER RETIREMENT: Can be called to hold court or perform other judicial duties.

RETIREMENT CITATIONS: Supreme Court, 1958 Recompiled Code (Supp.1967) Tit. 13, §§ 31, 33, p. 159. Courts of Appeal: *id.*, Tit. 13, § 105 (2), (3) p. 167 (Supp. 1967).

Circuit Court: *id.* Tit. 13, § 195 (1), (2) p. 234 (Supp. 1967), § 195 (4) (Amend. 1969).

Alabama Constitution, Art. 4 § 98.

* effective January, 1971

ALASKA

HIGHEST COURT
- Supreme Court
  - Chief Justice $30,000
  - Associates 28,000

GENERAL TRIAL COURT
- Superior Court 26,500

LIMITED AND SPECIAL COURTS
- District Court
  - District Judges 19,000
  - Magistrates .....(set by Supreme Court)

COURT ADMINISTRATOR
- Administrative Director of the Courts..... 26,500

BENEFITS

HOSPITALIZATION: Covers Supreme and Superior Court judges; premiums are shared by the state and the judge; authority for group plans given by statute.

VACATION: No set policy.

HOLIDAYS: 11 days.

EXPENSE ALLOWANCE: 12¢ a mile by private car and per diem travel allowance is $21.

RETIREMENT PROVISIONS

JUDGES COVERED: Supreme, Superior, and District Judges.

AGE AND SERVICE REQUIREMENTS: 65 after 5 years of service; retirement may be at any age after 5 years with benefits deferred to age 65 except with 20 years of service actuarially reduced payments may begin at age 60; retirement mandatory at 70.

CONTRIBUTION: None.

RETIREMENT BENEFITS: 5% of salary of office per year of service to a maximum of 75% of the salary of the office.

DEATH BENEFITS: Widow receives ½ of benefits judge would have received until she remarries.

DISABILITY RETIREMENT: Regular retirement benefits paid after 2 years service to justices of the Supreme Court who are retired for incapacity by action of the governor and to other judges retired for incapacity by the Supreme Court. After 5 years of service a judge may request a disability retirement and be granted regular retirement benefits by the governor on recommendation of a three man commission.

JUDICIAL SERVICE AFTER RETIREMENT: Special assignments by court rule.

RETIREMENT CITATION: Alas. Stats., 1962, §§ 22.-25.010 through 22.25.070.

ARIZONA

HIGHEST COURT
- Supreme Court
  - Chief Justice $23,500
  - Associates 23,500

INTERMEDIATE APPELLATE COURT
- Court of Appeals..... 22,500

GENERAL TRIAL COURT
- Superior Court 21,500
- Commissioners ..... up to 16,000

LIMITED AND SPECIAL COURTS
- Justice Courts .....5,100 to 11,000
- Police Courts .....300 to 19,200

COURT ADMINISTRATORS
- Administrative Director of the Courts..... 14,500
- Court Administrator, Maricopa County..... 16,307
- Court Administrator, Pima County..... 10,700

BENEFITS

HOSPITALIZATION: Group policy is available to judges of Supreme Court, Court of Appeals, and Superior Court. Premium for individual and family coverage paid by the judge.

VACATION: By custom vacations of up to one month are taken by judges of the Supreme Court, Court of Appeals, and Superior Court.

HOLIDAYS: 12 days.

EXPENSE ALLOWANCE: 10¢ a mile for private car travel on official business and a subsistence allowance of $20 per day in state and $30 per day without the state.

RETIREMENT PLAN

JUDGES COVERED: Judges of Supreme Court, Court of Appeals, and Superior Court.

AGE AND SERVICE REQUIREMENTS: Minimum is 65 after 20 years service; a judge whose service is terminated before the minimum retirement age but after 12 years of service may receive deferred benefits at age 65.

CONTRIBUTION: 5% of salary.

RETIREMENT BENEFITS: ⅔ of salary at time of retirement; proportionate amount of current salary times years of service divided by 20 if years of service are between 12 and 20 to a maximum of ⅔ of current salary.

DEATH BENEFITS: ⅓ of retirement benefits to widow if 62 or married 10 years and if judge served a minimum of 12 years.

DISABILITY BENEFITS: Any age with 10 years service, ⅔ of salary; with 5 years service, ⅓ salary; between 5 and 10 years service a proportionate amount.

SERVICE AFTER RETIREMENT: Subject to call of the Supreme Court any retired judge may assist any of the three courts in all duties prior to final disposition.

CITATION: Ariz. Rev. Stats. 1956, Vol. 1C, Tit. 38, Chapter 5, Art. 3 §§ 801 through 806, pp. 216-219, and 1969 Supp. pp. 60-62.

ARKANSAS

HIGHEST COURT
- Supreme Court
  - Chief Justice $24,900
  - Associates 22,400

GENERAL TRIAL COURT
- Circuit Court 19,200
- Chancery Court 19,200

LIMITED AND SPECIAL COURTS
- County Court .....3,000 to 5,000
- Common Pleas Court.....100 to 900*
- Municipal Court .....2,400 to 15,000
- Police Court .....1,200 to 3,600
- Mayor's Court .....1,200 to 3,600
- Justice of the Peace.....**

COURT ADMINISTRATOR
- Executive Secretary of the Judicial Department 18,000

BENEFITS

HOSPITALIZATION: Judges covered by Workman's Compensation Insurance. In addition, many judges carry hospitalization at their own expense.

VACATION: Supreme Court recesses from first Monday in June until the first Monday in September; however, judges are on call during this time. Trial courts take approximately 4 weeks.

HOLIDAYS: Supreme Court has two (Christmas and New Year), trial court holidays set by local rule.

EXPENSE ALLOWANCE: Supreme Court has no specific allowance but the maintenance allowance is used for authorized travel and meetings. Trial judges have the option of actual expenses or an annual allowance of $2,400. Mileage expense is 10¢ per mile.

* County Judge presides over Courts of Common Pleas; figures represent supplements.

** Recent Arkansas Supreme Court decision, *Doty v. Goodwin*, 246 Ark. 147 (1969), held conviction unconstitutional where fee of justice of the peace was dependent on conviction. Recent Arkansas Statute, 12-1731.1 (1969 Supp.), authorized quorum court to fix salaries of justices of the peace. Information on amount and numbers of justices on salary is presently unavailable.

RETIREMENT PLANS

JUDGES COVERED: A. Supreme, Circuit, and Chancery Court. B. Municipal and Police Court.

AGE AND SERVICE REQUIREMENTS: A. 65 after 15 years of service or any age after 20 years of service. B. Any age after 30 years of service or 70 after 10 years of service.

CONTRIBUTION: A. 4% of salary. B. None.

RETIREMENT BENEFITS: 50% of salary.

DEATH BENEFITS: 50% of retirement pay to widow (if she was married to judge at least five years prior to death) until she remarries, or to minor children if there is no widow. If both widow and minor children survive they each get half the death benefit.

DISABILITY RETIREMENT: A. Judge may retire for disability with a pension of ½ his last salary regardless of age or length of service if incapacitating illness occurs during term to which he was elected. B. 50% of last salary if incapacitating illness occurs during term to which he was elected.

SERVICE AFTER RETIREMENT: A. Chief Justice may recall any retired judge except those retired for disability for temporary service with the consent of the judge, who is paid the salary of the office without regard to recalled judges' retirement benefits. B. No specific provision.

CITATION: A. Ark. Stats. Ann. 1947, Tit. 22 §§ 22-901 through 22-909 (1969 Supp.) B. Tit. 22 §§ 22-739, 22-941 through 22-944.

CALIFORNIA

HIGHEST COURT
- Supreme Court
  - Chief Justice $45,418
  - Associates 42,747

INTERMEDIATE APPELLATE COURT
- Court of Appeal 40,076

GENERAL TRIAL COURT
- Superior Court 33,396

LIMITED AND SPECIAL COURTS
- Municipal Court 30,724
- Justice Courts ..... 900 to 21,000

COURT ADMINISTRATOR
- Administrative Director of the Courts 38,510
- Executive Officer, Los Angeles Superior Court 23,676- 29,484

BENEFITS

HOSPITALIZATION: Optional coverage available, premium payments are shared by judge and state. Family coverage available at extra charge to judge.

VACATION: 21 judicial days.

HOLIDAYS: 12 days plus every day in which there is an election in the trial court.

EXPENSE ALLOWANCE: Supreme and Court of Appeal judges allowed travel and per diem expenses when on court business. Superior Court judges allowed travel and per diem when assigned to another court. Reimbursement for travel expenses also provided for Municipal and Justice Court judges.

RETIREMENT PLANS

JUDGES COVERED: Supreme Court, Court of Appeal, Superior Courts, Municipal Courts.

AGE AND SERVICE REQUIREMENTS: 70 after 10 years of service within the preceding 15; 69 with 12, 68 with 14, 67 with 16, 66 with 18, or 65 with 20, all with maximum service interruptions of 4 years; 70 with 20 years service, the last five of which immediately precede retirement, or 60 after 20 years of service. Credit is granted for service in courts not included under the plan provided back contributions are paid and for service in the armed forces during war or national emergency.

CONTRIBUTION: 8% monthly salary deduction.

RETIREMENT BENEFITS: 50% of current salary if over 70; if less than 70, 65% of current salary; or with 20 years service 75%.

DEATH BENEFITS: If judge dies in active service while eligible for retirement or dies retired his widow receives 50% of his retirement allowance. If he dies in office with 10 years service but before he is eligible to retire his widow may receive 1.625% of current salary times years of service to a maximum of 37½% of current salary. This is contingent upon the judge paying $2.00 per month to the retirement fund. If the judge dies before he is retired and is not survived by a widow his heirs may receive an amount up to ½ his salary.

DISABILITY BENEFITS: A judge retired for disability is entitled to the same allowances provided in case of retirement for age and service.

SERVICE AFTER RETIREMENT: May be assigned with his consent to any court equal or higher than that of one from which he retired. He is paid the difference between his retirement allowance and compensation of an active judge.

CITATION: West's Annotated California Codes, Government Code, Vol. 37A, Tit. 8, Chap. 11, §§ 75000 through 75109, pp. 3-38 and 1968-69 Cumulative Pocket Supp., pp. 5-11. Cal. Const., Art. VI §§ 18 and 20.

COLORADO

HIGHEST COURT
- Supreme Court
  - Chief Justice $25,000
  - Associates 24,500

INTERMEDIATE APPELLATE COURT
- Court of Appeal
  - Chief Judge 22,750
  - Associates 22,250

GENERAL TRIAL COURT
- District Court 20,000

LIMITED AND SPECIAL COURTS
- Superior Court (Denver) 20,000
- Probate Court (Denver) 20,000
- Juvenile Court (Denver) 20,000
- County Court
  - Denver 17,500
  - Others 16,500- 17,500
- Municipal Court ..... 500 to 18,000

COURT ADMINISTRATOR
- State Court Administrator 20,000

BENEFITS

HOSPITALIZATION: All judges except Municipal judges may join a state plan which provides both basic and major medical benefits. The state pays $6.75 per month toward the premium, the judge the rest.

VACATION: 30 days with some variation.

HOLIDAYS: 11 days.

EXPENSE ALLOWANCE: All judges except Municipal are reimbursed by state at rate of 10¢ per mile. Supreme and Court of Appeals judges receive actual and necessary expenses. District, Superior, Probate, Juvenile, and County judges receive expenses to a maximum of $20 per day.

RETIREMENT PLANS

JUDGES COVERED: A. Supreme Court justices. B. All courts of record.

AGE AND SERVICE REQUIREMENTS: A. and B. Minimum age is 65 after 10 years of service.

CONTRIBUTION: 6% salary deduction plus $5 fee upon entering the system.

RETIREMENT BENEFITS: A. $5,000 a year at 65 after 10 years of service, $6,000 at 72 after 20 years, and $7,000 at 80 after 30 years. B. 50% of average highest

monthly salary of any 5 years service within the past 10 at age 65 with 16 or more years service or 60 with 20; 40% as above at 65 with 10 to 16 years service.

DEATH BENEFITS: A. $5,000 maximum if widow is 65 and married at least 20 years. B. Optional annuities available to spread benefits to widow or designated heirs; widow of judge who dies in office and who has completed 3 years of service receives an annuity of 25% of average monthly salary for the 3 years immediately preceding his death.

DISABILITY RETIREMENT: A. No specific provision. B. Judges retired for disability may receive an allowance equal to retirement benefits he would have received had he completed his term of office.

SERVICE AFTER RETIREMENT: Chief Justice may assign any retired judge with his consent to perform judicial duties in any court. For each day's service he receives ½ the salary applicable.

CITATION: Courts of Record: Colo. Rev. Stats. 1963, Chap. 111, §§ 111-6-1 through 111-6-13. Supreme Court (other provisions): *id.*, Chap. 37, § 37-2-14, Colo Const. Art. 6 § 31.

CONNECTICUT

HIGHEST COURT	
Supreme Court	
Chief Justice	$33,000
*Associates	29,000
GENERAL TRIAL COURT	
Superior Court	27,500
LIMITED AND SPECIAL COURTS	
Circuit Court	
Chief Judge	23,500
Judges	21,500
Common Pleas Court	22,500
Juvenile Court	20,000
Probate Court	fees up to 33,000

BENEFITS

HOSPITALIZATION: Group hospitalization, medical and surgical insurance is available to judges. State pays judges' premium and ½ of premium of judges' dependents.

VACATION: 1 month.

HOLIDAYS: 11 days.

EXPENSE ALLOWANCE: Judges of Supreme, Superior, Circuit, Common Pleas, and Juvenile Courts receive expenses. Mileage reimbursed at 10¢ per mile.

RETIREMENT PLANS

JUDGES COVERED: Judges of Supreme, Superior, Common Pleas, Circuit, and Juvenile Courts.

AGE AND SERVICE REQUIREMENTS: Minimum is 65 after no minimum length of service or after 25 years of service with no age requirement. Retirement mandatory at 70.

CONTRIBUTION: 5% of salary for judges appointed after May 20, 1967; those appointed earlier make no contribution.

RETIREMENT BENEFITS: ⅔ of salary if judge served 10 years or retired at 70. If retirement occurs between ages 65 and 69 with less than 10 years of service the allowance is computed by dividing a fraction, the numerator of which is the number of years actually served and the denominator of which is the number 10 or the number of years the judge would have served had he not retired until age 70—whichever number is less, into ⅔ of his current salary.

DEATH BENEFITS: Widow receives ⅓ of the current salary of the office the judge held. If the judge is not survived by a widow the pension is payable to his children until they reach age 18.

DISABILITY RETIREMENT: Judges retired for disability receive full benefits.

SERVICE AFTER RETIREMENT: Retired judges of Supreme, Superior, and Common Pleas courts become state referees for life. Chief Justice appoints trial referees from state referees and they may enter judgment in cases referred to them by Superior and Common Pleas Courts. Compensation is $50 per day.

CITATION: Gen. Stats. of Conn. Vol IX, Tit. 51 Chap. 872, §§ 51-49 through 51-51; Conn. Const. Art. 5 § 6.

DELAWARE

HIGHEST COURT	
Supreme Court	
Chief Justice	$34,500
Associates	34,000
GENERAL TRIAL COURTS	
Superior Court and Orphan's Court	
Presiding Judge	31,500
Associates	31,000
Court of Chancery	
Chancellor	31,500
Vice Chancellors	31,000
LIMITED AND SPECIAL COURTS	
Family Court	27,000
Municipal Court (Wilmington)	
Full Time Judge	25,000
Part Time Judges	8,300
Common Pleas Court	27,000
Justices of the Peace	8,000
COURT ADMINISTRATOR	
Deputy Administrator for Justices of the Peace	17,000

BENEFITS

HOSPITALIZATION: Judges may participate in a voluntary Blue Cross Plan.

VACATION: Unspecified.

HOLIDAYS: 9 days.

EXPENSE ALLOWANCE: Mileage reimbursement at 10¢ per mile.

RETIREMENT PLANS

JUDGES COVERED: Judges of Supreme, Superior, Chancery, and Orphan's Courts and all other full time judges of courts of record paid by the state.

AGE AND SERVICE REQUIREMENTS: 72 with 12 years service, any age with 24, or 65 with 12 if not reappointed to office.

CONTRIBUTION: 5% of that portion of judge's salaries below $7,500.

RETIREMENT BENEFITS: 2% of highest average salary for any five consecutive years times his total number of years service.

DEATH BENEFITS: Widow receives ⅔ of pension payable to him until death or remarriage.

DISABILITY BENEFITS: Any age with no minimum service requirement, same as retirement benefits.

SERVICE AFTER RETIREMENT: No specific provision.

CITATION: Del. Code Ann., Vol. 12, Tit. 29, Chap. 56, §§ 5601 through 5610.

FLORIDA

HIGHEST COURT	
Supreme Court	$34,000
INTERMEDIATE APPELLATE COURT	
District Court of Appeals	31,200

* One of the justices is, upon nomination by the Governor, appointed Chief Court Administrator by the General Assembly at a salary of $33,000.

GENERAL TRIAL COURT
- Circuit Court 28,500

LIMITED AND SPECIAL COURTS
- Court of Record of Escambia County..... 28,500
- Criminal Courts of Record.....15,000 to 25,000
- Courts of Record.....13,500 to 27,500
- Civil Courts of Record.....20,000 and 25,000
- Felony Court of Volusia County..... 20,000
- County Judges Court (Probate).....11,000 to 28,500
- County Court .....not provided
- Juvenile Courts
  - Authorized by special act.....3,000 to 28,500
  - County Judges also serving Juvenile Court .....—
- Small Claims Courts.....fees to 15,000
- Justice of the Peace.....fees to 11,500
- Magistrate's Courts 21,600

COURT ADMINISTRATOR
- Executive Director of the Judicial Administrative Commission 15,405

BENEFITS

HOSPITALIZATION: Group policies available with family coverage, premium paid by judge.

VACATION: Discretionary.

HOLIDAYS: 7 days plus those the State Personnel Board may designate.

EXPENSE ALLOWANCE: Supreme and District judges receive per diem of $25, Circuit judges get $20; mileage reimbursement is 10¢ per mile.

RETIREMENT PLANS

JUDGES COVERED: A. Judges of Supreme Court, District Court of Appeals, Circuit Courts, and Escambia County Court of Record. B. Public Employee's Retirement System applies to all other judges.

AGE AND SERVICE REQUIREMENTS: A. 60 after 10 years of service or 55 after 10 with reduced benefits. For judges assuming office after July 1, 1963 it is age 65. B. 60 after 10 or 55 after 10 with reduced benefits. Mandatory retirement at age 70 for all judges of the state except those in office on November 1, 1956.

CONTRIBUTION: A. 8% of salary. B. 6% of salary without social security coverage, 4% with social security.

RETIREMENT BENEFITS: 3⅓% (or 5% for justices in office prior to July 1, 1957) of average salary (best 10 out of last 15 years) times years of service not to exceed final average salary. B. 2% (1½% with social security benefits) of average final compensation for each year of service.

DEATH BENEFITS: A. Judge may accept reduced retirement benefits under one of several plans to provide benefits for designated heirs, any eligible judge is automatically construed to have selected the option which provides the widow with greatest benefits. B. Optional reduced annuities provide pension for surviving spouse.

DISABILITY BENEFITS: A. Any age with 10 years of service the last 5 of which are continuous for voluntary retirement, benefits are not less than 25% of final salary. Judges retired involuntarily receive ⅔ salary at time of retirement if more than 10 years of service or ⅓ salary if less than 10 years service with additional benefit in latter case of 3⅓% for each year of service. B. Any age with 10 years of service last 5 of which are continuous; minimum benefits are 50% of average final compensation, but do not apply if judge is 60 or receives social security disability benefits.

SERVICE AFTER RETIREMENT: Any retired justice or judge may be assigned, with consent, to any court by Chief Justice, compensation equates difference between retirement benefits and salary of the office.

CITATION: Florida Stats. 1967, Chapters 122 and 123, 1970-71 Cum. Pocket Supp. Const. Art. 5 §§ 2, 17, 19.

GEORGIA

HIGHEST COURT
- Supreme Court $26,500

INTERMEDIATE APPELLATE COURT
- Court of Appeals..... 26,500

GENERAL TRIAL COURT
- Superior Court 24,800
- Plus local supplements.....up to 14,000

LIMITED AND SPECIAL COURTS
- City Courts .....4,600 to 15,000
- County Civil and Criminal Courts
  - Bibb County 8,000
  - Baldwin and Gwinnet Counties..... 6,000
  - Cobb County 18,500
  - Coveta County 8,000
  - Clayton County 12,500
  - DeKalb County 14,000
- Civil Court (Fulton County)
  - Chief Judge 23,000
  - Associates 22,500
  - Troup County 10,000
- Municipal Court
  - Augusta
    - Chief Judge 11,200
    - Associates 9,700
- Juvenile Court
  - Counties over 500,000..... 23,000
  - Justices of the Peace .....Fees

BENEFITS

HOSPITALIZATION: Group policy available, premiums shared by judge and state.

VACATION: Two weeks in general, maximum is four weeks.

HOLIDAYS: 11 days.

EXPENSE ALLOWANCE: No provisions for appellate courts, Superior Court allowances provided by local legislation.

RETIREMENT PLANS

JUDGES COVERED: A. Supreme Court. B. Court of Appeals. C. Superior Court. D. Ordinaries (probate jurisdiction). E. Supreme Court and Court of Appeals judges elected after April 1, 1964 under State Employee's Retirement System.

AGE AND SERVICE REQUIREMENTS: A. 70 with 10 years on appellate and trial courts of general jurisdiction, or 65 with 20 consecutive years service including service as solicitor or attorney general. B. 65 with 20 consecutive years service in state courts, or 70 with 10 consecutive years service on Court of Appeals or Supreme Court. C. 70 with 10 years service, or any age after 18 years service, at least 5 of which have been on Superior Court; service credits for military service and certain state offices. D. 65 with 4 years service, or any age with 20 years as an officer of the court with benefits deferred to age 65. E. 60 with 5 years creditable service, or any age with 30 years, or at 70 "forthwith."

CONTRIBUTION: A. and B. None, C. 5% of salary, D. 5% of salary or net fees up to $12,000, E. 5% of earnable salary.

RETIREMENT BENEFITS: A. and B. ⅔ current salary of office. C. ⅔ current salary, if retiring at 70 after 10 years service benefits are ½ current salary. D. 10% of average monthly salary plus 2½% for each year of service over four years, not to exceed 20 years. E. Actuarial equivalent of contributions.

DEATH BENEFITS: A. and B. No specific provisions. C. Contributions refunded to widow. D. Contributions refunded to estate. E. 15 years service, 75% of retirement allowance; 20 years service, same allowance as age 60; 25 years service, 75% of allowance payable at age 65; 30 years service same allowance as payable at age 65.

DISABILITY BENEFITS: A., B. and D. No specific provisions. C. 62 with 10 years service, ½ current salary of office. E. Same as death benefits.

SERVICE AFTER RETIREMENT: A. and B. Serves as member of advisory appellate council. C. Serve as *ex officio* members of judicial council and may be called to sit as emergency judge of Superior Court. D. No specific provision. E. None unless on bench before April 1, 1964.

CITATION: A. Code of Georgia Ann., Book 9 (1959 Revision), Tit. 24, §§ 4601 through 4613, pp. 487-489, 1969 Cumulative Pocket Supp. B. *id.*, §§ 3601A through 3609A, pp. 440-441. C. *id.*, §§ 2601A through 2620A, pp. 264-271. D. *id.*, §§ 1701A through 1716A, pp. 148-155. E. *id.*, Tit. 40, §§ 2501 through 2529, 1969 Cum. Pocket Supp.

HAWAII

HIGHEST COURT
- Supreme Court
  - Chief Justice $33,880
  - Associates 32,670

GENERAL TRIAL COURT
- Circuit Court 30,250

LIMITED COURT
- *District Magistrates 23,670

COURT ADMINISTRATOR
- Administrative Director of the Courts..... 22,670

BENEFITS

HOSPITALIZATION: Group policy with family coverage available; judge's premium shared with state, judge pays for family coverage. If judge retires and has had insurance for 2 years state pays entire cost of policy.

VACATION: 21 working days.

HOLIDAYS: 11 days.

EXPENSE ALLOWANCE: Chief Justice has a $500 allowance. Per diem allowance is $30 to $40 for all judges. Mileage reimbursed at 12¢ per mile for the first 400 miles and 10¢ per mile thereafter.

RETIREMENT PLANS

JUDGES COVERED: Supreme and Circuit Court judges under Public Employee's Retirement System.

AGE AND SERVICE REQUIREMENTS: 55 with 5 years service or any age after 25 years creditable service. Retirement compulsory at 70. Credit given for state service.

CONTRIBUTION: 6.5% of salary.

RETIREMENT BENEFITS: Actuarial equivalent of 1/50 of average final salary times years of creditable service plus accumulated contributions plus 1/140 of average final compensation (highest 5 year average) times years of service if a member is 55. Maximum allowance is 75% of average final compensation, minimum is $30 per month. If member is not yet 55, benefits are reduced.

DEATH BENEFITS: Non-occupational death, accumulated contributions plus, if completed one year of service, ½ salary for year preceding death, such amount increased by 5% for each full year of service in excess of 10 years. Occupational death, accumulated benefits plus pension of ½ average final compensation paid to widow.

DISABILITY BENEFITS: Non-occupational disability, retirement benefits are received if member has reached age of 55, otherwise benefits equal 25% of average final compensation plus 1% for each year of service over 15. Occupational disability, actuarial equivalent of accumulated contributions plus pension of ⅔ average final compensation.

SERVICE AFTER RETIREMENT: No specific provisions.

CITATION: Rev. Laws of Hawaii 1955, Vol. 1, Chap. 6 §§ 20 through 103, pp. 113-128; Laws 1957, Act 143, § 4, p. 128; 1965 Supplement to Laws, Const. Art. 14 § 2.

* Part-time magistrates are paid $5324 to 8652.

IDAHO

HIGHEST COURT
- Supreme Court $25,000*

GENERAL TRIAL COURT
- District Court 22,500*

LIMITED AND SPECIAL COURTS
- Probate Courts ..... 1,500 to 12,000**
- Justices of the Peace ..... set by Commissioners

COURT ADMINISTRATOR
- State Court Administrator..... 14,500

BENEFITS

HOSPITALIZATION: Group policies with family coverage available: all premiums paid by the state.

VACATION: No set policy, 2 to 4 weeks typical.

HOLIDAYS: 8 days.

EXPENSE ALLOWANCE: Supreme and District judges get actual travel expenses, mileage is reimbursed at 10¢ per mile.

RETIREMENT PLANS

JUDGES COVERED: Supreme and District Court judges.

AGE AND SERVICE REQUIREMENTS: Minimum age is 65 after 8 years of service or any age after 20 years. Retirement mandatory at age 70 or at end of term in which age 70 is attained.

CONTRIBUTION: 4% of monthly salary.

RETIREMENT BENEFITS: 2½% times years of service up to 25 years of current compensation of the office.

DEATH BENEFITS: If judge dies before retirement, widow receives 20% of allowance judge would have received at 65; if judge dies after retirement widow receives 20% of his allowance.

DISABILITY BENEFITS: No minimum age and regular retirement benefits.

SERVICE AFTER RETIREMENT: Retired judge may act as Supreme Court commissioner at request of chief justice, any retired district judge on request by any district judge, with agreement of parties, may hear and determine civil actions.

CITATION: Idaho Code 1947, Vol. 2, Tit. 1, §§ 2001 through 2008.

* Judges receive an increment of 3% of their annual salary for each year of service up to a maximum of 10 years.

** Set by county commissioners.

ILLINOIS

HIGHEST COURT
- Supreme Court $40,000

INTERMEDIATE APPELLATE COURT
- Appellate Court 37,500

GENERAL TRIAL COURT
- Circuit Court ..... 15,000 to 35,000
  - Judges 27,500
    - Cook County Supplement..... 7,500
  - Associate Judges
    - State salary 25,000
    - Cook County Supplement..... 7,500
  - Magistrates
    - Lawyer-Magistrates 18,500
    - Cook County Supplement..... 4,500
    - Non-Lawyer Magistrates* 15,000

COURT ADMINISTRATOR
- Administrative Director 37,500

* All magistrates in Cook County are lawyers.

RANK ORDER OF SALARIES IN THE HIGHEST APPELLATE AND TRIAL COURTS, AND OF POPULATION AND PER CAPITA INCOME

GENERAL NOTE. Population and per capita income figures were taken from Department of Commerce publication, *Current Population Reports*, Series P-25, No. 436, and *Survey of Current Business*, August, 1970. Where a range of salaries is paid to trial court judges the average of the range was used to establish rank. In cases where more than one state paid the same salary, each of these states has been assigned the rank number of the last in the alphabetical listing of them.

State	JUDICIAL SALARIES		Per Capita Income Rank	Population Rank
	Highest Appellate Courts	General Trial Courts		
Alabama	42	34	49	21
Alaska	20	15	3	51
Arizona	39	30	29	34
Arkansas	43	43	50	32
California	2	4	6	1
Colorado	35	39	22	30
Connecticut	18	13	2	24
Delaware	11	6	10	47
Florida	11	11	25	9
Georgia	25	5	35	15
Hawaii	13	8	13	41
Idaho	33	26	41	42
Illinois	5	18	7	5
Indiana	35	32	17	12
Iowa	37	34	24	25
Kansas	39	35	26	29
Kentucky	28	42	44	23
Louisiana	7	14	46	19
Maine	49	42	36	38
Maryland	9	7	11	18
Massachusetts	12	10	9	10
Michigan	9	18	12	7
Minnesota	28	24	19	20
Mississippi	51	51	51	28
Missouri	25	30	28	14
Montana	45	44	34	44
Nebraska	33	24	21	35
Nevada	44	42	4	48
New Hampshire	23	16	27	43
New Jersey	1	2	8	8
New Mexico	42	39	42	37
New York	4	3	5	2
North Carolina	18	28	43	11
North Dakota	49	47	39	46
Ohio	15	36	16	6
Oklahoma	42	50	37	27
Oregon	28	21	23	31
Pennsylvania	7	12	18	3
Rhode Island	33	22	14	39
South Carolina	15	10	47	26
South Dakota	46	46	38	45
Tennessee	37	50	45	17
Texas	18	21	32	4
Utah	49	50	40	36
Vermont	33	28	33	49
Virginia	33	39	31	13
Washington	23	26	15	22
West Virginia	23	32	48	33
Wisconsin	20	19	20	16
Wyoming	51	46	30	50
District of Columbia	3	1	1	40

BENEFITS

HOSPITALIZATION: Blue Cross and Blue Shield policies with optional family coverage available. State pays first $5.00 on judge's monthly premium, judge pays the rest and all family coverage.

VACATION: Discretionary except by practice Cook County Circuit judges have 5 weeks, associates 4 weeks and magistrates 3 weeks.

HOLIDAYS: 11 days.

EXPENSE ALLOWANCE: Actual expenses of court business and official travel are paid to Supreme and Appellate Court judges. Circuit judges, associates, and magistrates are reimbursed for in-circuit travel, hotel, and meals at a per diem of $10 in Cook County and $7.50 elsewhere. Car mileage is reimbursed at 12¢ per mile.

RETIREMENT PLANS

JUDGES COVERED: Open to all judges of courts of record and the court of claims.

AGE AND SERVICE REQUIREMENTS: Minimum age is 60 after 10 years of service.

CONTRIBUTION: 10% of salary annually; married judges contribute 2½% of income to cover widow's pension.

RETIREMENT BENEFITS: 2½% for each year of the first 10 years plus 5% for each year over 10 years to a maximum of 75% of average salary of the last 4 years before retirement. Judges who joined prior to July 1, 1967 can elect to remain under prior 50% or 60% maximum.

DEATH BENEFITS: If judge dies after retirement, widow receives ⅔ of pension. If he served 10 years, widow receives ⅔ pension he would have received or 7½% of salary, whichever is greater. If widow has minor children the benefit is the greater of 75% of pension or 15% of his salary. With minor children benefits are paid no matter what the widow's age, otherwise when she reaches 55.

DISABILITY RETIREMENT: Judge may be retired after 10 years service with full retirement benefits for disability.

SERVICE AFTER RETIREMENT: Retired judges may be assigned with their consent and are paid applicable salary.

CITATION: Smith-Hurd, Ill. Ann. Stats., "Pensions" Chap. 108½, §§ 18-101 to 18-166. Ill. Const. Art. 6 § 18.

INDIANA

HIGHEST COURT	
Supreme Court	$24,500
INTERMEDIATE APPELLATE COURT	
Appellate Court	24,500
GENERAL TRIAL COURT	
Circuit and Superior Court	19,000- 23,500
(Based on population and property valuation)	
Optional County Supplement	up to 4,000
LIMITED AND SPECIAL COURTS	
Probate Court	12,000- 22,000
Criminal Court	same
Juvenile Court	same
Municipal Court	19,500
Magistrates Court	600 to 1,200
Justice of the Peace	
Townships of:	
60,000 and over	4,600
Optional Supplement	up to 500
20,000 to 60,000	3,600
Optional Supplement	up to 500
Less than 20,000	fees up to 3,000
Optional Supplement	up to 500
City Courts	Varies
COURT ADMINISTRATOR	
Court Commissioner	19,920

BENEFITS

HOSPITALIZATION: Low option Blue Cross, Blue Shield.

VACATION: Up to the judge.

HOLIDAYS: 12 days.

EXPENSE ALLOWANCE: Supreme Court judges receive $2,400 expense allowance. Other court allowances vary. Per diem for travel is $12 and 7¢ per mile within state and $16 outside the state. Supreme Court judges have state cars.

RETIREMENT PLANS

JUDGES COVERED: Judges of all courts except municipal and city courts.

AGE AND SERVICE REQUIREMENTS: Minimum age is 65 after 12 years of service in a state court, or after 12 years of service provided contributions to the fund are continued until the equivalent of 16 years of contributions has been reached. (§ 3253)

CONTRIBUTION: 5% of monthly salary up to $500.

RETIREMENT BENEFITS: 50% of salary at time of retirement up to $10,000.

DEATH BENEFITS: The widow receives the amount or balance of her husband's contribution to the fund.

DISABILITY BENEFITS: Judges must comply with provisions of § 3253 if they have served less than 16 years, otherwise full retirement benefits for disability.

SERVICE AFTER RETIREMENT: No specific provisions.

CITATION: Burns' Ann. Ind. Stats. 1933, 1946 Replacement Vol. 2, Part 2, Tit. 4, Chap. 32, §§ 3244 through 3266.

IOWA

HIGHEST COURT	
Supreme Court	$24,000
GENERAL TRIAL COURT	
District Court	21,000
LIMITED AND SPECIAL COURTS	
Superior Court	10,500
Municipal Court	16,800
Justices of the Peace	
Townships under 10,000	Fees (all civil fees, all criminal fees to $1,200 and ½ of excess.)
Others	Certain civil fees and salary (based on population) of 1,875 to 3,375.
Police Court	Fees*
Mayor's Court	Fees**
COURT ADMINISTRATOR	
Judicial Department Statistician	15,500

BENEFITS

HOSPITALIZATION: Group policy available to Supreme and District Court judges; judge pays all premiums except $6.00 per month paid by state.

VACATION: Supreme and District judges have 1 week after 1 year, 2 weeks after 2, 3 weeks after 10, and 4 weeks after 15.

EXPENSE ALLOWANCE: Judges of Supreme and District Court receive actual expenses when away from residence up to $15 per day. Mileage reimbursed at 10¢ per mile.

* Same fees as Justice of the Peace or salary by city ordinance in lieu thereof.

** Same fees as Justice of Peace in addition to salary as mayor.

RETIREMENT PLANS

JUDGES COVERED: Judges of Supreme, District, Superior, and Municipal Courts.

AGE AND SERVICE REQUIREMENTS: Minimum age is 65 after 6 years of service or any age after 25 years of service. Mandatory retirement for Supreme and District judges appointed after July 1, 1965 is 72 otherwise age 75.

CONTRIBUTION: 4% deduction from basic salary.

RETIREMENT BENEFITS: 3% of average annual salary for last 3 years times years of service not to exceed 50% of salary at retirement.

DEATH BENEFITS: Widow receives amount or balance of amount of credit in the retirement fund.

DISABILITY RETIREMENT: May receive full retirement benefits provided he has served 6 years prior to disability.

SERVICE AFTER RETIREMENT: With consent a retired judge is subject to temporary assignment in any court except in the Supreme Court.

CITATION: Code of Iowa, 1966, Chap. 605A and 1970 Cum. Pocket Supp.

KANSAS

HIGHEST COURT	
Supreme Court	
Chief Justice	$24,500*
Associates	23,500*
Commissioners	23,000*
GENERAL TRIAL COURT	
District Court	19,500*
Local Supplement	1,200 to 2,400
LIMITED AND SPECIAL COURTS	
Probate Courts	
Shawnee County	19,900
Johnson County	17,500
Sedgwick County	15,500
(add'l as Juvenile Judge)	3,500
Wyandotte County	16,500
(add'l as Juvenile Judge)	3,500
Other Counties	5,000 to 11,500**
County Courts	
Depending on number of cases filed	Percent of Probate Judge's Salary
Less thas 250	25%
250 to 500	30%
500 to 1000	40%
More than 1000	50%
SPECIAL COURTS OF COUNTY-WIDE JURISDICTION	
Court of Common Pleas (Sedgwick County)	16,000
Magistrate Court	
Shawnee County	13,200
Johnson County	14,000
Wyandotte County	15,000
Saline County	10,000
City Court	
Arkansas City	3,900
Atchison	3,600
Chanute	not reported
Coffeyville	Fees
Hutchinson	10,000
Independence	Fees
Leavenworth	5,400
Pittsburg	4,800
Winfield	not reported
COURT ADMINISTRATOR	
Judicial Administrator	17,500

* effective January, 1971

** May be increased in certain counties by 15% to 50% range.

BENEFITS

HOSPITALIZATION: State financed employee group plan; family coverage available at judge's expense.

VACATION: Not reported.

HOLIDAYS: Not reported.

EXPENSE ALLOWANCE: Supreme and District Court Judges receive actual and necessary expenses.

RETIREMENT PLANS

JUDGES COVERED: Justices, commissioners, and judges of Supreme and District Courts.

AGE AND SERVICE REQUIREMENTS: Minimum is 65 with no minimum length of service or upon termination of service after 10 years for cause other than death but prior to retirement. Retirement mandatory at 70 or at end of term in which age is attained.

CONTRIBUTION: 6% of monthly salary.

RETIREMENT BENEFITS: 3⅓% of last monthly salary times number of years of service. Total benefits must not exceed 65% of last monthly salary.

DEATH BENEFITS: Judge may elect to receive reduced benefits to provide benefits to joint annuitant. Benefits available to widow of judge dying in office who was eligible for retirement.

DISABILITY RETIREMENT: Any judge found permanently disabled may retire and receive full benefits.

SERVICE AFTER RETIREMENT: May sit as judge *pro tem* of district court or commissioner of the Supreme Court in any pending original action by request of chief justice of Supreme Court; reimbursement for expenses.

CITATION: Kansas Stats. Ann., Chapter 20, §§ 2601 through 2617 as amended.

KENTUCKY

HIGHEST COURT	
Court of Appeals	
Justices	$26,000
Commissioners	22,500
GENERAL TRIAL COURT	
Circuit Court	19,500
LIMITED AND SPECIAL COURTS*	
Quarterly Courts	up to 7,200
County (Probate) Court	up to 7,200
Justice Court	up to 7,200
Police Court	up to 7,200
COURT ADMINISTRATOR	
Director of Administrative Office	20,000

BENEFITS

HOSPITALIZATION: None.

VACATION: Approximately 9 weeks.

HOLIDAYS: 13 days.

EXPENSE ALLOWANCE: All allowable expenses, mileage is reimbursed at 8 cents per mile.

RETIREMENT PLANS

JUDGES COVERED: Judges, Commissioners of Court of Appeals and Circuit Court, and Court Administrator.

AGE AND SERVICE REQUIREMENTS: Normal age for retirement is 65, minimum service requirement is 8 years. Retirement may be earlier than 65 with benefits deferred at a reduced rate until 65.

CONTRIBUTION: 3% of monthly salary.

RETIREMENT BENEFITS: 5% of average salary for preceding 5 years times years of service up to 100% of final compensation.

DEATH BENEFITS: 50% of retirement or disability benefits to the widow.

* All limited court salaries set by county authorities.

DISABILITY RETIREMENT: No minimum age or service requirement, disabled judge receives ½ of his normal retirement allowance at age 65.

SERVICE AFTER RETIREMENT: No specific provision.

CITATION: Ky. Rev. Stats., Tit. 1, Chap 21, § 21.345 to 21,510.

LOUISIANA

HIGHEST COURT
- Supreme Court
  - Chief Justice $37,500
  - Associates 37,500

INTERMEDIATE APPELLATE COURT
- Court of Appeals 35,000

GENERAL TRIAL COURT
- District Court
  - State salary 20,500
  - Supplement outside New Orleans 13,500
  - New Orleans Supplement 13,500

LIMITED AND SPECIAL COURTS
- Municipal Court (New Orleans) ..... 15,000 to 16,500*
- Traffic Court (New Orleans) ..... 15,000 to 16,500*
- Juvenile Court ..... Same as District Court
- City Court
  - Under 100,000 population .. 3,600 to 7,200 plus fees
  - Over 100,000 population 20,500
- Parish Court (Jefferson) ..... minimum of 17,500
- Justices of the Peace
  - Civil Cases ..... Fees
  - Criminal Cases ..... salary set locally

COURT ADMINISTRATOR
- Judicial Administrator 22,400

BENEFITS

HOSPITALIZATION: Group policies with family coverage; premium shared by judge and the state.

VACATION: Supreme Court, Court of Appeals, and District Court judges take 4 weeks.

HOLIDAYS: 7 days plus 5 additional if governor declares state business is not pressing.

EXPENSE ALLOWANCE: Court of Appeals judges receive reasonable expenses. District judges get up to $2,500 office expenses and $1,800 for travel.

RETIREMENT PLANS

JUDGES COVERED: Judges of Courts of record and Juvenile and Family Courts and the Judicial Administrator.

AGE AND SERVICE REQUIREMENTS: 70 with 20 years service, 65 with 25, or 65 with 20 or any age with 23 with reduced benefits. Mandatory at 75 with 20 years service, or at 80 or until completion of 20 years service which ever comes first. Credit for service on any court of record.

CONTRIBUTION: None.

RETIREMENT BENEFITS: Full salary if 65 with 20 years service or at any age with 23 years of service he receives ⅔ salary; proportionate reduction if 65 with less than 20 years service.

DEATH BENEFITS: ⅓ of salary or ½ of retirement benefits to widow.

DISABILITY BENEFITS: Any age with no minimum service, receives retirement benefits he would receive at age 70, minimum ⅔ of salary.

SERVICE AFTER RETIREMENT: May sit on any court of record by assignment of Supreme Court, additional compensation to equate benefits with judicial salary in that court plus expenses.

CITATION: West's Ann. La. Stats., Const. Vol. 2, Art. 7 § 8, Art. 7 § 11.

* Includes $7,100 from state, $7,900 from city and optional $1,500 from city.

MAINE

HIGHEST COURT
- Supreme Court
  - Chief Justice $21,500
  - Associates 20,000

GENERAL TRIAL COURT
- Superior Court 19,500

LIMITED AND SPECIAL COURTS
- District Court
  - Chief Judge 16,000
  - Judges 15,000
- Probate Court ..... 3,500 to 9,900

COURT ADMINISTRATOR
- Administrative Assistant to Chief Justice 15,000

BENEFITS

HOSPITALIZATION: Blue Cross and Blue Shield policies available to judge, premium paid by the judge.

VACATION: No set policy.

HOLIDAYS: 9 days plus election days.

EXPENSE ALLOWANCE: Supreme and Superior Court judges reimbursed for reasonable traveling expenses. Mileage reimbursed at 10 cents per mile.

RETIREMENT PLANS

JUDGES COVERED: Judges of Supreme and Superior Courts.

AGE AND SERVICE REQUIREMENTS: Normal retirement at age 70 with at least 7 years service or 65 with 12 years service. Benefits forfeited if judge does not retire before age 71.

CONTRIBUTION: None.

RETIREMENT BENEFITS: ¾ of salary currently in effect.

DEATH BENEFITS: Widow entitled to ⅜ currently effective salary until she dies or remarries, then to children until they are 18.

DISABILITY BENEFITS: Any age with no minimum service, same as retirement.

SERVICE AFTER RETIREMENT: May be appointed by governor for 7 year term as "active retired justice or judge" to serve on any court by assignment of Chief Justice; 7 year term, renewable.

CITATION: 4 Maine Rev. Stats. Ann. §§ 5, 103, P. L. 1969, Chap. 463 and Chap. 466.

MARYLAND

HIGHEST COURT
- Court of Appeals
  - Chief Judge $36,000
  - Judges 35,000

INTERMEDIATE APPELLATE COURT
- Court of Special Appeals
  - Chief Judge 33,500
  - Judges 32,500

GENERAL TRIAL COURT
- Circuit Court 30,500

LIMITED AND SPECIAL COURTS
- People's Court
  - Montgomery County
    - Chief Judge 25,500
    - Judges 25,000
  - Prince George County
    - Chief Judge 22,000
    - Judges 21,000
  - Baltimore City*
    - Chief Judge 25,500
    - Judges 25,000
  - Anne Arundel County
    - Chief Judge 19,000
    - Judges 18,000

Howard County
Chief Judge 8,500
Judges 8,000
Dorchester
Chief Judge 4,500
Judges 4,000
Trial Magistrates .....300 to 6,500
Orphan's Court (Part time)
Salaried .....600 to 14,500
Others .....Per day 8 to 19.50

COURT ADMINISTRATOR
Director, Administrative Office of the Courts... 30,500

BENEFITS

HOSPITALIZATION: Group policies with family coverage available at state level; state pays a portion of the premiums.

VACATION: Appellate and trial judges entitled to annual vacation of not more than 6 weeks.

HOLIDAYS: 10 days plus election days.

EXPENSE ALLOWANCE: Judges reimbursed for actual expenses in attending judicial conference and when assigned to sit outside his circuit.

RETIREMENT PLANS

JUDGES COVERED: Judges of Circuit Court, Supreme Bench of Baltimore City, Court of Special Appeals, and Court of Appeals.

AGE AND SERVICE REQUIREMENTS: Minimum age is 60 after no minimum service, mandatory retirement at age 70.

CONTRIBUTION: None; contributory plan contribution information not provided.

RETIREMENT BENEFITS: $750 for each year of service not to exceed $12,000; Court of Appeals judges receive additional $100 for each year of service not to exceed $13,000, judges of Court of Special Appeals receive additional $50 for each year of service not to exceed $12,800. Effective July 1, 1969 an alternative contributory plan provided. Judges appointed after July 1, 1969 must join, others may elect to join. Pension is 1/16 of 60% of maximum salary for each year of service up to 16 years.

DEATH BENEFITS: 50% to widow married at least 3 years. Contributory Plan benefits not provided.

DISABILITY BENEFITS: No specific provision.

SERVICE AFTER RETIREMENT: No specific provision.

CITATION: Ann. Code of Md. 1957, Vol. 2, 1966 Replacement Vol., Art. 26 §§ 49 and 50, pp. 206 to 210; 1969 Cum. Pocket Supp.

* Baltimore City has a People's Court (5 judges) for civil cases and a Municipal Court (17 judges) for minor criminal and traffic cases. Each court has a chief judge.

MASSACHUSETTS

HIGHEST COURT
Supreme Judicial Court
Chief Justice $35,000
Associates 33,800
GENERAL TRIAL COURT
Superior
Chief Justice 31,300
Associates 30,000
LIMITED AND SPECIAL COURTS
Probate Court
Chief Judge 27,300
Associates
Full Time 26,300
Part Time 9,400*
Land Court 30,000
Municipal Court (Boston)
Chief Justice 26,300
Associates 25,000
Juvenile Courts (Boston, Springfield and Worcester) .....22,000 to 26,300
District Court
Chief Justice 26,300
Associates 25,000
Part Time .....7,600 to 10,100
Special Judges .....Per diem**
COURT ADMINISTRATOR
Executive Secretary to Justice of the Supreme Judicial Court*** 25,350

BENEFITS

HOSPITALIZATION: Group policies under either state or county plan depending upon source of judge's salary. Judge and governmental unit share the cost of the plan.

VACATION: Supreme Judicial and Superior Court judges takes about 10 weeks.

HOLIDAYS: 10 days (Suffolk County has 12).

EXPENSE ALLOWANCE: Judges reimbursed for travel expenses. Mileage allowance is 8¢ per mile.

RETIREMENT PLANS

JUDGES COVERED: All judges.

AGE AND SERVICE REQUIREMENTS: Judges appointed before July 31, 1956 may retire at or after 70 after 10 years of continuous service. Judges appointed after July 31, 1956 must retire at 70 or after 10 years of continuous service, whichever is later.

CONTRIBUTION: None.

RETIREMENT BENEFITS: ¾ salary at time of retirement.

DEATH BENEFITS: Judge may choose alternative pension at a reduced rate which will give his widow an annuity of ⅔ the alternative pension after his death. If a judge age 55 or over who had not retired but was eligible to do so or would have had he lived to 70 dies, the widow receives ⅔ of the alternative pension.

DISABILITY BENEFITS: No age or service requirement; same as retirement benefits.

SERVICE AFTER RETIREMENT: No specific provision.

CITATION: Government Laws of Mass., Chap. 32 §§ 65A, 65B, and 65C; Constitution Pt. 2, Chap. 3, Art. I, Amendments, Art. LVIII.

* Per diem equivalent to per diem of salary of judge in whose county he is sitting is paid in addition to his salary.
** Serve on Boston's Municipal, Juvenile, and District Courts. Per diem is based on equivalent per diem for a full-time district judge.
*** Salary fixed by chief justice not to exceed 75% of salary of an associate judge.

MICHIGAN

HIGHEST COURT
Supreme Court $35,000
Commissioners .....21,694 to 26,705
INTERMEDIATE APPELLATE COURT
Court of Appeals 32,500
GENERAL TRIAL COURT
Circuit Court
State Pay 20,000
Local Supplements 10,000
District Court
State Pay 18,000
Local Supplement .....up to 9,500
LIMITED AND SPECIAL COURTS
Recorder's Court (Detroit)..... 30,000
Common Pleas Court (Detroit)..... 25,000
Probate Court .....6,500 to 20,000*

* Depending on population probate judge may receive local supplement, but total salary is not to exceed $29,000.

Municipal Courts ..... (part-time) 5,000 to 20,000
Kalamazoo 20,000
Lansing 17,500

COURT ADMINISTRATOR
Administrator of the Courts 30,463

BENEFITS

HOSPITALIZATION: Group plan with family coverage available, all premiums paid by judge.

VACATION: Up to one month.

HOLIDAYS: 10 plus election days.

EXPENSE ALLOWANCE: Supreme Court, Court of Appeals and Circuit Court reimbursed for actual expenses. Mileage reimbursed at 10¢ a mile.

RETIREMENT PLANS

JUDGES COVERED: A. Judges of Supreme Court, Court of Appeals, Circuit Court, Superior Court of Grand Rapids, Recorders' and Common Pleas Court of Detroit. B. Probate Court.

AGE AND SERVICE REQUIREMENTS: A. Minimum age is 60 after 20 years service, or 70 after 12, or any age after 30 years service. Retirement mandatory at 70. B. Minimum is age 60 after 20 years continuous service, 65 after 16, the last 6 years of which are continuous, or 70 after 6 years continuous service.

CONTRIBUTION: A. 7% of salary to $720. B. 6% of salary to $720.

RETIREMENT BENEFITS: A. Appellate judges receive ½ salary at time of retirement, other judges receive ½ current salary of circuit judges. Optional annuities available. B. 26% of salary at time of retirement times years of service (up to 24 years), total allowance not to exceed $7,200. Optional annuities available.

DEATH BENEFITS: A. If judge has served 10 years and widow is 55 and has been married 10 years, she receives ½ his annuity; she may receive benefits before 55 if there are minor children. B. Widow receives ½ annuity if judge has served 20 years provided she is 55 and has been married 10 years.

DISABILITY BENEFITS: A. 65 with 10 years service, same as retirement; any age with 10, same as retirement computed according to the option for a cash refund annuity until 65 when he has a full choice of options. B. Any age with 10 years service, same as retirement with full choice of options.

SERVICE AFTER RETIREMENT: Temporary filling of a vacancy (Const. Art. VI § 23).

CITATION: A. Mich. Stats. Ann. 1935, Vol. 20 (1962 Revised Volume) and 1969 Cum. Pocket Supp., Title 27, Chap. 266, §§ 27.125 (1) through 27.125 (30). B. *Id.*, Title 27, Chap. 266, §§ 27.3178 (60.1) through 27.3178 (60.33).

MINNESOTA

HIGHEST COURT
Supreme Court
Chief Justice $27,000
Associates 26,000

GENERAL TRIAL COURT
District Court
Ramsey, Hennepin, St. Louis Counties 23,500
Others 22,000

LIMITED AND SPECIAL COURTS
Municipal Court ..... 420 to 23,000
Probate Court ..... 6,500 to 23,500 (depending on population)
Justices of the Peace ..... Fees

COURT ADMINISTRATOR
Administrative Assistant to Supreme Court 24,000

BENEFITS

HOSPITALIZATION: Coverage available, state pays for judge, judge pays family coverage.

VACATION: 4 weeks.

HOLIDAYS: 11 days.

EXPENSE ALLOWANCE: Chief Justice receives travel expenses; district judges receive expenses while sitting away from their residence. Mileage reimbursement is 9¢ a mile.

RETIREMENT PLANS

JUDGES COVERED: Judges of A. Supreme Court, B. District Court, and C. Probate Courts.

AGE AND SERVICE REQUIREMENTS: A. 70 with 2 full terms of service, 65 with 15 years of service on Supreme and District courts. Mandatory forfeiture of portion of retirement benefits if not retired at 73. B. 65 with 25 years service or 70 with 15 as judge of a court of record. Mandatory forfeiture of benefits if not retired at 70 with 15 years of service or within 6 months of completion of 15 years. C. 70 with 25 years service as probate judge of any court of record, referee in probate or armed forces during war.

CONTRIBUTION: A., B. and C. None.

RETIREMENT BENEFITS: A. ½ current compensation of office plus 2.5% of salary times years of service up to 10 more than minimum years service. B. ½ current salary of office. C. ½ salary at time of retirement.

DEATH BENEFITS: A., B. and C. 50% of allowance judge received or would have received if widow is 40 and has been married 3 years.

DISABILITY BENEFITS: A. Any age plus two terms of service, full pay to end of term, same as retirement thereafter; any age plus one term receives full pay to end of term. B. Any age, no minimum service, pension equals regular pay to the end of judge's elected term and ½ current salary of office thereafter. C. Any age, same as retirement.

SERVICE AFTER RETIREMENT: Any retired justice may be appointed by the court as a commissioner to serve as the court directs.

CITATION: Minn. Stats. Ann., Vol. 27, Chap. 480, pp. 586-599, and 1969 Cum. Pocket Supp.

MISSISSIPPI

HIGHEST COURT
Supreme Court
Chief Justice $20,000
Presiding Justice 19,500
Associates 19,000

GENERAL TRIAL COURT
Circuit Court 16,000
Chancery Courts 16,000

LIMITED AND SPECIAL COURTS
County Courts ..... 5,400 to 13,000
Justice of the Peace ..... Fees

BENEFITS

HOSPITALIZATION: Group policies with optional family coverage available. State pays 40% of specific premium for Supreme Court justices, trial judges pay all their own premiums.

VACATION: Supreme and Circuit Courts take 8 weeks, Chancery Court several weeks.

HOLIDAYS: 10 days.

EXPENSE ALLOWANCE: Circuit and Chancery Judges $500 per year; justices receive expenses for national and regional conferences.

RETIREMENT PLANS

JUDGES COVERED: All judges.

JUDICIAL SALARIES IN APPELLATE AND TRIAL COURTS

Notes: Alabama—salaries shown become effective January 19, 1971. California—on September 1, 1970, and every year thereafter, judicial salaries will be increased by the percentage gain in California's consumer price index during the preceding calendar year. Kansas—salaries shown become effective January 1, 1971. South Carolina—salaries shown become effective January 1, 1971. Washington—salaries become effective as justices are re-elected (either 1969 or 1971).

[1]General Note: Salaries are stated in annual amounts and do not reflect additional compensation for chief justices or presiding judges. Where a salary range rather than a single rate is shown on the chart, it reflects variations due to local supplements or other authorized variations. Also, in jurisdictions which have constitutional restrictions on increasing compensation during a judge's term, the figure shown is for newly appointed or elected judges.

[2]In computing the National Average and National Median figures, (i) federal salaries are excluded, (ii) all states have been weighed equally without adjustment for variations in the size of the judiciary, (iii) for courts where a salary range rather than a single rate is shown, the figures used have been the average of the upper and lower limits of this range, (iv) Puerto Rico is included.

[3]Selig, R.N., *1968 Survey of Judicial Salaries and Retirement Plans in the United States,* American Judicature Society, Chicago, 1968.

State	Highest Court	Intermediate Appellate Court	General Trial Court
Alabama	22,500(N)	22,000(N)	18,000 to 24,000(N)
Alaska	28,000	None	26,500
Arizona	23,500	22,500	21,500
Arkansas	22,400	None	19,200
California	42,747(N)	40,076(N)	33,396(N)
Colorado	24,500	22,500	20,000
Connetlcut	29,000	None	27,500
Delaware	34,000	None	31,000
Florida	34,000	31,200	28,500
Georgia	26,500	26,500	24,800 to 38,800
Hawaii	32,670	None	30,250
Idaho	25,000	None	22,500
Illinois	40,000	37,500	15,000 to 35,000
Iowa	24,000	None	19,000 to 23,500
Kansas	23,500(N)	None	19,500 to 21,900(N)
Kentucky	26,000	None	19,500
Louisiana	37,500	35,000	20,500 to 34,000
Maine	20,000	None	19,500
Maryland	35,000	32,500	30,500
Massachusetts	33,800	None	30,000
Michigan	35,000	32,500	20,000 to 30,000
Minnesota	26,000	None	22,000 to 23,500
Mississippi	19,000	None	16,000
Missouri	26,500	25,000	20,000 to 23,000
Montana	21,000	None	19,000
Nebraska	25,000	None	22,000 to 23,500
Nevada	22,000	None	19,500
New Hampshire	27,500	None	26,000
New Jersey	45,000	42,000	37,000
New Mexico	22,500	21,000	20,000
New York	42,000	35,600 to 42,100	33,600 to 39,100
North Carolina	29,000	26,000	22,000
North Dakota	20,000	None	18,000
Ohio	30,000	28,000	14,500 to 26,000
Oklahoma	22,500	19,500	17,500
Oregon	26,000	25,000	24,000
Pennsylvania	37,500	35,500	26,500 to 30,000
Rhode Island	25,000	None	23,000
South Carolina	30,000(N)	None	30,000(N)
South Dakota	20,500	None	18,500
Tennessee	24,000	20,000	17,500
Texas	29,000	26,000	20,000 to 28,000
Utah	20,000	None	17,500
Vermont	25,000	None	22,000
Virginia	25,000	None	20,000
Washington	27,500(N)	25,000	22,500
West Virginia	27,500	None	17,500 to 25,000
Wisconsin	28,000	None	21,000 to 28,000
Wyoming	19,000	None	18,500
Puerto Rico	27,000	None	17,000 to 22,900
District of Columbia	42,500	None	40,000
Federal	60,000	42,500	40,000
1970 National Average[3]	27,659	28,625	23,345
1968 National Average[3]	25,115	27,331	21,030
1970 Median[2]	26,000	26,500	22,500
1968 Median[3]	24,500	25,000	21,000

AGE AND SERVICE REQUIREMENTS: 65 with 10 years service, 55 with 35, or any age with benefits deferred to 60 except benefits commence at 55 with 30 years service; service credit for state and military service. Retirement is voluntary for judges elected to constitutional office. For others it is mandatory at 65 unless continued service is authorized by retirement board for one year periods to 70.

CONTRIBUTION: 4½% of salary.

RETIREMENT BENEFITS: 1¼% of highest average salary for five years of service times years of membership, plus 1¼% of average salary for each year prior to membership. 3% reduction for each year less than age 65.

DEATH BENEFITS: Options to provide benefits to widows or designated heirs available with reduced retirement allowance, widow of judge who dies in office after 20 years presumed to have chosen option to provide benefits from age 45 until she becomes eligible for social security at 62.

DISABILITY BENEFITS: 60 with 10 years service, same as retirement; any age with 10, 75% of retirement benefits he would receive at 60.

SERVICE AFTER RETIREMENT: No specific provision.

CITATION: Miss. Code Ann. 1942, Vol. 5A Recompiled, Tit. 26, Chap. 6, Art. 2 §§ 7446-11 through 7446-29, pp. 353-371 and 1969 Cum. Pocket Supp.

MISSOURI

HIGHEST COURT	
Supreme Court	
Judges	$26,500
Commissioners	26,500
INTERMEDIATE APPELLATE COURT	
Court of Appeals	
Judges	25,000
Commissioners	25,000
GENERAL TRIAL COURT	
Circuit Court	
First and Second Class Counties	23,000
Third Class Counties	20,000
Optional Supplement	3,000
LIMITED AND SPECIAL COURTS	
St. Louis Court of Criminal Corrections	21,000
Probate Court	10,600 to 24,000
Magistrates*	10,600 to 13,500

BENEFITS

HOSPITALIZATION: None.

VACATION: Discretionary.

HOLIDAYS: Discretionary.

EXPENSE ALLOWANCE: Supreme and Court of Appeals judges get actual expenses while temporarily sitting in another court. Circuit judges are allowed actual expenses while sitting in another county.

RETIREMENT PLANS

JUDGES COVERED: Judges of Supreme Court, Court of Appeals, Circuit Courts, Courts of Criminal Correction and Courts of Common Pleas.

CONTRIBUTION: None.

AGE AND SERVICE REQUIREMENTS: 65 with 12 years service or after six years of continuous service prior to passage of 1959 Law. Retirement mandator, at 70.

RETIREMENT BENEFITS: ⅓ current salary of office.

DEATH BENEFITS: No specific provision.

DISABILITY BENEFITS: 50% salary until end of term of office.

* In counties of less than 30,000 probate judge is *ex officio* magistrate and magistrates salary compensates both offices.

SERVICE AFTER RETIREMENT: Appointed special commissioners or referees with life tenure, subject to temporary duty by assignment of Supreme Court, reimbursement for expenses.

CITATION: Vernon's Ann. Stats. of Missouri, Vol. 27, Title 32, Chap. 476 §§ 476.400 through 476.510, pp. 86 to 90, 1969 Cum. Pocket Supp., Const. Art. 5 §§ 25 and 27.

MONTANA

HIGHEST COURT	
Supreme Court	
Chief Justice	$22,500
Associates	21,000
GENERAL TRIAL COURT	
District Court	19,000
LIMITED AND SPECIAL COURTS	
Police Court	up to 5,400
Justice of the Peace	
where population under 10,000	Fees
10,000 to 15,000	Fees plus 3,400
15,000 to 18,000	Fees plus 3,600
Over 18,000	Fees plus 4,600

BENEFITS

HOSPITALIZATION: State pays ½ premium up to $7.50 per month.

VACATION: Approximately 4 weeks.

HOLIDAYS: 10 days plus election days.

EXPENSE ALLOWANCE: Supreme Court receives actual expenses, District judges receive expenses for sitting outside their district. Mileage reimbursed at 10¢ a mile.

RETIREMENT PLANS

JUDGES COVERED: A. Supreme and District Court judges. B. Judges of courts of limited jurisdiction.

AGE AND SERVICE REQUIREMENTS: A. Minimum is age 65 with 5 years of service. B. Minimum is 65 with 10 years service or 60 after 10 years with reduced benefits. If member retires before 65 and has not completed 10 years service, he receives reduced benefits. Credit given for public service and service in the armed forces.

CONTRIBUTION: A. 6% of salary. B. Based on sex and nearest birthday at time of entrance into system.

RETIREMENT BENEFITS: A. 3.3% per year of salary for first 15 years of service and 1% for each year of service thereafter. B. Actuarially determined and based on years of service; minimum of 50% of salary if judge retires after age 70 provided state's contribution does not exceed $480.

DEATH BENEFITS: A. If judge dies before retirement, beneficiary receives allowance judge would have received. If judge dies after retirement, beneficiary receives balance of contributions and state annuity. Judge has option of a lesser retirement allowance which provides his beneficiary with a benefit equal to ½ his lesser pension. B. If member dies in office or within 4 months of retirement, widow receives 1/12 of his final compensation times his years of service up to ½ his final compensation.

SERVICE AFTER RETIREMENT: A. Subject to call for service on Supreme and District Courts, reimbursement for expenses. B. No specific provision.

CITATION: Rev. Code of Montana, 1969 Cumulative Supplement, Chap. 11, §§ 93-1107 to 93-1132.

NEBRASKA

HIGHEST COURT	
Supreme Court	$25,000
GENERAL TRIAL COURT	
District Court	22,000
Supplement where population over 150,000	1,500

LIMITED AND SPECIAL COURTS

County Court (Probate)	4,000 to 19,500* (based on population)
Municipal Court	19,000**
Juvenile Court	22,000
Supplement where population over 150,000	1,500
Justice of the Peace	Fees

BENEFITS

HOSPITALIZATION: None.

VACATION: Discretionary.

HOLIDAYS: 11 official days but court does not take that many.

EXPENSE ALLOWANCE: Supreme Court has annual allowance of $3,880 to cover travel to professional meetings for the entire court. District Judges receive actual expenses in holding court.

RETIREMENT PLANS

JUDGES COVERED: Judges of Supreme, District, Workman's Compensation, County, separate Juvenile Courts—County judges and Municipal Court judges.

AGE AND SERVICE REQUIREMENTS: 65 with no minimum service. Mandatory retirement at 70 or at end of judicial term in which it is reached. Credit for service in any of the above courts or armed forces during war.

CONTRIBUTION: 4% for original members; 6% for future members.

RETIREMENT BENEFITS: Two plans, original member plan covering judges currently serving and future member plan covering judges taking office after December 25, 1969. Original member's plan benefits equal 3⅓% of final average salary over last 4 years of service times his years of service. Total benefits received by judge cannot exceed 65% of final average salary. Future member's monthly benefit is 1/12 of 2½% of total salary earned by judge for performance of his duties between the time he started making contributions to the fund and the date of his retirement.

DEATH BENEFITS: In event of death of judge before or after retirement, his beneficiary is repaid total or balance of his contributions to the fund.

DISABILITY BENEFITS: No minimum age or service requirement, same as retirement benefits.

SERVICE AFTER RETIREMENT: Permitted.

CITATION: Chap. 24, Art. 7, Reissue Revised Statutes of Nebraska, 1943.

* Maximum applies to Douglas County (Omaha).
** Except in first class cities where set by city council.

NEVADA

HIGHEST COURT	
Supreme Court	$22,000
GENERAL TRIAL COURT	
District Court	19,500
LIMITED COURT	
Justice Court	set locally
Municipal Court	set locally

BENEFITS

HOSPITALIZATION: Group policies with family coverage available; judge pays all premiums.

VACATION: Supreme and District judges take 2 to 4 weeks.

HOLIDAYS: 8 days.

EXPENSE ALLOWANCE: Judges reimbursed for instate conferences at $20 per day and 10¢ per mile. Per diem for out of state travel to conference of Chief Justices is $25. Justices of the Peace receive $20 per day and 10¢ a mile for travel outside municipality.

RETIREMENT PLANS

JUDGES COVERED: A. Supreme and District Court judges. B. All courts are under Public Employees' Retirement System.

AGE AND SERVICE REQUIREMENTS: A. Minimum age is 60 after 12, or 20 years service at different rates of benefits. B. 60 after 10 years service or 55 after 30 years of continuous service.

CONTRIBUTION: A. None. B. 6% of salary.

RETIREMENT BENEFITS: A. 20 years or more, ⅔ final salary; between 12 and 20, ⅓ final salary. B. 20 years service, allowance is 50% of average salary for 3 consecutive highest salaried years during the last 10 years of service. For more than 20 years of service an additional 1.5% of average salary for each additional year up to 10. Minimum guarantee is $75 per month.

DEATH BENEFITS: A. Widow of any judge eligible for pension receives, at age 65, $350 per month. B. Members may select one of five optional plans for protection of an heir. If member dies in office his contributions to fund are returned to his heirs. Widow of deceased member with one or more children under 18 may receive $100 monthly unless she makes more than $5,000 annually. If judge leaves the service before retirement he may withdraw his contribution. If however the judge has been a member for 25 years he may leave his contribution in the fund and receive benefits when minimum age is attained. Members for 20 years may do the same and receive proportionally smaller benefits to a minimum of 80% of normal benefits.

DISABILITY BENEFITS: A. No specific provision. B. Any age, 10 years service, same as retirement allowance.

SERVICE AFTER RETIREMENT: No specific provision.

CITATION: A. Nev. Rev. Stats., Vol. 1, Tit. 1, Chap. 2, §§ 2.060 and 2.070, Chap. 3, § 3.090 as amended Stats. 1960, Chap. 225. B. Nev. Rev. Stats., Vol. 2, Tit. 23, Chap. 286, §§ 286.010 through 286.800.

NEW HAMPSHIRE

HIGHEST COURT	
Supreme Court	
Chief Justice	$28,500
Associates	27,500
GENERAL TRIAL COURT	
Superior Court	
Chief Justice	27,000
Associates	26,000
LIMITED AND SPECIAL COURTS	
Probate Court	9,000
Municipal Court	150 to 1,000*
District Court	1,400 to 1,900**

BENEFITS

HOSPITALIZATION: Group plan with family coverage available, state pays $3.00 of premium—judge pays remainder.

VACATION: Discretionary.

HOLIDAYS: 11 days plus election days.

EXPENSE ALLOWANCE: Supreme and Superior Court judges get actual expenses, mileage reimbursed at 8¢ a mile.

RETIREMENT PLANS

JUDGES COVERED: A. All courts under state Employees' Retirement System. B. Optional disability plan for Supreme and Superior Court judges.

AGE AND SERVICE REQUIREMENTS: A. Minimum is age 60 with no minimum length of service. Retirement is compulsory for judges at 70. B. None.

* Salary established locally.
** Based on case load formula.

CONTRIBUTION: A. Actuarially determined. B. None.

RETIREMENT BENEFITS: A. 1/60 of average final compensation times number of years of service under 30 plus 1/120 of additional years. Each member is guaranteed at least 50% of average final compensation or if he has completed less than 30 years a proportionate amount. B. None.

DEATH BENEFITS: A. In event of occupational death, widow receives annuity of 50% of average final compensation. Member may elect in lieu of regular allowance one of a series of actuarially reduced annuities with additional benefits for designated heirs. B. None.

DISABILITY BENEFITS: A. 10 years of service, 60 years old, regular retirement allowance. If under 60, 90% of regular retirement allowance. B. 50% of salary at time of retirement.

SERVICE AFTER RETIREMENT: A. Supreme and Superior Court judges become judicial referees at ¾ current effective salary. B. Must perform such duties as may be assigned to him by the Chief Justice.

CITATION: N. H. Const., Pt. II, Art. 78; R.S.A. 100-A, 490:2, 491:2, 493-A, 493:2.

NEW JERSEY

HIGHEST COURT
- Supreme Court
  - Chief Justice $47,500
  - Associates 45,000

INTERMEDIATE APPELLATE COURT
- Appellate Division, Superior Court..... 42,000

GENERAL TRIAL COURT
- Superior Court .....37,000 and 40,000*
- County Court 37,000

LIMITED AND SPECIAL COURTS
- County District Courts..... 34,000
- Juvenile and Domestic Relations Courts..... 34,000
- Municipal Courts .....up to 20,000

STANDING MASTER 32,000

COURT ADMINISTRATOR
- Administrative Director of the Courts..... 32,000**

BENEFITS

HOSPITALIZATION: Group policy available. State pays judges' premium, judge pays for family coverage.

VACATION: 7 weeks (5 in summer, 1 at Christmas, and 1 at Easter).

HOLIDAYS: 14 days.

EXPENSE ALLOWANCE: Supreme Court, Appellate Division, Superior and County Court judges are reimbursed for actual expenses in connection with judicial functions not exceeding state per diem of $25 or $16 per diem when engaged in official travel other than attendance at a convention or conference.

RETIREMENT PLAN

JUDGES COVERED: A. Supreme and Superior Courts B. County Court, optionally county judges are covered under Public Employees' Retirement System. C. Juvenile and Domestic Relations Courts and County District Courts covered by Public Employees Retirement System.

AGE AND SERVICE REQUIREMENTS: A. May retire at 65 after 15 years service or at 60 after 25. Mandatory at 70 after aggregate of 10 years service. B. 70 after 10 years successive service on County Court, if covered under Public Employees' Plan minimum is 70 after 10 years aggregate service on county court or court of common pleas or 65 with 10 if judge is not reappointed; benefits begin at 70. C. Voluntary at age 60 and mandatory at 70 with no minimum service requirement but benefits depend on years of service.

CONTRIBUTION: A. 10% of difference between current salary and salary prior to July 1, 1965. B. None. C. Actuarially determined.

RETIREMENT BENEFITS: A. ¾ annual salary at time of retirement. B. ½ annual salary at retirement. C. Actuarially determined.

DEATH BENEFITS: A. and B. ¼ annual salary received by husband if widow was married before age 50. C. Not provided.

DISABILITY BENEFITS: A. Any age, no minimum service, ¾ salary. B. Not provided. C. Any age with 10 years service, benefits are: 9/10 times years of service, divided by 60, times final average salary.

SERVICE AFTER RETIREMENT: Judges under age 70 may serve at request of chief justice and receive $50 per diem.

CITATION: A. N. J. Stats. Ann. 43: 6-6.4 *et seq.* B. N. J. S. 2A:3-21.1 *et seq.* and N.J.S.A. 43: 15A-121 *et seq.* C. N.J.S.A. 15A-1 through 15A-127. Const. Art. 6, Sec. 6, Paras. 3 and 5.

NEW MEXICO

HIGHEST COURT
- Supreme Court $22,500

INTERMEDIATE APPELLATE COURT
- Court of Appeals 21,000

GENERAL TRIAL COURT
- District Court 20,000

LIMITED AND SPECIAL COURTS
- Probate Court .....1,000 to 3,960
- Small Claims Court 8,000
- Municipal Court (Albuquerque) 16,000
- Magistrate Court .....2,000 to 14,000

COURT ADMINISTRATOR
- Director of Administrative Office 11,550

BENEFITS

HOSPITALIZATION: Group policy available, state pays approximately 25% of premium.

VACATION: 30 days.

HOLIDAYS: 10 days.

EXPENSE ALLOWANCE: Supreme and District Court judges are paid in state per diem of $20, $25 without the state. Mileage is reimbursed at 10¢ per mile.

RETIREMENT PLANS

JUDGES COVERED: Supreme and District Court.

AGE AND SERVICE REQUIREMENTS: 64 with 10 years service, or 60 with 16.

CONTRIBUTION: 6% of salary.

RETIREMENT BENEFITS: 50% of average salary of last 3 years of service.

DEATH BENEFITS: 50% of retirement benefits to widow of judge who retired at or before 70. 99% of contribution refunded to widow or heirs of judge who dies in office.

DISABILITY BENEFITS: Any age with 10 years service, 50% of salary.

SERVICE AFTER RETIREMENT: No specific provision.

CITATION: N.M. Stats. 1953, Vol. 2, Chap. 5, Art. 5, 1969 Supp., §§ 5-5-1.2 to 5-5-28.1.

NEW YORK

HIGHEST COURT
- Court of Appeals
  - Chief Judge $44,500
  - Associates 42,000

INTERMEDIATE APPELLATE COURT
- Appellate Division, Supreme Court
  - First and Second Departments
    - Presiding Justice 43,600
    - Associates 42,100

* Superior Court assignment judges receive the higher figure.

** Includes $5,000 as Standing Master.

Third and Fourth Departments
Presiding Justice 36,100
Associates 35,600
(Above figures include local supplements)

GENERAL TRIAL COURT
Supreme Court
First and Second Departments 39,100
Third and Fourth Departments 33,600
(Above figures include local supplements)

LIMITED AND SPECIAL COURTS
Family Court
New York City 30,000
Elsewhere ..... 25,000 to 30,000
County Court ..... 25,000 to 30,000
Nassau County District Court
Presiding Judge 32,500
Associates 30,000
Suffolk County District Court
Presiding Judge 25,000
Associates 22,500
Court of Claims
Presiding Judge 34,000
Associates 34,000
Surrogate Court
New York City 39,100
Richmond 35,500
Elsewhere ..... 25,000 to 36,382
New York City Civil Court 30,000
New York City Criminal Court 30,000
Justice Courts ..... varies

COURT ADMINISTRATOR
State Administrator, Judicial Conference 42,678
Department Directors of Administration
First and Second Departments 36,325
Third Department 30,608
Fourth Department 30,608

BENEFITS

HOSPITALIZATION: Group policies with family coverage available, premiums shared by state and judge.

VACATION: About 7 weeks in major courts, less in some lower courts.

HOLIDAYS: Regular state holidays.

EXPENSE ALLOWANCE: In lieu of expenses judges given allowances of $6,000 in Court of Appeals, $6,500 in Appellate Division in Third and Fourth Departments, $3,000 in Supreme Court, $7,000 to presiding judge of Court of Claims, and $4,500 to Court of Claims judges.

RETIREMENT PLAN

JUDGES COVERED: A. Judges paid by city of New York. B. Judges paid by state.

AGE AND SERVICE REQUIREMENTS: A. Minimum age is 60 or 55 with actuarially higher rate of salary deductions and pension, no minimum service requirement. Retirement mandatory at 70 but service may be extended for additional periods of two years each up to 80. Credit given for service in city agencies or courts. B. Minimum age is 60 or 55 with actuarially higher contributions, or any age after 20 years service in the event of separation without personal fault. Retirement compulsory at 70 unless excepted by law.

CONTRIBUTION: A. and B. Actuarially determined.

RETIREMENT BENEFITS: A. Actuarial equivalent of contributions plus pension of 1/40 of final compensation (average during selected 5 years) for members retiring at 60, 1/120 or 1/100 of final compensation for persons retiring at 55. B. Members retiring at 60 receive annuity paid from accumulated contributions plus pension equal to 1/140 of final average salary times years of membership service plus pension of 1/70 times final average salary times years of prior service. Members retiring at 55 receive annuity as above plus 1/20 final average salary times years of service.

DEATH BENEFITS: A. Non-occupational death, benefits equal accumulated contributions plus amount of salary earned in 6 months prior to death, or if member had more than 10 years service, amount of salary earned in previous 12 months. Occupational death, widow receives pension of ½ member's salary at death. B. Occupational death, pension of ½ average final salary. Non-occupational death after one year of service accumulated contributions plus 1/12 salary at death for each year of service up to 12 years. In addition state provides extra non-occupational benefits on a year-to-year basis consisting of 1/24 of salary at death for each year of service beyond 12 years not to exceed 24 additional years.

DISABILITY BENEFITS: A. Occupational disability, any age no minimum service, allowance of actuarial equivalent of contributions plus pension equal to reserve-for-take-home-pay to which he is entitled plus additional pension of ¾ of final compensation. Non-occupational disability, minimum service is 10 years, allowance is allowance member would have received at minimum retirement age computed on basis of actual length of service, not below ¼ final compensation. B. Occupational disability, same as A. Non-occupational disability, any age, 15 years service, if 60 allowance computed in regular manner, if below 60, allowance is 90% of 1/70 of final average salary times years of service, not below ¼ of that amount. Supplemental allowance provided for judicial officers retired by court on the judiciary payable to end of term or age 70. Such allowance, together with all other benefits, shall total ⅔ of salary at time of retirement.

SERVICE AFTER RETIREMENT: Retired judges may be appointed as retired justices of the Supreme Court for renewable terms of two years each. Compensation is same as Supreme Court judge.

CITATION: A. New York City Charter and Administrative Code Ann., Title B, §§ B-3-1.0 through B-3-55.0, pp. 31-76 and 1969 Cum. Pocket Supp. B. McKinney's Consol. Laws of N. Y., Book 50 ½ "Retirement and Social Security Laws," §§ 2 through 119, pp. 2-160 and 1969 Cum. Pocket Supp. Service after retirement found in: *id.*, Book 29 "Judiciary Law," §§ 115-125, pp. 211-238 and 1969 Cum. Pocket Supp. Const. Art. 6, §§ 9, 9-a and 19.

NORTH CAROLINA

HIGHEST COURT
Supreme Court
Chief Justice $30,000
Associates 29,000

INTERMEDIATE APPELLATE COURT
Court of Appeals
Chief Judge 27,000
Associates 26,000

GENERAL TRIAL COURT
Superior Court 22,000

LIMITED AND SPECIAL COURTS
District Court
Chief Judges 18,000
Judges 17,000
County Court ..... 7,500 to 10,000
Recorder's Court ..... 6,500 to 10,000
Municipal Court ..... varies
Justice Court ..... varies

COURT ADMINISTRATOR
Director, Administrative Director of the Courts.. 24,500

BENEFITS

HOSPITALIZATION: None.

VACATION: Appellate and Superior Court judges 6 weeks, District judges 3 weeks.

HOLIDAYS: Discretionary.

EXPENSE ALLOWANCE: Appellate and District judges receive travel reimbursement at 9¢ per mile and limited subsistence. In the case of District judges it is a maximum of $15 per day. Superior judges have an expense allowance of $5,000 per year.

RETIREMENT PLANS

JUDGES COVERED: A. Appellate judges. B. Superior Court judges (Court Administrator receives the same coverage).

AGE AND SERVICE REQUIREMENTS: A. Minimum is 15 years service, whether consecutive or not, 65 with 12 years consecutive service in appellate division, or 75 with 8 years consecutive service in appellate division, or 24 years of service regardless of age. B. 65 with 15 years service, 68 with 12 consecutive years of service, or after 24 years of service. Retirement mandatory at 70.

CONTRIBUTION: A. and B. None.

RETIREMENT BENEFITS: A. ⅔ of current salary. B. Same.

DEATH BENEFITS: A. and B. No specific provision.

DISABILITY BENEFITS: A. and B. After 8 years service, benefits same as retirement allowance.

SERVICE AFTER RETIREMENT: A. and B. Judges who retire on longevity are "emergency" judges for life and are subject to temporary recall to active duty. They are paid $100 weekly plus expenses.

CITATION: Gen. Stats. of N. C., Chap. 7A, Arts. 6 and 8, 7A-39.1 through 7A-39.11, 7A-50 through 7A-55.

NORTH DAKOTA

HIGHEST COURT
- Supreme Court
  - Chief Justice $20,500
  - Associates 20,000

GENERAL TRIAL COURT
- District Court 18,000

LIMITED AND SPECIAL COURTS
- County Court of
  - Increased Jurisdiction ..... 11,000 to 15,000
- Other County Courts (Probate) ..... 5,600 to 8,500*
- County Justice Court ..... up to 5,000

BENEFITS

HOSPITALIZATION: Group policies with family coverage available, all premiums paid by judge.

VACATION: No set policy.

HOLIDAYS: 8 days.

EXPENSE ALLOWANCE: Mileage reimbursement is 9¢ per mile.

RETIREMENT PLANS

JUDGES COVERED: Supreme and District Court judges.

AGE AND SERVICE REQUIREMENTS: Retirement at any age; benefits commence at 65 after 20 years of service, 66 after 18, 67 after 16, 68 after 14, 69 after 12, or 70 after 10. Mandatory forfeiture of benefits at 73 if continuing to hold office.

CONTRIBUTION: 5% of salary during the first 20 years of service.

RETIREMENT BENEFITS: ½ current salary of office.

DEATH BENEFITS: Judge has 3 options; ¾ retirement benefits until he dies then ½ to unmarried widow until age 62, ⅔ allowance until he dies then ⅔ to widow until 62, or ½ retirement until he dies and ½ to wife at 62 even if her husband is alive.

DISABILITY BENEFITS: Full salary of office for remainder of term.

SERVICE AFTER RETIREMENT: May be appointed commissioner by Supreme Court and is eligible to serve as referee in civil action in any court or as legal counsel in any state agency.

CITATION: N. D. Century Code Ann. 1960, Tit. 27, §§ 1701 through 1705 and 1969 Supplement; Disability, *id.*, Chap. 05 §§ 05031, 05032 p. 658.

* Plus supplement not to exceed 10% set by County Commissioners if they feel the duties merit the increase.

OHIO

HIGHEST COURT
- Supreme Court
  - Chief Justice $32,000
  - Associates 30,000

INTERMEDIATE APPELLATE COURT
- Court of Appeals 28,000

GENERAL TRIAL COURT
- Court of Common Pleas ..... 14,500 to 26,000*

LIMITED AND SPECIAL COURTS
- Probate Court ..... 14,500 to 26,000*
- Municipal Court ..... 10,000 to 23,000
  - Part Time 6,000
- Juvenile Court (Cuyahoga County) 26,000
- County Courts 6,000

COURT ADMINISTRATOR
- Administrative Director of the Courts 24,960

BENEFITS

HOSPITALIZATION: Group policies available with family coverage, state or county pays ½ the premium.

VACATION: 30 days.

HOLIDAYS: 9 days.

EXPENSE ALLOWANCE: Court of Appeals judges have per diem of $20 when they sit in another appellate district and actual expenses when they sit on the Supreme Court. Common Pleas, Probate and Juvenile judges per diem is $30 and Municipal judges per diem is $15. Mileage allowance is 10¢ per mile.

RETIREMENT PLAN

JUDGES COVERED: All judges.

AGE AND SERVICE REQUIREMENTS: 60 with 5 years service, 55 after 25, or any age with 36 years service. Credit given for military service and elective office.

CONTRIBUTION: 7.7% of first $25,000 in salary.

RETIREMENT BENEFITS: Allowance actuarially figured and may be as high as 85% of average salary for highest 5 years of service.

DEATH BENEFITS: Three options available for a lesser allowance with benefits accruing to designated heirs. Widow or heirs of a member who had completed 5 years service may also receive a monthly allowance of $50 to $100 a month.

DISABILITY BENEFITS: Any age with no minimum service, benefits include annuity equal to contribution plus pension based on difference between attained age and regular retirement age.

SERVICE AFTER RETIREMENT: No specific provision.

CITATION: Baldwin's Ohio Rev. Code and Service 1964, Vol. 1, Title 1, §§ 145.01 through 145.99.

* Figures include local supplements of $2,000 to $10,000.

OKLAHOMA

HIGHEST COURT
- Supreme Court $22,500
- Court of Criminal Appeals 22,500

INTERMEDIATE APPELLATE COURT
- Court of Appeals 19,500*

GENERAL TRIAL COURT
- District Court
  - District Judge 17,500
  - Associate District Judges
    - Pop. over 300,000 16,500
    - 10,000 to 300,000 14,500
    - Under 10,000 13,000
  - Special Judges
    - Lawyers 13,000
    - Non-lawyers 9,000

LIMITED AND SPECIAL COURTS
- Court on the Judiciary
  - Appellate Division ..... **
  - Trial Division ..... **

State Industrial Court 17,500
Court of Tax Review ..... ***
Court of Bank Review ..... ***
Municipal Courts ..... ****

COURT ADMINISTRATOR
Administrative Director 17,500

BENEFITS

HOSPITALIZATION: Covered by group policy.

VACATION: Up to 15 days, with sick leave up to 45 days.

HOLIDAYS: 7 days.

EXPENSE ALLOWANCE: Actual and necessary expenses while outside county of residence, not to exceed 9¢ per mile and per diem of $12 or subsistence allowance of $10 per day in-state and $20 per day out-state.

RETIREMENT PLANS

JUDGES COVEPED: Judges of Supreme Court, Court of Criminal Appeals, Industrial, Intermediate Appellate and District Courts.

AGE AND SERVICE REQUIREMENTS: 60 after 20 years service, 65 after 10, or 70 after 8. Credit given for prior service in courts of record. Retirement mandatory at end of term in which requirements met.

CONTRIBUTION: 4% of 75% of his salary.

RETIREMENT BENEFITS: 4½% of final salary times years of service up to 75% of final salary.

DEATH BENEFITS: Contributions are paid to beneficiaries if judge dies before he retires, no survivor benefits.

DISABILITY BENEFITS: No specific provision.

SERVICE AFTER RETIREMENT: May serve by assignment of Supreme Court.

CITATION: 20 O. S. Supp. 1969 §§ 1101 through 1108.

* In operation January, 1971.

** Trial and Appellate judges serve on them "ex officio" without additional pay.

*** Special courts manned by district judges, who receive only expenses.

**** Compensation set by local ordinance.

OREGON

HIGHEST COURT
Supreme Court $26,000

INTERMEDIATE APPELLATE COURT
Court of Appeals 25,000

GENERAL TRIAL COURT
Circuit Court 24,000

LIMITED AND SPECIAL COURTS
Tax Court 24,000
District Court 18,000
Justice of the Peace ..... up to 8,820
County Court ..... 3,000 to 10,500

COURT ADMINISTRATOR
Administrative Assistant to Chief Justice 15,000

BENEFITS

HOSPITALIZATION: Group policy with family coverage available, premium paid by judge.

VACATION: 2 to 4 weeks.

HOLIDAYS: 7 days.

EXPENSE ALLOWANCE: Actual expenses and travel for duty outside district and to meetings of Judicial Conference. Mileage allowance is 8¢ per mile.

RETIREMENT PLANS

JUDGES COVERED: Judges of Supreme Court, Court of Appeals, Circuit and Tax Court and is optional for District Court judges.

AGE AND SERVICE REQUIREMENTS: 65 after 16 years service or 70 after 12. Retirement compulsory at 75. Any judge who holds office for 16 years and contributes to fund for 16 years will receive benefits at 65 even though he ceases to hold office before 65. No judge has to contribute for more than 16 years.

CONTRIBUTION: 7% of salary.

RETIREMENT BENEFITS: 45% of highest average salary for 5 out of last 10 years.

DEATH BENEFITS: Widow's pension is determined by % of basic amount (22.5% of final average pay of judge) scaled from 100% to 20% depending upon years of service of judge. If, prior to death, they have been married 10 years, no adjustment is made in widow's pension, but if married less than 10 and wife more than 3 years younger, she receives an actuarial amount.

DISABILITY BENEFITS: Involuntarily retired judge receives regular retirement allowance if otherwise fully qualified. Voluntarily retired judge with 6 years service receives regular retirement allowance.

SERVICE AFTER RETIREMENT: Retired justices may be appointed *pro tempore* to Supreme or Circuit Court by the Supreme Court. Retired Circuit judges may be appointed *pro tempore* to Circuit Court by Supreme Court.

CITATION: Oregon Rev. Stats., Vol. 1, Tit. 1, Chap. 1, §§ 1.130 through 1.380 pp. 6-8a (Amend. 1969), Const. Art. 7 (Amended) § 1a.

PENNSYLVANIA

HIGHEST COURT
Supreme Court
Chief Justice $38,000
Associates 37,500

INTERMEDIATE APPELLATE COURT
Supreme Court
Presiding Judge 36,000
Associates 35,500

GENERAL TRIAL COURT
Court of Common Pleas* ..... 26,500 to 30,000**

LIMITED AND SPECIAL COURTS
Philadelphia County
Municipal Court
Attorney Judges 20,000***
Lay Judges 16,500
Traffic Court 16,500***
Justices of the Peace ..... 3,000 to 14,000

COURT ADMINISTRATOR
State Court Administrator 35,000

BENEFITS

HOSPITALIZATION: Group policies with family coverage available, premium shared.

VACATION: Supreme Court theoretically has one month, practically less.

HOLIDAYS: 5 days.

EXPENSE ALLOWANCE: Supreme Court judges have $4,000 expense allowance, Superior Court judges have $3,000. Mileage allowance is 8¢ per mile.

RETIREMENT PLANS

JUDGES COVERED: All judges paid by the state.

AGE AND SERVICE REQUIREMENTS: 60 with one full elective term or 10 years of service, any age after 20 years judicial service or 25 years of state service.

CONTRIBUTION: Salary deductions computed on basis

* Presiding judge receives $500 more in each district.

** Common Pleas Court in Dauphin County (Harrisburg) also functions as Commonwealth Court. The 5 judges handle actions against the state and are paid $31,500.

*** Presiding Judge receives $1,000 additional.

of varying proportions (from 1½% to 2⅛%) of an actuarially determined base rate of contribution.

RETIREMENT BENEFITS: 4% of average annual salary for five highest years for each year of service during first 10 years plus 3% of final average salary for each year thereafter. Supreme Court justice with no other service who contributes at a higher rate may receive 5% for first 16 years and 4% for each year thereafter. Allowance may be modified by 1 of 4 options but maximum allowance is 80% of final salary.

DEATH BENEFITS: If judge dies in office while eligible for retirement, pension he was eligible for is paid to his designated heir.

DISABILITY BENEFITS: With 5 years service, actuarial equivalent of accumulated contributions plus state annuity of 1/90 final salary times years of service at a minimum of 33% of final salary.

SERVICE AFTER RETIREMENT: No specific provision.

CITATION: Purdon's Penn. Stats. Ann., Tit. 71, Chap. 8, §§ 1725-101 through 1725-811 pp. 250-290 and 1969 Cum. Pocket Supp.

RHODE ISLAND

HIGHEST COURT	
Supreme Court	
Chief Justice	$26,000
Associates	25,000
GENERAL TRIAL COURT	
Superior Court	
Presiding Justice	24,000
Associates	23,000
LIMITED AND SPECIAL COURTS	
District Court*	20,000
Probate Court	up to 11,440
Family Court	
Chief Judge	24,000
Associates	23,000
COURT ADMINISTRATOR	
Court Administrator	14,404

BENEFITS

HOSPITALIZATION: Group policies available, state pays for judge, judge pays for family coverage.

VACATION: Varies.

HOLIDAYS: 10 days.

EXPENSE ALLOWANCE: Supreme Court justices get travel allowances for out-of-state conferences. Superior and Family judges receive 8¢ per mile while on circuit.

RETIREMENT PLANS

JUDGES COVERED: Supreme, Superior, Family, and District Court judges.

AGE AND SERVICE REQUIREMENTS: 65 after 20 years service on either court, or 70 after, or if a justice on January 16, 1956 any age after 25 years (with increased pension).

CONTRIBUTION: None.

RETIREMENT BENEFITS: ¼ of salary at time of retirement, full salary for judges in office on January 16, 1956 who retire with 25 years service.

DEATH BENEFITS: No provision.

DISABILITY BENEFITS: No specific provision.

SERVICE AFTER RETIREMENT: Superior judge may sit as associate on Superior Court at request of presiding judge.

CITATION: Gen. Laws of R. I. 1956, Vol. 2, Tit. 8, Chap. 3, §§ 7 and 8, p. 386 and 1967 Cum. Pocket Supp. Also § 8-10-42 G.L. and § 8-8-10 G.L. as amended by Chap. 239, 1969 Public Laws.

* Chief Judge receives $21,000.

SOUTH CAROLINA

HIGHEST COURT	
Supreme Court	
Chief Justice	$35,000*
Associates	30,000*
GENERAL TRIAL COURT	
Circuit Court	30,000*
LIMITED AND SPECIAL COURTS	
County Court	set locally
Probate Court	set locally
Juvenile & Domestic Relations Court	set locally
Municipal Court	set locally
Magistrates Court	set locally

BENEFITS

HOSPITALIZATION: Hospitalization policy available; premium paid by the judge.

VACATION: No set policy.

HOLIDAYS: 13 days.

EXPENSE ALLOWANCE: Supreme Court judge has $600 expense allowance and $25 per diem for travel. Circuit judge has travel per diem of $25. Mileage allowance is 9¢ a mile.

RETIREMENT PLANS

JUDGES COVERED: Supreme and Circuit Court judges.

AGE AND SERVICE REQUIREMENTS: 70 with 15 years service, 65 with 20, or any age with 25. Mandatory at 72.

CONTRIBUTION: 4% of salary.

RETIREMENT BENEFITS: ⅔ current salary of office.

DEATH BENEFITS: ⅓ of retirement benefits to widow, so long as she is unmarried.

DISABILITY BENEFITS: Any age with 7 years service, same as retirement.

SERVICE AFTER RETIREMENT: Any retired judge or justice may serve as associate justice or special circuit judge at the call of the chief justice, reimbursement for expenses.

CITATION: Code of Laws of South Carolina, Title 61, Chap. 5, §§ 251-258.

* Effective January 1, 1971.

SOUTH DAKOTA

HIGHEST COURT	
Supreme Court	$20,500
GENERAL TRIAL COURT	
Circuit Court	18,500
LIMITED AND SPECIAL COURTS	
District County Courts	16,500*
Municipal Judges	—

BENEFITS

HOSPITALIZATION: Group policies with family coverage available, premium paid by the judge.

VACATION: Depends on workload.

HOLIDAYS: 9 days plus election days.

EXPENSE ALLOWANCE: $2,000 travel allowance for Supreme Court. Circuit Judges reimbursed for traveling outside their circuit. Per diem maximum for in-state is $13.52, out-state $24.25. Mileage allowance is 8¢ a mile.

RETIREMENT PLANS

JUDGES COVERED: Supreme and Circuit Court judges.

* Pursuant to 1966 constitutional amendment the Supreme Court in 1969 divided the state into 19 county court districts with the approval of the Senate replacing 64 county and municipal courts except for 3 municipal courts retained.

JUDICIAL SALARIES IN SELECTED COURTS OF LIMITED JURISDICTION

Notes: Arkansas—common pleas courts are presided over by county judges. Supplements of from $100 to $900 for these duties are included in the salaries shown. Massachusetts—salary given is for full-time judges; part-time judges are paid from $7,600 to $10,000. New Jersey—county district courts have $3,000 limit on negligence actions. North Carolina—county and recorder's court are gradually being replaced by a uniform system of district courts. The transition will be completed in 1971.

State	Court	Jurisdiction			Minor Court Salary	Major Court Salary
		Civil	Criminal	Probate		
Alabama	Inferior	Varies	Limited	No	6,000-10,000	18,000-24,000
Alaska	District	$ 3,000	General	No	19,000	26,500
Arkansas	Common Pleas	1,000	None	No	3,100-5,900 (N)	19,200
California	Municipal	5,000	Misdemeanors	No	30,724	33,396
Colorado	County	500	Misdemeanors	No	17,500	20,000
	Superior (Denver)	5,000	General	No	20,000	20,000
Connecticut	Common Pleas	15,000	None	No	22,500	27,500
	Circuit	7,500	None	No	21,500	27,500
Delaware	Common Pleas	2,500	Misdemeanors	No	9,500-27,000	31,000
Dist. of Columbia	Court of General Sessions	10,000	Limited	No	27,500	40,000
Florida	Civil Court of Record	1,000, 5,000	Varies	No	20,000-25,000	28,500
	Courts of Record	10,000			13,500-27,500	28,500
Georgia	City, Municipal Civil and Criminal	Varies	Misdemeanors	No	4,600-22,500	24,800-38,800
Hawaii	District	2,000	Misdemeanors	No	23,670	30,250
Illinois	Magistrates	10,000	Misdemeanors	Yes	15,000-23,000	15,000-35,000
Indiana	Municipal (Marion Co.)	10,000	Misdemeanors	No	19,500	19,000-23,500
Iowa	Municipal	2,000	Misdemeanors	No	16,800	21,000
Kansas	Probate	1,000	Misdemeanors	Yes	5,000-19,900	19,500-21,900
	Municipal & Cmn Pleas	1,000, 3,000	Misdemeanors	No	3,600-16,000	19,500-21,900
Louisiana	City	100-1,000	None	No	3,600 + FEES to 34,000	20,500 to 34,000
Maine	District	10,000	Limited	Yes	15,000	19,500
Maryland	Magistrates	Varies	Limited	No	300-6,500	30,500
	Peoples (Baltimore)	3,000	None	No	25,000	30,500
Massachusetts	District & Municipal	Unlimited	Limited	No	25,000 (N)	30,000
Michigan	District	3,000	Limited	No	18,000-27,500	20,000-30,000
	Common Pleas (Detroit)	5,000	None	No	25,000	20,000-30,000
Minnesota	Municipal	Varies	None	No	420-23,000	22,000-23,500
Mississippi	County	10,000	Misdemeanors	No	5,400-13,000	16,000
Missouri	Magistrate	2,500	Misdemeanors	No	10,600-13,500	20,000-23,000
Nebraska	Municipal	2,000	Limited	No	19,000	22,000-23,500
	County	1,000	Limited	Yes	4,000-19,500	22,000-23,500
New Hampshire	District	1,500	Limited	No	1,400-19,000	26,000
New Jersey	County-District	1,000 (N)	Misdemeanors	No	34,000	37,000
New Mexico	Small Claims (Albuquerque)	2,000	Limited	No	8,000	20,000
New York	County Courts	6,000-10,000	General	No	25,000-33,000	33,600-39,100
	Civil court of NYC	10,000	None	No	30,000	33,600-39,100
	Criminal court of NYC	None	General	No	30,000	33,600-39,100
North Carolina	District	5,000	Limited	No	17,000	22,000
	County (N)	3,000	Misdemeanors	Yes	7,500-10,000	22,000
	Recorder (N)	1,000	Misdemeanors	No	6,500-10,000	22,000
North Dakota	County	1,000	Misdemeanors	Yes	5,600-15,000	18,000
Ohio	Municipal	5,000 (N)	Misdemeanors	No	10,000-23,000	14,500-26,000
Oklahoma	Associate District Judges	Unlimited	General	Yes	13,000-16,500	17,500
Oregon	District	2,500	Limited	Yes	18,000	24,000
Pennsylvania	Municipal (Philadelphia)	500	Limited	No	20,000	26,500-30,000
Rhode Island	District	5,000	Limited	No	20,000	23,000
South Carolina	County	7,500-25,000	Limited	No	VARIES	30,000
South Dakota	District County	1,000	Limited	Yes	16,500	16,500
Tennessee	General Sessions	3,000	Misdemeanors	No	1,800-11,800	17,500
Texas	County	1,000	Misdemeanors	Yes	18,500-22,500	20,000-28,000
Utah	City	1,000	Misdemeanors	No	5,000-10,500	17,500
Vermont	District	5,000	None	No	19,000	22,000
Virginia	Municipal	2,000	Misdemeanors	No	12,000-22,000	20,000
	County	2,000	Misdemeanors	Varies	3,000-15,000	20,000
Washington	Justice	1,000	None	No	20,000	22,500
Wisconsin	County	500,000	Limited	Yes	18,500-27,000	21,000-28,000
Puerto Rico	District	2,500	Misdemeanors	No	17,000	22,900

AGE AND SERVICE REQUIREMENTS: 65 with 15 years service on either or both courts or any age after 20.

CONTRIBUTION: 4% of salary.

RETIREMENT BENEFITS: ½ salary at time of retirement.

DEATH BENEFITS: If judge dies before retirement his heirs receive his contributions. After a judge has served 10 years he may elect to assign ⅓ of his retirement pay to his wife. At retirement he will receive ⅔ allowance and the wife shall receive ⅓ commencing on the judge's retirement or death in office until she dies or remarries.

DISABILITY BENEFITS: Any age with 10 years service, same as retirement, less than 10 years, governor may approve $200 monthly for remainder of term.

SERVICE AFTER RETIREMENT: May be commissioner or referee of supreme court by assignment, receives expenses.

CITATION: S. D. Code of 1939, 1960 Supp, Vol. 2, Title 32, Chap. 32.15 and S. D.C.L. 1967 § 16-8-9.1 and .2.

TENNESSEE

HIGHEST COURT
- Supreme Court
  - Chief Justice $25,000
  - Associates 24,000

INTERMEDIATE APPELLATE COURT
- Court of Appeals
  - Presiding Judge 21,000
  - Associates 20,000
- Court of Criminal Appeals
  - Presiding Judge 21,000
  - Associates 20,000

GENERAL TRIAL COURT
- Circuit Court 17,500
- Chancery Court 17,500
- Criminal Courts 17,500
- Law Equity Courts 17,500

LIMITED AND SPECIAL COURTS
- County Courts (Probate) ..... set locally
- General Sessions Court ..... 1,800 to 11,800
- Juvenile Court ..... set locally
- Municipal Court ..... set locally

COURT ADMINISTRATOR
- Executive Secretary to Supreme Court 20,000

BENEFITS

HOSPITALIZATION: Group policy; state and judge each pay ½.

VACATION: Discretionary.

HOLIDAYS: 14 days.

EXPENSE ALLOWANCE: Judges get actual expenses and 8¢ per mile.

RETIREMENT PLANS

JUDGES COVERED: All judges of courts of record.

AGE AND SERVICE REQUIREMENTS: Minimum age is 65. Credit is given for up to 4 years in armed forces or certain elected offices if contributions to fund are kept up.

CONTRIBUTION: Judges contribute 8% of monthly salary.

RETIREMENT BENEFITS: 75% of salary at time of retirement with 24 years service or if in office on August 31, 1966 and retiring at 70 after 20 years service. Otherwise the benefit is 3.125% times years of service, if less than 24, times salary at retirement. Minimum is equal to or greater than salary on September 1, 1958 times 3.3% times number of years of service.

DEATH BENEFITS: Options to provide for continuation of reduced retirement benefits to surviving beneficiary.

DISABILITY BENEFITS: After August 31, 1966 any age with 10 years service, regular retirement benefits.

SERVICE AFTER RETIREMENT: May be assigned by chief justice to sit to relieve congestion or to substitute for any judge unable to attend.

CITATION: Tenn. Code. Ann., Tit. 17, Chap. 3, §§ 301 through 326.

TEXAS

HIGHEST COURT
- Supreme Court $29,000
- Court of Criminal Appeals 29,000

INTERMEDIATE APPELLATE COURT
- Court of Civil Appeals 26,000

GENERAL TRIAL COURT
- District Court
  - State Salary 20,000
  - Local Supplement ..... up to 8,000

LIMITED AND SPECIAL COURTS
- County Courts (Probate) ..... 18,500 to 22,500
- Justices of the Peace ..... Fees

BENEFITS

HOSPITALIZATION: Group policies with optional family coverage, premiums are paid by judge.

VACATION: Supreme Court justices generally take 6 weeks.

HOLIDAYS: 12 days.

EXPENSE ALLOWANCE: District judges receive expenses while serving outside their counties. Mileage allowance is 10¢ a mile.

RETIREMENT PLANS

JUDGES COVERED: Judges of Supreme Court, Criminal and Civil Appeals, and District Courts.

AGE AND SERVICE REQUIREMENTS: Any age with 18 years service, with benefits deferred to age 65, or 65 with 10.

CONTRIBUTION: 5% of salary plus $2.00 annually.

RETIREMENT BENEFITS: With 24 years service may retire and receive benefits before age 65 at ½ salary. Judges who retire at or before 70 receive an additional annuity of 10% of pay. Judges with 12 years service may retire at any time with benefits commencing at 65.

DEATH BENEFITS: If he dies in office his contributions are refunded, upon retirement he can take a reduced annuity and provide for benefits to his widow on an actuarial basis. If he does not do this the balance of his contributions are refunded at his death.

DISABILITY BENEFITS: Any age after 10 years service, same as regular retirement allowance.

SERVICE AFTER RETIREMENT: Any judge may elect to remain a judicial officer and be assigned by the Supreme Court with his consent to sit on any court of the same or lower jurisdiction than that of the one he retired from, receiving the difference between his pension and the compensation of active judges of the court.

CITATION: Vernon's Civil Stats. of the State of Texas Ann., Art. 6228b, §§ 1 through 10.

UTAH

HIGHEST COURT
- Supreme Court
  - Chief Justice $20,000
  - Associates 20,000

GENERAL TRIAL COURT
- District Court 17,500

LIMITED AND SPECIAL COURTS
- Juvenile Court 17,500
- City Courts
  - First Class 10,500
  - Others ..... 5,000 to 10,500
- Justices of the Peace ..... Fees

BENEFITS

HOSPITALIZATION: Group policy open to the judges.

VACATION: No set policy.

HOLIDAYS: 12 days.

EXPENSE ALLOWANCE: District judges receive actual expenses for serving outside their home county. Mileage reimbursed at 10¢ per mile.

RETIREMENT PLANS

JUDGES COVERED: Supreme, District and City Courts.

AGE AND SERVICE REQUIREMENTS: 70 with 10 years service or any age with 20.

CONTRIBUTION: 7% of salary up to 7% of $500 monthly.

RETIREMENT BENEFITS: ½ of salary to a maximum of $500 monthly.

DEATH BENEFITS: Widow receives ½ judge's pension unless she is younger than he, then her annuity shall be an actuarial equivalent.

DISABILITY BENEFITS: Any age with 10 years service, same as retirement.

SERVICE AFTER RETIREMENT: Chief Justice or presiding judge may request service on a case by case basis, reimbursement is a per diem rate less pension plus travel.

CITATION: Utah Code Ann. 1953, Vol. 5, Tit. 49, Chap. 7 §§ 1-7.

VERMONT

HIGHEST COURT
- Supreme Court
  - Chief Justice $26,500
  - Associates 25,000

GENERAL TRIAL COURT
- Superior County Court and Court of Chancery
  - Presiding Superior Judge 22,500
  - Judges 22,000
  - Assistant Judges ..... per day 15

LIMITED AND SPECIAL COURTS
- Probate Courts ..... 3,050 to 10,500*
- District Courts 16,000

COURT ADMINISTRATOR
- State Court Administrator 19,000

BENEFITS

HOSPITALIZATION: Policies with optional family coverage available, state pays ½ judge's premium, he pays the rest.

VACATION: 2 to 4 weeks in August.

HOLIDAYS: 11 days.

EXPENSE ALLOWANCE: Judges of Supreme, County, Chancery, and District Courts receive actual expenses. Mileage reimbursement is at 8¢ per mile.

RETIREMENT PLANS

JUDGES COVERED: All judges whose salaries are paid by the state.

AGE AND SERVICE REQUIREMENTS: Normal age is 65 and compulsory at 70. May retire at 60 (men) or 55 (women) after 10 years service, or at any age after 32 years of service. Credit given for military and state service.

CONTRIBUTION: Actuarially determined.

RETIREMENT BENEFITS: Annuity actuarially equivalent to contributions plus pension equal to 1/140 of average final compensation over 5 highest years, times years of service, plus 1/70 of average final compensation times his years of prior service increased by 3 years (up to 35 years total). In addition, Supreme, Superior and District judges receive a further allowance according to their years of service for a total of from 2/5 their salary at retirement after 12 years of service to full salary after 30. For each year of service after 12, 3⅓% of salary at retirement is added.

DEATH BENEFITS: A choice of 3 optional modifications is available with additional benefits accruing to designated heirs.

DISABILITY BENEFITS: Any age with 12 years service, pension consists of regular member's annuity, plus pension equal to 9/10 regular retirement allowance, plus the additional allowance in the case of Supreme, Superior, and District judges.

SERVICE AFTER RETIREMENT: No specific provisions.

CITATION: Vt. Stats. Ann., Vol. 1, Tit. 3, Chap. 15, §§ 371 through 385.

* Compensation of probate judges supplemented by statutory fees for providing copies of court records.

VIRGINIA

HIGHEST COURT
- Supreme Court of Appeals
  - Chief Justice $27,500
  - Justices 25,000

GENERAL TRIAL COURT
- Trial Courts of Record (Circuit, Corporation, or Hustings Courts) 20,000

LIMITED AND SPECIAL COURTS
- County Courts ..... 3,000 to 15,000
- Municipal Courts ..... —
- Regional Juvenile and Domestic Relations Court ..... 12,000 to 22,000

COURT ADMINISTRATOR
- Executive Secretary of the Supreme Court of Appeals 20,700

BENEFITS

HOSPITALIZATION: State employees' group policy available to judges, at his cost.

VACATION: Discretionary.

HOLIDAYS: 4 days.

EXPENSE ALLOWANCE: Supreme Court of Appeals have option of reimbursement for mileage or a $2,000 allowance. Judicial conference expenses are reimburseable for judges. Circuit Court judges receive actual expenses and County Court judges receive an allowance of $1,650.

RETIREMENT PLANS

JUDGES COVERED: A. Judges of Supreme Court of Appeals. B. Circuit, Corporation, and City Courts. C. County Court.

AGE AND SERVICE REQUIREMENTS: A. 65 after 12 years service, retirement compulsory at 75 for judges achieving the bench after June 30, 1954. B. 65 with 10 years service or 62 with 25 consecutive years service. Any judge on bench after June 30, 1954 must retire at 75 and if appointed after March 1, 1962 must retire at 70. Minimum service in both cases 10 years. C. 70 after 15 years service.

CONTRIBUTION: A., B., and C. If 40 or less on taking office, 2% of salary, if 40 to 55, 2½%, if above 55, 3%.

RETIREMENT BENEFITS: A. ¾ salary at retirement. B. The same. C. The same reduced by social security benefits.

DEATH BENEFITS: A. and B. Any member may choose a last survivor annuity instead of normal retirement benefits. C. No provision made.

DISABILITY BENEFITS: A. and B. Any age with no minimum, regular retirement benefits. C. Any age with 10 years service, regular retirement benefits.

SERVICE AFTER RETIREMENT: A. May be recalled to duty for a period of up to 90 days. B. May be recalled by Supreme Court to preside in Circuit, Corporation, or City Court of record for a period of not less than 90 days. C. No specific provision.

CITATION: Code of Virginia 1950, Vol. 7, 1967 Replacement Volume, Tit. 51, Chap. 2, Arts. 1, 3, 6, 7 and Chap. 2.2, Const. Art. 6 § 102-103.

WASHINGTON

HIGHEST COURT
- Supreme Court $27,500

INTERMEDIATE APPELLATE COURT
- Court of Appeals 25,000

GENERAL TRIAL COURT
- Superior Court 22,500
- Pro tem judges ..... per day 90

LIMITED AND SPECIAL COURTS
- Municipal Court
  - Seattle 18,000
  - Elsewhere if population over 50,000 ..... minimum 9,000
- Justice Courts (King, Pierce, Spokane) ..... 2,400 to 13,333
- Full Time Justice Courts 20,000
- Justice of the Peace
  - Where population is
    - 5,000 to 20,000 ..... 2,400 to 3,600
    - over 20,000 ..... 5,400 to 6,500
    - Others ..... Fees
- Police Courts ..... Not reported

COURT ADMINISTRATOR
- Administrator for Courts 20,000

BENEFITS

HOSPITALIZATION: Group policies with family coverage available, premiums paid by judge.

VACATION: 1 month.

HOLIDAYS: 8 days.

EXPENSE ALLOWANCE: Superior judges receive expenses when sitting outside their district.

RETIREMENT PLANS

JUDGES COVERED: Supreme, Court of Appeals, and Superior Courts.

AGE AND SERVICE REQUIREMENTS: 70 after 10 years service, any age after 18; judge may retire after 12 years with reduced benefits commencing at 70. Retirement compulsory at age 75. Credit for service on either court and military service during term of office.

CONTRIBUTION: 6½% of salary.

RETIREMENT BENEFITS: ½ salary at time of retirement; judges who serve more than 18 years receive additional 1/18 of salary for each year over 18 to a maximum of 75% of salary.

DEATH BENEFITS: Widow of judge who served 10 years receives ½ of judge's pension provided she has been married 3 years.

DISABILITY BENEFITS: Any age with 10 years service, regular retirement benefits.

SERVICE AFTER RETIREMENT: No specific provision.

CITATION: Revised Code of Washington, Tit. 2, Chap. 2.12, §§ 2.12.010 through 2.12.070, Constitutional Provision: Amendment 25.

WEST VIRGINIA

HIGHEST COURT
- Supreme Court of Appeals $27,500

GENERAL TRIAL COURT
- Circuit Court
  - Circuits less than 60,000 19,000
  - Circuits more than 60,000 17,500
  - Optional Supplement (total salary may not exceed) 25,000

LIMITED AND SPECIAL COURTS
- County Court ..... 540 to 9,600
- Criminal Courts, Domestic Relations Courts, Intermediate Courts, Common Pleas Courts, Juvenile Court, Justice of the Peace ..... Varies 10,500 to 17,500

BENEFITS

HOSPITALIZATION: None.

VACATION: Discretionary.

HOLIDAYS: 5 days.

EXPENSE ALLOWANCE: Mileage reimbursed at 10 cents per mile.

RETIREMENT PLANS

JUDGES COVERED: Judges of courts of record.

AGE AND SERVICE REQUIREMENTS: 65 after 16 years of service or any age after 16 years with benefits commencing at age 65.

CONTRIBUTION: 6% of salary.

RETIREMENT BENEFITS: 75% of highest salary, judges retiring after 8 years service beyond age 65 receive 75% of salary at retirement.

DEATH BENEFITS: Widow of judge who served 16 years receives annuity of 40% of current salary of office.

DISABILITY BENEFITS: Any age with 12 years service, regular retirement benefits.

SERVICE AFTER RETIREMENT: May serve as special judge on any court of record except Supreme Court of Appeals.

CITATION: West Virginia Code of 1966, Vol. 2, Chap. 51, Art. 9, §§ (1) through (16) pp. 71-83 and 1969 Cum. Supp.

WISCONSIN

HIGHEST COURT
- Supreme Court
  - Chief Justice $29,000
  - Associates 28,000

GENERAL TRIAL COURT
- Circuit Court
  - State Pay 21,000
  - Local Supplements ..... up to 7,000

LIMITED AND SPECIAL COURTS
- County Court
  - State Pay 18,500
  - Local Supplement ..... up to 8,500
- Municipal Justice Court ..... set locally

COURT ADMINISTRATOR
- Administrative Director 23,500

BENEFITS

HOSPITALIZATION: Supreme and Circuit Court judges covered by group policies, state pays ½ premium.

VACATION: No set policy.

HOLIDAYS: No set policy.

EXPENSE ALLOWANCE: Judges receive reasonable expenses. Mileage reimbursement at 10 cents a mile for the first 400 miles and 7 cents thereafter.

RETIREMENT PLANS

JUDGES COVERED: Judges of Supreme, Circuit, and County Courts and full time judges of municipal and other courts of record.

AGE AND SERVICE REQUIREMENTS: Minimum age is 55 provided credits are enough to provide an annuity of $10 per month. Compulsory retirement of Supreme and Circuit Court judges is 70.

CONTRIBUTION: 2½% of salary and 4½% in excess of an amount specified as subject to withholding.

RETIREMENT BENEFITS: Actuarially determined.

DEATH BENEFITS: May be paid in the form of beneficiary annuities to judge's widow or minor children if the amount of the benefit is sufficient to provide an annuity of $10 per month, otherwise the heirs are paid lump sum of judge's contribution, not less than $500.

DISABILITY RETIREMENT: Any age with 5 years participation in the retirement program or immediately if disability is occupationally incurred. Annuity will not be less than annuity from additional deposits to the fund he may have made plus the lesser of (a) 50% of his final earnings or (b) 1½% final earnings times years of service including assumed service between disability and age 65. Annuity may be reduced 20% after 7 months if judge is eligible to receive Social Security primary or disability benefits. In event the amount that can be provided by judge's total retirement credits is greater than the above formula the judge may elect the former.

SERVICE AFTER RETIREMENT: Retired Supreme and Circuit judges serve as circuit judges upon assignment by chief justice; compensation is $50 a day and expenses. In addition retired county judges may now serve upon assignment by chief justice at same rate of compensation.

CITATION: West's Wisc. Stats. Ann., Vol. 10, Chap. 66, §§ 90 through 918, pp. 112-98 and 1969 Cum. Pocket Supp.; Vol. 29, Chap. 252, § 075, p. 170; Const. Art. 7 § 24.

WYOMING

HIGHEST COURT	
Supreme Court	$19,000*
GENERAL TRIAL COURT	
District Court	18,500*
LIMITED COURT	
Justice of the Peace	1,600 to 4,800**
Rural Areas	Fees
Constables	set locally
Municipal Courts	set locally

BENEFITS

HOSPITALIZATION: Policies with family coverage available, state pays $7 per month on premium.

VACATION: No set policy but generally 1 month

HOLIDAYS: 10 plus election days.

EXPENSE ALLOWANCE: Per diem of $13 in-state travel, $16 out-state. Mileage allowance of 10 cents per mile.

RETIREMENT PLANS

JUDGES COVERED: Supreme and District Court.

AGE AND SERVICE REQUIREMENTS: Minimum is 65 after 18 years service in either or both courts, except service requirement is reduced one year for each year the judge is over 70. If judge has served between 6 and 18 years he is eligible for proportionately lower benefits.

CONTRIBUTION: None.

RETIREMENT BENEFITS: 40% of current salary of office; if judge has fewer years than the minimum his pension is proportion of regular allowance his total years of service bears to 18, or if he is over 70, to 18 minus judge's age less 70.

DEATH BENEFITS: None.

DISABILITY BENEFITS: None.

SERVICE AFTER RETIREMENT: Any retired justice may assist Supreme Court; any retired judge may sit on District Court; retired justices and judges may be called up to advise in matters before the legislature.

* Under Constitution Art. 5, § 17 increases during term of office are prohibited, however, when any change in personnel of any court or an additional judge is eligible to receive an increased salary, all judges or justices in same category also get it.

** Depending on population.

CITATION: Wyoming Statutes 1957, Tit. 5, Chap. 1, §§ 5-4, 5-16, and 5-47.

FEDERAL SYSTEM
UNITED STATES

HIGHEST COURT	
Supreme Court	
Chief Justice	$62,500
Associates	60,000
INTERMEDIATE APPELLATE COURTS	
U. S. Court of Appeals	42,500
GENERAL TRIAL COURTS	
U. S. District Court	40,000
Territorial Courts (Canal Zone, Virgin Islands, Puerto Rico and Guam)	40,000
LIMITED AND SPECIAL COURTS	
Court of Claims	42,500
Court of Military Appeals	42,500
Court of Customs and Patent Appeals	42,500
Tax Court	40,000
Customs Court	40,000
COURT ADMINISTRATOR	
Director of Administrative Office of the Courts	40,000

DISTRICT OF COLUMBIA

HIGHEST COURT	
U. S. Court of Appeals for D.C.	42,500
GENERAL TRIAL COURT	
U. S. District Court for D.C.	
Chief Justice	40,000
Judges	40,000
LIMITED AND SPECIAL COURTS	
D. C. Court of Appeals	
Chief Judge	29,000
Judges	28,500
D. C. Court of General Sessions	
Chief Judge	28,000
Judges	27,500
Tax Court	23,500
Juvenile Court	
Chief Judge	28,000
Judges	27,500

BENEFITS

HOSPITALIZATION: Covered by government health programs, premiums are shared.

VACATION: Not to exceed one month.

HOLIDAYS: Generally correspond to those observed in the place where the court sits.

EXPENSE ALLOWANCE: Judge reimbursed for official travel for actual expenses of $30 per day or a per diem of $16. Mileage allowance is 10 cents per mile.

RETIREMENT PLANS

JUDGES COVERED: Any justice or judge of the United States appointed to hold office during good behavior.

AGE AND SERVICE REQUIREMENTS: 65 after 15 years service, or 70 after 10, judges who retire after age 70 with at least 10 years service are eligible for certain retirement benefits.

CONTRIBUTION: None.

RETIREMENT BENEFITS: Salary of the office from which he retired. Territorial judges receive that portion of their salary at retirement that total years of service bears to 16.

DEATH BENEFITS: Widow of a justice receives an annuity of $5,000 per year. Widow of a judge may receive an annuity of up to 37½% of his average final salary. Such annuity depends on the judge having made a 3% of salary contribution to the "judicial survivor's annuity fund."

DISABILITY BENEFITS: Any age with 10 years service full current salary, if less than 10 years service ½ that amount. Judges of territorial courts with 16 years service receive full current salary, if he has served between 10 and 16 years he receives the proportion of his salary which the number of his total years service bears to 16. Such annuity commences at age 65.

SERVICE AFTER RETIREMENT: Judges appointed for life tenure retire only from active service and retain their office and may be assigned to judicial service by the administrative head of the court.

CITATION: U. S. C. A., Title 28, Chap. 17 §§ 371 through 376.

PUERTO RICO

HIGHEST COURT	
Supreme Court	
Chief Justice	$27,500
Associates	27,000
GENERAL TRIAL COURT	
Court of First Instance	
Superior Court*	22,900
LIMITED COURTS	
District Courts*	17,000
Justice of the Peace**	3,000 to 4,000
COURT ADMINISTRATOR	
Administrative Director of the Courts	22,900

BENEFITS

HOSPITALIZATION: Group policies with family coverage available. Premuims paid by Commonwealth.

VACATION: 30 with 60 days for sick leave.

HOLIDAYS: 18 holidays.

EXPENSE ALLOWANCE: Reimbursement for travel expenses for meetings concerning administration of justice. Mileage allowance is 11 cents per mile and 1 cent for each official passenger. Per diem, according to salary, paid to judges for official business outside residence.

RETIREMENT PLANS

JUDGES COVERED: Supreme, Superior, and District Courts.

AGE AND SERVICE REQUIREMENTS: 60 after 10 years service, deferred benefits available for retirement before 60 after 10 years service. Retirement allowed at 59, 58, 57 with 23, 24, 25 years of service respectively. Retirement mandatory at 70.

CONTRIBUTION: 7½% of salary.

RETIREMENT BENEFITS: 25% of average salary over last 5 years plus 25/72 of one percent of his average salary for each month of service over 10 years not to exceed ¾ of average salary.

DEATH BENEFITS: Any judge may choose a reduced benefit of not less than $120 a year to provide his widow with a pension which is the actuarial equivalent of the pension the judge was entitled to before electing the option. If judge dies in active service, his heirs receive his contributions to pension fund and a lump sum equivalent to his annual salary. In event of death after retirement, his heirs receive his surplus contribution.

DISABILITY BENEFIT: Any age with 10 years service, pension equal to ¾ of regular annuity at age 60 reduced by any other compensation or insurance he receives.

SERVICE AFTER RETIPEMENT: No specific provision.

CITATION: Laws of P.R. Ann., Vol. 1, 1959 Cum. Pocket Supp. Title 4, 233-46 pp. 165-176.

* These courts are divisions of the Court of First Instance: District Court has limited civil and misdemeanor jurisdiction and Superior Court has jurisdiction over all other civil and criminal matters.

** Raise in salary every two years of service, $300 per annum up to $4,800.

calendar

American Judicature Society Meetings

January 28-29, 1971 Missouri Nominating Commissioners Institute, Kansas City, Missouri

February 8, 1971 Midyear Meeting Palmer House, Chicago, Illinois

March 11-14, 1971 National Conference on the Judiciary Williamsburg. Virginia

April 28, 29, 30, 1971 New Jersey Citizen's Conference Cherry Hill, New Jersey

July 1971 Annual Meeting New York City

February 1972 Midyear Meeting New Orleans, Louisiana

August 1972 Annual Meeting San Francisco, California

Trial Judges' Seminars of the National College of State Trial Judges

February 15-19, 1971 Chief Justices and Judges Court Administration Conference on the Metropolitan Courts, Williamsburg, Virginia

April 14-16, 1971 Virginia Judicial Conference Hot Springs, Virginia

May or June 1971 Florida Judicial Conference

June 1971 Institute of Court Management University of Denver Law Center Denver, Colorado

August 1971 South Carolina Judicial Seminar Columbia, South Carolina

Merit Selection for Indiana; Seven States Achieve Significant Reforms

Judicial reform had a banner year in 1970, as seven states adopted major improvements. The highlights of the November election were the adoption of merit selection in Indiana and a merit-based plan for some Maryland judges.

The details:

Indiana

Indiana voters have overwhelmingly approved a judicial amendment including merit selection for all appellate judges.

The proposition carried the November 3 election with more than 55% of the vote.

Justices of the supreme court and judges of the new court of appeals will be appointed by the governor from a list of three nominees submitted by a seven-member non-partisan commission. The appointee will then run for retention after two years of service and every ten years thereafter.

The nominating commission, which will also serve as the judicial qualifications commission, will consist of three attorneys elected by the bar, three non-attorneys appointed by the governor, and the chief justice of the supreme court. No appointed commissioner shall hold any salaried public office or any office in a political party or organization.

The commission has the duty to seek out individuals with extraordinary legal skills, judicial temperament, and personal integrity. Each person nominated by the commission must either have been admitted to the practice of law for ten or more years or shall have served as a trial judge for five or more years.

Except for justices of the peace, who are no longer constitutional officers, the amendment does not affect the trial courts.

The appellate courts will be reorganized into a supreme court and a multi-district court of appeals, the exact arrangement of which shall be determined by the legislature.

The amendment also provides for the nominating commission to serve as a judicial qualifications commission to retire or remove appellate judges who are unable or unwilling to perform their responsibilities. Trial court judges remain subject to the old law, whereby removal can occur only upon impeachment by the legislature after conviction of corruption or other high crime.

This ratification of Constitutional Amendment No. 2 was a great victory for the Indiana Citizens for Modern Courts of Appeal, which with the American Judicature Society, the League of Women Voters of Indiana, and the Indiana State Bar Association, sponsored the Second Citizens' Conference on Indiana Courts, July 23-24, 1970. (November, 1970, JUDICATURE, p. 169).

Indiana thereby becomes, as of the effective date of the amendments — January 1, 1972 — the 20th state to adopt merit selection.

Maryland

Judicial reform in Maryland, considered dead after its excellent proposed constitution was defeated in May 1968, came back in fine style on November 3, 1970.

The voters adopted new provisions reorganizing the lower courts, adding a merit-based system for selecting district court judges. The machinery for removing unfit judges was also improved.

Part of the impetus for reform came from the Citizens' Conference on Maryland Courts and Justice, which was co-sponsored by the American Judicature Society at Annapolis, September 5-6, 1969. (March, 1970, JUDICATURE, p. 347).

Under the new district court appointment system, the governor appoints judges, subject to confirmation by the state senate. At the end of the term, the governor is required to renominate the same judge, and the senate decides whether to reconfirm.

The merit selection feature was added in July when Governor Marvin Mandel announced at an American Judicature Society breakfast that he had issued executive orders establishing judicial nominating panels, subject to the approval of the amendment.

The appointment panels will consist in equal numbers of law-

yers elected by the bar and laymen appointed by the governor, with a chairman also appointed by the governor.

Maryland has retained the previous appointment system for other judges, whereby the governor appoints the judge, but the appointee must face a contested election for a full term at the next election.

Maryland has had a judicial removal commission since 1966, but judges could be removed only by the general assembly. The legislature will retain this impeachment power, but the Commission on Judicial Disabilities will now report on disabled or unfit judges to the court of appeals, which has the ultimate removal authority.

The third change sets up a uniform district court system to replace the present lower courts.

There were reform actions in these other states in 1970:

Alaska
Alaska adopted two major reforms in the administration of its courts in a referendum on August 25, 1970, by margins of more than 2 to 1.

The office of chief justice of the Supreme Court of Alaska will now be rotated every three years and filled by vote of the members of the court. While a chief justice may serve more than one term, such terms may not be consecutive. The appointment was previously made by the governor for an unlimited term.

The administrative director of the courts will now serve at the pleasure of the entire court, instead of only the chief justice.

Arizona
A modern judicial qualifications commission was established in Arizona as the result of a November 3, 1970, referendum.

The new commission eliminates the cumbersome requirement of recall election and impeachment, the only methods earlier available to remove a judge. It will have nine members—judges, lawyers, and laymen—who will serve without pay. Upon information or complaint, it will investigate charges against allegedly unfit judges and report to the supreme court.

The voters also approved creation of a commission to recommend changes in the rate of pay of elective state officials, including judges.

Arkansas
The proposed new constitution for Arkansas lost at the polls on November 3, 1970, carrying several judicial reforms to defeat.

The new judicial article would have unified the lower courts, created a court of appeals, abolished separate courts of law and equity, granted rule-making power to the supreme court, put judges on a non-partisan ballot, and established a judicial retirement and disability commission.

District of Columbia
A commission on judicial disabilities and tenure, approved by Congress in July, will take effect on February 1, 1971. It will consist of five members and has been given rule-making powers. A decision of the commission will be appealable to a special court of three federal judges.

Florida
A judicial article which would have simplified the Florida court structure, enlarged the powers of the judicial qualifications commission, and provided for adoption of merit selection of judges by legislative action was narrowly defeated on November 3, 1970.

The article was the end result of a 1964 citizens' conference, co-sponsored by the American Judicature Society, and a constitutional revision commission. The recommendations had, however, been so greatly altered in the legislature that the Florida Bar had refused to endorse the final proposal, and the circuit judges association had actively opposed it.

The various interested groups are already working together to prepare a new article for future submission.

Idaho
The voters of Idaho defeated a proposed new constitution, containing important judicial changes, on November 3, 1970.

The judicial article would have provided a federal-type system of judicial appointment for the supreme court and allowed the legislature to adopt a similar system for district courts. It would have created a unified court system supervised by the supreme court, with the chief justice as administrative head, given rule-making powers to the supreme court, and spelled out the limitations of the 1967 act establishing a judicial qualifications commission.

Missouri
In addition to the adoption of

merit selection in St. Louis County (November 1970, JUDICATURE, p. 109), the voters of Missouri adopted a statewide judicial qualifications commission on August 4, 1970.

The six-member commission will consist of two lawyers selected by the Missouri Bar, two nonlawyers appointed by the governor, one appeals judge elected by all appeals judges, and one circuit judge elected by all circuit judges.

The commission can recommend to the supreme court the removal of any judge or magistrate who is unable to perform his duties or who has demonstrated unfitness to hold judicial office. Four members must concur in any such recommendation.

North Dakota

The voters selected 98 delegates to the 1972 constitutional convention in balloting on November 3, 1970.

Committees will be organized on April 7, 1971, and hold hearings until the 30-day regular convention session opens on January 4, 1972.

Nebraska

Three amendments approved on November 3 will remove justices of the peace as constitutional officers and permit establishment of a unified state court system, require redistricting of supreme court districts every 10 years, and permit assignment of retired judges to temporary duty.

Texas

An extension of the judicial qualifications commission, adopted in 1965 and patterned after the California plan, to virtually all the courts of Texas was adopted by a vote of more than 2 to 1 on November 3, 1970.

The amendment makes it possible for the legislature to make further extensions as it sees fit.

Virginia

Virginia adopted a new judicial article as part of a general constitutional referendum by an overwhelming margin on November 3, 1970.

The changes give the general assembly the authority to create a judicial inquiry and review commission with jurisdiction over most state judges, the state corporation commission, and other personnel exercising judicial functions.

Judge Joseph A. Sullivan Elected President of Metropolitan Courts Group

The ninth annual meeting of the National Conference of Metropolitan Courts was held at Miami Beach, October 21-23, 1970.

The Conference was established in 1962 to assist judges in the largest courts in the nation. While there are no formal requirements, attendance is traditionally limited to judges from jurisdictions of over 800,000 persons. The 1970 session was attended by more than 80 persons from 32 courts.

At the close of the session, Judge Joseph A. Sullivan of Detroit was elected president of the Conference, and Justice William B. Groat of Jamaica, New York, was named chairman of the executive committee. Justice Tom C. Clark of Washington, D.C., will continue as honorary chairman.

JUDGE SULLIVAN

JUSTICE GROAT

Other officers are Judge Raymond J. Arata of San Francisco, first vice president; Justice John V. Corrigan of Cleveland, second vice president; and Dean Laurance M. Hyde, Jr., of Reno, Nevada, secretary.

In addition to Mr. Justice Clark, Justice Groat and the immediate past president, Judge William A. Herin of Miami, the executive committee will consist of Judge John S. Boyle of Chicago, Judge William J. Wilkins of Seattle, Justice G. Joseph Tauro of Boston, Judge Lewis Dickson of Houston

and Judge Kenneth N. Chantry of Los Angeles.

Mr. Justice Clark, retired associate justice of the Supreme Court of the United States, opened the conference by reporting on his experiences on the federal trial bench in San Francisco. He blamed crowded dockets on archaic file systems, indifferent and poorly trained courthouse personnel, and on lawyers who file long, dilatory pleadings and who are unprepared to argue the law. He suggested more and better court administrators, greater use of computer technology, and training programs for courtroom clerks.

He also questioned the most common answer to court congestion, saying, "We do not need more judges. We have been 'putting on more men' for years, and we are as far behind as ever. What we need is better management."

The other featured speakers were Judge David W. Dyer of Miami, judge of the United States Court of Appeals for the Fifth Circuit, and United States District Judge Frank J. Murray of Boston.

Judge Dyer discussed the relationship between state and federal courts. He found two problem areas—the lack of independence of state court judges, and conflicting decisions caused by the overlapping jurisdiction of the two systems.

He called for the elimination of politically elected judges by adoption of plans for merit selection and urged judges of both systems to work together to expand the role of the state courts.

Judge Murray talked about the challenges faced by the courts as a "new breed of apostles of unrest" attacks the dignity of the courts. He outlined recommendations for handling possible contempt of court and cautioned his audience to remember that the goal of any trial is "to reach a definitive conclusion of the matter at hand," and not to exact revenge for insults to the court.

The primary topics were court management, automobile insurance plans, and methods to increase the prestige and effectiveness of the trial bar.

Participating as speakers, in addition to Judge Boyle, Dean Hyde, Judge Dickson, and Judge Chantry, were Judge Horace W. Gilmore of Detroit, Edward C. Gallas of New York, Judge Walter J. McLaughlin of Boston, Delmar Karlen of New York, Walter H. Beckham, Jr., of Miami, Ernest C. Friesen, Jr., of Denver, and William B. Eldridge of Washington, D.C.

The next conference will be held during October, 1971, in Detroit.

Michigan Decision Advances Concept of Unified Court

A judicial decision destined to become a landmark in the field of court administration and judicial independence has been handed down by the Supreme Court of Michigan. The court held that a court has the inherent power to bind the state or the county contractually when an expenditure is necessary to exercise its judicial powers.

The case, *Judges for Third Judicial Circuit v. County of Wayne, et al,* 172 N.W. 2d 436 (1969) is an important advance in the concept of the unified court in Michigan and in other states.

The court held that *irrespective of the statute on the subject,* a judicial assistant of the type contemplated by the statute is a practical necessity for the effective continuing operation of a metropolitan circuit court consisting of 27 judges and that the Circuit Court had *inherent* power to hire such staff as it needed.

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(Act of October 23, 1962; Section 4369, Title 39, United States Code)

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I certify that the statements made by me above are correct and complete.
CLARETTE P. BEIN, Editorial Assistant

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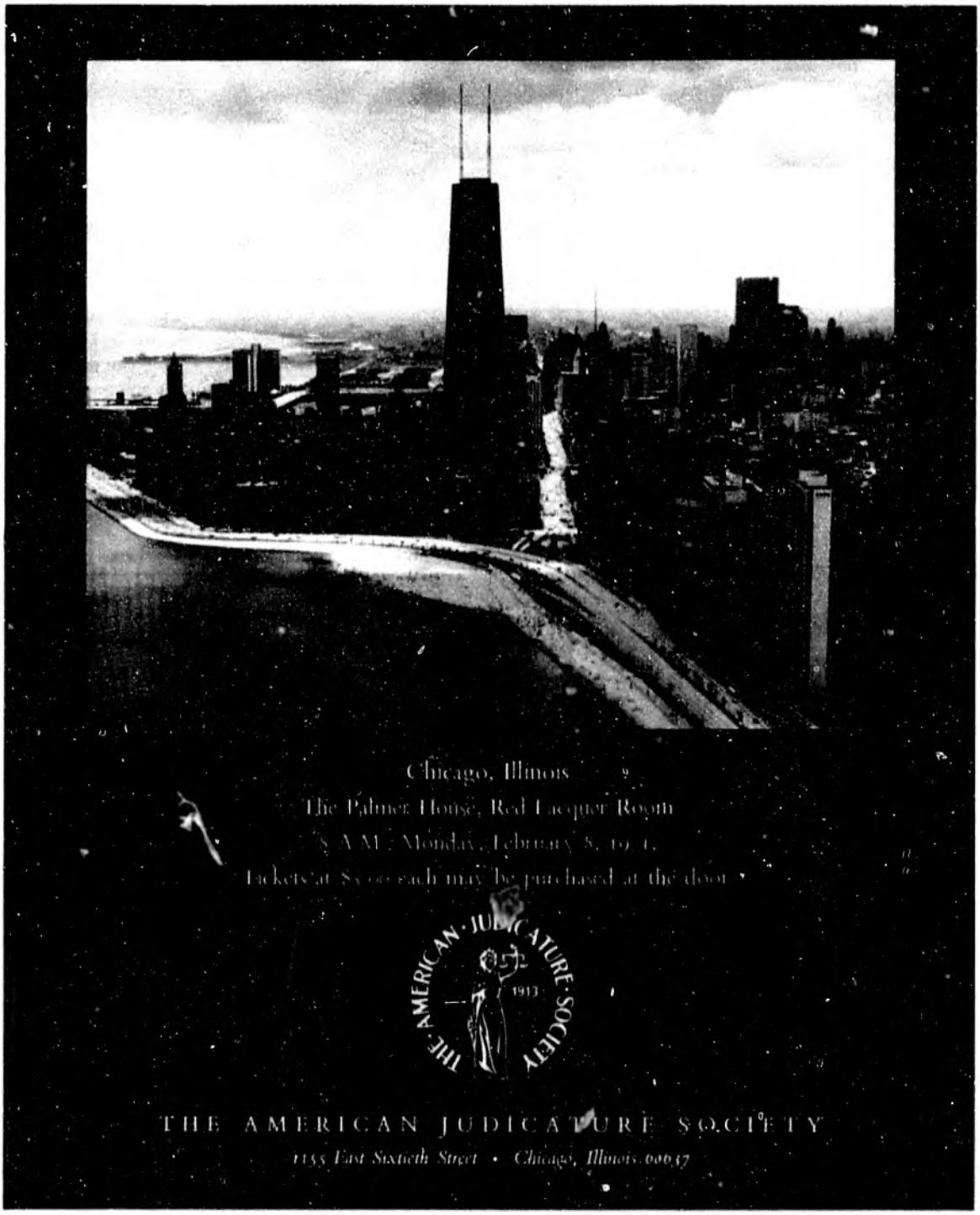
To Promote the Efficient Administration of Justice

MARTIN A FARRELL JR 7
542 2ND AVE 71
ANCHORAGE ALASKA 99501

Fifty-Eighth Midyear Meeting



HB-357

MOBILE AND MODULAR HOMES FOR COLD REGIONS

DAVID SCHAEFER

The Federal government has estimated that 27 million new homes will be needed in the next 10 years. Presently, the home construction industry is capable of building about 1.8 million homes per year, or 18 million in the next 10 years. If this were the only method of production America could expect a shortage of 9 million homes by 1980, but fortunately the mobile and modular home industries can offer some help. Washington recently forecasted that by 1980 one in every five Americans will be living in a factory-built home.

Alaska is in a more desperate situation than most other states. A significant portion of its population lives in substandard homes and the State's growth rate is higher. Anchorage quadrupled its population between 1950 and 1960, while the Fairbanks population tripled during these same years. Such growth rates are not uncommon for other Alaskan cities and show no signs of decreasing. In some cases they are increasing. During the month of October 1970 there were 1,334 homes under construction in Anchorage. The role of factory-built homes is becoming more important. Anchorage added 750 new mobile home spaces to existing and new mobile home courts in 1970; all these spaces are presently filled.

Instant Housing

What can factory-built housing offer? First and foremost it can fill the gap between housing needs and capabilities. Secondly, it can offer substantial savings in initial cost. And thirdly, it is in effect "instant housing" which is important to Alaskans since they face short construction seasons: A factory works year-round and can ship homes any place on demand.

Factory processes enable a company to assemble a home much faster than a normal contractor could put up a "stick built" one. On an assembly line it is not uncommon for a 12 x 60 mobile home to be built in as few as 200 man-hours. Some large companies in California produce 20 million square feet of building per year, equivalent to 20,000 homes of 1,000 square feet, or enough to give every family in he Fairbanks area a new home in one year.

Mobile and Modular

The zenith of factory-built homes are the modular and mobile homes. This industry is one of the fastest growing in the United States, building homes that require minimal on-site preparation. The mobile home only requires hookup of outside electrical, water and waste systems. The modular home requires these three features plus a foundation. A mobile home can be set up in a matter of hours, while the modular home requires a couple of days.

The mobile is basically a rectangular box space frame. Most manufacturers build these up to 14 feet wide and 68 feet long, generally the maximum allowable size due to transportation restrictions. The double-wide is a third type of finished factory home which might be mentioned here. This is merely two mobile homes bolted together at the home site, affording more living space. It is built to the same specifications as the normal mobile home, usually those of the Mobile Home Manufacturers Association sponsored ASA 119.1.

The modular home is in effect a "stick built" factory home. It must conform to all local building codes, and in some ways is better constructed than a "stick built" since it must stand up during transportation to the home site. Modular units are also popular for apartments, town houses and motels. When used in these capacities they must meet local building and fire codes for multifamily dwellings.

Design Limitations

Housing is one of the few commodities that is not mass produced, but if Alaskans are to receive the adequate housing they need they must rely at least partially on factory-built homes. At the same time they must insist the homes meet the basic requirements for the State's special climatic conditions. The most economical structure is not necessarily the one with the lowest initial cost. The actual cost depends on the initial cost plus the cost of maintaining the structure throughout its useful life.

For a home to function properly in an Arctic or subarctic climate, certain aspects of design must be given greater importance by the builder. For instance, large furnaces capable of keeping the unit comfortable at 50 degrees below zero are necessary, as are roofs capable of withstanding 30 and 40 pounds per square foot snow loads.

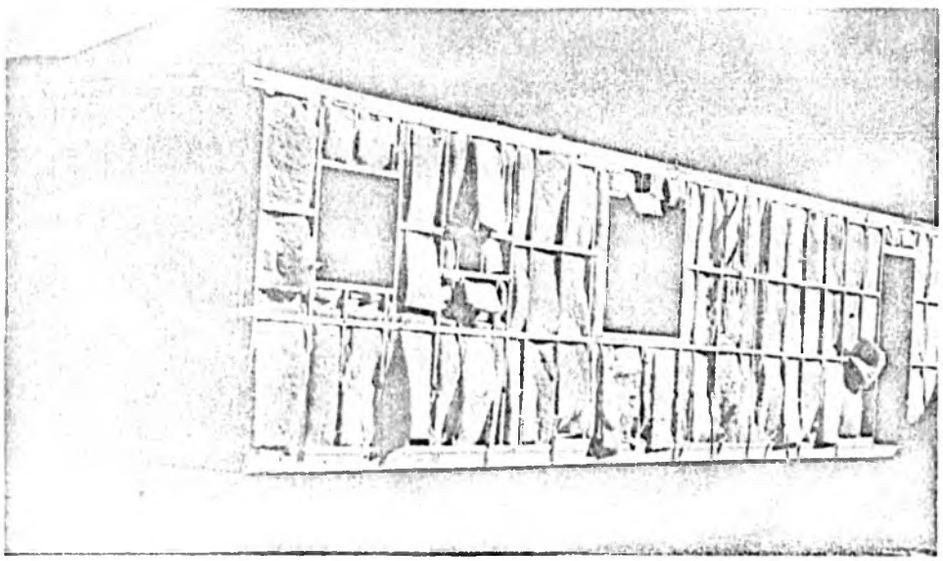
One of the largest problems of factory-built homes rises from the reluctance of manufacturers to design special units for the relatively small market potential of cold regions. There is currently a mobile and modular home factory in Palmer, Alaska. Hopefully this factory will build exclusively for boreal environments.

Construction

Mobile homes generally have 2 x 3 wall construction with 1 to 2½ inches of fiber glass insulation. The interior wall is 3/16 to 1/4 inch prefinished paneling and the exterior is 0.019 inch aluminum sheeting. The maximum insulating quality of such a wall is R=10, with most mobile homes having an R=5 insulating factor. In interior Alaska, however, it is almost mandatory that walls have at least an R=15. Four inches of fiber glass insulation give an R=16 insulating factor. Modular homes generally have a 2 x 4 wall construction with plasterboard and prefinished paneling on the interior, and plywood or siding on the exterior. These homes have 3½ inches of insulation, sufficient for cold regions.

A mobile home generally does not have a vapor barrier on the interior

'71 Spring Issue



Typical mobile home prior to installation of exterior finish. Insulation thickness 1-1/8", no vapor barrier, and insulation is not stapled to studs.

side. In fact many manufacturers put a vapor barrier on the exterior wall. A vapor barrier is to intercept moisture as it passes through the interior wall, for if it is allowed to condense within the insulation ice or frost will form, considerably reducing the insulating quality of the wall and causing other problems when the ice melts. In cold regions the difference in vapor pressure between the interior and exterior of a structure can be nearly 1/2 pound per square inch. Ventilation can help reduce the vapor problem, but ventilation is insufficient when outside temperatures are below -25°F. Modular home manufacturers generally put vapor barriers on the warm side of the structure. They seem to have more flexible assembly line processes that allow modifications for climatic conditions.

Another area of importance to cold regio. home owners is the heating system installed in the units. Here again, modular home builders can furnish almost any kind and size heater. Mobile home manufacturers on the other hand are restricted: only a few companies make heating units especially for mobile homes. It is not uncommon for homes to be shipped to Alaska with insufficient heating capacity. With an outside air temperature of -50°F and an inside temperature of +70°F, an R=10 wall will transmit about 12 BTU/HR/ft². If there are 4 air changes per hour the heating requirement for a home with 3,000 square feet of wall space will be about 110,000 BTU/hr. The largest furnace provided for mobile homes is about 85,000 BTU/hr. Hence, on those days when the temperature is extremely cold the home owner can expect some discomfort. Also, there is increased fire hazard from overworking a furnace. Every effort should be made by dealers and customers to insure that the furnace of the home is of adequate size.

Design criteria for snow and wind loads generally call for 30 pounds per square foot for most of Alaska. There are some areas, notably around Valdez, where snow loads are considerably higher. But the Mobile Home Manufacturers Association sponsored code only recommends roof truss design for 20 pounds per square foot. This inadequate feature has caused some problems in the Fairbanks area this winter. Several new mobile home roofs collapsed due to excessive snow. Others were near collapse, but the owners removed the snow before permanent damage occurred. Modular homes generally call for roof truss design of 40 to 55 pounds per square foot live load.

When constructing a normal "stick built" home the builder normally covers the studs with plasterboard, or some other fire retardant material. Mobile homes, however, do not use this method and hence have a tendency to burn very fast when they happen to catch fire. Exits from mobile homes are often limited also. The manufacturer is required to put in a second door for the fire exit but this is normally a metal clad mobile home door. During the winter months these doors often frost shut, or the home owner covers them to prevent frosting. In any event, during the time of greatest fire hazard there is often only one usable exit from the home. The furnaces are generally in the middle of the home and should a person be caught in a back bedroom when a fire starts he has very little time to get out. Although some manufacturers are using a fire retardant prefinished panel for interior finishing, they are unfortunately in the minority.

These are some examples of the special considerations manufacturers of factory-built homes must take if they are going to supply a product suitable to cold regions. Consumers, as well, must demand their new homes have as many arctic features as possible. They must also consider a mobile or modular home a perma-

Bow truss used in mobile homes. Design calls for only 20 psf snow load.

HB - 358

January 18, 1972

Allan A. Engstrom, Esquire
Davidson, Engstrom & Evans, Attorneys
201 National Bank of Alaska Building
Juneau, Alaska 99801

Re: H.B. 358 - Relating to Hospitals

Dear Allan:

I have your letter of January 12 concerning your wish to be heard, as the representative of Blue Cross Washington-Alaska, on the subject bill. This bill is still in the committee of first referral (Commerce) and will not be in this committee until reported back to the House.

You may wish to request Representative Kerttula that you be heard by Commerce. In any case, I will be happy to have your presentation when, and if, the bill reaches Judiciary.

Sincerely,

William J. Moran

cc: Representative Kerttula

DAVIDSON, ENGSTROM & EVANS
ATTORNEYS AT LAW
JUNEAU, ALASKA 99801

C. GIRARD DAVIDSON
ALLAN A. ENGSTROM
GORDON E. EVANS

201 NATIONAL BANK OF ALASKA BUILDING
TELEPHONE 586-1445

January 12, 1972

Hon. William Moran
Chairman, House Judiciary Committee
State Capitol Building
Juneau, Alaska 99801

Re: H. B. 358

Dear Bill:

On April 1, 1971, I advised you by letter that I represented Blue Cross Washington Alaska, Inc., and that we had a special interest in H. B. 358, which is in your committee. We would again appreciate the opportunity to appear before your committee prior to any action on the bill. We will be prepared to appear before your committee at your convenience.

Yours very truly,

ALLAN A. ENGSTROM

AAE:rhm

Commerce
3/26/71

 UVC NCUTLO 1971 HB-363

Staff Report: Nebraska and New York have laws identical in substance to the proposal. In Nebraska the level is 0.10% and in New York it is 0.15% (reduced to 0.12% in 1971).

11. COMBINED INFLUENCE OF ALCOHOL AND DRUGS

Subcommittee Recommendation: Add a new section to the Code making it unlawful for a person to drive while under the combined influence of alcohol and any drug.

Summary of Deliberations: At the 1968 meeting, the Subcommittee reaffirmed its earlier approval of the proposal in principle. However, certain evidentiary problems, such as the presumption of non-intoxication when the blood alcohol level is under 0.05%, were noted in conjunction with adopting a provision on the combined use of alcohol and drugs. Thus, the proposal was tabled for the purpose of a thorough review by the staff concerning any possible difficulties that must be overcome in enforcing such a law.

At the 1970 meeting, the staff reiterated its opinions on this proposal and amplified its report on state laws. The major difficulty with such a law was determined to be the absence of any accurate testing methods to show the presence of drugs or the effect on a person of the combined use of drugs and alcohol. From that standpoint there would be no more difficulty with the proposal than with the large number of existing laws on driving under the influence of drugs alone. It was noted that the NHTSA is currently studying drug use by drivers and is concerned about the difficulty in obtaining convictions under laws designed to combat the problem of drugs and driving.

A motion to amend the proposal by adding express definitions of what constitutes a drug was defeated. A motion to approve the proposal was passed unanimously.

Amendment that was offered was too indefinite - not so much that it didn't need a definition of drug.

There is ample evidence that the combination of alcohol and certain kinds of drugs such as barbiturates or other central nervous system depressants can seriously impair mental and physical functions even when neither substance, alone, is ingested in sufficient quantity to cause any adverse effects. Obviously, then, such combinations are particularly dangerous from the standpoint of operating a motor vehicle and have been so recognized by the legislatures of five states whose laws have been amended to prohibit driving under the combined influence of alcohol and a drug. These laws provide:

California -- "It is unlawful for any person who is under the influence of intoxicating liquor, or under the combined influence of intoxicating liquor and any drug, to drive a vehicle upon any highway."

Connecticut -- prohibits the operation of a motor vehicle while under the influence of intoxicating liquor or any drug, or both.

Iowa -- prohibits operation of a motor vehicle on the highway while in an intoxicated condition or under influence of narcotic and/or hypnotic drugs or a combination of such drugs and alcohol.

Massachusetts -- prohibits operation of a motor vehicle "while under the influence of intoxicating liquor or narcotic drugs, as defined in section 197, ch. 94, or under the influence of barbiturates, amphetamines, or other hypnotic or somnifacient drugs, or under the influence of the vapors of glue, carbon tetrachloride, acetone, ethylene dichloride, toluene chloroform, xylene or any combination thereof."

Minnesota -- "It shall be unlawful . . . for any of the following persons to drive, operate or be in actual physical control of any vehicle within this State:

(a) A person who is under the influence of an alcoholic beverage or narcotic drug;

(b) A person who is an habitual user of narcotic drugs;

(c) A person who is under the influence of a combination of any two or more of the elements named in subsections (a) and (b)."

Even without the existence of such express statutes, however, several courts have held that a person operating a motor vehicle while under the combined influence of alcohol and a drug is guilty of driving while under the influence of intoxicating liquor if there is evidence showing that his ability to drive, although partially impaired by the use of a drug, is also adversely affected by the consumption of an alcoholic beverage. Several factors should be considered in determining whether to prosecute a person for driving while under the influence of a drug, or both: the nature of the drug involved, the extent of use of the drug and the alcoholic beverage, the wording of the applicable laws, state rules on criminal procedures, interpretative court decisions and applicable constitutional provisions. Some interesting legal questions raised in this connection are:

(1) Can a person charged with driving while under the influence of intoxicating liquor, and found not guilty by reason of being exclusively under the influence of a drug, be re-charged and re-tried for having driven while under the influence of a drug, presuming, of course, that it is unlawful to drive while under the influence of the particular drug used by that person? The answer would depend to a large extent on the interpretation of the law or laws involved and state constitutional provisions on "double jeopardy." The issue would have to be similarly resolved if a person were charged with driving while under the influence of a drug and it was shown during the trial that he was exclusively under the influence of intoxicating liquor.

(2) Can an indictment or complaint allege in one count that the person was driving while under the influence of intoxicating liquor and allege in a second count that the person was driving while under the influence of a drug?

(3) What is the legal effect of a low blood-alcohol ratio under a chemical test law when the person has consumed both liquor and drugs? If the law contains the same chemical test provisions as the Code, for example, a blood alcohol ratio of less than 0.05 percent would give rise to the presumption that the defendant was not under the influence of intoxicating liquor and, therefore, further evidence would have to be introduced to rebut that presumption.

Staff Survey

The staff has contacted enforcement and administrative personnel in each of the states with a comparable law to determine what major difficulties are encountered. The response ranged from enthusiastic (California) to unfavorable (Massachusetts).

In California it was determined that prosecutions for driving while under the combined influence of alcohol and drugs are instituted when preliminary investigation reveals the probability that simple drunk driving charges will not be successful, and, at the same time, evidence as to the use of drugs will not sustain a finding that the defendant was "incapable of driving safely." Officials in that state report a large number of convictions for driving under the combined influence without any special problem for prosecutors to overcome. It should be noted, however, that California does not establish presumptions for blood alcohol since it omits a law comparable to UVC § 11-902(b).

CONSOLIDATION OF ARTICLE 9 OFFENSES

If the National Committee approves the recommendations in the prior two items, two new sections would be added to Article 9 of Chapter 11 -- one dealing with an unlawful alcohol-blood level and a second dealing with alcohol-drug driving.

Because this article already has sections numbered 11-902, 11-902.1 and 11-902.3, merely adding these two sections would create two more sections having a decimal (11-902.4 and 11-902.5). To avoid renumbering problems and to consolidate the four offenses, the staff recommends the following draft:

§ 11-902 -- Drivers with ability impaired by alcohol or drugs

(a) A person shall not drive or be in actual physical control of any vehicle while:

1. There is 0.10% or more by weight of alcohol in his blood;
2. Under the influence of alcohol;
3. Under the influence of any drug to a degree which renders him incapable of safely driving; or

4. Under the combined influence of alcohol and any drug to a degree which renders him incapable of safely driving.

(b) The fact that any person charged with violating this section is or has been legally entitled to use a drug shall not constitute a defense against any charge of violating this section.

(c) Every person convicted of violating this section shall be punished by imprisonment for not less than 10 days nor more than one year, or by fine of not less than $100 nor more than $1,000, or by both such fine and imprisonment. On a second or subsequent conviction he shall be punished by imprisonment for not less than 90 days nor more than one year, and, in the discretion of the court, a fine of not more than $1,000.

The above draft would replace existing §§ 11-902(a), 11-902.1 and 11-902.2 and would incorporate the two new provisions. Section 11-902.2(b) would be deleted because license revocation is and should be covered in UVC Chapter 6. Also deleted are the portions of existing § 11-902.1 dealing with habitual users of narcotic drugs and persons under the influence of narcotic drugs. The latter category of persons is adequately covered by draft § 11-902(a)3. As to driving by habitual users, the staff suggests that draft § 11-902(a)3 should also be adequate and there is no need to continue this prohibition.

The Subcommittee recommendation would additionally require changes in several other Code sections to reflect the changes made in § 11-902. Thus the Code's chemical test provision would be revised and repositioned, and Code §§ 6-205, 6-205.1 and 16-105 would require revision as follows:

§ 11-902.1 -- Chemical tests

(a) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while ability was impaired by alcohol or drugs, evidence of the amount of alcohol or drug in a person's blood at the alleged time, as determined by a chemical analysis of the person's blood, urine, breath or other bodily substance, shall be admissable. Where such a chemical test is made the following provisions shall apply:

1. [(c)] Chemical analyses of the person's blood, urine, breath, or other bodily substance to be considered valid under the provisions of this section shall have been performed according to methods approved by the State department of health and by an individual possessing a valid permit issued by the State department of health for this purpose. The State department of health is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the State department of health.

2. [(d)] When a person shall submit to a blood test at the request of a law enforcement officer under the provisions of § 6-205.1, only a physician or a registered nurse (or other qualified person) may withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of breath or urine specimens.

3. [(e)] The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

4. [(f)] Upon the request of the person who shall submit to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or his attorney.

5. [4.] Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 cubic centimeters of blood. (REVISED, 1968.)

(b) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of [intoxicating liquor] the amount of alcohol in the person's blood at the time alleged as shown by chemical analysis of the person's blood, urine, breath, or other bodily substance shall give rise to the following presumptions:

1. If there was at that time 0.05 percent or less by weight of alcohol in the person's blood, it shall be presumed that the person was not under the influence of [intoxicating liquor.]

2. If there was at that time in excess of 0.05 percent but less than 0.10 percent by weight of alcohol in the person's blood, such fact shall not give rise to any presumption that the person was or was not under the influence of [intoxicating liquor,] but such fact may be considered with other competent evidence in determining whether the person was under the influence of [intoxicating liquor.]

[3. If there was at that time 0.10 percent or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of intoxicating liquor.]

(Former subsection (b)4 moved to (a)5 above.)

3. [5.] The foregoing provisions of paragraph (b) shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of [intoxicating liquor.] → alcohol.

Comments: This draft moves the chemical test provisions out of § 11-902. The new section deals solely with chemical tests and is divided into two subsections. Subsection (a) deals with the procedures for performing chemical tests and it would be applicable to chemical tests performed where any of the four offenses under § 11-902 is suspected. The subsection specifically provides that the evidence of the amount of alcohol or drug in the blood as determined by the chemical test would be admissable. Subsection (b) retains the presumptive levels, except the presumption based upon a level of 0.10% which is deleted because it is superfluous in view of new § 11-902(a)1 making it unlawful for a driver to have a blood/alcohol ratio of 0.10% or more.

§ 6-205—Mandatory revocation of license by department

The department shall forthwith revoke the license of any driver upon receiving a record of such driver's conviction of any of the following offenses:

1. Manslaughter (or homicide by vehicle) resulting from the operation of a motor vehicle;

2. Driving or being in actual physical control of a motor vehicle while [under the influence of intoxicating liquor]; → ability is impaired by alcohol or drug as prohibited by § 11-902

[3. Driving a motor vehicle while an habitual user or under the influence of any narcotic drug or while under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle;]

3. [4.] Any felony in the commission of which a motor vehicle is used;

4. [5.] Failure to stop, render aid, or identify himself as required by § 10-102 in the event of a motor vehicle accident resulting in the death or personal injury of another;

5. [6.] Perjury or the making of a false affidavit or statement under oath to the department under this act or under any other law relating to the ownership or operation of motor vehicles;

6. [7.] Unauthorized use of a motor vehicle belonging to another which act does not amount to a felony.[13] (SECTION REVISED, 1968.)

§ 6-205.1—Revocation of license in event of refusal to submit to chemical tests [14]

(a) Any person who operates a motor vehicle upon the [public] highways of this State shall be deemed to have given consent, subject to the provisions of § [11-902] to a chemical test or tests of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood if arrested for any offense arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle while [under the influence of intoxicating liquor]. The test or tests shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon the [pub'] highways of this State while [under the influence of intoxicating liquor]. The law enforcement agency by which such officer is employed shall designate which of the aforesaid tests shall be administered.

(b) Any person who is dead, unconscious or who is otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by paragraph (a) of this section and the test or tests may be administered, subject to the provisions of § [11-902].

(c) If a person under arrest refuses upon the request of a law enforcement officer to submit to a chemical test designated by the law enforcement agency as provided in paragraph (a) of this section, none shall be given, but the department, upon the receipt of a sworn report of the law enforcement officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the [public] highways of this State while [under the influence of intoxicating liquor] and that the person had refused to submit to the test upon the request of the law enforcement officer, shall revoke his license subject to review as hereinafter provided.

(d) Upon revoking the license, as hereinbefore in this section directed, the department shall immediately notify the person in writing and upon his request shall afford him an opportunity for a hearing in the same manner and under the same conditions as is provided in § 6-206(c) for notification and hearings in the cases of discretionary suspension of licenses, except that the scope of such a hearing for the purposes of this section shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle upon the [public] highways of this State while [under the influence of intoxicating liquor] whether the person was placed under arrest, and whether he refused to submit to the test upon request of the officer. Whether the person was informed that his privilege to drive would be revoked if he refused to submit to the test shall not be an issue. The department shall order that the revocation either be rescinded or sustained.

(e) If the revocation is sustained after such a hearing, the person whose license has been revoked, under the provisions of this section, shall have the right to file a petition in the appropriate court to review the final order of revocation by the department in the same manner and under the same conditions as is provided in § 6-212 in the cases of discretionary revocations and suspensions. (NEW SECTION, 1962; REVISED, 1968.)

§ 16-105—Arrests for serious offenses

(a) The authority of a police officer to make an arrest is the same as upon an arrest for a felony when such officer has reasonable and probable grounds to believe that the person arrested has committed any of the following offenses:

1. Homicide by vehicle;

2. Driving, or being in actual physical control of, a vehicle while [under the influence of intoxicating liquor] ability is impaired by alcohol or drug as prohibited by § 11-902

[3. Driving a vehicle while under the influence of any narcotic drug, or driving a vehicle while under the influence of any other drug to a degree which renders the person incapable of safely driving a vehicle;]

3. [4.] Failure to stop, or failure to give information, or failure to render reasonable assistance, in the event of an accident resulting in death or personal injuries, as prescribed in §§ 10-102 and 10-104;

4. [5.] Failure to stop, or failure to give information, in the event of an accident resulting in damage to a vehicle or to other property, as prescribed in §§ 10-103 to 10-105 inclusive; (REVISED, 1968.)

5. [6.] Reckless driving;

6. [7.] Racing on the highway; or (NEW, 1968.)

7. [8.] Willfully fleeing from or attempting to elude a police officer. (NEW, 1968.)

Provided, however, that the manner of making arrests under this section shall be as in misdemeanor cases.

(b) Whenever any person is arrested as authorized in this section he shall be taken without unnecessary delay before the proper magistrate as specified in § 16-111, except that in the case of the offenses designated in paragraphs 5, 6, 7 and 8, a police officer shall have the same discretion as is provided in other cases in § 16-107. (REVISED, 1968.)

were approved November 1971

Comments: These revisions to Code §§ 6-205, 6-205.1 and 16-105 are necessary to provide for license revocation, implied consent to testing, and felony arrest powers in the case of the alcohol and drug offenses other than driving while under the influence.

13. TREATMENT FOR DRIVERS WITH ALCOHOL OR DRUG PROBLEM

Subcommittee Recommendation: Amend the penalty for a violation of § 11-902 to allow a commitment or an order to submit to supervised treatment as an alternate to fine or imprisonment.

ice for a total period of five consecutive years, and upon being relieved by the appropriate Secretary from active Federal service, National Guard, or Air National Guard units, shall, insofar as practicable, be returned to their National Guard or Air National Guard status in their respective States, Territories, the District of Columbia, and Puerto Rico, with pertinent records, colors, histories, trophies, and other historical impedimenta. (June 24, 1948, ch. 625, title I, § 21, as added June 30, 1950, ch. 445, § 2, 64 Stat. 318, and amended June 19, 1951, ch. 144, title I, § 1(x), 65 Stat. 87; July 7, 1952, ch. 584, § 1, 66 Stat. 440.)

REFERENCES IN TEXT

Selective Service Act of 1948, as amended, referred to in the first par., was redesignated Universal Military Training and Service Act by the amendment in act June 19, 1951, ch. 144, title I, § 1(a), 65 Stat. 75 to act June 24, 1948, ch. 625, title I, § 1(a), 62 Stat. 604, and was again redesignated Military Selective Service Act of 1967 by the amendment in Pub. L. 90-40, § 1(1), June 30, 1967, 81 Stat. 100. See section 451(a) of this Appendix.

AMENDMENTS

1952—Act July 7, 1952, authorized the President to retain unit organizations and their equipment, exclusive of individual members, for a period of five years.

1951—Act June 19, 1951, substituted "July 1, 1953" for "July 9, 1951", "twenty-four months" for "twenty-one months", and adding last sentence.

EX. ORD. NO. 10271. DELEGATION OF PRESIDENT'S AUTHORITY

Ex. Ord. No. 10271, July 7, 1951, 16 F.R. 6661, provided:

There is hereby delegated to the Secretary of Defense the authority vested in the President by section 21 of the Universal Military Training and Service Act (64 Stat. 318), as amended by the 1951 Amendments to the Universal Military Training and Service Act (65 Stat. 87; Public Law 51, 82d Congress) [this section], to order into the active military or naval service of the United States for a period not to exceed twenty-four months, with or without their consent, any or all members and units of any or all Reserve components of the Armed Forces of the United States and retired personnel of the Regular Armed Forces: *Provided*, that so much of the authority of the President under the said section 21, as amended [this section], as relates to any Reserve component of the United States Coast Guard or to retired personnel of the Regular Coast Guard is hereby delegated to the Secretary of the Treasury.

The Secretary of Defense is hereby authorized to redelegate, subject to such conditions as the Secretary may deem appropriate, to the Secretaries of the Army, Navy, and Air Force such functions under this order as affect their respective services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 451, 453, 454, 455, 456, 459, 460, 461, 462, 463, 464, 465, 466, 467, 469, 470 of this Appendix.

§ 472. Period of increased service applicable to all personnel.

Wherever in this amendatory Act the period of active service for any category of persons is increased, such increased period of service shall be applicable to all persons in such category serving on active duty in the Armed Forces on the date of the enactment of this amendatory Act [June 19, 1951]. (June 19, 1951, ch. 144, title I, § 4, 65 Stat. 88.)

REFERENCES IN TEXT

Date of the enactment of this amendatory Act, referred to in the text, is act June 19, 1951, ch. 144, 65 Stat. 75, which generally amended this Appendix. See distribution tables for distribution of act.

CODIFICATION

Section was enacted as part of the 1951 Amendments to the Universal Military Training and Service Act, act June 19, 1951, ch. 144, 65 Stat 75, and not as part of the Military Selective Service act of 1967, Act June 24, 1948, ch. 625, 62 Stat. 604. Title I of Act June 24, 1948, ch. 625, as amended, is classified to sections 451, 453, 454, 455, 456, and 458—471 of this Appendix. Title II of the Act was classified to various sections of former Title 10, Army and Air Force. See Tables volume. For location of such sections in revised Title 10, Armed Forces, see disposition table set out at the beginning of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 451, 453, 454, 455, 456, 459, 460, 461, 462, 463, 464, 465, 466, 467, 469, 470 of this Appendix.

§ 473. Regulations governing liquor sales; penalties.

The Secretary of Defense is authorized to make such regulations as he may deem to be appropriate governing the sale, consumption, possession of or traffic in beer, wine, or any other intoxicating liquors to or by members of the Armed Forces or the National Security Training Corps at or near any camp, station, post, or other place primarily occupied by members of the Armed Forces or the National Security Training Corps. Any person, corporation, partnership, or association who knowingly violates the regulations which may be made hereunder shall, unless otherwise punishable under the Uniform Code of Military Justice, be deemed guilty of a misdemeanor and be punished by a fine of not more than $1,000 or imprisonment for not more than twelve months, or both. (June 19, 1951, ch. 144, title I, § 6, 65 Stat. 88.)

REFERENCES IN TEXT

Uniform Code of Military Justice, referred to in the text, is classified to chapter 47 of Title 10, Armed Forces.

CODIFICATION

Section was enacted as a part of the 1951 Amendments to the Universal Military Training and Service Act, act June 19, 1951, ch. 144, 65 Stat. 75, and not as a part of the Military Selective Service Act of 1967, act June 24, 1948, ch. 625, 62 Stat. 604. Title I of Act June 24, 1948, ch. 625, as amended, is classified to sections 451, 453, 454, 455, 456, and 458—471 of this Appendix. Title II of the Act was classified to various sections of former Title 10, Army and Air Force. See Tables volume. For location of such sections in revised Title 10, Armed Forces, see disposition table set out at the beginning of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 451, 453, 454, 455, 456, 459, 460, 461, 462, 463, 464, 465, 466, 467, 469, 470 of this Appendix.

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940

ACT OCT. 17, 1940, CH. 888, 54 STAT. 1178

Sec.
501. Short title.

ARTICLE I.—GENERAL PROVISIONS

510. Purpose; suspension of enforcement of civil liabilities.
511. Definitions.
512. Territorial application; jurisdiction of courts; form of procedure.
513. Protection of persons secondarily liable.
514. Extension of benefits to citizens serving with forces of war allies.
515. Notice of benefits to persons in and persons entering military service.

Re HB 379

(Former subsection (b)4 moved to (a)5 above.)

3. [5.] The foregoing provisions of paragraph (b) shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of [intoxicating liquor.] → alcohol.

Comments: This draft moves the chemical test provisions out of § 11-902. The new section deals solely with chemical tests and is divided into two subsections. Subsection (a) deals with the procedures for performing chemical tests and it would be applicable to chemical tests performed where any of the four offenses under § 11-902 is suspected. The subsection specifically provides that the evidence of the amount of alcohol or drug in the blood as determined by the chemical test would be admissable. Subsection (b) retains the presumptive levels, except the presumption based upon a level of 0.10% which is deleted because it is superfluous in view of new § 11-902(a)1 making it unlawful for a driver to have a blood/alcohol ratio of 0.10% or more.

§ 6-205—Mandatory revocation of license by department

The department shall forthwith revoke the license of any driver upon receiving a record of such driver's conviction of any of the following offenses:

1. Manslaughter (or homicide by vehicle) resulting from the operation of a motor vehicle;

2. Driving or being in actual physical control of a motor vehicle while [under the influence of intoxicating liquor];

[3. Driving a motor vehicle while an habitual user or under the influence of any narcotic drug or while under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle;]

3. [4.] Any felony in the commission of which a motor vehicle is used;

4. [5.] Failure to stop, render aid, or identify himself as required by § 10-102 in the event of a motor vehicle accident resulting in the death or personal injury of another;

5. [6.] Perjury or the making of a false affidavit or statement under oath to the department under this act or under any other law relating to the ownership or operation of motor vehicles;

6. [7.] Unauthorized use of a motor vehicle belonging to another which act does not amount to a felony.[13] (SECTION REVISED, 1968.)

ability is impaired by alcohol under as prohibited in § 11-902

§ 6-205.1—Revocation of license in event of refusal to submit to chemical tests [14]

(a) Any person who operates a motor vehicle upon the [public] highways of this State shall be deemed to have given consent, subject to the provisions of § [11-902] to a chemical test or tests of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood if arrested for any offense arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle while [under the influence of intoxicating liquor]. The test or tests shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle upon the [public] highways of this State while [under the influence of intoxicating liquor]. The law enforcement agency by which such officer is employed shall designate which of the aforesaid tests shall be administered.

(b) Any person who is dead, unconscious or who is otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by paragraph (a) of this section and the test or tests may be administered, subject to the provisions of § [11-902].

(c) If a person under arrest refuses upon the request of a law enforcement officer to submit to a chemical test designated by the law enforcement agency as provided in paragraph (a) of this section, none shall be given, but the department, upon the receipt of a sworn report of the law enforcement officer that he had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the [public] highways of this State while [under the influence of intoxicating liquor] and that the person had refused to submit to the test upon the request of the law enforcement officer, shall revoke his license subject to review as hereinafter provided.

(d) Upon revoking the license, as hereinbefore in this section directed, the department shall immediately notify the person in writing and upon his request shall afford him an opportunity for a hearing in the same manner and under the same conditions as is provided in § 6-206(c) for notification and hearings in the cases of discretionary suspension of licenses, except that the scope of such a hearing for the purposes of this section shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle upon the [public] highways of this State while [under the influence of intoxicating liquor] whether the person was placed under arrest, and whether he refused to submit to the test upon request of the officer. Whether the person was informed that his privilege to drive would be revoked if he refused to submit to the test shall not be an issue. The department shall order that the revocation either be rescinded or sustained.

(e) If the revocation is sustained after such a hearing, the person whose license has been revoked, under the provisions of this section, shall have the right to file a petition in the appropriate court to review the final order of revocation by the department in the same manner and under the same conditions as is provided in § 6-212 in the cases of discretionary revocations and suspensions. (NEW SECTION, 1962; REVISED, 1968.)

§ 16-105—Arrests for serious offenses

(a) The authority of a police officer to make an arrest is the same as upon an arrest for a felony when such officer has reasonable and probable grounds to believe that the person arrested has committed any of the following offenses:

1. Homicide by vehicle;

2. Driving, or being in actual physical control of, a vehicle while [under the influence of intoxicating liquor;] ability is impaired by alcohol or drug as prohibited by § 11-902

[3. Driving a vehicle while under the influence of any narcotic drug, or driving a vehicle while under the influence of any other drug to a degree which renders the person incapable of safely driving a vehicle;]

3. [4.] Failure to stop, or failure to give information, or failure to render reasonable assistance, in the event of an accident resulting in death or personal injuries, as prescribed in §§ 10-102 and 10-104;

4. [5.] Failure to stop, or failure to give information, in the event of an accident resulting in damage to a vehicle or to other property, as prescribed in §§ 10-103 to 10-105 inclusive; (REVISED, 1968.)

5. [6.] Reckless driving;

6. [7.] Racing on the highway; or (NEW, 1968.)

7. [8.] Willfully fleeing from or attempting to elude a police officer. (NEW, 1968.)

Provided, however, that the manner of making arrests under this section shall be as in misdemeanor cases.

(b) Whenever any person is arrested as authorized in this section he shall be taken without unnecessary delay before the proper magistrate as specified in § 16-111, except that in the case of the offenses designated in paragraphs 5, 6, 7 and 8, a police officer shall have the same discretion as is provided in other cases in § 16-107. (REVISED, 1968.)

Approved November 1971

Comments: These revisions to Code §§ 6-205, 6-205.1 and 16-105 are necessary to provide for license revocation, implied consent to testing, and felony arrest powers in the case of the alcohol and drug offenses other than driving while under the influence.

13. TREATMENT FOR DRIVERS WITH ALCOHOL OR DRUG PROBLEM

Subcommittee Recommendation: Amend the penalty for a violation of § 11-902 to allow a commitment or an order to submit to supervised treatment as an alternate to fine or imprisonment.

ice for a total period of five consecutive years, and upon being relieved by the appropriate Secretary from active Federal service, National Guard, or Air National Guard units, shall, insofar as practicable, be returned to their National Guard or Air National Guard status in their respective States, Territories, the District of Columbia, and Puerto Rico, with pertinent records, colors, histories, trophies, and other historical impediments. (June 24, 1948, ch. 625, title I, § 21, as added June 30, 1950, ch. 445, § 2, 64 Stat. 318, and amended June 19, 1951, ch. 144, title I, § 1(x), 65 Stat. 87; July 7, 1952, ch. 584, § 1, 66 Stat. 449.)

REFERENCES IN TEXT

Selective Service Act of 1948, as amended, referred to in the first par., was redesignated Universal Military Training and Service Act by the amendment in act June 19, 1951, ch. 144, title I, § 1(a), 65 Stat. 75 to act June 24, 1948, ch. 625, title I, § 1(a), 62 Stat. 604, and was again redesignated Military Selective Service Act of 1967 by the amendment in Pub. L. 90-40, § 1(1), June 30, 1967, 81 Stat. 100. See section 451(a) of this Appendix.

AMENDMENTS

1952—Act July 7, 1952, authorized the President to retain unit organizations and their equipment, exclusive of individual members, for a period of five years.

1951—Act June 19, 1951, substituted "July 1, 1953" for "July 9, 1951", "twenty-four months" for "twenty-one months", and adding last sentence.

EX. ORD. NO. 10271. DELEGATION OF PRESIDENT'S AUTHORITY

Ex. Ord. No. 10271, July 7, 1951, 16 F.R. 6661, provided:

There is hereby delegated to the Secretary of Defense the authority vested in the President by section 21 of the Universal Military Training and Service Act (64 Stat. 318), as amended by the 1951 Amendments to the Universal Military Training and Service Act (65 Stat. 87; Public Law 51, 82d Congress) [this section], to order into the active military or naval service of the United States for a period not to exceed twenty-four months, with or without their consent, any or all members and units of any or all Reserve components of the Armed Forces of the United States and retired personnel of the Regular Armed Forces: *Provided*, that so much of the authority of the President under the said section 21, as amended [this section], as relates to any Reserve component of the United States Coast Guard or to retired personnel of the Regular Coast Guard is hereby delegated to the Secretary of the Treasury.

The Secretary of Defense is hereby authorized to redelegate, subject to such conditions as the Secretary may deem appropriate, to the Secretaries of the Army, Navy, and Air Force such functions under this order as affect their respective services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 451, 453, 454, 455, 456, 459, 460, 461, 462, 463, 464, 465, 466, 467, 469, 470 of this Appendix.

§ 472. Period of increased service applicable to all personnel.

Wherever in this amendatory Act the period of active service for any category of persons is increased, such increased period of service shall be applicable to all persons in such category serving on active duty in the Armed Forces on the date of the enactment of this amendatory Act [June 19, 1951]. (June 19, 1951, ch. 144, title I, § 4, 65 Stat. 88.)

REFERENCES IN TEXT

Date of the enactment of this amendatory Act, referred to in the text, is act June 19, 1951, ch. 144, 65 Stat. 75, which generally amended this Appendix. See distribution tables for distribution of act.

CODIFICATION

Section was enacted as part of the 1951 Amendments to the Universal Military Training and Service Act, act June 19, 1951, ch. 144, 65 Stat 75, and not as part of the Military Selective Service act of 1967, Act June 24, 1948, ch. 625, 62 Stat. 604. Title I of Act June 24, 1948, ch. 625, as amended, is classified to sections 451, 453, 454, 455, 456, and 458—471 of this Appendix. Title II of the Act was classified to various sections of former Title 10, Army and Air Force. See Tables volume. For location of such sections in revised Title 10, Armed Forces, see disposition table set out at the beginning of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 451, 453, 454, 455, 456, 459, 460, 461, 462, 463, 464, 465, 466, 467, 469, 470 of this Appendix.

§ 473. Regulations governing liquor sales; penalties.

The Secretary of Defense is authorized to make such regulations as he may deem to be appropriate governing the sale, consumption, possession of or traffic in beer, wine, or any other intoxicating liquors to or by members of the Armed Forces or the National Security Training Corps at or near any camp, station, post, or other place primarily occupied by members of the Armed Forces or the National Security Training Corps. Any person, corporation, partnership, or association who knowingly violates the regulations which may be made hereunder shall, unless otherwise punishable under the Uniform Code of Military Justice, be deemed guilty of a misdemeanor and be punished by a fine of not more than $1,000 or imprisonment for not more than twelve months, or both. (June 19, 1951, ch. 144, title I, § 6, 65 Stat. 88.)

REFERENCES IN TEXT

Uniform Code of Military Justice, referred to in the text, is classified to chapter 47 of Title 10, Armed Forces.

CODIFICATION

Section was enacted as a part of the 1951 Amendments to the Universal Military Training and Service Act, act June 19, 1951, ch. 144, 65 Stat. 75, and not as a part of the Military Selective Service Act of 1967, act June 24, 1948, ch. 625, 62 Stat. 604. Title I of Act June 24, 1948, ch. 625, as amended, is classified to sections 451, 453, 454, 455, 456, and 458—471 of this Appendix. Title II of the Act was classified to various sections of former Title 10, Army and Air Force. See Tables volume. For location of such sections in revised Title 10, Armed Forces, see disposition table set out at the beginning of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 451, 453, 454, 455, 456, 459, 460, 461, 462, 463, 464, 465, 466, 467, 469, 470 of this Appendix.

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940

ACT OCT. 17, 1940, CH. 888, 54 STAT. 1178

Sec.
501. Short title.

ARTICLE I.—GENERAL PROVISIONS

510. Purpose; suspension of enforcement of civil liabilities.
511. Definitions.
512. Territorial application; jurisdiction of courts; form of procedure.
513. Protection of persons secondarily liable.
514. Extension of benefits to citizens serving with forces of war allies.
515. Notice of benefits to persons in and persons entering military service.

Re HB 379

Sec.
516. Extension of benefits to persons ordered to report for induction or military service.
517. Effect on rights, remedies, etc., pursuant to written agreements entered after commencement of military service.

ARTICLE II.—GENERAL RELIEF

520. Default judgments; affidavits; bonds; attorneys for persons in service.
521. Stay of proceedings where military service affects conduct thereof.
522. Fines and penalties on contracts, etc.
523. Stay or vacation of execution of judgments, attachments, etc.
524. Duration and term of stays; codefendants not in service.
525. Statutes of limitations as affected by period of service.
526. Maximum rate of interest.
527. Limitations prescribed by internal revenue laws as affected by period of service.

ARTICLE III.—RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS, ASSIGNMENTS, LEASES

530. Eviction or distress during military service; stay; penalty for noncompliance; allotment of pay for payment.
531. Installment contracts for purchase of property.
532. Mortgages, trust deeds, etc.
533. Settlement of cases involving stayed proceedings to foreclose mortgage on, resume possession of, or terminate contract for purchase of, personal property.
534. Termination of leases by lessees.
535. Protection of assignor of life insurance policy; enforcement of storage liens; penalties.
536. Extension of benefits to dependents.

ARTICLE IV.—INSURANCE

540. Definitions.
541. Persons entitled to benefits of article; applications; amount of insurance protected.
542. Form of application; reports to Veterans' Administration by insurer; policy deemed modified upon application for protection.
543. Determination of policies entitled to protection; notice to parties; lapse of policies for nonpayment of premiums, etc.
544. Rights and privileges of insured during period of protection.
545. Deduction of unpaid premiums upon settlement of policies maturing during protection.
546. Guaranty of premiums and interest by United States; settlement of amounts due upon expiration of protection; subrogation of United States; crediting debt repayments.
547. Regulations; finality of determinations.
548. Law governing applications for protection prior to October 6, 1942.
549 to 554. Omitted.

ARTICLE V.—TAXES AND PUBLIC LANDS

560. Taxes respecting personalty, money, credits, or realty; sale of property to enforce collection; redemption of property sold; penalty for nonpayment; notice of rights to beneficiaries of section.
561. Rights to public lands not forfeited; grazing lands
562. Homestead entries and settlement claims; service as equivalent to residence and cultivation.
563. Same; death or incapacity during or resulting from service as affecting rights; perfection of rights.
564. Desert-land entries; suspension of requirements.
565. Mining claims; requirements suspended.
566. Mineral permits and leases; suspension of operations and term of permits and leases.
567. Right to take action for perfection, defense, etc., of rights as unaffected; affidavits and proofs.
568. Irrigation rights; residence requirements suspended.
569. Distribution of information concerning benefits of article; forms.
570. Homestead entrymen permitted to leave entries to perform farm labor.
571. Land rights of persons under 21.
572. Extension of benefits to persons serving with war allies of United States.
573. Income taxes; collection deferred; interest; statute of limitations.
574. Residence for tax purposes.

ARTICLE VI.—ADMINISTRATIVE REMEDIES

580. Transfers to take advantage of act.
581. Certificates of service; persons reported missing.
582. Revocation, etc., of interlocutory orders.
583. Separability of provisions.
584. Termination date.
585. Inapplicability of Soldier's and Sailor's Civil Relief Act of 1918.

ARTICLE VII.—FURTHER RELIEF

590. Stay of enforcement of obligations, liabilities, taxes, etc.

EXTENSION OF BENEFITS TO INDUCTEES UNDER UNIVERSAL MILITARY TRAINING AND SERVICE ACT

The benefits of the Soldiers' and Sailors' Civil Relief Act of 1940, sections 501—548 and 560—590 of this Appendix, are extended to inductees under the Universal Military Training and Service Act by section 404 of this Appendix

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1918

Former provisions on this subject were contained in the Soldiers' and Sailors' Civil Relief Act of 1918, set out as former sect' 101 et seq. of this Appendix.

§ 501. Short title.

This Act [sections 501 to 548 and 560 to 590 of this Appendix] may be cited as the Soldiers' and Sailors' Civil Relief Act of 1940. (Oct. 17, 1940, ch. 888, § 1, 54 Stat. 1178.)

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT AMENDMENTS OF 1942

Act Oct. 6, 1942, ch. 581, § 1, 56 Stat. 769, provided: "That this Act (affecting sections 513—517, 525, 526, 530—535, 540—554, 560—569, 572, 574, and 590 of this Appendix) may be cited as the Soldiers' and Sailors' Civil Relief Act Amendments of 1942."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 510 to 548 and 560 to 590 of this Appendix.

ARTICLE I.—GENERAL PROVISIONS

§ 510. Purpose; suspension of enforcement of civil liabilities.

In order to provide for, strengthen, and expedite the national defense under the emergent conditions which are threatening the peace and security of the United States and to enable the United States the more successfully to fulfill the requirements of the national defense, provision is made to suspend enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the period herein specified over which this Act [sections 501 to 548 and 560 to 590 of this Appendix] remains in force. (Oct. 17, 1940, ch. 888, § 100, 54 Stat. 1179.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 511 to 548 and 560 to 590 of this Appendix.

§ 511. Definitions.

(1) The term "persons in military service" and the term "persons in the military service of the United States", as used in this Act [sections 501 to 548 and 560 to 590 of this Appendix], shall include the following persons and no other: All members of the Army of the United States, the United States Navy, the Marine Corps, the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy. The term "military service", as used in this Act [said sections], shall signify Federal service on active duty with any branch of service heretofore referred to or mentioned as well as training or education under the supervision of the United States preliminary to induction into the military service. The terms "active service" or "active duty" shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(2) The term "period of military service", as used in this Act [sections 501 to 548 and 560 to 590 of this Appendix], shall include the time between the following dates: For persons in active service at the date of approval of this Act [Oct. 17, 1940] it shall begin with the date of approval of this Act [Oct. 17, 1940]; for persons entering active service after the date of this Act [Oct. 17, 1940], with the date of entering active service. It shall terminate with the date of discharge from active service or death while in active service, but in no case later than the date when this Act [said sections] ceases to be in force.

(3) The term "person", when used in this Act [sections 501 to 548 and 560 to 590 of this Appendix], with reference to the holder of any right alleged to exist against a person in military service or against a person secondarily liable under such right, shall include individuals, partnerships, corporations, and any other forms of business association.

(4) The term "court", as used in this Act [sections 501 to 548 and 560 to 590 of this Appendix], shall include any court of competent jurisdiction of the United States or of any State, whether or not a court of record. (Oct. 17, 1940, ch. 888, § 101, 54 Stat. 1179.)

WOMEN'S ARMY CORPS

The members of the Women's Army Auxiliary Corps were included among the "persons in military service" within the meaning of the Soldiers' and Sailors' Civil Relief Act by the amendment to subsec. 1 of this section by act of May 14, 1942, ch. 312, § 10, 56 Stat. 282, which was repealed by act of July 1, 1943, ch. 187, § 5, 57 Stat. 371. The Women's Army Auxiliary Corps established by the act of May 14, 1942, was superseded by the Women's Army Corps in the Army of the United States as established by the act of July 1, 1943, ch. 187, 57 Stat. 371 and repealed by act June 25, 1947, ch. 327, § 2 (a), 61 Stat. 451, eff. July 1, 1948. The effective date of the repeal was postponed until June 12, 1948, by act June 12, 1948, ch. 449, title I, § 110, 62 Stat. 303, section 101 of which established in the Regular Army a Women's Army Corps to be effective June 12, 1948.

The members of the Women's Army Corps, Regular Army, are entitled to the protection of all laws applicable to male commissioned officers, warrant officers, and enlisted men of the Regular Army; to former male commissioned officers, warrant officers and enlisted men of the Regular Army; and to their dependents and beneficiaries, in view of section 107 of act June 12, 1948, ch. 449, title I, 62 Stat. 361, which superseded similar provisions contained in act July 1, 1943, ch. 187, § 2, 57 Stat. 371 [formerly set out as section 1552 of this Appendix].

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510, 512 to 548 and 560 to 590 of this Appendix.

§ 512. Territorial application; jurisdiction of courts; form of procedure.

(1) The provisions of this Act [sections 501 to 548 and 560 to 590 of this Appendix] shall apply to the United States, the several States and Territories, the District of Columbia, and all territory subject to the jurisdiction of the United States, and to proceedings commenced in any court therein, and shall be enforced through the usual forms of procedure obtaining in such courts or under such regulations as may be by them prescribed.

(2) When under this Act [sections 501 to 548 and 560 to 590 of this Appendix], any application is required to be made to a court in which no proceeding has already been commenced with respect to the matter, such application may be made to any court. (Oct. 17, 1940, ch. 888, § 102, 54 Stat. 1179; Proc. No. 2695, July 4, 1946, 11 F.R. 7517, 60 Stat. 1352.)

CODIFICATION

The clause "including the Philippine Islands while under the sovereignty of the United States" following the words "and all territory subject to the jurisdiction of the United States" in subdivision (1) was omitted pursuant to 1946 Proc. No. 2695, which recognized the independence of the Philippine Islands as of July 4, 1946, and is set out as a note under section 1394 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510, 511, 513 to 548 and 560 to 590 of this Appendix.

§ 513. Protection of persons secondarily liable.

(1) Whenever pursuant to any of the provisions of this Act [sections 501 to 548 and 560 to 590 of this Appendix] the enforcement of any obligation or liability, the prosecution of any suit or proceeding, the entry or enforcement of any order, writ, judgment, or decree, or the performance of any other act, may be stayed, postponed, or suspended, such stay, postponement, or suspension may, in the discretion of the court, likewise be granted to sureties, guarantors, endorsers, accommodation makers, and others, whether primarily or secondarily subject to the obligation or liability, the performance or enforcement of which is stayed, postponed, or suspended.

(2) When a judgment or decree is vacated or set aside in whole or in part, as provided in this Act [sections 501 to 548 and 560 to 590 of this Appendix], the same may, in the discretion of the court, likewise be set aside and vacated as to any surety, guarantor, endorser, accommodation maker, or other person whether primarily or secondarily liable upon the contract or liability for the enforcement of which the judgment or decree was entered.

(3) Whenever, by reason of the military service of a principal upon a criminal bail bond the sureties upon such bond are prevented from enforcing the attendance of their principal and performing their

obligation the court shall not enforce the provisions of such bond during the military service of the principal thereon and may in accordance with principles of equity and justice either during or after such service discharge such sureties and exonerate the bail.

(4) Nothing contained in this Act [sections 501 to 548 and 560 to 590 of this Appendix], shall prevent a waiver in writing of the benefits afforded by subsections (1) and (2) of this section by any surety, guarantor, endorser, accommodation maker, or other person whether primarily or secondarily liable upon the obligation or liability, except that after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 [Oct. 6, 1942] no such waiver shall be valid unless it is executed as an instrument separate from the obligation or liability in respect of which it applies, and no such waiver shall be valid after the beginning of the period of military service if executed by an individual who subsequent to the execution of such waiver becomes a person in military service, or if executed by a dependent of such individual, unless executed by such individual or dependent during the period specified in section 106 [section 516 of this Appendix]. (Oct. 17, 1940, ch. 888, § 103, 54 Stat. 1179; Oct. 6, 1942, ch. 581, §§ 2, 3, 56 Stat. 769.)

REFERENCES IN TEXT

The Soldiers' and Sailors' Civil Relief Act Amendments of 1942, referred to in subsec. (4), amended, among other sections, this section. For other sections affected, see note under section 501 of this Appendix.

AMENDMENTS

1942—Subsec. (1). Act Oct. 6, 1942, § 2(a), substituted "accommodation makers, and others, whether primarily or secondarily" for "and others".

Subsec. (2). Act Oct. 6, 1942, § 2(b), substituted "accommodation maker, or other person whether primarily or secondarily" for "or other person".

Subsecs. (3) and (4). Act Oct. 6, 1942, § 3 added subsecs. (3) and (4).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 512, 514 to 548 and 560 to 590 of this Appendix.

§ 514. Extension of benefits to citizens serving with forces of war allies.

Persons who serve with the forces of any nation with which the United States may be allied in the prosecution of any war in which the United States engages while this Act [sections 501 to 548 and 560 to 590 of this Appendix] remains in force and who immediately prior to such service were citizens of the United States shall, except in those cases provided for in section 512 [section 572 of this Appendix], be entitled to the relief and benefits afforded by this Act [sections 501 to 548 and 560 to 590 of this Appendix] if such service is similar to military service as defined in this Act [said sections], unless they are dishonorably discharged therefrom, or it appears that they do not intend to resume United States citizenship. (Oct. 17, 1940, ch. 888, § 104, as added Oct. 6, 1942, ch. 581, § 4, 56 Stat. 770.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 513, 515 to 548 and 560 to 590 of this Appendix.

§ 515. Notice of benefits to persons in and persons entering military service.

The Secretary of the Army and the Secretary of the Navy shall make provision, in such manner as each may deem appropriate for his respective Department, to insure the giving of notice of the benefits accorded by this Act [sections 501 to 548 and 560 to 590 of this Appendix] to persons in and to persons entering military service. The Director of Selective Service shall cooperate with the Secretary of the Army and the Secretary of the Navy in carrying out the provisions of this section. (Oct. 17, 1940, ch. 888, § 105, as added Oct. 6, 1942, ch. 581, § 4, 56 Stat. 770.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

SECRETARY OF THE AIR FORCE

For transfer of certain functions insofar as they pertain to the Air Force, and to the extent that they were not previously transferred to the Secretary of the Air Force and Department of the Air Force from the Secretary of the Army and Department of the Army, see Secretary of Defense Transfer Order No. 40 [App. A (112)], July 22, 1949.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 514, 516 to 548 and 560 to 590 of this Appendix.

§ 516. Extension of benefits to persons ordered to report for induction or military service.

Any person who has been ordered to report for induction under the Selective Training and Service Act of 1940, as amended, shall be entitled to the relief and benefits accorded persons in military service under articles I, II, and III of this Act [sections 510 to 517, 520 to 527, and 530 to 536 of this Appendix] during the period beginning on the date of receipt of such order and ending on the date upon which such person reports for induction; and any member of the Enlisted Reserve Corps who is ordered to report for military service shall be entitled to such relief and benefits during the period beginning on the date of receipt of such order and ending on the date upon which he reports for such service. (Oct. 17, 1940, ch. 888, § 106, as added Oct. 6, 1942, ch. 581, § 4, 56 Stat. 770.)

REFERENCES IN TEXT

The Selective Training and Service Act of 1940, as amended, referred to in text, was formerly set out as sections 301—303, 304, 305, 306—309, 310, and 311—318 of this Appendix. Similar provisions are now contained in the Universal Military Training and Service Act, set out as sections 451, 453, 454, 455, 456 and 458—471 of this Appendix.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 515, 517 to 548 and 560 to 590 of this Appendix.

§ 517. Effect on rights, remedies, etc., pursuant to written agreements entered after commencement of military service.

Nothing contained in this Act [sections 501 to 548 and 560 to 590 of this Appendix] shall prevent—

(a) the modification, termination, or cancellation of any contract, lease, or bailment or any obligation secured by mortgage, trust deed, lien, or other security in the nature of a mortgage, or

(b) the repossession, retention, foreclosure, sale, forfeiture, or taking possession of property which is security for any obligation or which has been purchased or received under a contract, lease, or bailment,

pursuant to a written agreement of the parties thereto (including the person in military service concerned, or the person to whom section 106 [section 516 of this Appendix] is applicable, whether or not such person is a party to the obligation), or their assignees, executed during or after the period of military service of the person concerned or during the period specified in section 106 [section 516 of this Appendix]. (Oct. 17, 1940, ch. 888, § 107, as added Oct. 6, 1942, ch. 581, § 4, 56 Stat. 770.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 516, 518 to 548 and 560 to 590 of this Appendix.

ARTICLE II.—GENERAL RELIEF

§ 520. Default judgments; affidavits; bonds; attorneys for persons in service.

(1) In any action or proceeding commenced in any court, if there shall be a default of any appearance by the defendant, the plaintiff, before entering judgment shall file in the court an affidavit setting forth facts showing that the defendant is not in military service. If unable to file such affidavit plaintiff shall in lieu thereof file an affidavit setting forth either that the defendant is in the military service or that plaintiff is not able to determine whether or not defendant is in such service. If an affidavit is not filed showing that the defendant is not in the military service, no judgment shall be entered without first securing an order of court directing such entry, and no such order shall be made if the defendant is in such service until after the court shall have appointed an attorney to represent defendant and protect his interest, and the court shall on application make such appointment. Unless it appears that the defendant is not in such service the court may require, as a condition before judgment is entered, that the plaintiff file a bond approved by the court conditioned to indemnify the defendant, if in military service, against any loss or damage that he may suffer by reason of any judgment should the judgment be thereafter set aside in whole or in part. And the court may make such other and further order or enter such judgment as in its opinion may be necessary to protect the rights of the defendant under this Act [sections 501 to 548 and 560 to 590 of this Appendix]. Whenever, under the laws applicable with respect to any court, facts may be evidenced, established, or proved by an unsworn statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury, the filing of such an unsworn statement, declaration, verification, or certificate shall satisfy the requirement of this subsection that facts be established by affidavit.

(2) Any person who shall make or use an affidavit required under this section or a statement, declaration, verification, or certificate certified or declared to be true under penalty of perjury permitted under subsection (1), knowing it to be false, shall be guilty of a misdemeanor and shall be punishable by imprisonment not to exceed one year or by fine not to exceed $1,000, or both.

(3) In any action or proceeding in which a person in military service is a party if such party does not personally appear therein or is not represented by an authorized attorney, the court may appoint an attorney to represent him; and in such case a like bond may be required and an order made to protect the rights of such person. But no attorney appointed under this Act [sections 501 to 548 and 560 to 590 of this Appendix], to protect a person in military service shall have power to waive any right of the person for whom he is appointed or bind him by his acts.

(4) If any judgment shall be rendered in any action or proceeding governed by this section against any person in military service during the period of such service or within thirty days thereafter, and it appears that such person was prejudiced by reason of his military service in making his defense thereto, such judgment may, upon application, made by such person or his legal representative, not later than ninety days after the termination of such service, be opened by the court rendering the same and such defendant or his legal representative let in to defend; provided it is made to appear that the defendant has a meritorious or legal defense to the action or some part thereof. Vacating, setting aside, or reversing any judgment because of any of the provisions of this Act [sections 501 to 548 and 560 to 590 of this Appendix], shall not impair any right or title acquired by any bona fide purchaser for value under such judgment. (Oct. 17, 1940, ch. 888, § 200, 54 Stat. 1180; Sept. 8, 1960, Pub. L. 86-721, §§ 1, 2, 74 Stat. 820.)

AMENDMENTS

1960—Subsec. (1). Pub. L. 86-721, § 1, permitted the establishment of certain facts by a declaration under penalty of perjury in lieu of an affidavit.

Subsec. (2). Pub. L. 86-721, § 2, inserted after "affidavit required under this section," the words "or a statement, declaration, verification, or certificate certified or declared to be true under penalty of perjury permitted under subsection (1),".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 517, 521 to 548 and 560 to 590 of this Appendix.

§ 521. Stay of proceedings where military service affects conduct thereof.

At any stage thereof any action or proceeding in any court in which a person in military service is involved, either as plaintiff or defendant, during the period of such service or within sixty days thereafter may, in the discretion of the court in which it is pending, on its own motion, and shall, on application to it by such person or some person on his behalf, be stayed as provided in this Act [sections 501 to 548 and 560 to 590 of this Appendix] unless, in the opinion of the court, the ability of plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of his

military service. (Oct. 17, 1940, ch. 888, § 201, 54 Stat. 1181.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 520, 522 to 548 and 560 to 590 of this Appendix.

§ 522. Fines and penalties on contracts, etc.

When an action for compliance with the terms of any contract is stayed pursuant to this Act [sections 501 to 548 and 560 to 590 of this Appendix] no fine or penalty shall accrue by reason of failure to comply with the terms of such contract during the period of such stay, and in any case where a person fails to perform any obligation and a fine or penalty for such nonperformance is incurred a court may, on such terms as may be just, relieve against the enforcement of such fine or penalty if it shall appear that the person who would suffer by such fine or penalty was in the military service when the penalty was incurred and that by reason of such service the ability of such person to pay or perform was thereby materially impaired. (Oct. 17, 1940, ch. 888, § 202, 54 Stat. 1181.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 521, 523 to 548 and 560 to 590 of this Appendix.

§ 523. Stay or vacation of execution of judgments, attachments, etc.

In any action or proceeding commenced in any court against a person in military service, before or during the period of such service, or within sixty days thereafter, the court may, in its discretion, on its own motion, or on application to it by such person or some person on his behalf shall, unless in the opinion of the court the ability of the defendant to comply with the judgment or order entered or sought is not materially affected by reason of his military service—

(a) Stay the execution of any judgment or order entered against such person, as provided in this Act [sections 501 to 548 and 560 to 590 of this Appendix]; and

(b) Vacate or stay any attachment or garnishment of property, money, or debts in the hands of another, whether before or after judgment as provided in this Act [said sections]. (Oct. 17, 1940, ch. 888, § 203, 54 Stat. 1181.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 522, 524 to 548 and 560 to 590 of this Appendix.

§ 524. Duration and term of stays; codefendants not in service.

Any stay of any action, proceeding, attachment, or execution, ordered by any court under the provisions of this Act [sections 501 to 548 and 560 to 590 of this Appendix] may, except as otherwise provided, be ordered for the period of military service and three months thereafter or any part of such period, and subject to such terms as may be just, whether as to payment in installments of such amounts and at such times as the court may fix or otherwise. Where the person in military service is a codefendant with others the plaintiff may nevertheless by leave of court proceed against the others. (Oct. 17, 1940, ch. 888, § 204, 54 Stat. 1181.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 523, 525 to 548 and 560 to 590 of this Appendix.

§ 525. Statutes of limitations as affected by period of service.

The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 [Oct. 6, 1942] be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment. (Oct. 17, 1940, ch. 888, § 205, 54 Stat. 1181; Oct. 6, 1942, ch. 581, § 5, 56 Stat. 770.)

REFERENCES IN TEXT

The Soldiers' and Sailors' Civil Relief Act Amendments of 1942, referred to in the text, amended, among other sections, this section. For other sections affected, see note under section 501 of this Appendix.

AMENDMENTS

1942—Act Oct. 6, 1942, included proceedings before boards, bureaus, commissions, departments, or other agencies of government, and added provision for omission of service period in computing period for redemption of real property.

CROSS REFERENCES

Application of this section to any period of limitation prescribed by or under internal revenue laws, see section 527 of this Appendix.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 524, 526 to 548 and 560 to 590 of this Appendix.

§ 526. Maximum rate of interest.

No obligation or liability bearing interest at a rate in excess of 6 per centum per annum incurred by a person in military service prior to his entry into such service shall, during any part of the period of military service which occurs after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 [Oct. 6, 1942], bear interest at a rate in excess of 6 per centum per annum unless, in the opinion of the court, upon application thereto by the obligee, the ability of such person in military service to pay interest upon such obligation or liability at a rate in excess of 6 per centum per annum is not materially affected by reason of such service, in which case the court may make such order as in its opinion may be just. As used in this section the term "interest" includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) in respect of such obligation or liability. (Oct. 17, 1940, ch. 888, § 206, as added Oct. 6, 1942, ch. 581, § 6, 56 Stat. 771.)

REFERENCES IN TEXT

The Soldiers' and Sailors' Civil Relief Act Amendments of 1942, referred to in the text, amended, among other

sections, this section. For other sections affected, see note under section 501 of this Appendix.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 525, 527 to 548 and 560 to 590 of this Appendix.

§ 527. Limitations prescribed by internal revenue laws as affected by period of service.

Section 205 of this Act [section 525 of this Appendix] shall not apply with respect to any period of limitation prescribed by or under the internal revenue laws of the United States. (Oct. 17, 1940, ch. 888, § 207, as added Oct. 21, 1942, ch. 619, title V, § 507(b)(2)(B), 56 Stat. 764.)

CROSS REFERENCES

Income taxes, deferment of collection, see section 573 of this Appendix and note thereunder.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 526, 530 to 548 and 560 to 590 of this Appendix.

ARTICLE III.—RENT, INSTALLMENT CONTRACTS, MORTGAGES, LIENS, ASSIGNMENTS, LEASES

AMENDMENTS

1942—Article heading was amended by act Oct. 6, 1942, ch. 581, § 7, 56 Stat. 771. Article was formerly entitled "Rent, Installment Contracts, Mortgages".

§ 530. Eviction or distress during military service; stay; penalty for noncompliance; allotment of pay for payment.

(1) No eviction or distress shall be made during the period of military service in respect of any premises for which the agreed rent does not exceed $150 per month, occupied chiefly for dwelling purposes by the wife, children, or other dependents of a person in military service, except upon leave of court granted upon application therefor or granted in an action or proceeding affecting the right of possession.

(2) On any such application or in any such action the court may, in its discretion, on its own motion, and shall, on application, unless in the opinion of the court the ability of the tenant to pay the agreed rent is not materially affected by reason of such military service, stay the proceedings for not longer than three months, as provided in this Act [sections 501 to 548 and 560 to 590 of this Appendix], or it may make such other order as may be just. Where such stay is granted or other order is made by the court, the owner of the premises shall be entitled, upon application therefor, to relief in respect of such premises similar to that granted persons in military service in sections 301, 302, and 500 of this Act [sections 531, 532, and 560 of this Appendix] to such extent and for such period as may appear to the court to be just.

(3) Any person who shall knowingly take part in any eviction or distress otherwise than as provided in subsection (1) hereof, or attempts so to do, shall be guilty of a misdemeanor, and shall be punishable by imprisonment not to exceed one year or by fine not to exceed $1,000, or both.

(4) The Secretary of the Army, the Secretary of the Navy, or the Secretary of the Treasury with respect to the Coast Guard, as the case may be, is empowered, subject to such regulations as he may prescribe, to order an allotment of the pay of a person in military service in reasonable proportion to discharge the rent of premises occupied for dwelling purposes by the wife, children, or other dependents of such person. (Oct. 17, 1940, ch. 888, § 300, 54 Stat. 1181; Oct. 6, 1942, ch. 581, § 8, 56 Stat. 771; Mar. 3, 1966, Pub. L. 89-358, § 10, 80 Stat. 28.)

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947 was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

AMENDMENTS

1966—Subsec. (1). Pub. L. 89-358 increased the limitation of rents from $80 to $150 per month.

1942—Subsec. (2). Act Oct. 6, 1942, § 8(a), added last sentence.

Subsec. (3). Act Oct. 6, 1942, § 8(b), inserted "or attempts so to do,".

SECRETARY OF THE AIR FORCE

For transfer of certain functions relating to finance and fiscal matters, insofar as they pertain to the Air Force, from the Secretary of the Army and Department of the Army to the Secretary of the Air Force and Department of the Air Force, see Secretary of Defense Transfer Order No. 25 [§ 1.111], Oct. 14, 1948.

For transfer of certain real property, and functions relating thereto, insofar as they pertain to the Air Force, from the Secretary of the Army and Department of the Army to the Secretary of the Air Force and Department of the Air Force, see Secretary of Defense Transfer Order Nos. 14, eff. July 1, 1948, and 40 [App. B (140)], July 22, 1949.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 527, 531 to 548 and 560 to 590 of this Appendix.

§ 531. Installment contracts for purchase of property.

(1) No person who has received, or whose assignor has received, under a contract for the purchase of real or personal property, or of lease or bailment with a view to purchase of such property, a deposit or installment of the purchase price, or a deposit or installment under the contract, lease, or bailment, from a person or from the assignor of a person who, after the date of payment of such deposit or installment, has entered military service, shall exercise any right or option under such contract to rescind or terminate the contract or resume possession of the property for nonpayment of any installment thereunder due or for any other breach of the terms thereof occurring prior to or during the period of such military service, except by action in a court of competent jurisdiction.

(2) Any person who shall knowingly resume possession of property which is the subject of this section otherwise than as provided in subsection (1) of this section or in section 107 [section 517 of this Appendix], or attempts so to do, shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year or by fine not to exceed $1,000, or both.

(3) Upon the hearing of such action the court may order the repayment of prior installments or deposits or any part thereof, as a condition of terminating the contract and resuming possession of

the property, or may, in its discretion, on its own motion, and shall, on application to it by such person in military service or some person on his behalf, order a stay of proceedings as provided in this Act [sections 501 to 548 and 560 to 590 of this Appendix] unless, in the opinion of the court, the ability of the defendant to comply with the terms of the contract is not materially affected by reason of such service; or it may make such other disposition of the case as may be equitable to conserve the interests of all parties. (Oct. 17, 1940, ch. 888, § 301, 54 Stat. 1181; Oct. 6, 1942, ch. 581, § 9 (a, c, d), 56 Stat. 771.)

AMENDMENTS

1942—Subsec. (1). Act Oct. 6, 1942, § 9 (a), omitted provision limiting applicability to transactions prior to Oct. 10, 1940, and proviso relating to modification, termination, or cancellation of contracts and repossession or retention of property by mutual written agreement of the parties, inserted provision relating to deposit or installment under contract, lease, or bailment, and included other breaches of terms in addition to nonpayment of installments.

Subsec. (2). Act Oct. 6, 1942, § 9 (d), substituted "of this section or in section 107, or attempts so to do," for "hereof".

Subsec. (3). Act Oct. 6, 1942, § 9 (c), deleted "except as provided in section 303", preceding "on application".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 530, 532 to 548 and 560 to 590 of this Appendix.

§ 532. Mortgages, trust deeds, etc.

(1) The provisions of this section shall apply only to obligations secured by mortgage, trust deed, or other security in the nature of a mortgage upon real or personal property owned by a person in military service at the commencement of the period of the military service and still so owned by him which obligations originated prior to such person's period of military service.

(2) In any proceeding commenced in any court during the period of military service to enforce such obligation arising out of nonpayment of any sum thereunder due or out of any other breach of the terms thereof occurring prior to or during the period of such service the court may, after hearing, in its discretion, on its own motion, and shall, on application to it by such person in military service or some person on his behalf, unless in the opinion of the court the ability of the defendant to comply with the terms of the obligation is not materially affected by reason of his military service—

(a) stay the proceedings as provided in this Act [sections 501 to 548 and 560 to 590 of this Appendix]; or

(b) make such other disposition of the case as may be equitable to conserve the interests of all parties.

(3) No sale, foreclosure, or seizure of property for nonpayment of any sum due under any such obligation, or for any other breach of the terms thereof, whether under a power of sale, under a judgment entered upon warrant of attorney to confess judgment contained therein, or otherwise, shall be valid if made after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 [Oct. 6, 1942] and during the period of military service or within three months thereafter, except pursuant to an agreement as provided in section 107 [section 517 of this Appendix], unless upon an order previously granted by the court and a return thereto made and approved by the court.

(4) Any person who shall knowingly make or cause to be made any sale, foreclosure, or seizure of property, defined as invalid by subsection (3) hereof, or attempts so to do, shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year or by fine not to exceed $1,000, or both. (Oct. 17, 1940, ch. 888, § 302, 54 Stat. 1182; Oct. 6, 1942, ch. 581, §§ 9 (b, c), 10, 56 Stat. 771, 772; June 23, 1952, ch. 450, 66 Stat. 151.)

REFERENCES IN TEXT

The Soldiers' and Sailors' Civil Relief Act Amendments of 1942, referred to in subsec. (3), amended, among other sections, this section. For other sections affected, see note under section 501 of this Appendix.

AMENDMENTS

1952—Subsec. (4). Act June 23, 1952, prohibited the making of sales, foreclosures, or seizures defined as invalid by subsec. (3) of this section.

1942—Subsec. (1). Act Oct. 6, 1942, § 9 (b), deleted "originating prior to the date of approval of this Act and" following "obligations" and inserted matter at end of subsection following "him".

Subsec. (2). Act Oct. 6, 1942, § 9 (c), deleted "except as provided in section 303," preceding "on application".

Subsec. (3). Act Oct. 6, 1942, § 10, amended subsec. (3) generally.

Subsec. (4). Act. Oct. 6, 1942, § 10, added subsec. (4).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 531, 533 to 548 and 560 to 590 of this Appendix and title 12 sections 1710, 1739, 1750c.

§ 533. Settlement of cases involving stayed proceedings to foreclose mortgage on, resume possession of, or terminate contract for purchase of, personal property.

Where a proceeding to foreclose a mortgage upon or to resume possession of personal property, or to rescind or terminate a contract for the purchase thereof, has been stayed as provided in this Act [sections 501 to 548 and 560 to 590 of this Appendix], the court may, unless in its opinion an undue hardship would result to the dependents of the person in military service, appoint three disinterested parties to appraise the property and, based upon the report of the appraisers, order such sum, if any, as may be just, paid to the person in military service or his dependent, as the case may be, as a condition of foreclosing the mortgage, resuming possession of the property, or rescinding or terminating the contract. (Oct. 17, 1940, ch. 888, § 303, as added Oct. 6, 1942, ch. 581, § 12, 56 Stat. 772.)

REPEALS

Former section 533, from act Oct. 17, 1940, ch. 888, § 303, 54 Stat. 1183, related to stay of action to resume possession of motor vehicle, tractor, or their accessories, encumbered by purchase money mortgage, conditional sales contract, etc., and was repealed by act Oct. 6, 1942, ch. 581, § 11, 56 Stat. 772.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 532, 534 to 548 and 560 to 590 of this Appendix.

§ 534. Termination of leases by lessees.

(1) The provisions of this section shall apply to any lease covering premises occupied for dwelling, professional, business, agricultural, or similar pur-

poses in any case in which (a) such lease was executed by or on the behalf of a person who, after the execution of such lease, entered military service, and (b) the premises so leased have been occupied for such purposes, or for a combination of such purposes, by such person or by him and his dependents.

(2) Any such lease may be terminated by notice in writing delivered to the lessor (or his grantee) or to the lessor's (or his grantee's) agent by the lessee at any time following the date of the beginning of his period of military service. Delivery of such notice may be accomplished by placing it in an envelope properly stamped and duly addressed to the lessor (or his grantee) or to the lessor's (or his grantee's) agent and depositing the notice in the United States mails. Termination of any such lease providing for monthly payment of rent shall not be effective until thirty days after the first date on which the next rental payment is due and payable subsequent to the date when such notice is delivered or mailed. In the case of all other leases, termination shall be effected on the last day of the month following the month in which such notice is delivered or mailed and in such case any unpaid rental for a period preceding termination shall be proratably computed and any rental paid in advance for a period succeeding termination shall be refunded by the lessor (or his assignee). Upon application by the lessor to the appropriate court prior to the termination period provided for in the notice, any relief granted in this subsection shall be subject to such modifications or restrictions as in the opinion of the court justice and equity may in the circumstances require.

(3) Any person who shall knowingly seize, hold, or detain the personal effects, clothing, furniture, or other property of any person who has lawfully terminated a lease covered by this section, or in any manner interfere with the removal of such property from the premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent accruing subsequent to the date of termination of such lease, or attempts so to do, shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year or by fine not to exceed $1,000, or both. (Oct. 17, 1940, ch. 888, § 304, as added Oct. 6, 1942, ch. 581, § 12, 56 Stat. 772.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 533, 536 to 548 and 560 to 590 of this Appendix.

§ 535. Protection of assignor of life insurance policy; enforcement of storage liens; penalties.

(1) Where any life insurance policy on the life of a person in military service has been assigned prior to such person's period of military service to secure the payment of any obligation of such person, no assignee of such policy (except the insurer in connection with a policy loan) shall, during the period of military service of the insured or within one year thereafter, except upon the consent in writing of the insured made during such period or when the premiums thereon are due and unpaid or upon the death of the insured, exercise any right or option by virtue of such assignment unless upon leave of court granted upon an application made therefor by such assignee. The court may thereupon refuse to grant such leave unless in the opinion of the court the ability of the obligor to comply with the terms of the obligation is not materially affected by reason of his military service. For the purpose of this subsection premiums which are guaranteed under the provisions of article IV of this Act [sections 540 to 548 of this Appendix] shall not be deemed to be due and unpaid.

(2) No person shall exercise any right to foreclose or enforce any lien for storage of household goods, furniture, or personal effects of a person in military service during such person's period of military service and for three months thereafter except upon an order previously granted by a court upon application therefor and a return thereto made and approved by the court. In such proceeding the court may, after hearing, in its discretion, on its own motion, and shall, on application to it by such person in military service or some person on his behalf, unless in the opinion of the court the ability of the defendant to pay the storage charges due is not materially affected by reason of his military service—

(a) stay the proceedings as provided in this Act [sections 501 to 548 and 560 to 590 of this Appendix]; or

(b) make such other disposition of the case as may be equitable to conserve the interest of all parties.

The enactment of the provisions of this subsection shall not be construed in any way as affecting or as limiting the scope of section 302 of this Act [section 532 of this Appendix].

(3) Any person who shall knowingly take any action contrary to the provisions of this section, or attempts so to do, shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year or by fine not to exceed $1,000, or both. (Oct. 17, 1940, ch. 888, § 305, as added Oct. 6, 1942, ch. 581, § 12, 56 Stat. 773.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 534, 536 to 548 and 560 to 590 of this Appendix.

§ 536. Extension of benefits to dependents.

Dependents of a person in military service shall be entitled to the benefits accorded to persons in military service under the provisions of this article [sections 530 to 536 of this Appendix] upon application to a court therefor, unless in the opinion of the court the ability of such dependents to comply with the terms of the obligation, contract, lease, or bailment has not been materially impaired by reason of the military service of the person upon whom the applicants are dependent. (Oct. 17, 1940, ch. 888, § 306, as added Oct. 6, 1942, ch. 581, § 12, 56 Stat. 773.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 535, 540 to 548 and 560 to 590 of this Appendix and title 12 sections 1710, 1739, 1750c.

ARTICLE IV.—INSURANCE

PRIOR PROVISIONS

The provisions of "Article IV—Insurance" of act Oct. 17, 1940, ch. 888, 54 Stat. 1183, were amended by act Oct. 6, 1942, ch. 581, § 13, 56 Stat. 773, to read as incorporated in sections 540—548 of this Appendix.

Prior to act Oct. 6, 1942, constituting the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, "Article IV—Insurance" consisted of sections 400—414 of act Oct. 17, 1940, which were incorporated in sections 540—554 of this Appendix. For text of sections 400—414 of act Oct. 17, 1940, as originally enacted, see notes to sections 540—554 of this Appendix.

§ 540. Definitions.

As used in this article [sections 540 to 548 of this Appendix]—

(a) The term "policy" shall include any contract of life insurance or policy on a life, endowment, or term plan, including any benefit in the nature of life insurance arising out of membership in any fraternal or beneficial association, which does not provide for the payment of any sum less than the face value thereof or for the payment of an additional amount as premiums if the insured engages in the military service of the United States as defined in section 101 of article I of this Act [section 511 of this Appendix] or which does not contain any limitation or restriction upon coverage relating to engagement in or pursuit of certain types of activities which a person might be required to engage in by virtue of his being in such military service, and (1) which is in force on a premium-paying basis at the time of application for benefits hereunder, and (2) which was made and a premium paid thereon before the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 [Oct. 6, 1942 or not less than one hundred and eighty days before the date the insured entered into the military service. The provisions of this Act [sections 501 to 548 and 560 to 590 of this Appendix] shall not be applicable to policies or contracts of life insurance issued under the War Risk Insurance Act, as amended, the World War Veterans Act, as amended, or the National Service Life Insurance Act of 1940, as amended.

(b) The term "premium" shall include the amount specified in the policy as the stipend to be paid by the insured at regular intervals during the period therein stated.

(c) The term "insured" shall include any person in the military service of the United States as defined in section 101, article I, of this Act [section 511 of this Appendix], whose life is insured under and who is the owner and holder of and has an interest in a policy as above defined.

(d) The term "insurer" shall include any firm, corporation, partnership, or association chartered or authorized to engage in the insurance business and to issue a policy as above defined by the laws of a State of the United States or the United States. (Oct. 17, 1940, ch. 888, § 400, 54 Stat. 1183; Oct. 6, 1942, ch. 581, § 13, 56 Stat. 773; July 11, 1956, ch. 570, § 1, 70 Stat. 528.)

References in Text

The Soldiers' and Sailors' Civil Relief Act Amendments of 1942, referred to in subsec. (a), amended, among other sections, this section. For other sections affected, see note under section 501, of this Appendix.

The War Risk Insurance Act, as amended, referred to in subsec. (a), was act Oct. 6, 1917, ch. 105, 40 Stat. 398, as amended, which was repealed by Pub. L. 85-56, Title XXII, 2202(96), June 17, 1957, 71 Stat. 166.

The World War Veteran's Act as amended, referred to in subsec. (a), was act June 27, 1924, ch. 320, title I, 43 Stat. 607, as amended, which was repealed by Pub. L. 85-857, § 14(51), Sept. 2, 1958, 72 Stat. 1271, and subject matter of which is now generally covered by subchapter II of chapter 19 of Title 38, Veterans' Benefits.

The National Service Life Insurance Act of 1940, as amended, referred to in subsec. (a) was act Oct. 8, 1940, ch. 757, title VI, pt. 1, 54 Stat. 1008, as amended, which was repealed by Pub. L. 85-857, § 14(75), Sept. 2, 1958, 72 Stat. 1272, and is now generally covered by chapter 19 of Title 38, Veterans' Benefits.

Amendments

1956—Subsec. (a). Act July 11, 1956, substituted "one hundred and eighty" for "thirty" preceding the words "days before the date the insured entered into the military service".

Effective Date of 1956 Amendment

Section 2 of act July 11, 1956, provided that the amendment to subsec. (a) should take effect with respect to applications for benefits made after July 11, 1956.

Prior Provisions

Section 400 of act Oct. 17, 1940, as originally enacted, which, by the provisions of section 408 of act Oct. 17, 1940 as amended and incorporated in section 548 of this Appendix, is continued in force as to applications for protection executed prior to Oct. 6, 1942, read: "In this article the term 'policy' shall include any contract of life insurance on the level premium or legal reserve plan. It shall also include any benefit in the nature of life insurance arising out of membership in any fraternal or beneficial association; the term 'premium' shall include membership dues or assessments in such association, and the date of issuance of policy as herein limited shall refer to the date of admission to membership in such association; the term 'insured' shall include any person who is the holder of a policy as defined in this article; the term 'insurer' shall include any corporation, partnership, or other form of association which secures or provides insurance under any policy as defined in this article."

Veterans' Life Insurance Refunds

Pub. L. 85-586, Aug. 1, 1958, 72 Stat. 487, authorized the Administrator of Veterans' Affairs to make refunds, without interest, which are due on account of amounts collected by the United States Government by offset or otherwise from persons who made valid application for and were legally entitled to the protection of article IV of the Soldiers' and Sailors' Civil Relief Act of 1940, former sections 540-554 of this Appendix, as it existed prior to the amendments of October 6, 1942, application to be made to the Veterans' Administration, within two years after Aug. 1, 1958 and authorized appropriation of additional sums for such purposes.

Section Referred to in Other Sections

This section is referred to in sections 501, 510 to 536, 541 to 548 and 560 to 590 of this Appendix.

§ 541. Persons entitled to benefits of article; applications; amount of insurance protected.

The benefits and privileges of this article [sections 540 to 548 of this Appendix] shall apply to any insured, when such insured, or a person designated by him, or, in case the insured is outside the continental United States (excluding Alaska and the Panama Canal Zone), a beneficiary, shall make written application for protection under this article [said sections], unless the Administrator of Veterans' Affairs in passing upon such application as provided in this article [said sections] shall find that the policy is not entitled to protection hereunder. The Veterans' Administration shall give notice to the military and naval authorities of the provisions of this article [said sections], and shall include in such notice an explanation of such provisions for the information of those desiring to make application for the benefits thereof. The original of such application shall be sent by the insured to the insurer, and a copy thereof to the Veterans' Administration. The total

amount of insurance on the life of one insured under policies protected by the provisions of this article [said sections] shall not exceed $10,000. If an insured makes application for protection of policies on his life totaling insurance in excess of $10,000, the Administrator is authorized to have the amount of insurance divided into two or more policies so that the protection of this article [said sections] may be extended to include policies for a total amount of insurance not to exceed $10,000, and a policy which affords the best security to the Government shall be given preference. (Oct. 17, 1940, ch. 888, § 401, 54 Stat. 1183; Oct. 6, 1942, ch. 581, § 13, 56 Stat. 774.)

PRIOR PROVISIONS

Section 401 of act Oct. 17, 1940, as originally enacted, which, by the provisions of section 408 of act Oct. 17, 1940 as amended and incorporated in section 548 of this Appendix, is continued in force as to applications for protection executed prior to Oct. 6, 1942, read:

"(1) The benefits of this article shall apply to any person in military service who is the holder of a policy of life insurance, when such holder shall apply for such benefits on a form prepared in accordance with regulations which shall be prescribed by the Administrator of Veterans' Affairs. Such form shall set forth particularly that the application therein made is a consent to such modification of the terms of the original contract of insurance as are made necessary by the provisions of this article and by receiving and filing the same the insurer shall be deemed to have assented thereto, to the extent, if any, to which the policy on which the application is made is within the provisions of this article. The original of such application shall be sent by the insured to the insurer, and a copy thereof to the Veterans' Administration.

"(2) The Veterans' Administration shall issue through suitable military and naval channels a notice for distribution by appropriate military and naval authorities to persons in the military service explaining the provisions of this article and shall furnish forms to be distributed to those desiring to make application for its benefits."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 540, 548 to 548 and 560 to 590 of this Appendix.

§ 542. Form of application; reports to Veterans' Administration by insurer; policy deemed modified upon application for protection.

Any writing signed by the insured and identifying the policy and the insurer, and agreeing that his rights under the policy are subject to and modified by the provisions of this article [sections 540 to 548 of this Appendix], shall be sufficient as an application for the benefits of this article [said sections], but the Veterans' Administration may require the insured and insurer to execute such other forms as may be deemed advisable. Upon receipt of the application of the insured the insurer shall furnish such report to the Veterans' Administration concerning the policy as shall be prescribed by regulations. The insured who has made application for protection under this article [said sections] and the insurer shall be deemed to have agreed to such modification of the policy as may be required to give this article [said sections] full force and effect with respect to such policy. (Oct. 17, 1940, ch. 888, § 402, 54 Stat. 1183; Oct. 6, 1942, ch. 581, § 13, 56 Stat. 774.)

PRIOR PROVISIONS

Section 402 of act Oct. 17, 1940, as originally enacted, which, by the provisions of section 408 of act Oct. 17, 1940 as amended and incorporated in section 548 of this Appendix, is continued in force as to applications for protection executed prior to Oct. 6, 1942, read:

"The benefits of this act shall be available to any person in military service in respect of contracts of insurance in force under their terms up to but not exceeding a face value of $5,000, irrespective of the number of policies held by such person whether in one or more companies, when such contracts were made and a premium was paid thereon before the date of approval of this act or not less than thirty days before entry into the military service; but in no event shall the provisions of this article apply to any policy on which premiums are due and unpaid for a period of more than one year at the time when application for the benefits of this article is made or in respect of any policy on which there is outstanding a policy loan or other indebtedness equal to or greater than 50 per centum of the cash surrender value of the policy."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 541, 543 to 548 and 560 to 590 of this Appendix.

§ 543. Determination of policies entitled to protection; notice to parties; lapse of policies for nonpayment of premiums, etc.

The Administrator of Veterans' Affairs shall find whether the policy is entitled to protection under this article [sections 540 to 548 of this Appendix] and shall notify the insured and the insurer of such finding. Any policy found by the Administrator of Veterans' Affairs to be entitled to protection under this article [said sections] shall not, subsequent to date of application, and during the period of military service of the insured or during two years after the expiration of such service, lapse or otherwise terminate or be forfeited for the nonpayment of a premium becoming due and payable, or the nonpayment of any indebtedness or interest. (Oct. 17, 1940, ch. 888, § 403, 54 Stat. 1184; Oct. 6, 1942, ch. 581, § 13, 56 Stat. 775.)

PRIOR PROVISIONS

Section 403 of act Oct. 17, 1940, as originally enacted, which, by the provisions of section 408 of act Oct. 17, 1940 as amended and incorporated in section 548 of this Appendix, is continued in force as to applications for protection executed prior to Oct. 6, 1942, read:

"The Veterans' Administration shall, subject to regulations, which shall be prescribed by the Administrator of Veterans' Affairs, compile and maintain a list of such persons in military service as have made application for the benefits of this article, and shall (1) reject any application for such benefits made by persons who are not persons in military service; (2) reject any applications for such benefits in excess of the amount permitted by section 402 [section 542 of this Appendix]; and (3) reject any applications in respect of contracts of insurance otherwise not entitled to the benefits of this article. Said Administration shall immediately notify the insurer and the insured in writing of every rejection or approval."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 542, 544 to 548 and 560 to 590 of this Appendix.

§ 544. Rights and privileges of insured during period of protection.

No dividend or other monetary benefit under a policy shall be paid to an insured or used to purchase dividend additions while a policy is protected by the provisions of this article [sections 540 to 548 of this Appendix] except with the consent and approval of the Veterans' Administration. If such consent is not procured, such dividends or benefits shall be added to the value of the policy to be used as a credit when final settlement is made with

the insurer. No cash value, loan value, or withdrawal of dividend accumulation, or unearned premium, or other value of similar character shall be available to the insured while the policy is protected under this article [said sections] except upon approval by the Veterans' Administration. The insured's right to change a beneficiary designation or select an optional settlement for a beneficiary shall not be affected by the provisions of this article [said sections]. (Oct. 17, 1940, ch. 888, § 404, 54 Stat. 1184; Oct. 6, 1942, ch. 581, § 13, 56 Stat. 775.)

PRIOR PROVISIONS

Section 404 of act Oct. 17, 1940, as originally enacted, which, by the provisions of section 408 of act Oct. 17, 1940, as amended and incorporated in section 548 of this Appendix, is continued in force as to applications for protection executed prior to Oct. 6, 1942, read:

"When one or more applications are made under this article by any one person in military service in respect of insurance exceeding a total face value of $5,000, whether on one or more policies or in one or more companies, and the insured shall not in his application indicate an order of preference, the Veterans' Administration shall reject such policies as have the inferior cash surrender value, so as to reduce the total benefits conferred within the face value of $5,000, and where necessary for this purpose shall direct the insurer to divide any policy into two separate policies. The said Administration shall immediately notify the insurer and the insured in writing of such selection."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 543, 545 to 548 and 560 to 590 of this Appendix.

§ 545. Deduction of unpaid premiums upon settlement of policies maturing during protection.

In the event of maturity of a policy as a death claim or otherwise before the expiration of the period of protection under the provisions of this article [sections 540 to 548 of this Appendix], the insurer in making settlement will deduct from the amount of insurance the premiums guaranteed under this article [said sections], together with interest thereon at the rate fixed in the policy for policy loans. If no rate of interest is specifically fixed in the policy, the rate shall be the rate fixed for policy loans in other policies issued by the insurer at the time the policy brought under the Act [sections 501 to 548 and 560 to 590 of this Appendix] was issued. The amount deducted by reason of the protection afforded by this article [sections 540 to 548 of this Appendix] shall be reported by the insurer to the Administrator of Veterans' Affairs. (Oct. 17, 1940, ch. 888, § 405, 54 Stat. 1184; Oct. 6, 1942, ch. 581, § 13, 56 Stat. 775.)

PRIOR PROVISIONS

Section 405 of act Oct. 17, 1940, as originally enacted, which, by the provisions of section 408 of act Oct. 17, 1940 as amended and incorporated in section 548 of this Appendix, is continued in force as to applications for protection executed prior to Oct. 6, 1942, read:

"No policy which has not lapsed for the nonpayment of premium before the commencement of the period of military service of the insured, and which has been brought within the benefits of this article, shall lapse or be forfeited for the nonpayment of premium during the period of such service or during one year after the expiration of such period: Provided, That in no case shall this prohibition extend for more than one year after the date when this Act ceases to be in force."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 544, 546 to 548 and 560 to 590 of this Appendix.

§ 546. Guaranty of premiums and interest by United States; settlement of amounts due upon expiration of protection; subrogation of United States; crediting debt repayments.

Payment of premiums and interest thereon at the rate specified in section 405 hereof [section 545 of this Appendix] becoming due on a policy while protected under the provisions of this article [sections 540 to 548 of this Appendix] is guaranteed by the United States, and if the amount so guaranteed is not paid to the insurer prior to the expiration of the period of insurance protection under this article [said sections], the amount then due shall be treated by the insurer as a policy loan on such policy, but if at the expiration of said period the cash surrender value is less than the amount then due, the policy shall then cease and terminate and the United States shall pay the insurer the difference between such amount and the cash surrender value. The amount paid by the United States to an insurer on account of applications approved under the provisions of this article, as amended [said sections], shall become a debt due to the United States by the insured on whose account payment was made and, notwithstanding any other Act, such amount may be collected either by deduction from any amount due said insured by the United States or as otherwise authorized by law. Any moneys received as repayment of debts incurred under this article, as originally enacted and as amended [said sections], shall be credited to the appropriation for the payment of claims under this article [said sections]. (Oct. 17, 1940, ch. 888, § 406, 54 Stat. 1184; Oct. 6, 1942, ch. 581, § 13, 56 Stat. 775; Apr. 3, 1948, ch. 170, § 6, 62 Stat. 160.)

AMENDMENTS

1948—Act Apr. 3, 1948, added last sentence to section.

PRIOR PROVISIONS

Section 406 of act Oct. 17, 1940, as originally enacted, which, by the provisions of section 408 of act Oct. 17, 1940 as amended and incorporated in section 548 of this Appendix, is continued in force as to applications for protection executed prior to Oct. 6, 1942, read:

"Within the first fifteen days of each calendar month after the date of approval of this Act until the expiration of one year after the date when this Act ceases to be in force every insurance corporation or association to which application has been made as herein provided, for the benefits of this article, shall render to the Veterans' Administration a report, duly verified, setting forth the following facts:

"First. The names of the persons who have applied for such benefits, and the face value of the policies in respect of which such benefits have been applied for by such persons during the preceding calendar month.

"Second. A list as far as practicable of the premiums in respect of policies entitled to the benefits of this article, which remain unpaid on the last day of the preceding calendar month, which day is at least thirty-one days after the due date of the premiums, provided such premiums have not previously been so reported as in default.

"Third. A list of premiums which, having been previously reported as in default, have been paid by the policyholder or someone on his behalf in whole or in part during the preceding calendar month.

"Fourth. A computation of the difference between the total amount of defaulted premiums therein reported and the total amount of premiums paid as therein reported, after having been previously reported as in default. From this sum shall be deducted the total sum of any premiums previously reported as in default, upon policies in respect of which the Veterans' Administration

has, since the date of such report, rejected an application for the benefits of this article. The final sum so arrived at shall be denominated the monthly difference."

CROSS REFERENCES

Termination of war for purposes of sections 540—548 of this Appendix, see note to section 584 of this Appendix.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 545, 547, 548 and 560 to 590 of this Appendix.

§ 547. Regulations; finality of determinations.

The Administrator of Veterans' Affairs is authorized and directed to provide by regulations for such rules of procedure and forms as he may deem advisable in carrying out the provisions of this article [sections 540 to 548 of this Appendix]. The findings of fact and conclusions of law made by the Administrator of Veterans' Affairs in administering the provisions of this article [said sections] shall be final, and shall not be subject to review by any other official or agency of the Government. (Oct. 17, 1940, ch. 888, § 407, 54 Stat. 1185; Oct. 6, 1942, ch. 581, § 13, 56 Stat. 775; Sept. 2, 1958, Pub. L. 85–857, § 14(76), 72 Stat. 1272.)

PRIOR PROVISIONS

Section 407 of act Oct. 17, 1940, as originally enacted, which, by the provisions of section 408 of act Oct. 17, 1940, as amended and incorporated in section 548 of this Appendix, is continued in force as to applications for protection executed prior to Oct. 6, 1942, read:

"The Administrator of Veterans' Affairs shall verify the computation of monthly difference reported by each insurer and shall, within ten days thereafter, deliver each month to the proper officer of such insurer, a certificate in the amount of the monthly difference certified in respect of each insurer. Such certificate shall be signed by said Administrator in the name of the United States, shall be in such form as the Administrator shall determine, shall be payable to the insurer within sixty days after the approval of the statement of account, as provided in section 411 hereof [section 551 of this Appendix], and shall bear interest at a rate to be prescribed by the Secretary of the Treasury, payable with the principal. Such certificate shall not be transferred except with the approval of said Administrator and shall remain with the insurer until settlement is made in accordance with this article."

AMENDMENTS

1958—Pub. L. 85–857 eliminated provisions which required the Administrator of Veterans' Affairs to report annually to the Congress on the administration of sections 540—548 of this Appendix. See section 214 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by Pub. L. 85–857 effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as a note preceding Part I of Title 38, Veterans' Benefits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 546, 548 and 560 to 590 of this Appendix.

§ 548. Law governing applications for protection prior to October 6, 1942.

(1) The provisions of this article [sections 540—548 of this Appendix] in force immediately prior to the enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942 [Act Oct. 6, 1942, which, among other things, amended this article generally] (hereinafter in this section called "such provisions") shall remain in full force and effect with respect to all valid applications for protection executed prior to the date of enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942 [Oct. 6, 1942] and all policies to which such applications pertain shall continue to be entitled to the protection granted thereby.

(2) Any insurer under a policy accepted under such provisions shall, subject to the approval of the Administrator of Veterans' Affairs and upon complete surrender by it to the United States, within ninety days after the date of enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942 [Oct. 6, 1942], of all certificates issued in accordance with such provisions together with all right to payment thereunder, be entitled to the guarantee of unpaid premiums and interest thereon and the mode of settlement for such policies as provided by this article, as amended [sections 540 to 548 of this Appendix]. The privileges and benefits granted by the foregoing sentence shall be in lieu of the method of settlement, and the requirement for accounts and reports prescribed by such provisions. In the event any such insurer fails to surrender within the said ninety days all such certificates and rights to payment, the accounts, reports, and settlements required to be made by such insurer under such provisions shall continue to be made as required and shall be governed by such provisions. (Oct. 17, 1940, ch. 888, § 408, 54 Stat. 1185; Oct. 6, 1942, ch. 581, § 13, 56 Stat. 776.)

REFERENCES IN TEXT

The provisions of this article in force immediately prior to the enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942, referred to in text, are set out in notes under sections 540—548 and 549—554 of this Appendix.

The Soldiers' and Sailors' Civil Relief Act Amendments of 1942, referred to in the text, amended, among other sections, this section. For other sections affected, see note under section 501 of this Appendix.

PRIOR PROVISIONS

Section 408 of act Oct. 17, 1940, as originally enacted, continued in force by this section as amended by act Oct. 6, 1942, read: "The certificate so delivered shall be held by the respective insurers as security for the payment of the defaulted premiums with interest. To indemnify it against loss the United States shall have a first lien upon any policy receiving the benefits of this article, subject only to any lien existing at the time the policy became subject to this Act, and no loan or settlement or payment of dividend shall be made by the insurer on such policy which may prejudice the security of such lien. Before any dividend is paid or any loan or settlement is made the written consent of the Veterans' Administration must be obtained."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 547 and 560 to 590 of this Appendix.

§§ 549 to 554. Omitted.

CODIFICATION

Sections 549—554 of this Appendix were omitted from "Article IV—Insurance" in the general amendment thereof by act Oct. 6, 1942, ch. 581, § 13, 56 Stat. 773. They were from sections 409—414, respectively, of act Oct. 17, 1940, ch. 888, 54 Stat. 1185, 1186, and read:

"§ 549. *Deduction of unpaid premiums from proceeds of policies.* In the event that the military service of any person being the holder of a policy receiving the benefits of this article shall be terminated by death, the amount of any unpaid premiums, with interest at the rate provided for in the policy for policy loans, shall be deducted from the proceeds of the policy and shall be included in the next monthly report of the insurer as premiums paid. Oct. 17, 1940, ch. 888 § 409, 54 Stat. 1185.

"§ 550. *Lapsing of policy for failure to pay past due premiums upon termination of service.* If the insured

does not within one year after the termination of his period of military service pay to the insurer all past due premiums with interest thereon from their several due dates at the rate provided in the policy for policy loans, the policy shall at the end of such year immediately lapse and become void, and the insurer shall thereupon become liable to pay the cash surrender value thereof, if any: *Provided*, That if the insured is in the military service when this Act ceases to be in force, such lapse shall occur and surrender value be payable at the expiration of one year after the date when this Act ceases to be in force Oct. 17, 1940, ch. 888, § 410, 54 Stat. 1185.

"§ 551. *Accounts stated between insurers and United States.* At the expiration of one year after the date when this Act ceases to be in force there shall be an account stated between each insurer and the United States, in which there shall be credited to the insurer the total amount of the certificates held as security under this article, together with accrued interest to the date of the account, and in which there shall be credited to the United States the amount of the cash surrender value of each policy lapsed or forfeited as provided in section 410 [section 550 of this Appendix], but not in any case a greater amount on any policy than the total of the unpaid premiums with interest thereon at the rate provided for in the policy for policy loans. Oct. 17, 1940, ch. 888, § 411, 54 Stat. 1185.

"§ 552. *Payment of balances due insurers by Secretary of Treasury.* The balance in favor of the insurer in each case shall be certified by the Administrator of Veterans' Affairs to the Secretary of the Treasury, who shall pay to the insurer the amount thereof, which is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, upon the surrender by the insurer of the certificates delivered to it from time to time by the Administrator of Veterans' Affairs under the provisions of this article. Oct. 17, 1940, ch. 888, § 412, 54 Stat. 1185.

"§ 553. *Policies excepted from application of article.* This article shall not apply to any policy which is void or which may at the option of the insured be voidable, if the insured is in military service, either in this country or abroad, nor to any policy which as a result of being in military service, either in this country or abroad, provides for the payment of any sum less than the face thereof or for the payment of an additional amount as premium. Oct. 17, 1940, ch. 888, § 413, 54 Stat. 1186.

"§ 554. *Insurers within application of article.* This article shall apply only to insurance companies or associations which are required, by the law under which they are organized or doing business to maintain a reserve, or, which if not so required, have made or shall make provision for the collection from all those insured in such insurer of a premium to cover the special war risk of those insured persons who are in military service. Oct. 17, 1940, ch. 888, § 414, 54 Stat. 1186."

ARTICLE V.—TAXES AND PUBLIC LANDS

§ 560. Taxes respecting personalty, money, credits, or realty; sale of property to enforce collection; redemption of property sold; penalty for nonpayment; notice of rights to beneficiaries of section.

(1) The provisions of this section shall apply when any taxes or assessments, whether general or special (other than taxes on income), whether falling due prior to or during the period of military service, in respect of personal property, money, or credits, or real property owned and occupied for dwelling, professional, business, or agricultural purposes by a person in military service or his dependents at the commencent of his period of military service and still so occupied by his dependents or employees are not paid.

(2) No sale of such property shall be made to enforce the collection of such tax or assessment, or any proceeding or action for such purpose commenced, except upon leave of court granted upon application made therefor by the collector of taxes or other officer whose duty it is to enforce the collection of taxes or assessments. The court thereupon, unless in its opinion the ability of the person in military service to pay such taxes or assessments is not materially affected by reason of such service, may stay such proceedings or such sale, as provided in this Act [sections 501 to 548 and 560 to 590 of this Appendix], for a period extending not more than six months after the termination of the period of military service of such person.

(3) When by law such property may be sold or forfeited to enforce the collection of such tax or assessment, such person in military service shall have the right to redeem or commence an action to redeem such property, at any time not later than six months after the termination of such service, but in no case later than six months after the date when this Act [said sections] ceases to be in force; but this shall not be taken to shorten any period, now or hereafter provided by the laws of any State or Territory for such redemption.

(4) Whenever any tax or assessment shall not be paid when due, such tax or assessment due and unpaid shall bear interest until paid at the rate of 6 per centum per annum, and no other penalty or interest shall be incurred by reason of such nonpayment. Any lien for such unpaid taxes or assessment shall also include such interest thereon. (Oct. 17, 1940, ch. 888, § 500, 54 Stat. 1186; Oct. 6, 1942, ch. 581, § 14, 56 Stat. 776.)

Amendments

1942—Subsec. (1). Act Oct. 6, 1942, inserted parenthetical clause excepting income taxes, included taxes and assessments falling due prior to period of military service, and extended benefits to cover personal property, money, or credits, and real property owned and occupied for professional purposes.

Subsec. (2). Act Oct. 6, 1942, § 14(a), amended section generally.

Subsec. (5). Act Oct. 6, 1942, § 14(b), repealed subsec. (5), which required the Secretaries of War, Navy, and Treasury to give notice of the benefits of this section to persons in the military service.

Section Referred to in Other Sections

This section is referred to in sections 501, 510 to 548 and 561 to 590 of this Appendix.

§ 561. Rights to public lands not forfeited; grazing lands.

(1) No right to any lands owned or controlled by the United States initiated or acquired under any laws of the United States, including the mining and mineral leasing laws, by any person prior to entering military service shall during the period of such service be forfeited or prejudiced by reason of his absence from the land or his failure to perform any work or make any improvements thereon or his failure to do any other act required by or under such laws.

(2) If a permittee or licensee under the Act of June 28, 1934 (48 Stat. 1269) [sections 315 to 315g, 315h to 315m, 315n, 315o-1 and 1171 of Title 43] enters military service, he may elect to suspend his permit or license for the period of his military service and six months thereafter, and the Secretary of the Interior by regulations shall provide for such suspension of permits and licenses and for the remission, reduction, or refund of grazing fees during such suspension.

(3) This section shall not be construed to control specific requirements contained in this article [sections 560 to 574 of this Appendix]. (Oct. 17, 1940, ch. 888, § 501, 54 Stat. 1187.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 and 562 to 590 of this Appendix.

§ 562. Homestead entries and settlement claims; service as equivalent to residence and cultivation.

If any person whose application for a homestead entry has been allowed or who has made application for homestead entry which may thereafter be allowed, after such entry or application enters military service, or if any person who has a valid settlement claim enters military service, the Department of the Interior shall construe his military service to be equivalent to residence and cultivation upon the tract entered or settled upon for the period of such service. From the effective date of this Act [Oct. 17, 1940] no contest shall be initiated on the ground of abandonment and no allegation of abandonment shall be sustained against any such person, unless it shall be alleged in the preliminary affidavit or affidavits of contest and proved at the hearing in cases initiated subsequent to the effective date of this Act [Oct. 17, 1940] that the alleged absence from the land was not due to such military service. If such person is discharged on account of wounds received or disability incurred in the line of duty, the term of his enlistment and any period of hospitalization due to such wounds or disability shall be deducted from the required length of residence, without reference to the time of actual service. No patent shall issue to any such person who has not resided upon, improved, and cultivated his homestead for a period of at least one year. (Oct. 17, 1940, ch. 888, § 502, 54 Stat. 1187.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560, 561 and 563 to 590 of this Appendix.

§ 563. Same; death or incapacity during or resulting from service as affecting rights; perfection of rights.

(1) If any person whose application for a homestead entry has been allowed or who has made application for homestead entry which may thereafter be allowed or who has a valid settlement claim dies while in military service or as a result of such service, his widow, if unmarried, or in the case of her death or marriage, his minor children, or his or their legal representatives, may proceed forthwith to make final proof upon such entry or upon an application which is allowed after the applicant's death, or upon a homestead application thereafter allowed based on a valid settlement claim, and shall be entitled to receive a patent for such land. The death of such person while in military service or as a result of such service shall be construed to be equivalent to a performance of all requirements as to residence and cultivation upon such homestead or claim, notwithstanding the provisions of section 502 of this Act [section 562 of this Appendix].

(2) If such person is honorably discharged and because of physical incapacities due to such service is unable to return to the land, he may make final proof without further residence, improvement, or cultivation, at such time and place as the Secretary of the Interior may authorize, and receive a patent to the land entered.

(3) The Act of July 28, 1917 (40 Stat. 248) [sections 241 and 242 of Title 43], is repealed. (Oct. 17, 1940, ch. 888, § 503, 54 Stat. 1187.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 562 and 564 to 590 of this Appendix.

§ 564. Desert-land entries; suspension of requirements.

(1) No desert-land entry made or held under the desert-land laws prior to the entrance of the entryman or his successor in interest into military service shall be subject to contest or cancelation for failure to make or expend the sum of $1 per acre per year in improvements upon the claim or to effect the reclamation of the claim during the period the entryman or his successor in interest is engaged in military service or during a period of six months thereafter or during any period of hospitalization because of wounds or disability incurred in the line of duty. The time within which such entryman or claimant is required to make such expenditures and effect reclamation of the land shall be exclusive of his period of service and the six-months' period and any such period of hospitalization.

(2) If such entryman or claimant is honorably discharged and because of physical incapacities due to such service is unable to accomplish reclamation of, and payment for, the land, he may make proof without further reclamation or payments under such rules as the Secretary of the Interior may prescribe and receive patent for the land entered or claimed.

(3) In order to obtain the benefits of this section, such entryman or claimant shall, within six months after the effective date of this Act [Oct. 17, 1940] or within six months after his entrance into military service, file or cause to be filed in the land office of the district in which his claim is situated a notice that he has entered military service and that he desires to hold the desert claim under this section. (Oct. 17, 1940, ch. 888, § 504, 54 Stat. 1187.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 563 and 565 to 590 of this Appendix.

§ 565. Mining claims; requirements suspended.

(1) The provisions of section 2324 of the Revised Statutes of the United States [section 28 of Title 30], which require that on each mining claim located after May 10, 1872, and until patent has been issued therefor not less than $100 worth of labor shall be performed or improvements made during each year, shall not apply during the period of his service, or until six months after the termination of such service, or during any period of hospitalization because of wounds or disability incurred in line of duty, to claims or interests in claims which are owned by a person in military service and which have been regularly located and recorded. No mining claim or any interest in a claim which is owned by such a person and which has been regularly located and recorded shall be subject to forfeiture by nonperformance of the annual assessments during the period

of such military service, or until six months after the termination of such service or of such hospitalization.

(2) In order to obtain the benefits of this section, the claimant of any mining location shall, before the expiration of the assessment year during which he enters military service, file or cause to be filed in the office where the location notice or certificate is recorded a notice that he has entered such service and that he desires to hold his mining claim under this section. (Oct. 17, 1940, ch. [illegible] § 505, 54 Stat. 1188.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 564 and 566 to 590 of this Appendix.

§ 566. Mineral permits and leases; suspension of operations and term of permits and leases.

(1) Any person holding a permit or lease on the public domain under the Federal mineral leasing laws who enters military service may, at his election, suspend all operations under his permit or lease for a period of time equivalent to the period of his military service and six months thereafter. The term of the permit or lease shall not run during such period of suspension nor shall any rentals or royalties be charged against the permit or lease during the period of suspension.

(2) In order to obtain the benefit of this section, such permittee or lessee shall, within six months after the effective date of this Act [Oct. 17, 1940], or six months after his entrance into military service, notify the Bureau of Land Management by registered mail of his entrance into such service and of his desire to avail himself of the benefits of this section.

(3) This section shall not be construed to supersede the terms of any contract for operation of a permit or lease. (Oct. 17, 1940, ch. 888, § 506, 54 Stat. 1188; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F. R. 7876, 60 Stat. 1100.)

TRANSFER OF FUNCTIONS

"Bureau of Land Management" was substituted for "General Land Office" on authority of 1946 Reorg. Plan No. 3, set out as a note under section 1 of Title 43, Public Lands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 565 and 567 to 590 of this Appendix.

§ 567. Right to take action for perfection, defense, etc., of rights as unaffected; affidavits and proofs.

Nothing in this article [sections 560 to 574 of this Appendix] shall be construed to limit or affect the right of a person in military service to take any action during his period of service which may be authorized by law or the regulations of the Department of the Interior for the perfection, defense, or further assertion of rights initiated or acquired prior to the date of entering military service. It shall be lawful for any person while in such service to make any affidavit or submit any proof which may be required by law or the practice or regulations of the Bureau of Land Management in connection with the entry, perfection, defense, or further assertion of any rights initiated or acquired prior to entering such service, before the officer in immediate command and holding a commission in the branch of the service in which the person is engaged. Such affidavits shall be as binding in law and with like penalties as if taken before an officer designated by the Secretary of the Interior of a United States land office. The Secretary of the Interior may issue rules and regulations to effectuate the purposes of sections 501 to 512, inclusive [sections 561—572 of this Appendix]. (Oct. 17, 1940, ch. 888, § 507, 54 Stat. 1188; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F. R. 7876, 60 Stat. 1100.)

TRANSFER OF FUNCTIONS

"Bureau of Land Management" was substituted for "General Land Office" and "an officer designated by the Secretary of the Interior" for "a register" on authority of 1946 Reorg. Plan No. 3, set out as a note under section 1 of Title 43, Public Lands.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 565 and 568 to 590 of this Appendix.

§ 568. Irrigation rights; residence requirements suspended.

The Secretary of the Interior is authorized, in his discretion, to suspend as to persons in military service during the period while this Act [sections 501 to 548 and 560 to 590 of this Appendix] remains in force and for a period of six months thereafter or during any period of hospitalization because of wounds or disability incurred in line of duty that provision of the act known as the "Reclamation Act" requiring residence upon lands in private ownership or within the neighborhood for securing water for the irrigation of the same [section 431 of Title 43], and he is authorized to permit the use of available water thereon upon such terms and conditions as he may deem proper. (Oct. 17, 1940, ch. 888, § 508, 54 Stat. 1189.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 567 and 569 to 590 of this Appendix.

§ 569. Distribution of information concerning benefits of article; forms.

The Secretary of the Interior shall issue through appropriate military and naval channels a notice for distribution by appropriate military and naval authorities to persons in the military service explaining the provisions of this article [sections 560 to 574 of this Appendix] except as to sections 500, 513, and 514 hereof [sections 560, 573 and 574 of this Appendix] and shall furnish forms to be distributed in like manner to those desiring to make application for its benefits, except as to said sections. (Oct. 17, 1940, ch. 888, § 509, 54 Stat. 1189; Oct. 6, 1942, ch. 581, § 15, 56 Stat. 776.)

AMENDMENTS

1942—Act Oct. 6, 1942, substituted "sections 500, 513, and 514" for "section 500" and "sections" for "section" at end of section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 568 and 570 to 590 of this Appendix.

§ 570. Homestead entrymen permitted to leave entries to perform farm labor.

(1) During the pendency of any war in which the United States may be engaged while this Act [sections 501 to 548 and 560 to 590 of this Appendix] remains in force any homestead entryman shall be entitled to a leave of absence from his entry for the

purpose of performing farm labor. The time actually spent in farm labor shall be counted as constructive residence, if within fifteen days after leaving his entry to engage in such labor the entryman files a notice of absence in the land office of the district in which his entry is situated, and if at the expiration of the calendar year the entryman files in that office a written statement under oath and corroborated by two witnesses giving the date or dates when he left his entry, the date or dates of his return, and the place where and person for whom he was engaged in farm labor during such period or periods of absence.

(3) Nothing in this section shall excuse any homestead entryman from making improvements or performing the cultivation upon his entry required by law. The provisions of this section shall apply only to persons whose applications have been allowed or filed prior to the effective date of this Act [Oct. 17, 1940]. (Oct. 17, 1940, ch. 888, § 510, 54 Stat. 1189.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 569 and 571 to 590 of this Appendix.

§ 571. Land rights of persons under 21.

Any person under the age of twenty-one who serves in the military service while this Act [sections 501 to 548 and 560 to 590 of this Appendix] remains in force shall be entitled to the same rights under the laws relating to lands owned or controlled by the United States, including the mining and mineral leasing laws, as those over twenty-one now possess under such laws. Any requirements as to establishment of residence within a limited time shall be suspended as to entry by such person until six months after his discharge from military service. Applications for entry may be verified before any officer in the United States or any foreign country authorized to administer oaths by the laws of the State or Territory in which the land may be situated. (Oct. 17, 1940, ch. 888, § 511, 54 Stat. 1189.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 570 and 572 to 590 of this Appendix.

§ 572. Extension of benefits to persons serving with war allies of United States.

Citizens of the United States who serve with the forces of any nation with which the United States may be allied in the prosecution of any war in which the United States engages while this Act [sections 501 to 548 and 560 to 590 of this Appendix] remains in force shall be entitled to the relief and benefits afforded by sections 501 to 511, inclusive [sections 561 to 571 of this Appendix], if such service is similar to military service as defined in this Act [sections 501 to 548 and 560 to 590 of this Appendix], and if they are honorably discharged and resume United States citizenship or die in the service of the allied forces or as a result of such service. (Oct. 17, 1940, ch. 888, § 512, 54 Stat. 1190; Oct. 6, 1942, ch. 581, § 16, 56 Stat. 776.)

AMENDMENTS

1942—Act Oct. 6, 1942, substituted "sections 501 to 511, inclusive" for "this article."

REPEAL OF PRIOR ACTS CONTINUING SECTION

Section 6 of Joint Res. July 3, 1952, repealed Joint Res. Apr. 14, 1952, ch. 204, 66 Stat. 54 as amended by Joint Res. May 28, 1952, ch. 339, 66 Stat. 96; Joint Res. June 14, 1952, ch. 437, 66 Stat. 137; Joint Res. June 30, 1952, ch. 526, 66 Stat. 296, which continued provisions until July 3, 1952. This repeal shall take effect as of June 16, 1952, by section 7 of Joint Res. July 3, 1952.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 571 and 574 to 590 of this Appendix.

§ 573. Income taxes; collection deferred; interest; statute of limitations.

The collection from any person in the military service of any tax on the income of such person, whether falling due prior to or during his period of military service, shall be deferred for a period extending not more than six months after the termination of his period of military service if such person's ability to pay such tax is materially impaired by reason of such service. No interest on any amount of tax, collection of which is deferred for any period under this section, and no penalty for nonpayment of such amount during such period, shall accrue for such period of deferment by reason of such nonpayment. The running of any statute of limitations against the collection of such tax by distraint or otherwise shall be suspended for the period of military service of any individual the collection of whose tax is deferred under this section, and for an additional period of nine months beginning with the day following the period of military service. The provisions of this section shall not apply to the income tax on employees imposed by section 1400 of the Federal Insurance Contributions Act. (Oct. 17, 1940, ch. 888, § 513, 54 Stat. 1190.)

REFERENCES IN TEXT

Section 1400 of the Federal Insurance Contributions Act, referred to in the text, is a reference to section 1400 of Title 26, I.R.C. 1939, which was repealed by section 7851 of Title 26, I.R.C. 1954, and is now covered by section 3101 of Title 26, I.R.C. 1954. For provision deeming a reference in other laws to a provision of I.R.C. 1939, also as a reference to corresponding provision of I.R.C. 1954, see section 7852(b) of Title 26, I.R.C. 1954.

FORMER PROVISIONS FOR ABATEMENT OF TAX

Internal Revenue Code, § 421, as added by act June 9, 1943, 7 p. m., E. W. T., ch. 120, § 8, 57 Stat. 149, and amended by acts Aug. 5, 1947, ch. 496, § 1, 61 Stat. 778; Aug. 8, 1947, ch. 515, § 9, 61 Stat. 918 (section 421 of Title 26, I.R.C. 1939), provided for abatement of income tax for members of armed forces dying on or after December 7, 1941, while in active service and prior to January 1, 1948. These provisions were omitted in the general amendment of that section by act Sept. 23, 1950, 3:15 p.m., E.D.T., ch. 994, title III, part I, § 301, 64 Stat. 947.

EXTENSION OF DUE DATE UNDER OTHER LAWS

Section 507 (b) (2) (A) of the Revenue Act of 1942, act Oct. 21, 1942, 4:30 p. m., E. W. T., ch. 619, title V, 56 Stat. 964, provided: "The amendments made by this section [adding sections 3804 and 3805 of Title 26, I.R.C. 1939, and adding section 527 of this Appendix] shall not be construed to shorten any period fixed under the provisions of section 513 of the Soldiers' and Sailors' Civil Relief Act of 1940 [this section] within which any act may be done, except that any action or proceeding authorized under section 3804(d)(1) of the Internal Revenue Code [Title 26, I.R.C. 1939], as well as any other action or proceeding authorized by law in connection therewith, may be taken, begun, or prosecuted without regard to the period so fixed."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 572 and 574 to 590 of this Appendix.

§ 574. Residence for tax purposes.

(1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled, compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district. Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property, or the use thereof, within any tax jurisdiction other than such place of residence or domicile, regardless of where the owner may be serving in compliance with such orders: *Provided*, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

(2) When used in this section, (a) the term "personal property" shall include tangible and intangible property (including motor vehicles), and (b) the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: *Provided*, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid. (Oct. 17, 1940, ch. 888, § 514, as added Oct. 6, 1942, ch. 581, § 17, 56 Stat. 777, and amended July 3, 1944, ch. 397, § 1, 58 Stat. 722; Oct. 9, 1962, Pub. L. 87-771, 76 Stat. 768.)

AMENDMENTS

1962—Pub. L. 87-771 inserted sentence in par. (1) making this section applicable with respect to personal property, or the use thereof, within any tax jurisdiction other than the place of residence or domicile, regardless of where the owner may be serving in compliance with military or naval orders where the owner of personal property is absent from his residence or domicile solely by reason of compliance with such orders.

1944—Act July 3, 1944, added "personal" preceding "property" in first sentence, "personal property", preceding "income or gross income", "and personal property shall * * * other has jurisdiction" following "or District" in second sentence, and substituted "October 6, 1942" for "the date of the enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942" in the third sentence.

CREDITING OR REFUNDING TANGIBLE PERSONAL PROPERTY TAX

Section 2 of act July 3, 1944, provided: "Nothing contained in this Act [this section] shall be construed to require the crediting or refunding of any tax in respect of tangible personal property (including licenses, fees, or excise imposed in respect of motor vehicles or the use thereof) paid prior to the date of its enactment. [July 3, 1944]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 573 and 580 to 590 of this Appendix.

ARTICLE VI.—ADMINISTRATIVE REMEDIES

§ 580. Transfers to take advantage of act.

Where in any proceeding to enforce a civil right in any court it is made to appear to the satisfaction of the court that any interest, property, or contract has since the date of the approval of this Act [Oct. 17, 1940] been transferred or acquired with intent to delay the just enforcement of such right by taking advantage of this Act [sections 501 to 548 and 560 to 590 of this Appendix], the court shall enter such judgment or make such order as might lawfully be entered or made, the provisions of this Act [said sections] to the contrary notwithstanding. (Oct. 17, 1940, ch. 888, § 600, 54 Stat. 1190.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 574 and 581 to 590 of this title.

§ 581. Certificates of service; persons reported missing.

(1) In any proceedng under this Act [sections 501 to 548 and 560 to 590 of this Appendix] a certificate signed by The Adjutant General of the Army as to persons in the Army or in any branch of the United States service while serving pursuant to law with the Army of the United States, signed by the Chief of Naval Personnel as to persons in the United States Navy or in any other branch of the United States service while serving pursuant to law with the United States Navy, and signed by the Commandant, United States Marine Corps, as to persons in the Marine Corps, or in any other branch of the United States service while serving pursuant to law with the Marine Corps, or signed by an officer designated by any of them, respectively, for the purpose, shall when produced be prima facie evidence as to any of the following facts stated in such certificate:

That a person named has not been, or is, or has been in military service; the time when and the place where such person entered military service, his residence at that time, and the rank, branch, and unit of such service that he entered, the dates within which he was in military service, the monthly pay received by such person at the date of issuing the certificate, the time when and the place where such person died in or was discharged from such service.

(2) It shall be the duty of the foregoing officers to furnish such certificate on application, and any such certificate when purporting to be signed by any one of such officers or by any person purporting upon the face of the certificates to have been so authorized shall be prima facie evidence of its contents and of the authority of the signer to issue the same.

(3) Where a person in military service has been reported missing he shall be presumed to continue in the service until accounted for, and no period herein limited which begins or ends with the death of such person shall begin or end until the death of such person is in fact reported to or found by the Department of the Army or Navy, or any court or board thereof, or until such death is found by a court of competent jurisdiction: *Provided*, That no period herein limited which begins or ends with the death of such person shall be extended beyond a period of six months after the time when this Act [said sections] ceases to be in force. (Oct. 17, 1940, ch. 888, § 601, 54 Stat. 1190; Jan. 20, 1942, ch. 10, § 1, 56 Stat. 10; May 13, 1942, ch. 303, § 1, 56 Stat. 276.)

REFERENCES IN TEXT

The time when this Act ceases to be in force, referred to in subdivision (2), is defined in section 584 of this title.

CODIFICATION

The Department of War was designated the Department of the Army and the title of the Secretary of War was changed to Secretary of the Army by section 205(a) of act July 26, 1947, ch. 343, title II, 61 Stat. 501. Section 205(a) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted "Title 10, Armed Forces" which in sections 3011—3013 continued the military Department of the Army under the administrative supervision of a Secretary of the Army.

CHANGE OF NAME

"Chief of the Bureau of Navigation of the Navy Department" was changed to "Chief of Naval Personnel" under authority of act May 13, 1942.

Act Jan. 20, 1942, redesignated "Major General Commandant of the Marine Corps" to be "Commandant of the Marine Corps".

AIR FORCE

For transfer of certain functions relating to military records, insofar as they pertain to military personnel of the Department of the Air Force, from the Secretary of the Army and Department of the Army to the Secretary of the Air Force and Department of the Air Force, see Secretary of Defense Transfer Order No. 20 [§ 1e], Aug. 12, 1948.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 580 and 582 to 590 of this title.

§ 582. Revocation, etc., of interlocutory orders.

Any interlocutory order made by any court under the provisions of this Act [sections 501 to 548 and 560 to 590 of this Appendix] may, upon the court's own motion or otherwise, be revoked, modified, or extended by it upon such notice to the parties affected as it may require. (Oct. 17, 1940, ch. 888, § 602, 54 Stat. 1191.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 581 and 583 to 590 of this title.

§ 583. Separability of provisions.

If any provision of this Act [sections 501 to 548 and 560 to 590 of this Appendix], or the application thereof to any person or circumstances, is held invalid, the remainder of the Act [said sections], and the application of such provision to other persons or circumstances, shall not be affected thereby. (Oct. 17, 1940, ch. 888, § 603, 54 Stat. 1191.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 582 and 584 to 590 of this title.

§ 584. Termination date.

This Act [sections 501 to 548 and 560 to 590 of this Appendix] shall remain in force until May 15, 1945: *Provided*, That should the United States be then engaged in a war, this Act [said sections] shall remain in force until such war is terminated by a treaty of peace proclaimed by the President and for six months thereafter: *Provided further*, That wherever under any section or provision of this Act [said sections] a proceeding, remedy, privilege, stay, limitation, accounting, or other transaction has been authorized or provided with respect to military service performed prior to the date herein fixed for the termination of this Act [said sections], such section or provision shall be deemed to continue in full force and effect so long as may be necessary to the exercise or enjoyment of such proceeding, remedy, privilege, stay, limitation, accounting, or other transaction. (Oct. 17, 1940, ch. 888, § 604, 54 Stat. 1191.)

EXTENSION OF ACT

Notwithstanding the provisions of Joint Res. July 25, 1947, set out in a note under this section, this entire act, sections 501—548 and 560—590 of this Appendix, are in force and effect and shall so remain until a subsequent Act of Congress terminates them, under the provisions of section 464 of this Appendix.

TERMINATION OF WAR

Joint Res. July 25, 1947, ch. 327, § 4, 61 Stat. 454, provided: "For the purposes of article IV of the Act of October 17, 1940 (54 Stat. 1183—1186), as amended [sections 540—548 of this Appendix], the present war shall be deemed to have terminated within the meaning of section 604 (54 Stat. 1191) of the said Act [this section], as of the effective date of this joint resolution [July 25, 1947]".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548, 560 to 583 and 585 to 590 of this title.

§ 585. Inapplicability of Soldiers' and Sailors' Civil Relief Act of 1918.

CODIFICATION

Section, act Oct. 17, 1940, ch. 888, § 605, 54 Stat. 1191, related to the inapplicability of the Soldiers' and Sailors' Relief Act of 1918, former section 101 et seq. of this Appendix, to military service performed after Oct. 17, 1940.

ARTICLE VII.—FURTHER RELIEF

§ 590. Stay of enforcement of obligations, liabilities, taxes, etc.

(1) A person may, at any time during his period of military service or within six months thereafter, apply to a court for relief in respect of any obligation or liability incurred by such person prior to his period of military service or in respect of any tax or assessment whether falling due prior to or during his period of military service. The court, after appropriate notice and hearing, unless in its opinion the ability of the applicant to comply with the terms of such obligation or liability or to pay such tax or assessment has not been materially affected

by reason of his military service, may grant the following relief:

(a) In the case of an obligation payable under its terms in installments under a contract for the purchase of real estate, or secured by a mortgage or other instrument in the nature of a mortgage upon real estate, a stay of the enforcement of such obligation during the applicant's period of military service and, from the date of termination of such period of military service or from the date of application if made after such service, for a period equal to the period of the remaining life of the installment contract or other instrument plus a period of time equal to the period of military service of the applicant, or any part of such combined period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of the period of military service or from the date of application, as the case may be, in equal installments during such combined period at such rate of interest on the unpaid balance as is prescribed in such contract, or other instrument evidencing the obligation, for installments paid when due, and subject to such other terms as may be just.

(b) In the case of any other obligation, liability, tax, or assessment, a stay of the enforcement thereof during the applicant's period of military service and, from the date of termination of such period of military service or from the date of application if made after such service, for a period of time equal to the period of military service of the applicant or any part of such period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of such period of military service or the date of application, as the case may be, in equal periodic installments during such extended period at such rate of interest as may be prescribed for such obligation, liability, tax, or assessment, if paid when due, and subject to such other terms as may be just.

(2) When any court has granted a stay as provided in this section no fine or penalty shall accrue during the period the terms and conditions of such stay are complied with by reason of failure to comply with the terms or conditions of the obligation, liability, tax, or assessment in respect of which such stay was granted. (Oct. 17, 1940, ch. 888, § 700, as added Oct. 6, 1942, ch. 581, § 18, 56 Stat. 777.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 510 to 548 and 560 to 585 of this title.

FIRST WAR POWERS ACT, 1941

ACT DEC. 18, 1941, CH. 593, 55 STAT. 838

TITLE I.—COORDINATION OF EXECUTIVE BUREAUS IN THE INTEREST OF THE MORE EFFICIENT CONCENTRATION OF THE GOVERNMENT

§§ 601 to 605. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 651.

Sections, act Dec. 18, 1941, ch. 593, title I, §§ 1-5, 55 Stat. 838, 839, related to coordination of executive bureaus, offices, etc., in the interest of more efficient concentration of the Government, consolidation of offices, expenditure of appropriations for bureaus, offices, etc., Presidential recommendation to Congress for elimination of certain bureaus, offices, etc., and to suspension of conflicting laws.

TITLE II.—CONTRACTS

§ 611. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 651.

Section, acts Dec. 18, 1941, ch. 593, title II, § 201, 55 Stat. 839; Jan. 12, 1951, ch. 1230, § 1, 64 Stat. 1257, related to exemption of war contracts from certain restrictions.

TITLE III.—TRADING WITH THE ENEMY

§ 616. Amendment of section 5 of this Appendix and section 95a of Title 12.

CODIFICATION

Section, act Dec. 18, 1941, ch. 593, title III, § 301, 55 Stat. 839, has been omitted as executed.

§ 617. Repealed. Pub. L. 89-554, 8(a), Sept. 6, 1966, 80 Stat. 651.

Section, act Dec. 18, 1941, ch. 593, title III, § 302, 55 Stat. 840, confirmed certain acts, etc., made under the Trading with the Enemy Act.

§ 618. Repealed. July 5, 1947, ch. 327, § 1, 61 Stat. 449.

Section, act Dec. 18, 1941, ch. 593, title III, § 303, 55 Stat. 840, related to censorship of communications during World War II and penalties and forfeitures for violations thereof.

§§ 619, 620. Omitted.

CODIFICATION

Section 619, act Dec. 18, 1941, ch. 593, title III, § 304, as added Mar. 8, 1946, ch. 83, § 1, 60 Stat. 50, was omitted as its provisions are incorporated in section 32 of this Appendix.

Section 620, act Dec. 18, 1941, ch. 593, title III, § 305, as added Aug. 8, 1946, ch. 878, § 1, 60 Stat. 925, was omitted as its provisions are incorporated in sections 33—37 of this Appendix.

TITLE IV.—TIME LIMIT AND SHORT TITLE

§§ 621, 622. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 651.

Sections, act Dec. 18, 1941, ch. 593, title IV, §§ 401, 402, 55 Stat. 841, provided for the termination of sections 601-605 of this Appendix and contained the short title for former sections 601-605, 611, and 616-622 of this Appendix, the "First War Powers Act, 1941," respectively.

SECOND WAR POWERS ACT, 1942

ACT MAR. 27, 1942, CH. 199, 56 STAT. 176

TITLE I.—EMERGENCY POWERS OF THE INTERSTATE COMMERCE COMMISSION OVER MOTOR AND WATER CARRIERS

Sec.
631 to 631b. Omitted.

TITLE II.—ACQUISITION AND DISPOSITION OF PROPERTY

632, 632a. Omitted.

TITLE III.—PRIORITIES POWERS

633. Amendment of section 1152 of this Appendix.

TITLE IV.—PURCHASE BY FEDERAL RESERVE BANKS OF GOVERNMENT OBLIGATIONS

634. Federal Reserve Act amendment.

TITLE V.—WAIVER OF NAVIGATION AND INSPECTION LAWS

635. Authorization of waiver by responsible department or agency head.

TITLE VI.—POWER TO REQUISITION

636, 636a. Omitted.

TITLE VII.—POLITICAL ACTIVITY

637. Amendment of section 1181 of Title 5.

HB-432

GREATER ANCHORAGE AREA BOROUGH

3500 TUDOR ROAD, POUCH 6-650
ANCHORAGE, ALASKA 99502

April 30, 1971

GLENN M. McKEE
ASSESSOR
279-8686

Representative William J. Moran
State House
State Capitol
Juneau, Alaska 99801

Dear Representative Moran:

Re: House Bill No. 432.

I have been following House Bill 432 for some time. I do have one question: The Senior Citizens' Bill purpose and intent is to keep the senior citizens in Alaska where, as I read it, they can continue to make their immeasurable contributions to the younger generations.

The one problem I see with this bill is that it is for the abode of the senior citizen on Real Property only. There are numerous senior citizens who do not choose to live in a home, but would prefer to live in a trailer. Why then are we discriminating against those persons who prefer to live in a trailer and in a trailer court? It is their home, just as a person living on real property is living in his home.

I feel that if this bill is to pass that it should be amended to grant exemption from taxes on the home from those senior citizens who live in trailers, even though the trailer is not on their own property. We in the Anchorage Borough, as do most all of the other boroughs and cities in the state, classify a trailer as Personal Property. Therefore, those persons who live in trailers would not be considered under the bill as it presently exists.

Very truly yours,

Glenn M. McKee, Director
Property Assessment & Management Department

GMM:bls

cc: Mr. S. Robert Dozier, State Assessor
Local Affairs Agency
Pouch AB
Juneau, Alaska 99801

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER / POUCH M — JUNEAU 99801

April 13, 1972

Re
CSHB 480

Honorable William J. Moran
Chairman, House Judiciary Committee
Alaska State Legislature
Juneau, Alaska 99801

Bill

Dear Representative Moran:

Attached is a copy of a letter dated April 11, 1972 from Homer L. Burrell, Director of the Division of Oil and Gas, in which he comments on CSHB 480, which is before your Committee for consideration.

Work of the Oil and Gas Conservation Committee, which is in the Division of Oil and Gas, is highly technical. By necessity, the Committee frequently relies on information that is held confidential by law and, in some cases, on information that is furnished with the understanding that it will be held confidential.

Very truly yours,

Charles F. Herbert
Commissioner

Attachment

02-001B

STATE
of ALASKA

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL AND GAS

TO: Charles F. Herbert
Commissioner

DATE : April 11, 1972

FROM: Homer L. Burrell
Director

SUBJECT: CSHB No. 480

Although a member of the Alaska Bar Association Administrative Law Committee, I was not present when Committee approval of the captioned bill was voted.

From the standpoint of the Oil and Gas Conservation Committee, I object to: (a) being under the Administrative Procedure Act, as we have our own hearing and appeal procedures in AS 31 with which both the Administrative Procedure Act and the proposed bill conflict; and (b) the fact that the captioned bill requires all state agencies, regardless of their individual governing statutes, to use hearing officers on the staff of the Office of Administrative Adjudication, and opens up our confidential files to the hearing officers.

I therefore recommend:

(1) AS 44.62.330(a)(18) be repealed; and

(2) AS 44.62.353 and 354 (in the captioned bill) be amended to provide that hearing officers may be assigned only to those agencies and functions subject to the Administrative Procedure Act.

The specialized and technical nature of oil and gas conservation hearings is such that a hearing officer without substantial oil and gas experience would be a burden upon this agency.

DEPARTMENT OF
NATURAL RESOURCES

APR 12 1972

RECEIVED
JUNEAU, ALASKA

Prepare bill for Moran

HB-451 + HB-452

UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT

The Hague Conference on Private International Law has been requested by the Council of Europe to prepare a general convention on recognition and enforcement of foreign judgments. The six nations of the European Economic Community have started work on a convention of their own. The United Kingdom has concluded new treaties and the Commissioners on Uniformity of Legislation in Canada have decided to re-examine their own Uniform Act. A concerted drive is under way to secure greater uniformity in the law. From all of these efforts improvement may come to a field well known for its unsatisfactory condition.

In most states of the Union, the law on recognition of judgments from foreign countries is not codified. In a large number of civil law countries, grant of conclusive effect to money-judgments from foreign courts is made dependent upon reciprocity. Judgments rendered in the United States have in many instances been refused enforcement abroad because of the difficulty of proving existence of reciprocity to the satisfaction of the foreign court. Wide agreement exists in state law on the rules to govern recognition of such judgments. The uniform codification of the law greatly enhances the prospects of recognition for judgments from American courts.

Uniform Foreign Money-Judgments Recognition Act

(Be it enacted, etc.)

SECTION 1. [Definitions.] As used in this act:

(1) "foreign state" means any governmental unit other than the United States, or any state, district, commonwealth, territory, insular possession thereof, or the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands;

(2) "foreign judgment" means any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters.

SECTION 2. [Applicability.] This act applies to any foreign judgment that is final and conclusive and enforceable where rendered even though an appeal therefrom is pending or it is subject to appeal.

SECTION 3. [Recognition and Enforcement.] Except as provided in Section 4, a foreign judgment meeting the requirements of Section 2 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. The foreign judgment is enforceable in the same manner as the judgment of a sister state which is entitled to full faith and credit.

SECTION 4. [Grounds for Non-recognition.]

(a) A foreign judgment is not conclusive if

(1) the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) the foreign court did not have personal jurisdiction over the defendant; or

(3) the foreign court did not have jurisdiction over the subject matter.

(b) A foreign judgment need not be recognized if

(1) the defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;

(2) the judgment was obtained by fraud;

(3) the [cause of action] [claim for relief] on which the judgment is based is repugnant to the public policy of this state;

(4) the judgment conflicts with another final and conclusive judgment;

(5) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court; or

(6) in the case of jurisdiction based only on personal service the foreign court was a seriously inconvenient forum for the trial of the action.

SECTION 5. [Personal Jurisdiction.]

(a) The foreign judgment shall not be refused recognition for lack of personal jurisdiction if

(1) the defendant was served personally in the foreign state;

(2) the defendant voluntarily appeared in the proceedings other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him;

(3) the defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

(4) the defendant was domiciled in the foreign state when the proceedings were instituted, or, being a body corporate had its principal place of business was incorporated, or had otherwise its principal corporate seat in the foreign state;

(5) the defendant had a business office in the foreign state and the proceedings in the foreign court involved a [cause of action] [claim for relief] arising out of business done by the defendant through that office in the foreign state; or

(6) the defendant operated a motor vehicle or airplane in the foreign state and the proceedings involved a [cause of action] [claim for relief] arising out of such operation.

(b) The courts of this state may recognize other bases of jurisdiction.

SECTION 6. [Stay in Case of Appeal.] If the defendant satisfies the court either that an appeal is pending or that he is entitled and intends to appeal from the foreign judgment, the court may stay the proceedings until the appeal has been determined or until the expiration of a period of time sufficient to enable the defendant to prosecute the appeal.

SECTION 7. [Saving Clause.] This act does not prevent the recognition of a foreign judgment in situations not covered by this act.

SECTION 8. [Uniformity of Interpretation.] This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

SECTION 9. [Short Title.] This act may be cited as the Uniform Foreign Money-Judgments Recognition Act.

SECTION 10. [Repeal.] [The following acts are repealed:

(1) ;

(2) ;

(3) .]

SECTION 11. [Time of Taking Effect.] This act shall take effect [ ]

UNIFORM INTERSTATE AND INTERNATIONAL PROCEDURE ACT

Civil litigation with interstate and international aspects is becoming an increasingly important element of judicial business. In many cases it is necessary to perform a procedural act, either with or without assistance from local officials, in a sister state or a foreign country. Conversely, domestic courts are being requested with greater frequency to render assistance to out-of-state tribunals and litigants. Unfortunately, existing law is frequently difficult to ascertain, inadequate, and ill-adjusted to conditions prevailing outside the forum state. The American Bar Association, recognizing the need for reform, recommended shortly after the second World War that the President establish a Commission to investigate, and suggest measures for the improvement of existing procedures. In 1952, the President approved this recommendation, and in 1958, the United States Congress enacted legislation to establish a Commission and Advisory Committee on International Rules of Judicial Procedure (Act of September 2, 1958, 72 Stat. 1743). This Commission and its Advisory Committee, in cooperation with the Columbia Law School Project on International Procedure, has drafted several amendments to the Federal Rules of Civil and Criminal Procedure and Titles 18, 22 and 28 of the United States Code that are presently being considered for adoption.

The Uniform Interstate and International Procedure Act presents for adoption by the states a comprehensive code for use in state litigation with interstate or international incidence. It is designed to clarify, consolidate, and improve existing law, and supplants the Uniform Foreign Depositions Act, the Uniform Judicial Notice of Foreign Law Act, and the Uniform Proof of Statutes Act.

Article I, a modified version of the uniform Extra-Territorial Process Act, which was before the Conference at its 1961 meeting, specifies authorized bases of personal jurisdiction over persons and entities that are not within the state at the time the action is commenced. Article II provides several alternative methods by which service may be effected outside the state. Article III is designed to facilitate the taking of depositions to obtain testimony, documents, and other tangible evidence outside the state for use in domestic litigation. Both Article II and Article III contain provisions for rendering assistance to tribunals and litigants outside the enacting state. Article IV resolves problems attendant upon the determination of the law of a governmental unit outside the forum state. Article V concerns proof of official records kept outside the state.

Uniform Interstate and International Procedure Act

(Be it enacted, etc.)

Article I. Bases of Personal Jurisdiction Over Persons Outside This State

REVISED UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT

The mobility, today, of both persons and property is such that existing procedure for the enforcement of judgments in those cases where the judgment debtor has removed himself and his property from the state in which the judgment was rendered, is inadequate. By this act, procedure is made available under which the judgment creditor can effectively obtain relief and at the same time adequate protection is given the judgment debtor to present any defense that can now be interposed to an action on such judgment. The revision simplifies procedures by providing for a shorter registration or filing procedure rather than the summary judgment procedure prescribed by the original act.

Revised Uniform Enforcement of Foreign Judgments Act

09.30.160

Section 1. [Definition.] In this act "foreign judgment" means any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state.

09.30.170

Section 2. [Filing and Status of Foreign Judgments.] A copy of ~~any~~ foreign judgment authenticated in accordance with the act of Congress or the ~~statutes~~ laws of this state may be filed in the office of the clerk of ~~any~~ [District Court of any city or county] of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of the [District Court of any city or county] of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a [District Court of any city or county] of this state and may be enforced or satisfied in like manner.

09.30.180

Section 3. [Notice of Filing.]

(a) At the time of the filing of the foreign judgment, the judgment creditor or his lawyer shall make and file with the Clerk of Court an affidavit setting forth the name and last known post office address of the judgment debtor, and the judgment creditor.

(b) Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post office address of the judgment creditor and the judgment creditor's lawyer, if any, in this state. In addition, the judgment creditor may mail notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement of a foreign judgment except as to the costs of the proof of mailing by the judgment creditor.

(c) No execution or other process for enforcement of a foreign judgment filed hereunder shall issue until [20] days after the date of filing the judgment for enforcement, and if the judgment debtor shows the [District Court of any city or county] that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

09.30.110

Section 4. [Stay.]

(a) If the judgment debtor shows the [District Court of any city or county] that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

(b) If the judgment debtor shows the [District Court of any city or county] any ground upon which enforcement of a judgment of any [District Court of any city or county] of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this state.

09.30.120

Section 5. [Fees.] Any person filing a foreign judgment shall pay to the Clerk of Court [ ] dollars. Fees for docketing, transcription or other enforcement proceedings shall be as provided for judgments of the [District Court of any city or county of this state].

09.30.130

Section 6. [Optional Procedure.] The right of a judgment creditor to bring an action to enforce his judgment instead of proceeding under this act remains unimpaired.

09.30.140

Section 7. [Uniformity of Interpretation.] This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

09.30.150

Section 8. [Short Title.] This act may be cited as the Uniform Enforcement of Foreign Judgments Act.

Section 9. [Repeal.] The following acts and parts of acts are repealed:

(1) ;

(2) ;

(3) .

Section 10. [Taking Effect.] This act takes effect [ ].

REPORT ON HOUSE BILL NO. 480

BY THE
ADMINISTRATIVE LAW COMMITTEE,
ALASKA BAR ASSOCIATION

Sec. 44.62.351

The Committee has contacted the Alaska Court System, and has been informed by Chief Justice Boney that they have not had an opportunity to review the Bill. However, your subcommittee chairman has talked to one of the Associate Justices of the Supreme Court, and he informs me that he would oppose having the Office of Administrative Adjudication attached to the court system, although he did make it clear that the courts do not oppose, and in fact, favor, the concept of independent hearing examiners. The courts' main concern is that by adding more people to the system, its staff manpower and budget would be further diluted, since they are already underfunded, and in addition, since a hearing examiner decision might ultimately be appealed to the courts, there would be the question of a possible conflict of interest.

The Committee would not object to the hearing examiner being placed under, for example, the Department of Administration, provided that department's authority were limited to budget authority only. The Committee believes that the Bill should stress the independence of the hearing examiners.

Sec. 44.62.352

We would recommend adding a subsection (c) providing for a term of six years and allowing removal only for good cause.

Sec. 44.62.353(b)

We would recommend that this subsection be amended by adding the words "who is otherwise qualified by reason of background and experience, and meets the qualifications established by the Department of Administration."

> COMMENT: This change is to correlate this section with Sec. 352(b) which provides that the presiding officer must have the same qualifications as a hearing officer, and it is thought initially that the Department of Administration (or the Court System) should set these qualifications.

Sec. 44.62.353(c)

We would re-write the first sentence of this subsection to read as follows: "The presiding officer shall assign a hearing officer for any administrative adjudicatory proceeding arising under state law."

> COMMENT: This makes it clear that the Bill will apply to all agencies. While there is no objection by the Committee to having commissions or agencies, such as Public Utilities Commission or Alaska Transportation Commission, sit on cases, the Committee does believe that a hearing officer should sit with the agency. One Committee member felt that in appropriate cases, where there was an otherwise qualified lawyer member of the agency, he could be appointed as hearing examiner.

Sec. 44.62.353(d)

We would add a subsection (d) to provide that the Office of Administrative Adjudication may contract for a hearing examiner where their staff does not otherwise have a qualified person available.

COMMENT: This suggestion was made by some members of the House Local Affairs Committee, and the Committee believes it is a sound one.

Sec. 44.62.354

Add a sentence at the end that the office will compile and publish significant Court and Administrative decisions.

COMMENT: We think the Office of Administrative Adjudication should be required to publish significant administrative law decisions, just as the Court publishes its opinions. The Commission also might wish to consider making the publication a monthly or bi-monthly affair, in which proposed regulations could also be published. This would be the equivalent of the Federal Register as used by the federal government.

Sec. 44.62.410

We would change the first sentence to read: "The agency shall consult the office and all parties in interest, and, subject to the availability of the office's staff, shall determine the time and place of hearing."

COMMENT: Many hearings have a statewide interest and effect--i.e., utility, oil and gas, and transportation matters--and the agency should try to set it for the convenience of all parties.

Sec. 44.62.500(c)

The second sentence of this subsection should have the following language added: "and a final decision, including findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings."

COMMENT: This language is taken from Sec. 12 of the Model State Administrative Procedures Act. If this amendment is adopted it will prevent agencies from arbitrarily reversing a hearing examiner decision by reference to statutory language or formulas. Further, this language, we think, is indicative of the present trend of Administrative Law requirements for making explicit findings of fact and conclusions of law. We do not think that this will infringe upon the permanent authority of the agencies to make the final decision but rather, it requires them to have good reason to reverse a hearing examiner decision.

Sec. 44.62.515 (a)

Add: "or the submission of briefs or memoranda, whichever occurs later". We would also recommend a provision similar to that required of judges--i.e., that a hearing examiner submit an affidavit that he has no cases pending beyong the 90-day limit provided above or forfeit his pay

Sec. 44.62.515(b)

Strike the word "rendering" and substitute "receipt".

COMMENT: The amendment to subsection (a), we believe, is a realistic one, since in the more complex cases it often will take 60 to 70 days just to submit briefs. A hearing examiner should have the full 90 days to make the decision. Subsection (b) makes it clear that the agency or commission would have 30 days from the receipt of the decision. Delay in the mails is often encountered and the agency should have the full 30 days to render its decision.

We would add a Sec. 11 to the Bill, making it clear that the sections referred to in House Bill No. 480 apply to all agencies of the state and not just the agencies referred to in AS 44.62.330.

We wish to make it clear that we would not recommend a general revision of the Administrative Procedure Act, §44.62.330, et seq., to make it applicable to all agencies. Certain state agencies have adopted their own rules of practice pursuant to law, and at this point in time we do not think any effort should be made to generalize the Administrative Procedure Act provisions to all agencies. What we do wish to make clear, however, is that the provisions recommended for House Bill No. 480 should be applicable to all agencies.

The Administrative Law Committee has long favored independent hearing examiners. However, more importantly, we favor the concept that there will be adequate hearing officer personnel available to all agencies of the state. The present impossible situation at the Alaska Transportation Commission and the lack of effective hearing procedures for many of the regulatory boards, such as medical examiners, dental examiners, etc., is clearly not in the public interest.

Shirle A. Debenham, Chairman
Administrative Law Committee

Andrew E. Hoge, Subcommittee Chairman
Administrative Law Committee

A NEW REGULATORY FRAMEWORK

Report On Selected Independent Regulatory Agencies

The President's Advisory Council On Executive Organization

January 1971

Findings and Recommendations

Major and fundamental change pervades each of the areas of economic enterprise under regulation by the independent regulatory commissions.

- In transportation, increasing interaction between the various modes reflects a persistent striving for greater efficiency in the movement of goods and people;
- In trade, new and probably enduring levels of public and producer attention are being given to the quality of goods and services, and to the operation of the marketplace;
- In securities, even as the structure of the industry itself and the relationship between Government and industry are experiencing major changes, a well-established trend toward institutional investment and new methods of financing are significantly altering the characteristics of securities trading;
- In power, where industry structure is also undergoing change, supplies of electrical energy and natural gas have not consistently kept pace with increasing demands in certain areas, and new technologies have yet to take up the slack;
- In communications, burgeoning technology has created new avenues for service and new products which together complicate the task of regulation and blur distinctions between the various forms of communications.

The independent regulatory commissions play a critical role in balancing the changing demands of the Nation for the goods and services of regulated industries and the related need for financially sound and effectively managed industries in the regulated sectors of our economy. Unfortunately, obsolete organizational forms limit the effectiveness of these commissions in responding to economic, technological, structural, and social change. Inappropriate regulatory structures and cumbersome procedures impose burdens that impede good public service, sound financial and operational planning, and adjustment to changes in growing industries—contrary to the purposes of regulation.

Our proposals for change in the organizational forms of several independent regulatory commissions are directed at improving agency effectiveness, while assuring fairness to those involved in or affected by the regulatory process.

FINDINGS

The regulatory commissions are not sufficiently accountable for their actions to either the Congress or the President because of the degree of their independence and remoteness in practice from those constitutional branches of government. Regulatory activities, therefore, are not adequately supported and are not effectively coordinated with national policy goals.

Inherent deficiencies in the commission form of organization prevent the commissions from responding effectively to changes in industry structure, technology, economic trends, and public needs.

Deficiencies in the performance of the regulatory commissions are partly due to the difficulty of attracting highly qualified commissioners and retaining executive staff. Even able administrators have difficulty in serving as coequals on collegial commissions.

- While there are notable exceptions, it is difficult to attract to regulatory positions men of skill in administration and breadth of perspective largely because of the procedures and traditions associated with appointment to the regulatory commissions.
- Given these traditions and the shared responsibility of the collegial form, it is not likely that commission positions will generate greater interest in the future.

Certain judicial activities of the commissions conflict with their policy-making responsibilities and generate an organizational environment inimical to regulatory efficiency and constructive response to industry and the public.

- Many commissions engage excessively in case-by-case adjudication as a basis for policy formulation rather than using less formal procedures such as exchanges of written or oral information, informal regulatory guidance, or rulemaking.
- The judicial cast of agency review proceedings places too great an emphasis on legal perspectives to the detriment of economic, financial, technical, and social perspectives. One result is a high level of legal skill among agency professionals and commissioners, but generally insufficient capability in other disciplines.
- The judicial cast of agency review proceedings delays final administrative determinations and invites dilatory appeals.
- Overjudicialization encumbers the time and energies of commissioners and staff, causes undue case backlogs, imposes high costs upon litigants, prevents anticipatory action through rulemaking, deters informal settlements, and precludes coordination of agency policy and priorities with those of the executive branch.

Certain functional responsibilities are inappropriately distributed among the various commissions.

- Responsibility for regulation of transportation is distributed among the ICC, CAB, and FMC, impeding formulation of broader regulatory policy covering the several transportation modes and coordination with the Department of Transportation, and thus forestalling consistency in national transportation policy.
- Responsibility for promotion of transportation, vested in some regulatory commissions, conflicts with the regulatory activity of those agencies.
- Combination of antitrust enforcement and consumer protection in the FTC deprives that agency of a central purpose, fostering an uncertainty of emphasis as between its functions, inordinate delay, and preoccupation with routine matters.
- Regulation of public utility holding companies by the SEC is no longer best performed by that agency. Regulatory expertise regarding public utility holding companies rests with the FPC.

RECOMMENDATIONS

To assure coordination of regulatory matters with national policy goals, to improve the management efficiency of regulatory functions, to improve accountability to the Congress and the executive branch, and to increase the probability of superior leadership for regulatory activities, the transportation, power, securities, and consumer protection regulatory functions should be administered by single administrators, appointed by

the President. These functions should be performed by agencies respectively designated: Transportation Regulatory Agency, Federal Power Agency, Securities and Exchange Agency, and Federal Trade Practices Agency.

- The authority and responsibility attending the single administrator form should enable the agencies to attract and retain the most highly qualified administrators and executive staffs.
- Unambiguous placement of authority for agency policy and operations in a single administrator should increase accountability to both the Congress and the President.
- Agency work should be expedited by utilizing more effective administrative techniques made possible by one-man management of agency activities.

The communications regulatory function and the antitrust enforcement function should, as now, be carried out by multimember bodies for reasons supervening the advantages of a single administrator. The FCC should be reduced in size from seven to five members, to serve 5-year terms.

To prevent the overjudicialization of agency procedures and attitudes and to assure comprehensive and anticipatory policymaking, internal agency review of proceedings should be limited in time and focused primarily on the consistency of the decision with agency policy. Appeals from final agency decisions should be heard by an Administrative Court of the United States.

- A 30-day period should be allowed after a hearing examiner's decision for review by the single administrator. The administrator should have the power to modify or remand an examiner's decisions. The limited time and scope of policy review by agency administrators should help make initial decisions of agency examiners, in many cases, final determinations of the agency.
- The Administrative Court should review appeals by an aggrieved party from final agency determinations of the transportation, securities and power agencies. Decisions of the antitrust, trade practices, and communications agencies would be reviewed in the Federal courts as they are today.
- The court should consist of as many as 15 judges, appointed by the President and confirmed by the Senate for terms sufficiently long as to attract men of quality. We suggest 15-year staggered terms, with judges sitting in three-man panels for each case reviewed by the court.

Certain functional responsibilities of the agencies should be realigned.

- To reflect the increasing interdependence of the structure, economics, and technology of the transportation modes, regulatory responsibilities of the ICC, CAB, and the FMC should be combined within a new Transportation Regulatory Agency.
- To correct the conflict inherent in performing regulatory and promotional functions in the same agency, the promotional subsidy-granting activities of the CAB should be transferred to the Department of Transportation.
- To assure that each of its missions is more effectively performed, the FTC's consumer protection responsibilities should be vested in a new Federal Trade Practices Agency and its antitrust enforcement responsibilities should be vested in a new Federal Antitrust Board. The Board should consist of a chairman and two economist members, each appointed by the President with the consent of the Senate.
- To provide an organizational placement which better reflects current realities, the regulatory responsibilities of the SEC under the Public Utility Holding Company Act should be transferred to the Federal Power Agency.

DISSENTING STATEMENT OF FREDERICK R. KAPPEL

The Council made its recommendations to the President in a brief and to the point preliminary report on July 10, 1970. It included a dissent on my part consistent with the content of that report.

This more complete report contains the same specific recommendations and my dissent concerning them is unchanged and quoted herein.

This report elaborates considerably on the earlier report in its reasoning and in its references, quotes, and documentation. It does this by the inclusion of views and writings from numerous sources. These include legal, academic, government committee views, and writings from individuals involved as regulators past and present. There were over 200 interviews made by staff as noted in the report.

In connection with the references, interviews and other material researched I must point out that there are almost no references or views from the regulated entities. To this extent I believe any one who accepts this report on its face value must recognize that it is almost totally lacking in this very important respect. If constructive action results from this report and the efforts behind it (and I sincerely hope that it will), it will require, in my opinion, that this added point of view be sought and considered in a major way. Any useful progress will require it.

Since this report is hopefully the beginning of an effort to bring to bear all qualified viewpoints toward better regulatory results, it must be the aim that such regulation meet the test of not only good, safe, ample

goods and services fairly priced to the public, but the organizational structure and the level of competence of the regulators themselves must be such that they will soundly recognize the problems of the regulated entities and work with the realization that the producers and businesses involved must be allowed freedom to manage and have ample leeway in operations and rate of returns to produce the high quality and ample service results that are vital to the whole country. This is a serious deficiency in past performance.

The ensuing developments should include careful examination of the recommendations of this Council, agency by agency, before adopting these structural recommendations as I note in the following quoted dissent previously referred to:

"I do not share the judgments of my associates in recommending a single administrator and a separate administrative court. These proposals reflect their belief that they will bring about a greater capability of administration and improved decision processes. There is no certainty that these proposals will lead to more effective administration. The economic and technological aspects of transportation and power regulation, for example, are more complex than other nonservice industries studied. The problems raised in the regulation of these industries cannot be resolved entirely in the atmosphere of either a hearing officer or an administrative court. I fear that this will be the result of the changes proposed by my colleagues.

"I agree, however, along with my colleagues that we should emphasize the need to encourage men of exceptional ability to seek and accept appointments to these vital administrative posts as a prime objective of our recommendations. But, I would suggest that more careful attention to the selection of commissioners and other key personnel is as likely to improve the administrative process as is the single administrator and the administrative court.

"In my opinion, it would be more appropriate to implement these proposals in one administrative agency. The FTC would be my selection. These innovations may then be studied carefully before any further attempt is made to implement them elsewhere."

Overview

The independent regulatory commissions, now mature institutions of the Federal Government, are characterized by rigidity in their process and in their patterns of relationship with Congress and the executive branch, the regulated industries, and the public. They lack the adaptive force which might regenerate or redefine their roles in helping shape the American economy. Both rigidity and lack of adaptability impede regulatory effectiveness at the very time when persistent trends and new directions in the economy demand flexibility and imagination to carry out regulatory objectives and to formulate action in the interest of the public, including the regulated segments of the private sector.

REGULATION AND GOVERNMENTAL STRUCTURE

The ICC, CAB, FMC, FTC, SEC, FPC, and FCC, established by Congress in the years since 1887, have long been considered an anomaly in government structure.[1] They are institutions housed in the executive branch, carrying out legislative functions, and behaving like courts. In the past quarter century, the growth of the regulated industries and the pace of the national economy have largely outdistanced the ability of the commissions to cope constructively with regulatory problems.

To have practical meaning, the commissions' charge to regulate in the interest of the public must include regard for economic, technological, and social developments, as well as the capability of the regulated industries to provide good public service.

Inadequacies in regulatory structure have adversely affected the implementation of Congressional mandates, the management of executive

branch functions, the interests of the public generally, and the ability of the regulated industries to operate their businesses profitably or to plan future actions with reasonable assurance of what regulatory policy will be.

The history of the regulatory commissions reflects an attempt to respond practically to national needs with institutions outside the three constitutional branches of government. Congress initially undertook to perform some regulatory responsibilities, but later conferred these responsibilities on independent commissions, a form that it believed would provide fairness and expertise, without delay or partisan influence. The commissions, however, soon became part of a highly specialized, independent "fourth branch" of the Federal Government. Today, they are not sufficiently accountable to either Congress or the executive branch. Perhaps because of this, they have become less effective in balancing the needs of the public with those of the industries they regulate consistent with Congressional intent and executive policy.

REGULATORY ACCOUNTABILITY

More than 30 years ago, the President's Committee on Administrative Management highlighted the lack of accountability of independent regulatory commissions:

> They constitute a headless "fourth branch" of the Government, a haphazard deposit of irresponsible agencies and uncoordinated powers * * * . The Congress has found no effective way of supervising them, they cannot be controlled by the President, and they are answerable to the courts only in respect to the legality of their activities.[2]

The point has been made many times since, but the scope of the problem has changed little, if at all, over the years. The independent commissions persist more from inertia than from an analysis of how regulatory bodies should properly function within the context of a comprehensive political and economic system.

Congress has conceived of these commissions as independent of executive branch control, but in fact the commissions are almost as independent of Congress itself. Apart from appropriations approval, periodic program review, and the intermittent interest of one or several of its members, Congress does not exercise the degree of oversight with respect to regulatory commissions that it does for executive departments and other agencies of the executive branch. Congress has sought to preserve the independence of the regulatory commissions, even as their activities increasingly affect the implementation of national policy. The executive branch, responsible for carrying out national policy, has been reluctant to support reforms needed to integrate regulatory activities with executive programs

because the President does not have sufficient responsibility for commission direction.

Yet congressional and executive attention to regulatory needs is required more today than ever in the past because of the increasing interdependence of national economic policies which emerge from budget and fiscal action, economic regulation, and industry promotion by government. Proponents of the commission form tend to ignore that interdependence.[3] In doing so they perpetuate processes and relationships which may frustrate national policy and sound economic growth.

Independence, and the resulting absence of regulatory accountability, has transferred to a generally shielded arena those questions which should be settled in a more open forum. The public—the intended beneficiary of regulation—has found it difficult to understand the issues and lacks a practical mechanism through which to communicate its views.

All this, together with significant impediments to regulatory performance inherent in the commission form itself, has led the commissions to become less responsive to economic and social trends and changes in industry structure.

Most studies and commentary relating to reform of the regulatory commissions over the years emphasize their separateness from an integrated governmental structure.[4] These studies, and subsequent attempts to implement proposals stemming from them, have concentrated on reordering personnel, procedures, or functions to improve commission performance. Such efforts are commendable, but internal revision and redefinition are not enough. The regulatory apparatus requires a fundamental restructuring to enhance overall effectiveness and responsibility.

Accountability to Congress

Congress' powers under article II of the Constitution to regulate interstate and foreign commerce is the primary basis for regulatory controls. Through legislation, Congress has vested in regulatory commissions the powers necessary to carry out broad statutory mandates. But congressional statements of policy are understandably general, leaving to the commissions the task of making specific policy to implement those objectives. One result is that the commissions, in the course of time, have developed policies affecting the economy without sufficient guidance or check by Congress.[5] This condition is aggravated in the view of some commentators by the commission form of organization which makes it hard to pinpoint those within the regulatory agencies responsible for setting policy.[6]

With greater coordination between the agencies and the executive branch and an organization structured to focus responsibility, Congress

would be better able to oversee agency policy and, in concert with the President, improve regulation.

Accountability to the Executive Branch

The President is responsible under article I of the Constitution to "take care that the laws be faithfully executed." That duty extends to the activities of the regulatory agencies to assure that the laws enacted by Congress are carried out effectively and fairly. The American public—to whom the President is directly answerable—looks to the President for leadership in pursuing national policy goals, including those affected by the regulatory process. The success of many Congressional and executive programs ultimately depends on a coordinated regulatory response.

Several recent Presidents have recommended changes in the regulatory process.[7] Although many proposed reforms have fallen short of enactment, these Presidents presumably felt that such recommendations were part of their responsibility to oversee faithful execution of the laws. Congress has repeatedly recognized the President's role in the regulatory scheme by authorizing him to make organizational changes in all agencies of the executive branch without distinction between executive agencies within the Departments and independent regulatory commissions.[8]

If regulation is to be more responsive to the public interest and coordinated with national programs, it must first be brought within the ambit of elective government, with accountability to those officials to whom the public and the regulated industries alike look for fair constructive application of national policy.

REGULATION BY INDEPENDENT COMMISSIONS

Historically, at least four premises have been offered to support regulation by independent commission.

The first is that Congress delegated unique legislative authority to carry out certain critical regulatory functions and created a unique form of organization, the independent commission, for that purpose. Yet, most executive departments also possess delegated regulatory powers. For both, Congress enacts skeletal legislation setting forth principles, mandates, and limitations within which the traditional executive departments and agencies develop rules, standards, and regulations to give substance to a legislative program.[9] It is difficult today to discern the distinction which justifies wide differences in the structure and processes of the Federal Trade Commission on the one hand and the Food and Drug Administration or Federal Aviation Administration (both headed by single administrators) on the other. The most recent agency to be vested with

regulatory functions, the Environmental Protection Agency,[10] incorporates the concept of unitary leadership in place of the commission form.

Second, it is argued that to deal with complex and technical regulatory problems, special expertise is required of decisionmakers and that the commission form alone best develops that expertise. The commissions have not, however, demonstrated consistent mastery of the subjects within their jurisdictions.[11] Nor does their technical capability visibly surpass that of regulatory counterparts within executive departments.

Third, it is urged that the application of regulatory statutes, rules, and regulations requires a bipartisan, multimember body that can act without regard to the partisan considerations which affect Congress or the executive branch. Political pressure coming from Congress or the executive branch unquestionably impinges on the impartiality of commission proceedings. But the procedural requirements of adequate notice and fair hearing, as well as the availability of judicial review, help to assure, as much as anything, a just result in particular proceedings. In the opinion of several observers of the regulatory process, the fairness of regulatory decisions results more from the mechanics of internal decisionmaking and breadth of perspective of the regulators than from the fact of bipartisan representation on the commissions.[12]

A fourth premise often asserted in support of the commission form is that commissions can better serve the public interest in regulatory matters because their independence makes them immune from control by the industries they regulate. The assumption which lies behind these assertions is that the interest of the industries and of the public are in fundamental conflict. But today, those interests are closely related, for the success of an industry will have a marked impact on the extent, quality, and price of available goods and services. Nevertheless, undue or unbalanced influence upon the commissions by the industries regulated is undesirable. While the adversary nature of commission proceedings decreases the likelihood of such influence, when it occurs, it is an outgrowth of the dependence of the regulator on the regulated--a relationship which may occur regardless of form.[13] To the extent the form of organization is responsible at all, the very anonymity of the commission structure which heightens unaccountability tends to prevent public exposure of relationships which may be improper.

The foregoing does not set forth all the premises underlying the commission form for use in economic regulation.[14] Other arguments for the establishment of the commissions range from the discomfort of many courts with complex economic and technological problems to the need for expeditious procedures in regulating commerce.

At the very least, these reasons for regulation by independent commis-

sion, if ever valid, are today of questionable validity. In practice, the commission form has proven most of them to be invalid.

REGULATION AND INDUSTRY EXPANSION

The form of the regulatory commissions, compatible with another era, prevents them from responding effectively to economic trends and changes in technology, industry structure, and public needs.

The Interstate Commerce Commission, first among the Federal regulatory commissions, was established in 1887 to achieve rate stability, prevent discrimination in favor of large shippers and certain geographical areas, and protect farmers from undue charges by railroads. Today, some of the surface transportation industries suffer major economic hardship partly caused by the regulatory processes themselves.

Given the likely impact of such developments as containerization, jet freight carriage, and the interstate highway system, as well as the needs of a growing and concentrated population, modes of transportation within ICC jurisdiction must be viewed together with other modes as an integral part of a unified transportation network. Other carriers not regulated by the ICC affect and are affected by ICC decisions. Urban mass transit is a concern of the ICC, CAB, and the Department of Transportation. The ICC and the CAB exercise jurisdiction over inland segments of overseas shipments while the FMC and CAB exercise jurisdiction over the ocean segment of such shipments, even though containerization has made possible a continuous flow of commerce from the interior of the United States to the interior of other continents. Fragmented regulation of the transportation industry is inconsistent with efforts to develop a coordinated transportation system. It frustrates the development of management and financial capability in the industries involved, and impedes the rate at which new technology can be utilized.

The Federal Trade Commission was created in 1914 to prevent unfair methods of competition by businesses in interstate commerce. Originally intended to augment antitrust enforcement, the FTC has become a repository for many bits and pieces of legislation that did not seem to fit neatly into any other agency of government. Consequently, FTC jurisdiction now ranges from the complexities of large corporate mergers to the comparatively simple task of accurate labeling of fabrics and furs.

The Federal Power Commission originated in 1920 with the relatively tidy mandate of licensing construction and operation of hydroelectric power plants on bodies of water within the jurisdiction of the Federal Government. It now also regulates transmission and wholesale marketing of electric energy in interstate commerce, including rates, accounting procedures, mergers, consolidations, interconnections, and

coordination of interstate electric energy systems. The FPC similarly regulates transmission and wholesale marketing of natural gas in interstate commerce. An increasingly complex interstate energy system affecting the well-being of every citizen makes these regulatory tasks monumental.

The Federal Communications Commission was set up in 1934 to bring order to radio spectrum allocation and to regulate the existing telephone systems as a monopoly service under legislation that authorized exclusive operation in the public interest. To these has been added regulatory responsibility for standard television broadcasting, cable and subscription television, satellite communications, and computer utilities.

The Securities and Exchange Commission, also a product of regulatory legislation in the 1930's, was established to promote public confidence, through government oversight, in the issuance and trading of securities. But today, the SEC must deal with related problems of public ownership of brokerage firms, the operations of securities exchanges, the effects of computerization and new financing techniques, and the advent of major institutional investors.

The Civil Aeronautics Board, created in 1938, dramatically illustrates the way in which technology has challenged the ability of regulatory commissions to respond to change. The CAB initially concentrated on safety regulations and awards of mail routes. Today, the Board oversees an industry experiencing recurring economic problems and faced with crowded airways, jumbo jets, inadequate terminal facilities, and problems yet to be generated by the SST. These factors materially affect the ability of the industry to provide good service and at the same time impinge on the economy, our physical environment, and transportation modes not regulated by the CAB.

The Federal Maritime Commission, which in 1961 replaced the Federal Maritime Board established under the Shipping Act of 1916, today is involved in tasks of international importance. The FMC must deal with the effects of containerization and other technological innovations in ocean shipping. The Commission must also resolve problems relating to joint through rates and single bills of lading, its impact on modes (including foreign carriers) it does not regulate, and pricing through international shipping conferences.

The end result of this period of unparalleled technological change, industry expansion, economic growth, and environmental and social concern is that new responsibilities and workloads generated by routine matters have outdistanced the commissions' ability to respond. As the volume of proceedings has increased with each new responsibility, internal commission structure and process has become more complex. While some attempts have been made to remedy these problems through inter-

nal reforms, little thought has been given to restructuring the entire regulatory apparatus.

But it is not the mounting ineffectiveness of the regulatory framework alone which compels change. The world is in an era of transition that challenges government and private sectors alike to deal constructively and cooperatively with the economic issues, current, prospective, and unforeseen. The independent regulatory commission's inflexible institutions attuned to a simpler day, cannot be expected to deal constructively with economic issues yet to be generated if they are unable to deal with current ones. More than ever, a new framework is needed for improved regulation and as a necessary first step to reconsidering the statutes which authorize economic regulation.

A NEW CONCEPTUAL FRAMEWORK

The failure of regulatory commissions to respond to current demands and the unlikelihood of their responding to new ones is principally attributable to collegial organization, the judicial cast of agency activities, and the misalignment of certain functional responsibilities.

The collegial form is today inappropriate for regulating highly complex, everchanging areas of the economy. What is needed is a regulatory structure which is more adaptable to changing conditions and better able than a collegial body to articulate policy. Plural-headed administration is usually characterized by shared powers, shared responsibility, and, for that reason, shared indecision and unaccountability.

In addition, overjudicialization, resulting from full commission review of initial agency decisions as a matter of course, has upset commission priorities and obscured the formulation of comprehensive, timely, and anticipatory agency policy. Moreover, the admixture of certain judicial functions with policymaking and prosecutory responsibilities has created a condition of apparent bias in certain proceedings, subjecting agency determinations to criticism on that ground and generally undermining confidence in the regulatory process.

Finally, certain regulatory activities are improperly divided among, or unwisely combined in existing commissions.

Agency Administration

We have considered several alternatives and have concluded that the best approach to solving the problems created by the commission form is to replace commissions—for transportation, power, securities, and trade practices regulation—with single administrators. These officials should be appointed by the President, upon the advice and consent of the Senate, to serve at the pleasure of the President.

agencies, where these vital requirements for program direction are now often weak. This form of organization would also strengthen program coordination where two or more agencies need to work together to achieve a common goal.

Specifically, as described in detail in chapter 1, the single administrator would:

- Enable an agency to attract and retain highly qualified executives and staff because of better-defined, singular authority and responsibility;
- Encourage formulation of policy through informal procedures and rulemaking rather than case-by-case adjudication;
- Foster improved policy coordination among the agencies and with executive departments;
- Facilitate more immediate response to the needs of the public and to structural, economic, and technological changes in the regulated industries; and
- Promote more efficient allocations of agency resources by encouraging the use of modern management methods, including greater delegation of authority and more direct staff accountability.

Unitary leadership will not solve all regulatory problems. An agency so led may flounder for lack of the right kind of leadership or suffer from misguided efforts. But fault for that lies in the quality of the appointment not the form of organization. In such a case, responsibility lies with the President who has power to make the necessary change.

We suggest retention of plural leadership in the communications and antitrust areas because of overriding considerations which in our view supervene the benefits of the single administrator form. These considerations are discussed in chapters 4 and 7.

Review of Agency Decisions

The regulatory commissions have tended over the years to overjudicialize agency process by adopting a case-by-case approach. Excessive judicialization has fostered the development of ad hoc policies often limited to the particular fact situation at hand and therefore without general applicability or future effect.

Such judicial preoccupation, seen most readily in the course of systematic full commission review of decisions by agency hearing examiners, generally has precluded early, comprehensive statements of policy through rulemaking proceedings and other informal policymaking procedures. It has prevented the application of current agency policy by examiners while implicitly encouraging appeals to the full commission for a de

perspectives of staff and commissioners. The judicial attitudes and procedures of the commission have unduly prolonged proceedings and nurtured high case backlogs leading to ineffective uses of agency resources.

To rectify this situation, we propose that, instead of reviewing each initial decision as a matter of course, the single administrator of the restructured transportation, securities, and power regulatory agencies, and the new trade practices agency, review selected cases primarily for consistency with agency policy. Action by the administrator to overturn, modify, or remand an examiner's decision should be taken within 30 days and should set forth the reasons underlying such action.

Final agency action would be subject to review in the Federal courts. Whereas judicial review is presently exercised by the U.S. Courts of Appeals, we propose that, except for trade practice proceedings, review be transferred to a new Administrative Court of the United States. That court would be expert as to both the substantive issues involved in transportation, securities, and power legislation and the procedural intricacies of the Administrative Procedure Act which governs agency and review process. Moreover, the court's familiarity with problems of regulatory administration and the need for expedited procedures can be expected to aid in displacing the court-like posture of the agencies while maintaining regulatory fairness. We anticipate that removing judicial review of agency process from the Courts of Appeals will reduce somewhat the load on those courts and eliminate much of the agency preoccupation with judicial procedures which derives from review by common law courts.

The Administrative Court should consist of as many as 15 judges, appointed by the President, upon the advice and consent of the Senate, to serve staggered terms. We suggest terms up to 15 years. Appointments should be made initially on a bipartisan basis, with no more than a bare majority from one political party. Subsequent appointments or reappointments, just as those to other Federal courts, should be made without regard to political affiliation. The length of judicial terms should be long enough to insure continuity of expertise and at the same time short enough to permit revitalization of the judicial process compatible with an expanding economy, new technology, and changes in industry structure. A Chief Judge designated by the President should assign judges to cases on a rotating basis rather than to specialized panels. This would allow judges to maintain an open perspective and avoid identification of particular judges with specific types of proceedings.

The Restructured Agencies

The single administrator form, limited internal review, and the Administrative Court create a structure within which several regulatory functions can be realigned to reflect a more rational and potentially more effective placement of responsibilities.

Transportation

Three agencies presently regulate transportation: the ICC (railroads, trucks, buses, freight forwarders, barge lines, and pipelines), the CAB (air carriers), and the FMC (maritime shipping). While the reasons for dividing responsibility among three agencies may have been compelling as transportation regulation evolved, we found no persuasive reasons to justify the continuation of these divisions. To the contrary, grouping these responsibilities within a single Transportation Regulatory Agency has many advantages. These are set forth at length in chapter 3.

Today, there is a singularly vital need for a regulatory facility which is consonant with the increasing interdependence of transportation modes, competition among the modes, and integration of transportation into effective networks. The proposed Transportation Regulatory Agency would be charged with weighing the interests of each transportation mode in terms of the public interest. Rules and procedures for uniform classifications and for coordinated rates, routes, and industry practices would be possible when now such action is virtually impossible.

Promotional as distinct from regulatory functions of the existing transportation agencies—such as the subsidy-granting activity of the CAB—should be consolidated in the Department of Transportation which has primary concern for industry promotion. This would eliminate conflicting responsibilities for promotion and regulation within a single agency.

Trade

While transportation regulation is in our view better administered by one agency, regulation of antitrust enforcement and consumer protection is ill-combined in the FTC.

Although both activities aim at assuring fair business practices and preserving competition in American industry, methods of investigation, negotiation, and enforcement of their respective statutory mandates differ widely. Each requires different expertise and procedures. Consumer protection relies primarily on the promulgation of rules and regulations together with field investigations. Antitrust enforcement entails intensive study of the industry and of the economic impact of industry practices.

As detailed in chapter 4, to fulfill these separable responsibilities the FTC should be abolished and in its place created a new Federal Trade

Practices Agency for protecting consumers and a new Federal Antitrust Board for antitrust enforcement.

The Federal Trade Practices Agency would establish trade practice policies, both on its own initiative and in response to public initiatives. It would also investigate actual instances of alleged violations of fair trade practices. Since many such complaints are of limited financial consequence and are amenable to prompt resolution, hearing examiners situated in regional offices of the agency could most expeditiously deal with them. In fact, today many such situations are resolved quickly through the most informal discussion betwen the FTC and alleged offenders. In those cases where substantial issues are involved, examiners' decisions should be subject to appeal in appropriate Courts of Appeals after opportunity for policy review by the agency administrator.

The Federal Antitrust Board, consisting of a chairman and two economist administrators, would continue dual antitrust enforcement with the Department of Justice. The chairman would be responsible for all executive and administrative duties, and would articulate agency policy. The multimember Board would permit comprehensive micro- and macroeconomic analysis by drawing upon the special expertise and perspectives of its members. Actions brought by the Board should be heard in the Federal district courts.

Securities

A new Securities and Exchange Agency should supplant the SEC. Internal review of certain judicial proceedings presently commenced before hearing examiners should be limited to 30 days and directed principally to assuring that decisions correctly reflect agency policy. Appeals from agency decisions should be to the Administrative Court. Original actions taken by the SEC in the Federal district courts should continue as they do today. For reasons stated in chapter 5, application of these structural changes would enable the agency to adapt readily to present and future needs of the securities industry and the investing public.

Regulatory responsibilities of the SEC under the Public Utility Holding Company Act of 1935 should be vested in the proposed power regulatory agency, since problems relating to the structure of public utility holding companies are properly within the competence of that agency. For many years, in fact, the SEC has drawn upon FPC expertise in administering the act. This proposal has long had substantial support from both the SEC and FPC.

Power

A new Federal Power Agency should replace the FPC. As with the proposed transportation and securities agencies, as well as for reasons

discussed in chapter 6, the power administrator would be able to respond more effectively than a multimember commission to the needs of the electric power and natural gas industries, their customers, and the public generally. Appeals from final agency decisions would be to the Administrative Court. As noted, the power agency should assume regulatory responsibilities under the Public Utility Holding Company Act.

Communications

The FCC regulates, among other things, radio and television broadcasting, both important sources of public information. To an extent not present in other agencies, regulation in this area involves personal value judgments as to the type, quality, and substance of programing—the product of the industry which the FCC oversees. Clearly, the public has come to rely on the broadcast media for much of its information. The mere appearance of possible undue influence over program content might undermine public confidence in the sources of its information. Thus, we believe it would be inadvisable to place in the hands of a single administrator the power to exercise control over industry members through licensing and programing decisions.

Moreover, because broadcast regulation is uniquely subjective in character, we believe that decisions in this area should reflect the personal values of more than a single individual. This is especially important in view of the fact that even though the damage to society from control of information sources may be substantial, there is no satisfactory remedy for undoing the harm. Accordingly, it is imperative, in the first instance, to build in added safeguards for assuring an uncontrolled flow of ideas and information.

For these reasons, more fully explained in chapter 7, the FCC should be retained as a multimember commission. To offset some of the disadvantages of plural administration, the number of FCC commissioners should be reduced from seven to five, to serve 5-year terms.

CONCLUSION

Most deficiencies and problems of the regulatory agencies stem from an inapposite wedding of form and function. The present commissions combine the passive, judicial characteristics of a court with the active policymaking responsibilities of an administrator, to the detriment of both.

Substantial changes are advisable in the present structure of regulation by collegial bodies. The transportation, power, securities, and trade practices agencies are in need of the vigorous reform which a single administrator is most likely to bring about.

We have not recommended single administrators for all the regulatory agencies because organizational theory should give way when other factors bear greater weight. Although we emphasize organizational principles, we think exceptions should be made where, on balance, supervening considerations apply or greater effectiveness is likely by retaining collegial bodies. Hence, we believe that the overriding needs for a mixture of views in the communications area and for extensive economic judgment at the point of decision in the antitrust field justify plural-headed organizations in these areas.

There has been no attempt to catalog all the flaws of the regulatory structure nor to set forth solutions to all problems. But we have identified the major problems; and we have suggested a constructive plan for refashioning the regulatory structure so that the agencies can perform more effectively and at the same time more fairly.

We do see, moreover, that in our complex and growing society economic regulation must be consistent in its purpose, constructive in its policies, and objective in its decisions. Regulators have the difficult task of balancing the interests of industries and of the public to insure that the latter is well served and that the former remain vigorously able to provide that service. Such is the goal of the proposals we have made.

NOTES

1. "It [the committee] is not persuaded of the soundness of the view sometimes asserted that, to the traditional threefold classification, there must be added a fourth power, conveniently called 'administrative,' which somehow involves the exercise of functions which are neither executive, legislative, nor judicial and thus escapes the necessity for safeguards which centuries of experience have built around the exercise of such functions." Report of the Special Committee on Administrative Law, before the 57th Annual Meeting of the American Bar Association, Milwaukee, Aug. 28–31, 1934, in "Separation of Powers and the Independent Agencies: Cases and Selected Readings," Committee on the Judiciary, S. Doc. No. 91–49, at 216 (1970).

2. The President's Committee on Administrative Management, "Report of the Committee With Studies of Administrative Management in the Federal Government," pt. I, at 40 (1937) (hereinafter referred to as Brownlow report).

3. See M. Bernstein, "Regulating Business by Independent Commission" 283 (Princeton University Press, Princeton, 1955) (hereinafter referred to as Bernstein).

4. See generally "Report of the Special Committee on Administrative Law" before the 57th Annual Meeting of the American Bar Association supra note 1; Brownlow report, supra note 2; "The U.S. Commission on Organization of the Executive Branch of the Government, the Independent Regulatory Commissions," Rept. No. 12, March 1949 (U.S. Government Printing Office, Washington, D.C., 1949) (hereinafter referred to as First Hoover Commission Report); Bernstein, supra note 3; J. Landis, "Report on Regulatory Agencies to the President-Elect," printed for use of the Senate Committee on the Judiciary, 86th Cong., Second sess. (1960) (hereinafter referred to as Landis report).

5. "Usually these investigations or hearings are sporadic in nature having been sparked by some incident that has caught the attention of the press. Regular surveys of their activities would be far more valuable." Landis report, supra note 4, at 34–35; "Congress has found no effective way of supervising them, they cannot be controlled by the President, and they are answerable to the courts only in the respect to the legality of their activities." Brownlow report, supra note 2, at 40.

6. "This arrangement [a chairman designated by the President and responsible for administration and staff] has advantages for the Commission as well. Over the long pull, it must function as a part of the Government as a whole. For one thing, it can accomplish its duties only with proper appropriations and that may require sympathetic help from the Chief Executive with respect to its budget." The U.S. Commission on Organization of the Executive Branch of the Government, Committee on Independent Regulatory Commissions: A Report with Recommendations, Jan. 13, 1949 (U.S. Government Printing Office, Washington, D.C., 1949) (hereinafter referred to as "First Hoover Commission Task Force Report"); "[S]o far an administration carried on by a group is concerned, there is little to commend it. It is on the purely administrative side that the independent commissions are weakest, and gain rather than loss would result from centralizing control and responsibility. * * * For purposes of management, boards and commissions have turned out to be failures." Brownlow report, supra note 2, at 21; "Administration by a plural executive is universally regarded as inefficient." "First Hoover Commission Report," supra note 4, at 5.

7. Eisenhower administration: "U.S. Commission on Organization of the Executive Branch of the Government, Legal Services and Procedure" (U.S. Government Printing Office, Washington, D.C., 1955) (hereinafter referred to as "Second Hoover Commission Report").

Kennedy administration: Landis report, supra note 4.

Johnson administration: "President's Task Force Report on Government Organization"; "Price Task Force 1964"; "Heineman Task Force Report 1967" (unpublished).

8. See, e.g., 5 U.S.C. 901 (a), 902(1)(a) (supp. IV, 1965–68); see also 5 U.S.C. 105 (supp. IV, 1965–68); 31 U.S.C. 2, 18(a)(b) (1964).

9. See, e.g., Packers and Stockyards Act, 7 U.S.C. 181–231 (1964) as amended (supp. IV, 1965–68), administered by the Department of Agriculture; Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301–392 (1964), as amended (supp. IV, 1965–68), administered by the Food and Drug Administration; and the Commodity Exchange Act, 7 U.S.C. 1–17(a)(1964), administered by the Commodity Exchange Commission under the executive branch.

10. Reorganization Plan No. 3 of 1970, prepared by the President and transmitted to the Senate and the House of Representatives, July 9, 1970, pursuant to the provisions of 5 U.S.C. ch. 9.

11. "In both the ICC and the FTC, long tenures and the tradition of reappointment have tended to make incumbent commissioners relatively insensitive to new industrial developments and rather hostile to new ideas about regulatory policy and administrative practice." Bernstein, supra note 3, at 108.

12. "There is a little evidence that commissioners divide on major policy issues according to their party affiliations." Bernstein, supra note 3, at 104. See generally E. Herring, "Federal Commissioners—A Study of Their Careers and Qualifications" (Harvard University Press, Cambridge, 1936).

13. See E. Redford, "American Government and the Economy" 587–590 (Macmillan, New York City, 1965).

14. For an in-depth historical analysis see "Final Report of the Attorney General's Committee on Administrative Procedure," ch. 1 (U.S. Government Printing Office, Washington, D.C., 1941); J. Anderson, "The Emergence of the Modern Regulatory State" (Public Affairs Press, Washington, D.C., 1962) (hereinafter referred to as Anderson).

No. 5

J.6 -
HB 517

CITY OF ANCHORAGE ALASKA

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February 7, 1972

The Honorable William J. Moran
Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99801

Dear Bill:

In accordance with our telephone conversation of this date, I am enclosing the City of Anchorage, Municipal Division of the District Court, budget for 1972. Also enclosed is an extract of the Fines and Forfeitures section of the budget.

Sincerely yours,

Bob

Robert E. Sharp
City Manager

Enclosures: a/s

AIRMAIL IS FASTER

DEPARTMENT	ACCOUNT TITLE	ACCOUNT NUMBER	SUMMARY	A	PAGE
Municipal Division of District Court	Administrative	1005.00		-	C84

ACCOUNT SUMMARY

EXPENDITURE CLASSIFICATION	1968 ACTUAL	1969 ACTUAL	1970 ACTUAL	1971 REVISED BUDGET	1972 REQUEST	1972 RECOMMEND	1972 APPROVED
Personal Services	91,581	68,881	83,000	131,075	180,854	155,250	155,250
Contractural	27,406	11,479	9,062	17,688	17,360	17,780	17,780
Supplies	2,429	2,779	2,259	2,753	3,250	3,000	3,000
Other Costs	3,650						
Capital Outlay		549	1,029	47	24,200	700	700
	125,066	83,688	95,350	151,563	225,664	176,730	176,730
Less Interfund Charges							
Total	125,066	83,688	95,350	151,563	225,664	176,730	176,730

DEPARTMENT	DIVISION	ACCOUNT TITLE	ACCOUNT NUMBER	WORK PROGRAM
Mun. Div. Dist. Court	COURT	Administration	1005.00	

Problem

Lack of space to conduct Arraignments, & Jury and Court Trials. Failure to provide timely trials will result in dismissals. RE: Criminal Rule 45, as amended by Alaska State Supreme Court Order No. 131 Section (b). Trials presently being set into 6th month after defendent is arraigned. 639 Trials pending as of August 25th, 1971. Rental Cost to City for extra court room from Sept. 28 thru July 31 - 6,607.20.

Goal-1

(A) Implement efficient procedures to accomodate increased load resulting from requirement of Jury trials plus normal increase in number of cases filed.
(B) Departments current program will not contribute to timely trials without wholesale dismissal of cases.
(C) Greatly needed is additional court room space and assignment of another full time Judge or Magistrate.

Objective

(A) Existing facilities will have to be divided creating a second court room - this can be accomplished at an approximate cost of $23,500.00.
(B) One court room will conduct Jury Trials, one court room will conduct Non-Jury trials five days per week beginning at 8:00AM each day. Scheduling of trials for each court will govern time of day court will close. Arraignments will be held in the late afternoon and early evenings.
(C) Provide court space & additional court personnel (if necessary) to handle in timely & efficient manner the business of Municipal Division of District Court within one facility or area.

Progress Evaluation

(A) Case flow in timely manner; elimination of confusion in procedure; elimination of unreasonable continuances of cases. Results would be reflected in less backlog in number of cases & show increase in revenue as well as timely dispensation of justice.
(B) Cases scheduled from April 2 thru August 4, 1971 - 1426. Cases actually held - 206. Cases Dismissed -368. Cases granted continuances - 305. Changes of Pleas, Bail Forfeitures and Bench Warrants - 558.
(C) Cases that could have been tried during period April 2 thru Aug. 4 (Providing adequate space and personnel available) -673.

CITY OF ANCHORAGE

DEPARTMENT	ACCOUNT TITLE	ACCOUNT NUMBER	DETAIL	8	PAGE
Municipal Division of District Court	Administrative	1005.00			C86

CODE NO.	EXPENDITURE CLASSIFICATION	1970 ACTUAL	1971 REVISED BUDGET	1972 REQUEST	1972 RECOMMEND	1972 APPROVED
	PERSONAL SERVICES					
8110	Salaries	59,020	89,389	114,632	107,860	107,860
8120	Overtime	2,340	2,330	2,000	2,000	2,000
8140	Liability & Workman's Comp. Ins.	876	1,384	1,373	1,870	1,870
8141	Retirement Plans	1,330	1,550	2,876	1,860	1,860
8142	Life Insurance	40	60	80	80	80
8143	Medical Insurance	302	2,125	2,110	2,110	2,110
8144	Social Security (FICA)	2,645	4,527	5,983	5,570	5,570
8180	Contracted Labor (Judges)	16,447	29,710	51,800	33,900	33,900
	Total	83,000	131,075	180,854	155,250	155,250
	CONTRACTUAL					
8211	Duplicating	558	548	650	650	650
8221	Telephone, Switchboard	2,220	2,300	2,400	2,400	2,400
8235	Tuition Refunds	108			-0-	-0-
8241	Interfund Charges				1,640	1,640
8252	Other Vehicles or Equip. Rented	1,741	600	630	630	630
8253	Private Vehicle			300	300	300
8254	Space Rental - City Buildings	3,151	11,280	12,980	11,810	11,810
8261	Repairs & Maintenance-City Forces	522			150	150
8262	Other Repairs & Maintenance		2,610		-0-	-0-
8270	Travel	666			-0-	-0-
8271	Dues & Subscriptions	96	350	400	200	200
	Total	9,062	17,688	17,360	17,780	17,780
	SUPPLIES					
8303	Office Supplies & Postage	2,259	2,753	3,250	3,000	3,000
	CAPITAL					
8602	Additional Court Room			23,500	-0-	-0-
8605	Machinery & Equipment	1,029	47	700	700	700
	Total	1,029	47	24,200	700	700
	Total Operating Budget	95,350	151,563	225,664	176,730	176,730

DEPARTMENT	ACCOUNT TITLE	ACCOUNT NUMBER	PERSONNEL	C	PAGE
Municipal Division of District Court	Administrative	1005.00			C87

CLASSIFICATION	RANGE	SALARY RATE	EMPLOYEES CURRENT *BUDGET	1972 * REQUEST		* RECOMMEND		* APPROVED	
Department Adm. Assist II	25	994-1209	1	1	13,176	1	13,176	1	13,704
Accounting Clerk II	15	671-817	2	2	18,074	2	18,074	2	18,796
Jury Trial Clerk	13	620-755	2	2	16,352	2	16,352	2	17,006
Non-Jury Trial Clerk	13	620-755	1	1	7,622	1	7,622	1	7,926
Arraignment Clerk	13	620-755	2	2	15,474	2	15,474	2	16,092
In-Court Bailiff	19	787-956	2	2	19,590	2	19,590	2	20,374
Arraignment Clerk (PT)	13	620-755	1 1/2	2	14,996	1 1/2	11,247	1 1/2	11,696
In-Court Bailiff (PT)	19	787-956	3/4	1	9,348	3/4	7,011	3/4	7,292
			12 1/4	13	114,632	12 1/4	108,546	12 1/4	112,886
New Position									
Vacation Replacement (Bailiff)	19	787-956			1,510		1,510		1,570
Less 2% Vacancy Rate							(2,201)		(2,245)
TOTAL			12 1/4	13	116,142	12 1/4	107,855	12 1/4	112,211

* This column used for number of employees in each class.

COMMENTARY

DEPARTMENT	ACCOUNT TITLE	ACCOUNT NUMBER	COMMENTARY	D	PAGE
MUNICIPAL DIVISION OF DISTRICT COURT	ADMINISTRATION	1005.00			C88

	Department Request	Manager Recommends	Council Approved
8110 - Salaries-In court Bailiff as vacation replacement for existing positions	1,510	1,510	1,510
8180 - Contracted Labor - One additional Judge or Magistrate required to conduct additional court sessions, thus providing more time for trials	51,800	33,900	33,900
8242 - Inter-Fund Charges			
Courier		410	410
Microfilm-Records		1,230	1,230
		1,640	1,640
8253 - Bailiff use of private automobile to transport jurors, and in some instances prisoners. Clerk use of private automobile carrying on business of Municipal cases in State Court Building.	300	300	300
8602 - Partition existing facilities to provide two court rooms. Present facility operating at full capacity requiring rental being paid for court space.	23,500	-0-	-0-
8605 - Typewriter for added personnel.	700	700	700

ACC'T. NO.	CLASSIFICATION	1970 ACTUAL	1971 REVISED BUDGET	1972 REQUEST	1972 RECOMMEND	1972 APPROVED
	I. TAXES					
.7001	Real Property	3,942,073	4,585,815	5,540,940	5,362,200	5,362,200
.7002	Personal Property	1,127,982	1,257,550	1,406,620	1,361,250	1,361,250
.7010	PILOT - Off-Street Parking	39,090	79,173	79,170	77,940	77,940
.7015	PILOT - Anchorage Telephone Utility	355,030	365,105	527,000	412,420	412,420
.7016	PILOT - Municipal Light & Power	234,520	241,120	345,380	380,970	380,970
.7017	PILOT - Water Utility	254,760	265,731	299,500	299,500	299,500
.7018	PILOT - Port of Anchorage	21,648	25,360	25,410	25,410	25,410
.7025	Franchise Tax - Anchorage Natural Gas	100,671	105,868	111,330	112,000	112,000
.7026	Co-Op Taxes - Chugach Electric	17,073	33,955	40,000	40,000	40,000
.7030	Voluntary PILOT - ASHA	8,884	10,000	10,000	10,000	10,000
.7035	Penalties & Interest on Delinquent Taxes	72,969	60,000	70,000	70,000	70,000
	Subtotal	6,174,700	7,029,677	8,455,350	8,151,690	8,151,690
	II. LICENSES AND PERMITS					
.7100	Building & Trade Licenses	12,234	15,450	15,000	15,000	15,000
.7101	Building Permits	234,460	210,000	290,280	290,000	290,000
.7102	Taxi Zone & Terminal Fees	6,155	6,000	6,400	6,500	6,500
.7103	Other Business Licenses	17,089	20,000	20,000	20,000	20,000
.7110	Street Use Permits	2,220	2,000	5,420	5,500	5,500
.7120	Chauffers' Licenses	4,393	3,810	4,800	5,000	5,000
.7121	Licenses on Amusement Devices	8,783	6,000	6,500	6,500	6,500
.7122	Liquor Handlers' Permits	3,361	3,400	4,000	4,000	4,000
	Subtotal	288,695	266,660	352,400	352,500	352,500
	III. FINES AND FORFEITURES					
.7200	Parking Violations	252,869	300,000	360,000	360,000	360,000
.7201	Court Fines & Forfeitures	390,531	409,000	390,000	390,000	390,000
.7202	Failure to Appear Warrants	48,682	60,000	60,000	60,000	60,000
.7210	Library Book Fines	10,546	10,500	12,000	12,000	12,000
.7212	Impound & Storage of Aircraft	236	200	250	250	250
	Penalty & Interest-Spec. Assmt.	11,939	-0-	-0-		
	Subtotal	714,803	779,700	822,250	822,250	822,250

HB-563

RECOMMENDATIONS ADOPTED BY THE ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS AT ITS SEPTEMBER 11, 1970 and JANUARY 22, 1971 MEETINGS DEALING WITH STATE-LOCAL RELATIONS IN THE CRIMINAL JUSTICE SYSTEM

A. COURTS

Recommendation 1. Organization and Administration

The Commission recommends that each State establish a simplified and unified court system, consisting of a supreme court, an intermediate court of appeals if necessary, a general trial court and special subdivisions of the general trial court performing the duties of courts of limited jurisdiction. The Commission also recommends that the States abolish justice of the peace courts, or overhaul them by placing them under State supervision, direction and administration; by compensating justices by salary rather than by fees; and by requiring them to be licensed to practice law in the State or pass an appropriate qualifying examination. The Commission further recommends that all courts be subject to administrative supervision and direction by the supreme court or the chief justice; to uniform rules of practice and procedure promulgated by the supreme court subject to change by the legislature; and to the flexible assignment by the supreme court or chief justice of judges from court to court within and between levels.

Recommendation 2. State Court Administrative Office

The Commission recommends that all States provide an administrative office of the State courts, headed by a professional administrator, to assist in the administrative supervision and direction of the State court system.

Recommendation 3. Trial Court Administrative Offices

The Commission recommends that States authorize and encourage establishment of administrative offices for the general trial courts of large urban areas. The Commission further recommends that such offices be headed by professional administrators and be under the general supervision of the State court administrator where one exists.

Recommendation 4. Methods of Selecting Judges--The "Merit Plan"

The Commission recommends that State and local governments, where needed, adopt the "Merit Plan" of selecting judges, whereby commissions consisting of representatives of the bar, the judiciary, and the public screen and nominate qualified candidates for appointment by the chief executive. The Commission further recommends that judges so appointed be required to submit themselves to voter approval or disapproval at an election at the end of each term.

Recommendation 5. Judicial Discipline and Removal: The California-Type Commission on Judicial Qualifications.

The Commission recommends that, where lacking, States establish machinery for the discipline and removal of incapacitated or unfit judges, patterned after California's Commission on Judicial Qualifications.

Recommendation 6. Judicial Qualifications

The Commission recommends that States require all judges to be licensed to practice law in the State.

Recommendation 7. Mandatory Retirement

The Commission recommends that, where lacking, State laws require mandatory retirement of State and local judges upon reaching age seventy.

Recommendation 8. Full-Time Judges

The Commission recommends that States require all judges to devote full-time to their judicial duties.

Recommendation 9. State-Local Sharing of Court Financing: Full State Assumption of Costs

The Commission recommends that States assume full responsibility for financing State and local courts.

Recommendation 10. Improved Federal-State Court Relations

The Commission urges State and Federal district judges, judicial officers and Bar Associations to initiate and support the development of State-Federal Judicial Councils composed of chief judges of State and appropriate Federal district courts to cooperatively explore problems of joint concern, including procedures for review of past conviction petitions.

B. PROSECUTION

Recommendation 11. Increased State Responsibility for Prosecution

The Commission recommends that States strengthen State responsibility for prosecution by enhancing the attorney general's authority to oversee the work of local prosecutors; by establishing a State council of prosecutors composed of all local district attorneys and under the leadership of the attorney general; and by giving the attorney general the power to consult with and advise local prosecutors in matters relating to the duties of their office; and when, in his judgement, the interest of the people of the State requires it, to attend the trial of any party accused of a crime and assist in the prosecution and intervene in any investigation, criminal action, or proceedings instituted by prosecuting attorneys in certain specified instances. The Commission further recommends that States empower the supreme court to remove a prosecuting attorney pursuant to prescribed procedures and safeguards.

Recommendation 12. Consolidation of Local Prosecution Functions in Certain Areas

To achieve more efficient use of manpower and a higher level of prosecution, the Commission recommends that States, where necessary, centralize the local prosecution function in a single office, responsible for all criminal prosecutions.

Recommendation 13. Prosecutorial Districts and the Part-Time Prosecutor

The Commission recommends that States require prosecuting attorneys to be full-time officials and that their jurisdictions be redrawn so that each is large enough to require the full-time attention of such an official and to provide the financial resources to support his office.

Recommendation 14. Financing Prosecution

The Commission recommends that States pay at least 50 percent of the costs of local prosecuting attorneys' offices.

Recommendation 15. Flexible Grand Jury Procedures

The Commission recommends that, where necessary, States enact legislation authorizing prosecutors to bring indictments through either grand jury or information procedures. The Commission further recommends that prosecutors utilize grand juries primarily in cases of alleged official corruption or extraordinary public concern. When used, grand juries should be empaneled on a frequent enough basis to prevent unnecessary court delay. The Commission stresses that nothing in this recommendation is intended to modify the traditional investigative powers of grand juries.

C. DEFENSE COUNSEL FOR THE INDIGENT

Recommendation 16. State-Local Responsibility for Providing Defense Counsel for the Indigent--Direct Administration by the State

The Commission recommends that each State establish and finance a statewide system for defense of the indigent, making either a public defender or coordinated assigned counsel service readily available to every area of the State.

D. POLICE

Recommendation 17. Provision of Basic Police Services (Patrol and Preliminary Investigation) in all Metropolitan Localities

The Commission recommends that all local governments in metropolitan areas assure the provision of full-time patrol and preliminary investigative services to their residents. Metropolitan localities should provide these services either directly, or through intergovernmental cooperation with States, counties, or other local governments, or some combination thereof. The Commission also recommends that overlying county governments should be empowered to assume the police function in any metropolitan locality which fails to provide patrol and preliminary investigative services, charging the cost of such assumed police service to the affected local government. The Commission further recommends that in cases where the county does not assume these police services, State legislation should mandate the consolidation of police services in metropolitan jurisdictions which do not provide basic police services directly or through interlocal agreements.*

*Governor Reagan dissented.

Recommendation 18. Provision of Supportive (Staff and Auxiliary) Police Services in Metropolitan Areas

The Commission recommends that counties be empowered and encouraged to perform specialized, supportive (staff and auxiliary) police services for constituent localities in single county metropolitan areas. These services should include communications, records, crime laboratory, and other related functions. The Commission further recommends that in multicounty or interstate metropolitan areas, States authorize and encourage appropriate areawide instrumentalities such as regional criminal justice planning agencies, councils of government, or multifunctional, multicounty agencies to perform these supportive police services.

Recommendation 19. Special Police Task Forces in Multicounty Metropolitan Areas

The Commission recommends that States authorize or encourage the creation of specialized police task forces, under State or interlocal direction, to operate throughout multicounty and interstate metropolitan areas in order to deal with extra-local and organized crime. The Commission further recommends that under the interlocal option, any areawide agency performing two or more operating functions be given responsibility for the task force; if no such areawide agency exists, the force should be established by interlocal agreement among the participating local governments.

Recommendation 20. Extraterritorial Police Powers

The Commission recommends that, where necessary, States enact legislation and enter into interstate compacts giving localities carefully circumscribed extraterritorial police powers relating to "close pursuit" of felonious criminal offenders and to geographically extended powers of criminal arrest. The Commission further recommends that States clarify governmental responsibility for liability insurance for police officers engaged in lawful extraterritorial police activity.

Recommendation 21. Financing County Police Services in Unincorporated Portions of Urban Areas.

The Commission recommends that where counties provide police services to unincorporated portions of metropolitan areas, States should require the costs of such services to be borne entirely by such unincorporated areas.

Recommendation 25. Independent County Police Forces and Modernized Sheriffs' Departments

The Commission recommends that States give metropolitan counties the option of assigning basic responsibility for countywide police services to an "independent" county police force under the control of the county chief executive or county board of commissioners. The Commission further recommends that States enact legislation which requires county law enforcement agency personnel to be compensated solely on a salary basis, covered by civil service tenure provisions, and provided with adequate retirement benefits. Where counties choose not to exercise the option of creating an independent county police force, States should authorize the assignment of responsibility for countywide police service to the sheriff's department, the reassignment of the sheriffs' court and jail* duties to appropriate court and correctional agencies, and the enactment of legislation which removes tenure limitations on the sheriff's office.

*The term "jail" refers to a short-term correctional institution other than a local holding facility.

Recommendation 26: Abolition of the Office of Constable

The Commission recommends that States abolish the office of constable and transfer its duties to appropriate lower court systems.

Recommendation 27. Abolition of the Coroner's Office

The Commission recommends that States abolish the office of coroner. The Commission also recommends that States enact legislation requiring that the medical functions of the coroner be exercised by an appointed local medical examiner and the judicial functions of the coroner position be exercised by the local prosecuting attorney. The Commission further recommends that such legislation should stipulate that official records regarding certification of death be a matter of public record, and a grand jury or specified number of citizens, by petition, may call for an inquest.

Recommendation 28. Improving Police Selection, Training, and Education.

The Commission recommends that, where needed, States create Councils on Police Standards, composed of appropriate State, local and public members, to develop and recommend minimum standards for police selection and basic training. The Commission further recommends that States enact legislation promulgating mandatory minimum standards in these areas and assigning the administration of these standards to such Councils. States should meet 100 percent of the cost of local training programs meeting mandatory State standards. The Commission further recommends that States encourage private and public institutions of higher education to offer appropriate programs for police training and that local governments establish incentive pay plans or other fiscal aids designed to help local policemen in furthering their professional training by participating in such programs.

Recommendation 29. State Criminal Code Revision.

The Commission recommends that State legislatures revise their criminal code to better define the scope of discretionary police activities. More specifically, State criminal codes should stipulate the bounds of legitimate police activity in the exercise of arrest powers, search procedures, and interrogation practices. The Commission further recommends that, where lacking, States enact comprehensive governmental tort liability statutes to protect State and local police employees from tort actions arising out of legitimate use of discretionary police powers.

Recommendation 30. Modifying Personnel Practices.

The Commission recommends modification of State laws which restrict local chief executives from appointing local police chiefs from the ranks of any qualified applicants and which restrict local police chiefs from appointing division heads and assistants reporting directly to them. The Commission further recommends that where necessary States modify veterans' preference and other State civil service regulations which serve to limit unduly or otherwise restrict the selection, appointment, and promotion of qualified local policemen.

E. CORRECTIONS

Recommendation 31. Reordering Priorities

The Commission concludes that since corrections is the step-child of the criminal justice system, it is essential that greater public attention, funds, and policy focus be directed to this field and that basic reforms be undertaken. The Commission recommends, as a matter of general public policy, that State and local officials give a high priority to upgrading correctional institutions and rehabilitation services in order to help reduce crime rates.

Recommendation 32. Strengthening Community-Based Treatment

The Commission concludes that adequately financed, staffed, and supervised community-based treatment programs including probation, work release, youth service bureaus, half-way houses, parole, and aftercare--can be more effective than institutional custody in rehabilitating most offenders and in facilitating their readjustment to society.

Recommendation 33. Refocusing State-Local Correctional Responsibilities

The Commission concludes that while State governments have an overriding responsibility to ensure the provision of certain correctional services on a statewide basis, including responsibility for assignment and transfer of convicted prisoners, other correctional activities can be more appropriately handled by local governments. Hence--

The Commission recommends that the States assume full financial, administrative, and operational responsibility for juvenile and long-term adult correctional institutions, parole, juvenile aftercare, and adult probation. The Commission further recommends that local governments retain operational and a share of the fiscal responsibility for short-term adult institutions and jails, adult and juvenile detention, and misdemeanant and juvenile probation, and that the States establish and monitor minimum standards of service, furnish planning and technical assistance, and provide a reasonable share of the costs of such activities.*

*Governor Hearnes dissented.

Recommendation 34: Consolidating State Administrative Responsibilities

The Commission recommends that the State's responsibility for correctional activities, excluding the adjudicatory functions of granting paroles or pardons, be vested in one State department or agency directly accountable to the Governor.

Recommendation 35: Upgrading the Detention Function

To ease the critical problem of comingling untried persons with convicted offenders, and to expedite the trial of such persons, the Commission recommends that States and local governments jointly plan and develop adequate adult and juvenile detention services and facilities which relate to the processes of the court system.

Recommendation 36: Programs and Facilities for Work Release

The Commission recommends that State and local governments enact legislation, where necessary, authorizing work-release programs and establishing administrative and fiscal procedures to enable the State correctional agency to utilize approved regional or community institutions and jails for the placement of those prisoners who might benefit from such programs.

Recommendation 37: Expanding Vocational Training

The Commission concludes that the educational and vocational programs of most State and local institutions have failed to equip adequately offenders with the skills and experience necessary for successful reintegration into society, and that this, in turn, has contributed to the high rate of recidivism.

The Commission, therefore, recommends that State and local governments initiate or revamp their academic and vocational training offerings for inmates of juvenile and adult institutions.

Recommendation 38: Promoting Regional Correctional Facilities

The Commission recommends that States authorize and encourage local governments through financial incentives and

technical assistance to contract with larger local units for the custody of their prisoners, or enter into agreements with other local units for the joint establishment and operation of regional jails and local institutions to handle such offenders.

Recommendation 39: Management of Short-Term Penal Institutions

The Commission recommends that short-term penal institutions be administered by appropriately trained correctional personnel.

Recommendation 40: Quantity and Quality of Personnel

The Commission concludes that many State and local correctional agencies have insufficient and inadequate professional staff due to low pay, long hours, a custodial rather than rehabilitative orientation, lack of exposure to research and development advances, and other impediments to job satisfaction. Hence --

The Commission recommends that State and appropriate local governments improve recruitment, compensation, training, and promotion practices to attract sufficient numbers of high quality personnel to the corrections system. The Commission further recommends that States establish minimum qualifications standards for correctional personnel.

Recommendation 41: Use of Paraprofessional and Volunteer Aides

The Commission recommends that, where necessary, State and local legislative bodies, personnel agencies and/or correctional agencies take action to create new personnel classification positions so that paraprofessionals and other qualified workers, including ex-offenders other than former police officers, can be used in correctional programs. The Commission further recommends that States and localities make available training and educational opportunities to such personnel to enable them to meet appropriate standards.

F. THE PUBLIC'S ROLE IN LAW ENFORCEMENT

Recommendation 42: Police-Community Relations

The Commission concludes that a workable partnership between police and community residents is necessary to effectively prevent crime. Hence,

The Commission recommends that local governments substantially increase their efforts to involve citizens in the law enforcement and criminal justice process through the establishment of police-community relations machinery and programs.

G. INTERFUNCTIONAL COOPERATION

Recommendation 43: Establishment of Local Criminal Justice Coordinating Councils

The Commission recommends that local criminal justice coordinating councils under the leadership of local chief executives be established in jurisdictions having substantial administrative responsibility for at least two of the major components of the criminal justice system. The Commission further recommends that LEAA require regional criminal justice planning agencies to coordinate their work with these local councils where they exist.

Recommendation 44: Improving Interfunctional Linkages in the State-Local Criminal Justice System

The Commission recommends that State and regional criminal justice planning agencies and local criminal justice coordinating councils take primary responsibility for improving interfunctional cooperation in the State-local criminal justice system. These agencies should encourage, among other things, the development of such coordinating mechanisms as seminars on sentencing practices for judicial and correctional personnel, police legal advisors, and a comprehensive criminal justice data system. They should also encourage the coordinating efforts of the existing professional law enforcement organizations. The Commission further recommends that State legislatures establish a joint standing committee or take other appropriate means to provide for continuing study and review of the progress in achieving a better coordinated State-local criminal justice system.

HB-563

THE COUNCIL OF STATE GOVERNMENTS

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1735 DeSALES STREET, N.W. • WASHINGTON, D.C. 20036

April 16, 1971

INFORMATION LETTER

CRIMINAL LAW REVISION: FEDERAL AND STATE EFFORTS

Latest Developments:

State efforts in criminal law codification will be the subject of hearings before the Senate Judiciary Subcommittee on Criminal Laws and Procedures in late May. State experiences in criminal law revision will be discussed at additional hearings in June.

The Congress is beginning a major effort, expected to last for two or three years, to reform and codify the Federal criminal laws. According to the Senate Subcommittee Counsel, State experiences in code revision will benefit the federal effort. The Congress wants to learn from State government drafting techniques, substantive law provisions, and code organization and style. Operating experience under new codes adopted by States will guide the federal law reform program.

Background:

Congressional action in federal criminal law reform comes in response to the final report of the National Commission on Reform of Federal Criminal Laws filed January 7, 1971. The National Commission was created by Congress in 1966 by Public Law 89-801. Commission Chairman, appointed by President Johnson, is former Governor Edmund G. Brown, of California. Vice-Chairman is Congressman Richard H. Poff, of Virginia.

The Department of Justice, acting upon the direction of President Nixon, is developing a criminal code revision which will become the Administration's version for submission to the Congress. A special legal task force has been formed within the Department to draft the code. It is monitored by a four-man policy committee composed of high Department officials.

The National Commission was careful to present the Congress with a basic working draft upon which legislative decisions could still be made. The Draft is a complete reform of the present Title 18, the criminal law section of the U. S. Code. It brings together all federal felonies, some of which are presently outside Title 18; it codifies common defenses, which are now left to common law court decisions; and establishes standard principles of criminal liability. The Draft Code restructures the system for imposing sentences. The Commission, with certain strong dissent from a minority of its members, recommended the abolition of capital punishment.

Federal-State Jurisdictional Issues:

Major provisions of the Draft Code substantially increase federal criminal jurisdiction at the expense of State jurisdiction. Section 201(b) of the Code allows the federal government to prosecute for normally state offenses wherever there is a related federal criminal code violation. This would permit federal prosecution for all crimes of violence such as murder, arson, assault in any instance where there is a related federal code offense, no matter how minor. This so-called "piggyback" provision significantly curbs state responsibility for the punishment of crimes of violence.

The basic issues of cooperative federalism are not considered at all in the Draft Code. The practical problems of federal-state relations are further complicated by the Code's jurisdictional provisions concerning federal enclaves. Over the last century and a half, the movement of the law has been toward increased assimilation of the rights of enclave residents to the

rights of state residents. This reached the point where, in the case of Evans v. Cornman (90 S. Ct. 1752 (1970)), the Supreme Court ruled that residents of federal enclaves may vote in state elections. The Code, however, makes federal criminal law specifically applicable to enclaves, and reduces the Assimilative Crimes Act to its narrowest possible dimensions. The effect of these provisions is to make enclaves practical sanctuaries from state laws, thus undermining the state's enforcement of its criminal laws in surrounding areas. In 1956 the two volume "Report of the Interdepartmental Committee to Study Problems of Jurisdiction Relating to Federal Enclaves", the most comprehensive study of the problem, recommended the almost complete retrocession of exclusive jurisdiction over federal enclaves to state governments.

The Draft Code further extends federal criminal jurisdiction to cases involving offenses affecting federal public servants engaged in performance of their official duties, whether or not the offense is specifically directed by the offender against the federal official qua federal official. Similar provisions in the Draft Code provide for federal prosecution of property crimes directed against property being manufactured, constructed or stored for the United States whether or not the criminal was aware that the property was so situated. Federal jurisdiction over crimes involving the most minimal affect upon interstate commerce, such as using a telephone, is extended. The Draft Code extends federal jurisdiction to cases where either offenders or victims use interstate travel, even though the travel itself may not be directly related to the substance of the crime.

Finally, plenary federal jurisdiction is asserted in the general statement in Section 201 of the Brown Commission Code. The language states, "When no base is specified for an offense, federal jurisdiction exists if the offense is committed anywhere within the United States, or within the special maritime and territorial jurisdiction of the United States."

State Criminal Law Revision Efforts:

State criminal law revision efforts and experience will be used by the Congress to guide its own federal criminal law reforms.

The following states have enacted new criminal codes: Connecticut (1971); Georgia (1969); Illinois (1962); Kansas (1970); Louisiana (1942); Minnesota (1963); New Mexico (1963); New York (1967); and Wisconsin (1956).

The following states have completed drafts of new criminal codes which are now before their legislatures: Alaska, Colorado, Delaware, Hawaii, Idaho, Maryland, Michigan, Montana, New Hampshire, Oregon, Pennsylvania, and Texas.

Code revision efforts are now underway in: California, Kentucky, Massachusetts, New Jersey, Ohio, Rhode Island, Missouri, and preliminary work has begun in Alabama, Nebraska, and North Carolina. The legislatures in Arizona and North Dakota have just recently authorized efforts to draft criminal code revisions.

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71-I-20

HD-563

THE COUNCIL OF STATE GOVERNMENTS

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March 18, 1971

INFORMATION LETTER

SPECIAL REVENUE SHARING FOR LAW ENFORCEMENT

Latest Developments

President Nixon sent to Congress his special revenue sharing message on Law Enforcement--the first of six such messages to cover the broad areas of law enforcement, rural development, urban development, education, manpower and transportation.

The President proposes to amend the present Omnibus Crime Control and Safe Streets Act, administered by the Law Enforcement Assistance Administration, by granting to States substantially more flexibility in the use of funds, and relieving States of much administrative burden.

Background

The major elements proposed in the President's message are:

--Funds would be allocated to the States on a population formula, from an initial authorization request of $425 million. An additional $75 million would be granted from the LEAA discretionary fund, as now authorized in existing law.

--The requirement for a state criminal justice plan would remain in the basic Act, but the approval of the state plan by the LEAA would no longer be necessary prior to the allocation of the special revenue sharing funds to the States. The plan would be filed with the LEAA for its use as a post-audit tool. The plan would continue to have to be approved by the Governor and the state criminal justice agency supervisory board.

--The requirement for matching funds, to be furnished by recipients of grants, would be eliminated. Federal funds would be used for 100 percent of project costs.

--The present requirement that grantees maintain the existing level of their own direct expenditures, and that federal funds not be used to supplant state or local funding, is eliminated. The "maintenance of effort" requirement will no longer be a condition for receiving a grant.

--LEAA would still be authorized to provide technical assistance and counseling to the States in the preparation of their statewide plans.

--Minorities' protection from discrimination under Title VI of the Civil Rights Act of 1964 would apply to the law enforcement revenue sharing program. The present act exempts States and localities from the Title VI provisions.

--The new proposals preserve the flexible pass-through formula (contained in the 1970 amendments) requiring States to make available to localities a portion of the shared revenue equal to the ratio of state-local expenditures for all criminal justice activities.

--Additional fiscal control requirements would be placed on the States. More detailed post-audit reports will be required.

--The 1970 amendments to the basic Act providing for Part E-Corrections funding will be continued in the present form.

--The 25 percent "buy-in" requirement, adopted in the 1970 amendments, whereby States will be required in fiscal year 1973 to furnish 25 percent of a sub-grantees matching funds would be eliminated.

--LEAA programs for law enforcement research, academic assistance and statistics and technical assistance will remain as they are.

Initial reaction from state officials has been favorable. Some have expressed concern that elimination of all matching and maintenance of effort requirements may result in a net loss of federal, state and local funds coming into the criminal justice system; and that localities, no longer having to put up their match for grants, might become careless with the "free" money.

Copies of the message and legislation will be sent upon request.

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71-I-10

HB-563

THE COUNCIL OF STATE GOVERNMENTS

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April 8, 1971

SPECIAL LETTER

JUVENILE DELINQUENCY LEGISLATION

Latest Developments

Congress is moving on pending juvenile delinquency legislation. The June 30, 1971 expiration of the Juvenile Delinquency Prevention and Control Act has prompted the General Subcommittee on Education of the House Education and Labor Committee, chaired by Rep. Roman Pucinski (Ill) and the Senate Judiciary's Subcommittee on Juvenile Delinquency, chaired by Sen. Birch Bayh (Ind) to begin hearings on pending legislation. Both subcommittees have heard Administration witnesses. Hearings will continue into May.

The Administration's proposal is not yet in bill form. Developed by HEW's Youth Development and Delinquency Prevention Administration, under Robert Gemignani, the proposal calls for a "national strategy" to develop model systems for preventing delinquency in inner city, suburb, rural setting, and the college campus. Final Administration approval has not been given to the HEW bill due to objections from the Justice Department.

Background

The Juvenile Delinquency Prevention and Control Act of 1968 (P.L. 90-445) was designed to be a companion program to block grant Omnibus Crime Control and Safe Streets Act. It provides for grants to States and cities for planning and action programs to prevent, control. and rehabilitate juvenile delinquents. Complex language of the Act prevented States from receiving action funds if they opted to do comprehensive planning. States seeking funds to coordinate juvenile delinquency projects with Omnibus Crime Control programs were frustrated by restrictive guidelines and bureaucratic mismanagement of program. Underfunding of Act (FY 69: $5 million; FY 70: $10 million; FY 71: $15 million)in spite of authorizations of $25 million, $50 million and $75 million, respectively, indicate low priority of program in HEW.

Alternative Proposals to be Considered:

I. The Administration requests $10 million to develop a "national strategy" to test new approaches, techniques and model systems, seeking new knowledge about delinquent behavior, and transferring such findings into programs being funded by federal grant programs. Model systems for prevention and rehabilitation will be established for inner cities, suburbs, rural areas, and college campuses. The goals of HEW proposal are coordination of federal programs relating directly to delinquency, and promotion of joint funding. At present eight federal departments are involved directly in programs for delinquent youths. An additional eight agencies conduct a total of 75 programs for youth generally. Five HEW task forces will plan model delinquency-prevention projects; gather data; recommend projects for funding; assist applicants in program development; formulate evaluation systems; provide program consultation; and disseminate results.

II. Rep. Tom Railsback (Ill) and 50 other House members propose, in H.R. 45, creation of the "Institute for Continuing Studies of Juvenile Justice." The Institute will collect data on the treatment and control of juvenile offenders; serve as an information bank; and function as a graduate training center. No specific funds are authorized.

III. Rep. Claude Pepper (Fla), chairman of the House Select Committee on Crime, plans to introduce the "Juvenile Research Institute and Training Center Act." The bill would create a Coordinating Committee for Juvenile Justice composed of heads of federal agencies dealing with juvenile programs: Office of Education, Children's Bureau, Youth Development and Delinquency Prevention Administration, National Institute of Mental Health (all HEW); Law Enforcement Assistance Administration, Bureau of Prisons (Justice); Office of Manpower Training, U. S. Employment Service (Labor); Model Cities Program (HUD); and Legal Services Division (OEO). The committee would evaluate federal programs dealing with juveniles and recommend improvements. The Institute would collect information on juvenile justice; provide technical assistance to State, localities, and private agencies, training for professionals, and grants for action programs. The authorization request is $8 million over 3 years.

IV. Rep. Roman Pucinski (Ill), Chairman of the General Subcommittee on Education of House Education and Labor Committee has introduced H.R. 6247 to extend the present Juvenile Delinquency Prevention and Control Act for five years, and increase the funding authorization.

V. The National Governors' Conference policy position, adopted in August, 1970, recommend transfer of planning and action program section (Title I) of the 1968 Juvenile Delinquency Act to Law Enforcement Assistance Administration. State dissatisfaction with HEW, and their satisfaction with the block grant mechanism administered by LEAA prompted this decision. During debate on policy position, many Governors expressed view that there must be a dual effort toward solving the juvenile problem. Improvements in juvenile justice system and law enforcement are essential; but there must also be efforts to divert youth from the justice system by preventive and youth development programs. Several Governors emphasized need for a comprehensive approach to problems of youth offenders. They pointed out that delinquent youths should not be set apart from government's total youth development effort. This approach is frustrated by multiplication of youth aid programs among diverse federal agencies. Governors have urged a "block grant for youth."

To date, approximately $38 million in LEAA block grant funds have gone for prevention and control of juvenile delinquency in FY 69 and 70 while the Youth Development Administration allocated a mere $13,713,000. In FY 1971, LEAA state plans call for over $60 million for delinquency prevention and control while the YDDPA (HEW) will be granting $14 million.

Action Needed

Hearings in both Senate and House will continue. State officials wishing to testify should contact this office, or the Chairman of the Senate Subcommittee on Juvenile Delinquency, or Chairman of the House General Subcommittee on Education. Views on proposed federal legislation are requested by this office. Copies of specific bills will be sent upon request.

Staff Contact: James A. R. Johnson, Special Assistant

71-S-6

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Congressional Record

PROCEEDINGS AND DEBATES OF THE 92d CONGRESS, FIRST SESSION

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ECONOMIC DEVELOPMENT—FIELD HEARINGS TO EXAMINE THE PROPER DIRECTION AND FORM OF AN EFFECTIVE PROGRAM

Mr. MONTOYA. Mr. President, I rise to apprise the Senate of field hearings which will be held during the course of the next few weeks with respect to Appalachia and the other regional commissions.

The concept of creative federalism enunciated by Lyndon Johnson early in his Presidency, and the statement of awareness that we must "help State and local governments develop greater capacity to plan and manage their own affairs" which was contained in the state of the Union address by President Nixon, are both clear characterizations of the direction that government must take. If we start from the premise that the responsibility of government is to serve the people, then I believe it is our duty to achieve the best level of understanding of the kinds of public services that the people of the United States need to maintain proper growth and development.

The lasting effect of the great depression of the 1930's was not the catastrophic economic losses suffered, as terrible as they were, rather, it was the loss of the initiative and ability to render services to the public suffered by local and State governments. We now fully appreciate the result of the continuous movement of power to the National Government.

In and of itself, this centralization was not bad. It enabled us to frame the recovery from the depression, to mobilize for and conduct our national defense during World War II and to make the changeover from a wartime economy to an economy directed toward peaceful pursuits. The centralization of power served its purpose and like all other political responses, it has run its course.

We are now faced with a new set of imperatives, a new set of needs, a new set of national directions. In order to carry them forward we must decentralize government activities and the responsibilities for decisionmaking. This is not to say that there is no longer a need for a strong, active, and concerned Federal Government. What it means is that along with that kind of Federal Government, we must reestablish strong, active, and committed State and local governments. We have all been engaged in politics—the art of government—long enough to realize that there is no single answer, that the art of government is the art of change without violent upset. We must be in a position to evaluate and reevaluate what will work and under what circumstances it will work best.

The President, in his state of the Union message, put great emphasis on revenue sharing. Whether his recommendations will be enacted and whether they will work are questions which we will consider during the 92d Congress. But revenue sharing alone is not the answer. Our experiences over the past 25 years with a series of different approaches to long-term unemployment problems, short-term economic responses, natural catastrophe mechanisms, and the need for intelligent, well-reasoned assessments of priorities has given us a fund of experience and knowledge on which to draw.

As a result of President Johnson's concept of creative federalism, the Congress in 1965 enacted the Appalachian Regional Development Act and the Public Works and Economic Development Act. These programs, which have been in operation for 6 years, provide us with an excellent base from which to examine and recommend legislation in response to the broad range of the problems of the decade of the 1970's.

As we at the Federal level have been working with the programs to which I have referred, a number of States have developed responses of their own. During the months of February, March, and April, we shall inquire in depth as to how these programs have worked, what has been learned from them and how the lessons can be used to shape a new program of State-Federal action to achieve the goal of economic prosperity in a framework of healthy social, cultural, and environmental development.

In the literature of political science and economics, and in the recommendations of Government agencies are a number of worthy proposals. At this time we are not in a position to choose a particular approach to pursue. What the Subcommittee on Economic Development intends to do during these next 3 months is examine many of those ideas in a general framework. We are looking to the creation of legislation to establish a national economic development program, a public works and public facilities investment plan to determine how priorities for public works should be established, to create an inventory of what is needed, and to equip State and local governments to assume the major role in these determinations.

We will concern ourselves with such questions as what constitutes proper development, how to determine the development goals and objectives of State and local governments, and how the Federal Government should be structured to assist the State and local governments in meeting these responsibilities.

As I have said, there are many suggestions. There have been many experiments, the most notable of which are the Appalachian regional development program and the approaches of the Public Works and Economic Development Act.

On February 8, 9, and 10, the Subcommittee on Economic Development will consider S. 575, a bill to extend and revise the Appalachian Act introduced by Senator RANDOLPH, the chairman of the Committee on Public Works, and Senator JOHN SHERMAN COOPER, the ranking minority member. Through these hearings, we will determine what has worked and why it has worked.

As Senator RANDOLPH said in his introductory remarks in this Chamber on February 3:

> I am proud that the Appalachian Development Program has been a leader and an innovator in the areas of government organization and revenue sharing. The Committee on Public Works recognizes the significance of the bold new steps that have been taken in Appalachia, and we are studying the Appalachian program as a possible pattern for economic development and other programs elsewhere.

I concur in his observation and agree with his further statement:

> Based on what we have learned in the past six years and what we expect to learn this year, I am sure that the Appalachian program will be modified and refined. We will, however, want to preserve the momentum and the spirit of cooperation and Federal-State partnership generated under the Appalachian program.

Senator RANDOLPH and Senator COOPER have done much to bring to the attention of the Senate, the Congress, and the Nation, the need for this Appalachian program and the important purposes which it serves. Following these hearings, the subcommittee will begin a series of field hearings which will take us to Raleigh, N.C., February 18, 19, and 20; Memphis, Tenn., March 5 and 6; Los Angeles, Calif., April 1, 2, and 3; Albuquerque and Santa Fe, N. Mex., April 5 and 6; Seattle, Wash., April 14 and 15; Anchorage and Fairbanks, Alaska, April 16, 17, and 18. The sites of these hearings

were chosen because in each place we expect to examine a different aspect of the major problems associated with economic development.

Raleigh, N.C., because of the knowledge and experience of the Governors, other members of State governments, local officials, and private citizens in that area of the South in working with the Appalachian program and the regional economic development program under title V of the Public Works and Economic Development Act.

Memphis, Tenn., because of the strong desire of the leaders of the States of the Midsouth to create a regional economic development program and because of the depth of experience with economic development districts established under title III of the Public Works and Economic Development Act which has been gained in that area.

We will hold hearings in Los Angeles to examine in some detail the long-term development problems of a major metropolitan area which has large minority populations not benefiting from the general prosperity of the area. The current technological unemployment in Los Angeles also should provide us with some interesting testimony.

In New Mexico we can concentrate on the alternatives of the regional commission and State development approach. We will be able to examine the issue with Governors, other State officials, and private individuals who have been working within the regional concept for the last 5 years. During these hearings we can also discuss the specific needs of Indians for separate treatment in order to help them defeat their long-term depression situation.

In Seattle, we will be able to discuss with the Governors of the Northwest their great concern for a regional development commission and to look into the question of pervasive unemployment which that general area has experienced.

In Alaska, we will be able to take full advantage of the knowledge gained by that State in its efforts to achieve economic revitalization following the disastrous earthquake in 1964. In Alaska we will be able to test the one-State approach as compared with the multistate approach.

It is our intention wherever we go to also raise the question of how best to describe the form of the Federal response to those situations where plant closings, loss of vital natural resources, and elimination of Government facilities create economic catastrophes. In this regard, I will join with Senator RANDOLPH and other Members of the Senate in the introduction of a bill to revitalize the accelerated public works program. We shall use this legislation which will be introduced next week as a vehicle for discussion on how best to do this job.

All of the witnesses will be asked to testify on the following outline of questions. We hope that they will respond to as many of the areas as they believe their experience and professional capability allow them.

First. What are the objectives of economic development?

In terms of these goals, what specifically has been the impact of the following on the economic development of your area:

Titles I, II, III, and IV of the Public Works and Development Act as administered by the Economic Development Administration: Its impact on immediate economic development and its impact on continuing economic development.

The regional commissions as created by title V of the Public Works and Economic Development Act.

Any other private, local, State, or Federal programs and agencies which you believe have the task of fostering economic development.

Would you comment on the following proposed local-State-Federal structure for implementing these economic development goals or, if you have other suggestions, please present them to the committee:

Should the entire State be divided into multicounty development areas, and if so—

Who would authorize and designate the districts: The State, Federal legislation, the local communities or some combination of these?

What criteria would be used to delineate these districts?

Should these districts be limited to areas of economic distress or would they be organized around areas of potential economic growth—for example, growth centers?

Would these districts focus in nonmetropolitan areas or should they include metropolitan areas?

What would be the authority and responsibilities of the districts?

What would be the relation of these districts to the State? To Federal agencies? To local governmental authorities? To other multicounty districts which might already operate in the area?

Should the State establish a State-level economic development agency within the office of the Governor? If so—

What responsibilities and authority should this agency need to be effective?

What would be the relation of the agency to local governmental units and locally initiated plans and projects? Local development districts?

What would be the relation of this State-level agency to other State line agencies?

What would be the relation of this State agency to Federal Departments?

Would such an agency and a State development plan be a prerequisite to further Federal assistance?

Should the Federal Government be organized on a multistate regional basis or should we proceed on a State-by-State basis?

What would be the advantage of multistate regional commissions, such as the Appalachia Regional Commission and the title V commissions?

What criteria would be used to designate these regional groupings?

What responsibilities and authority should these regional commissions have to be effective?

Would the commissions include the entire State or only that area meeting the designation criteria? Why?

Should the regional commissions be represented at the Federal level as part of the Department of Commerce or within the executive offices by a Federal coordinator for economic development for example? What would be the role of the Federal side of the regional commission?

What would be the advantage of proceeding on a State-by-State basis?

Would the States be represented at the Federal level through a line agency or within the executive office by a Federal coordinator for economic development for example?

What would be the function of the Federal coordinator?

What would be the relation of the Federal coordinator to local development districts? The States? To other Federal Departments?

Should there be a regional counterpart in the Federal administrative regions to assist the Federal coordinator and the States?

What would be the relation of the private sector to such a structure?

What programs and devices do you recommend to accomplish these goals of economic development? For example, the use of supplemental grants and development corporations.

Second. What should be the role of the Federal and State governments in short-term economic readjustments in rural and urban areas which suffer abrupt and severe unemployment and loss of income due to setbacks in economic activity?

What programs and devices would be necessary to carry out such assistance?

What structure could best accomplish this assistance effort? For example, the use of a Federal coordinating field committee.

Following these hearings and an examination of the record, we shall draft legislation. We shall then hold hearings in Washington, D.C., with a wide range of witnesses who can give us their critical comments and their best suggestions on how to develop a workable procedure to achieve our goals.

Preparation for this program evaluation has been proceeding for some weeks. Members of the subcommittee have indicated their intense interest in the subject. I look to their support and participation in this undertaking. I know that we can develop a good bill in the tradition of the Committee on Public Works. I look forward to working with Senator HOWARD BAKER, the ranking minority member of the subcommittee, and all of his colleagues together with my Democratic colleagues. In this spirit of cooperation, we can approach this large and difficult task with reasonable hope for success to the benefit of the people of this country.

HB-563

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / POUCH K — STATE CAPITOL
JUNEAU 99801

April 24, 1972 .

The Honorable William J. Moran
Chairman
House Judiciary Committee
Alaska State Legislature
Juneau, Alaska 99801

Dear Chairman Moran:

I am sending you a proposed draft to substitute for House Bill 563 submitted by the Governor to insure security and privacy of criminal justice information systems. I am also sending you a copy of my letter to the Senate Judiciary Committee on Senate Bill 387 which is identical to House Bill 753 referred to your committee.

The proposed substitute would specifically require the appplication of the Administrative Procedure Act in relation to the adoption of regulations pursuant to this proposed chapter. Although such a specific reference may not be necessary for the purposes of the Administrative Procedure Act, the reference makes it absolutely clear that it does apply.

Sec. 12.62.020 of the proposed bill has been altered so that the commission is required to adopt regulations concerning the collection and storage of information. Therefore, information may not be placed in such systems, or if already there, it may not remain in such systems, unless the commission specifically permits it by regulation. In addition, a long list of information is specifically excluded from the systems by the provisions of subsection (b) of this section. These exclusions include, among others, professional license information, revenue and taxation information, information relating to state welfare programs, and state personnel information.

The provisions relating to confidential information have been eliminated, and an individual may see all information referring to himself in a criminal justice information system.

The provisions relating to interstate systems for House Bill 753 have been incorporated into this proposed bill.

Also, most of the more detailed provisions relating to the right of individual access, inspection, and challenge from House Bill 753 have been incorporated into this proposed bill.

The reference to "potential criminal offenders" in the definition of "criminal justice information" has been removed.

Finally, the effective date for this proposed bill would be October 1, 1972 to allow the Governor's Commission on the Administration of Justice time to establish the needed regulations.

Very truly yours,

JOHN E. HAVELOCK
ATTORNEY GENERAL

cc: The Honorable William A. Egan
Governor

JEH:gb

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / POUCH K — STATE CAPITOL
JUNEAU 99801

April 10, 1972

The Honorable Robert H. Ziegler
Chairman
Senate Judiciary Committee
Alaska State Legislature
Juneau, Alaska

Re: SB 387

Dear Chairman Ziegler:

In reviewing SB 387, "An Act protecting the constitutional right of privacy of those individuals concerning whom records are maintained by governmental agencies," several possible problems have come to our attention. I believe your committee should be made aware of these problems.

I. PROBLEMS RELATED TO THE SECTION ON INDIVIDUAL RECORDS.

1. The proposed new section AS 09.25.125, which would set up a regulating scheme governing the collection and exchange of information collected by all state government agencies, would regulate these activities far beyond the needs for protecting the privacy of the individual or the security of the information. The notice provisions would, in many cases, create an unnecessary administrative burden on agencies presently collecting needed information. The requirement of permission or notice, when information is disclosed, would create a like unnecessary administrative burden in many situations; in other situations it would inhibit or prevent legitimate exchange or disclosure of information by government agencies.

2. The term "record" as used in Section 09.25.125 is never defined. Consequently, under a very broad definition of this term it is possible that any employees of a state agency would have to meet the permission and notice provisions of this section whenever he released any kind of information about another individual. This could possibly prevent public officials of the state from making all kinds of public statements and would thus lead to an extremely undesirable result.

3. In Section 09.25.125(d)(1) the time period "reasonably necessary" is pc ibly too vague and might lead to unnecessary litigati .

4. It is not clear what Section 09.25.125(d)(2) really means.

5. It would be inappropriate in Section 09.25.125 (e) to require the governor to report on records and/or investigatory files which might be maintained by the legislative and judicial branches of government.

II. PROBLEMS RELATED TO THE SECTIONS ON CRIMINAL JUSTICE INFORMATION SYSTEMS.

1. Definition of Criminal Justice Information System. Nowhere in Secs. 12.62.010 through 12.62.120 is the term "criminal justice information system" defined. Without knowing just what these Sections purport to regulate, it is impossible to discuss intelligently what effects these proposed Sections will or will not have on the collections and dissemination of information by criminal justice agencies within the state.

Section 12.62.030 states that only "criminal record information" may be collected and stored in criminal justice information systems. The Section goes on to give a list of examples of the kinds of information which may be put in the system and then it states, "[t]his information is restricted to that recorded as the result of the initiation of criminal proceedings or of consequent proceedings related to the criminal proceedings." This language evidently serves to define "criminal record information," the only kind of information which may be stored in criminal justice information systems. Without a definition of just what a criminal justice information system is, however, it is not exactly clear what this Section does.

If a "criminal justice information system" comprises all the information collected by a criminal justice agency, then it would prevent the compilation of investigative reports by any police or other agency. Further, it would prevent the Department of Public Safety from compiling its file of drivers licenses, fishing licenses and so forth.

If "criminal justice information system" means any data bank compiled by a criminal justice agency so that information from it can be recovered by an electronic computer it will preclude the inclusion in one system or the establishment of separate systems fo drivers license information, fishing license information and so forth. Further, it would prohibit the establishment of a computer management information system by any of these agencies.

For the purposes of this bill, one further possible interpretation of "criminal justice information system" would simply be to allow the criminal justice agencies themselves to designate that portion of their total records which comprise their "criminal justice information system". They would then be required to keep this information in a separate manual or electronic file, but this portion of the act would not regulate the collection, dissemination, and storage of other information if it were kept separately from the so-called "criminal justice information system."

Without some definition of "criminal justice information system," it is impossible for us to tell what the legal effect of this bill would be.

2. Restriction on the Scope of Criminal Justice Information Systems. Even though the exact extent of the regulation of records collected by criminal justice agencies which would be imposed by this bill is completely unclear, it is quite clear that only information recorded as the result of the initiation of criminal proceedings can be collected and stored in criminal justice information systems, whatever they may be. If the bill were interpreted to allow the Department of Public Safety to continue to keep a drivers license file and a fishing license file, under the provisions of 12.62.030, these files could not be combined with so-called criminal offender record information and included in the criminal justice information system. Likewise, a management information system could not be included in a criminal justice information system.

It is true that putting too much information in one file system poses a potential threat to privacy and freedom even if all the information collected is a matter of public record. Likewise, it is, of course, more efficient not to have to maintain too many separate filing systems. Privacy and freedom should not be sacrificed at the expense of efficiency. However, in this instance we do not see how the inclusion of this information poses a threat to privacy and freedom. The added expense of having to maintain two or three separate electronic filing systems is unjustified.

I would like to emphasize, however, that the basic notion that adequate safeguards be established to keep information out of any electronic file system used by criminal justice agencies which would pose a threat to privacy and freedom is sound. However, the restrictions imposed by this bill go beyond what is needed for adequate protection, and they impose unneeded inefficiencies.

The restrictions to which we are objecting here are imposed both by Section 12.62.020 and Section 12.62.090.

3. Provision Relating to Legislative Review of Regulations. Section 12.62.020 provides that regulations adopted pursuant to this proposed chapter between now and the first day of the next legislature will be in effect until March 15, 1973. If they have not been acted upon by the legislature by that date, "the regulations are of no effect." Regulations adopted after the first day of the next legislature are apparently of no effect until they have been acted upon by the legislature.

First, these proposed provisions for legislative review could possibly leave us with a totally unregulated system if no action is taken by March 15, 1973. The provision would not suspend the operation of criminal justice information systems on March 15, 1973; it would simply suspend the regulation of them.

Second, the provision is somewhat unclear as to when regulations adopted after the first day of the next legislature would take effect. Since they are subject to "approval, rejection, or amendment," I presume they would not take effect until the legislature acted upon them. This would leave the commission almost no flexibility in regulating criminal justice information systems. While this might possibly prevent changes in regulations which would pose a threat to privacy in the eyes of the legislature, it would also prevent the commission from taking immediate action where protection might be needed.

Third, this Section does not follow the procedure set out in Section 44.62.320 which is the usual method of legislative review of administrative regulation. We believe that the procedure set out in Section 44.62.320 is the procedure which should be established here for possible legislative action on administrative regulations adopted pursuant to this chapter.

4. Warrant Provisions of Section 12.62.030(f). This Section provides that information can be retrieved from the system by asking certain kinds of questions of the system only after a warrant has first been obtained from a judicial officer. The judicial officer must determine that

> probable cause has been shown that (1) access is imperative for purposes of the criminal justice agency's investigational or other responsibilities, and (2) the information sought to be obtained is not reasonably available from any other source or through any other method.

Generally, the standard of "probable cause" is not applied to these particular kinds of findings. Certainly there are some " probable cause" findings which might well be required before such a warrant were issued, but I do not believe this standard makes very much sense when it is applied to the two required

findings set out in this section. I realize that this provision of the bill was taken directly from the bill prepared for the Project SEARCH (System for Electronic Analysis and Retrieval of Criminal Histories) Committee on Security and Privacy; however, I still believe it is an incorrect use of this standard.

5. Dedication Requirements of Section 12.62.070(a). This requires that all components of the system be dedicated to the criminal justice information system and that no components be used for any other purpose. This is unnecessary because adequate and equivalent safeguards can be provided without requiring the total dedication.

6. Purging Provisions of Section 12.62.090. Although it is evident that the legislature may wish to require the purging of information relating to an individual from the system where there has been no conviction, there are two matters relating to this section which I hope will be carefully considered. First, no purging is required of information for persons who have one or more convictions; the purging requirement applies only to persons with no record at all. Second, it is not clear whether or not a purging is required if a person is convicted of some different or lesser charge and not on the basis of the original charge filed.

7. Penalties. The criminal penalties section would impose a penalty on anyone who communicates or seeks to communicate criminal offender record information except in accordance with the provisions of this proposed chapter. In the legislative findings and purpose section it is stated that the purposes of the chapter are, among others, to control and coordinate criminal offender record keeping within the state. The chapter purports to do this by regulating the flow of "criminal offender record information," a term which is never exactly defined, in and through "criminal justice information systems," a term which is not defined at all. Does this mean that the only way "criminal offender record information" can be communicated is via "criminal justice information systems"? Without some better definitions it is impossible to know. Further, it would seem highly undesirable to impose a severe criminal penalty for the wrongful handling of this information when the information to which this penalty applies is nowhere carefully defined.

The problems outlined in this letter are not exhaustive of those we have found in the bill. I would like to once again suggest that House Bill 563 represents a much more well thought out approach to the problems which this bill seeks to address.

Very truly yours,

JOHN E. HAVELOCK
ATTORNEY GENERAL

JEH:gb

HB-563

IN REPLY PLEASE REFER TO

UNITED STATES DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
WASHINGTON, D.C. 20530

SPECIAL CONDITIONS

Grantee (Name of SPA): Criminal Justice Planning Agency (Alaska)

Grant Number: 71A-202

In addition to the General Conditions and Conditions Applicable to Fiscal Administration to which this grant is subject, it is also conditioned upon and subject to compliance with the following special condition(s):

1. Approval of this plan does not constitute approval of planned fund allocation required for major cities and counties nor of action fund levels for areas of high crime incidence and high law enforcement activity. The statutory amendment to P.L. 90-351 set out in § 203(c) and 303 require determination by the Law Enforcement Assistance Administration in respect to these new requirements. Such determinations will be made upon submission of a Plan Supplement Document which is to be submitted by May 1, 1971. In addition, Section 301(c) of the amendments set forth new minimum State matching contribution ratios of 25% State funds to 75% Federal except for Part C - Construction programs which remain at a ratio of 50% State to 50% Federal. Matching contribution may be made at the amended level.

2. In respect to action program No. 4B of the 1971 State plan entitled Development of Criminal Justice Information System, and relevant Multi-year programs, the grantee agrees to: (a) insure that adequate provisions are made for system security, the protection of individual privacy and the insurance of the integrity and accuracy of data collection and; (b) in view of the commitment of funds to this program, will coordinate development of the program with any compatible multi-State effort to secure the benefits of exchange of data and use of standard reporting formats and definitions, to enhance the benefits and potential of its information system facilities and needed interface with National Criminal Justice Information Systems.

3. Within 30 days of receipt of grant award, grantee shall provide a complete discussion of the needs and problems of its two largest cities, Anchorage and Fairbanks, consistent with the requirements of the SPA Guide, page 48.

4. Within 60 days of receipt of grant award, grantee will submit to LEAA a schedule of implementation of the program funded for $45,900 in 1970, and which is intended to serve as the basis for 1971's organized crime program. The schedule should contain a time sequence in quarterly phases, and an approximate range of personnel, equipment, supplies or services to be acquired.

5. The level of funding for programs related to civil disorders, organized crime and juvenile delinquency, coupled with modest program support in the prior fiscal years (1969 and 1970) raises questions concerning responsiveness to the statutory requirement that plans and programs be comprehensive in scope and provide for the improvement and coordination of all aspects of law enforcement. Accordingly, plan approval is based upon the understanding that the State will (i) allocate a reasonable portion of future block grant funds for such programs out of fiscal year 1972 action funds to be made available on the basis of this approved 1971 plan and (ii) structure the multi-year component of the next submission (due December 31, 1971) to reflect a continuing reasonable allocation to these program areas, consistent with a proper analysis of the State's needs, problems and priorities.

6. In its fiscal year 1972 and future State plan submissions, the grantee will provide a detailed analysis of the State's potential in regard to the area of riots and civil disorders.

7. Special Conditions numbers 1, 2, 3 and 4 attached to Alaska'a 1971 planning grant application were concerned with the SPA staff and board composition. Until these Special Conditions have been satisfied 1971 action funds will not be released to Alaska for funding of action programs contained in this 1971 plan.

8. No funds provided under this grant may be used to pay for the establishment or operation of any agency or center unless that agency or center is established in the executive branch of the government, is under the direct supervision of the Governor and performs only those functions directly related to the development and implementation of the approved State Comprehensive Plan.

HB-563

L. Parker

MINUTES

GOVERNOR'S COMMISSION ON THE ADMINISTRATION OF JUSTICE

April 25, 1972

The sixth meeting of the Governor's Commission on the Administration of Justice was called to order by Vice Chairman John Huber on April 25, 1972 at 2 p.m. in the Governor's Conference Room, Capitol Building, Juneau, Alaska.

Commission members in attendance were:

John Havelock, Attorney General, Dept. of Law, Chairman
John Huber, State Representative, Fairbanks, Vice Chairman
John Rader, State Senator, Anchorage
Thomas Strickland, Anchorage Police Department, retired
Wallis Droz, City Manager, Fairbanks
George Charles, Bethel
Frederick P. McGinnis, Commissioner, Health & Social Services
Herbert D. Soll, Public Defender Agency, Anchorage
George Boney, Chief Justice, Alaska Supreme Court
Pat Wellington, Deputy Commissioner, Dept. of Public Safety
Gordon E. Evans, Attorney, Juneau

Also attending were:

Lt. Brad Moerlins, Planner, Anchorage Police Department
Off. Jerry Prater, Planner, Fairbanks Police Department
Charles Smith, Planner, Juneau, Dept. of Public Safety
Paula Easley, Conference Secretary
Will Condon, Dept. of Law

Criminal Justice Planning Agency staff present were:

Lauris S. Parker, Executive Director
Dennis W. Lund, Corrections Specialist
Terry P. Hanson, Law Enforcement Specialist

Mr. Parker introduced others in attendance: Florence Campbell of the Dept. of Public Safety, Messrs. Broad, Crobell and Coffer of Arther Young & Company and government interns Charles Dickie, Jr., Jim Moore, Joan Hendrie and Cathy See. Gordon E. Evans, newly appointed member to the Commission, was also introduced.

APPROVAL OF MINUTES

Mr. Huber turned the chair to Mr. Havelock who asked if all members had received and read the Minutes of the February 24 meeting and if there were corrections or additions. As there were none, Mr. Droz MOVED that the Minutes be approved, and they were adopted as written. ACTION

Mr. Boney then MOVED that the Alaska Justice Information System application be approved and that AJIS not be implemented until adequate security be provided, either by legislative action or by administrative approval of this body. The motion carried. ACTION

Following passage of the motion, Mr. Wellington reminded members that the Commission could withhold funds until the security provisions were in effect. Mr. Parker added that federal funds were disbursed on a monthly drawdown basis for all projects, and that if a subgrantee failed to abide by any special provisions or restrictions to a grant award, the funds could be cancelled.

Discussion and several motions made and withdrawn referred to the desirability of a legislative statement of policy with regard to the security, information limitations and access to the system. Result of the discussion was agreement that award of the AJIS grant, subject to strict security provisions imposed by the Commission, the Committee on Security and Privacy and the Department of Public Safety, would keep administrative authority within the scope of these bodies rather than with the 60-member legislature. Mr. Moerlins reminded the Commission that the special conditions made a part of grant awards in effect became law with regard to administration of grant funds, and Mr. Parker added that all grants were administered by the planning agency in strict accordance with the Commission's directives.

DEPARTMENT OF LAW INTERN PROJECT REQUEST

The application, being considered prior to the first Commission funding session due to the time element, requested federal funds of $5,962 to cover salaries and employee benefits of three legal interns for a two and a half month period this summer. Mr. Wellington MOVED for approval of the project, and motion carried. ACTION

APPLICATION FOR DISTRICT ATTORNEY SEMINAR

Mr. Parker said the seminar was planned for May 23 and 24, 1972 and requested $3,705 from the CJPA training fund. Since funds were not available from that source, $2,400 could be transferred from 1971 excess funds from Department of Law projects if the Commission wished. Mr. Boney MOVED for approval of the project in the amount of available funds and that the money be transferred from the Department of Law's closed projects. The motion carried. ACTION

HB-611

Summary Of Proposed Recodification Of Federal Credit Union Act

As Approved by The CUNA International Executive Committee
On Recommendation of the Legal and Legislative Committee

I. Corporate Powers And Activities

SUBJECT	PRESENT PROVISION	PROPOSAL	COMMENTS
Purpose of Credit Union	The Act (Sec. 1752) defines a "Federal Credit Union" as a cooperative association organized in accordance with the provisions of the Act for the purpose of promoting thrift among its members and creating a source of credit for provident or productive purposes.	To incorporate the definition of a credit union of CUNA Model Credit Union Act (Sec. 1): "A credit union is a cooperative non-profit association incorporated in accordance with the provisions of this Act for the purpose of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest, and providing an opportunity for its members to use and control their own money in order to improve their economic and social condition."	This is a broader definition of a credit union in keeping with changes in the economy and the present and future needs of the people.
Organization Certificates	The Act (Sec. 1753) provides that any seven or more natural persons who desire to form a federal credit union shall subscribe before some officer competent to administer oaths an organization certificate in duplicate which shall specifically set forth certain information.	To allow the Organization Certificate to be signed before a witness or the signatures to be acknowledged by some official competent to acknowledge.	To simplify the procedures for organizing a federal credit union by making it more convenient for the persons signing the Organization Certificate to have their signatures authenticated.
Borrowing Power of Credit Union	The Act (Sec. 1757-8(10)) empowers credit union to borrow, in accordance with such rules and regulations as may be prescribed by the Director of Bureau, from any source, in any aggregate amount not exceeding 50% of its paid-in and unimpaired capital and surplus.	That all language be removed from the Act (or regulations) that imposes borrowing limitations on the credit union.	To better enable credit unions to meet the financial needs of members.
Discounting of Notes	The Act (Sec. 1757 (10)) authorizes federal credit unions to discount eligible paper with Federal Intermediate Credit Banks.	That the provisions limiting discounting of paper to Federal Intermediate Credit Bank be deleted from the law and an unrestricted discounting privilege be substituted.	To provide essential flexibility to credit union operations. Restricting discounting to Federal Intermediate Credit Banks is too narrow a privilege, according to Bureau.
Purchase of Assets	The Act (Sec. 1766) gives the Director of the Bureau authority to prescribe rules and regulations concerning merger, consolidation, and dissolution of federal credit unions. Federal Credit Union Rules and Regulations, August 1969, Par. 308, sets forth merger procedures.	To authorize a credit union to sell all or any part of its assets to another credit union or to purchase all or any part of the assets of another credit union; and to further provide that the purchasing credit union may assume any or all of the liabilities of the selling credit union or of the members whether or not they are members of the purchasing credit union; and requiring that the agreement between the selling and purchasing credit unions must be approved by the Administrator.	To facilitate the timely dissolution of a credit union, while conserving its assets and protecting the interests of members.
Liquidation Procedures	The Act (Sec. 1766) gives the Director of Bureau authority to prescribe rules and regulations concerning merger, consolidation, and dissolution of credit unions, and specifies certain policies and responsibilities in connection with voluntary and involuntary liquidation. Federal Credit Union Rules and Regulations, August 1969, (part 310) establishes the policy for liquidation of credit unions.	To incorporate the provisions on liquidation found in the CUNA Model Credit Union Act (Sec. 33(b) (c)), which requires approval of dissolution by majority of members at meeting or in writing, and notification of supervisory department of intent to liquidate. Further prescribes suspension procedure to be followed by department, providing for hearing before issuance of involuntary liquidation notice and appointment of liquidating agent, and right of credit union to request stay of execution by appealing to courts.	To provide a more systematic procedure on dissolution, setting forth rights and responsibilities of all parties thereto.
Donations by Credit Unions	The Act is silent, and the Bureau has ruled donations are not within incidental powers if credit union does not anticipate an immediate, direct and current pecuniary gain or donation does not forward credit union's purpose.	That the board of directors be permitted to authorize donations by the credit union to community, charitable and civic organizations.	To permit credit unions to be better integrated in civic and community affairs.
Incidental Powers	The Act (Sec. 1757) states Federal Credit Union shall have power "to exercise such incidental powers as shall be necessary or requisite to enable it to carry out effectively the business for which it is incorporated."	To authorize a federal credit union to exercise such incidental powers as shall be necessary or requisite to enable it to carry out efficiently the business for which it is organized, including such incidental powers as are generally granted to corporations.	Federal credit unions should be considered as any other corporation with respect to inherent powers.
Overseas Checking Accounts	The Act is silent.	To authorize federal credit unions operating overseas branches to open checking accounts in foreign banks which are correspondents for U. S. banks.	Authority is presently lacking for federal credit unions with overseas branches to open checking accounts in foreign banks, according to the Bureau. This would be particularly helpful to military credit unions.

SUBJECT	PRESENT PROVISION	PROPOSAL	COMMENTS
Membership Officers	The Act (Sec. 1761b) provides for the appointment of only one membership officer.	To permit the appointment of more than one membership officer at the option of the board of directors.	Some credit unions believe they could operate more efficiently with two or more membership officers.
Credit Committee — Appointment of	The Act (1761c) requires a credit committee of not less than three members be elected at the annual meeting.	That the board of directors be empowered to appoint the credit committee, with the option that the committee may be eliminated entirely and its responsibilities to approve or disapprove loans assigned to a loan officer(s).	Would assure essential flexibility. In some credit unions the credit committee is neither practical nor efficient.
Approval of Loans by	The Act (Sec. 1761c) states that no loan shall be made unless it is approved by a majority of the entire committee and by all members of the committee who are present at a meeting at which the application is considered.	That approval of loans by the credit committee be by a simple majority vote.	Present approval requirement is cumbersome and difficult to fulfill in some credit unions.
Loan Officers — Appointment of	The Act (Sec. 1761c) states: The credit committee may, by majority vote of its members, appoint one or more loan officers.	To authorize the board of directors to appoint loan officer(s) and prescribe rules under which they may perform.	To be consistent with proposed optional appointment of the credit committee.
Reports by	The Act (Sec. 1761c) states: Each loan officer shall furnish to the credit committee a record of each transaction approved or not approved by him within seven days of the date of the filing of the application or request.	To repeal the requirement that loan officers must report to the credit committee at least every seven days. Frequency of reports to be governed by rules of the directors.	Frequency of reports by loan officers should be governed by situation in individual credit union.
Insurance for Officials	The Act. (Sec. 1761a) provides compensation of officials as indicated above. The Bureau has ruled that a credit union can obtain group accident insurance to protect directors and committeemen while on official business. With this exception they may not purchase accident, health, life, or other insurance for officials because to do so would constitute compensation.	To exclude a credit union's purchase of life, accident, and health insurance for its officers, directors and committeemen from being deemed compensation within the meaning of the Act.	Allowing insurance to be provided officials on a full time basis would preclude injustice to survivors because of difficulty in interpreting "on credit union business."

IV. Savings And Deposits

Shares, Par Value	The Act (Sec. 1753) states: The par value of shares shall be $5 each.	To give the board of directors authority to establish the par value of shares in $5 multiples, not less than $5, and not more than $25.	To oblige small shareholders to adopt thrift habits consistent with current financial conditions and allow board to deal with small, inactive accounts.
Checking Accounts	The Act is silent.	To authorize credit unions to establish for members checking accounts, with reserves for such accounts to be set by the Administrator with the consent of the National Credit Union Board.	To permit a fuller range of service to members.
Deposit Accounts— Establishment of	The Act is silent.	To permit credit unions to operate deposit accounts, limited to members and treated as capital. These accounts to be subject to conditions established by the board of directors.	Would provide fuller range of service to members.
Interest Rate On	Present Act makes no provision for deposits.	That legislation be drawn to allow variable interest rates on deposits.	A variable rate of return will enable unions to provide different types of deposit accounts.
Variable Dividend Rates	The Act (Sec. 1763) states that dividends shall be paid on all paid up shares outstanding at the end of the dividend period.	To authorize variable dividend rates on shares.	To allow flexibility in classification of shares, consistent with a flexible deposit program.
Dividend Frequency	The Act (Sec. 1763) authorizes the board of directors to declare a dividend annually, semi-annually, or quarterly, as the bylaws may provide.	That the frequency for payment of dividends be removed from the Act so as to be completely at the discretion of the board of directors.	To allow credit unions to pay dividends according to custom of other institutions in its locality, and to give members greater flexibility.
Multiple Party Accounts	The Act (Sec. 1759) states: Shares may be issued in joint tenancy with right of survivorship with any persons designated by the credit union member.	To add a new multiple party account provision enabling credit unions to offer members (1) a multiple party share account with survivorship; (2) a share-deposit account of trustee for beneficiary; (3) a multiple party share-deposit account without survivorship; (4) a multiple party share-deposit account which includes one or more non-member parties.	Permits persons who have no will or who wish to avoid probate to enjoy the advantages of an account during their lifetime and to name one or more beneficiaries to receive money in account after their death. Also a member with other parties to his account need not lose control of his money since he can restrict withdrawals.

V. Loans

Interest Rates — Incidental Charges	The Act provides (Sec. 1757)(5) rates of interest not exceeding 1 percentum per month on unpaid balances, inclusive of all charges incidental to making the loan.	To remove from the Act the requirement that the interest rate be inclusive of all charges incidental to making the loan.	It is economically unsound for the credit union to make certain types of loans, such as real estate, and pay the incidental costs.
Maximum	As above.	That the interest rate shall not exceed 1% per month, unless otherwise approved by the Administrator.	A higher return on loans may be necessary, due to increased costs of operation and acquisition of capital, if credit union is to maintain full-range of services to members.
Interest Refunds — Frequency of, Rate of	The Act (Sec. 1761(b)(14)) empowers board of directors, subject to Bureau regulations, to authorize an interest refund to members of record at the close of business on the last day of any dividend period in proportion to the interest paid by them during the dividend period.	To permit the interest refund period to be other than the dividend period and to provide for variable interest refund rates.	To offer greater flexibility as to period for which interest refund is paid and to permit selectivity with respect to loans which will receive refund.

VII. Investments

SUBJECT	PRESENT PROVISION	PROPOSAL	COMMENTS
Investment in Other Credit Unions	The Act (Sec. 1757(8)(G) provides that a federal credit union shall have the power to invest its funds in shares or deposits of any central credit union in which such investments are specifically authorized by the board of directors of the federal credit union making the investment.	To authorize credit unions to deposit or purchase shares in other credit unions without limitations -- further that anything in the Act in conflict with this proposal be eliminated.	Provide greater liquidity within the credit union movement and to allow credit unions to invest fully in other credit unions.
Loans to Other Credit Unions	The Act (Sec. 1757(8) provides that loans may be made up to 25% of the unimpaired capital and surplus of the lending credit union.	To delete from the Act the limitation that loans to other credit unions in the aggregate may not exceed 25% of the lending credit union's paid-in and unimpaired capital and surplus.	Provide greater liquidity within the credit union movement.
Investment in Service Corporations	The Act (Sec. 1757(8) provides for investment in government securities, in insured financial institutions, and in central credit unions.	In addition to existing privileges, to permit funds not used in loans to members to be invested in capital shares, obligations, or preferred stock issues of any agency or association organized either as a stock company, mutual association or membership corporation, provided the membership or stockholdings, as the case may be, of such agency or association are confined or restricted to credit unions or organizations of credit unions and provided the purposes for which such agency or association is organized are designed to service or otherwise assist credit union operations.	To provide necessary financing for organization furnishing essential services to credit unions and/or credit union members, such as a data processing facility, mutual fund etc.
Investment in Cooperative Societies	The Act is silent	To empower federal credit unions to invest in cooperative societies, as provided in the CUNA Model Credit Union Act: "Funds not used in loans to members may be invested in shares of a cooperative society organized under local or national cooperative laws in the total amount not exceeding 10% of the shares, deposits, and surplus of the credit union." (Sec. 23(4))	To allow investment in mutual self-help organizations which may be of benefit to credit union members.
Loans to Credit Union Associations	The Act is silent Bylaws (Art. XII) — Loans may be made only to members (individuals) or to a member other than a natural person in amounts not in excess of shareholdings in the credit union extending the loan.	To authorize credit unions to make loans, in aggregate not exceeding 1 percent of the capital of the credit union to any credit union association of which the credit union is a member. Such loans may be made on secured or unsecured basis with interest and with such maturity, deeds and conditions as the board of directors shall authorize.	To strengthen the ability of credit union associations to finance programs and activities of benefit to credit unions and their members.
Investment in Corporate Securities	The Act (Sec. 1757) does not include authority for investment in corporate securities.	To authorize credit unions to invest up to 5% of their shares in any corporate stock or bond which appears on a list approved by the Administrator annually or quarterly. The Administrator should prepare and maintain a list of not less than 30 corporations.	To permit diversification of credit unions investment portfolio similar to practice of other financial institutions, with necessary supervisory safeguards.

VIII. Reserves And Liquidity

Reserves	The Act (Sec. 1782) provides for transfer of 20% of net earnings to regular reserves until 10% of total shares attained.	That the regular reserve be based on risk assets and that the formula for transfer to the reserve be at the rate of 10% of gross income until such time as the reserve fund reaches 5% of risk assets; that it then be decreased to 7% of gross income until such time as the reserve fund reaches 6% of risk assets and then be decreased to 5% of gross income until the reserve fund attains a maximum of 7% of risk assets. Subsequent transfers required only to maintain 7% maximum.	Reserves should be related to basic risk assets such as loans outstanding, according to independent studies by the Bureau of Federal Credit Unions and CUNA International. A transfer to reserves based on gross income would accelerate reserve accumulation in high-expense credit unions which often have greater need for reserves. A declining formula for transfer to reserves would give relief to the older and better established credit unions with ample reserves already accumulated.
Central Bank System for Credit Unions	The Act is silent.	That the staff report on a Central Bank System for credit unions be forwarded to the CUNA Districts without recommendation, but with a memorandum setting forth the pros and cons of the proposals.	The Recodification Committee did not have sufficient time before the CUNA District Meetings to fully and adequately evaluate the tentative proposal on a Central Bank System.
Authority for Federal Centrals	The Act is silent.	To authorize federal centrals to operate with the same powers as are accorded state-chartered central credit unions.	No special authority exists in the Act for the operation of federal central credit unions, according to the Bureau. It would strengthen the dual chartering system if federal centrals were empowered to operate in the same way that state-chartered centrals operate.

HB 648

...ated to be more concerned about the ...'s interests than those of their ...nts. I'm writing to PLAYBOY in the ...pe that you've heard about these law... and will be able to tell me how to ...ntact them.

(Name withheld by request)
APO San Francisco, California

You're probably referring to the Law... Military Defense Committee, a ...up that was formed in the summer of ... and since that time has helped over ... Servicemen with everything from ...plications for discharge to general ...rts-martial for fragging. The committ... received a grant from the Playboy ...undation in 1971. You can contact ...m at their office at 203 Tu Do Street, ...om 11, Saigon, South Vietnam, or in ... U. S. at their headquarters at Langdell Hall, Cambridge, Massachusetts 02138.

PERMANENT CRIMINAL RECORDS

A bill to expunge certain criminal records has failed to pass the Maryland assembly by a relatively narrow margin. Its detractors claimed that it would allow those with a criminal past to lie to prospective employers. The short answer to this is that employers should not be asking such questions in the first place. Proper employment information would still be available from previous employers or other references and such information is far more pertinent than data pertaining to an arrest or a chance encounter with the law.

In cases of arrests that are made solely on the initiative of individual police officers, where no grand-jury indictment or preliminary hearing has produced a dispassionate determination of probable guilt, all records of the arrest should be destroyed immediately upon the acquittal of the defendant or upon the failure of evidence against him. In other cases, the records should be expunged completely after an appropriate passage of time. Permanent records of this sort handicap people for the rest of their lives.

I, for one, hope the Maryland bill will be reintroduced before a more enlightened assembly and that this time it will be enacted.

Frank Matthews
Bladensburg, Maryland

THE COST OF ONE ARREST

The following excerpts from a *Washington Post* editorial have my complete endorsement:

> Judge Gerhard A. Gesell struck a blow for humanism as well as for simple justice when he ruled recently that the FBI must put an end to its indiscriminate dissemination of individual arrest records. These may still be made available to agencies of the Federal Government and for genuine law-enforcement purposes outside the Federal Government. But the past practice of letting banks, private employers and others have easy access to them must be discontinued, the judge said, in the interest of fairness and decency. Careless use of these records, he said, "may easily inhibit freedom to speak, to work and to move about in this land." . . .
>
> If a man is arrested and subsequently adjudged wholly innocent of the offense for which the arrest was made, surely his record ought to be as free from blemish as if he had never been accused at all. We wish that such information could be wholly expunged from the record. And even when his past guilt or innocence has been left unresolved, it would be preferable to let him have the benefit of the doubt. Oblivion has its virtues no less than recollection. We share Judge Gesell's humane feeling that, with the development of computerization, there is "a pressing need to preserve and redefine aspects of the right of privacy to insure the basic freedoms guaranteed by this democracy."

There is much more reform needed in this area. I have seen my son's one indiscretion of high school days rise up repeatedly and destroy social and employment opportunities, nullifying years of expensive higher education. When a person hasn't committed any new offense, why shouldn't his arrest record be destroyed entirely after a certain period of time?

(Name withheld by request)
Washington, D. C.

LET THE VICTIMS SPEAK

I recently saw some 1970 issues of PLAYBOY and was very stirred by the debate about electro-convulsive therapy in several installments of *The Playboy Forum*. Having been through this torture myself, I agree with the ex-patients who denounced it and I completely distrust the psychiatrists who defended it; however, I am glad that you published both sides. In almost all official investigations, the victim is never allowed to talk. No ordinary woman was allowed to say anything during the Senate hearings on the oral contraceptive and when one tried to speak, she was ruled out of order; the only female testimony came from female M. D.'s, who spoke for their profession—the profession that was being investigated. Similarly, the poor never get a chance to comment on poverty programs and educational conferences do not invite dropouts to come and explain why they found the schools intolerable. And, of course, any inquiry into our mental hospitals develops into psychiatrists investigating psychiatrists and state officials checking other state officials; what the patients have to ... irrelevant and immaterial.

The only way to learn the truth ... any social problem is to let the vi... speak in reply to their exploiters.

(Name withheld by rec...
Los Angeles, Californi...

LAW VS. DISORDER

Thanks to PLAYBOY's openly fav... the legalization of everything from ... juana to homosexuality, and thanks ... to a Supreme Court that has compl... undermined our system of criminal ... tice by making it impossible for p... to conduct an effective investigation ... murderers of a six-year-old girl are ... roaming the streets of our town. O... the alleged killers, a boy of 16, has s... almost his entire life committing ... sexual offense after another but has ... er been confined for more than per... tory psychological care. Why? Bec... our Alabama courts are afraid of ... cism by the liberal press, such as ... *New York Times*, and because pe... like Hugh Hefner are constantly scr... ing about the rights of the accused.

What about the rights of the vic... As the father of a five-year-old gi... am incensed that child murderers ... allowed total freedom of action while ... local police and the FBI stand by, h... lessly muttering about circumstan... evidence. As a concerned citizen and ... ther, I have attempted to arouse ... townspeople to unilateral action, bu... no avail. Lawlessness, through its hu... maiden humanitarianism, has gained ... strong a foothold—even in the D... South, America's last bastion of dece... and order.

Incidentally, as one who holds ... degree in statistics, I have done some ... search on the supposed fairness of y... magazine, and it may interest you to k... that over the past eight years, a full ... percent of all the letters you have p... lished espouse your point of view, se... percent are marginal and only 11 perc... are unquestionably opposed to the v... ous tenets of *The Playboy Philosophy*.

Charles A. Kar...
Fayette, Alaba...

You accuse PLAYBOY, The New Y... Times, *the Supreme Court and any... else who has ever expressed concern ... due process of law of fomenting ... spirit of lawlessness and disorder; th... in the next breath, you state that ... have advocated what you term unilat... action to deal with a boy who is alle... to be a killer on the basis of evidence t... is considered circumstantial by both ... local police and the FBI. You furt... suggest that the absence of more subst... tial evidence is the fault of a libe... Supreme Court that has made it "imp... sible for police to conduct an effect... investigation," ignoring the fact t... effective investigating is exactly what ...*

HB-787

ROBISON, MCCASKEY, STRACHAN & HOGE
ATTORNEYS AT LAW
921 SIXTH AVENUE WEST
ANCHORAGE, ALASKA 99501

PAUL F. ROBISON
KENNETH McCASKEY
JOHN R STRACHAN
ANDREW E. HOGE

WILLIAM G. RICHARDS
MARVIN S. FRANKEL
PETER A. LEKISCH
LEROY BARKER

TELEPHONE
AREA CODE 907
[redacted]
279-7431

March 6, 1972

Representative William J. Moran
Pouch V, State Capitol
Juneau, Alaska 99801

Dear Bill:

This is a followup to my letter of February 29th regarding the proposed Bill to protect underground utilities. Upon reviewing my file, I was concerned that I might have sent you an incomplete draft of the Bill. Enclosed please find the final draft of the proposed Bill. I would appreciate it if you would insure that the Bill that is introduced includes "natural gas" under the list of definitions under the subsection "Utility operator". Also, the Bill should include a second section which makes the Act effective immediately upon its passage and approval.

Paul Robison is in Juneau this week and can assist you if you have any questions regarding the legislation. In addition, I would appreciate it if you could telephone me later this week and advise me whether you anticipate this Bill can be passed during this session of the Legislature.

Very truly yours,

Leroy J. Barker

ENC.

LJB:u

ROBISON, McCASKEY, STRACHAN & HOGE
ATTORNEYS AT LAW
921 SIXTH AVENUE WEST
ANCHORAGE, ALASKA 99501

PAUL F. ROBISON
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MARVIN S. FRANKEL
PETER A. LEKISCH
LEROY BARKER

TELEPHONE
AREA CODE 907
272-9446
279-7431

HB-787

February 16, 1972

Representative William J Moran
Pouch V State Capitol
JUNEAU, Alaska 99801

Dear Bill:

Paul suggested that I forward the enclosed copy of a proposed statute which we anticipate asking you to submit to the legislature next week.

We had a meeting this week of representatives of all the underground utilities here in the Anchorage area. The proposed ordinance was presented for comment and consideration. As soon as the utilities involved have had an opportunity to review the statute and make appropriate comment, we will be submitting it to you with a request that it be introduced in the legislature with the hope that it will be passed this year.

Yours very truly,

ROBISON, McCASKEY, STRACHAN
& HOGE

LEROY J. BARKER

LJB/lmm

PROPOSED STATUTE

Section 1. Purpose.

The purpose of this Act is to protect workmen and others in the immediate vicinity from death or injury which may result from the destruction of, or damage to, underground utility lines. It is also the purpose of this Act to provide for the well being of the community by preventing the interruption of essential services resulting from the destruction of, or damage to, underground utility lines.

Section 2. Strict Liability for Damage to Underground Utilities by Excavation. (a) Any person, who while excavating, damages any underground utility line is liable, without regard to negligence, for three times the actual damages to the utility operator of the utility line, unless the person has requested a locate by the utility operator and the locate has not been provided by the utility operator within four normal business hours after it received the request, or where the locate by the utility operator is inaccurate and that inaccuracy is the proximate cause of the damage.

(b) In addition to the damages provided for above, a person who damages any underground line is liable, without regard to negligence, for a civil penalty in the sum of $500.00 for each incident. The sums so recovered are payable to the State of Alaska unless the utility operator is a Borough established under Title Seven or a Municipal Corporation as established under Title Twenty-nine. In the latter event the civil penalties shall be payable to the utility operator.

(c) Any action brought under section (a) may include a claim for the civil penalty even though the party bringing the action is not a Borough or a Municipal Corporation.

Section 3. Actions to be brought in two years.

No actions may be brought under any of the provisions of this Act unless commenced within two years after the date the damage to the line occurs.

Section 4. Remedies not exclusive.

Remedies provided for under this Act are not exclusive and utility operators shall retain any remedies otherwise allowed by statute or common law.

Section 5. Definitions.

As used in this Act

"excavate" means the movement or removal of earth or blasting, and includes augering, back-filling, digging, ditching, drilling, grading, plowing-in, pulling-in, ripping, scraping, trenching, and tunnelling;

"person" includes a corporation, company, partnership, firm, association, organization, business trust, society, a Borough established under Title Seven, a Municipal Corporation as established under Title Twenty-nine, and a natural person;

"utility line" means any conduit or related facilities, including pipe or cable by which a utility operator furnishes service; and

"utility operator" means a person who furnishes any of the following services by means of a utility line:

(1) petroleum product,

(2) electricity,

(3) sewer,

(4) communications, or

(5) water.

HB-787

Chugach ELECTRIC ASSOCIATION, INC.

GAMBELL AT EIGHTH • P. O. BOX 3518 • PHONE 272-4441 Anchorage, Alaska 99501

February 29, 1972

PLEASE REPLY VIA AIRMAIL

Mr. William J. Moran
Pouch V
State Capitol
Juneau, Alaska 99801

Dear Mr. Moran:

In the past month several meetings were held by representatives of the various utilities in the Anchorage area to discuss a possible solution to "dig-ins" of buried facilities. During the course of these meetings, the possible use of legislation as a means of control was discussed.

As a result of these meetings, a proposed legislative bill was formulated and set to paper by the Anchorage City Attorney. I understand that there will be a letter forthcoming requesting that you introduce such bill. A copy of the aforementioned is enclosed for your review and comments.

In addition to the bill, an "Agreement" among the various utilities was also discussed. Enclosed is a copy of this proposed agreement. Your timely comments on this would also be appreciated.

Very truly yours,

James D. Bumgardner

James D. Bumgardner
Manager of Engineering Services

Enclosures

JERRY JOST

ANCHORAGE
CITY ATTORNEY
BOX 400
ANCHORAGE, ALASKA
272-6522 EXT. 325

AGREEMENT

THIS AGREEMENT, made and entered into by and between the CITY OF ANCHORAGE, a municipal corporation, the GREATER ANCHORAGE AREA BOROUGH, a municipal corporation, CHUGACH ELECTRIC ASSOCIATION, CENTRAL ALASKA UTILITIES, INC., and ALASKA INTERSTATE, d/b/a ANCHORAGE NATURAL GAS:

WHEREAS the parties to this contract experience a common hardship as a result of destruction of facilities by construction contractors; and

WHEREAS the interruption of service as a result of facility damage creates hazardous conditions, causes public inconvenience and requires the utilities to employ crews on repair work that could otherwise be utilized for installations or other work designed to provide benefits to residents requiring service, and,

WHEREAS it appears that the primary causes for the damage to facilities is economic in that money is saved by tearing out buried facilities rather than waiting for a locate service or utilizing small equipment to expose the facilities; and,

WHEREAS the parties contemplate a reciprocal agreement providing for withholding of contract payments sufficient to cover all costs of facility damages to another utility will provide an incentive to request locate service and to avoid damage,

NOW, THEREFORE, in consideration of the mutual covenants, stipulations and agreements herein contained, the parties agree as follows:

1. Each party to this agreement will include, in each and

ANCHORAGE
CITY ATTORNEY
BOX 400
ANCHORAGE, ALASKA
272-8522 EXT. 325

every contract calling for the construction or installation of utility facilities or other excavation the following clause:

> Upon receipt of written notification from any of the public utilities listed in this paragraph that Contractor has caused damage to any facility, equipment or installation of that utility and that Contractor failed to request a locate service at least four (4) business hours prior to the damage, or if the locate service was properly requested, that the damage was not proximately caused by an error in the locate service, *_____
>
> will withhold from forthcoming contract payments, including advances, an amount sufficient to cover the damage. The amount sufficient to cover the damage shall be designated by the utility providing notification of damage and shall include the total cost of repair, including overhead and a minimum of three hundred dollars ($300) to cover costs and attorney's fees. The public utilities that may provide notice of utility damage under this paragraph are:
>
> Anchorage Natural Gas
> Anchorage Telephone Utility
> Anchorage Water Utility
> Central Alaska Utilities
> Chugach Electric Association
> Greater Anchorage Area Borough Sewer Utility
> Municipal Light and Power Utility
>
> Upon receipt of a release of claim by the notifying utility or the judgment of a court having jurisdiction establishing that Contractor is liable for a lesser amount or is not liable for the damage, *_____
>
> _____

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BOX 400
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272-5522 EXT. 325

will release the excess funds to Contractor. Funds withheld pursuant to this provision shall not bear interest.

Upon receipt of satisfactory evidence establishing that the utility giving notice of damage failed to commence an action against the Contractor in a court of competent jurisdiction within ninety (90) days after discovery of the damage, *_____

_____

shall release the funds withheld pursuant to this provision.

2. The parties agree that a utility giving notice of damage and requesting that funds be withheld under this agreement will indemnify, hold and save the withholding utility or utilities harmless from liability of any nature or kind, including costs and expenses, for or on account of any suits or damages resulting from withholding funds pursuant to this contract.

3. This contract shall remain in full force and effect for a period of one (1) year from the date of execution. Any party may terminate his rights and liabilities under this agreement by serving notice on all other parties, at least ten (10) days prior to the effective date of termination. Termination by a party shall not extinguish any accrued liability.

4. Notices under this agreement shall be addressed to the utility manager, or, in the case of the City of Anchorage, Department of Public Works, to the Director of Public Works, at the appropriate business address.

IN WITNESS WHEREOF, the parties have executed this

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CITY ATTORNEY
BOX 400
ANCHORAGE, ALASKA
272-5522 Ext. 325

agreement as set forth below.

CITY OF ANCHORAGE, ALASKA

By: _____
Robert E. Sharp, City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

_____
DIRECTOR OF PUBLIC WORKS

_____
Manager, ANCHORAGE TELEPHONE UTILITY

_____
Manager, MUNICIPAL LIGHT & POWER

_____
Manager, ANCHORAGE WATER UTILITY

_____
Manager, ANCHORAGE NATURAL GAS

_____
Manager, CENTRAL ALASKA UTILITIES

_____
Manager, CHUGACH ELECTRIC ASSOCIATION

_____
Manager, GREATER ANCHORAGE AREA
BOROUGH SEWER UTILITY

* Insert the name of the party to this agreement who is contracting for construction, installation or excavation.

A BILL

For an Act entitled: "An Act relating to liability for damage to underground utilities."

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

* Section 1. AS 18.60 is amended by adding new sections to read:

ARTICLE VII. DAMAGE TO UNDERGROUND FACILITIES OF A UTILITY

Sec. 18.60.700 PURPOSE. This Act is intended to protect workmen and others from death or injury which may result from damage to underground utility facilities, and to provide for the safety and well being of the general public by deterring the interruption of essential services resulting from damage to the facilities.

Sec. 18.60.710 STRICT LIABILITY FOR DAMAGE TO UNDERGROUND UTILITIES. (a) A person who, while excavating, damages an underground utility facility is liable to the utility operator for three times the actual damages unless the person has requested the utility operator to locate its facilities in a designated area and the locate has not been provided as pursuant to secs. 710-750 of this chapter or the locate provided is inaccurate and that inaccuracy is the proximate cause of the damage. Damages provided by

this section shall be awarded without regard to negligence.

(b) A utility operator shall, within four regular business hours after receipt of a request for locate service, commence to locate the utilities in the designated area and shall complete the service within a reasonable time. If the request for locate service encompasses excavation work in an area which will require more than one day to complete, the person requesting the locate shall provide the utility with a schedule of the excavating work for which location service is to be provided.

Sec. 18.60.720 CIVIL PENALTY A person who damages an underground facility under conditions creating liability for treble damages under sec. 710 of this chapter shall, in addition, be liable to the State of Alaska for a civil penalty in the sum of $500 for each incident. An action for the civil penalty may be commenced by the Attorney General, or the penalty may be awarded to the State in an action commenced under sec. 710, even though the State is unrepresented in the proceeding.

Sec. 18.60.730 ACTIONS TO BE BROUGHT IN TWO YEARS No action may be brought under secs. 710 or 720 of this chapter unless commenced within two years after the date of damage to the utility facility.

Sec. 18.60.740 REMEDIES NOT EXCLUSIVE. The provisions of secs. 710-750 of this chapter shall not be construed as abolishing or diminishing any other claim or remedy otherwise available to a utility operator, except that an award of treble damages under sec. 710 shall extinguish a claim for damages based on negligence.

Sec. 18.60.750 DEFINITIONS As used in secs. 700-750 of this chapter

(1) "excavate" means the movement or removal of earth and includes, but is not limited to, blasting, augering, back-filling, digging, ditching, drilling, staking, grading, plowing-in, pulling-in, ripping, scraping, trenching, and tunnelling;

(2) "inaccurate" means a locate that is not within 24 inches horizontally, or, when required, 12 inches vertically, of the centerline of the facility provided by the utility;

(3) "locate" means a field marking on the surface by paint, dye, stakes or any other marking clearly visible at the time of placement which designates the horizontal course or location of a utility facility. When pipes, cables or tiles are being located, the locate shall signify the centerline of the pipe or tile and the utility shall specify the dimensions of the facility. When the excavation is for the

purpose of street or highway improvement that requires a change in grade in excess of 12 inches, the locate shall include a designation of the vertical depth of the facility, which may be shown by plans, exposure of facilities, or other suitable means.

(4) "person" means a corporation, company, partnership, firm, association, organization, business trust, society, borough, municipal corporation or natural person;

(5) "utility operator" means a person who furnishes any of the following services to a customer or customers by means of a conduit, pipe, tile, wire, cable or line:

(a) petroleum products

(b) electricity

(c) sewer

(d) communications

(e) water

NAMES OF PEOPLE ATTENDING MEETING OF FEBRUARY 14, 1972

Jim Cellars	-	Borough attorney's office
John Brown	-	Central Alaska Utilities
John Bjornson	-	Central Alaska Utilities
Dick Brink	-	Central Alaska Utilities
Dick McBride	-	Anchorage Telephone Utility
Luke Bergman	-	Anchorage Natural Gas Company
Dave Skitt	-	Anchorage Water Utility
Ed Fisher	-	R. W. Retherford (APUC)
S. W. Smith	-	Anchorage Water Utility
I. W. Mitchell	-	A. P. U. C.
J. R. Hendershot	-	A. P. U. C.
Dale Teel	-	Anchorage Natural Gas
Paul Robison	-	Attorney (ANGC)
Jerry J. Jost	-	Chugach Electric Association
Leroy Barker	-	Attorney (ANGC)
Bob Phillips	-	G.A.A.B. R.O.W.
Frankland Smith	-	M L & P
Robert J. Mahoney	-	City Attorney's office
Paul Singleton	-	G.A. A.B.

HDR-7 (1971)

One-House Legislature Advocated by Unruh

By JESS UNRUH

National Municipal League
Carl H. Pforzheimer Building
47 East 68th Street, New York, N. Y. 10021

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One-House Legislature Advocated by Unruh

by Jess Unruh*

THE heavy double doors are locked and barred. A burly sergeant-at-arms gently, but with authority, refuses entrance to everyone. Even senators and assemblymen cannot pass. Occasionally the doors will be opened by the sergeant and through the cigar smoke a quick look will reveal six men. Shirtsleeved, ties loosened, they reflect the same harmless goodwill you can see four nights a week in any of a dozen rooms in the Senator Hotel when a poker or blackjack game is in progress.

But there is nothing harmless about the meeting going on behind the barred doors. And the stakes are far higher than the crisp hundred dollar bills that change hands between lobbyist and legislator in friendly poker games.

Before the six men come out of the walnut-panelled room they will have passed judgment on life and death matters for many of California's 20 million residents and will have spent nearly 7 billion tax dollars collected from the citizenry.

There are no rules—except those decided on by the conferees. No reporter is inside the room to report the proceedings. There is no requirement that the report on their deliberations be rendered by a certain time. And there will in all likelihood be very little time for other legislators or the public to do more than skim the document which will finally be produced.

All of the work laboriously put into a budget bill for nine months by thousands of civil servants, administrators and legislators means absolutely nothing if it does not meet the approval of the six tribunes in that room.

This is a free conference of the California legislature. Scary, you say? Should be changed and cleaned up? The press ought to be allowed in? Perhaps. But, before condemning the six legislators and the institutions they represent, let's take another look.

The three senators and three assemblymen who will spend over a billion dollars each are doing what comes naturally in today's legislature. They are reconciling the differences between the decisions made in each of the two houses. It is a process which has been going on for decades in 49 states and will continue as long as the two-house or bicameral legislature exists.

State legislatures under the bicameral system are costly and inefficient

* Jess Unruh is former speaker of the California Assembly.

anachronisms which thwart the popular will, cater to private interests, and hobble responsible decision making, until they are no longer responsive to the needs of the people they are supposed to serve.

This lack of accountability to the people is not a problem unique to our state legislatures, but is permeating every level of our government. We see it at work in our monolithic bureaucratic agencies which have almost become governments unto themselves; we see it in our costly and iniquitous system of justice; we see it in the wasted education of our youth. And we feel it in the growing hostility and frustration of a large number of our citizens. Indeed, it may be that this frustration is the only thing that will "bring us together."

If we look at the militant student protesting the Vietnam war or irrelevance in his classroom, and at the middle-income suburbanite venting his ire on local school bond requests, we see they have at least one thing in common: They are both enraged at the inability of government to deal effectively with what they see as the principal problems that confront them.

In response to these growing complaints, some attempts are being made at governmental reform. President Nixon and others are now talking seriously about reforming the federal executive and bringing the states into parity with the federal government through revenue sharing and block grants.

I predict that their efforts will have little effect on improving the quality and responsiveness of state government unless state institutions themselves are drastically revised. And basic to that restructuring is the overhauling of that institution which will have to pass upon the revision of every other state agency—the state legislature.

The most far-reaching reform, the most drastic step we could take toward making our state governments more responsive, more honest, more efficient and more economical is the introduction of the unicameral or one-house legislature.

No matter how much we concern ourselves with upgrading the legislative process, we will fail unless unicameralism is made central to the present efforts to reform and modernize state legislatures. I believe in increased salaries, better facilities and professional staff. But they are not enough. These reforms in themselves only make a more efficient horse and buggy. The bicameral legislature still remains almost hopelessly outmoded, only perpetuated by tradition and special interests.

Even the original rationale for the two-house legislature, to guarantee some representation of people as well as of property, has been removed by recent Supreme Court decisions guaranteeing equal representation. Under the one man, one vote rulings first enunciated in *Baker* v. *Carr*, representa-

tion of people has finally become paramount over the representation of geographic areas.

I suggest that, from now on, honest, accurate reapportionment will invariably make the houses carbon copies of each other insofar as their constituent makeups are concerned. The degree to which the houses actually do differ will become a measure by which reapportionment has been unfair or dishonest.

If efficiency and representativeness stand to gain under unicameralism, the special interest groups which now dominate our bicameral legislative process stand to lose a great deal.

Consider just one special interest—the liquor industry. In California the wholesale liquor distributors have succeeded in building into our laws protective measures such as state-guaranteed collection of accounts from retailers. To kill any reform legislation dealing with the liquor industry and preserve this economic sanctuary, all the liquor lobbyists have to do is woo and win a majority of *one* committee in *either* house of the state legislature. This may mean only three men. Elimination of bicameralism would increase the possibility of repealing this grossly unfair legislation.

Almost every state has its privileged industries or groups which thrive under the protection that unwieldy, unresponsive legislatures afford them. The power of these groups over the government should be curbed, but cannot be as long as the many obstacles to reform are compounded by a bicameral legislature. It is clear that basic reform cannot happen in state legislatures which were designed to afford maximum protection to those who need it least.

If the clandestine "poker game" of the free conference and the "legislative black jack" of special interests now witnessed under our bicameral system do not offer reason enough to consider unicameralism, let us look at the problems from a point of reference we can all understand—in terms of money and economy.

Today there is a renewed interest in making legislatures equal partners in the governmental process. And, as we have indicated, there is probably no more important step to be taken in making our federal system work better. To upgrade legislatures is, however, an expensive proposition. For many years legislative budgets have been neglected. Most legislatures are still woefully underpaid, understaffed and lacking in such basic necessities as office space, clerical help and even telephone allowance. Some legislatures will have to build expensive new buildings to house a significantly enlarged staff. Taxpayers are not likely to look with favor on the drastic increases in spending that will be necessary to achieve these reforms under the present, inefficient bicameral system.

But most legislatures, particularly those in the larger states, could give themselves the tools necessary for proper decision making *without* significant budgetary increase by eliminating one house. Not only would this greatly decrease the number of legislators, offices, telephones and secretaries that must be paid for directly, it would also permit a reduction in staff and spending by those public and private agencies which must deal with the legislature.

To illustrate, let's use again the annual state budget and follow its tortuous course through the California legislature, a body universally conceded to be the best in the nation. The budget is introduced in the same form in *both* houses. It is then sent to the finance committee of each house. There it consumes most of the time of 25 to 30 percent of the members of each house for from four to five months, sometimes more. It also consumes the bulk of the time of the highest-paid Assembly and Senate staff employees.

But, this is only the visible and expected part of the iceberg. It also draws the major part of the staff time of the top people in the governor's Department of Finance—scurrying back and forth between the Assembly Ways and Means Committee and the Senate Finance Committee. Each executive department whose budget is being scrutinized also sends representatives to these two committees and their many subcommittees. Lobbyists and interested citizens' groups also have to cover both houses. All of these people will be paid either directly by the taxpayers or indirectly by the tax write-off.

But all this is really shadowboxing because, as we have seen, the budget is finally written by three senators and three assemblymen in a free conference committee, and the product of their labors and decisions may bear little relationship to the budget passed by either house.

The days (sometimes weeks) of labor that these six members contribute again require the attendance of top staff people of the Legislative Analyst's office and the Department of Finance.

It is just as bad with other legislation. A school finance bill must be sent first to the education committee of the house in which it was introduced, then to its finance committee, then to the floor and then, if the bill passes, the whole maddening process is repeated again in the other house. This requires representatives of executive agencies, legislative staff and affected interests to appear at every repetitive step of the way. And, again, the final bill may well be written in a so-called free conference committee of six members to resolve the disputes between the houses, or to do *whatever else* comes into their minds.

Or there can be yet another level of committee operation in this mess—the joint committee, which is almost beyond anyone's control and often costs much more than it's worth in productive output. The joint committee has

the added advantage—to everyone but the people—of allowing legislators to avoid politically difficult problems by banishing them to the limbo of a powerless joint committee. The need for these committees would be *totally eliminated* if there were a one-house legislature.

In those states, such as California, which have already done much to modernize their procedures and abilities, unicameralism should bring no less than a 40 percent reduction in the costs of the legislature and of those groups which must work directly with it. In California, about $20 million could be saved annually. The savings would be far more, if you consider future capital construction costs connected with increased staffing and legislative upgrading under the bicameral system.

But I do not suggest merely a penny-pinching approach to federalism. What I am really concerned with is responsible decision-making power at the state level. Two-house legislatures neutralize the force of the legislature in state government. Governors can, and do, arrange alignments of one house against the other over pieces of legislation and programs. This kind of whipsaw technique can ensure the defeat of legislation even though it may be supported by the majority of legislators. Also, most of the more vicious logrolling and logjamming in the legislative process comes about between the two houses.

The California State Senate Finance Committee for years has had a practice of holding all Assembly bills until the last few days of the session to keep a bargaining lever over members of the lower house. Without that excuse, the chairman of a one-house finance committee would be hard put to hold all appropriation measures until the last 10 days.

In my opinion, the committee system provides opportunity enough for governors and special interest groups to exert pressure on legislatures. When one house is pitted against the other, a serious power vacuum is created—a vacuum that outsiders are all too eager to fill. With only one house, however, the legislature would more nearly match the unified structure of the executive branch and, therefore, be a more worthy competitor.

When a smart governor plays one house against the other the public can rarely identify where the responsibility for defeat of legislation lies. The public can rarely detect the real culprit.

Let me say parenthetically that the press might do a much better and more thorough job covering the legislative process, and pinpointing responsibility, if there were, for example, only one-third as many committees functioning.

Specifically, what legislators desperately need today is visibility. Visibility promotes competence in, and attracts talent to, the legislative arena. It is also the best deterrent to corruption.

What the public needs is to be able to fix responsibility. I do not believe that we can expect the public to support state government until it can be seen who is responsible for what is happening or not happening in state government.

But consider the citizen's problem. He currently has a representative or an assemblyman and a state senator. They may well be in direct disagreement about a measure the voter is interested in. Whose word does he take as to what has happened to his interests? And who is really "representing" his point of view? Under bicameralism the assemblyman can say, "Well, we passed that bill but the Senate defeated it," or vice versa. Under unicameralism, responsibility to one's constituency cannot be so lightly evaded.

Unicameralism may also offer the best hope for our tripartite system to survive as a democratic form of government. If state legislatures are to play a significant role in twentieth-century American government, such basic kinds of reforms must be implemented, and within the very near future. If this does not occur, I doubt rather seriously that legislatures or state governments in general will be an effective instrument of the people's will. The states (and certainly state legislatures) will simply be bypassed in favor of a federal government which is no more responsive.

But, single-house legislatures will only happen if people understand how wasteful and unresponsive the two-house legislature has become.

When your legislature is in session take a close look at its operations. How much time is spent on interhouse squabbles that should be spent on policy deliberations? Are committees in one house passing out bad bills so that the other house will have to take the heat for killing them? Is the Senate stalling bills from the other house as leverage to get its own bills through? Are they creating unwieldy joint committees in an attempt to get around the problems of two houses and begetting Frankenstein's monsters as a result?

Ask yourself these questions about your legislature. Is there interhouse bill highjacking and name calling? Who speaks with authority on questions involving major legislation? Where would testimony on such legislation get the fairest hearing? Can you identify *exactly* who killed the legislation you felt to be important? Are the lobbyists playing off one house against the other so that legislation on which both houses basically agree goes down the tubes? Is the governor doing the same?

By now you can ask the rest of the questions yourself. The answers should leave you with a clearer understanding of why a lot of people in this nation have concluded that the system cannot produce answers anymore. These people are proposing solutions of their own: burn the whole country down and start over; abolish the states; drop out.

If the states are the critical link in the federal system, state government should have solutions too. If the federal system is worth saving, people at the state level are going to have to give it a lot of help. In every state constitution I have ever seen the legislative article precedes the executive. I take this to mean that the drafters believed in the importance of a strong and responsive legislature. If the constitution has to be amended to make the legislature unicameral, then the people will have to carry the ball. Few politicians can be expected to abolish their own jobs.

We are constantly told, today, that government should be more business-like in its conduct. Legislatures can be likened in the governmental structure to boards of directors in a corporate structure. No business has two boards of directors with equal power; under such a structure there could be no direct accountability to the stockholders. We should be able to expect at least as good an organization from the public corporations which spend $70 billion of our money every year. It's time we got down to business with one board of directors for our state governments.

Or we could abolish it all and let the six men in the free conference committee run the whole thing. That would at least be more efficient—and more honest—than what we have today.

One-House Legislature

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Editorial Comment

The Better Way

IT IS typically "American" to make and run things better and better —with the possible single exception of the state legislature.

The state legislature is something at which to scoff. There is no less respected institution, more's the pity.

In industry, science, business and other fields of human endeavor the traditional way of doing things is not sacrosanct. The mere fact that a method is old usually makes it suspect.

It is time, and long past time, for some of the leadership that has won progress in other fields to take a hard look at state legislatures and do something about them. Our lawmaking bodies should be of a kind that will deserve respect and will attract public-spirited men and women to their service.

The evidence is overwhelming that a one-house legislature is better than the traditional two-house body.[1] The weaknesses and worse of the bicameral system are common knowledge and have been so for as long as anyone can remember. It was away back in 1915, for example, that a joint legislative committee in Nebraska commented in its report:

"1. Representative government by the people should be direct and responsible. One body can more directly represent the public will of a democratic people than two or more.

"2. Cities all over the civilized world having a larger population and more diverse interests than Nebraska are governed by one body and the tendency is to make that body smaller with more direct responsibility upon each member than hitherto.

"3. The arguments for a two-house legislature may be summarized under three heads:

"a. The need of proper representation for different orders or classes of citizens in respect to wealth, education or social position. The answer to this is that the spirit of American institutions is to abolish class distinctions in government and to diffuse education and wealth letting social position take care of itself.

"b. Another argument is that two houses are required in order that they may be a check upon each other and prevent the enactment of unwise legislation. In practice it has been found that the so-called 'check' between the two houses results in trades and absence of the real responsibility

(Continued on page 12)

[1] See pages 2 and 8.

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One House for 20 Years

Nebraska's extensive experience with nonpartisan unicameral legislature indicates it's here to stay.

By JACK W. RODGERS*

NEBRASKA has completed two decades of experience with its nonpartisan unicameral legislature, an experience which includes ten regular and six special sessions. The eleventh regular session convened January 1, 1957, adjourning in June. During these twenty years nonpartisan unicameral law-making has been put to a severe test. The legislature has faced knotty problems growing out of economic recession, war, postwar adjustments and drought. It has been asked to expand services and cut taxes, oftentimes simultaneously. This is the stuff out of which the new system could have been shown to be inadequate.

What is the situation? Has the nonpartisan unicameral legislature met these challenges head-on? Has it passed "hasty and ill-considered" legislation? Are the people satisfied that it has done a commendable job? Have any attempts been made to return to the former partisan bicameral legislature?

The events of the past twenty years would appear to justify the following summary statement: The people of the state have accepted the formulation of public policy by a nonpartisan one-house legislature. While there is some opinion in favor of a return to a partisan legislature, there is little feeling that the state should revert to bicameralism. Many people, however, including members of the legislature, would like to see certain changes made within the framework of the basic system now in use.

Vigorous opponents[1] to the adoption of the 1934 constitutional amendment providing for the nonpartisan unicameral legislature called the proposal "dangerous" and "un-American." The press was almost unanimously opposed to it. Yet, since its adoption, the legislature has not been a principal issue of contention in state affairs and attempts to alter it to fit the earlier pattern have not only failed but have met with little or no popular enthusiasm.

Those who have served in the unicameral legislature, including a number who had also served in the former bicameral legislature, have been among its stoutest supporters. For example, only two bills have been introduced since 1937 proposing constitutional amendments to make the unicameral legislature partisan, one in 1951 and one in 1957. Both bills were killed in committee and aroused little discussion. No

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[1] Organized principally into a nonpartisan group known as the Representative Government Defense Association.

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bills have been introduced proposing amendments to return to bicameralism. Also, when a petition campaign was inaugurated in 1953 to re-establish a partisan bicameral legislature, members and former members almost to the man came to the defense of the existing system.

Since 1941 eight bills have been introduced containing five proposals to increase the term of office to four years, eight proposals to raise the salaries of the members, three to provide for annual sessions and two to enlarge the size of the single chamber. The only one to get on the ballot was a 1949 proposal to permit the legislature to fix its own salary, to extend the term to four years and to allow annual sessions to be provided by law. It was soundly defeated at the 1950 general election.

No Stand by Parties

What has been the attitude of the political parties in Nebraska toward the legislature? Surprisingly enough, especially in view of the nonpartisan feature, neither political party took a stand on the impending referendum in its 1934 platform. In its 1952, 1954 and 1956 state platforms the Republican party urged that members be elected on a partisan ballot but nothing was said about re-establishing bicameralism. The Democratic party has mentioned neither issue in any of its platforms since 1934, although its 1956 platform contained a reference to the need for "organized political responsibility" in state government. This platform also stated, however, that "the Democratic party of Nebraska recognizes in our unicameral legislature a bold and striking reform that has provided simplicity and economy in our legislative structure."

It is against this background that we turn briefly to the 1953-54 movement to return to bicameralism and partisan elections. Immediately after the adjournment of the 1953 session the state chairmen of the two parties announced formation of a bipartisan committee to sponsor a movement to re-create a partisan legislature and to consider the desirability of going back to a bicameral body. Petitions were to be circulated to put the proposition on the ballot at the 1954 general election.

The committee, in announcing its plans, said there was widespread dissatisfaction with the 1953 session, primarily because of its length, cost, number of bills introduced, total appropriations made and the number of lobbyists registered.[2] It is interesting to note that similar charges made against the 1933 session of the old bicameral legislature were part of the argument supporting adoption of the unicameral system.

An immediate rebuttal was issued by a number of persons, including several state legislators. Labeling the committee's charges as "unfair" and "ill-considered," they voiced their enthusiastic satisfaction with the present system. The announcement did serve to arouse considerable comment over the state and many persons registered approval of enlarging the present chamber. A lesser number argued for a return to partisan elections but few expressed

[2] Omaha *World-Herald*, June 19, 1953.

any interest in reestablishing bicameralism.

The bipartisan committee moved ahead slowly with its plans but finally announced it would circulate petitions to place a constitutional amendment on the 1954 ballot for establishment of a partisan bicameral legislature. By the time the petitions were ready for circulation, however, the group had only eight months in which to get 59,572 signatures so distributed as to include 5 per cent of the electors in each of two-fifths of the counties.

The Republican State Central Committee gave its "wholehearted endorsement" to the proposal but, when the campaign for signatures began to lag, reversed its action and said it would favor a petition campaign to reestablish partisanship only. The Democratic State Central Committee never came out with a definite endorsement. The bipartisan committee then decided to back this more limited proposal and again submitted petitions. This campaign fared no better. It was difficult to get people to carry the petitions, few signatures were gotten and the movement soon collapsed.

Several conclusions were obvious: First, there was no "widespread dissatisfaction" with the unicameral system itself, no popular demand for its change. The committee mistook criticism of the legislature's actions or inactions for criticism of the basic structure itself. The proponents of the petition campaign were also unable to pinpoint any particular governmental problems and show that they were the direct result of the unicameral legislature or nonpartisan elections. It was furthermore apparent that few persons outside the four Republican and four Democratic leaders who made up the committee, including other party officials and leaders, were actually behind the movement. There was no other impetus.

In May 1956, it was announced that another petition campaign would be launched, this time under the auspices of several state labor organizations. The plan was to seek to increase the size of the unicameral legislature to 85 and to raise the pay of its members. The issue was to be placed on the ballot at the 1956 election. It was reported that the sponsors felt their interests would be better represented in a larger, better salaried legislature. Nothing further was heard of this movement, however.

Procedural Changes

For several sessions feeling had been growing among many members that certain procedural changes would help cut the length of sessions and give more time for adequate discussion of the more important bills. The 1955 legislature passed a resolution directing a committee of the Legislative Council to make a study of the legislative process with these goals in mind. As a result of this study[3] several recommendations for rule changes were made to the 1957 legislature.

Included were recommendations to speed up the hearing process,

[3] Nebraska Legislative Council, *Report of the Committee on Legislative Processes*, September 1956.

change the Committee on Order and Arrangement into a true steering committee, provide a method whereby the budget bill could be given a thorough airing on the floor, purchase recording machines to reproduce committee testimony and general file debate, screen resolutions calling for Legislative Council studies and bring about a realignment of the standing committees.

The 1957 legislature proceeded immediately to adopt three of these proposed rule changes. First, it adopted the proposed committee realignment which added one new committee and reduced the size of the other committees. The result was one additional committee to hear bills, five additional committee meetings each week and the fact that no longer would the membership of the agriculture, education and public works committees have to be the same.

The study committee's recommendation that standing committees begin their hearings at 1:30 in the afternoon rather than 2:00 was also adopted, thus giving more time to hear bills and to hold the important executive sessions. These rule changes were recognition of the fact that much of the lost motion in the legislative machinery occurred at the committee stage. Since all bills are given public hearings with five days notice it is necessary to speed the process as much as possible and to budget hearing time carefully.

Concrete results are already in evidence. The legislature does not begin all-day sessions until the hearing process has been largely completed, and this year these sessions began on May 3, nearly a month earlier than in 1955. This gave the legislature more time to discuss more bills more fully on the floor than formerly.

The third rule change adopted was to provide that resolutions calling for Legislative Council studies be referred to the executive board of the council for a report prior to being acted upon by the legislature. The result of this change has been to reduce materially the number of studies assigned for report by the Legislative Council.

Summary

We return briefly to the original conclusion that the people of Nebraska have accepted completely the nonpartisan one-house legislature. The abortive attempts to alter it by petition, the favor with which it is viewed by those who have served in it, and the lack of popular criticism of the system itself all bear out this statement.

Perhaps part of this approval is based solely on a passive acceptance of prevailing political institutions, but there are other and more positive reasons.

The basic purpose of a legislative body is to reflect the prevailing political, social and economic views of the people it represents. If it does this, and if its machinery and processes are constituted in such a way as to allow these resultant decisions to be expeditiously enacted into law, then it makes little difference whether the members are called Republicans and Democrats or senators from districts 1 and 43. The Ne-

braska legislature has performed this function, even though early opponents were concerned lest the lack of party responsibility and a second chamber to check impulsive actions would lead to a distortion of public opinion.

For example, the people have long insisted on a narrow tax base and limited government spending. In 1937 and 1938 the state was advertised in *Time* magazine as "America's White Spot," undarkened with income, sales or other "extra" taxes.[4] The Nebraska Federation of County Taxpayers Leagues said that the outstanding accomplishment of the first session of the unicameral legislature was the fact that no bills were introduced providing for major new forms of taxation except the one to levy a cigarette tax which was defeated.[5]

Low Tax Burden

Succeeding sessions of the unicameral legislature have continued to reflect this conservatism in tax matters. While a cigarette tax was imposed in 1947 and a severance tax in 1955, repeated attempts to enact sales and income taxes have met with failure. Two such bills were defeated by the 1957 session. Today Nebraska is the only state in the Union which continues to rely on the general property tax for an appreciable percentage of its state revenue (about 30 per cent in 1956), and it has the lowest per capita state tax burden of all the states save one and no long-term debt.

Yet the legislature has provided those services over the years which a majority of the people have demanded. It has supported an excellent State University, has carried on an accelerated highway program and has maintained since 1935 a fairly liberal public assistance program, the latter in response to a population whose percentage of persons over 65 is greater than the national average.

The legislature since 1937 has also mirrored the disapproval of the largely rural population of a compulsory school redistricting law and the state now has more school districts than any other state. It has consistently refused to accede, furthermore, to the persistent urging of educational groups for a program of state aid to schools, believing that the greater number of people would object to the wider tax base which such a program would require.

The people of the state, in addition, favor the openness with which the legislative process is conducted. Hundreds come to Lincoln each session to attend the public hearings held on all bills and to watch proceedings in the chamber. It is an easy matter, moreover, to locate the status of any bill at any one time and to follow its course. And the people know who is responsible in cases where actions are taken of which they disapprove.

And there are checks within this unicameral system. It has already

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[4] By the Associated Industries of Nebraska. See *Time*, December 27, 1937, and June 14, 1938. This group also published a colorful 31-page brochure entitled *America's White Spot* (1938), and distributed it widely.

[5] Nebraska Federation of County Taxpayers Leagues, *Legislative Report of the First Session of the Nebraska Unicameral Legislature*, Fullerton, Nebraska, 1937, page 1.

been seen that public opinion itself is an important one.[6] The governor's veto is available but the restricted use of this check buttresses the conclusion that the legislature keeps closely attuned to public opinion. The initiative and referendum are available and have been used to correct what the people believe are errors of commission or omission on the part of the legislature.[7]

Close observers today feel there are three changes which should be given careful consideration in the near future. An enlargement of the present chamber (under the present constitutional provision it could be increased from 43 to 50) would not only widen its representativeness but would also relieve part of the heavy committee burden now shouldered by each member. The legislators' salaries ($872 per year) need to be raised too, and districts should be redrawn to reflect the population shifts which have occurred since the 1930 census (the basis for the original and present apportionment).

It is certain, however, that the unicameral principle is here to stay in Nebraska. As one who was long associated with the legislature put it, "the unicameral legislature has not fulfilled either the most optimistic hopes of its friends or the most pessimistic fears of its opponents. On the whole, however, it has given a good account of itself."[8]

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[6] For example, a leading veteran senator was defeated for reelection in 1956 largely because he took a view on redistricting and educational problems not shared by a majority of his rural constituents.

[7] The 1949 action of the legislature in increasing the gas tax was reversed by a referendum in 1950. Also, because recent legislatures had refused to levy a ton-mile tax on heavy trucks, groups in favor of such a tax placed such a law before the people by initiative petition in 1956. It was voted down by the electorate.

[8] Roger V. Shumate, "The Nebraska Unicameral Legislature," *The Western Political Quarterly*, September 1952, page 512.

Highest Score Sheet

Unicameral system lacks old abuses of railroading, last minute peak load, buck passing, trickery, patronage.

By RICHARD C. SPENCER*

ONE occasionally hears whispers that the Nebraska unicameral legislature is not all that it should be and that many Nebraskans are dissatisfied with it. Of course, no political structure is all that it should be, but the whispers seem to have originated outside Nebraska for the benefit of non-Nebraskans. It might be well to take a look at the score sheet of the Nebraska legislature compared with that of other states, especially now that the legislature has completed its eleventh regular session, 1937-1957.

Although the picture is not far different from that reported in this REVIEW in February 1950,[1] the fact is that the "unicameral"—"unicam," as Nebraskans familiarly designate it—has come to be something of a show piece for visitors from other states and from foreign, particularly Latin American, countries. Several features distinguish it from other American state legislatures, features that no one who has carefully observed or studied it can possibly deny.

The legislature obviously grapples with the vital problems of the day and does so rather promptly—though it may not deal with them as some people would like. The peak of the load in number of bills passed or rejected continues to come just after the middle of the session.

No irresponsible introduction of bills takes place late in the session through blind compliance with requests for unanimous consent. In 1955, for instance, only 25 bills were introduced after the twentieth day deadline. Six were requested by the governor and nineteen were committee bills. Railroading a late-introduced bill through has been tried and failed. This alone should put most state legislatures to shame. Proportionately, a larger number of bills per member are introduced but there is no rush at the end of the session. The simple and direct procedures are devised for, and do produce, full deliberation, including repetition of steps for review when necessary. Bills are better drafted to begin with than in most states and they end up in better technical form when passed because of the regular procedures for technical review. There is little chance for and little resort to trickery or surprise actions. The procedure is too simple and direct for that.

All bills are considered in some way and the full legislature takes complete responsibility for the dis-

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[1] See "Nebraska Idea 15 Years Old," by Richard C. Spencer, page 83; see also "One House for 20 Years," by Jack W. Rodgers, page 2, this reprint.

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position of every bill, either to pass it or to postpone it indefinitely, without leaving it to the mercy of a committee or burying it on the calendar. If a standing committee holds a bill too long, a discharge rule that actually works is occasionally used to bring it to the floor.

There is no sifting committee to draw its mesh too tight nor any other procedural device of selection that can be exploited to prevent the representative body as a whole from debating a measure. A bill is taken up in its order of report out of committee, as listed on the daily "Work Sheet," or—a fairly recent development—it is lifted from its regular order by grant of unanimous consent. This latter practice seems somewhat untidy—perhaps could be used for surprise purposes—but it does not endanger the prospects of consideration of other measures on the calendar. It merely makes an exception to the regular order.

Suggest Steering Committee

A procedural study group has suggested the creation of a so-called "sifting" (also called "steering") committee to coordinate reference of bills to committee and their return, hearings schedules and debate calendar sequences. There is no suggestion, however, that this committee, if created, would be in position to act as executioner of unwanted measures. The whole legislature does its own sifting—sometimes awkwardly but effectively. As a result sessions have grown somewhat longer, that of 1957 being the longest, 115 days; but it disposed of 615 bills, passing 404 of them.

Bills get more complete consideration by the whole legislature in Nebraska than elsewhere. Nearly all committee work was done by April first in the 1957 session. That was scarcely after the middle of the session and the full legislature began holding afternoon (but no night) sittings as well as the regular morning sittings to consider the bills that committees had already reported and which were waiting their turn on the calendar.

Minor changes in procedure, primarily with a view to shortening the session, were considered in 1955 and 1957 but of those recommended by the Legislative Council's study committee only one was adopted. It increased from eleven to twelve the number of bill-policy committees in order to spread the work of bill consideration by cutting down on the size of most other committees. One proposal, to have departmental bills introduced by committees only, was apparently inadequately presented and therefore misunderstood. It was rejected, some members thinking it would limit their right to introduce bills of their own that might affect departments, but one observer felt that if the matter were presented again it would be adopted. It could reduce the total number of bills introduced by individual members and save some sessional time by consolidating the bill demands of various departments.

The unicameral continues to operate without any end-of-session confusion, uncertainty or rush. The end is clearly predicted fully a week in advance, with only a few bills left for disposal in the last few days. Only one bill is passed on the last day—the budget bill. Thus the gov-

ernor is not overloaded and is not, as often happens in other states, the target of dissatisfied lobbyists who hope to take advantage of his discomfiture to influence him, perhaps through his executive assistants, to veto a measure they oppose. This puts the governor's legislative work out in the open. For most bills the governor may wish to veto the legislature is still in session to reconsider them.

Simply because work is done so much in the open no devious lobby influence is effective, although lobbies are there in full force and resort to some practices, like offering free meals, that raise eyebrows. The newspapers and consequently the public can follow the operations of the unicam without difficulty. There is only one relatively small body of legislators to be watched.

Members themselves may not easily abuse their offices because they can be easily watched both from within the membership and from without. In most state legislatures members have to ignore or tolerate questionable practices on the part of some of their colleagues because it is hard for them to do anything about it. Not so in Nebraska. One Nebraska legislator apparently attempted to use his position in an unseemly manner in 1955 but his fellow legislators got suspicious. In a legislature of only one house members cannot dodge responsibility for their fellows. Unethical conduct by one, if condoned, reflects on all others. An investigation of "improper practices" was ordered and a forthright report was adopted almost unanimously. The offending member was, in full session, roundly "censured, reprimanded and condemned for improper and unethical conduct." It was a good lesson for all members and, no doubt, for the pressure interests that may have been involved.

There is no sessional legislative patronage available to individual members in the usual American pattern. Instead, the approximately 60 sessional employees are appointed by the full-time, year-in-and-year-out clerk of the legislature, himself a former senator under the earlier bicameral setup. He accepts applications transmitted by members, without the members having to favor some and disappoint others, and merely appoints those of proper qualifications.

Legislative Council's Duties

One outstanding feature is that the Legislative Council and its permanent research staff are trusted with serious investigations and difficult tasks—probably much more so than is possible in a bicameral legislature. It is trusted to do the interim work of investigation, research and bill recommendation that in many state legislatures is parcelled out in a hit-and-miss fashion among various specially appointed interim committees. Since all members of the small Nebraska legislature are now members of the Legislative Council and may be asked to serve on council committees for particular assignments as arranged by its executive committee, there is little reason for members being suspicious of the council's reports and recommendations. This permits all members of the legislature, potentially, to be active throughout the biennium but in a

well coordinated and responsible manner. The permanent research director of the council and his staff serve on all the projects.

There are no conference committees as in other legislatures to iron out the differences, serious or petty, in bills already passed by two houses. This source of obscure, irresponsible and sometimes corrupt legislative action is entirely lacking, of course, merely because there is only one house. Likewise, one house or its committees cannot wait to see what the other house and its committees will do with particular bills or parts of a "program" before taking some action itself. In the one house, it does no good to wait and thus congest the calendar. There is no "passing the buck." This is the principal reason that the unicameral legislature can complete all its work without a rush at the end of the session. It is just that simple.

Reapportionment Question

Nebraska got an equitable reapportionment for representation when the unicameral districts were laid out. Although out of line now, the disproportion between the larger cities and "out-state" is not as yet serious enough to be disturbing. No provision was made in the constitution to assure prompt and fair reapportionment. Left in the hands of the legislature itself, the job may not be done because of the strength of the over-represented "out-state" sections, unless, of course, citizens resort to a constitutional amendment by initiative petition for this purpose.

The adoption and continuance of the unicameral legislature has little or nothing to do with political views or loyalties, liberal or conservative, Democratic or Republican. The people of Nebraska are essentially conservative. Their legislature is essentially conservative. Some unicameral legislators have been identified as "status quo" members who get their principal support outside the legislature from the railroad lobby, some of the Omaha interests and the economy-minded tax groups. Others have been labelled "progressive" and are aligned with such matters as educational and welfare improvement. Others are not definitely tagged, but the "status quo" group generally is comfortably in the saddle. In this respect they are about like Americans in general, so why should they try to upset an effective unicameralism to which they have become accustomed?

Dependence is placed on the property tax. Income and sales taxes have been avoided. Appropriations have not been high, although the 1957 session, as something of an exception and only after long debate and some reversals in decisions, found it necessary to recognize the rise in the cost of state government and appropriated amounts reaching a new high, especially for the University of Nebraska. Thus far, the legislators have not been able to get the voters to increase legislative salaries, which under present constitutional limits are admittedly very low —$872 a year.

Nebraskans are interested in their legislature. They vote for its members in approximately the same numbers that they vote for members of Congress—in both primary and gen-

eral election. They write "letters to the editor" about it, usually exhibiting more feeling of personal contact with the legislature than comparable letters in other states, but the comments or complaints deal with the same subjects as elsewhere. Some are satisfied and some dissatisfied with legislative results.

Some, including a few of the legislators themselves, feel that the legislature may be somewhat small to handle committee work adequately or to be adequately representative—that it should be enlarged. Some think, and this includes the partisan governors, that there would be more "leadership" if the election were on a partisan basis, the implication being that a governor belonging to the dominant party in the legislature could crack the whip on behalf of an executive or partisan "program." Others seriously doubt this. At present the election of members is on a nonpartisan basis in both the primary and general election, and most members seem to be content with this. In fact, they have not infrequently elected to important legislative posts those in whom they had personal confidence, regardless of known party affiliation.

In the 1957 session, proposals to change the size and nonpartisan character of the legislature were rejected and the only constitutional amendment proposed by the legislature that would affect themselves, to be submitted to the people in 1958, is to double legislative salaries.

EDITORIAL COMMENT

(Continued from page 1)

which should be felt by representatives of the people. Nothing is more common than for one house to pass a bill and the members who voted for it to urge the other house to defeat it, or for a little group of members in one house to hold up legislation from the other house until they extort from it what they demand.

"c. The third point urged for two houses is in order to prevent hasty legislation by requiring more time and machinery for the enactment of a law, thus securing deliberation and reflection. Deliberation and reflection do not now mark the work of a two-house legislature, which passes most of its acts in the last ten days of the session. A smaller body with a more direct responsibility upon each member arising therefrom will tend to greater deliberation and reflection than the present system."

These serious indictments are at least as valid today as they were 40 years ago. Nebraska's experience, as well as the experience of the many cities that abandoned bicameralism long ago, have brought in the verdict.

Contrast the indifference and lethargy of other states with the attitude of industry. The assembly line was little more than an experiment before everyone saw its soundness—and acted. And no one has to go around preaching the virtues of automation or of the self-service supermarket.

Don't we care what happens to our legislatures?

NATIONAL MUNICIPAL LEAGUE
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THE UNICAMERAL LEGISLATURE

Institutions of representative government should not be regarded as ends in themselves, but simply as means through which social and economic objectives can be achieved. An efficient legislative structure for state government is important so that lawmakers will have the fullest opportunity to know and be responsible to the public will.

Bicameralism is a characteristic feature of American government found in the organization of both Congress and the legislatures of every state except Nebraska. However, it has not been the only structure employed in American legislatures. Pennsylvania, Georgia, and Vermont had experience with unicameralism in their early history. Nebraska has had a unicameral state legislature since 1937. Great Britian's legislative body, from which our tradition stems, is bicameral in name only. The House of Commons has assumed all important legislative and political functions from the House of Lords, and is essentially a unicameral system. At one time some 40 per cent of the nation's cities had bicameral legislative bodies, but bicameralism has practically disappeared at the municipal level.

Although the traditional bicameral legislature remains in all but one state, the two houses generally have the same jurisdiction, the same authority, and the same requirements to perform identical functions. Further, state government is undergoing major change today. Reynolds v. Sims and other recent U.S. Supreme Court decisions have established the general rule that a state must make "an honest and good faith effort to construct districts for both houses of its legislature as nearly of equal population as is practicable." Differing bases of apportionment alone are a less valid rationale for a bicameral system.

It is therefore important to re-examine the efficiency and effectiveness of unicameralism as compared to bicameralism, and to weigh the relative merits and disadvantages of each.

Spotlight on Nebraska

The story of the pioneering efforts of Senator George W. Norris and others to convince Nebraskans to adopt a one house legislature began in 1913. A legislative committee was appointed to study ways and means by which the state government could be made to function more effectively. It recommended the unicameral system. A long and arduous campaign began, ending victoriously in November of 1934.

At that time, a citizens' petition had secured a statewide vote on the constitutional amendment to merge Nebraska's 33-member Senate and 101-member House into a single legislative body. The amendment carried by a large majority, and the unicameral legislature has been in operation in Nebraska ever since.

Legislative Structure

Nebraska has a one-house legislative body composed of not less than 30 nor more than 50 members (currently 50), elected from single-member districts on a nonpartisan ballot (which is not essential to the system). Legislators meet in unlimited biennial sessions, for which they are presently paid $4,800. Legislative terms have recently been extended from two to four years, with half the members elected every two years. The governor continues to present a budget, exercise the veto power, and make certain appointments subject to legislative confirmation. The presiding officer of the assembly is the lieutenant-governor, and the chief clerk is a full-time officer. A legislative council, to which all legislators belong, functions between and during sessions to maintain research and reference services, as well as to formulate legislative programs.

One of the objectives of the unicameral amendment was an effective committee system. There are at present 18 standing committees, 13 on subject matter and 5 on administration and rules. Membership and chairmen of the committees are chosen by a 13-member Committee on Committees.

Rules of Procedure

Introduction of bills by individual members is limited to the first 20 legislative days. After the 20-day limit, a standing committee may introduce bills upon a majority vote of its members and upon the vote of three fifths of the elected members of the legislature. Bills may also be introduced after the 20-day limit upon recommendation of the Governor.

There are public hearings on almost all major bills. Any citizen may appear to state his position for or against a measure. Notice of date and time of committee meetings is published in the legislative journal 5 days in advance of hearings.

En route to passage after receiving committee approval, a bill makes at least three appearances on the floor—first to undergo debate and amendments, a second time for technical refinements and unanimous consent amendments, and third, final reading aloud and final vote. All bills must be published after refinement and when received by the legislature must lie on the members' desk for one legislative day before the final vote.

Unicameralism a Success in Nebraska

There has been no serious attempt in Nebraska to return to bicameralism since 1934, although there are recurrent movements to change from non-partisanship to the party system. A survey of 68 present and former senators by the University of Nebraska's School of Journalism in 1961 turned up only four who wanted to return to the two-house system.

Nebraska's Gov. Frank B. Morrison has said in an interview with the *New York Times* that two houses are unnecessary. "There is no longer any reason for any state to retain the duplications of a bicameral system when a unicameral system serves the same purpose less expensively." The legislators in Nebraska generally agree that the unicameral system has benefited the state. Those interviewed by the *Times* indicated that lawmakers were much more responsive to the wishes of their constituents under the unicameral system than under the old two-house establishment. Vice-Chancellor of the University of Nebraska, Dr. A. C. Breckenridge, says that the unicameral system has "become a source of considerable pride for many Nebraskans. Although it is by no means a perfect institution, it is a workable and responsible device for representative government."

The unicameral legislature also is advocated by the National Municipal League in its Model Constitution and the system is supported in Nebraska by the Nebraska League of Women Voters.

Why Only in Nebraska?

With many western nations and almost all major cities in the U.S. governed by unicameral systems, why is Nebraska the only state with a unicameral legislature? One reason given is the innate conservatism in America where government is concerned; another is that legislators are naturally reluctant to vote themselves out of office. Three other factors were at work in Nebraska when the unicameral system was adopted: (1) long outstanding leadership for unicameralism in the state; (2) initiative provisions available in the constitution; and (3) disenchantment with the bicameral legislature and its handling of depression issues.

In Support of Bicameralism

The adherents of bicameralism give a number of reasons for its retention. A study of apportionment by a group of political scientists, "One Man, One Vote," said: *"Bicameralism may also serve to further the very objective of representing the people equitably in a legislature. In any districting, geographic features are bound to cause some inequities of population among districts. When there are two houses, an area that is somewhat underrepresented in one may be given a compensating advantage in the other and minor inequities in apportionment thus be balanced off."* The Supreme Court said that different constituences could be represented in two houses under a population standard; one house could have single-member districts while the other could have at least some multi-member districts. Differences in personnel, constituency, and outlook due to different terms and other factors all are justifications for bicameralism.

Efficiency and Consideration of Bills

Supporters of bicameralism insist one of its greatest advantages is that hasty or ill-considered legislation, passed by one house, can be killed on sober examination by the other. The following statistical analysis of the action of one house upon the bills from the other in Missouri challenges this argument.

Missouri General Assembly
Bills introduced and Their Disposition
72nd General Assembly, Reg. Session 1963

Introduced			1,154
Passed House of Origin	549	47.6%	
Failed in House of Origin	605	52.4%	
Action in Second House			549
Passed without Amendment	200	36.5%	
Passed with Amendments	87	15.7%	
Failed to Pass	262	47.8%	
Bills Sent to Conference			22

The house of origin in Missouri failed to pass approximately half the bills introduced, which means that a large fraction of the legislation proposed in either house is never even considered by the second chamber. When bills do get to the second house, a far greater percentage of those finally passed are not amended, seeming to disprove the theory that one house acts as a check upon the other.

Unicameral advocates assert that the real checks and balances are the governor's veto, a court review, and the fact that a bad bill can be repealed by referendum or at the next legislative session. Checks and balances should be exercised between the three branches of government.

A summary of the above provides an interesting parallel with those of Nebraska's unicameral legislature during the same year.

	1963	
Bills intro. Mo. Legislature	1,154	
Bills passed Mo. Legislature	287	25%
Bills intro. Neb. unicameral Leg.	815	
Bills passed Neb. unicameral Leg.	545	67%

For purposes of comparison, the last year of Nebraska's bicameral legislature is enlightening: of 1,956 bills introduced in 1935, 192 or 18% were passed. Certainly in a one-house legislature the total number of bills introduced is greatly reduced and the percentage of bills passed is greatly increased. In Nebraska, reports on bills can be requested 20 days after a bill has been sent to committee. The unicameral legislature has not experienced the bunching up of bills at the end of the session which so often characterizes the last 48 hours of many legislative sessions (caused in part by bills being approved by one house and held by the other until the last possible moment.)

Responsibility and Visibility

In a single house, supporters say, each legislator would feel greater personal responsibility for careful consideration of all bills to be voted upon, knowing that responsibility for presenting bad legislation could not lightly be delegated to a second body. Responsibility is more easily pinpointed in a unicameral system. With bicameralism, one house can stop, or seriously impede, good measures that are favored by a majority of the people. Some authorities feel that the biggest problem of state legislatures has been the failure to take any action at all rather than the laws actually passed.

It is claimed that two houses provide protection against corruption and undue influence by lobbies, yet Nebraska's simple organization and small membership provide high "visibility" for legislation. Certainly the elimination of the conference committee, which Senator Norris termed a third house, removes one point of undue influence. Nebraska State Senator R. D. Marvel says: "There's now no way for us to pass the buck. I can't say to a constitutent, 'Okay, I'll introduce this for you,' and then run to the other house and say, 'Boys, kill this.' The lobbyist, too, doesn't dare talk out of both sides of his mouth. We're working in a goldfish bowl." The definite legislative procedures required in Nebraska make it easier for the voter to understand the process and to know where and when his voice would be most effectively heard.

Economy

A unicameral legislature would undoubtedly be more economical. While improved rules of procedure could be followed under bicameralism, duplication of effort still would be involved in getting legislation passed by two houses. The total cost of Nebraska's first unicameral session in 1937, with 226 bills passed, was $140,000. The last bicameral session in 1935, with 192 bills passed, cost $203,000. Experts, however, are inclined to discount the importance of this argument. The single house should cost less, they say; but legislative costs are so small a part of total state budget that this is not a significant argument. Of more importance is the fact that the unicameral system would reduce the number of legislative members, making it possible to pay the legislators a more reasonable sum without increasing the amount spent on salaries.

Quality of Legislation

Certainly the rules of procedure have been an outstanding feature of Nebraska's unicameral system. Many of these same improvements could be made within a bicameral system, however. To adequately evaluate the quality of government in any state one must look at the kind of legislation which is passed, rather than the techniques used to pass it. Some authorities have noted that in a state as concerned with economy as Nebraska, the legislation passed has not kept pace with progress in other states. For example, Nebraska has no merit rating system for state employees, something the League of Women Voters has long supported in Missouri. Critics also have pointed to Nebraska's tax problems as an area in which bicameral legislatures seem to have done a better job. Yet, if the reason for lack of progress is failure of the legislature to act, having two houses instead of one would have made the situation even worse. Unicameralism, as a tool, does not guarantee good government, but it does eliminate some of the obstacles that plague bicameralism. Nebraska's problems and constituency are different from those of a more urban state, and comparisons of the quality of legislation are exceedingly difficult to make.

How Could Missouri Change to Unicameralism?

The legislature could offer a unicameral amendment to the voters, or citizens could circulate initiative petitions asking that such an amendment be put on the ballot at the next general election.

The change would take effect thirty days following approval by a majority of the voters.

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Report issued to the Idaho Legislature, November 1964, Research Publication
REAPPORTIONMENT OF THE IDAHO LEGISLATURE, November, 1964, Research Publication No. 1

UNICAMERAL LEGISLATURES

The Birth of Legislatures

Legislatures are a comparatively modern branch of government, while executive and judicial agencies can be found in the most ancient societies. The legislature as such originated in England in the late Middle Ages when the king under pressure of his vassals called representatives to gather and consult on the governing of the kingdom. From the beginning, the delegates were called as representatives of separate and distinct classes of society, known as estates. In the Model Parliament of 1295 there were five estates, but soon these were consolidated into two, the nobility and clergy in one body, and the common people in the other, and the tradition grew for them to sit apart so that each would have at least a veto power over the other. This explains the origin of the House of Commons representing the lower classes and the House of Lords representing the aristocracy.[1]

Colonial Legislatures

This pattern was followed to some extent in the Colonial American legislatures where the upper house in most cases served as a council to the royal governor, and represented the king, while the lower house was chosen by the electorate of the colony. In some cases the upper house was elected by the lower, but property requirements were higher in the upper house. Upon gaining independence most of the states retained this basic form while three states (Pennsylvania, Vermont, Georgia) at first tried unicameral legislatures.

"In the American colonies, the rise of the second house came about due to a conflict of interests within the colony or between the proprietor and the colonists.[2] The governor's council, which was to become the upper house of the legislature in the great majority of colonies, was a small body of from three to twelve men, appointed by the proprietors to act in advisory capacity to the governor; the lower house was a concession to the colonists, just as the house of commons grew up as a concession to the non-noble class of England. That the two groups early came to sit apart was due to questions of expediency, and the same motive which led the proprietors or the colonists to demand a separate house under one set of conditions led them to wish a joint meeting as a single house under other conditions.

"In Maryland, the first legislature summoned by Lord Baltimore, that of 1637, and its immediate successors, consisted of the lieutenant general or governor and the secretary of the province, the members of the council, gentlemen summoned by special writ of the proprietor, and the burgesses elected by each hundred. Those summoned by special writ were quite naturally looked upon as representing the interests of the proprietor rather than of the colonists. So long as the governor could summon an indefinite number of gentlemen to sit and vote with the elected burgesses, he could easily control the legislature. The burgesses, therefore, feeling that they were the only true representatives of the people, and impotent to cope with the forces of the governor,

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[1] E. C. Buehler, Unicameral Legislatures, (New York: Noble and Noble, 1937), pp. 141-160.

[2] Harrison Boyd Summers, Unicameralism in Practice (Vol. 11, No. 5 of The Reference Shelf, 11 vols.; New York: H. W. Wilson, 1937), pp. 181-197.

SUBJECT Legislatures
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early demanded the right to sit and vote apart and to have a veto on the acts of others. Although refused at the time, their request was granted eight years later, and from 1650 on the two groups continued to sit apart and act as coordinate bodies.

"The people of New Jersey were no less insistent in their struggle for a single house. The 'Consessions' of 1664, issued upon the separation of the new colony from New York, provided for the appointment of a council of six to twelve by the governor, who was the appointee of the proprietors, and the election of twelve deputies by the freemen. It would seem that the Concessions contemplated that these two groups should sit as one body and decide all questions by majority vote. But when the first session met in 1668 there were ten deputies and only seven councillors present. It being evident to the representatives of the proprietors that such a scheme would destroy all effective control over the conduct of affairs by them, they immediately withdrew and insisted upon their right to sit and vote apart. The deputies, wishing a single house, were so insistent in their demands that the governor ignored the Concessions, dismissed the deputies, and ruled without an elective assembly until 1675. The deputies elected in 1675 and succeeding years were no less insistent than had been their predecessors in their demands for a single house, and in 1681 the governor again dismissed them and ruled with the advice of the appointed council alone. In 1702, when the colony became a royal province, the bicameral system was restored, the upper house or council being appointed by the king, and the lower house elected by the freemen of East and West Jersey. This status continued until the revolution.

"In 1680, when New Hampshire was separated from Massachusetts by royal decree and made a separate province, the crown appointed a president and a council of nine who were to govern with the aid of an elective general assembly. To make the veto of the smaller council effective, it was provided that the two groups should sit and vote apart. That there was no intention of making the elective group the equal of the council was early shown when, in 1682, due to the stubborn attitude of the assembly in insisting upon its rights, it was dissolved, to meet only once during the next ten years. In the interim the president ruled with the council alone. In 1692 the assembly was restored as a coordinate body, and in this form the two houses continued down to the revolution.

"New York was ruled by a governor and council until 1683, when an elective assembly was granted, to sit as an independent house. With the ascension of the proprietor to the throne as James II, one of his first acts was to abolish this assembly, leaving the governor and council again supreme. William III revived the assembly in its old form in 1691, and it was continued down to the revolution. North Carolina was granted elected representatives as early as 1665, the 'Concessions' of that year providing for the election of twelve deputies to sit with a smaller number of councilors, as a single body. The disadvantage in which this placed the proprietors soon becoming evident, the plan was changed to require the consent of a majority of the councilors, as well as a majority of the entire body, for the passage of all laws. The two groups continued to sit together, the representatives of the proprietors having a veto, until 1691, when a new form of government provided for an upper house of the local nobility and a lower house of elected delegates. From this date the two houses continued to sit as separate bodies. In South Carolina the two houses seem to have sat apart from the first.

"The early legislative history of Pennsylvania and Delaware is quite different. William Penn was notably the most liberal of all the proprietors, and when he provided for a legislature for Pennsylvania in 1682, he did not retain a check in the form of an appointive upper house. He did, however, provide for two houses, both elective, the smaller of which was to propose laws, the larger only to consent to or reject the bills of the other. This ingenious scheme soon broke down, however, the lower house gaining the right to originate bills, which power was definitely recognized by the charter of 1696. The distinction between the houses being broken down, they simply becoming coordinate legislative Bodies, representing the same interests, a single house was substituted by the charter of 1701, and the life of the two houses as coordinate branches was thus limited to five years. Two years later Delaware was given its own legislature, also a single house, and in this form the two governments continued down to 1776.

"The first colonial assembly ever to meet in the new world was that of Virginia, elected in 1619 at the call of Governor Yeardley. Up to this time the colony had been under the direction of a governor and a council of six, all appointed by the London Company. The twenty-two burgesses met with the governor and council in one body and enacted laws for the colony. Although the session lasted but six days, it marks the beginning of representative government in America. Five years later, when the crown revoked the charter, the House of Burgesses was allowed to continue, the councillors, now the appointees of the crown, continuing to sit as members of this body. In 1680, however, the council was made an independent house, to increase the control of the crown over colonial affairs. The two houses continued down to the revolution.

"Massachusetts was the first colony to develop a two-house legislature. The charter of 1629 provided for a governor, deputy-governor, and eighteen assistants, all appointed by the members of the company. They were to meet four times a year with the freemen of the colony, who retained the legislative authority. With the growth of the colony such general meetings proved impracticable, and the lawmaking was left to the governor and the assistants. Although the assistants were now elected by the whole body of the freemen, the towns felt themselves to be without adequate representation, and in 1632 secured the right to send two deputies each to sit with the governor and assistants. Although the two groups sat together as one body, the closer connection of the assistants with the executive, together with the difference in their modes of election, tended to make them think of themselves as constituting two different groups, and not two years had passed before the assistants sucessfully asserted their right to a veto on acts of the General Court, even though they secured a majority vote of the two groups combined. However, they continued to sit together, either group having a negative upon the other until 1644, when a sharp controversy brought the two groups into conflict and forced the issue of separation.

"The two self-governing offshoots of Massachusetts, Connecticut and Rhode Island, may well be considered together, as their lines of development are very similar to each other and to that of Massachusetts. As in the latter state, a small number of 'magistrates' were elected at large, and a larger number of 'deputies' were chosen by the towns. The two groups met together as one house, but as the amount of business increased, the smaller group was made

a sort of standing committee to care for all matters that might arise while the deputies were not in session. This placed the deputies at a distinct disadvantage and led to their demanding and receiving permission in Rhode Island to withdraw for discussion among themselves and to agree upon a common attitude, so that they might meet the magistrates on a more even footing. The next step was a desire for complete separation, which came in 1696 in Rhode Island, and two years later in Connecticut. Only under such a plan could the more transient body of deputies retain their independence and equality of action in competition with the more experienced and more active magistrates.

"Thus the eighteenth century opened with all but two of the American colonies having legislatures composed of two coordinate branches, with an appointive council exercising a certain degree of supervision over the assembly. The only new colony of the next century, Georgia, in keeping with the policy of the proprietors and of the crown, was also provided with a bicameral legislature, so that the revolution found the American colonies with much the same scheme of legislative organization as had existed for the greater part of a century. Now that the time had come for the colonists to decide how to govern themselves, only those living in Pennsylvania and Delaware had had personal experience with the working of a single-house legislature.

"The revolution produced no break in the orderly growth of legislative institutions. No alteration had taken place in the minds of the people relative to those institutions under which they had lived for the better part of a century, and no radical changes were contemplated in them. The constitutions adopted in the period following the opening of hostilities simply followed the lines of development already established. In the organization of the legislatures of the new revolutionary states, the chief problem facing the constitution makers had to do with the upper house. The lower house, which always had been the most, and generally the only, republican branch of the colonial legislature, required no attention other than a definition of its function and powers. The upper house, however, demanded reconstruction, since the colonial council was aristocratic and monarchical in character. The colonists had grown accustomed, in the council, to a legislative body smaller in size and more permanent in nature than was the lower house, renewed as vacancies occurred rather than annually or semi-annually, and frankly composed of and representing the interests of the wealthier members of the electorate. Advanced though the colonists were for their day and age, they still retained much of the British antipathy to and fear of the uncontrolled rule of the masses. The council, being the agency with which they were acquainted, was the logical one to continue as a check upon the more democratic lower house.

"Of the eleven states to reorganize their colonial governments during the period of hostilities through the adoption of a written constitution, all but two, Pennsylvania and Georgia, provided for an elective second or upper house. Of the remaining nine, seven frankly made the upper house a weapon of special privilege represented by wealth. In Maryland, New Jersey, North Carolina, South Carolina and New Hampshire, membership was restricted to the wealthier members of society through higher property qualifications than were required for membership in the lower house. New York and North Carolina provided for the election of members of the upper chamber by the more wealthy electors. And Massachusetts and New Hampshire provided that members of the upper house should be apportioned in accordance with the 'proportion of public taxes' paid by the districts. Only Virginia and Delaware had the same property qualifications for both the members and the electors of the upper and lower houses.

Legislatures Since Colonial Days

Under the Articles of Confederation the United States functioned with a unicameral congress, but in the framing of the Constitution the authors provided for two houses primarily as a check upon the much greater power of the new federal union. The bicameral provision was part of the Great Compromise which provided for representation to be by states in one house and by population in the other to satisfy both the large and small states. The bicameral feature itself was not specifically debated at any length.

After Vermont abolished its unicameral legislature in 1836 (being the last of the three to do so) all the states had bicameral systems for nearly a century. The tendency was nearly universal to have the lower house more representative of the people while the upper house continued to represent land and wealth, often by having higher property requirements for its electors. In the early twentieth century there was a widespread movement to promote unicameral legislatures. This sprang from a general dissatisfaction with corrupt and minority-dominated bodies, and was closely related to the Progressive Movement and the drive for the initiative and referendum. Proposals were made in a number of states, often by the governor, but were always defeated. The following table gives examples of defeated unicameral proposals: [3]

Year	State	Where defeated or died
1915	Alabama	Legislature
1915	Arizona	Initiative
1918	Arkansas	Constitutional Convention
1913	California	Legislature
1917	California	Legislature
1918	California	Legislature
1923	California	Legislature
1925	California	Legislature
1914	Colorado	Initiative
1914	Minnesota	Legislature
1915	New York	Constitutional Convention
1912	Ohio	Constitutional Convention
1914	Oklahoma	Referendum
1912	Oregon	Referendum
1914	Oregon	Initiative
1917	South Dakota	Legislature
1927	South Dakota	Legislature
1915	Washington	Legislature
1917	Washington	Legislature

The movement lasted until 1935 when Nebraska adopted its unicameral amendment, largely under the leadership of George W. Norris, the famous Progressive Republican Senator from Nebraska. The Nebraska plan seems to have been popular and successful, at least to the extent that it has not been changed, but it has not led to any other state's adopting it.

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[3] Ibid., pp. 197 - 200.

Representative legislatures had their greatest period of development during the 19th century and are now common throughout the civilized world.

> About three-fifths of the contemporary national legislatures are bicameral in form, including those of the major states. Legislatures are unicameral in Austria, Finland, New Zealand, Portugal and Spain, in the new states of Israel and Indonesia, and in most of the Soviet satellite states. National and state legislatures in the United States alone have preserved the balance between the two chambers. The U.S. Senate is unique among national upper chambers for its considerable ascendancy over the House of Representatives through longer term and possession of distinctive powers to confirm presidential appointments and to approve ratification of treaties, while possessing powers coordinate with the House of Representatives in other important respects. Elsewhere, notably in the British House of Lords since 1911 and to a lesser extent in the French Council of the Republic since 1946, upper chambers have quite generally been reduced to the role of delay, advice, and amendment of the actions of the popular second chamber.[4]

Canada is a particular case in regard to unicameral legislatures. The national Parliament is made up of the Queen's representative as Governor General, and two houses, the Senate and the House of Commons. The Provincial legislatures, with the exception of Quebec are unicameral, consisting of a Lieutenant Governor presiding and an elected Legislative Assembly. (Quebec retains a nominal second chamber, the Legislative Council.) Lieutenant Governors have the power to refuse assent to bills passed by the assembly. Canadian legislatures may delegate legislative power to other bodies, but such power is derivative rather than residual, and may be revoked at any time.[5] In Australia all states except Queensland nave bicameral legislatures, and the federal legislature is bicameral.

Essentially the tendency has been to copy the British pattern of bicameral legislatures in most of the English speaking world, and in larger nations, especially federal unions, while unicameral legislatures have arisen in smaller more homogeneous states and nations. Thus we find bicamerals in Switzerland, Australia, France, Spain, Mexico, Sweden, United States, Canada, and most American and Australian states and the bilingual province of Quebec in Canada; while we find unicamerals in Costa Rica, Finland, Haiti, Luxembourg, Norway, Panama, the majority of Canadian provinces, a single homogeneous American state, and one of the smaller Australian states. It should also be pointed out that American cities and towns are nearly universally governed by unicameral councils, though many of them earlier ex erimented with a bicameral form.

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[4] Encyclopedia Americana, 1964, Vol. XVII, "Legislature", p. 226.

[5] Encyclopedia Canadiana, 1963, Vol. 6, 'Legislation", pp. 114-116.

The Unicameral System

The rest of this study will attempt to explore the arguments that are advanced to support the adoption of a unicameral system, and the changing trend of justification for bicameral systems. The emphasis will be on the unicameral arguments, it being assumed that the reader is well acquainted with the functioning of the two-house system.

Arguments in favor of the unicameral system have tended to center around the issues of speed, economy, and popular will. One of the earliest advocates of the unicameral legislature was Jeremy Bentham, the 18th century political philosopher whose main theory was that of "utilitarianism", which proclaimed that government should seek the "greatest good for the greatest number". In achieving this he felt that any legislature would have to be based on universal suffrage and equal representation, essentially the "one man-one vote" concept. Therefore a second house was at best superfluous, usually obstructive, and potentially dangerous. He had no respect for bicameralism as a British tradition, pointing out that imitating governments rejected the monarchy but retained the House of Lords feeling they had no quarrel with it. Bentham saw only useless delay in consideration of legislation by a second house, suggesting that the indignation of voters is a better check on rash action. In a bicameral system a clear majority representing the will of the people in one house could be defeated by one or two votes in the other house. Any delay or clash of authority could only help to make lawmaking obscure and complex, an anathema to Bentham's idea of keeping the legislative process as close to the people as possible.[6] If one accepts Bentham's basic premise of pure majority rule, it is easy to concede his arguments in favor of unicameral legislatures. However, Bentham's premise is not in line with the tradition in United States governmental history of protection for minority and other interests.

An argument advanced long before the Supreme Court directed that both houses be apportioned on a strictly population basis was that the two houses had become so much alike in their representation that a separation was superfluous. This involves the whole issue of delay, obstruction and corruption. A bicameral legislature must consider everything twice (four times counting committees) thus doubling both time and expense. There is always the possibility that the two houses will pass the same bill for quite different reasons, not knowing the deliberations of the other. Or, vice-versa, they may pass essentially the same legislation, but in slightly different form, leading to delay in compromising the two versions. Or one house may assume that the other house has considered a bill adequately since it passed it, while in fact the bill gets proper consideration in neither house. On the other hand, two considerations can be strictly repetitious or may reflect purely the mutual jealousy between houses in seeking the attention of the people. Actually legislatures have virtually ceased to be deliberative bodies in the face of the great amounts of work they must now accomplish in one session. This is espcially noticeable in the closing days of a session when bills must be rushed

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[6] Buehler, op. cit., pp. 127 - 140.

through in great numbers, with most of the rules suspended, and with no deliberation by the entire house at all. Advocates of the one-house system maintain that it would simplify the procedure and make it possible to have adequate discussion of all measures once.[7]

It is argued that a two-chamber legislature is more easily dominated by pressure groups because influence is needed with only a minority of one house in order to at least obstruct action. This was a key argument of Senator Norris who pushed the Nebraska unicameral. He saw danger especially in the conference committee system where two or three members from each house can have life or death power over a piece of legislation and can become a sort of superlegislature. Senator Norris's case against the two house system was built principally on his fear of evils and difficulties in the conference committee. He felt that the committee had far too much power in relation to its publicity.[8]

Advocates of the unicameral legislature make frequent reference to the tendency of a bicameral legislature to try to shift blame and responsibility from one house to the other. Since every bill must be considered in two places, it is relatively easy through parliamentary maneuver to create confusion as to who was really responsible for the passage or defeat of a particular bill. Or, if a bill is proposed which most members do not favor, but whose author is a member against whom they do not wish to vote, the bill may well be passed in the originating house with the silent hope that it will be killed in the other house. This method is the source of much unworkable law. The method is the fate of a great deal of personal legislation or measures which were promised to constituents with tongue in cheek. Proponents of the one house system contend that it will make the record of the legislator much clearer to the public and make it more difficult for a member to introduce legislation which he doesn't really want. Responsibility would be made clear to the voter and thus would rest more heavily upon the legislator individually.[9]

Unicameral legislatures, it is argued, are faster in passing needed legislation and more economical in their work since double consideration is eliminated. The absence of duplication of effort in committees and rivalry between the two houses would improve both speed and economy. In a bicameral system lack of unified leadership can create further problems of delay or obstruction, especially if the two houses are controlled by opposite parties or if one house allies itself with the governor, against the other. Often there can be delay simply because the two houses become jealous of each other's prerogatives and seek to obstruct for the sake of obstruction. Sometimes a conflict between the two houses over one major question will halt all action on necessary legislation until it must all be passed in great haste during the last days of the session. In a two party system the division of the legislature into two houses effectively creates four segments of legislators with conflicting loyalties, any one segment of which can usually delay the popular will from becoming law.

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[7]Austin F. McDonald, American State Government and Administration, (New York: Thomas Y. Crowell Company, 1948), pp. 161-165.

[8]Buehler, op. cit., pp. 45 - 64.

[9]Robert S. Babcock, State and Local Government and Politics, (New York: Random House, 1957), pp. 162-163.

Thus the idea of a second chamber as a check on the governmental process has become instead merely a block to progress.

Another criticism of the bicameral legislature has been that its complexity and unwieldy organization make it difficult for the average citizen to appear before its committees of present their views in other ways. On the other hand the professional lobbyist or pressure group has a distinct advantage in working with this obscure system.[10]

The trend in the 20th century has definitely been in the direction of making legislatures more directly responsible to popular will. The Supreme Court decision requiring apportionment on the basis of population in both houses of a state legislature is probably the largest single step in this trend. The Encyclopedia Americana tracing and commenting on the trend points out the changing justification that has been used for the principle of bicameralism:

> Representation of various social classes or estates almost accidentally furnished the basis for bicameralism in England and in some other countries. Upper chambers are commonly constituted by birth, appointment, indirect election, or from a restricted electorate, while lower chambers almost universally rest upon a broader base of direct popular election. With the extension of suffrage and the development of popular political parties, power has followed the vote and progressive democratization of older societies has found expression in the ascendancy of their popularly elected second chambers. Much of the historic basis of bicameralism has been destroyed.
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> In federated states a different reason of continuing validity sustains bicameralism. As in the U.S. Congress with its equal representation of states (geographic representation) in the Senate and representation according to state population in the House of Representatives, bicameralism permits expression of different principles of representation and the possibility of harmonizing the conflicts of interest expressed through such representation. The justly famous "Connecticut Compromise" which projected the federal Congress onto these lines during the Constitutional Convention of 1787, allowed the Convention to proceed with other essential matters to forge the greatest of federated states. The bicameral Canadian Parliament has accommodated geographic, nationality, and population principles of representation in a federal framework. Australia has solved representation problems similar to those in the United States by means of a bicameral parliament.
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> Since both houses in American state legislatures have come to be elected by the same broad electorate organized into slightly different territorial groupings (commonly the county for the upper houses and population districts for lower houses), justification for bicameralism has shifted to emphasise on the

[10] Buehler, op. cit., pp. 45 - 64.

value of preserving a balance between rural and urban interests and on the desirability of dual consideration and debate. Critics on the other hand, point to dangers in the diffusion of responsibility between the two houses, duplication of time effort, and cost, and liability to obstruction by minority interests. It is suggested that the double hurdle of bicameralism may block desirable as well as undesirable legislation, and it is noted that with few exceptions municipal councils are unicameral in the United States.

Bicameralism in the United States has helped to create and to perpetuate a rural gerrymander (over-representation of rural population) in many state legislatures, and the House of Representatives, and of the less populous states in the Senate. Legislatures establish electoral districts both for state legislative bodies and for the state delegations to the national House of Representatives, and, with the election to the state senate frequently based on county district, they have been reluctant in many states to adjust representative districts to the progressive urbanization of American life. This has brought on acute problems of taxation and financing public services in several states with large metropolitan centers. This rural-urban political conflict is largely, but by no means entirely, independent of partisan political alignment. [11]

A further argument in favor of the unicameral legislature involves the recent trend toward more technical and specialized legislation. Legislatures in the past have often been accused of allowing carelessly drawn and faulty legislation to pass without careful scrutiny. As state legislation becomes more complex and more involved with areas where professional competence is needed in drawing up bills, it becomes more of a luxury to subject detailed bills to the whims and vagaries of two mutually jealous and suspicious bodies.

The U. S. Congress as has been pointed out above was made bicameral as part of the federal system in which the component states were to be sovereign and therefore were entitled to representation as states in one house of the legislature. This principle does not necessarily hold true for state legislatures since states are not federated systems and the counties or other districts are not sovereign entities, but merely administrative subdivisions of the state government. On the other hand bicameralism has been defended by pointing out the unique historical role of the United States Senate in checking the role of the executive branch, or at least keeping a watchful eye on it. One other historical fact that ought to be noted is that constitutional conventions, which have been the means of setting up governments in the American tradition, have always been unicameral bodies, no need apparently having been seen to establish differing kinds of representation for these sessions.

As has been pointed out, Nebraska is the only state in the union which presently has a unicameral legislature. The Constitutional amendment which created the unicameral body for that state is presented as an appendix

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[11] Americana, loc. cit.

to this report. In addition to the amendment, some 125 changes in statute were required. Nebraska is not without its reapportionment troubles also. A constitutional amendment giving twenty per cent weight to area in apportioning the legislature was approved by the voters on November 6, 1962, and implemented by the legislature in May, 1963. A Federal District Court suit to bar submission of the amendment and to compile reapportionment on the basis of population alone had been denied, but a second suit challenging the weighted voting is pending.

Text of Nebraska's Unicameral Amendment[12]

Sec. 1. Commencing with the regular session of the Legislature to be held in January, nineteen hundred and thirty-seven, the legislative authority of the state shall be vested in a Legislature consisting of one chamber. The people reserve for themselves, however, the power to propose laws, and amendments to the constitution, and to enact or reject the same at the polls, independent of the Legislature, and also reserve power at their own option to approve or reject at the polls any act item, section or part of any act passed by the Legislature. All authority vested by the constitution or laws of the state in the Senate, House of Representatives, or joint session thereof, in so far as applicable, shall be and hereby is vested in said Legislature of one chamber. All provisions in the constitution and laws of the state relating to the Legislature, the Senate, the House of Representatives, joint sessions of the Senate and House of Representatives, Senator, or member of the House of Representatives, shall in so far as said provisions are applicable, apply to and mean said legislature of one chamber hereby created and the members thereof. All references to Speaker of the House of Representatives or temporary president of the Senate shall mean Speaker of the Legislature. Whenever any provision of the constitution requires submission of any matter to, or action by, the House of Representatives, the Senate, or joint session thereof, or the members of either body or both bodies, it shall after January first, nineteen hundred and thirty-seven, be construed to mean the Legislature herein provided for.

Sec. 5. At the regular session of the Legislature held in the year nineteen hundred and thirty-five the Legislature shall by law determine the number of members to be elected and divice the state into Legislative Districts. In the creation of such Districts, any county that contains population sufficient to entitle it to two or more members of the Legislature shall be divided into separate and distinct Legislative Districts, as nearly equal in population as may be and composed of contiguous and compact territory. After the creation of such districts, beginning in nineteen hundred and thirty-six and every two years thereafter, one member of the Legislature shall be elected from each such district. The basis of apportionment shall be population excluding aliens, as shown by the next preceding federal census. In like manner, when necessary to a correction of inequalities in the population of such districts, the state may be redistricted from time to time, but no oftener than once in ten years.

Sec. 6. The Legislature shall consist of not more than fifty members and not less than thirty members. The sessions of the Legislature shall be biennial except as otherwise provided by this constitution or as may be otherwise provided by law.

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[12] Summers, op. cit., pp. 43 - 46.

Sec. 7. Members of the Legislature shall be elected for a term of two years beginning at noon on the first Tuesday in January in the year next ensuing the general the general election at which they were elected. Each member shall be nominated and elected in nonpartisan manner and without any indication on the ballot that he is affiliated with or endorsed by any political party or organization. The aggregate salaries of all the members shall be $37,500 per annum, divided equally among the members and payable in such manner and at such times as shall be provided by law. In addition to his salary, each member shall receive an amount equal to his actual expense in traveling by the most usual route once to and returning from each regular or special session of the Legislature. Members of the Legislature shall receive no pay nor perquisites other than said salary and expenses, and employees of the Legislature shall receive no compensation other than their salary or per diem.

Sec. 10. The Legislature shall meet in regular session at 12:00 o'clock (noon) on the first Tuesday in January in the year next ensuing the election of the members thereof. The Lieutenant Governor shall preside, but shall vote only when the Legislature is equally divided. A majority of the members elected to the Legislature shall constitute a quorum; the Legislature shall determine the rules of its proceedings and be the judge of the election, returns, and qualifications of its members, shall choose its own officers, including a Speaker to preside when the Lieutenant Governor shall be absent, incapacitated, or shall act as Governor. No member shall be expelled except by a vote of two-thirds of all the members elected to the Legislature, and no member shall be twice expelled for the same offense. The Legislature may punish by imprisonment any person not a member thereof who shall be guilty of disrespect to the Legislature by disorderly or contemptuous behavior in its presence, but no such imprisonment shall extend beyond twenty-four hours at one time, unless the person shall persist in such disorderly or contemptuous behavior.

Sec. 11. The Legislature shall keep a journal of its proceedings and publish them (except such parts as may require secrecy) and the yeas and nays of the members on any question, shall at the desire of any one of them be entered on the journal. All votes shall be viva voce. The doors of the Legislautre and of the Committees of the Whole, shall be open, unless when the business shall be such as ought to be kept secret.

Sec. 14. Every bill and resolution shall be read by title when introduced, and a printed copy thereof provided for the use of each member, and all amendments thereto shall be printed and read at large before the vote is taken upon its final passage. No such vote upon the final passage of any bill shall be taken, however, until five legislative days after its introduction nor until it has been on file for final reading and passage for at least one legislative day. No bill shall contain more than one subject, and the same shall be clearly expressed in the title. And no law shall be amended unless the new act contain the section or sections as amended and the section or sections so amended shall be repealed. The Lieutenant Governor, or the Speaker if acting as presiding officer, shall sign, in the presence of the Legislature while the same is in session and capable of transacting business, all bills and resolutions passed by the Legislature.

THE STRUCTURE OF THE MARYLAND LEGISLATURE

Unicameralism vs. Bicameralism

By John H. Michener

THE PURPOSE OF THE LEGISLATURE

The structuring of a legislature is not undertaken as an esthetic experience of value in itself, but as a means to secure a body that will function in the best possible manner. Alternative legislative structures must thus be evaluated in terms of their relative contributions to attainment of the purposes for which the legislature is created. A brief review of the basic purpose of the legislature helps clarify many of the problems involved in choosing between a bicameral and unicameral legislative structure.

The basic purpose of the legislature in modern times is to represent the electorate and to enact legislation carrying out majority wishes. Protection of minority interests is not a function of the legislature, as such. Protection of minority interests--or in broader terms, the distribution of power among the components of society--is a function of the constitution and the whole constitutional system. Internal restraints or impediments to legislative action are but one of a number of alternative means of protecting minority interests, and a means that has little justification if the other means in the constitutional system as a whole are adequate.

The failure of legislatures to fulfill their basic purpose adequately has been a fundamental cause of the most prevalent

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tendency in modern constitutional government, the decline of the legislative assembly.[1]

In choosing between a bicameral or a unicameral system, there needs to be a recognition of the underlying purpose of the legislature and an explicit decision on the worth of legislative impediments to implementation of majority wishes, in terms both of the value of that which is gained and the value of that which is lost.

ORIGIN OF BICAMERALISM

Bicameralism is not the outcome of deliberate choice, but is rather an accident of English history and the influence of the English example on other nations.[2] The system is rooted in the stratified social order of the later Middle Ages.[3] The various social classes then existing formed different estates. When necessary, each class met as a separate "estate" in a "states general." In England the various estates came to sit in two houses. In France there were three estates, which last met in 1789. Four estates met in Sweden until 1866.[4]

Though it was an accident of English history that there were two chambers in the legislature rather than three or four, it was not an accident that there were two chambers rather than one. Similarly, it was no accident that a bicameral system developed in Maryland. The first assemblies in Maryland had but a single house. This house, it was charged, was under the control of the governor through his power to summon the attendance of individual citizens in the assembly on a selective basis and to use proxies held by

himself and the secretary of the colony.[5] In order to prevent this subjection, the burgesses elected by the freemen requested in 1642 that they be allowed to meet in a separate house. Although this request was refused then, a bicameral legislature was adopted in 1650.[6] Thereafter, Maryland had a bicameral legislature, except for a brief reversion to unicameralism during the period of Puritan ascendancy from 1654 to 1657.[7] Bicameralism thus came to Maryland as a means of increasing the responsiveness of the legislature to the electorate and not as a check on popular wishes.

ARGUMENTS FOR RETENTION OF THE BICAMERAL SYSTEM

The forces leading to the creation of the bicameral system are not the same as the forces leading to its retention. Retention of the bicameral system has been urged on the following grounds:

1. The upper house provides a protection for the propertied classes.

   With the abolition of property requirements for voting, particularly for voting for the upper house, this justification lost its compelling force. Moreover, Federal and State constitutional protections for property have proved adequate in the view of most observers. The argument is no longer made today.

2. Two houses permit representation of different interests in the two chambers.

   With the lower house based on population, the upper house can be constituted on another basis, such as representation of area. This argument has not been viable since 1964 when the

Supreme Court held that both houses of State legislatures must be apportioned on the basis of population.[8]

3. The second chamber provides a check on "popular passions."

In the words of Justice Story, a second chamber "forms a great check upon undue, hasty, and oppressive legislation."[9]

4. A second chamber can give an independent and thorough review to the need for and character of proposed legislation and so detect and avoid unnecessary or faultily drafted legislation.

5. A bicameral system permits the defeat of undesirable but popular legislation where outright opposition to the legislation would be politically dangerous.

6. A bicameral legislature prevents unity in the legislature and so precludes the success of any legislative attempts to invade the powers of the executive or judicial branches or the powers of the people.

7. A bicameral system prevents corruption of the legislature.

Corruption of a single chamber might succeed, but it would be much more difficult to corrupt both houses at the same time.

8. The bicameral system is the traditional system in the United States and is familiar to the voters.

The foregoing arguments are assumed by the proponents of bicameralism to be self-apparent. Research studies documenting these claims are not available.

In addition to these direct arguments for a bicameral system, the proponents of bicameralism attack certain features of the unicameral system. Generally, these attacks take the form of an

assertion that the unicameral system lacks some desirable features found in the bicameral system, in particular, checks on popular passions and an independent review. The specific features of the unicameral system are not attacked as undesirable in themselves.

ARGUMENTS FOR THE UNICAMERAL SYSTEM

The case for unicameralism rests on three grounds: (1) an assertion that there is no justification for the present bicameral system, (2) a positive plea for the merits of unicameralism, and (3) a refutation of the asserted deficiencies of unicameralism.

The Attack on Bicameralism

As noted earlier, justification for a second chamber is no longer claimed on the grounds that the upper chamber protects the propertied classes or permits the representation of different interests in the society. It should be noted in passing, though, that historically these were the two fundamental justifications advanced for the bicameral system. With their fall, the justification of bicameralism has had to fall back to secondary arguments which the unicameralists claim to be untenable.

The claim that bicameralism provides a check on "popular passions" and on hastily drawn legislation is vigorously attacked by unicameralists. One aspect of the attack involves basic differences in the judgment of the proper role of the legislature. Thus the unicameralists assert that a check on legislative action, purely for the sake of blocking action disliked by the minority, is undemocratic and one of the prime causes for the widely recognized decline of legislative power vis-a-vis the executive.

Further, state the unicameralists, the claimed need for a review is a tacit recognition of the inherently faulty nature of the bicameral system with its confusion of responsibilities that permits legislators to escape public accountability for their actions. If the legislature were properly structured, there would be little need for a review of its work. On the practical side, the unicameralists assert that the so-called popular passions can dominate both chambers, as in some legislatures during the McCarthy era. In this view, the protection of the rights of unpopular groups lies basically in an educated citizenry and in the overall structure of the constitutional system. Furthermore, the branch of government that has raised its voice against popular views in defense of minorities has not been the legislature but the courts. Simply put, there is no data supporting the claim that the second chamber acts as a constructive check on the first.[10] Conversely, American experience has shown that in normal times the legislature is not inclined to ride roughshod over the rights of the well-to-do. Instead, the inclination is to avoid action on important issues and not to be influenced by popular passions.[11]

The unicameralists similarly dispute the view that the second chamber acts as an independent body of review to correct faultily drafted legislation. The objections to the claim fall into three major categories.

First, there is an assertion that, in fact, an independent review is often not given by the second chamber.[12] For example, bills are often received by the second chamber so late in the session that it is physically impossible to give them a thorough

consideration. Often times bills are hastily passed by the first house on the assumption that they will be carefully examined by the second chamber, an assumption that is sometimes poorly founded. With respect to noncontroversial bills, in particular, it is claimed that the second chamber seldom gives careful consideration, and that such consideration is often not given by the first chamber either.[13]

The second category of objections is that such checking or review that has been done has not been demonstrated to be of merit. The value of a check is not measured by its extent, but by its wisdom. In the case of Vermont, where a careful study was made of this point, not one of the "checked" bills could be classed as dangerous or seriously unwise.[14] Similarly, the National Municipal League states that there is no data to support the claim that a bicameral system results in better policies or more carefully drawn laws.[15]

The third category of objections claims that there is little need for a technical review. The argument for a second chamber review antedated the rise of the Legislative Council, of executive sponsored legislation, and of professional bill-drafting services. Important present day legislation has been carefully considered and drafted before introduction into the legislature, so that passage by one house in itself constitutes an independent review. A second chamber, with no special knowledge of the problems or technical competence in drafting legislation, has nothing further to contribute.

Proponents of unicameralism give short shrift to the claim that bicameralism permits the killing of undesirable but popular legislation. In the view of the unicameralists, this is but a tacit concession that bicameralism confuses responsibility and permits legislators to hide from the consequences of their actions, or, in blunt language, that bicameralism permits deception of the electorate. In the unicameralist view, if the legislation is popular but undesirable, the legislators have a duty to educate the electorate to an understanding of the reasons why the legislation is undesirable.

The claim that bicameralism prevents undue aggrandizement of legislative power is similarly rejected by unicameralists. Unicameralists point out the claim traces back to the days of the founding of the American constitutional system when democracy was suspect and it was anticipated that the legislature would be the dominant branch of government. History has proved the fear of legislative usurpation to be misplaced; today the need is to strengthen the legislature, not to weaken it. Further, the best check on the legislature is clearly focused public accountability.

The unicameralists also dispute the claim that bicameralism prevents corruption of the legislature. In the past, unicameralists point out, simultaneous corruption of both houses of state legislatures has actually occurred. Today, protection of vested interests requires primarily the blocking of legislation rather than the passage of new legislation. Bicameralism presents more points at which legislation can be stopped, and with less fear of

popular understanding of what has happened, than does unicameralism. In this view, corruption is a greater danger under bicameralism.

Finally, unicameralists reject the validity of the argument that bicameralism is desirable since it is traditional and understood by the voters. A traditional form of government does not mean it is good. When Lord Bryce wrote the American Commonwealth after visiting the United States in the 1880s, he commented that the government of the cities, then almost all bicameral, was the one conspicuous failure of the United States. The dramatic improvement of city governments since then can be traced directly to the abandonment of the traditional bicameral system in favor of unicameralism.[16]

Voters are in intimate contact with city governments and have a good understanding of unicameralism. Voters also have some knowledge of corporate structure with its strong parallels to unicameralism. Further, it is widely known that Nebraska has experimented successfully with unicameralism. Under these circumstances, it is no longer possible to pass unicameralism off as something strange and untried to be rejected in favor of the "traditional" bicameral government.

Not only do the unicameralists dispute the merits of every claim made for bicameralism, they claim that bicameralism has a number of positive disadvantages.

First among the disadvantages is the conference committee. This committee, it is claimed, often functions as a secret "third" chamber unaccountable to the electorate. Further, compromise measures as reported out by the conference committee must be

accepted or rejected by each house in toto without opportunity for amendment. Since the work of the conference committee is carried out in secret and sometimes hastily, unicameralists claim the conference committee is not only undesirable but a negation of the claim that bicameralism assures a check to prevent faultily drawn legislation. A student of the conference committee as it functioned in Nebraska before the adoption of unicameralism in 1934 reported that over 25% of all measures that were amended by the second chamber passed through conference. This same student of the Nebraska experience also found that almost 70% of all bills considered by the conference committee were referred to that committee during the last twenty days of the legislative session and that almost 50% of such bills were referred during the last ten days of the session.[17]

A second claimed disadvantage of bicameralism is the rivalry sometimes engendered between the two houses. Documented examples of this at the state level are not readily available, but a recent episode in the United States Congress illustrates the danger. In the case at point, appropriations to the executive departments suffered an extensive delay because the chairmen of the House and Senate appropriation committees could not agree, among other points, on where the conference committee, appointed to compromise the differences between the two chambers, was to sit.[18]

A third claimed objection to bicameralism is that it obscures responsibility and prevents accountability to the electorate. The claim here is that a measure can be passed in the two houses in slightly different form with agreement being deliberately not reached in conference so that the measure is defeated although

everyone is on record as being in favor, that a measure may pass one house as the best that could be obtained from the second house, rather than on its merits, or on the grounds that the choice was between a version worked out in conference or nothing. In all of these cases, it is impossible for the average voter to know who was responsible for the final action and should be held to account.

The Merits of Unicameralism

Although unicameralists dispute the merits of every claim made for bicameralism and advance some positive arguments against bicameralism, their advocacy of unicameralism rests primarily upon positive advantages they see in the latter system. These claims may be summarized as follows:

CLAIM 1. Unicameralism is more efficient than bicameralism.

The basic claim here is that each bill needs to be considered by only one house, eliminating a wasteful duplicative consideration. This results in more expeditious introduction and consideration of legislation and the elimination of the common end-of-session legislative log-jam. Thus in the 1949 Nebraska legislative session, only seventeen bills were introduced after the first twenty legislative days, and a number of these were recommended by the governor or were substitute or consolidated bills introduced by committees rather than by individual legislators.[19] In this session, one-half of the bills acted on by the legislature had been handled by the mid-point of the session. Three-fourths of those acted on had been handled by the two-thirds point of the session. In the last two weeks, only 44 bills were acted on. Of these 44, eight were

considered in the last week, and only one of these eight on the last day.[20] In the 1961 session, 25 bills remained to be disposed of in the last two weeks and only six on the last day.[21]

CLAIM 2. Unicameralism results in legislators of higher quality and greater prestige.

Usually this claim is made in general terms.[22] However, a study in 1944 showed that over 50% of Nebraska's unicameral legislators had had some college work or had attended an institution of higher learning.[23] Most had held public office or were influential members of civic or state social and economic organizations. In 1950 it was reported that two-thirds of the legislators had had previous legislative experience.[24]

On the other hand, a careful student of the subject believes it is unresolved whether unicameralism improved the moral and intellectual caliber of the Nebraska legislators.[25]

CLAIM 3. Unicameralism results in a more representative legislature.

Under the bicameral system in Nebraska, 52% of the legislators had only a single occupation while 48% had two or more occupations.[26] Under unicameralism, only 31% had a single occupation while 69% had two or more. Multiple occupations are claimed to bring a greater awareness of the problems and ramifications involved in legislation and so to make the legislator more responsive to constituent needs. Conversely, the change to unicameralism in Nebraska did not disturb the ratio of farmers, business, and professional men elected to the legislature. Thus the cross-section of the community remained

the same so that reduction in the number of representatives had no adverse effect.[27]

CLAIM 4. Unicameralism results in a positive improvement in the quality of enacted legislation.

Fewer statutes enacted under Nebraska's unicameral legislature were declared unconstitutional, as compared to its bicameral statutes, and fewer statutes were found to have "bugs" or "jokers."[28] Some of the credit must go to the simultaneous institution of a legislative council with the unicameral legislature, but proponents claim the unicameral legislature deserves part of the credit. Several reasons are advanced. As will be noted below, unicameralism results in the introduction of fewer bills. This means that each bill that is introduced can be given more time. Secondly, the increased efficiency of the unicameral legislature eliminates the hasty consideration often given to bills under a bicameral system. Thirdly, the unicameral legislature bears full accountability for the quality of the bills passed and this responsibility cannot be blurred by shared responsibility with a second chamber. Fourthly, bills often pass one house of a bicameral legislature in the expectation of defeat in the second chamber.[29] Such expectations are not always realized. Under unicameralism this type of miscalculation is eliminated.

CLAIM 5. Unicameralism results in higher standards for the introduction of bills.

Under unicameralism, a Nebraska legislator pointed out, he could no longer introduce a bill at the request of a constituent and then ask the other house to kill it.[30] The result of

unicameralism in Nebraska was a spectacular 43% reduction in the number of bills introduced.[31] Concomitantly, the percentage of introduced bills that were enacted rose from less than 20% under bicameralism to over 50% under unicameralism.[32]

CLAIM 6. Unicameralism brings lobbyists out into the open where their activities are subject to public scrutiny.

The claim here is that the direct and open procedures of the unicameral legislature, and the searching publicity that unicameralism permits, soon expose any member who is prone to succumb to lobby influence.[33] It is not uncommon for a Nebraska legislator to denounce a lobbyist by name on the floor of the house and to give a statement of what the lobbyist has been doing.[34]

The attainment of common policy between the two chambers of a bicameral system is greatly assisted--far more than is commonly realized--by pressures put on by lobbyists.[35] Unicameralism prevents this, and also prevents lobbyists opposing legislation from secretly maneuvering to get the two houses to adopt different versions of the bill so that it might be killed altogether or to give the lobbyists a chance to secretly influence conference action and the writing of the conference report.

Although unicameralism reduces the number of opportunities for lobby influence, and makes attempted influence more likely to receive public scrutiny, some observers do not believe the claim that unicameralism reduces the influence of the lobby to be positively proved.

CLAIM 7. Unicameralism pinpoints responsibility for legislative actions.

Under unicameralism responsibility is clearly focused.[36] There is no opportunity to pass bills for the other house to kill, to alter or kill legislation in the secrecy of the conference committee, or to claim that there is no use to consider certain legislation on the grounds it would meet sure death in the other chamber. Without the complexities of bicameral procedures, it is easier for the public to keep track of the progress of legislation. The interaction of these two factors results in pinpointed responsibility for legislative actions.

CLAIM 8. Unicameral legislatures are more economical.

The Vermont unicameral legislature was less expensive than the bicameral legislature both in total expenditures and in per capita expenditures.[37] In Nebraska's case, the switch to unicameralism reduced legislative expenses by almost 25%. A legislative council was introduced at the time of the switch to unicameralism. If the expenses of the council are excluded from the costs of operating the unicameral legislature, the savings amount to over 27%.[38] The reasons for this are obvious. A unicameral legislature, as compared to a bicameral legislature, can be expected to have fewer salaried members, a smaller legislative staff, reduced travel allowances, smaller printing expenditures, and so on.

OTHER CLAIMS. Unicameralism results in improved public understanding of legislative activities, the development of legislative leadership is facilitated, and a closer relationship between the legislature and the governor is permitted.

The first of these claims is implicit in many of the claims discussed above. The simplicity and openness of the unicameral system permits easy news coverage and searching publicity. Increased public understanding is an inevitable result. The development of legislative leadership is facilitated through its concentration in one chamber. This same concentration of leadership simplifies the working relationship between the governor and the legislature.

Rebuttal of Objections to Unicameralism

Unicameralists reject the criticism levied by the bicameralists. The one major objection to unicameralism is the fact that a review by the second chamber is eliminated. As noted before, unicameralists counter with an attack on the general worth of the review given by bicameral systems, point out the lessened need for a second legislative review with the growth of legislative councils, professional bill drafting services, and executive leadership, and claim the experience of Nebraska has proved in fact that there is no need for review. Should it still be felt, however, that a second legislative review is needed, the unicameralists point out that this can be secured under their system.

One method of securing a review is to require that certain categories of legislation be passed by two different sessions before becoming effective. The second passage may even be required to come after an intervening election. Because of the delays involved in this approach, it is feasible only with respect to fundamental issues where the need for a wide and lasting consensus

is of vital importance. Another approach, feasible for ordinary measures, is for the legislature to choose, when it first convenes, a portion of its membership to sit in a separate revising chamber. This is now done in the unicameralist Scandinavian countries.[39] All major questions and all conflicts between the two houses are handled by a majority vote of the two houses in a common session. In short, the second chamber can suggest revisions but has no power to enforce them over the wishes of the elected legislature. This, it will be recognized, is in effect the British system where the House of Lords can suggest revisions but no longer has power to prevent the passage of legislation. This method of securing a review of the work of the elected legislature bears a noticeable resemblance to the "Virginia Plan" advanced in the Constitutional Convention of 1787. That plan, favored by James Madison among others, provided for a lower house elected by the people, with an upper house chosen by the lower house.[40] Since the upper house would be chosen by the lower house, even though the choice was from nominations submitted by the various State legislatures, the upper house under the Virginia Plan could not be expected to prevail in a conflict between the two.

CONCLUDING REMARK

The foregoing summary of the arguments advanced for and against bicameralism and unicameralism tips heavily in favor of unicameralism. This is a reflection of the fact that people who write on the subject--political scientists and other persons with academic backgrounds in the main--heavily favor unicameralism. The most

that is said against unicameralism by persons within this group is that a clear superiority over bicameralism may not have been factually proved. Persons holding this reservation appear to be in the minority within the group. There is some comment that analyses to date are not conclusive on the grounds that a modernized, up-dated bicameralism has not been tried. The difficulties with this observation are that it may be easier to secure a wholesale revision of the legislature itself than to induce an existing legislature to reform its procedures, and that the suggested bicameral improvements--such as joint committee hearings and possibly joint committees--actually are partial moves towards unicameralism, for the real work of legislatures is done in committees and not on the floor of the houses.[41] In view of this, the unicameralists ask why reform should stop with half-way measures.

Practicing politicians favor bicameralism. Even here the unicameralists suggest that this may be due not to the merits of the case but to a fear of the personal political consequences of the transition to unicameralism, for among Nebraska legislators who have had experience with both systems--and who thus survived the transition--there is an overwhelming preference for unicameralism. A survey in 1961 of 68 present and former Nebraska legislators showed that only four wanted a return to bicameralism.[42] Earlier one legislator who had served four years in the Nebraska lower house and two years in the Nebraska Senate under bicameralism, and who had voted against unicameralism, stated that unicameralism

was a decided improvement over the previous bicameral system.[43] This legislator, C. Petrus Peterson, had also served as Speaker of the unicameral assembly, so he was intimately acquainted with the practical workings of both systems.

FOOTNOTES

1. Shepard, W. J., "Legislative Assemblies," 9 Encyclopaedia of the Social Sciences 361 (1933).

2. Shull, Charles W., American Experience with Unicameral Legislatures 1 (1937).

3. Shepard, W. J., "Bicameral System," 2 Encyclopaedia of the Social Sciences 533 (1933).

4. Id. at 534.

5. Michener, John H., "The History of Legislative Apportionment in Maryland," 25 Md. L. Rev. 2 (Winter, 1965).

6. Id. at 5.

7. Ibid.

8. Reynolds v. Sims, 377 U.S. 533 (1964); Maryland Committee v. Tawes, 377 U.S. 656 (1964).

9. Story, Joseph, Commentaries on the Constitution of the United States § 550 (5th ed., Little, Brown & Co., 1891, vol. 1, p. 409).

10. National Municipal League, Model State Constitution (6th ed.) 43 (1963).

11. American Political Science Association, American State Legislatures 54 (1954).

12. Id. at 52.

13. Ibid.

14. Shull, op. cit. supra note 2, at 11.

15. National Municipal League, loc. cit. supra note 10.

16. Shepard, "Bicameral System," op. cit. supra note 3, at 535.

17. Burdette, Franklin L, "Conference Committees in the Nebraska Legislature," 30 American Political Science Review 1114 (1936), and "The Conference Committee Ogre," Unicameral Legislatures (Ed. by Bower Aly, 1937) 117, as cited by Bruce R. Trimble, The Structure of the Legislature 14 (1943).

18. 1962. See C. P. Trussell, "Money Bill Impasse in Congress Broken," New York Times July 19, 1962, p. 1, col. 2.

19. Spencer, Richard C., "Nebraska Idea 15 Years Old," 39 National Municipal Review 85 (February, 1950).

20. Id. at 86.

21. Spencer, Richard C., "Nebraska 'Unicam' Operates Smoothly," 50 National Civic Review 425 (September, 1961).

22. Carter, Edward F., "The Unicameral Legislative System," 21 Fla. L. J. 112 (May, 1947); National Municipal League, loc. cit. supra note 10.

23. Senning, John P., "Unicameralism Passes Test," 33 National Municipal Review 61 (February, 1944).

24. Spencer, op. cit. supra note 19, at 84.

25. Shumate, Roger V., "The Nebraska Unicameral Legislature," 5 Western Political Quarterly 508 (September, 1952).

26. Senning, loc. cit. supra note 23.

27. Ibid.

28. Shumate, loc. cit. supra note 25.

29. Trimble, op. cit. supra note 17, at 8.

30. State Senator Richard D. Marvel as cited by Donald Janson, "The House Nebraska Built," 229 Harper's 124 (November, 1964).

31. Shumate, loc. cit. supra note 25.

32. Id. at 509.

33. Senning, op. cit. supra note 23, at 64, 65.

34. Ibid.

35. Hagan, Charles B., "The Bicameral Principle in State Legislatures," 11 J. Pub. L. 321 (1962).

36. National Municipal League, loc. cit. supra note 10.

37. Shull, op. cit. supra note 2, at 12.

38. Aylsworth, L. E., "Nebraska's Unicameral Legislature Saves Money for Taxpayers," 27 National Municipal Review 492 (October, 1938).

39. McDaniel, Gerald R., "No One Misses the Landsting, But--," 49 American Scandinavian Review 268 (September, 1961).

40. Thornton, H. V., Legislative Organization and Procedures (Bicameralism v. Unicameralism) (Constitutional Study No. 8 for the Constitutional Survey Committee of the Oklahoma State Legislative Council) 4 (1948).

41. Shepard, op. cit. supra note 1, at 359.

42. Hanson, Odell, "The One-House Legislature," Baltimore Sun December 13, 1964, sec. D, p. 3.

43. Carter, op. cit. supra note 22, at 113.

In this article, a member of the Nebraska Legislature takes an incisive look at his State's unicameral legislative body, the only one-house Legislature in the United States. Senator Richard D. Marvel, who has served in the Legislature since 1951, finds that the people of Nebraska, the geography of the area, its economics and other sociological factors have played an important role in the development of the Nebraska unicameral. A second and concluding article by Senator Marvel will appear in a subsequent issue of State Government.

A Member Looks At
The Nebraska Unicameral

by Richard D. Marvel

ONE OF THE BASIC functions of a legislative body is to make decisions for the society which it represents. "The task of government is not to express an imaginary popular world, but to effect adjustments among the various special worlds and purposes which at any given time are pressing for realization." [1]

One cannot adequately understand pressure politics in Nebraska and the decisions that result without an analysis of the people of the State as well as the legislative institution which they have developed. The history of Nebraska, the structural processes of the Legislature, and the personal, informal influences which affect each State Senator must be described in trying to point out possible influences on the final product—legislative decisions.

PHYSICAL FACTORS

Nebraska is *geographically* classified as being part of the Great Plains area, with three distinguishing characteristics: "a comparatively level surface of great extent; a treeless land and unforested area; and a region where the rainfall is insufficient for the ordinary intensive agriculture common to the lands of the humid climate." [2] Eastern Nebraska, however, does not fall into the Great Plains area and contains not only entirely different topographical characteristics than the land west, but also is in an entirely separate rainfall area. "The state is indeed in the transitional area and for that reason, perhaps, its problems are more complicated." [3] Thus, the geography of the State may be responsible for many of the differences in attitude between the eastern and the western Senators.

Major rivers also play a role in both unifying and dividing Nebraskans. Every mile of the Platte River "is bound to history and politics." [4] It provided a pathway for settlers, de-

[1] V. O. Key, Jr., *Politics, Parties, and Pressure Groups*, 3rd ed., (New York: Thomas Y. Crowell Company, 1952), p. 10, quoting John Dickinson, "Democratic Dogma," American Political Science Review, XXV (1930), 291-292.

[2] Walter Prescott Webb, *The Great Plains* (New York: Grossett and Dunlap, 1931), p. 3.

[3] James C. Olson, *History of Nebraska* (Lincoln: University of Nebraska Press, 1955), p. 6.

[4] Wendy Rogers, "Water Treasure," *Depth Report No. 3* (Lincoln: School of Journalism, University of Nebraska, March 15, 1961) p. 9.

fined the major route for the railroads, became a political dividing line, and during the 1940s and 1950s the river became the center of bitter water diversion battles in the Nebraska Legislature.

DEMOGRAPHIC FACTORS

Nebraska has a built-in urban-rural population schism, for Douglas (Omaha) and Lancaster (Lincoln) counties—both located in the eastern one-third of the State, only sixty miles apart—contain over 35 per cent of the State's 1.5 million population and have enjoyed the major population increase in recent years. Observers predict that within a few years Omaha and Lincoln will have over 50 per cent of the population and will, thus, be entitled to a majority of the representation in the State's unicameral Legislature.

Probably of more significance for the future is the ratio of school age residents to total population. In 1964, Nebraska ranked thirty-eighth in this category, with school age population as 25.6 per cent of the total. In the same year, Nebraska ranked fourth in the Nation in its population of those over sixty-five years of age —a percentage of 11.6.[5] Immigrants have played an important part in the development of the State. The typical immigrants were poor people—thrifty, conservative, religious, and pragmatic. The Germans led the influx with more than 200,000 of the 538,218 foreign population in 1910. Large numbers of Scandinavians and Czechs populated the State as well as lesser numbers of Central and Southern Europeans, Dutch, French, and English. While the Yankee settlers tended to be more progressive and interested in innovation than were many other groups, "immigrant pioneers influenced the state's politics, its fiscal viewpoint, and its morals." Negroes, predominately located in the metropolitan areas, today number only 2.1 per cent of the population, and the other main disadvantaged minority group, the Indians, account for less than 0.5 per cent of the population.

ECONOMIC FACTORS

Founded on an agricultural basis, Nebraska today remains primarily an agricultural State. The State's economy stood sixth in agricultural products in 1967. The farming industry is a $1.73 billion annual business in Nebraska. There are 6.4 million head of cattle worth $1 billion. Nebraska has over twice as many people employed in agriculture as in manufacturing.[6] Present Nebraska industry is largely centered in the metropolitan areas of Omaha and Lincoln. Dougias County (Omaha) has 38 per cent of the manufacturing industries and 45 per cent of those employed in manufacturing.[7] The agricultural emphasis is even more apparent in light of the fact that over 40 per cent of the manufacturing employees process food and other related products.[8]

The interdependence of agriculture and manufacturing is not a coincidence, and Nebraska farmers have historically had a business-oriented view. The latter view triumphed over the Populist view which refused to accept price control based on production limits.[9]

With recent legislative enactments, many of Nebraska's pillars of fiscal conservatism have fallen. No longer can the State "boast" of no broadened tax base, no state aid to schools, and the lowest per capita state tax in the Nation. Frugality is understandable considering the environment of the Great Plains. In Nebraska, the environment imposes variability and stresses the importance of a materialistic, conservative orientation to life. Uncertainty encourages the citizen to buy, plan, and operate cautiously with an emphasis on practical living. As one western Nebraska mayor commented: "The depression years are still looking over our shoulders."[10]

[5] *Ranking of the States*, 1965, Research Division of the National Education Association, February, 1965, pp. 11-12.

[6] N. D. Searcy and A. R. Longwell, *Nebraska Atlas* (Kearney, Nebraska: Nebraska Atlas Publishing Company, 1964), p. 77.

[7] Ibid.

[8] Ibid.

[9] James A. Stone, "Agrarian Ideology and the Farm Problem in Nebraska State Politics with Special Reference to Northeast Nebraska 1920-1933" (unpublished Ph.D. dissertation, University of Nebraska, 1960), p. 172.

[10] Frederick C. Welso, Mayor of Rushville, Nebraska, personal interview, July 18, 1964.

Political squabbling dating from the first legislative sessio: between the North and South Platters set a pattern for political behavior which remains even today. Railroads made their presence felt in the early history of Nebraska and have played a significant role in the State's economic and political development. It has been said that the two most important factors in Nebraska's settlement were the construction of the railroads and a liberal land policy.[11] Towns vied for railroads and the competition encouraged feelings of localism and community spirit. A pioneer wrote in 1868: "One part of Nebraska belongs to the speculator, one part to the state, one part to the schools, and one part to the Union Pacific."[12] The political influence of the railroads is still felt in Nebraska, for the railroads continue to be important to the State's economy.

The home of *agricultural innovation,* the Great Plains region has also been "a land of *political innovation,* expressing itself in such vagaries as populism, agrarian crusades, and farm relief."[13] Nebraska has been an active, and at times the dominant participant in these various movements. Yet, the agrarian political behavior was unlike other segments of the population, "In short, the farmer reacts to economic pressure with political protest; yet the response has an explosive quality—great force without duration—which is unique."[14] Perhaps it is not too far-fetched to trace the individualism and the nonpartisanship of early agricultural political revolts to the signs of weakness in the Nebraska political parties by the mid-1930s, and ultimately to the establishment of a nonpartisan State Legislature.

It might be expected that a lack of commitment to a political philosophy would lead to significant variation in Nebraska's national political preference. However, this does not seem to have been the case. Dr. Jasper Shannon shows that "Nebraskans generally prefer a Republican liberal or progressive to a Democratic one,"[15] selecting Republicans in eighteen of twenty-four presidential elections.[16]

The environment and conditions of settlement contributed to strong feelings of *localism* and opposition to centralization. The necessity of the settler to look within himself in the midst of isolation and desolation caused localism to become the only understandable way of life. Localism is still strong today and finds expression in strong opposition to state involvement in educational matters.

THE LEGISLATOR—A BLEND

From this brief survey, one might be led to hypothesize that the Nebraska legislator is probably a highly individualistic, conservative, Republican, rurally oriented with a pro-business and anti-labor outlook, cautious with regard to spending, and a staunch advocate of local control. Yet, this picture would fail to account for the liberal innovations which have been a part of Nebraska history—the Populist-Progressive reforms, a complete public power complex, the somewhat radical design of the state capitol, and a one-house, nonpartisan Legislature. This blend of conservatism and liberalism may find its origin in the environment of the Great Plains which "challenges human intelligence in regard to every aspect of life—technological, economical, political, social, even philosophical."[17] This dichotomy has been evident throughout Nebraska history. Whatever the reason, it is evident that "there seems to be a contradiction in everything the Nebraskan thinks and does. He is secure, yet insecure; he is conservative, yet radical; he believes in both private ownership and public ownership. In his shifting moods and attitudes, the Nebraskan is like most of the great Midlands."[18] Thus, a more valid hypothesis would

[11]Olson, *History of Nebraska,* pp. 161-164.

[12]Jane Tenhulzen, "A Foreign Frontier," *Depth Report* No. 3 (Lincoln: School of Journalism, University of Nebraska, 1961), p. 23.

[13]Webb, *Great Plains,* p. 514.

[14]Angus Campbell, et al., *The American Voter* (New York: John Wiley & Sons, Inc., 1960), p. 103.

[15]Jasper Shannon, "Conservative Nebraska: Fact or Fiction?" (unpublished, undated paper), p. 1.

[16]Ibid., p. 15.

[17]Karl F. Kraenzel, Watson Thomson, and Glen H. Craig, *The Northern Plains in a World of Change* (Toronto: Gregory-Cartwright Ltd., October, 1949), p. 175.

[18]James Morrison, "Nebraska and its People: Paradoxes and Truisms of a High Plains Society," *Studies in Nebraska Journalism, Pamphlet No. 8* (Lincoln: School of Journalism, University of Nebraska), p. 5.

seem to be that when an overall perspective of the legislative voting pattern is achieved, the Nebraska legislator will prove to be not of extremes, but of moderation, a blend of conservative and progressive strains.

DEVELOPMENT OF THE UNICAMERAL

The development of Nebraska's nonpartisan, unicameral Legislature was the result of the State's political, social, and economic history. Even though a unique set of circumstances led to the birth at that particular moment in 1934, the thinking of the people as it evolved made the enactment of the system possible.

A number of events and individuals kept the unicameral idea before the people awaiting the right moment. During the Progressive period of the early 1910s, J. N. Norton came to the Nebraska House and eventually became majority leader and speaker pro tem. Norton was interested in the unicameral idea and pushed for it during his legislative career. The issue lost in the Constitutional Convention of 1920 by only one vote. In the same year, a model state constitution recommended by the National Municipal League advocated the adoption of a unicameral State Legislature. In this same period, Senator George Norris was actively supporting the unicameral ideas in speeches and articles. Dr. John P. Senning, head of the Political Science Department at the University of Nebraska and member of the survey committee for the constitutional drafting committee of 1919 to 1921, saw the unicameral "as the next logical step for the improvement of the structure of the legislature." [19] The proponents believed the unicameral would be more representative of a legislative body, more open to public scrutiny, and more readily accountable to the electorate. Senator Norris saw partisanship and the conference committee as the two main roadblocks which tended to separate the public from its state representative.[20]

It was through Norris's efforts that the nonpartisan feature was part of the proposal put before the people in the election of 1934.

The year 1934 was economically poor for Nebraska. Agriculturally, the State had experienced hard times as early as the 1920s when the parity index began to take an unfavorable turn. Thus, the economic argument of the lesser cost of the unicameral no doubt had relevance for many people. Also, there were two other key constitutional amendments slated for consideration in 1934—a parimutuel proposition authorizing horse racing and repeal of prohibition. Advocates of these amendments, fearful that a "no" vote on one issue might jeopardize all, urged their supporters to vote "yes" on all three propositions. All three carried—repeal of prohibition by 328,074 to 218,107, parimutuel by 251,111 to 187,455, and the unicameral 286,086 to 193,152.[21]

Many credit one personality or organization for the success of the unicameral campaign. One author perhaps has summed it up best: "We may have to be content with the belief that the combination of forces and circumstances of the election produced the unpredicted. Certainly it was a decision that dismayed and perplexed many political experts." [22] Perhaps it is appropriate to say that originally Norton's promotion kept the unicameral ideal alive; that Norris' political astuteness judged the "Nebraska mind" ready to accept the proposition in 1934; and that Senning's educational background added the third element—political theory—to the triumvirate.

FORMAL STRUCTURE OF THE UNICAMERAL

The unicameral structure represents the innovative, yet conservative, spirit of the Nebraska pioneers. The basic goals of the unicameral, as propounded by its supporters and translated into the organization and rules of the Legislature, can be summed up as follows: (1) direct communication between the public

[19] John P. Senning, *The One House Legislature* (New York: McGraw-Hill Book Company, 1937), p. 3.

[20] George W. Norris, "The Model Legislature," address given in Lincoln, Nebraska, February 22, 1934, reprint from Congressional Record, February 27, 1934 (Washington, D.C.: U.S. Government Printing Office), pp. 3276-3280.

[21] Senning, *One House Legislature*, pp. 60-61.

[22] Adam Carlyle Breckenridge, *One House For Two: Nebraska's Unicameral Legislature* (Washington, D.C.: Public Affairs Press, 1957), p. 5.

and the legislative body, (2) visibility, i.e., playing the legislative game in the open, (3) adequate and full deliberation, (4) mobilization of power, (5) maximization of leadership potential, (6) representation of every major segment of the State's population, (7) protection of minority rights, (8) and the sum total of all of the previous goals—democratic representation.

Access and Visibility

The legislative operation and structure provides an excellent opportunity for the interested citizen to obtain access to the conflict and to observe the development of the battle plans. Visitors are separated physically from the Senators only by a rope strung across the rear of the chamber. Only forty-nine actors are involved and it is relatively simple to discern the key leaders in order to make direct contact with them. Perhaps the most important access point to both organized and unorganized groups is the committee hearing. Almost all bills are given a public airing to which any interested citizen is invited. Printed notice must be given five days before a hearing is held.

The Legislative procedure insures "openness" at all stages. A report on a bill or resolution must be made to the Legislature within eight calendar days after the committee has acted upon the particular measure[23] and the chairman must be accountable for the reasoning behind each decision. Any committee member who disagrees with the decision of his standing committee can rise on the floor to explain his opposition.[24]

Floor debate and voting procedure add another dimension to the visibility aspect. An electronic voting machine permits an observer to see at a glance how any Senator has voted. The vote on final reading is recorded in the daily Legislative Journal, but at any time while the bill is being processed a member can request a machine vote and can ask that this vote be made part of the record.[25]

Informed Deliberation

Public hearing is the first step a bill takes after introduction. After the open committee session, where all can testify, the committee goes into secret or executive session to take action on the bill. When a bill is released by a committee, it will be considered by the entire Legislature after being placed on general file, the first of five procedural steps, followed by enrollment and review for review, select file, enrollment and review for engrossment, and final reading. The first full-scale debate of any bill occurs during the time that bill is on general file.

The select file provides an additional deliberative step largely unknown in other legislative bodies. It provides an additional opportunity for debate and examination of the measure. "Procedure on Select File was really action in another committee of the whole."[26]

The two enrollment stages provide for technical correction of the bill and the addition of amendments. A full-time attorney is hired to assure legal correctness.

The last file is final reading. All Senators are required to be on the floor, and no visitors are permitted to contact the Senators.[27] As the entire bill is being read, the Senators, free from interruptions, have a final opportunity to study each bill.

The rules which govern movement of the bill across each of the five files provide that: (1) five legislative days must have passed since the bill was initially referred to enrollment and review, (2) it must have passed two legislative days on the board after its reference to the final reading file, and (3) a final printed form of the bill must have been upon the desks of the members for at least one legislative day.[28]

The unicameral's founders obviously felt that the deliberative process could not be left to chance. The original steps, largely intact, are still providing the necessary checks against hasty or ill-informed legislation.

[23]Nebraska, *Rules of the Nebraska Legislature* (1965), Rule 6, sec. 8. Cited hereafter as Nebraska Rules.
[24]Ibid., Rule 6, sec. 10.
[25]Ibid., Rule 9, sec. 4.
[26]Lane W. Lancaster, "Nebraska's New Legislature," XXII, *Minnesota Law Review* (December, 1937), 69.
[27]Nebraska Rules, Rule 4, sec. 7.
[28]Ibid., Rule 12, sec. 11.

Mobilization of Power

The unicameral structure provides a flexible framework for the use of political power. Flexibility in this instance refers to three major areas—method of selection of legislative leaders, development of leadership by specialization, and the presence of voting blocs which shift with specific issues. Neither seniority, partisanship, nor gubernatorial influence have been of major significance in the power struggle in Nebraska's unicameral structure.

The election of legislative leaders—the speaker, chairman of the committee on committees, and the chairman and vice chairman of the legislative council—is by secret ballot, not by party alignment.[29] The speaker presides during the absence of the Lieutenant Governor,[30] but his real power is based upon his membership in the reference committee[31] and the legislative council executive board. The speakership, often conferred on one of the senior members, has been more a position of honor than power in Nebraska.

The chairman of the committee on committees is a strategic position. This committee chooses the chairman and members of each standing committee. Though geographical distribution, nonpartisanship, and a blend of freshman and experienced Senators is sought, politics is a vital aspect of committee assignments. Both opponents and proponents of a broadened tax base in the past have attempted to put their friends on the revenue committee. Spending agencies of state government, in like manner, are always happy when their supporters find a position on the budget committee.

A person can rise to committee chairman in as few as two terms. Often geographic location or spending philosophies are the basis for selection. Peculiar to the unicameral is the fact that committee chairmen usually retain their positions for no more than two consecutive sessions. The chairman and vice chairman of the five-member legislative council executive board can be very influential. This board, which also includes the speaker and chairman of the committee on committees, heads the main research unit available to the Legislature and directs interim studies.

Bills are assigned to various standing committees by the reference committee—the speaker, chairman of committee on committees, and the Lieutenant Governor. Obviously, referral to an unfriendly committee can greatly lessen a bill's chances for survival.

While partisan machinery might make voting blocs more rigid, Nebraska's nonpartisanship finds that opponents on one issue may be proponents on another. In other words, issues tend to take the place of party alliances in Nebraska's legislative voting patterns.

Leadership

The legislative climate includes an opportunity for advancement which is not based on seniority. Nonpartisanship permits legislators to wield a considerable amount of individual authority and influence through identification with specific subjects. Ideally, the Nebraska unicameral structure provides the laboratory for the individual who desires to use his talents to full capacity to experiment with the problems of state government. The product of legislation in the American democracy must include the ingredients from the many elements of the society being served. To meet the diverse needs and demands requires the leadership traits of courage, patience, and understanding. The author believes these traits have been encouraged to a greater degree under a nonpartisan, one-house legislative structure.

Majority and Minority Rule

Minority groups in our framework must be allowed to speak, but not so loudly or forcefully as to thwart the majority. A Nebraska citizen can be heard on any issue through individual effort or by uniting with a group which shares his view.

A potent majority, properly organized, is provided adequate means of expression within the unicameral system. Neither party, seniority customs, nor a second house stands in the way

[29] Ibid., Rule 3, sec. 1.
[30] Ibid., Rule 2, sec. 1.
[31] Ibid., Rule 14, sec. 1.

of the majority. Lobbying by minority groups behind closed doors is reduced by a visible, accessible, legislative system operated by a small, easily identifiable membership.

Democratic Representation

The sum of all the elements discussed previously should lead to representative government producing moderate decisions. A legislative structure must afford the opportunity for the cooperative use of all its elements to meet the challenges facing modern representative democracy. The nonpartisan unicameral structure provides the mechanism to meet the demands of the first seven points. The seven goals, together, can attain maximum coordination through the nonpartisan, unicameral structure and thus produce the eighth goal—moderation through democratic, representative government.

INFORMAL INFLUENCES ON DECISION MAKING

Each individual elected to the unicameral brings with him predetermined philosophies and prejudices which collide with the informal rules of the group. His "role concept"—how he relates to each individual, to society, and to the world—influences his behavior in the role of a legislator. This "role concept" can be said to be composed of three elements: (1) the personal background and relationships a legislator brings with him to the Legislature, (2) the outside pressures of constituents, groups, parties, and agencies of state government, (3) the "rules of the game" governing the roles and actions of the members of the legislative group itself.[32]

The Legislator in Perspective

As was the pattern in the majority of the States, the Nebraska Legislature has had to wrestle with the reapportionment problem. Originally set up on an equitable distribution of population, urban growth in the 1950–60 decade resulted in an imbalance. The 1962 general election results not only indicated the population disparity between rural and urban legislative districts, but also revealed the appreciable difference within the metropolitan areas of both Omaha and Lincoln.

Urban-sponsored reapportionment acts were killed in the 1959 and 1961 sessions. A compromise establishing a population-area formula was passed by the Legislature as a constitutional amendment in 1961 and was approved by the voters. The 1963 Legislature implemented the measure, allowing a 20 per cent weight for area. A three-member federal court, however, voided the act, but approved a 1965 reapportionment act following a population discrepancy of almost 20 per cent.[33] Thus, one obstacle to possible majority rule in the Nebraska unicameral has been overcome.

As may be expected, farming-ranching has been the dominant occupation represented in the unicameral. Lawyers, traditionally well represented in legislative bodies, have steadily declined in the unicameral and business-oriented occupations seem to have taken their place. Few blue-collar workers have served in the Nebraska Legislature. The average age of Nebraska legislators has remained fairly constant over the years. The early sessions had the youngest personnel—47.0 years of age in 1941. The average age rose gradually to 54.2 in the 1947 session, and has remained around 54 years. Of all the legislators serving between 1936 and 1962, more than 67 per cent of those elected served more than one term, and more than 37 per cent served more than two terms. About one-third served but one term in the unicameral.

Of 125 uncontested races in the elections held between 1936 and 1962 (20.7 per cent of the total races), 114, or 91.2 per cent, involved incumbents. The "staying power" of Nebraska Senators seems to be very high. Once elected, if he so desires, an individual has greater than an 80 per cent chance of being reelected. Of 416 incumbents running in the years 1936–1962, 341, or 81.5 per cent, were successful. If one discards those defeated by former legis-

[32] John C. Wahlke, Heinz Eulau, William Buchanan, and LeRoy C. Ferguson, *The Legislative System* (New York: John Wiley & Sons, Inc., 1962), pp. 141–169.

[33] *League of Nebraska Municipalities* v. *Frank Marsh and others*, 232 F Supp. 411 (U.S. District Court, 1964), and *League of Nebraska Municipalities* v. *Frank Marsh and others*, 252 F. Supp. 27 (U.S. District Court, 1966).

lators, the result is 341 out of 395 successful, or 86.3 per cent.[34]

The turnover ratio in the unicameral has been generally below 40 per cent, and in the last few years seems to be near the national average which was 34 per cent in both houses in 1963.

More influential in the selection of candidates than state-wide pressure groups are the local organizations which feel that the incumbent legislator is not properly representing their interests. This situation will usually result in a meeting of the major groups and a subsequent attempt to draft a new legislative candidate.

Election to a legislative office in Nebraska does not offer a fertile ground for advancement to a higher state office, since very few individuals have moved from the Legislature to other state offices. Since 1951, the author's first legislative term, only one unicameral member has been elected to a higher office.

The pay for senators is $4,800 a year (the unicameral meets biennially, except for special sessions).[35] Fringe benefits given senators are minimal. They are not provided offices and must conduct their affairs from the desks on the floor of the unicameral. Senators can call upon the legislative council, composed of a staff of six people, two of whom are available to individual legislators for research during the session and the interim. In the 1967 session, law students from the University of Nebraska were utilized by the legislative council on a part-time basis to aid in research. Another service is provided in the form of a bill-drafter's office. Here, a legal staff drafts each bill introduced in the Legislature. In 1962, the office of a legislative fiscal analyst was added to the staff of the legislative council. Responsible to the committee on budget and appropriations, the fiscal staff has provided invaluable assistance to the implementation of program budgeting for the State.

The Legislator as Representative

Perhaps one of the greatest influences upon the representative as he functions in the legislative arena is potential constituency pressure. Elected on a nonpartisan basis, a Nebraska legislator is committed to support specific groups or issues, rather than to support a party platform.[36] The influence of constituency pressure will depend upon the position of the Senator within his own district. Some believe that the increase in senatorial terms from two to four years, adopted in 1964, will relieve some of the constituency pressure. This will permit a legislator to build a better record and to accept leadership in more sensitive areas with less fear of immediate repercussions.

THE NEBRASKA UNICAMERAL—CONCLUDING OBSERVATIONS

To be an active and accepted organ, a Legislature must reflect the basic thought of a majority of the State's opinion-makers. It must derive sustenance from the lifeblood of the environment of the State it serves. The Nebraska system fulfills those qualifications, for it is a creature, or a creation, of the history, the wishes, the thoughts of the citizens it serves.

The legislative structure derives its basic traits from the people, works with these same people in making state policy decisions and, in turn, has its own impact upon the people once the decisions are implemented. The input to the Legislature from the State and its people is received, remolded, and returned to the people in the form of legislative or decisional output.

The Legislature is considered to be an active and influential part of the social process of the State. Likewise, each of the elements exerting major impact upon the decisions of the unicameral is to be considered a segment

[34]Compiled from *Nebraska Blue Book*, 1936-1962, inclusive.

[35]Article III, sec. 7 of the Nebraska Constitution provides that a Senator shall receive "not more than two hundred dollars per month" for his term of office. At the time of the adoption of this amendment in 1960, there were some charges that the wording of the amendment masked the intent of raising legislative salaries which previously had been around $870 per year. Section 7 amended in 1968 read: "not to exceed four hundred dollars per month during the term of his office."

[36]In the 1959 session, the author, on constitutionality grounds, voted against an Associated Industries of Nebraska-sponsored bill on secondary boycotts. Subsequently, he was forced to attend a special meeting of his business constituents to explain his stand.

of the same social system. Thus, the environment exerts an influence on the legislative body directly, and also through the formal and informal structures of the legislative system. Likewise, the formal and informal act upon each other, as well as upon the environment and upon the Legislature itself. Finally, the unicameral system, receiving the total impact of these three important pressures, by its final decisions, or output, completes the circle by exerting its own influence back upon the environment and the people of the State it serves.

The decisions of the Legislature, reflecting the people's main characteristics and beliefs, produce moderate answers or conclusions to the major problems. Such flexibility is present within the unicameral legislative structure. The pressure groups, too, are products of the social system and must operate within the same basic framework of a formal structure and an informal process as the legislators being pressured. Both elements, the pressured and those exerting the pressure, are influenced by the same basic elements of th State's social system.

The unicameral structure provides the governmental tools that the people of Nebraska need to confront present challenges. The system is streamlined to eliminate obstacles which stand between the people and their goals of democratic representation. The worth of the unicameral has not always been fully understood, appreciated, or utilized. This is no reason to discount its value or underestimate its contribution in meeting the current need to upgrade and strengthen state government in the latter decades of the twentieth century.

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UNICAMERALISM: WISCONSIN LEGISLATIVE HISTORY

INTRODUCTION

Nebraska is the only state in the United States that currently has a unicameral (that is, one-house) legislature. It has been in existence since 1937 with no apparent attempts to change the structure. Three other states (Pennsylvania, Georgia and Vermont), however, began with a unicameral legislature and later abandoned it.

Although the unicameral legislature is not very popular in the United States, many foreign countries have adopted it. For example, when Quebec abolished its two-house parliament in 1969, the last of Canada's 10 provinces became unicameral. The governing bodies of most municipalities and counties in the United States are also unicameral in nature.

The history of unicameral proposals in Wisconsin began with 2 proposed constitutional amendments introduced in 1915. After a lapse of 12 years, there was at least one such proposal introduced in every regular biennial session from 1927 to 1937. In 1935, 5 separate joint resolutions were introduced relating to adopting a unicameral legislature. Two of these proposals (1935 Assembly Joint Resolutions 10 and 95) were passed by the Assembly. These are the only 2 such measures which have ever received passage by at least one house. 1935 AJR 95 was not a proposed constitutional amendment, but rather, a proposed referendum relating to the establishing a unicameral legislature.

Not until very recently has there been any revived interest in unicameralism since the 1930's. Four proposals have been introduced in the last 3 sessions of the Wisconsin Legislature to provide for a unicameral legislature. Unicameralism has been given considerable attention since 1964 in many other states beside Wisconsin. The recent upsurge of interest is at least partially due to the United States Supreme Court's 1964 ruling in Reynolds v. Sims (377 U.S. 533; 84 S. Ct. 1362), which held that both houses of state legislatures must be apportioned according to population. In Wisconsin, of course, both houses have always been apportioned "according to the number of inhabitants". Since representation for both houses of state legislature now has to be based on population, some commentators have suggested that there might be no further need for 2 houses.

CONSTITUTIONAL PROVISIONS RELATING TO THE LEGISLATURE

The current provisions of the Wisconsin Constitution governing the number and size of the houses comprising the Wisconsin Legislature are found in Article IV. They read as follows:

> Section 1. The legislative power shall be vested in a senate and assembly.

Prepared by Gary Hatcike, Research Analyst

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Section 2. The number of the members of the assembly shall never be less than 54 nor more than 100. The senate shall consist of a number not more than one-third nor less than one-fourth of the number of the members of the assembly.

If Wisconsin were to adopt a unicameral legislature, additional sections of constitution would have to be amended. Those sections which would also be affected are:

Article IV,	Section 3.	Apportionment.
	Section 4.	Assemblymen, how chosen.
	Section 5.	Senators, how chosen.
	Section 7.	Organization of legislature; quorum; compulsory attendance.
	Section 8.	Rules; contempt; expulsion.
	Section 9.	Officers.
	Section 10.	Journals; open doors; adjournments.
	Section 17.	Style of laws; bills.
	Section 19.	Origin of bills.
	Section 20.	Yeas and nays.
	Section 26.	Extra compensation; salary change.
Article V,	Section 8.	Lieutenant Governor president of senate....
	Section 10.	Governor to approve or veto bills; proceedings on veto.
Article VI,	Section 2.	Secretary of State duties relating to the legislature.
Article VII,	Section 1.	Impeachment proceedings.
	Section 13.	Removal of judges.
Article VIII,	Section 6.	Public debt for extraordinary expense; taxation.
	Section 8.	Vote on fiscal bills; quorum.
Article XI,	Section 4.	Legislature prohibited from incorporating banks.
Article XII,	Section 1.	Constitutional amendments.
	Section 2.	Constitutional conventions.
Article XIII,	Section 6.	Legislative officers.

WISCONSIN LEGISLATION PROPOSING A UNICAMERAL LEGISLATURE

No proposed constitional amendments relating to the establishment of a unicameral legislature have ever achieved passage through both houses of the Wisconsin Legislature, so as to be eligible for "2nd consideration" review 2 years later in preparation for their submission to the voters of Wisconsin. Therefore, all the proposals listed in the following table constitute "1st consideration" constitutional amendment proposals.

A. Proposed Constitutional Amendments Providing for a Unicameral Legislature*

Year	Joint Resolution	Author	Name of Body	Size of Body	Length of Term	Type of District	Misc. Provisions
1915	SJR 20	G. Weissleder	Legislature	3 mbrs. from each congress. district	Staggered 4-year terms	Correspond with congress. districts	
1915	AJR 33	H. L. Mortenson	Legislative Commission	1 mbr. from each congress. dist. & 2 from state at large	4 years	Congress. dist., plus 2 from the state at large	One of the 2 at large mbrs. receiving highest no. of votes — pres., other vice-pres.
1927	AJR 17	Wm. Coleman	Legislature	133 Members	Staggered 4-year terms	Single dists. of convenient contiguous territory	
1929	AJR 131	Robert Caldwell	Legislature	Number of mbrs. equal to the no. of U.S. Rep.s from Wisconsin	Staggered 4-year terms	Correspond with congress. districts	
1931	AJR 48	Philip Wenz	Legislature	133 Members	4-year terms	Single districts	
1933	AJR 26	G. Weissleder	Legislature	Not more than 3 mbrs. from each congress. district	Staggered 4-year terms	Single dists. of convenient contiguous territory	Sessional salary of $1200
1935	AJR 10	M. H. Hall	Legislature	Not less than 30 nor more than 50 members	2 years	Single member districts	
	A.Am. 1 (Adopted)	B. M. Vaughan		Not less than 90 nor more than 100 members			

*In measures proposing a staggered 4-year term, most proposals provided for half of the Legislature being elected for 2 years in the initial election under the new unicameral legislature, and subsequently for 4-year terms.

Proposed Constitutional Amendments Providing for a Unicameral Legislature — Con't

Year	Joint Resolution	Author	Name of Body	Size of Body	Length of Term	Type of District	Misc. Provisions
1935	AJR 11	G. Weissleder	Legislature	Not more than 3 mbrs. from each congress. district	Staggered 4-year terms	Single member districts	Legislature would meet once each mo. until all business completed. Annual salary of $4,000
	A.Sub.Am.1 as amended by A.Amdt. 1 and 2 (Adopted)			Not less than 90 nor more than 100			Legislature would meet once every 2 years
1935	AJR 70	Mary Kryzak	Legislature	Not less than one mbr. from each county nor more than 100 members	4-year terms	No dist. would embrace more than one county.	
1937	AJR 11	M. H. Hall	Legislature	Not less than 30 nor more than 50 members	2 years	Single member districts	
1965	AJR 107	Barbee, Iverson, Lipscomb & Schaus	Legislature	Not less than 43 nor more than 75 members	Staggered 4-year terms	Single member districts	Annual salary of $10,000. Annual sessions
1967	SJR 26	J. Lourigan	Legislature	Not more than 45 members	Staggered 4-year terms	Single dists. of compact contiguous territory	
1967	AJR 37	Barbee, Lipscomb, Anderson, Kessler & O'Malley, co-sponsored by Lourigan	Legislature	Between 33 and 75 members	Staggered 4-year terms	Single member districts	Annual salary of $12,000. Annual sessions.

Proposed Constitutional Amendments Providing for a Unicameral Legislature — Con't

Year	Joint Resolution	Author	Name of Body	Size of Body	Length of Term	Type of District	Misc. Provisions
1969	AJR 18	Barbee, Lipscomb & Sanasarian	Legislature	Not less than 33 nor more than 75 members	Staggered 4-year terms	Single member districts	Annual salary of $12,000. Annual sessions

B. Proposed Referenda Relating to Establishment of a Unicameral Legislature

Year	Joint Resolution	Author	Referendum Question
1935	AJR 95 A.Sub.1	G. Weissleder	This proposal would submit to the voters a referendum consisting of the following 5 questions and comprising 7 parts: (1) "Do you favor a one-house legislature?"; (2) (a) "Do you favor a legislative membership of not less than 30 nor more than 50 members?"; (or) (b) "Do you favor a legislative membership of not less than 30 nor more than 100 members?"; (3) "Do you favor the legislature sitting as a body to hear all arguments for and against all matters coming before it?"; (4) "Do you favor having the legislature meet once each month and remain in session until its business is completed?"; (5) (a) "Do you favor a 4-year term for the members of the legislature?"; (or) (b) "Do you favor a 2-year term for the members of the legislature?". The measure was adopted by the Assembly by a vote of 48 to 32. The Senate, however, nonconcurred in it by a 23 to 7 vote.
1935	AJR 171	E. W. Blomquist & A. F. Poltl	This proposal would have submitted one question to the voters: "Do you favor a one-house legislature? Yes____ No____"
1955	AJR 91	Louis C. Ramell	This proposal would have provided an advisory referendum consisting of 2 questions: (1) "Do you favor an amendment to the state constitution to provide for a unicameral legislature of 100 members, one-half to be elected every 2 years for terms of 4 years?" or (2) "Do you favor an amendment to the state constitution to provide that the legislative branch shall consist of 2 houses similar to the legislative branch of the federal government?"

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The House Nebraska Built

by Donald Janson

Its simple plan for making state government cheaper and more efficient has worked out remarkably well and may soon be copied elsewhere.

Though Vermonters may dispute the title, Nebraska is probably the thriftiest state in the union. For example, the state's bonded debt is limited to $100,000 and Nebraska stays well under that. It has no sales tax or state income tax because so many Nebraskans feel the revenue would open the door to unnecessary spending.

If you are aware of this penny-pinching tradition it is a shock when you drive the arrow-straight road from Omaha to Lincoln to find a veritable architectural extravaganza looming up out of the surrounding plains.

This spectacular skyscraper is the State Capitol. It cost about ten million dollars and took ten years to build, being paid for by a special property tax which yielded a million dollars a year. "An innocent traveler from the East who thinks that Nebraska is a stick-in-the-mud state will get some surprises," John Gunther wrote in *Inside U.S.A.*, after his first glimpse of this startling building.

The surprises, however, are not merely architectural. Recent visitors are viewing with even more interest what goes on inside the Capitol. For this is the headquarters of the only one-chamber state legislature in the nation, an innovation which may, in the years ahead, be widely copied in other states. If this comes to pass, the full potential of a remarkable institution may be discovered—for Nebraskans, though generally pleased with their brainchild, have tended, in characteristic fashion, to maintain it on a starvation diet.

Senator George W. Norris—Nebraska's great innovator—was the chief architect of the "unicameral," as it is generally known. At the time it was created it seemed of no more than local significance to the rest of the country.

Now, thirty years later, it has become an object of national interest as a result of the Supreme Court's reapportionment decision on June 15. Despite the delaying tactics of the 88th Congress, district lines will inevitably be redrawn and state legislatures are headed for a shake-up. Economy-minded citizens are pondering the possibility of shaking one house out of existence in the process. If this should happen, millions of tax dollars will be saved. More importantly, legislatures might be largely cleansed of the corruption and inefficiency that blight state governments across the country.

If nothing else, experience in Lincoln has proved that one house is cheaper than two. Specifically, the taxpayers' bill for the first unicameral that met in 1937 was approximately half that of the preceding chamber session. And when one body must do the work of two, there is little time to waste on the glut of meaningless bills commonly tossed in the hopper at the start of state legislative sessions. The number introduced was cut in half in the unicameral. Conspicuously absent are the hundreds of nuisance and special-interest bills annually proposed in one house on the assumption that they will be killed in the other.

"There's now no way for us to pass the buck," says State Senator Richard D. Marvel, who has served in the unicameral for ten years. "I can't say to a constituent, 'Okay, I'll introduce this for you,' and then run to the other house and say, 'Boys, kill this.' The lobbyist, too, doesn't dare talk out of both sides of his mouth and offer bribes. We are working in a goldfish bowl."

With only one house, there are, of course, none

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of those conference committees whose secret sessions have long been a convenient locale for lobbyists' less savory maneuvers. In Nebraska's unicameral, all committees are required to hold public hearings, to announce them far enough in advance so that all interested citizens can attend, and to conduct their deliberations in plain view of the electorate.

Senator Norris was particularly eager to eliminate the powerful conference committee, which he saw as the graveyard for much beneficial legislation as well as the focal point of lobbying manipulations. Traditionalists claim to fear that getting rid of one house would do violence to the governmental system of checks and balances, but Norris' response to that was curt: "After the legislative session comes to an end and we balance the books, we generally find that the politicians get the checks and the special interests get the balance."

Buck-passing, logrolling, and undercover pressure in matters of taxation, schools, utilities, public power, and transportation had long plagued Nebraska. These were the chief targets of Senator Norris' campaign for a unicameral legislature. But his arguments on these points had little impact for a decade. In the end it was a sure-fire Nebraska issue—economy—that proved his trump card.

This came about in the blistering summer of 1934, when temperatures steadily soared over the hundred-degree mark and only fourteen inches of rain—the least the state had ever had—fell all year on parched cornfields. In the third consecutive year of drought, hot prairie winds turned the plains into a dust bowl and the corn crop withered to a pitiful three bushels an acre, compared with the accustomed twenty-four. This agricultural calamity multiplied the miseries of the great depression, which had already swept the state with foreclosures, frozen credit, bankruptcies, and unemployment.

With his familiar black string tie hanging limp from his wilting collar, Norris stumped the state from Omaha to the western sandhills that searing summer pleading the cause of a one-house state legislature. He wore out two sets of automobile tires, crisscrossing the state. He had the aid of a small band of reform-minded allies. One of the most persuasive of these was former Congressman John N. "Nate" Norton (whose daughter, Mrs. Evelyn Lincoln, later became President Kennedy's secretary). "Save time, talk, and money," he urged.

Arrayed against the Norris-Norton forces was a formidable coalition of the state's power structure—major farm and professional organizations, railroads, utilities, and the press. Newspapers "forgot" to report Norris' speaking engagements; handbills posted to announce them were torn down.

"If I offered the Lord's Prayer as an amendment they would fight it," Norris said of his foes on election eve.

But in the end, Norris' dynamism and the appeal to frugality won out. Advocates of the unicameral were helped, too, by the fact that two popular proposals—one advocating repeal of prohibition, the other authorizing pari-mutuel betting—were also on the ballot. All three propositions were approved, the unicameral by a vote of 286,086 to 193,152.

The returns shocked Nebraska's newspapers and politicians. Most stunned of all were 90 of the state's 133 legislators who had been voted out of their jobs. The surviving 43 decided to call themselves senators and went to work as a single-chamber legislature in 1937. Norris skipped an opening of Congress to be there. "I congratulate you on being members of the first unicameral legislature," he told the new senators their first day. "Every professional lobbyist, every professional politician, and every representative of greed and monopoly is hoping and praying that your work will be a failure."

Lobbyists in the Open

Today the unicameral system is firmly entrenched in the state. Nebraskans deny that the money saved is the only reason. They claim that legislators have been made more responsive to the will of the electorate. Probably this is true. But in a tightfisted state, the result is not necessarily progressive.

For example, last year the revenue committee held public hearings on a bill to establish a state income tax. The American Farm Bureau Federation, the Farmers Union, and the Grange sent representatives to oppose it. So did the state teachers' association. Appearing in support was

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an Omaha taxpayers' group called the Nebraska State Improvement Association. Most witnesses opposed the bill and in the floor debate that followed it was killed.

Last year, similarly, the budget committee held public hearings for two weeks on a special appropriation for the state's university. Its backers, calling themselves Friends of the University, included prominent farmers and industrialists eager to see increased funds devoted to agricultural research. The owner of a television station and a former mayor of Lincoln favored increased university funds for other purposes. The principal officers of the university and its department heads explained their budget requirements to the committee. Individual taxpayers, however, spoke against parts of the proposal, as did representatives of more than 130 Omaha doctors who opposed a full-time faculty in an augmented medical school. Their testimony prevailed and a proposed $35 million program to improve medical-school facilities was drastically altered.

This was, of course, a victory for a special-interest group. In other states the AMA and the practicing doctors who have also been part-time teachers in medical schools have fought against salaried full-time faculties, although medical educators generally believe the trend is the inevitable consequence of the increased specialization and scientific intricacy of modern medicine.

The doctors' victory in Nebraska, however, was openly arrived at after public debate. This is a very different process from the backstairs operations of the lobbyists for the Union Pacific Railroad, the Burlington Railroad, the utilities and liquor interests in the old two-house legislature whose deliberations seldom saw the light of day.

Senator Norris hoped that the limelight shed on the unicameral legislature would attract more capable men to it. He assumed that they would be better paid for their work, since they were fewer in number. Nebraskans, however, don't believe in pampering their public servants. So for years, legislators' annual salaries remained at $872. Recently they were increased to $2,400, which is still not nearly enough to live on. (In other states legislators' pay ranges from New Hampshire's $200 per biennium to New York's $10,000 a year.) Inevitably the legislators' energies must be divided. Senator Marvel, for example, sold his insurance-and-loan business to serve in the legislature. But he will soon be back at a second job, teaching political science at the Municipal University of Omaha.

There are a number of competent, dedicated men in the Nebraska legislature, but there is a notable dearth of lawyers, and the overall caliber is not too different from that of the men I have watched in other state legislatures.

Unquestionably, however, they work harder and more effectively than in many states. For example, the senators assigned to appropriations serve on no other committees. They delve deeply into the specifics of all money measures and when a budget is finally passed there is no question that the legislators know, in detail, just what they are doing.

Between sessions, the legislature—which meets every two years—functions as a "legislative council" which works continually on the state's perennial problems. This valuable service would be considerably more effective if Nebraskans were less parsimonious. The council—along with the legislature generally—is short on research and clerical staff. No senator has a secretary or administrative assistant of his own—he must rely on a meager secretarial pool. Though the council studies and prepares some eight hundred bills on three hundred subjects for each session, its research staff consists only of a director, one assistant, and two secretaries. The budget committee has only two fiscal assistants. Some of these gaps could be filled by university graduate students serving as legislative interns. However, in 1961 Nebraska turned down a foundation grant offered for such a program because it required the state to match the foundation funds in part.

To cite such shortcomings is not to belittle the advantages of the unicameral system. The pattern of an agriculturally oriented state, which is in many respects unusually frugal, would not be duplicated in more urban, ethnically mixed, and liberal states. And those who have worked with the unicameral in Nebraska—from the Governor down—attest to its practicality, efficiency, and responsiveness.

"Ours is the best government on earth and the envy of a lot of people in other states," says Senator Leroy Bahensky. This may be hyperbole. But one cannot dispute him when he adds, "It isn't easy to acquire."

Not Ordained in Heaven

Probably the major roadblock for other states wishing to imitate Nebraska is tradition—the feeling that two houses were ordained by the Founding Fathers. Actually, the idea was borrowed from England. In the early days of the

union, some states permitted only the wealthy to vote for members of the upper chamber.

In Maryland, for example, a net worth of at least a thousand pounds was required. Like the House of Lords, the upper chamber was intended to provide the propertied class with a check against impetuous action by the lower house representing the mass of freemen.

At one time some 40 per cent of the nation's cities also had bicameral legislative bodies. Only two now survive—in small New England towns. Britain, as a practical matter, long ago evolved a unicameral system, when the House of Lords was shorn of most of its power.

Apart from tradition, the odds against adoption of a unicameral are considerable. Though legislatures in all states but New Hampshire and Delaware may propose constitutional amendments, they are not inclined to propose eliminating half their membership. Nor is the idea likely to be popular with the politicians who dominate the constitutional conventions which could initiate such a change in all states.

The best prospects are in the dozen states, besides Nebraska, which permit the people themselves to initiate reform by petition leading to popular referendum. These states are Arizona, Arkansas, California, Colorado, Massachusetts, Michigan, Missouri, Nevada, North Dakota, Ohio, Oklahoma, and Oregon. There have been a few attempts, both before and since 1934, to eliminate one house. None has yet succeeded.

However, a major justification for two houses has been wiped out by the Supreme Court's decision that both houses must be apportioned on the basis of population alone, eliminating area as a consideration. "It doesn't make any sense," said W. Dale Hess, Democratic floor leader of the Maryland House of Delegates, after the ruling was handed down, "to have two houses, both based on equal population, since they'd only be duplicating each other."

While there are dissenters, the decided feeling from most quarters in Nebraska today is that Hess is absolutely right and so were Norton and Norris and the Nebraska voters of 1934.

Nebraska's Unicameral Legislature Saves Money for Taxpayers

By L. E. AYLSWORTH
University of Nebraska

Claims of its advocates that adoption of a one-house body would result in a marked reduction in legislative costs fully substantiated by figures now available.

SEVERAL incomplete, very inaccurate or biased statements regarding the cost of Nebraska's unicameral legislature have been published and are being circulated. A statement of the actual facts that is complete, accurate, and impartial appears to be needed and worth while, in order that interested citizens the country over may be rightly informed. The following presentation, based on a thorough examination of the record of legislative expenditures in the office of the state auditor, attempts to achieve this result.

The constitution of Nebraska contains the unusual provision that "the auditor shall within sixty days after the adjournment of each session of the legislature, prepare and publish a full statement of all moneys expended at such session, specifying the amount of each item and to whom and for what paid." This statement gives all legislative expenditures until three to six weeks after the regular session ends. It has always included the total salary of members for their entire term unless a special session was held later. But it has never included all the expenditures of a legislature during its term. These continue for over a year and a half until the next legislature meets. Such expenditures have included in the past the preparation and publication of the permanent senate and house journals and the session laws, also the custodial care of the chambers and other rooms devoted to legislative purposes. Under the unicameral system they now also include the salaries of the members, expenses of the office of the permanent clerk, and of the legislative council for the rest of the term. These post-session expenditures, therefore, have to be taken into account in order to arrive at a complete and accurate statement.

Legislative costs in Nebraska under the bicameral system, while usually greater than necessary, have been moderate compared with those of many other states, and never flagrantly excessive. Nevertheless, unicameral advocates urged that the adoption of a smaller one-house legislature would result in a marked reduction in legislative costs even though the salary of members was more than doubled. A careful examination and comparison of the records show that they fully substantiate this claim.

Nebraska's first unicameral legislature, despite statements to the contrary,[1] both appropriated and expended much less for legislative purposes than any of its bicameral predecessors for over a decade. The average appropriation of the last five bicameral legislatures was $220,793.63 for regular sessions only, and $240,893.63 if the three

[1] "The total cost of the unicameral session . . . was $237,581.96, an increase in round numbers of $32,000 over the cost of the . . . most expensive bicameral session in the history of the state." See G. E. Price, *Unicameralism in Practice, The Nebraska Legislative System*, p. 173. H. W. Wilson & Co., New York. 1937. This glaring misstatement is due mainly to three errors: the counting of the annual $37,500 salary three times instead of two; the inclusion of a vetoed appropriation of $10,700; and the figuring of appropriations as actual expenditures.

	Appropriations for Unicameral Legislature	*Unexpended Balances*	
		Sept 1, 1938	*Dec. 31, 1938*
Incidentals (by legislature 1935)	$2,000.00	None	None
Salary, members	75,000.00	$8,600.26	$0.26
Employees, supplies, etc.	77,143.60	6,052.53	4,500.00
Printing Journal, Session Laws	10,000.00	5,936.08	5,936.08
Salary of permanent clerk	7,200.00	3,000.00	1,800.00
Legislative council	15,000.00	10,562.67	8,000.00
TOTAL	$186,343.60	$34,151.64	$20,236.34

special sessions are included. The average expenditure was $194,479.94 for regular sessions, and $211,733.46 for both regular and special sessions.

The total appropriations by the unicameral body for legislative expenses with their unexpended balances are shown by the tabulation above.

The $4,500 and $8,000 balances on December 31, 1938, (the end of the term of the present legislature) are conservative estimates. At the present rate of expenditure they are likely to be somewhat larger. The other three balances are definite and sure.

The following detailed comparison of the expenditures of Nebraska's last bicameral and first unicameral legislatures brings out clearly the lessened cost of the latter not only for salaries but also for other expenses:

COMPARATIVE COSTS OF 1935 AND 1937 LEGISLATURES[1]

	Bicameral Legislature, 1935-36			*Unicameral Legislature, 1937-38*
	Regular Session to Dec. 31, 1936	*Special Session to Dec. 31, 1936*	*Total for Both Sessions*	*Regular Session to June 30, 1937*
Salaries:				
Members	$106,660.00	$13,300.00	$119,960.00	$37,499.87
Officers	11,142.00	2,135.50	13,277.50	4,510.50
Employees	34,338.89	5,125.40	39,464.29	26,867.06
Supplies	7,828.88	1,701.46	9,530.34	3,612.11
Printing	26,106.12	2,954.72	29,060.84	15,267.13
Telephone and Telegraph	692.24	268.23	960.47	388.19
Postage	7,287.40	1,221.65	8,509.05	6,300.00
Travel expenses:				
Mileage	3,698.40	3,679.50	7,377.90	565.11
Special	1,034.85	170.48	1,205.33	189.36
Expert assistance:				
Legislative reference bureau	4,000.00	———	4,000.00	4,000.00
Legislative counsel	1,180.00	340.00	1,520.00	4,697.05
Special legal, auditing, stenographic, and medical	1,317.65	176.90	1,494.55	———
Journals:				
Preparation	2,950.00	572.00	3,522.00	———
Printing	5,470.70	1,074.75	6,545.45	1,477.12
Session laws:				
Preparation	856.50	437.00	1,293.50	———
Printing	4,482.26	2,302.92	6,785.18	2,586.80
TOTAL	$219,045.89	$35,460.51	$254,506.40	$107,959.30

[1] In this comparison the salary of the lieutenant-governor is eliminated for all three sessions because the attorney-general holds that he is an executive officer whose salary is not a legislative expense.

TOTAL UNICAMERAL EXPENSES TO JUNE 30, 1937 (FORWARD)			$107,959.30
Unicameral Expenditures from July 1, 1937 to September 1, 1938			
Salaries of 43 members—three-quarters, 1938		$28,899.87	
Clerk's office			
Salary of clerk	$4,200.00		
Salary of secretary	1,830.00		
Custodial service	2,112.40		
Renovating legislative chambers	1,231.90		
Other expenses	1,521.26		
		10,895.56	
Legislative Council			
Expenses, members	$963.89		
Assistants payroll	2,798.22		
Other expenses	675.22	4,437.33	
			44,232.76
Expenditures from September 1, 1938, to December 31, 1938			
Salaries of 43 members		$8,600.00[a]	
Clerk's Office			
Salary of clerk	$1,200.00[a]		
Secretary, custodial service, and supplies	1,552.53[b]		
		2,752.53	
Legislative Council		2,562.67[b]	
			13,915.20
TOTAL UNICAMERAL EXPENDITURES FOR BIENNIUM			$166,107.26

[a]Definite [b]Estimate

Inspection of this comparison shows that the total cost of the unicameral legislature for the biennium, including the expense of both the permanent clerk's office and the legislative council, will be only $166,107.26 as against $219,045.89 for the regular bicameral session—a reduction of $52,93. .63 or 24.17 per cent. If the expense or the legislative council be excluded for two reasons: first, that it is a new institution not provided for by the bicameral legislature; and second, that its function is to gather and prepare material for the use of the next legislature, the saving jumps to $59,938.63 or 27.36 per cent.

These comparisons are all on the basis of one regular session for the biennium. But, what about the comparative cost of unicameral and bicameral in case a special session is found necessary? In 1930 the total cost of a special session of eleven days was $23,861.06, and the next year for another of equal length, $26,746.05. The special session of twenty-four days in 1935 cost a total of $35,460.51. A little thought will show that the additional cost of a special session under the unicameral set-up will be much less than this. There will be no extra expense for the salaries of the members and the permanent clerk. The extra mileage expense will be only one-sixth of what it was formerly. Other expenses will also be less. Hence a special two- to four-weeks session of the unicameral can be held at an extra cost of $10,000 or less. This would make a total of only $176,107.26 for a regular and a special unicameral session as compared with $254,506.40, the cost of the two sessions of the last bicameral legislature—a saving of $78,399.14 or 30.8 per cent.

The chief saving as predicted is in the salaries of members and officers. There is a saving in the expense for employees but not so much as expected. The amount of work and correspondence devolving upon the forty-three

members was probably as great as that upon the 133 members of any bicameral session. Hence more secretarial assistance was needed. Then, too, committees were supplied with secretaries as never before, to promote the keeping of better records of their proceedings. This expense for assistance was well worth while. In the future, doubtless more care will be exercised to assure the selection of somewhat fewer and, in some instances, more highly qualified employees. There is a striking drop in mileage and special transportation. The expenditure for the latter of only $188.36 is phenomenally low. There was certainly nothing even suggestive of legislative junketing in the record of the unicameral body. In fact for this small expense to the taxpayers all or a part of the committee on appropriations, without prior notice, visited and inspected all the state institutions, some twenty-five in number, without a single exception, a record hitherto unequalled.

Another very noteworthy decrease in cost is that for the preparation and printing of the permanent legislative journal and the session laws. The last bicameral legislature spent $4,815.50 for preparing, and $13,330.63 for printing, its permanent journals and session laws, a total of $18,146.13. The cost of printing the unicameral journal and session laws was only $4,063.92. The preparation for printing was done by the permanent clerk and staff. The difference, $12,082.21, is more than enough to pay all the extra expense of the permanent clerk's office for the entire biennium.

The unicameral expenditure for postage while less than formerly is probably too high. The body persisted in continuing the very questionable practice of a flat postage allowance per day for all members. This was elevated from thirty-five cents to one dollar, or $98.00 to each member for the session. No doubt some members actually spent this, or even more, for official purposes. But in too many instances this allowance was to a large extent an unjustifiable personal perquisite. This fixed daily allowance should be abolished and the postmaster authorized to record and stamp all official mail presented by any member.

For only one aspect of legislation did the unicameral legislature appropriate and spend more than any bicameral legislature, namely, expert assistance and counsel. Some $8,700 was spent during the session for such aid, or $3,500.00 more than by the last regular bicameral session. Impressed by the number of important acts passed by the last two legislatures that had been stricken down by the state supreme court as unconstitutional, the unicameral legislature broke new ground by spending $4,700 for a special group of three legislative counsellors to pass on the constitutionality of bills as to which there was any doubt. A similar increased recognition of the need of planning, research, and competent assistance in order to secure proper and effective legislation and records was shown by the establishment of the permanent clerkship and the legislative council with special appropriations of $22,200 for their expenses.

A final observation seems pertinent. The $50,000 to $75,000 reduction in legislative costs by the first unicameral legislature, compared with the last bicameral, will doubtless appear small to many in these days of huge governmental expenditures, and more so in some other states than in Nebraska. But it is the percentage of reduction, not the amount, that is of vital importance. A like reduction in legislative costs in Illinois would equal from $300,000 to $400,000 each biennium, and in Pennsylvania from $500,000 to $600,000.

News in Review

Nebraska 'Unicam' Operates Smoothly

Handles 737 Bills With No Final Rush

NEBRASKA'S unicameral legislature this year, as in the past, had a performance quite in contrast to that of other state legislatures, particularly that of New York, described as "The Rites of Spring in Albany," by Mel Elfin in *The Reporter* of April 27 this year.[1]

The bill load of the Nebraska 1961 session, almost the same as that of 1959, was heavier in relation to the size of the legislature, i.e. to the number of members to share the burden, than in prior years—737 bills or an average of 17 per member (Iowa and Illinois figures this year were 8 and 11). The session was the longest by a week in the unicam's history, adjourning just before noon on Saturday, July 8, the 126th legislative day. This was the only Saturday sitting of the session. On Friday the legislature rejected proposals to suspend rules or cut procedural corners in order to finish in a hurry, held a morning and an afternoon sitting that day with a two-and-a-half hour recess at noon, but had no sitting at night.

Despite the heavy bill load per member, and contrary to the usual practice of bicameral legislatures, the bulk of the work did not pile up for last-minute action. Two weeks before adjournment Lincoln and Omaha newspapers reported that all but 25 of the bills had already been disposed of definitely, either by passage or rejection in some manner. The remaining days could be devoted to deliberations on the comprehensive budget bill for the ensuing biennium, on a few other highly controversial measures demanding full debate, and on the various proposals and instructions for investigations to be undertaken by the Legislative Council and its professional staff during the 18-month interim. Inasmuch as every member serves on that council, each may participate in committee hearings and deliberations at various times during the biennium under the general scheduling of its executive board. In this sense the legislature is never really inactive.

The unicameral continues to bear all the distinctive marks of a conservative midwest assembly. It still adheres to the property tax and has fended off attempts to impose general sales and income levies. During this session it outlawed the Communist party and lacked only one vote of ordering an investigation of school books as to their degree of "Americanism." It holds the purse strings tightly and had the University of Nebraska and other state institutions and agencies unusually on edge as it dealt with the budget. In the face of charges of gross gerrymandering, it reduced the state's congressional districts by one, but failed to touch its own legislative districts.

One thing was clear this session: the unicam's operations are sufficiently in the open, and its decisions or prospective decisions clear enough, so that a give-and-take occurs between legislature and public. For instance, what may have been a legislative policy mistake made during the session was corrected before the session was over as the result of repercussions through press publicity and pressure groups. It happened that a bill was passed about midsession requiring colored photos on drivers' licenses and centralising control of is-

[1] See also the Review, May 1961, page 254.

suance. Some alleged mishandling of contract-letting to implement the act only added fuel to the earlier controversy. The wisdom of the law was challenged with the upshot that an emergency bill was introduced and passed to repeal it.

The general appropriation bill was likewise before the legislators and public in time for public and administrative reaction. All could view and assess the proposals as a comprehensive program. The result was that some of the Appropriations Committee's cuts were modified before final action, although the totals were less than administrative recommendations by far and less than those for the previous biennium. The fact that the governor was not of the same political party as the majority of the "nonpartisan" legislators probably did not help.

The committee's bill, however, called for a new approach to budgeting and appropriations and had all agencies uneasy. One editorial emphasized that the attempt of the appropriations chairman to effect a functional basis for dealing with finances was likely to be of lasting benefit to the state. Considerable attention attached to the creation of a post of legislative fiscal analyst within the staff of the Legislative Council as an aid to both council studies and committee operations.

Praise came to the legislature for abolishing the Board of Control of state institutions and the substitution of departments and advisory boards, whose professional heads would be named by and responsible to the governor.

A slight reversion to the traditional American partisan pattern came about when the lieutenant governor, acting while the governor was absent at the Governors' Conference, appointed a recognized partisan, one whom the governor would not have appointed, to fill a vacancy in the nonpartisan legislature. This points up the fact that some Nebraskans continue to complain that the legislature flounders without leadership in the absence of partisan elections, even though leadership of a sort has certainly developed in the mechanism of the Appropriations Committee.

Different from other states, but usual in Nebraska, nearly all bills passed were in the governor's hands early enough for a vetoed bill to be returned for reconsideration while the legislature was still in session. Only six bills were left to be dealt with finally on the morning of that last day, between eight o'clock and noon, and the budget bill utilized most of this time because it was read, taking an hour and 27 minutes. Unusual for Nebraska, but causing more comment than alarm, was the enactment of the appropriation bill more than a week after its fiscal biennium had begun.

RICHARD C. SPENCER
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Unicameralism Passes Test

Nebraska's one-house legislature, after extended trial, has shown itself a sound instrument in the solution of the state's problems; fears of critics prove unfounded.

By JOHN P. SENNING
University of Nebraska

ALTHOUGH the United States is engaged in an unprecedented world war and the end is not yet in sight, the thoughts of the people are turning to postwar planning. Near the close of World War I interest in state government was focused on budgetary reform and administrative reorganization; today it is centered upon the state legislature.

Many reputable citizens are pointing to the ineptitude of legislatures in their handling of the depression issues as an omen of their inability to cope with the many serious questions of social and economic policy that will plague them in postwar days. They feel that the mechanism of legislative procedure must be reconstituted so that th lawmaking process will be adaptable to the nature and solution of those problems.

The nature and extent of that reform, whether it will follow the course of merely rejuvenating the bicameral setup or the example of Nebraska in adopting a unicameral structure, is unpredictable. Each plan has its staunch supporters and opponents. Unicameralism is a live issue in the Missouri constitutional convention now in session. The reasons advanced in opposition follow the traditional pattern of thought familiar to Nebraskans.

It is ten years ago this month that the campaign for a unicameral legislature was begun in Nebraska with the drafting of a constitutional amendment by a citizens committee.[1] Again and again the question is asked as to why this amendment was successful at the polls. The reasons have been published too often to require repetition here, except for one very important factor—Nebraska had kept the idea of a one-house assembly alive and before the people since 1913. No matter how fiercely the fire of a campaign for governmental reform burns, there must be a backlog of education and information if the fire is to arouse the people to affirmative action.

Since the questions raised in opposition to the unicameral principle in Missouri and elsewhere are identical with those which were the center of debate in Nebraska, it may be appropriate to turn to actual experience of the operation of a unicameral assembly, through four sessions and one special session, and to see to what extent the prophets of gloom and pessimism failed in their predictions. The skeptic answers each of these questions with an emphatic "No." Is it possible for a small single-chamber assembly to be representative of the people? To be an effective deliberative body? To be

[1] See "Nebraska Considers a One-House Legislature," by Lane W. Lancaster, NATIONAL MUNICIPAL REVIEW, July 1934, p. 373; also "Nebraska Adopts Single-Chambered Legislature," *op. cit.*, December 1934, p. 695.

a protection against hasty and ill-considered legislation? To be able to cope successfully with powerful pressure groups? Such an attitude reveals a misconception and a traditional view imposed upon the idea of a modernized legislature functioning in the present-day industrial and social environment.

In Nebraska the substitution of a nonpartisan, single-chamber assembly of 43 members for a partisan, bicameral body of 100 representatives and 33 senators reduced the total number of representatives without disturbing to any appreciable extent the ratio of farmers, business, or professional men and lawyers elected. Consequently the cross section of interest represented in the small assembly and in the bicameral body, subject to certain fluctuation, is the same. Multiplying men of the same occupational interest will not improve the representative character of the legislature.

Improved Personnel

Pursuing the subject of personnel we discover distinct gains in what may be termed a higher type of legislator. Considerably over 50 per cent of the unicameral legislators have either completed a college course or have attended an institution of higher learning one or more years. Furthermore a study of their place in the community shows that most of them have held public office or are influential members of civic and state social and economic organizations. They have therefore acquired a knowledge of the problems that are before the people and that are likely to need legislation for solution.

The most appealing argument used against representation in a small unicameral legislature was that, since Nebraska is predominantly agricultural in economic interest, the percentage of farmers elected would be too small for equable agricultural representation. One apparent fact was overlooked on the part of those who feared inequitable representation—that because of modern transportation, methods of production and distribution and industrialization of farming, urban and rural economic interests have become so intertwined that the differences of an earlier day have virtually disappeared.

A second fact emerged from an extended study of the occupations of the men elected to the one-house assembly and, for comparison, of the men who had served in the lower house of the bicameral legislature from 1921 to 1935. Of the bicameral representatives approximately 48 per cent were identified with two or more occupations while 52 per cent followed a single occupation. Of the unicameralists who served from 1937 to 1943 inclusive, approximately 69 per cent are identified with two or more occupational interests while 31 per cent have only a single occupational interest. Mr. Farmer, for example, also specializes in live-stock raising, serves on a board of directors of a farmers cooperative or of a rural telephone company or a local bank, and at the same time is identified with the associations representing those interests. Likewise Mr. Merchant, Mr. Lawyer, or Mr. Professional Man has a similar breadth of interests.

While the legislators do not lay

claim to being experts, but just plain ordinary men, nevertheless by reason of their catholicity of interests, their wealth of experience, coupled with their demonstration of good judgment and common sense in their labors session after session, it follows that this small body of legislators is actually more representative of the state's interest than a body twice its size or one of a hundred members.

Representatives of this quality are aware of their responsibility as the custodians of the great power vested in the single-chamber assembly. They gave evidence of that attitude during the first session in setting up the procedural framework within which the process of legislation has been carried on. The rules have been kept simple. A conscious effort was made to implement and supplement the safeguards set up in the constitution to prevent hasty and ill-considered legislation. Nor did the legislators rest on their oars after the rules of procedure were adopted. At each successive session alterations to facilitate work or to increase responsibility have been incorporated in the rules. This constant urge for improvement is in striking contrast to the old type of legislature in which rules were used for manipulation instead of for safeguarding the process of legislation.

The system of mandatory public hearings on all bills, inaugurated by the unicameral legislature, has steadily grown in importance. No legislator may serve on more than two of the eleven standing committees which deal with substantive legislation. Conflict of committee attendance is avoided by a carefully prepared schedule of time and place of meetings. This schedule, published in leaflet form and widely distributed, becomes a highly important source of information as each committee announces what bills will be heard at each session. The latter notice must be published five days prior to the session at which the hearing is had and a like notice is issued if a second hearing on the same bill should be necessary.

No Secret Sessions

The public announcements of committee hearings and the full press reports of the discussions at the hearings have created a renewed interest in the legislature by the people of the state. Increasing citizen participation in the hearings from session to session has brought the legislature close to the people. Hearings are also a great aid to the committee in determining the attitude of the public toward the legislative proposals under consideration. The press reports hearings almost, if not quite, as fully as it does the deliberations on the floor of the House. Contrary to the practice in at least some bicameral legislatures, there are no secret executive sessions of committees. The public is excluded from executive sessions but the press is present. In addition to its recommendation to the legislature as to disposition of a measure, the committee presents a statement giving reasons for its decision. This is mimeographed and placed on the desk of every member.

After a bill has been reported favorably by the committee to the parent body, it receives two thor-

ough considerations by the legislature itself. The first, General File, is the more exhaustive of the two. It is here that the bill is amended and each section approved or disapproved. It is also at this stage that the greatest casualty of legislative proposals occurs, except, of course, in the standing committee.

Legislative Procedure

Because a bill is so thoroughly discussed on General File, the debate unchecked, the clash of opinions often sharp and sometimes lobbying tactics exposed, there is captious criticism that the legislature is too slow. It is recommended, chiefly by lobbyists, that there be two or three leaders who would dictate to the rest of the House how to vote.

An interval of not less than three days must intervene between the first or General File consideration and the second or Select File consideration. Unless the measure is indefinitely postponed on General File it is sent to the Committee on Enrollment and Review for a thorough overhauling by the committee's legal expert for incorporation of amendments, attaining clarity of expression, and technical arrangement. All changes recommended by this committee are acted upon by the House. Following the second consideration on Select File, the Committee on Enrollment and Review prepares the bill for third reading and final passage. After the bill is printed in final form it must, by rule, lay on the members' desks for two legislative days before the final vote.

The full and open discussions, spacing of time between files, careful examination for errors after each consideration, machine and record votes, laying over of bills for additional information, all make for a satisfactory product. Moreover the orderly progress of work throughout the session prevents the piling up of a large number of bills to be disposed of during the closing days—another safeguard against hasty legislation. Not only does this make for a satisfactory product but also the governor is not confronted by a large number of bills for his approval or veto after the legislature adjourns. After adjournment in 1937 the governor had in hand 26 measures, 24 in 1939, eleven in 1941 and seven in 1943.

Nebraska Unicameral Legislature
Disposition of Bills

	1937	1939	1941	1943
Bills Introduced	58[illegible]	523	515	446
Committee Action				
Recommended to General File	312	306	298	301
Indefinitely Postponed	205	124	177	136
Omnibus Motion	56	93	31	9
Withdrawn	8	0	9	0
House Action				
General File	312	306	298	301
Passed	239	155	209	250
Indefinitely Postponed	54	34	12	30
Omnibus Motion	19	117	75	21
Select File	239	155	209	250
Passed	235	148	204	249
Indefinitely Postponed	2	7	5	1
Omnibus Motion	2	0	0	0
Third Reading File	235	148	204	249
Passed	230	144	202	247
Defeated	5	4	2	2
Vetoed by Governor	16	6	7	7
Became Law	214	138	196	241

The relation of the governor to the unicameral legislature has been watched with interest especially since opponents of the unicameral plan predicted that the governor would exercise complete domination

over the small legislative body. As a matter of fact the nonpartisan legislature and the chief executive have worked together more as two coordinate departments than did the governor and legislature under the bicameral system. A closer relationship exists at present between the governor and the assembly since the governor acts as liaison officer between the federal government and the legislature in transmitting the interpretation of federal laws, rules, and regulations relating to federal-state legislation, to committees and to the House. He has been able to iron out differences much more effectively than if the legislature dealt directly with the federal agencies.

Both governors who have been in office since the inception of the unicameral body have objected strenuously to the constitutional prohibition that prevents the chief executive from vetoing items in the appropriations bill which have been raised above the figures set in the executive budget, after the bill has been passed by a three-fifths vote. This objection is not directed at the unicameral legislature but rather at a decision of the State Supreme Court in 1929, which said that veto of such items would constitute a second veto. In 1943 Governor Dwight Griswold asked the legislature to pass and submit to the people a constitutional amendment which would give the governor the constitutional power to veto items raised above the executive budget but the proposal did not get out of committee.

The veto power has never been exercised to any great extent in Nebraska and the same is true under the unicameral plan—see table above. Furthermore there are frequent conferences between members of the legislature and the governor and understandings are effected while a proposal in which the governor is interested is under consideration. The position of influence which the one-house legislature has attained makes it stand on the same footing and coordinate with the executive department. Thereby the governor and the legislature act as a check upon each other.

What of the Lobby?

Is the one-house assembly able to cope with the lobby? Opponents of the unicameral legislature warned that the lobby would throw the legislature into confusion and assume control. They pictured the lobby as a few powerful special interest groups working under cover and attempting to corrupt the membership. Modern pressure groups are made up of a vast number of citizens whose manifold interests cover all the major fields of legislation. But the old-fashioned lobbyist is still on the scene using the objectionable tactics with which his name is associated. The unicameral legislature gives the representatives of pressure groups opportunity to be heard at the public hearings where they perform a distinct function in expressing public opinion and in furnishing factual information.

A few persistent lobbyists pester the legislature in their insistence on attaining their objectives. The very nature of the one-house legislature, however, is a check upon their activities. The direct and open procedure soon exposes any member who

is prone to succumb to lobby influence. It is not uncommon for a legislator on the floor of the House to call a lobbyist by name and to state in what underhanded practices he is engaged.

Each session has seen one outstanding struggle where powerful lobbies were pitted against each other—in 1937 the allotment of one cent of the gasoline tax for relief, in 1939 and 1943 bills which brought private and public electric power forces into conflict, and in 1941 the regulation of small loan companies. The one-house legislature is much more successful in combatting lobbying influence than was the bicameral assembly, because its small membership is unhampered by party control, and because of the open procedure, the searching publicity, and the neutralizing influence of opposing pressure groups upon each other.

Why has the Nebraska unicameral legislature increased in popularity during the seven years of its operation and why are the requests for a return to the bicameral system few and far between?[2] The product of legislation has been satisfactory and shows the result of exhaustive consideration and matured judgment. The process of deliberation is orderly and effective, conducted by a group of men who are representative of all interests in the state. The resistance to the lobby has inspired the confidence of thinking citizens in their lawmaking body. The development of research facilities through the legislative council assures accurate information to the legislature. The quarterly meetings of the council, held in different parts of the state where public hearings are conducted, induce citizen participation and lead the people to think of the legislature not as a discontinuous body but as a constantly functioning department of the state.

What of the future? There is a disposition on the part of members of the legislature to be alert for improvements in deliberation. Planning for and research upon important issues will be increased in scope. Forward-looking legislators are talking about a staggered four-year term to replace the present biennial term, of quarterly sessions to take the place of the long biennial session, and of salaries equal to those of judiciary and executive state officers.

The modernized structure of the Nebraska legislature is not a solution of legislative problems but only an instrument in their solution. It is a human instrument and as such can claim no infallibility but it is a step toward coördination of the process of lawmaking with the social and economic life of the people of the state.

[2] See also "Nebraska's Nonpartisan Unicameral Legislature," by L. E. Aylsworth, NATIONAL MUNICIPAL REVIEW, February 1937, p. 77; "Nebraska's Unicameral Legislature Saves Money for Taxpayers," *op. cit.* October 1938, p. 490; "One House, Two Sessions," by John P. Senning, December 1939, p. 843; and "Nebraska's One-House Legislature—After Six Years," by Harry T. Dobbins, September 1941, p. 511.

Nebraska's One-House Legislature — After Six Years

"Having observed the old way and the new, I unequivocally say that the new way is immeasurably the better."

By HARRY T. DOBBINS
Nebraska State Journal

THE Nebraska unicameral legislature recently finished its third regular session. The unicameral body was created by a constitutional amendment, adopted in 1935, which substituted a one-house legislature of from thirty to fifty members for a law-making body composed of a house of one hundred members and a senate of thirty-three members. Using the authority given by the amendment the last bicameral legislature fixed the membership at forty-three, a figure which came closest to securing equal district representation.

Members of the bicameral were paid $800 a biennium for their services. As the constitutional amendment limits to $75,000 the amount that can be paid in salaries to members for a biennium, the number of members—which may be changed by law at any session within the limits fixed—determines the individual salary. Under the present setup this salary is $1,744 for the two-year period, with no additional pay for extra sessions.

Representation is based upon population. This gives the counties of Douglas and Lancaster, in which are located respectively the cities of Omaha and Lincoln, a total of ten members. With one exception all the other districts are made up of from two to ten counties. The speaker now in office, R. M. Howard, represents the ten-county district.

Committee work is divided among ten groups composed of from five to eleven members each. In addition there is a committee on enrollment and review, whose duties are confined to seeing that pending legislation is properly arranged, that the phraseology is correct, and that it is properly correlated to existing statutes; a committee on committees, which selects the membership of the standing committees; and a committee on rules.

As with all pioneering efforts, various criticisms of the unicameral legislature have developed since its adoption in 1937.

Those heard most frequently are that members are elected on a nonpartisan ballot and that the membership is too small, that election on a party ticket enables the people to fix responsibility whereas nonpartisan election confers upon a small group the task of operating without any mandate solely on the basis of individual judgment.

It is quite true that a number of the members possess a yearning and a desire to have somebody else tell them what to do, and thus relieve

them of the burden of personal responsibility for their acts, or a desire to get organized backing. It is the old cry that the unicameral cannot furnish leadership of its own and that there should be party responsibility. But suppose the party declines responsibility. It has been doing that for years.

The proof lies in the examination of the platforms adopted last year preceding the election of members of the legislature. The Republican party, on state issues, declared for amendment of the primary law; so did the Democrats. The Republicans condemned the Democratic state administration for the extravagance with which it was charged; the Democrats commended the same administration for the rigid economy it had practiced; the Republicans declared for local administration of relief and public assistance and for a fair distribution of state highway funds, while the Democrats declared for limited civil service without stating a limit, for a minimum hour and wage law for women, and for adequate salaries for teachers without saying what is an adequate salary.

Issues Not Political

What sad befuddlement would have overwhelmed the members had they been elected as Republicans or Democrats when they faced the big controversial issues of the session: licensing of osteopathists to do operative surgery, a small loans law, gasoline tax refund for farmers, an unfair trades practices act, none of which was contained in the party platforms. Furthermore, could even the tyro in politics conjure up a party convention which would declare itself against teachers' retirement, against strict regulation of small loan companies, for or against tax refunds to farmers, or for an act designed to fix and freeze prices? The answer is that there are few state issues to divide along party lines.

In my view the unicameral system, which requires a candidate for the legislature to get out on his own power and contact the people whom he asks to represent, enables him to get a better knowledge of what his constituents think and want; and his constituents will be much more content with him if he faithfully and intelligently represents them, than with a man who, when questioned about his stand on a pending measure, proudly points to his party's platform and says: "There's where I stand; blame it, not me."

This party responsibility idea is a fetish, originally devised as a whip to hold party legislators in line and used and usable as a false front behind which timid-minded legislators may hide. Party platforms are written by party leaders and dictated by the head of the ticket. They contain what he and they regard as vote-catching pledges and promises and, as will be seen by the references just made to those adopted last year, they present no real issues. I have seen spokesmen whose duty it is to act as bellwether or sheepherder for a governor who has an eye on a senate seat. I have seen party leaders acting as lobbyists standing in the wings and directing action by messenger service or by calling members to their

it afforded a check against hasty and ill-formed legislation. In practice it greatly encouraged log-rolling and bill-trading. While trading is not absent from the unicameral, it possesses checks equally if not more effective than those of the bicameral body. As it is operated the members have three chances at a bill, in committee of the whole, on special file, and on third reading. If a measure passes the committee of the whole, it goes to a special committee which has in its employ a lawyer selected for his ability to detect constitutional imperfections. This special committee often rewrites a bill so as to more effectively declare its purpose, inserting amendments adopted on the floor in their proper places. The bill is then reported to special file, which is the equivalent of the committee of the whole, from which the bill proceeds to third reading. Only two bills of the many that passed the gauntlet were killed on third reading, a common place of fatality under the old system. All of these processes are leisurely gone through, and a law remodeled to suit the majority is the final result.

It is urged as a reason for a larger membership that too much work is imposed on the committees, which usually consist of eleven members. The cure for this is the introduction of fewer bills, or smaller committees.

In sharp contrast to bicameral practices, no bill can be considered in committee until five days' notice has been publicly given. Full hearings in public are given to all who wish to be heard upon any measure. In executive session reporters are admitted and no restrictions are placed upon what they may print.

The average number of bills introduced at the three unicameral sessions has been a little over five hundred. In bicameral days it was in excess of a thousand.

Order Out of Chaos

Twice as much time is devoted to consideration of legislation as was possible under bicameral operation. The observer is impressed, when he watches the unicameral in action, with the orderliness which has been substituted for the chaos and haste of the old days, with the seriousness which the members show in weighing the pros and cons of a proposed measure, and with the care taken to avert mistakes.

Between sessions a legislative council of fifteen members holds periodical meetings. It employs a corps of research workers, who gather all possible data on matters of taxation and other questions likely to be raised in succeeding sessions for the guidance of the membership of the future.

The unicameral legislature is the newspaper man's paradise. As a legislative reporter his mission is to keep the public informed as to the nature, purpose, and progress of legislation. The unicameral simplifies this task. Everything is open and above board. There are no secret meetings from which he is barred, and every facility is afforded for keeping track of the work of the lawmakers. Having observed the old way and the new, I unequivocally say that the new way is immeasurably the better.

side. This is alien leadership, not leadership within the body of lawmakers.

The notion that there can be no leadership in the unicameral legislature itself is without basis of fact. Each session of the unicameral has brought a gradual rise in the average ability and intelligence of members. The pay of $1,744 for the two-year term, for sessions averaging five months, makes it possible to secure the services of men of character and ability who can spare that time away from their private affairs, enables the members to be independent of the lobby which is always ready to dine and wine, and permits a member to devote necessary time to legislation.

Leadership Evident

It is self-evident that no legislature could turn out 202 laws without leadership. It is quite true that the independence which is the possession of unicameral legislators breeds a distrust of efforts of any member or members to assume leadership, and a general inclination to beat down the ears of one who seeks to assume that role. Yet leadership is slowly but surely emerging, leadership of a definite kind, based upon powers of logic and persuasion combined with a knowledge of facts and intelligence able to point out the results of proposed action.

Two years ago an effort was made to increase the number of members to eighty-six, double the present membership. It failed. No attempt has been made to renew the movement.

One argument in support of a larger membership is that with the present limitation all interests and areas are not represented.

Anyone with a critical knowledge of the operations of the bicameral system is aware that the best work was done by the small senate, while the house of one hundred members was unwieldy and added to the chaos of conflict that surrounded attempted legislation.

It is urged that the smaller number makes it possible for the lobby to operate with greater success, that with only forty-three members to concentrate upon, the pressure is increased. Lobbying takes two forms —that by representatives of vested interests whose status is menaced at each legislative session and who stay from beginning to end, and the pressure groups, such as teachers, firemen, members of the professions, bankers and merchants, who come and go as the tide of legislation flows. Much might be said upon the question. It is undeniable that the lobbyists prevent much bad legislation, and also some good legislation. The fact that almost to a man they oppose the unicameral system is significant. With only one house there are, of course, no conference committees, and it was the conference committee, meeting in secret, that was the lobbyist's most effective weapon. Through it disagreements between the two houses could be utilized to kill off legislation. It was in the closing days of the bicameral that most of the important measures hung in the balance, and the conference committee was often their burying ground.

The theory of the bicameral is that

Nebraska Idea 15 Years Old

One-house legislature no longer considered experimental; people well satisfied with result of their pioneer move.

By RICHARD C. SPENCER*

NEBRASKA'S experience with the unicameral legislature is now beyond the experimental stage. The one-house system is well established and it is possible to make a fairly accurate appraisal of its features. Seven regular biennial and three special sessions have been held. Some suggestions for minor changes will go on the ballot in the 1950 general election, but they do not call for any return to the two-house system.

Probably every session of any legislature pleases some people who are affected by its enactments or by its inaction while it displeases others by some of those same measures. Nebraska is not an exception in this respect but, regardless of expressions of disappointment at some of the bills that become law, one does not hear now, certainly not from important political sources, any demand for reversion to two houses.

The constitutional amendment of 1934 provided merely for the abolition of the two-house legislature and the substitution of a relatively small house of from 30 to 50 members. The size was fixed within these limits in 1935 by the last bicameral legislature in providing for 43 districts, a member to be elected from each, for the term beginning in 1937.

The biennial sessions were unchanged and so also were the relations of the governor to the legislature by way of budget proposals, veto power and the confirmation of gubernatorial appointments. The lieutenant governor's duties as presiding officer were transferred from the old Senate to the new body.

By statute the office of the clerk of the legislature was made permanent and a legislative council with research and reference staff was established to assist the legislature. These offices have been a distinct aid and the fact that they need serve only a single house prevents confusion and waste of effort on their part.

The early accounts of the first two or three sessions of the new legislature seemed to some skeptics to be somewhat generous in praise of the new system but, in general, longer experience has proved the skeptics wrong. Some former political opponents who at first viewed the device with alarm or scorn soon became adjusted to the new idea, or even began to view it with approval or at least with some degree of optimism. A lieutenant governor who presided over the new legislature is numbered among the converts.

The 43 districts were rather equitably arranged on the basis of the population census of 1930 and, ac-

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cording to the 1940 census, no great change occurred to alter the picture seriously. But a further growth of the metropolitan communities could upset Nebraska's representation just as it has done in some other states. Any attempt to rearrange single-member districts, of course, could result in a gerrymander. The principal safeguard against such a contingency is that these legislators are elected on a nonpartisan basis. This nonpartisan, or "non-political," feature has been subject to some attack from partisans, at least during the earlier years, but no present proposals for change heed this criticism.

Election records show that voters are fully aware of their legislature and are interested in their representatives. Although legislative nominees do not have a prominent place on the ballot, about four-fifths of those voters appearing at general elections vote for legislative candidates. And between 80 and 90 per cent of those voting at primary elections vote for legislative candidates even though they are not on partisan sections of the ballot.

More than that, candidates elected are usually persons who have already won some local distinction, by long service on school boards or in city or county offices. A number have been presidents of their local chambers of commerce. Two-thirds or more of those elected each session have had previous experience in the legislature, some of them for a number of terms, so that Nebraska laws are not made by green legislators. Thus far there have always been a few members who had served in the former bicameral legislature.

Until now, at least, no member seems to have his district sewed up through local machine politics. Seldom are candidates without opponents, at least in the primary, and in some districts considerable rivalry develops.

Factors of Success

Internally, the factors that have contributed to the success of the unicameral legislature may be listed as: (1) knowledge of what goes on, that is, absence of the uncertainty so common under bicameral systems caused by not knowing what another chamber, its standing committees or committee chairmen or conference committees may do; (2) a bill procedure that is deliberate and democratic; (3) procedure that is clear, understandable, observable and easily reportable by the newspapers; (4) committee structure that promotes some degree of internal leadership and coordination; (5) a session that is not limited as to duration.

The preliminary examining or drafting of bills is real and not perfunctory. The rules requiring introduction of bills early in the session can be and are applied. Committees report bills only after each has a public hearing announced in the journals five days in advance and the report thereon adopted in a committee meeting held at a scheduled hour and a committee record made. A successful exposure of an attempted evasion of this rule late in the 1949 session indicates that rules on committee procedure are enforced. Newspaper reporters may attend executive sessions of committees.

The legislature itself has an adequate opportunity to debate each bill. Technical safeguards are provided so that there seems to be little opportunity to railroad a bill through, as so frequently happens in bicameral legislatures.

After the first general debate on a bill it is given a thorough review for technical accuracy, even rewritten if necessary. Then after a second consideration it is engrossed and reprinted by the same technical committee, and its draftsman, that had previously reviewed it.

Only then does it go on the calendar for final reading and passage. A bill may not be read finally for passage until at least five legislative days after having been submitted for review and two days after placement on final reading file and at least one legislative day after final printed copies have reached members' desks.

There are only eleven bill-considering committees, so that they do not get in each other's way. Their chairmen, as members of the committee on order and arrangement, prepare the daily calendar after the close of the period for free introduction of bills and thus can help coordinate committee action with the debate schedule of the house itself.

A further coordination of effort apparently is achieved through the influence of the budget committee whose chairmanship is recognized as one of the, if not the, most powerful positions in the legislature. The general appropriation bill, introduced early, comes to the floor for extended debate and amendment during the last two or three weeks of the session when the most difficult bills are in their final stages, and it is likely to be the last bill passed.

Fewer Bills, More Laws

All these things have had their effect on the total operation of the legislature. On an average the number of bills introduced in a session is about half that under the former bicameral system. The number of laws passed, however, is somewhat larger than in the bicameral legislature, but are felt by all concerned to be in better form technically and less subject to misinterpretation or to questioning as to constitutionality. As elsewhere, the number of laws needed is on the increase, also as elsewhere, most of them are corrective or amendatory of laws already on the books rather than of new substance. Regular sessions have increased in length somewhat, but this increase is less than 14 per cent, or by an average of about twelve legislative days.

The time-table of the session is rather striking. The deadline for the introduction of bills is enforced. Only seventeen bills in 1949 were introduced after the lapse of the first twenty legislative days, and a number of these were either recommended by the governor or were substitute or consolidated bills presented by committees rather than by members. The size of the job could thus be estimated early in the session.

In the 1947 session about three-fourths of the bills ultimately reported out of committee were so reported by the time the session was barely half over. Similarly, in 1949,

something better than half the bills either to be passed or defeated in the session had already been disposed of when the session was half over, and about three-fourths of them were disposed of when the session was two-thirds of the way along. In general, only the difficult bills were left until late.

In striking contrast to the usual closing days of bicameral sessions, the last two weeks of the session saw only eight bills killed and 36 passed. The figures for the last week were two killed and six passed, and the only bill passed on the last day was the general appropriation bill. The number of bills on the governor's desk at the close of the session, therefore, is amazingly small compared with that usual in other states. Ordinarily the number is well under twenty.

The people of Nebraska have been well satisfied with their single-house legislature, at least until toward the close of the recent session, and they have enjoyed the distinction their state has in being unique in this particular.

There are now proposals for minor constitutional change in the system but no suggestion of returning to bicameralism.

One of the measures to go to the voters in 1950 was passed in the 1949 session. It would amend the constitution to provide for four-year terms, half the members to be elected every two years, and for fixing the legislative salary by statute—instead of the rather low maximum now embedded in the constitution. It would also permit annual sessions and, if annual, the session in even-numbered years limited to budgetary appropriations and confirmation of appointments.

An initiative petition is in circulation calling for a vote on increasing the legislative membership to somewhere between 75 and 85, and raising the salary. The thought of Nebraskans is thus upon alteration of details without changing the essential features of unicameralism.

Smooth Operation

The 1949 legislature may or may not have made some grievous errors. But in spite of charges of lack of leadership on policy and that in vote trading it was a "fraternity of tolerance," its program did not bog down or end up in the wild confusion common to most bicameral systems. This smooth operation seems to have been characteristic of all sessions of the unicameral system. Sly tricks may be attempted, but the work is so open that they are almost sure to be caught.

Perhaps one of the greatest assets of the Nebraska system is that operations, including those of lobbyists and members alike, are out in the open where newspapers may report them and keep the people of the state currently informed.

UNICAMERALISM VS. BICAMERALISM

A Study-Discussion Guide

League of Women Voters of Nebraska

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Nebraska is unique among the fifty states with its truly unicameral form of legislature. Although many foreign countries and most United States cities employ the one-house legislative body, Nebraska has the only state unicameral assembly since Vermont changed to a bicameral form in 1836.

In recent years other states have been watching the operation of our unicameral legislature as they have considered state constitutional revision. It would, therefore, seem very appropriate for us to take a careful look at the relative merits and shortcomings of unicameralism and bicameralism.

The History of Bicameralism and Unicameralism in America

Most of the American colonies started their legislative bodies in a unicameral form. Elected representatives sat with the governor and his appointed council in order to consider the enactment of laws, the levying of taxes and the transaction of state business. It was not long, however, before the executive division, the governor and his council, began to meet separately in order to be able to exercise an executive veto, and also because the elected representatives objected to the presence of members of the executive branch. By the end of the colonial period, all the colonies, except Pennsylvania and Delaware, were using the two-house arrangement.

When the colonies became states and wrote their first constitutions, all the states, with the exception of Georgia, Pennsylvania, and Vermont, provided for a bicameral legislature. The Governors' Councils became elected upper houses, and thereby lost their executive and judicial powers. They were designed primarily to protect the rights and privileges of the larger property holders. To this end, there were higher property qualifications for both voters and members. It was felt by many that the lower house, representing the population in general, would tend to be more radical, and might encroach on the rights of the propertied.

The upper house was also designed to give advice to the lower house when needed and to defeat ill-considered measures passed by the democratic lower house. Many felt that the concentration of power in a single house would lead that body to become exceedingly ambitious. These factors, and a tendency towards imitation, led all new states admitted into the Union to adopt bicameral legislatures.

However, three states, Georgia, Pennsylvania and Vermont, retained the unicameral form. Each of these maintained a council of censors that in many respects closely resembled a second house. This council had three functions: to act as the watchdog over governmental operations, to make recommendations for change, and to call for a constitutional convention when it seemed necessary. In 1789, Pennsylvania, and in 1790, Georgia, abandoned their original constitutions and in the new ones provided for two-house legislatures. Georgia was apparently influenced by the pattern of the federal Congress, and Pennsylvania seemed dissatisfied with both her council of censors and the executive council and thus abolished them. Vermont maintained her unicameral legislature from 1777 to 1836. Until the last year of the unicameral legislature, it seemed to be highly regarded by the people of the state. In 1835 at the election of a governor no candidate received a majority of the popular vote. In attempting to elect the governor, therefore, the legislature became involved in a deadlock

that resulted in a recommendation by the council of censors to abandon the only unicameral assembly in the country and adopt a bicameral legislature, which passed by a very close popular vote. For the next hundred years there was no unicameral state legislature in the United States.

Bicameral legislatures saw some change during this time, the most significant being the spread of universal manhood suffrage. This stripped the upper houses of their property qualifications and their duty in protecting the rights of property owners. In many states, however, this did not cause an equalization of representation in both houses. The lower house continued to be elected on the basis of population, while in most instances, the election districts for representatives to the upper house were based not only on population but also area. This tended to protect the then extremely important rural economy from the more progressive interests of the urban areas. As the urban areas have increased in size and relative importance, this has posed an increasing problem.

The Development of the Unicameral Legislature in Nebraska

As with all the other states that entered the Union after the Revolution, Nebraska's first constitution provided for a two-house legislature. This was maintained until 1934, in which year the people of Nebraska by a vote of 286,086 to 193,152, following a hotly contested campaign, established a unicameral legislature. It seemed strange to many observers that Nebraska, an extremely conservative farm state in the grips of a serious depression, would adopt such a dramatic change from the traditional form of state government and establish the only unicameral legislature in the United States. It has remained thus for over twenty-five years in spite of rather overwhelming agreement by political scientists that, no matter what its problems, Nebraska's unicameral legislature has proved itself to be a successful experiment.

In 1934, the idea of a unicameral assembly was not new to Nebraska. It had been preposed here, as in many other states, for many years. John N. Norton was its first strong advocate. He campaigned for this cause as early as 1913. In 1915, a joint legislative committee recommended that the people vote on a one-house form. This bill did not pass the legislature, and similar bills failed in 1917, 1919, 1920, 1923, 1925, and 1933. At the Constitutional Convention in 1919-1920 the proposal for discussion of a one-house legislature failed by only one vote, that vote being the presiding officer's vote to break a tie. Why after all these failures did it finally become a reality in 1934?

Although it remains somewhat of an enigma to those who know Nebraska, political observers have suggested several reasons for the establishment of the unicameral legislature. Possibly the most important reason was the vigorous personality and prestige of its strongest advocate, George W. Norris. It is upon his insistence that non-partisanship was established as a characteristic of the one-house body. He selected a propitious time for his campaign. A two-headed dragon was attacking Nebraska. The Midwest, along with the rest of the country, was in the depths of depression. As if this weren't enough to make times difficult for Nebraska's citizens, the early thirties also brought serious drought. Even the conserva-

tive, frugal people of Nebraska found living in these circumstances extremely difficult. Costs of state government had been a burden to some due to the building of the State Capitol, which had been constructed on a pay-as-you-go basis over a period of ten years. Therefore, the fact that a single, small legislature would cut governmental costs may have had its effect on the vote.

Another reason advocated as possible explanation was the fact that there were two other highly popular amendments offered at the same election-local option on prohibition, and legalized pari-mutual betting. The first won by a 110,000 majority, and the second by 64,000. The unicameral amendment was approved by a majority of 93,000. Possibly the popularity of these other issues helped to carry the unicameral amendment with them.

Nebraska's unicameral legislature has had twenty-five years to prove its effectiveness. There have been no major changes in the original provisions. The unicameral amendment provided for a one-house legislature, with all the privileges and responsibilities of the preceding two-house body. The 1935 legislature was to determine the legislative districts, using the 1930 census as their population guide. There were to be not more than 50, nor less than 30 members of the legislature. These members were to be elected on a non-partisan basis for a two-year term. The aggregate salaries of the legislators was not to exceed $37,500 per annum. In addition to his salary, each member would receive his actual traveling expenses for one direct round trip between his home and Lincoln for each legislative session, regular or special. The Lieutenant Governor would be the presiding officer, voting only to break a tie. A majority of the legislature would constitute a quorum. The legisture would determine its own rules, qualifications for membership, and be the judge of elections. It would choose its own officers, including a speaker to preside in the absence of the Lieutenant Governor. A two-thirds vote would be necessary for the expulsion of any member, and such member might be expelled only once for the same offense.

The legislature would also publish a journal in which, if requested, roll call votes would be recorded. Legislative sessions would be open to the public unless there was some special reason for secrecy. There were also provisions for the passage of bills stated in the amendment.

Most of the early opponents to the change have been converted or stilled in the face of the success of the unicameral legislature. Today, no one of any prominence suggests that Nebraska return to a two-house legislature, although there are many proposals for changes, with which the sponsor hopes to make the one-house body work more effectively.

Steps in the Passage of a Bill

Unicameral

1. The bill is introduced and read by title on the floor.
2. It is then referred to the standing committee for consideration and public hearing.
3. The standing committee reports the bill and refers it to General File.
4. General File provides reading, consideration, general debate and amendment by the Legislature, then the bill is referred to the Enrollment and Review (E & R) Committee.
5. The bill is reported back by the E & R committee and referred to Select File.
6. The Select File provides a second consideration and then the bill is referred to E & R for engrossment.
7. The bill is reported back by the E & R committee and referred to the Final Reading File.
8. On final reading, the bill has its third consideration and passed or killed.
9. The bill is sent to the Governor for his signature.
10. If the Govenor vetoes the bill, he sends it back to the Legislature to allow them to override the veto.

(This is the procedure for bill passage used by the Nebraska Legislature.)

Bicameral

1. The bill is introduced and read for the first time on the floor of the house of origin.
2. It is then referred to a standing committee.
3. After committee investigation, the bill is reported from committee.
4. The bill is then discussed in committee of the whole amended, killed or advanced without change.
5. The bill passed, third time, in the house of origin.
6. The bill is then sent to the second house.
7. It is then referred to the proper committee.
8. The second house committee refers the bill back to the main body after the usual consideration.
9. The bill then may be amended and passed.
10. If the amended bill is not accepted by the House, a Conference Committee is appointed to reach an agreement between the two versions of the bill.
11. When the Conference Committee reports a bill to the respective Houses, it is either accepted or rejected by the two groups without amendment of the conference committee report.
12. If the bill is rejected by either House, it is sent back to a new Conference Committee for further consideration.

13. If the bill is accepted by both Houses, it is sent to the Governor for his signature.

14. If the Governor does not approve of the bill, he may veto the measure and return it to the Legislature, usually giving his reasons for the veto.

Two lists of arguments often advanced in discussions of the form of state lawmaking bodies are presented below. One list argues in favor of a unicameral form and the other argues in favor of a bicameral legislature. Some of the arguments are used for both sides. Some are more valid arguments than others. Generalizations are often made. Consider each argument as it is presented in an attempt to determine the important issue or issues underlying each point. Following the summary of arguments for the two legislative forms, some discussion questions are presented.

Arguments in Favor of a Unicameral Form of State Legislature

1. There is no reason for people to vote for representatives in two separate houses.

   A. Originally, class differences dictated the need for two chambers. Now, these qualifications have disappeared and the same people vote for the members of both houses.

2. The Unicameral form simplifies bill passage.

   A. The unicameral form with only one chamber and a limited number of legislators, simplifies bill passage because fewer steps are required. Therefore, it is less likely for the bill to become confused or altered. Having fewer steps also means that a bill can be passed more quickly and efficiently without the necessity of limiting debate.

   B. The large bodies, of the lower houses particularily, in the bicameral form, make many complicated rules and procedures necessary. Passing a bill requires many involved steps and constant watchfulness, in order to follow the bill's progress. The complexity causes many delays and aids in the passage of poor legislation. Delayed bills often fail to receive consideration until the last minute clean-up rush.

3. Better legislation would result from a unicameral legislature.

   A. In the unicameral assembly, the process through which a bill must pass is more direct and a bill is more readily available for scrutiny by the legislators themselves and by the public. The well-regulated, easily defined process of bill passage would eliminate to a major extent the pile up of bills at the end of the session, because a bill is not so easily buried.

B. The bicameral form often causes hasty and ill-considered legislation. Two considerations do not necessarily mean double consideration. The first house may pass a bill quickly expecting that the second house will give it more careful study. Then the second house may assume that the first house gave the bill adequate consideration and automatically pass the bill. In practice, the majority of bills passed by one house are passed without change by the other. The number of poor bills that are passed indicates how poorly the check of the second house works in practice. Studies have indicated that the governor is a better check on the passage of bad bills. Many bills, passed by bicameral legislatures, might not be passed if legislators felt final responsibility for their actions.

C. The end of season rush in the bicameral legislature often results in poor legislation. In the beginning of a legislative session, much of the time is spent in organization. Several studies of bicameral legislatures have shown that between 50% to 90% of the bills are passed in the final two weeks. In most legislatures, a majority of bill passage occurs under suspension of the rules. Often bills are advanced, past the second reading and debate, to the final reading. This rush results in lack of consideration, poor wording and ill-advised amending.

4. A unicameral legislature places upon the members more responsibility for their actions.

A. Public attention can focus more easily upon the well-defined narrow procedure of the unicameral body, rather than being lost in the multitude of committees in the two-house legislature. George Norris has stated, "Responsibility always makes a person more deliberate, more logical and more careful. The same individual would be a much better legislator in a one-house legislature, where every official act must be performed before the eyes of the public, than in a two-house legislature, where all kinds of opportunities are offered to shift his responsibility, to share it with others, or to conceal his official acts from the public gaze."*

B. In a bicameral legislature, most legislators do not feel full and ultimate responsibility for their actions. Politicians can introduce popular, but objectionable, legislation by having similar bills introduced and passed in both houses, and having each one killed in the second house. Thus the legislator can placate public opinion and be on record in favor of a popular bill, while having no bill become law.

C. In the bicameral body, it is difficult for the average voter to follow a bill and assign responsibility for it. Intricate legislative machinery often conceals a politician's trail. A bill is easily lost to the public eye by rapid passage for minor amendment between committees of the two houses.

*Norris, George W., "One-House Legislature," Annals of the American Academy, September, 1955, p. 57.

This rapid passage also enables political buck passing.

5. The Conference Committee is an inherent evil necessary for the operation of the bicameral assembly.

   A. In the unicameral legislature, the conference committee can be eliminated, because it is only needed when two independent groups cannot agree and compromise is indicated.

   B. The conference committee in the bicameral is made up of members appointed by the presiding officers of both houses. Its purpose is to reconcile differences between the two houses. The report from this committee cannot be amended by either house, so it either must be accepted in its entirity by both houses or the bill fails. In seeking compromise, the conference committee often changes or amends the original purpose of the bills. Conference committee meetings are often held in secret, without rollcall, and no records are kept. Because a majority of the conferees from each house must agree to the compromise, it is possible for a minority to block passage of the committee provisions. This creates an increased opportunity for making political trades.

6. Lobbyists are less effective in the unicameral body.

   A. In a unicameral legislature there is less opportunity for objectionable lobbying. Because its procedure is apt to be more intelligible, there is less opportunity for manipulation by lobbyists, and a greater sense of responsibility by the legislators toward their constituents.

   B. In the two-house legislature, a lobbyist has many opportunities for intervention. Not only can he approach and attempt to control legislators in both houses and, thereby, sometimes succeed in one where he has failed in the other, but he also has an excellent opportunity to influence the conference committee. With these several sources, the lobbyist has more opportunity to cover his tracks and make his intervention less obvious. Because the legislator feels less direct responsibility, he is more apt to bow to the pressure of the lobbyist.

7. Special advantages of the unicameral legislature.

   A. It is easier to achieve cooperation between the Executive and Legislative branches of government. Their relationship is more direct, because there is only one organization of the legislature with which the Governor has to deal. It is easier for him to exert legislative leadership, resulting in a more unified and planned legislative program.

   B. The unicameral form may be more economical than the bicameral form with fewer salaries and related expenses to be paid. There is apt to be much less waste in the unicameral assembly with its simplified organization.

   C. The responsibility offered to the legislators as well as the opportunity to pay higher salaries is apt to attract

better qualified individuals.

D. The unicameral form has been advocated by the scholars of the National Municipal League since 1920, when they drafted their Model State Constitution.

Arguments in Favor of a Bicameral Form of State Legislature

1. The unicameral body is often in reality bicameral in nature.

   A. Most states of countries that operate under a unicameral legislature have what is in effect a second house by using appointive councils as a check on the action of the single house.

2. The bicameral form insures more equal representation to all interests within the state.

   A. All the people within a state should be represented, not merely a majority. Now, instead of the two houses of the bicameral representing property holders and non-property holders, they generally represent urban and rural interests. Representation in one house does not do this as effectively. Besides rural and urban interests receiving their due consideration, other special interests and classes can be represented, thereby counterbalancing the popular element and making for more sound legislation.

   B. The unicameral form does not represent the whole state as well as the bicameral. The small number of legislators will not represent the smaller communities and interests. It would tend to represent only the majorities. A single chamber will be apt to give unequal representation to cities. Apportionment becomes more of a problem in the unicameral because of the small number of representatives.

3. The Bicameral provides for more careful consideration of legislation.

   A. Double consideration of all issues is provided. The procedure for bill passage is more deliberate.

   B. The bicameral form affords a sound check upon unwise legislation. It eliminates the feeling on the part of the individuals and the body that they have only themselves to consult and satisfy. Usually, each house takes pleasure in detecting carelessness on the part of the other. If legislation is good, it is usually passed by both houses. If it is not good, it is fortunate that there is another body to oppose or correct it. The delay inherent in a more complicated system often works to benefit the legislature by preventing much bad legislation from getting through.

   C. "If the second house does its duty, no harm is done. If it fails to do its duty, there is nothing to show that it would not likewise have failed if it had been a single chamber."*

*Luce, Robert, Legislative Assemblies, Houghton Miflin Co., New York, 1924, p. 40.

B. The one-house system provides for no real check. Because only one action is necessary, bills can often be quickly passed under sway of emotion. The Governor's check is often inconsequential because it can easily be set aside by a not poor legislation. The single body is well aware of its potential power.

4. Many of the charges of shifting responsibility are exagerated and ill-founded.

   A. The joint-committee system in many states (Massachusetts, Vermont, Main, Connecticut, and Wisconsin) has had the effect of assigning responsibility.

   B. Any legislatow who seemed to be continually failing to accept responsibility would not be re-elected.

   C. There is no reason to suspect that where similar bills were offered in each house and defeated in the other, the legislators were merely trying to shift responsibility and were not looking seriously at a situation.

   D. Opportunities for shifting responsibility are available in the unicameral. DeLay and killing of bills can be shifted to the committees to which bills are referred. Responsibility can be shifted by trade-outs to members whose constituencise are disinterested in the bill. If all members are shifted to those not up for re-election. Responsibility can also be shifted to the Governor.

5. The Conference Committee is subjected to many checks and is not the evil often claimed.

   A. Both houses must vote on the bills referred back from the committee. Either house may demand action on any bill in committee. Each house has the right to send back any bill for further consideration. In many states, there are consitutional checks on the conference committee, prohibiting them from changing the intent of the bill.

   B. If the joint-committee system is used, there is often no disagreement and, therefore, no need for the conference committee. Secrecy can easily be removed by providing for open meetings and publication of the procedings. Antilobbying legislation can eliminate the influence of lobbyists on the conference committee.

6. Objectionable lobbying is not the major problem in the bicameral legislature that it is often assumed to be.

   A. A large unweildy legislature is also unweildy for a lobbyist. There are more opportunities for lobbying to fail, more gaps that have to be filled. Two houses are more difficult to manage than one.

B. Regulatory measures can easily be passed that would control any lobbying problem that may exist.

C. The one-house legislature can easily be controlled by lobbyists or special interests. Although it may be easier for a lobbyist to thwart legislation in a two-house legislature, he can much more easily promote desired legislation where he has to control only one house.

7. Although the bicameral state legislatures in existence today are not perfect, it would be easier and more satisfactory to correct the flaws in them, than to radically change the form of the legislature.

A. Procedures for bill passage can be more clearly defined and greatly simplified, elimating delays, unwieldiness and the end of season rush. One example of a simplification is the adoption of the joint-committee system.

B. Legislation controlling procedures of the conference committee and of lobbying could easily be provided.

C. The adoption of bill drofting services, legislative reference bureaus, and revision committees would facilitate the passage of more accurate, intelligible, clearly worded bills.

Questions for Discussion

1. What are the central issues dividing the proponents of bicameralism and unicameralism?

2. For each of the issues identified as central, an exploration of the following questions should contribute to a better understanding.

a. What is the nature of this issue and why is it important?

b. Which form of legislature seems best suited to a satisfactory resolution of this issue?

3. After carefully considering the characteristics of both forms, do you in general prefer a one-house or a two-house state legislature?

4. In your view are there any important differences between the desirability and effectiveness of the theoretical unicameral form, and the way in which it operates in prictice in Nebraska?

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Unicameralism: 'It Would Work Anywhere'

Beetle

. . . One House Legislature Will Be 1967 Topic

Most ideas for state legislative reform are mild compared with a proposal that two houses be cut back to one. So far the only "buyer" has been Nebraska. Yet the question —that of unicameralism—came up at New York State Constitutional Conventions in 1915 and 1938. It most certainly will be discussed as the 1967 convention approaches. Here's the first of four articles discussing Nebraska's experiences and the relevancy of the idea to New York.

By DAVID H. BEETLE
Gannett News Service

There's a saying that if you build a better mousetrap, the world will beat a path to your door.

Well, Nebraskans thought they built a better mousetrap when they became the first state to establish a unicameral (one house) legislature back in 1937, but the world failed to respond.

They gave high schoolers a national debate topic and political scientists a few paragraphs in their texts, but that was about it.

Today, though, thanks to the one-man-one-vote mandate, things are perking up.

A lot of people around the country are saying: "If both houses have to be based on population, why have two?"

"If this doctrine stands, the inevitable outcome will be unicameral legislatures in all our states," Cecil H. Underwood, a former West Virginia governor, told this year's national legislative conference in Portland, Ore.

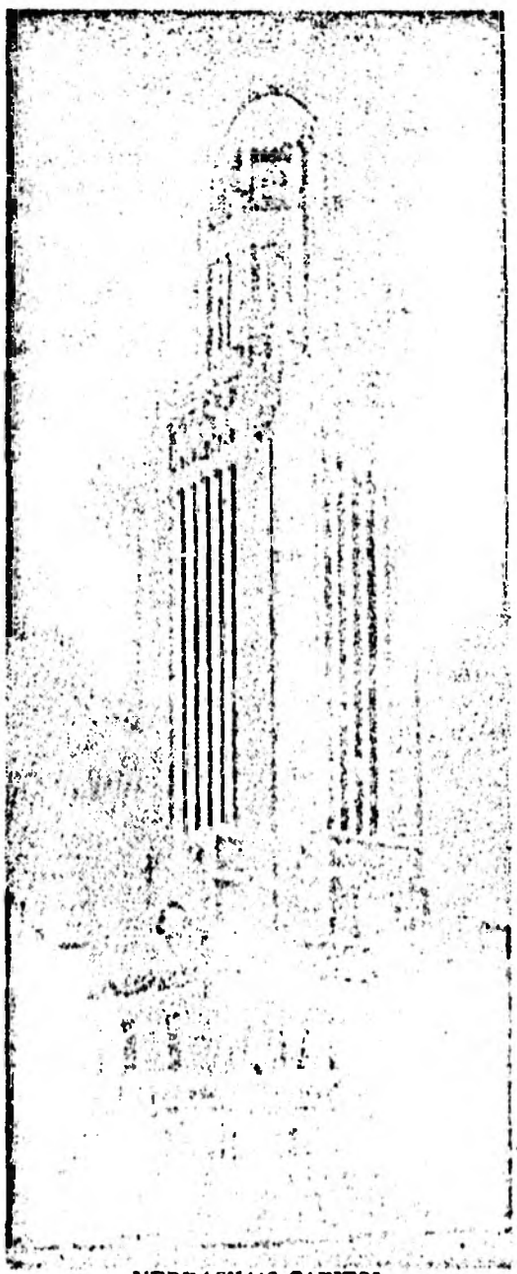
This prediction may be extreme, but the presence in Nebraska's tower-dominated Capitol of one left-over legislative chamber now used mostly for hearings, bid openings, and civil service tests is getting to be more than just a curiosity for passing tourists.

It's the abandoned one that's significant. The one that's in use looks perfectly normal.

INVITATION "sales trips" to tell "the Nebraska story" are mounting. Governor Frank B. Morrison has appeared before the Texas legislature and the New Jersey bar; Lt. Gov. Philip C. Sorensen has told Rhode Island constitutional convention delegates that there's nothing about a unicameral's value that's peculiar to Nebraska; legislative clerk Hugo F. Srb (he says his name reads like a radio station) has spoken similarly in Kentucky and California.

Mail inquiries are pyramiding. A Tennessee constitutional delegate writes in. So do curious legislators from other states: Connecticut, Pennsylvania, Ohio, Iowa, North Dakota, Alaska. And even citizens, eying reforms: a physician from Idaho, a chamber of commerce secretary from the state of Washington, an ex-Nebraska newspaperman now in Colorado.

Long eying Nebraska with satisfaction has been the National Municipal League. It has seen one city after another abandon bicameral councils until they now linger only in a couple of places in New England. As far back as 1918, the league wrote unicameralism into its model state constitution. When visitors from other lands pause in Lincoln, they often find Nebraska somewhat less than startling. Most of the Canadian provinces, as well as some countries in Europe, Latin America and Africa get by with one house.



NEBRASKA'S CAPITOL

Much of the current interest in unicameralism eddies around the office of clerk Srb. His earliest Nebraska memories go back to a day when he came home from the first grade sobbing to his Czech parents that "Everyone spoke English."

A TEACHER and attorney, he was a senator in the old two-house legislature and became the first and only clerk of the unicameral. Closer to the scene than anyone else living, he is enthusiastically and voluntarily pro-one house.

"With one house you fix responsibility. A legislator can't go home and say: 'We passed it, but something went wrong in the other house.' It's a lot easier for voters to keep track of one senator than one senator and three representatives."

Mr. Srb's enthusiasm is typical.

"The people of Nebraska are just about as likely to vote out unicameralism as the people of Colorado are to vote out Pike's Peak," one Nebraska editor wrote.

Among 30 Nebraskans sampled at random in Lincoln, only two—a barber and a draftsman —thought the state should have two houses. They felt vaguely it might lead to a better legislation. A 1961 survey of 68 present and former legislators turned up only four who favored the bicameral.

Governor Morrison, playing it safe, says that if unicameralism were put up to the voters, they'd go for it 75 per cent.

"Twenty-five per cent of the people are against anything you propose," he said, explaining the figure.

"I DON'T SEE why we need two legislatures any more than a bank needs two presidents, the United States needs two presidents or a city needs two school superintendents. There are a lot of vestigal things around—things like an appendix—and a bicameral legislature is one of them."

"The Nebraska Legislature has given a good account of itself," summarizes political scientist Adam C. Breckenridge, vice chancellor of the University of Nebraska. "I think other states could use one house—especially the more homogenous ones. I don't know but that it would work well anywhere."

"State government in order to survive has to be an equal co-partner with the federal government," believes Senator Richard D. Marvel, Hastings. "You can achieve this only by streamlining the structure and unicameralism is the one way to do it."

Even the newspapermen "on the scene"—and no group is more wary—are "sold."

"It's a reporter's dream," exclaimed one. "With a single house it's so much easier to track down legislation and find out its status."

Another newspaperman, now in California, said: "Come to think of it, I've worked in five different states and only in Nebraska did the legislature seem to command a lot of respect."

(Next: The start of it all).

Unicameralism: Where Nobody Can Hide

Beetle

Non-Partisanship Is Included in the Package

Most ideas for state legislative reform are mild when compared with a proposal that two houses be cut back to one. So far the only "buyer" has been Nebraska. Yet the question—that of unicameralism—came up at New York State Constitutional Conventions in 1915 and 1938. It most certainly will be discussed as the 1967 convention approaches. Here's the second of four articles discussing Nebraska's experiences and the relevancy of the idea to New York.

By DAVID H. BEETLE
Gannett News Service

Almost any knowledgeable American probably knows that Nebraska has a unicameral (one-house) legislature.

But it's a "hep" one indeed who also knows that it's non-partisan.

Yet historically the two are inseparable.

They were sold in Nebraska in a package in the searing summer of 1934. The top "salesman" was Senator George W. Norris, a "New Deal Republican," famous for the TVA, the REA and a black string tie. By November, he'd worn out two sets of auto tires stumping the state.

"Unicameralism" got the headlines, but "non-partisanship" was equally dear to the senator's heart. He had himself refused to take "party orders." He looked on the political pros as "Dealers in jobs who sold them over the political pie counter as a merchant sells calico."

Thus the two concepts were linked in the constitutional amendment that did the trick—an amendment which Nebraskans first got on the ballot by petition and then adopted 286,086 to 193,152.

The electorate was in a "yes" mood the same day they ended prohibition and OKd parimutuels. As for unicameralism, it wasn't a bolt from the blue for Nebraskans. Spurred on by political scientists and others, they had been talking about it for 19 years. In 1934, plagued by depression, drought, and ten-cents-a-bushel corn, they were also looking for economy.

IN THE UNICAMERAL, they got it. The amendment provided for from 30 to 50 legislators in one house as against 133 in two. The enabling statute settled on 43—a number but recently upped to 49. It took 22 years before the unicameral's budget climbed back to what the bicameral was costing.

The unicameral has also legislated with an eye to the state's dollar—some think more than it should. State aid is skimpy. In 1963 Nebraska collected less per capita in state taxes than any other state. It is also debt-free—but perhaps only because the Constitution still insists on it.

As he pressed his campaign from urban Omaha to the western ranges, Senator Norris made it clear that the idea of a two-house legislature emerged in England and elsewhere when the aristocracy gave recognition to the common people. He saw no excuse for two houses in a democracy. He branded bi-cameralism as a device to throw sand in the eyes of the voters, so they couldn't follow legislation and find out what went on. He didn't really "buy" two houses even for Congress, but there he felt stymied by states rights and the U. S. Constitution.

He affirmed one house would end legislation by conference committee. Here he felt lobbyists got in their licks behind closed doors. And while he doesn't seem to have conceived as even possible a bicameral state like New York without conference committees, one feels sure he would have felt that this state's mysterious methods of ending disagreements were skullduggery compounded.

"Instead of one house being a check upon the other, the double-barreled system is a shield for corruption," he charged, "concealing the record of unworthy representatives and making it impossible for a critical public to know just what the record is."

HE ALSO FAVORED fewer and better paid legislators—an idea that just now seems to be ripening 30 years later.

A lot of Senator Norris's dreams for what he predicted would be a "business-like legislative operation" have been fulfilled.

Nebraska's Senate is an-easy-to-understand, simple-to-follow, goldfish-bowl operation.

The senate (technically the house was abandoned because the title "senator" sounds more impressive) elects a speaker, other officers, a committee on committees, and through this 14 working committees. It's the smallest number of legislative committees in any house in any state. The organization voting is carried on by secret ballot.

If a legislator introduces a bill, he has to prepare a statement telling what he expects to accomplish. The bill and the statement go to the appropriate committee. It calls a hearing. This is public. Anyone who wants to attend, appears. What they say—and what the legislators say—get summarized in a public record.

To act, a committee goes into executive session. To this, though, the press is invited. Technically the reporters can only report the result (bill out, 5-2; bill killed, 7-0, etc.); Actually if a reporter hears anything he wants to write, he can ask the legislator for it afterwards—on the record. Usually he gets it. In any case, the committee chairman is mandated to put on each senator's desk a public memo explaining the committee's action and its reasons.

ON THE FLOOR, a member can get a roll call on any bill or motion, simply by asking. And a lot ask. A voting machine quickly obliges with a tally. Everything said in the chamber gets on a public record—one that's indexed yet. No bill can get through to the governor in less than a week.

Doggedly and methodically, the legislature holds sessions mornings, 9 to 12, and committee meetings in the afternoon, 1:30 to 5. These go on from Monday through Friday until the job is done. The hours may be extended in the afternoon if a lot of people want to be heard. Otherwise they seldom change. If a dozen bills are voted on in any one day, it's a lot. The usual number is half-a-dozen.

This summer, a seven-and-a-half month biennial session droned to a calm ending at 3:10 p.m. on August 17. That last day legislators acted on seven bills, no log jams.

So Senator Norris got the kind of legislature he wanted: a business-like place where no one can hide.

He also got a house with no "majority leader" and no "minority leader"; a house whose members may belong to a party but don't run on any party ticket.

This system is as rare as unicameralism—perhaps rarer. Even Minnesota legislators who don't run on a party ticket choose up sides after they're elected.

And in Nebraska, unlike unicameralism, nonpartisanship is hotly controversial.

(Next: The Second Half of the Package.)

What the Columnists Say

Unicameralism: Protection Against Lobbyists

Beetle

Nebraska's Legislature Is No Clay Pigeon

Most ideas for state legislative reform are mild when compared with a proposal that two houses be cut back to one. So far the only "buyer" has been Nebraska. Yet the question—that of unicameralism—came up at New York State Constitutional Conventions in 1915 and 1938. It most certainly will be discussed as the 1967 convention approaches. Here's the third of four articles discussing Nebraska's experiences and the relevancy of the idea to New York.

By DAVID H. BEETLE
Gannett News Service

Any state that wants to adopt a unicameral legislature has to face the fact that the country's only state-level model—Nebraska's—has an added feature: Non-partisanship.

Thus, in evaluating the success there of the one-house system, it's necessary to figure out how much of it is due to unicameralism and how much to non-partisanship. On this, even Nebraskans don't agree.

A few—though they seem to be a small minority—think that unicameralism will only work well in a non-partisan situation. They argue that if you had one house linked with a governor of the same party, he'd have too much power.

Others—perhaps most—believe that while non-partisanship and unicameralism don't have to go together, it makes for a nice marriage.

Still others—again a large number—feel that while unicameralism works well, "partisanship" would make it work better.

"In a non-partisan legislature, matters will be discussed and decided regardless of the wishes or interests of the party bosses," predicted the late Senator George W. Norris, the free-wheeling Nebraskan who "sold" the two-part package.

Then, as now, a lot of the party "pros" oppose non-partisanship.

REPUBLICAN WOMEN, with considerable rank-and-file help from both parties in 1963 circulated a petition to amend the Constitution to require that legislators run on a party ticket.

Needed to put the question on the ballot were 46,459 signers. They were 150 signers short. "And, at the end they were paying 15 cents a signature," a newspaperman observes. It was freely predicted the voters would have rejected it anyway.

A similar move to get the legislature itself to put the amendment on the ballot failed miserably. Only eight legislators favored it.

"Nebraskans are about evenly divided on the non-partisan issue," says Governor Frank B. Morrison. "But I think over the long run at the state level, non-partisanship works better. You see a lot of backwash from national politics confusing state issues around the country."

He acknowledged that as governor he might be able to get his own program across better if he had a legislature of his own party. "But that might be good or bad," he added. "The long range effect of a non-partisan legislature acting on a governor's policy is likely to be beneficial."

Hugo Srb, the legislature's clerk who was a senator in the old bi-cameral legislature, thinks those who favor partisanship just haven't seen it in operation. "That's the sad part of it," he says. He still recalls an eye-opening day 30 years ago when he was pressured into voting for an incompetent "because the party wanted it."

"WHAT HAPPENS when a crisis erupts—be it in Washington or anywhere?" he asks. There's an instant appeal to drop politics and deal with it on a non-partisan basis."

Richard D. Marvel, Hastings senator and a political science professor, sees both sides but leans toward non-partisanship.

"I'm responsible directly to the people and not to any political leader," he says. "I can't blame anything on a majority or minority leader, either."

For a Nebraska politician's argument th "non-partisanship had led to a house full Mexican generals all going off on their own the senator had a forthright answer.

"Leadership evolves here on a subject m ter basis," he says. "We tend to specialize."

It's better to have a doze leaders than or In the areas of public power, budget, taxes, ed cation, health, you don't find one man calli all the shots—and that's good."

"One of the problems," he acknowledges, that we probably pass more bills than we shoul simply because under our system it's som times hard to rally opposition."

Also favoring non-partisanship is Mrs. Fe Hubbard Orme, a housewife and school teach turned senator. "I'm sure if I had a majori leader, I wouldn't do half as much as I now," she says.

"He would be calling the boys in and tellir them what to do. From what I've heard other legislatures, there's a lot of goofing off.

SENATOR NORRIS SAW in "non-partisa ship" and "unicameralism" a double protectio against lobbyists. And while Nebraska's legi lature seems to be no "clay pigeon" for pre sure groups it's not easy to decide which el ment in the two-part package affords the mo protection.

"I've made it a point to talk with quite few lobbyists through the years," says Earl E Hershberger, a pharmacy owner at Lincoln "Cornhusker Hotel." His job gives him a ring side seat. "The first three or four years th lobbyists thought it was going to be a snap, bu it hasn't worked out that way. The lobbyist tell me they have to work harder here than any where; that they just can't get a majority leade on their side; that they have to talk with al the legislators individually."

One thing is sure. Nebraska's motto is: "Th salvation of the state is watchfulness in th citizen"—and unicameralism makes it easie for him to watch.

(Next: But would it work in New York?)

What the Columnists Say

Unicameralism: Could It Work Here?

Beetle

One-House Proposals Were Killed in 1915, 1938

Most ideas for state legislative reform are mild when compared with a proposal that two houses be cut back to one. So far the only "buyer" has been Nebraska. Yet the question — that of unicameralism—came up at New York State Constitutional Conventions in 1915 and 1938. It most certainly will be discussed as the 1967 convention approaches. Here's the last of four articles discussing Nebraska's experiences and the relevancy of the idea to New York.

By DAVID H. BEETLE

Gannett News Service

"It would be unfortunate if a constitutional convention were held in New York and consideration were not given to a proposition which, in recent times, has commanded the attention and thought of nearly all profound students of political science."

The quote refers to a one-house state legislature. It sounds like a nice, fresh quote newly minted for the approaching New York State Constitutional Convention.

Actually, it goes back a couple of constitutional conventions ago to the appearance in 1915 of a Long Island senator before a legislative procedures committee.

The idea of unicameralism is as persistent as Harold Stassen. The reasons for it change little, but the objections shift.

In 1915 it was argued that unicameralism "was a radical step" and that New York should not be the first. At the 1938 Constitutional Convention, it was contended that while the Nebraska experiment seemed to be working out okay, it was really too new to tell. And now in 1965, it's affirmed that while unicameralism works fine in a place like Nebraska you wouldn't want it in a big complex place like New York.

NEBRASKANS, for the record, note that complexity is relative. With a corn belt in the east, range country in the west, and 350,000-people's worth of urban sprawl around Omaha, they have their problems too. A run-down of their 1966 legislative program looks suspiciously like New York's—arts council, abolition of capital punishment cigaret tax increase, park bonds, urban renewal, fair housing, auto junk yards, State U. tuition and so on.

The 1915 convention actually got three unicameral proposals calling respectively for

MR. SAMUELS

MR. KIRVIN

single houses of 60, 100, and 168. All died in committee, but not until after three members of the legislative procedures committee from Owasco, Whitehall and New York, staged a floor fight. They argued that one house was more efficient and economic. That two houses existed only because of "the plaster cast of tradition."

They dredged back in history to discover that Benjamin Franklin had said that setting up a two-house legislature was like hitching a horse to each end of a cart and letting them pull in opposite directions.

Unicameral proponents also showed up at a committee hearing.

"How long would a bank, a railroad or a factory escape bankruptcy if it were managed by two boards of directors with equal powers and a chairman with extensive veto powers?" asked William E. Verplanck, Fishkill.

"With two houses and two sets of new committees, bills are shunted back and forth so many times that when one finally becomes law it is often impossible to tell who is responsible for it, or if a good bill is defeated it is almost impossible to tell who is responsible for its defeat," complained the Long Island senator, William McKinney.

"AMONG CITIES the first tendency was to correct evils by imposing further checks and balances," reminded the merchants association of New York. "The cure was worse than the disease. It was not until pressure for improvement was turned toward simplification of municipal government that real progress was made". A key point, it observed, was elimination of dual city-level legislative bodies.

The 1938 Constitutional Convention received—and killed in committee—two unicameral proposals. One was fathered by Court of Appeals Judge Harlan W. Rippey at the request of Democratic-lawyer John A. Millliver, a fellow Rochesterian who once ran for the State Senate. The other bore the name of Charles Poletti, later governor. He introduced it for the Citizens Union.

Staffers for a Poletti-headed committee doing pre-conference research listed the pros and cons of unicameralism. These tended to balance off except a couple of "cons" no longer held. One was that the Nebraska experiment was too new; the other that two houses permit representation of both people and area.

As the 1967 convention approaches, most of the cast will be different but a lot of the lines will be the same.

Governor Poletti today isn't necessarily for one house but believes it is something the convention should study.

ARDENT UNICAMERAL backers are the National Municipal League's Alfred Willoughby and the Citizens Union's Georgo Hallett.

Even a few political activitists are speaking up.

On the heels of the one-man-one-vote mandate, former GOP speaker Joseph Carlino said unicameralism would be worth looking into.

John F. Kirvin, a Schenectady Democratic assemblyman who won reelection by a narrow margin in a GOP-carved district, favors one house of 100 or 150. Today he sees "no checks and balances" if the same party controls both houses and only "wastefulness, friction and political folly" if it doesn't. He acknowledges two houses mean more patronage but doesn't think that's good.

Outspoken for unicameralism is Howard J. Samuels, a Canandagua business man and Democrat, who eyes the governorship.

Interestingly, while talk about borrowing Nebraska's "unicameralism" persists there is little mention of borrowing the other part of the late Senator George Norris's package—"nonpartisanship."

Back in the 1915 convention an Albion delegate asked: "Are the people educated up to unicameralism?"

"Why not anticipate their demand?" shot back a New Yorker.

And that seems to be the way things stand 50 years later. It could simply be a good idea waiting for another George Norris to come along.

Nebraska Strong for Unicameral

Thirty Years' Experience Disproves Arguments Advanced Against It

Richard D. James
In *The Wall Street Journal*

LINCOLN, Nebr.

One attraction sure to catch the eye of anyone approaching Nebraska's second largest city is the state Capitol, a towering white Indiana limestone edifice dominating the Nebraska plains for miles. Completed in 1932, it was acclaimed one of the nation's architectural showpieces.

It is probably more noteworthy these days, however, as the home of the nation's only one-house state legislature, which has been thrust into the national spotlight recently by revival of an issue that once appeared virtually dead — unicameralism.

The Mirror of Public Opinion

The historic "one man, one vote" U.S. Supreme Court decision, under which states now are busily recarving legislative districts to conform solely to population, raises the question of whether or not two legislative houses are necessary, if both are apportioned on the same basis. To find out how unicameralism works, it is necessary to turn to Nebraska, the only state with a single chamber since Vermont adopted bicameralism in 1836.

Though the idea of substituting one house for two, largely dormant since Nebraska adopted it in 1934, is not given much chance of making substantial headway in other states any time soon, some are discussing the possibility again.

Nebraska officials were asked by Kentucky to testify before an assembly revising the Kentucky Constitution. A former Rhode Island Governor spent three days in Lincoln studying the system and a unicameral bill is pending before the Illinois legislature. In nearly every state the concept is getting consideration.

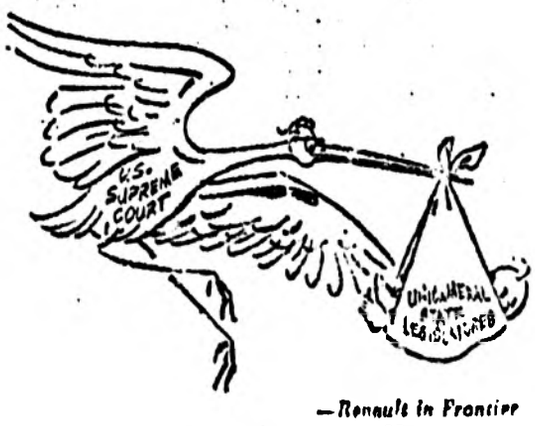
Nebraskans are quick to champion unicameralism. Using comparisons of the state's final bicameral legislature in 1935 with the first unicameral body in 1937, they claim the one-house system is more economical and more efficient.

The last bicameral session cost $202,593, or nearly double the $103,445 for the first unicameral session. The number of legislators was cut to 43 (currently 49) from 133, the number of standing committees to 18 from 61 and the number of bills introduced to 581 from 1056. Yet the first unicameral lawmakers passed 214 laws in 98 days; their bicameral counterparts, meeting 12 days longer, counted 22 fewer bills.

The one-house system, Nebraskans say, firmly fixes responsibility for good legislation or poor. "There's no way to pass the buck to the other house," says state Senator Richard D. Marvel. "The responsibility is right here."

But the most important advantage, some think, is eliminating the small but potent conference committee which resolves differences when bills passed in both houses vary, in content. The process, some contend, grants to a few men great power in determining the ultimate shape of legislation. Moreover, "the committee is a lobbyists' paradise" since only two or three Senators usually need to be swayed, says state Senator Stanley A. Matzke.

Interestingly, from its inception, Nebraska's unicameral body was apportioned on the basis of population. But voters in 1962 approved a constitutional amendment giving 20 per cent weight to area and the 1963 legislature reapportioned itself on that basis, adding six seats. Now, in light of the "one men, one vote" principle, it is reapportioning anew, using population once again as the sole standard.



—*Renault in Frontier*

One Man, One Vote, One House

The arguments thrown up to block unicameralism in those days are still those generally cited today. A second house is needed as a check on the first, opponents say. But Gov. Frank B. Morrison answers:

"On the basis of logic, I see no reason for two houses. The checks and balances come in other ways. The Governor has the veto; the law can be challenged in the courts; and finally, if the legislation isn't in the public interest, the people can repeal it through a referendum."

Mindful of this criticism, Nebraska carefully provided the opportunity for ample deliberation. Contrary to practice in some states, in Nebraska it's mandatory that all bills—some 900 in the current session—receive public hearings and that hearing dates be published at least five days in advance.

In addition, Nebraska's Constitution now prohibits passing any bill in less than a week. "In the old bicameral," recalls state Senator Peter H. Claussen, who served in the body, "it was possible by unanimous consent to introduce a bill in the morning and have it become law by evening. The public didn't have a chance to object."

Another important check was added, too. Before a bill becomes law it must pass three separate votes of the full Senate, the first following a complete reading and general debate on the Senate floor and the second not less than three days later. If it passes these hurdles, two more days must intervene before it is put to the final vote. A defeat at any stage kills the measure.

Other safeguards were created, too. The press is permitted to attend executive committee sessions, the theory being it keeps the legislative process more open. While reporters can relate the essence of a discussion, however, they must not report individual votes or statements. Executive sessions in bicameral days were closed to all outsiders as in most legislatures today.

As yet it's too early to tell whether unicameralism will gain more than the toehold it presently has. The Supreme Court decision, while raising some doubts regarding the need for two houses, didn't suggest there is no point in having two bodies even if both are based on population. Nonetheless, Nebraska's experiences with a unicameral system suggest some obvious advantages which in a time of rising governmental cost and complexity may deserve consideration.

DEC 29 1965

The Argument Goes On

A One-House Legislature?

By JOHN M. GREENE

ALBANY—Fifty years ago, former Sen. William McKinney of Northport tried to convince the delegates to the Constitutional Convention that New York State should shelve its bicameral legislature with its two branches and install a unicameral (one house) legislature in its place.

John Greene

"It would be unfortunate," said the senator, "if a constitutional convention were held in New York and consideration were not given to a proposition which, in recent times, has commanded the attention and thought of nearly all profound students of political science.

"With two houses and two sets of committees," McKinney told the delegates, "bills are shunted back and forth so many times that when one finally becomes law it is often impossible to tell who is responsible for it or, if a good bill is defeated, it is almost impossible to tell who is responsible for its defeat."

• • •

THE 1915 CONVENTION got three unicameral proposals calling for one house of 60, 100 and 168 members respectively. All three died after a hectic floor fight during which proponents quoted Benjamin Franklin as saying that setting up a two-house legislature was like hitching a horse to each end of a cart and letting them pull in opposite directions.

Two unicameral proposals were submitted to the 1938 convention, one of which bore the name of Charles Polleti, who later served briefly as governor of the state. He introduced the proposal for the Citizens Union.

George Hallock of the CU is still convinced a unicameral legislature should come into being. So is Alfred Willoughby of the National Municipal League. But Polleti now only goes so far to say it is something the 1967 convention should study.

So does former Assembly Speaker Joseph F. Carlino of Long Beach, who hopes to be a delegate to the convention. Howard J. Samuels of Canadaigua, who has gubernatorial ambitions, is also a unicameral booster.

Dr. Belle Zeller, a Brooklyn College professor and author of "American State Legislatures," said: "I don't go along with the idea that unicameralism is just a good idea for Nebraska because it's small." She said she'd like to see a few big states try it.

Dr. Zeller was asked if she feared lest an ambitious governor with a legislative majority from his own party might not put one house in his pocket. She replied, "That's not a serious objection. A governor usually has two pockets and he can put one in each."

A Democratic assemblyman from Schenectady, John F. Kirwin, favors one house of 100 or 150 members. He sees "no checks or balances" if the same party controls both houses and only "wastefulness, friction and political folly" if it doesn't.

• • •

IN 1915, IT WAS argued that unicameralism was a "radical step" and that New York should not be the first to take it. Twenty-three years later, the contention was that, while Nebraska seemed to be making it work, it really was too new to tell for sure.

Now, in 1965, the feeling seems to be that while unicameralism does work fine in a place like Nebraska it just wouldn't in a big complex state like New York.

Nebraskans have an answer to that. "Complexity," they say, "is relative." They have their problems with their corn belt to the east, their range country in the west and 350,000 peoples worth of urban sprawl around Omaha.

But take a look at its 1966 legislative program—arts council, abolition of capital punishment, cigaret tax increase, park bonds, urban renewal, fair housing, auto junkyards and state university tuition.

Sound familiar?

Wisconsin Briefs from the LEGISLATIVE REFERENCE BUREAU

Brief 70-5 December 1970

UNICAMERALISM: WISCONSIN LEGISLATIVE HISTORY

INTRODUCTION

Nebraska is the only state in the United States that currently has a unicameral (that is, one-house) legislature. It has been in existence since 1937 with no apparent attempts to change the structure. Three other states (Pennsylvania, Georgia and Vermont), however, began with a unicameral legislature and later abandoned it.

Although the unicameral legislature is not very popular in the United States, many foreign countries have adopted it. For example, when Quebec abolished its two-house parliament in 1969, the last of Canada's 10 provinces became unicameral. The governing bodies of most municipalities and counties in the United States are also unicameral in nature.

The history of unicameral proposals in Wisconsin began with 2 proposed constitutional amendments introduced in 1915. After a lapse of 12 years, there was at least one such proposal introduced in every regular biennial session from 1927 to 1937. In 1935, 5 separate joint resolutions were introduced relating to adopting a unicameral legislature. Two of these proposals (1935 Assembly Joint Resolutions 10 and 95) were passed by the Assembly. These are the only 2 such measures which have ever received passage by at least one house. 1935 AJR 95 was not a proposed constitutional amendment, but rather, a proposed referendum relating to the establishing a unicameral legislature.

Not until very recently has there been any revived interest in unicameralism since the 1930's. Four proposals have been introduced in the last 3 sessions of the Wisconsin Legislature to provide for a unicameral legislature. Unicameralism has been given considerable attention since 1964 in many other states beside Wisconsin. The recent upsurge of interest is at least partially due to the United States Supreme Court's 1964 ruling in Reynolds v. Sims (377 U.S. 533; 84 S. Ct. 1362), which held that both houses of state legislatures must be apportioned according to population. In Wisconsin, of course, both houses have always been apportioned "according to the number of inhabitants". Since representation for both houses of state legislature now has to be based on population, some commentators have suggested that there might be no further need for 2 houses.

CONSTITUTIONAL PROVISIONS RELATING TO THE LEGISLATURE

The current provisions of the Wisconsin Constitution governing the number and size of the houses comprising the Wisconsin Legislature are found in Article IV. They read as follows:

> Section 1. The legislative power shall be vested in a senate and assembly.

Prepared by Gary Watchke, Research Analyst

Section 2. The number of the members of the assembly shall never be less than 54 nor more than 100. The senate shall consist of a number not more than one-third nor less than one-fourth of the number of the members of the assembly.

If Wisconsin were to adopt a unicameral legislature, additional sections of constitution would have to be amended. Those sections which would also be affected are:

Article IV,	Section 3.	Apportionment.
	Section 4.	Assemblymen, how chosen.
	Section 5.	Senators, how chosen.
	Section 7.	Organization of legislature; quorum; compulsory attendance.
	Section 8.	Rules; contempt; expulsion.
	Section 9.	Officers.
	Section 10.	Journals; open doors; adjournments.
	Section 17.	Style of laws; bills.
	Section 19.	Origin of bills.
	Section 20.	Yeas and nays.
	Section 26.	Extra compensation; salary change.
Article V,	Section 8.	Lieutenant Governor president of senate....
	Section 10.	Governor to approve or veto bills; proceedings on veto.
Article VI,	Section 2.	Secretary of State duties relating to the legislature.
Article VII,	Section 1.	Impeachment proceedings.
	Section 13.	Removal of judges.
Article VIII,	Section 6.	Public debt for extraordinary expense; taxation.
	Section 8.	Vote on fiscal bills; quorum.
Article XI,	Section 4.	Legislature prohibited from incorporating banks.
Article XII,	Section 1.	Constitutional amendments.
	Section 2.	Constitutional conventions.
Article XIII,	Section 6.	Legislative officers.

WISCONSIN LEGISLATION PROPOSING A UNICAMERAL LEGISLATURE

No proposed constitional amendments relating to the establishment of a unicameral legislature have ever achieved passage through both houses of the Wisconsin Legislature, so as to be eligible for "2nd consideration" review 2 years later in preparation for their submission to the voters of Wisconsin. Therefore, all the proposals listed in the following table constitute "1st consideration" constitutional amendment proposals.

A. Proposed Constitutional Amendments Providing for a Unicameral Legislature*

Year	Joint Resolution	Author	Name of Body	Size of Body	Length of Term	Type of District	Misc. Provisions
1915	SJR 20	G. Weissleder	Legislature	3 mbrs. from each congress. district	Staggered 4-year terms	Correspond with congress. districts	
1915	AJR 33	H. L. Mortenson	Legislative Commission	1 mbr. from each congress. dist. & 2 from state at large	4 years	Congress. dist., plus 2 from the state at large	One of the 2 at large mbrs. receiving highest no. of votes – pres., other vice-pres.
1927	AJR 17	Wm. Coleman	Legislature	133 Members	Staggered 4-year terms	Single dists. of convenient contiguous territory	
1929	AJR 131	Robert Caldwell	Legislature	Number of mbrs. equal to the no. of U.S. Rep.s from Wisconsin	Staggered 4-year terms	Correspond with congress. districts	
1931	AJR 48	Philip Wenz	Legislature	133 Members	4-year terms	Single districts	
1933	AJR 26	G. Weissleder	Legislature	Not more than 3 mbrs. from each congress. district	Staggered 4-year terms	Single dists. of convenient contiguous territory	Sessional salary of $1200
1935	AJR 10	M. H. Hall	Legislature	Not less than 30 nor more than 50 members	2 years	Single member districts	
	A.An. 1 (Adopted)	B. M. Vaughan		Not less than 90 nor more than 100 members			

*In measures proposing a staggered 4-year term, most proposals provided for half of the Legislature being elected for 2 years in the initial election under the new unicameral legislature, and subsequently for 4-year terms.

Proposed Constitutional Amendments Providing for a Unicameral Legislature — Con't

Year	Joint Resolution	Author	Name of Body	Size of Body	Length of Term	Type of District	Misc. Provisions
1935	AJR 11	G. Weissleder	Legislature	Not more than 3 mbrs. from each congress. district	Staggered 4-year terms	Single member districts	Legislature would meet once each mo. until all business completed. Annual salary of $4,000
	A.Sub.Am.1 as amended by A.Amdt. 1 and 2 (Adopted)			Not less than 90 nor more than 100			Legislature would meet once every 2 years
1935	AJR 70	Mary Kryzak	Legislature	Not less than one mbr. from each county nor more than 100 members	4-year terms	No dist. would embrace more than one county	
1937	AJR 11	M. H. Hall	Legislature	Not less than 30 nor more than 50 members	2 years	Single member districts	
1965	AJR 107	Barbee, Iverson, Lipscomb & Schaus	Legislature	Not less than 43 nor more than 75 members	Staggered 4-year terms	Single member districts	Annual salary of $10,000. Annual sessions
1967	SJR 26	J. Lourigan	Legislature	Not more than 45 members	Staggered 4-year terms	Single dists. of compact contiguous territory	
1967	AJR 37	Barbee, Lipscomb, Anderson, Kessler & O'Malley, co-sponsored by Lourigan	Legislature	Between 33 and 75 members	Staggered 4-year terms	Single member districts	Annual salary of $12,000. Annual sessions.

Proposed Constitutional Amendments Providing for a Unicameral Legislature — Con't

Year	Joint Resolution	Author	Name of Body	Size of Body	Length of Term	Type of District	Misc. Provisions
1969	AJR 18	Barbee, Lipscomb & Sanasarian	Legislature	Not less than 33 nor more than 75 members	Staggered 4-year terms	Single member districts	Annual salary of $12,000. Annual sessions

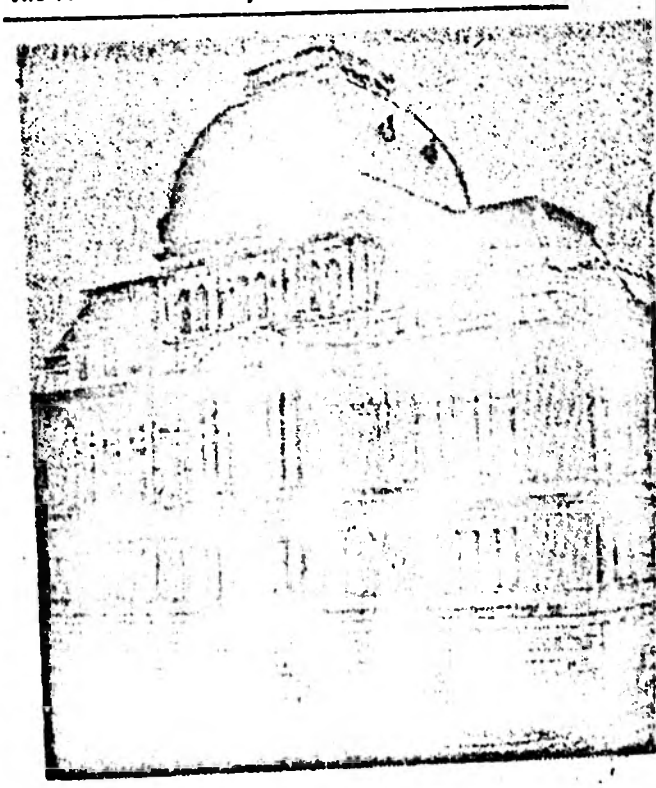
B. Proposed Referenda Relating to Establishment of a Unicameral Legislature

Year	Joint Resolution	Author	Referendum Question
1935	AJR 95 A.Sub.1	G. Weissleder	This proposal would submit to the voters a referendum consisting of the following 5 questions and comprising 7 parts: (1) "Do you favor a one-house legislature?"; (2) (a) "Do you favor a legislative membership of not less than 30 nor more than 50 members?"; (or) (b) "Do you favor a legislative membership of not less than 30 nor more than 100 members?"; (3) "Do you favor the legislature sitting as a body to hear all arguments for and against all matters coming before it?"; (4) "Do you favor having the legislature meet once each month and remain in session until its business is completed?"; (5) (a) "Do you favor a 4-year term for the members of the legislature?"; (or) (b) "Do you favor a 2-year term for the members of the legislature?". The measure was adopted by the Assembly by a vote of 48 to 32. The Senate, however, nonconcurred in it by a 23 to 7 vote.
1935	AJR 171	E. W. Blomquist & A. F. Poltl	This proposal would have submitted one question to the voters: "Do you favor a one-house legislature? Yes____ No____"
1955	AJR 91	Louis C. Romell	This proposal would have provided an advisory referendum consisting of 2 questions: (1) "Do you favor an amendment to the state constitution to provide for a unicameral legislature of 100 members, one-half to be elected every 2 years for terms of 4 years?" or (2) "Do you favor an amendment to the state constitution to provide that the legislative branch shall consist of 2 houses similar to the legislative branch of the federal government?"

The Providence Sunday Journal, February 13, 1966

One Branch or Two?

Two levels of government: At left the State House and at right, Providence City Hall.



The Cities Chose One

By JOSEPH A. KELLY

Joseph A. Kelly watches city government from his post as manager of the Journal-Bulletin bureau in Pawtucket.

ight U.S. cities with great- populations and bigger gets than the state of de Island are governed by ameral city councils.

ie number of councilmen hese one-body local legis- res ranges from nine in roit and Houston to 50 in ago.

os Angeles, with two and alf times the population of de Island, has 15 council- n. Philadelphia has 17.

century ago nearly all ge cities had bicameral ncils, usually a board of ermen and a common coun- They were on the wane 1850, almost extinct in 0.

Only Two Left

)f the 3,000 municipalities the U.S. today, there are ameral councils in only o—Everett, Mass. and Wa- ville, Maine.

Providence abandoned its ameral council in favor of unicameral council in 1940. wtucket, Woonsocket, New- rt and Central Falls did the me when they adopted me rule charters in 1952.

Much more significant than e demise of the bicameral uncil is the almost unanimous agreement that the unicameral council had produced tter local government in hode Island and throughout e country.

Former Governor Dennis J. oberts, a leader of the fight the Constitutional Convention for a unicameral state gislature, said the one-body uncil in Providence brought tremendous improvement in ty government.

Pawtucket, Woonsocket and entral Falls are said to have njoyed their best government years since they adopted ew charters with unicameral ouncils.

In these and other cities round the country the smaller unicameral councils have usually handled municipal usiness more expeditiously. There has been a better understanding by the public of controversial issues simply because they have been debated by fewer city councilmen.

There has been better scrutiny of the councils by the voters simply because there are fewer councilmen to [illegible]. Pawtucket, for example, decreased its councilmen from 21 to nine, Woonsocket from 20 to seven, Boston from 73 to nine.

Decline of Bosses

The unicameral council contributed much to the decline of political bossism in the cities. Conditions in the old bicameral councils with their many committees (the Boston council once had 42 committees) were so complex that it almost required a political boss to straighten them out.

The small one-body council focused more attention on the individual councilman and, generally, he acted accordingly. In almost every city it produced a higher caliber of candidate for the unicameral council. As a result, there was less dual office holding, fewer political shenanigans, more tending strictly to business.

Mr. Roberts believes the General Assembly and the city council are comparable, and that a unicameral legislature could bring the same improvements in state government that it has brought to the cities.

"The function of a city council is much like that of the General Assembly, even though it does not have the same inherent power," Mr. Roberts said.

The city council is a legislative body, he continued. It appropriates money and adopts ordinances regulating the public safety, health and other affairs of the city in much the same way as the General Assembly enacts laws.

Providence

Mr. Roberts, who served on the commission that framed the Providence charter in 1940 and then became the first mayor under the charter, asserted that the old bicameral council never functioned in its proper sphere. He recalled that committees of the board of aldermen and common council tied up business for months and on one occasion the appointment of a police commissioner was held up for more than two years.

"The unicameral council functioned as a legislative body should function from the outset. It was a tremendous improvement," Mr. Roberts said.

The former governor recalled that the only objections to the switch to a unicameral Providence council in 1940 came from the political structure, both Democrats and Republicans.

"They said the unicameral council would be the death knell of the Democratic party in Providence, that it would deprive the people of their rights, and the Democrats would never win another election.

In practice, it turned out that the Democratic party was stronger than ever under the unicameral council. The former governor pointed out that the Democrats received bigger pluralities than ever; they never lost the mayoralty again and there have never been more than four Republicans in the council.

In 1952, there was no controversy as the bicameral councils were abolished in Pawtucket, Woonsocket, Central Falls and Newport. Even councilmen who were losing their jobs failed to protest.

Forgotten Issue

The campaign for a new Pawtucket charter was fought bitterly by the professional politicians but no mention was ever made of the shift to the one-body council. It was just taken for granted that the bicameral council was long outmoded.

Hundreds of thousands of words were spoken at charter commission hearings on the manager plan vs. the mayor-council, partisan vs. nonpartisan elections and a merit system for city employes but nobody suggested that the old board of aldermen and common council should be retained.

Kevin K. Coleman, former mayor of Woonsocket, has no recollection of any demand that the bicameral council be retained in that city.

"What is important was the change for the better in Woonsocket after the switch to the seven-member unicameral council elected at large," Mr. Coleman said. "It proved quickly to be the more efficient way of legislating city business."

Authorities on government for nearly 75 years have held that the bicameral legislature at the city level created more problems than it solved and caused more evils than it prevented.

The first city governments established two houses of their municipal legislatures in imitation of Congress and in the belief they provided a necessary system of checks and balances.

Norfolk, Va., had a bicameral council in 1788, Philadelphia in 1796, Baltimore in 1797, Pittsburgh in 1816 and Boston in 1822. By 1840 the bicameral council had become general in the larger cities.

Fear of the Mob

Richard S. Childs, chairman of the executive committee of the National Municipal League and a leading authority on municipal government for 60 years, explains the early trend to bicameral city councils this way:

"In the making of charters of those days there was a great fear of headlong democratic action and mob rule. This led to innumerable devices to encumber the activities of government in an effort to insure elongated consideration of every measure.

"One of these devices was the establishment of two houses of the municipal legislature on the theory that if one house passes a bad bill, the other will block it.

"It was and is just as true to say that if one house passes a good bill, the other house will block it. The latter practice has been familiar for a century to all proposers of innovation and reform."

Boston had enough of its 78-member bicameral council by 1896, and Samuel B. Capen, president of the Boston Municipal League, told the National Municipal League at its annual meeting that year of the successful campaign for a unicameral council.

More Money

A city government does not need two boards of directors any more than a corporation or a railroad, Mr. Capen said. The second body in a unicameral legislature "often increases and rarely diminishes public spending," he said.

In order to bring the two bodies into harmony and obtain the required number of votes, Mr. Capen said, it often was necessary to appropriate large sums for projects in the districts of various members "for their selfish and personal interests, not because of public necessities."

He said the single branch legislature helps to define responsibility, making it easier for the voters to see who is responsible for legislation and where the blame rests when things go wrong.

W. B. Munro of Harvard University wrote in his "Government of American Cities" in 1912 that "quite as many opportunities for evil arise from a council's versatility in impeding business as from its power to rush things through with unseemly haste."

"If a single chamber can malign pressure he too ily stampeded into a vote hich is not in the interest the citizens, it is just as ue that a double chamber fords to every blackmailing olitical influence an undue tvantage in blocking the ith of measures which are the city's interest," Mr. unro said.

"The history of American ty councils furnishes quite many examples of malfeaance in one direction as the her," he added.

Delay and Friction

Mr. Munroe said the bicamral legislative system "enenders profitless delay and eedless friction; it precludes ie city from pursuing the rompt and businesslike ethods of private organizaons and it is out of harmony ith the arrangements which xist in the best governed ities of other countries."

Howard L. MacBain of Columbia Univeralty said in 916 in a paper on the evolution of the types of city government, "The introduction of ie two chambered council as a disastrous step in the irection of cumbersomeness f organization."

Numerous authorities on overnment also have noted hat no city which abolished he bicameral council has ever shown any desire to restore it.

Mr. Childs told a charter group in Pawtucket in 1951 that their city had the rather dubious distinction of being one of only a dozen cities in the country with a bicameral city council.

"We hope," he said, smiling, "that one of your Rhode Island cities will keep its bicameral council forever as a museum piece to show posterity what sort of complicated, ramshackle contraption once passed for city government."

The following year Pawtucket, Central Falls, Woonsocket and Newport passed up this opportunity for immortality, just as Providence had done in 1940.

Waterville

The field has since been reduced to two and two years ago the people of one, Waterville, Maine, had a chance to adopt a modern charter. They voted nearly two to one to keep the bicameral form.

The Waterville Sentinel favored the proposed charter with its unicameral council and it told its readers, "We can't be right unless everybody else in the country is wrong."

"What if we are the only ones? It makes us distinctive."

Supporters of the bicameral setup argued that doing away with the common council would eliminate a good school for people who go on to be aldermen, which is sometimes how it works.

Two recent governors of Maine came from Waterville, Edmund S. Muskie and the late Clinton A. Clauson. Ironically, neither of them served in the common council or board of aldermen.

Robert Drake, managing editor of the Sentinel, said the bicameral council was not the big issue in the charter campaign. He said the people voted down the new charter because it would have taken city jobs out of politics, and provided an executive secretary to the mayor. The present charter could be described as a "very weak mayor" type of charter, he said.

Everett

In Everett, Mass. the people lost an opportunity to vote out the only other bicameral council a few years ago when the then Governor Endicott Peabody vetoed a bill that would have put the question on the ballot. Everett has seven aldermen and 18 councilmen.

Philip J. Crowley, who retired last month after 16 years as mayor, said some people called the governor and "got him shook up." He said the Governor "mistook the voice of a few for the voice of many."

"Why the opposition to the change?" Mr. Crowley was asked.

"Only that some people would lose their jobs. An alderman gets $1,800 a year and a councilman gets $1,200," he said.

Mr. Crowley said he was elected mayor eight consecutive times and he managed to get his program through the two branches of the council. Yet, he is not in favor of a bicameral council.

"The bicameral council is outmoded. Things die in one branch, never get to the other. It's hard to pinpoint responsibility. Twenty five council names are too many for anybody to remember," he said.

"There's no argument for the bicameral council. It's just that there have been no scandals. The government is pretty good. So, there is no hue and cry for a change."

Is the successful experience of the cities with unicameral government relevant to the issue as it now faces the states? In short, could a unicameral state legislature become as successful as the one-house city council which today is the accepted way of operating the legislative branch of municipal government?

For Bicameral

The advocates of bicameralism are generally political leaders who have served in the legislatures, or are now serving, and they say no. They cite these points:

—A one-branch house destroys the traditional checks and balances exemplified by the division in Congress between the Senate and the House of Representatives.

—It is much easier in a one-branch body for one man or a small clique to exercise control.

Those who advocate unicameralism, on the other hand, are numerous authorities on government and political figures who have served in the executive branch. They cite these points:

—The big budgets and big problems of education, urban renewal and civil rights are just as serious and just as difficult on a city level as on the state level, and the unicameral councils of the cities have been able to cope with them in a fashion that, if not perfect, is at least no worse than the usual fashion in which the states have coped with them. New York City has more serious problems, certainly, than the state of New York, and Chicago has more than the state of Illinois. Both cities operate with unicameral councils. None of the several thousand cities which have adopted unicameral government have ever returned to the two-house system, nor has Nebraska, thus far the only unicameral state.

—The need in government today is for responsible, effective action—not the interminable delays that often impede business in bicameral legislatures. The two-house Massachusetts legislature, for example, has debated for more than a year and so far has failed to resolve the question of providing a greater state tax base. Several years ago Michigan had a financial crisis because the two branches failed to agree on a tax program. Such indecision would be impossible in a unicameral legislature: a decision one way or the other would have to be made.

—While it is possible that a clique can control a one-branch legislature, the responsibility is obvious to the voters. It cannot be hidden among large numbers of legislators. Having fewer choices to make at election time, the voters can exercise greater discretion and discrimination. As a matter of fact there have been many examples of cliques controlling two-branch legislatures.

—The additional check and balance afforded by a second house is more attractive in theory than in practice. Such balance, if it exists at all, is often purchased at an expensive price in confusion, delay, frustration and inefficiency, all of which are rapidly becoming intolerable in the face of the enormous problems facing government at all levels. In actual fact, there are sufficient checks and balances between the three main branches—judicial, executive, and legislative—precisely as the architects of the federal Constitution laid them down.

The architects of the federal Constitution devised the two-branch legislature to deal with the problem of the "sovereign" states. Within these states there are no sovereign subdivisions, just as there are none within cities.

As Alfred Willoughby, executive director of the National Municipal League, expressed it: It is no more logical to have two branches of the state legislature than it is to have two governors.

THE NEED FOR UNICAMERALISM

William J. D. Boyd

State legislatures are probably the most abused governmental institutions in this country. They are misunderstood and they are distrusted. The legislative 'image' is low indeed and only part of this is of their own doing. Most of it is due to the shackles placed upon legislatures by the many "thou shalt not's" of our state constitutions and by the organisational structure of the legislature itself.

Legislatures generally are underpaid, understaffed, ill housed, bound up in procedural antiquities and burdened with entirely too much local government legislation. In one way or another, New York's legislature is encumbered by all these factors, some to a much lesser degree than others. Some of the ills are not dependent upon constitutional reform. On the whole, New York's legislature has been one of the very best. Its public image is lower than it deserves. But the legislature could be dramatically upgraded and its image vastly improved with virtually no change at all in legislative personnel.

Distrust of the legislature is deeply mired in public ignorance of who their legislators are. Immediately after last year's elections, Elmo Roper and Associates polled the inhabitants of New York City, Buffalo, and Onondaga County to find out how much they could remember about the candidates they had just voted for. Only eight per cent of the people in New York City could properly identify one of the candidates (they weren't even asked to name the winner) in either the Senate or Assembly. Only fifteen per cent in Buffalo were right, and a rousing twenty per cent were correct in Onondaga. This is how much the citizens of the Empire State know about the men and women representing them in Albany. No wonder the public views the legislature with suspicion.

At the same time, a Gallup Poll showed that forty-six per cent of the people knew their Congressman, and seventy per cent could identify their mayor.

What New York needs is a dramatic restructuring of its state government. Very serious consideration should be given to the adoption of a single-house legislature. As long as citizens are confronted with an interminably long ballot and are unable to understand or follow the progress of legislation through the two houses, they will never know their legislator nor have much basic trust of the legislature. Present the people of this state with a streamlined ballot — the governor and a legislator — and within ten years a profound change will have taken place in the level of knowledge and interest that the public displays toward state government. Others will doubtless address you on the subject of shortening the statewide ballot; I should like to stick to the subject of the unicameral, or single-house, legislature.

Recently the New York Times stated that, because a large number of delegates to the convention are legislators, unicameralism has little chance of being adopted. It would indeed be unfortunate if the very people who would benefit most were to be the most adamant opponents of unicameralism.

The suggestion that the state shift to a single-house system is interpreted by some legislators as a personal criticism of the job they have been doing. It is no such thing. New York has had one of the best legislative records in the nation and most people acknowledge it. That still does not change the fact that it has been far from perfect and that the public still doesn't know what is going on or who is who. The organizational structure of the legislature is at fault and not the individual legislators. Rather than attacking them, a proposal for unicameralism is meant as an aid to the very people who feel abused by the suggestion.

The single-house concept is not radical, nor is it un-American.

Americans were the first people in modern times to utilize it. Vermont, Pennsylvania and Georgia all had single-house legislatures when every nation in Europe was ruled either by an autocratic monarch or utilized some form of a two-, three-, or four-house system. A majority of American cities had two-house legislatures but have since shifted to the one-house set-up so completely that today only two small towns in New England use bicameralism. Why did city governments change? Because they needed a full-time, action-oriented governing body.

Who ever heard of a bicameral county legislature?

Nebraska has been admirably served by its one-house state legislature, but unfortunately has combined it with other undesirable features that have hurt its value. Often when unicameralism is discussed, the conversation shifts to the comparative merits of legislation passed by the Nebraska and New York legislatures. This is a totally erroneous basis upon which to discuss the issue. The issue is: does the unicameral system perform well in Nebraska in comparison with the old bicameral system in Nebraska? The answer is an emphatic 'yes'. At no time has repeal of unicameralism been proposed in that state. This, and this alone, is what is important when the Nebraska unicameral set-up is discussed.

Great Britain and all the Scandinavian nations have, in actual practice, a one-house system, since the upper chambers are virtually powerless. Both Japan and New Zealand have single-house legislatures and every province in Canada except Quebec also uses unicameralism. It is one of those ironies that, although we started the first major experimentation with unicameralism and were to adopt it for all city and county government in this country, we have been far slower than other nations to see its practical value for our states.

Actually, 'irony' has little to do with it. There are very practical reasons why we have retained bicameralism at the state level and why we want to

it in the first place. American usage of bicameralism began in the newly independent states. Rather than the states' copying the federal government, as is often claimed, the reverse is true. Just as the British system of bicameralism had its roots in class distinction, so, too, the original purpose in this country was to place a check on the "masses." The newly created assemblies of the states were the most egalitarian parliamentary institutions in the world, even if the right to vote was often circumscribed by property-holding requirements, and was always restricted to free males.

The primitive conditions of communications led some states to bicameralism as a means of diffusing representation on a geographic basis. Most, however, had different qualifications for voting for members of the two houses, invariably based on greater wealth for the second house.

A vitally important reason for creating a differently constituted upper house to place a check on the more popularly elected chamber was that few of the states gave their governors the right to veto legislation. The unpleasant memories of colonial governors caused all thirteen original states to create weak chief executives. It was, therefore, to a second legislative chamber that the power to check the popular will was given. Those states which had single-house legislatures changed to bicameralism in order to place such a check on "the people."

It was several decades before the strict property qualifications disappeared. By then tradition and universal acceptance of bicameralism were strong factors in its retention. Equally persuasive, however, was the fact that it had become an important element in the emerging rural-versus-urban controversy. State after state (including New York) changed its apportionment formula so as to perpetuate rural dominance in at least one house. Those states which had single-house legislatures changed to bicameralism so as to introduce area factors in one house, and after 1890 most states entering the Union based one house on area,

the other on population. Recent court actions have now invalidated that purpose for bicameralism.

Some would still argue, however, that bicameralism provides a means of achieving fine shadings of difference in the type of representation in the two houses, even though both must be based essentially on population. [redacted] There are suggestions for lengthening the term of senators to four years, for deliberately creating Senate and Assembly districts unrelated to one another, and for placing citizens who live in an oversized Assembly district in an undersized Senate district. [redacted] Longer terms have some definite advantages but the claim of 'continuity' is a tenuous assertion in this state where the turnover in both chambers — even with reapportionment — is relatively small.

As for making the two sets of districts unrelated to one another, New York has long tried to keep a three-to-one ratio between the two houses, and the desire to place three Assembly districts in one Senate district is very strong. To try to balance out under- or over-representation in the two chambers is a practical impossibility, as anyone who has worked on the redistricting task in this state can testify.

New York has had dozens of legislators shift from the Assembly to the Senate with no discernible change in their voting patterns. In a highly competitive two-party state like New York, the position of the leadership of the Democratic or Republican party is much more important to a legislator than whether he is in the Assembly or the Senate.

The 'different shades of representation' argument has a very nice sound to it, but in the realm of practical politics it has little applicability to New York State.

Today the main argument for bicameralism at the state level is to create one house to act as a brake against impetuous action by the other. It is upon the validity of this that the fundamental value of bicameralism must be judged.

If an act is unconstitutional or damaging to the fundamental rights of any individual or group, there is the ultimate check of judicial review. An even more important factor is the governor's veto power. Any legislative measure that is hasty or ill-advised can be stopped by a governor and it requires a two-thirds majority to override his action.

The old argument that one house is needed to kill the precipitous action of the other is indeed faulty in a state like New York where the governor possesses strong veto powers and a wide range of other powers that aid him in seeing to it that his vetoes are upheld. This state's governors have regularly vetoed twenty-five per cent of the bills, and it has gone as high as thirty-five per cent. No governor's veto has been overridden in more than thirty years. This points up two fallacies in the one-house-checks-the-other thesis. First of all, the 'second' house seems to be letting a lot of legislation by it that our governors have considered questionable. And, secondly, the governors have done a pretty good job of stopping it. If the item veto is extended to non-appropriation items, this gubernatorial check in the 'checks and balances' system will be even greater.

Unicameralism would force legislators to assume fully the responsibilities of the office to which they were elected. Any legislator can tell you of the time — and money — wasted on legislation everyone knows is trivial, which is deliberately introduced with the full knowledge that it will never become law.

A single house would stop such negative aspects of the present system as the buck-passing between the houses that keeps the public confused as to where responsibility lies. It would also stop the highly questionable practice of passing a vast amount of legislation in the last forty-eight hours of a session, when each house hastily passes large numbers of bills previously enacted by the other chamber.

Closely allied with the one-house-checks-the-other theme is the idea that two houses provide time for due deliberation of all measures. Is this actually true? What about the end-of-the-session rush in all bicameral state houses? In Nebraska — again comparing it in purely institutional terms, not in terms of the type of legislation or economy that exist in that state — the unicameral legislature enacts almost exactly the same number of bills each session as did the old bicameral set-up. But less than half as many bills are introduced. Nebraska, incidentally, generally enacts only about one-fourth as much legislation as this state, which is supposed to have a system where deliberation and delay prevail. The unicameral system is a blessing to the legislator, who actually gets much more time to deal with each separate piece of legislation.

Under bicameralism, when the two houses pass different versions of the same bill, it is necessary to refer the measure to a conference committee which ironS out the differences, and whose recommendations are invariably accepted as the final law. Since there is no public testimony given before conference committees and their deliberations are rarely, if ever, open to the public, the end product is frequently enveloped in a cloud of suspicion. Political scientists and other students of the legislative process have long singled out the conference committee as a priority item for reform.

The relative obscurity of the state legislature is the most damning argument against bicameralism. Unicameralism, on the other hand, offers a means

of concentrating the voter's attention upon his state legislator. Greater public awareness heightens the importance of a legislative career.

A single house would further strengthen the legislature as an institution of state government by eliminating one set of checks and balances. Checks and balances are best exercised AMONG the three branches of government, not WITHIN just one of them. Would it be logical to elect two governors, the second to stop administrative action initiated by the first, or to veto bills the other had signed? Should there be two state courts of appeal, one to nullify the rulings of the other? Little-known state legislators are hardly in a position to challenge a popular and powerful governor. (And they would be challenging him on major issues, not the trivial nonsense a second house is now supposed to check.)

A single house would help correct the present imbalance. The role of leading individuals within the legislature would be enhanced; with only one majority leader, one chairman of the education committee, one head of the committee on labor and industry, these men and their positions would come under closer public scrutiny. A poor performance would be punished more easily and a good performance could be rewarded with greater influence or higher office. Men would become known as experts in their own fields and their voices would carry greater weight whenever a legislative-executive dispute arose over a policy issue.

Restoring the balance between the legislative and executive branches could do much to restore public faith and interest in state government. This, in turn, could help to halt the so-called trend to 'big government in Washington'. Single-house legislatures would be closer to and more respected by the public, while at the same time strengthening and streamlining the legislative function.

Better pay, better staffing, and better facilities could be provided for one house than can be done for two. A large bicameral legislature will

never be able to find it politically feasible to spend the money on itself that is necessary in this day and age. A reasonable sized single house, whose members are known to their constituents, will be able to equip, pay and staff itself as a twentieth-century legislative institution should.

It is interesting that Joseph Carlino, former speaker of the New York Assembly, and Jesse Unruh, current speaker of the California Assembly, have both advocated the adoption of a single-house legislature.

Both gentlemen frequently have been on record in opposition to a governor of their own party. They have come to realize that if the legislature is to continue to play a real role in our society it must be strengthened. State government itself needs strengthening. Strong governors, and streamlined reorganized court systems, are not viewed as radical or dangerous anymore. They are, in fact, 'quite the thing' these days. The poor legislature, however, has taken a back seat. If New York really wants to improve its government, it had better think about all <u>three</u> branches, and give unicameralism real consideration.

These then are the arguments for unicameralism: economy, efficiency, a heightened importance to a legislative career, and a strengthening of the legislative institution. All of these are important and desirable but they are insignificant in comparison to the one all-pervasive reason why we should have a one-house legislature — its impact on public awareness.

If one person in a hundred in New York has the vaguest idea of how the legislature actually works and what his particular legislative representatives are doing, it is a miracle. One can present all the beautiful arguments in the world about the need to preserve 'checks and balances', about the 'good record' of past New York legislatures and the need for a 'modest amount' of institutional delay. The fact remains that public attention is shifting more and more to the federal government while, at the same time, awareness of local government

activities remains relatively high. But state government, other than the office of governor, is becoming an ever greater enigma. People DO NOT KNOW their legislators and they DO NOT KNOW what the legislature is doing. It is worse today than it was sixty years ago.

No level of government can remain healthy or dynamic when the public simply does not know and does not care — and that is exactly the situation we have today. The ONLY way that the public has any chance to learn about their legislator and to follow the activities of the legislature is for us to strip away much of the junk in our current constitution and to replace it with a streamlined fundamental document, one of the main features of which would be a single-house legislature.

Feb. 1967

WJDB
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Copy Hereto to Bill Boyd —

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POLITICAL THICKETS AND UNICAMERALISM*

by

Harold S. Roberts

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POLITICAL THICKETS AND UNICAMERALISM*

A simple statement on representative government by Chief Justice Warren in the famous reapportionment cases handed down on June 15, 1964 has been hailed as one of the most revolutionary actions of the United States Supreme Court. So revolutionary, in fact, that some state legislatures have suggested legislation to set aside the Supreme Court decision. Other individuals have suggested the impeachment of members of the Court and of the Chief Justice.

The revolutionary statement written by Chief Justice Warren said in part, "representative government is in essence self-government through the medium of elected representatives of the people, and each and every citizen has an inalienable right to full and effective participation in the political processes of his state's legislative bodies." Such a statement might have been deeply revolutionary in the period immediately following the American Revolution, but it doesn't sound that way in the mid nineteen sixties. During the 18th century we espoused representative government, yet it was not an accepted practice that "every citizen" had an inalienable right to full and effective participation in the political processes of his state's legislative bodies. This was available only to those individuals who had qualified as free citizens because of property rights and other qualifications which we in the 20th century hold to be discriminatory. Some of the reasons why Chief Justice Warren's mild statement is regarded as revolutionary in the 20th century are:

(1) The Supreme Court has entered into an area which before had been considered strictly political and one in which the legislators did not expect the courts to step in. (Their political prerogative would not be touched by the court.)

(2) The Supreme Court decision appeared to support the elimination of the ancient tradition of the bicameral legislature by holding that both houses of state legislatures would have to be apportioned substantially on the basis of population. Although the Court went out of its way to support bicameralism, its action requiring both houses of the legislature to be apportioned on population removed the major underpinning for the bicameral legislature.

Chief Justice Warren said in his opinion, "Most citizens can achieve this participation only as qualified voters through the election of legislators to represent them. Full and effective participation by all citizens in state government requires, therefore, that each citizen has an equally effective voice in the election of members of his state legislature. Modern and viable state government needs, and the Constitution demands, no less."

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* Speech before the Unitarian Church of Honolulu, May 30, 1965.

The Court then went on to say, "Logically, in a society ostensibly grounded on representative government, it would seem reasonable that a majority of the people of a State could elect a majority of that State's legislators. To conclude differently, and to sanction minority control of state legislative bodies, would appear to deny majority rights in a way that far surpasses any possible denial of minority rights that might otherwise be thought to result....Since the achieving of fair and effective representation for all citizens is concededly the basic aim of legislative apportionment, we conclude that the Equal Protection Clause guarantees the opportunity for equal participation by all voters in the election of state legislators. Diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment....We are admonished not to restrict the powers of the States to impose differing views as to political philosophy on their citizens. We are cautioned about the dangers of entering into political thickets and mathematical quagmires. Our answer is this: a denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us."

It might be well to note in passing that the Supreme Court did see some of the implications of its decision but hoped that it would be possible on the ground of the logic of its argument to work out acceptable procedures in each of the states so that the existing bicameral legislatures would be retained. The Court in a statement which is not very persuasive argues for the retention of bicameralism. Its argument is presented following its reasons for the use of population standards in both houses: "We hold (the Court said) that, as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis. Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State."

The reasoning set out by the Court seems to be clear enough. The Court said, "The right of a citizen to equal representation and to have his vote weighted equally with those of all other citizens in the election of members of one house of a bicameral state legislature would amount to little if States could effectively submerge the equal-population principle in the apportionment of seats in the other house. If such a scheme were permissible, an individual citizen's ability to exercise an effective voice in the only instrument of state government directly representative of the people might be almost as effectively thwarted as if neither house were apportioned on a population basis. Deadlock between the two bodies might result in compromise and concession on some issues. But in all too many cases the more probable result would be frustration of the majority will through minority veto in the house not apportioned on a population basis, stemming directly from the failure to accord adequate overall legislative representation to all of the State's citizens on a nondiscriminatory basis. In summary, we can perceive no constitutional difference, with respect to the geographical distribution of state legislative representation, between the two houses of a bicameral state legislature."

As I indicated the Court wanted to make it quite clear that its actions were not to be construed as demolishing the bicameral legislatures. It said immediately following its holding that both houses must be apportioned substantially on the basis of population -- "We do not believe that the concept of bicameralism is rendered anachronistic and meaningless when the predominant basis of representation in the two state legislative bodies is required to be the same -- population. A prime reason for bicameralism, modernly considered, is to insure mature and deliberate consideration of, and to prevent precipitate action on, proposed legislative measures. Simply because the controlling criterion for apportioning representation is required to be the same in both houses does not mean that there will be no difference in the composition and complexion of the two bodies. Different constituencies can be represented in the two houses. One body could be composed of single-member districts while the other could have at least some multi-member districts. The length of terms of the legislators in the separate bodies could differ. The numerical size of the two bodies could be made to differ, even significantly, and the geographical size of districts from which legislators are elected could also be made to differ. And apportionment in one house could be arranged so as to balance off minor inequities in the representation of certain areas in the other house. In summary, these and other factors could be, and are presently in many States, utilized to engender differing complexions and collective attitudes in the two bodies of a state legislature, although both are apportioned substantially on a population basis."

The New York Times in its editorial "The Court and the States" on June 21, 1964 had a very pungent observation on the court's apology for bicameralism. It said, "The strictness of the population yardstick will cause wonder whether there is purpose any longer in having a bicameral state legislature...Chief Justice Warren sought to offset such arguments in the Alabama Case. He maintained that two houses would insure mature and deliberate consideration of measures and prevent precipitate action. With different size constituencies and different length terms, differing collective attitudes would develop, he forecast, even though both bodies were apportioned substantially on a population basis. This (said the New York Times) sounds more like a prescription for political featherbedding than a justification for bicameralism."

Locally the Honolulu Star-Bulletin in its editorial on July 16 had the following to say on unicameralism: "The unicameral system saves time and money, it helps to keep the people's business out in the open, it discourages piling up of legislation for last minute wheeling-and-dealing, it pinpoints responsibility, and it does all this without the loss of essential checks and balances. But it could sideline some legislators, reduce patronage and make the role of the political manipulator more difficult."

The focus on unicameralism has been a long time in coming and I would venture to suggest that the Supreme Court decisions in the reapportionment case will do more for a reexamination of the basic structure of state legislatures in the United States than any single action of our courts.

My own interest in government structure goes back some 25 years to my study of political science. This was not very extensive and perhaps my practical experience in the federal and state government has provided a deeper and better understanding of the functioning of government. However, my introduction to political science, or in those days the study of American government, included a study of the then widely used textbook by Professor Frederic Ogg of the University of Wisconsin and Norman Ray of the University of California.

This voluminous tome as well as some of the general readings on the structure and function of American legislatures left me with two distinct impressions: (1) That there was very little good to be said for American state legislatures during the last 100 years -- their inefficiency, their personal benefits from positions of power and influence (if not outright corruption), the devious machinations of the legislative process, the buck-passing etc., was such that no political scientist would say a good word for them. (2) That the single chamber (unicameral) legislature if given the opportunity might go a long way to make the legislative process more responsive to the needs of people.

The original attitude of trust of the legislatures as against the executive which followed the colonial period shifted quite drastically, and the detailed provisions of many state constitutions adopted during the second half of the 19th and early 20th century placed very stringent limitations on legislatures. This according to Professors Ogg and Ray reflected the growing distrust of the legislatures. They said in part, "The main explanation of our lengthy constitutions is...the widespread distrust of state legislatures growing out of the abuses of legislative power, accompanied by much corruption which marked the middle portion of the past century."

There have been recent observations on state legislatures which are equally damaging and critical, and suggest the need for wholesale revision. This of course is not a reflection on our State Legislature. The Hawaii Legislature compares very favorably with those of other States.

1950 During the campaigning for the Constitutional Convention, I debated the issue of unicameralism with then Senator William Heen primarily to get some community discussion on the relative value of bicameralism and unicameralism. I had no great conviction then that a unicameral legislature was necessarily the answer to the major problems of American legislative bodies, nor was I even convinced at that time that the unicameral legislature would be given serious consideration at the 1950 Constitutional Convention. It wasn't.

One of the helpful side-effects of the recent Supreme Court decisions relates to the removal of one of the major underpinnings of bicameralism -- namely that the establishment of two houses of a state legislature will assure different community interests and thereby complement one another and provide a better spectrum or cross section of the community. This basic argument has been eliminated with the Supreme Court requirement that <u>both</u> houses of a state legislature must be apportioned essentially on the basis of population and that any other criteria would be of a relatively

minor significance. Since this is the case, there seems to be relatively little argument for the retention of a bicameral legislature.

I know of no serious authority on American government who has argued for a bicameral system. They will, of course, in their textbooks present the usual arguments for the bicameral system, such as the argument that it provides better checks and balances; that it represents more diverse community groups; that it may represent varying geographic areas, or that the members of one house may have longer terms of office or may require older individuals in the Senate than in the House. I know of no book on American government which supports bicameralism, and I don't know of a single book which does not speak highly of the unicameral system. It may well be that this is because we in the United States have not had any serious experience of abuse under the unicameral since the unicameral exists in only one state of the union. There were a number of states during the colonial period that had a unicameral legislative body.

All of the arguments of logic and common sense suggest that the unicameral is a highly preferable approach to the legislative process. First and most important it is designed to achieve greater responsibility within the legislature. The importance of this responsibility becomes apparent when one examines the operation of a legislature. It is extremely difficult even for those who follow the legislative processes quite closely to know where the prime responsibility for action or inaction rests.

It is possible through understandings, deals and other devices to have one house adopt legislation with the understanding that it would be killed in the other house. This buck-passing is typical in most American states. It is frequently impossible to know where and to whom responsible citizens may turn to determine why legislation did not pass or why certain legislation did pass.

In addition to the two houses of the legislature, Senator George Norris, the person most responsible for unicameralism in Nebraska, argued that most legislatures in addition have a third house whose operation is even more devious and harmful to the public. This is the operation of the conference committee where the leadership in the two houses turn over the responsibility for working out a final proposal to a select group of both houses. This is reported back and invariably adopted by both houses. There is usually insufficient time at the end of the session or insufficient understanding of the bills, and since agreement had been reached by the leadership and by the conference committee, approval is almost invariably the result. In most cases, however, relatively few individuals are aware of what goes into the final bill and very few members of the public have any idea of what goes on in the conference committees which are generally held in executive session.

In addition there is a tremendous duplication of time and effort in myriad committees in both houses with voluminous and unnecessary bills which are generally used for the purpose of giving the impression to the voter that some legislator favors legislation desired by his constituent, even though it is often well understood that the bill will never get out of committee and will be "filed" in an appropriate dusty corner.

Ogg and Ray sum up the bicameral structure as follows: "Each chamber is, in short, a mere duplication of the other; neither is more conservative or radical than the other, and each is subject to the same influences. Thus it has come about that the state employs two substantially identical organs to perform the same functions." On the question of unicameralism they have this to say: "The advantages of the unicameral system are unmistakable. In the first place, it enables public attention to focus promptly upon the narrow and well-defined area, and therefore permits a real scrutiny of legislative proceedings while laws are being made, a thing which is practically impossible in the case of our present large two-house legislatures with their multitude of committees. In the second place, when there is but one chamber, responsibility cannot be bandied back and forth between two houses, members of one house working with members of the other to defeat legislation, and putting it beyond the power of the public to fix the responsibility....Agreements of this kind...are facilitated by the existence of a dual committee system in the great majority of states, each house having its full set of committees. This duplication furnishes abundant opportunities for shifty deals between two sets of committees, and two sets of political leaders, which still further serve to cloud issues and dissipate responsibility. The disappearance of the dual committee system (including the peculiarly irresponsible and autocratic conference committees), which would, of course, follow the abandonment of the bicameral system, would greatly simplify the legislative process and eliminate much of the delay which nowadays blocks good as well as bad measures....Deadlocks and friction which almost constantly arise between the two houses would cease when two houses no longer existed; and the cost of supporting the legislature might be reduced."

The question of course may well be raised -- why haven't Americans done something about this situation. A partial answer appears to be that the comfort of well-worn shoes are preferred to new ones which might pinch in unexpected places. Ancient shibboleths and customs have to be retained. What is must be because it has existed for a long period of time even if it has outlived its usefulness or historic role.

It is of course possible to develop ways to make the bicameral structure work more efficiently through joint committees, joint hearings, the operation of the committee of the whole, or joint meetings of both houses. In the minds of many, the bicameral structure has outlived its usefulness. This is particularly true since the decision in Reynolds v. Sims. As a tool of government it is regarded by many as a clumsy and inefficient tool, especially in an automated, efficiency-minded, and forward looking society such as ours. No sensible businessman would ever run his business with a system of double committees and double effort and without the ability to pinpoint responsibility for action or for inaction.

(As I have noted, the Supreme Court after undermining the prime supports for the bicameral legislature argues rather lamely for the values of bicameralism. We tend to agree with the New York Times that the argument is nothing more than approval of "a prescription for political featherbedding.")

There is no question that there are a number of valuable features of bicameralism. None of these features need to be eliminated in any reorganization of the legislature. All of the qualities which are useful in bicameralism, such as the age of members of the senate, can also be included into a unicameral system. It is possible for the states to develop a single body which has members representing certain districts who might be elected on a two-year basis, whose minimum age might be 25 or 30, and another group elected from larger districts somewhat similar to the senate, to be elected with a minimum age of 30 or 35. It is also possible to have these individuals elected from differing size geographic units. It is also possible to build into the unicameral system whatever safeguards are necessary to avoid precipitate action. The so-called checks and balances strongly emphasized by those seeking the retention of the bicameral system become meaningless, where in spite of the bicameral system and the check and balances hasty legislation is passed during the closing hours of the session. In many situations the legislation has not even been read let alone understood by those voting for it.

It is possible to build into a unicameral as well as a bicameral system, a procedure for insuring that legislation before it is adopted for final action by the legislature be required to sit on the desk for at least three days. Also on the table should be a copy of the report of the committee setting out the reasons in support of and against the adoption. It is also desirable to require that each bill be read in its entirety to the assembled members of the legislature before a final vote is taken on the bill. It is also possible to see to it that public hearings are held before committees on all bills. The public should have the opportunity to examine the records and files of the committee as well as the votes of the members. Requirements can be written into the rules of the legislature or even through statute or the constitution if it becomes necessary, so that the public will be protected from precipitate action. On the matter of checks and balances, there is still the major check, the public vote during elections. There is also the balance or check of the executive office, which has the responsibility to review and to veto poor legislation. There is also the opportunity of the courts to review legislation which is of a questionable constitutional nature.

It is my belief that the unicameral system, particularly since the reapportionment decisions of the Supreme Court, is a fruitful area for study of our representative form of government. It holds within it the opportunity to revitalize the legislatures of our states. It should be noted that many of our city governments which have budgets and responsibilities in excess of those of the states, as for example in New York City, are unicameral in their operation. Some of the Canadian provinces have gone unicameral as have the Swiss cantons, Norway. It might be noted that State Constitutional Conventions including our own Constitutional Convention of 1950 was a unicameral body. There has been no claim of hasty or precipitate action, even though there was no executive to veto our action. There was, of course, and there always should be the veto power of the people in the adoption of our basic philosophy and structure in the State constitution.

I do not want to leave the impression that any structure, even a unicameral, would resolve the basic problems of government. Structures

are useful insofar as they help achieve the functions and goals of a community of people. It takes devoted and competent people to use the structure to achieve optimum results. A poor structure, however, is an added impediment toward efficient, effective and viable representative government.

It is the hope of many that in the months ahead, prior to our actual convening of a constitutional convention, the people of this community will discuss at length those features which will help bring about responsive and responsible state government. Careful and considerate study should be given to the unicameral legislature as one of the possible avenues for achieving that result.

We have not discussed the possible substantial savings of money which might come about as a result of having a single rather than a bicameral legislature. Substantial savings may be achieved, if the size of the legislature is not increased. The costs attributable to government, however, ought not to be the primary consideration. Providing effective representation should cost more. We ought to be willing to pay more for the kind of government which would be responsive to our needs; the kind that would attract the best people of our community to devote their full time, talents and energy to the administration of government. We believe this will require full-time paid salaries for legislators commensurate with those of other professions. The job should not be a part-time job taken out of a busy work schedule. The individuals should be paid on a full-time basis just as members of the U. S. Congress. Our representatives should be able to devote their full time to the needs of the State. The size of the body might well be reduced in a unicameral legislature.

Until we make a more careful review of the structure of our state governments, and insist on changes we want, we will not get the kind of government which all of us believe we should have and to which we are hopefully entitled. Let us work together to achieve more effective participation in our state government.

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ARTICLE IN FAVOR OF A UNICAMERAL LEGISLATURE

BY: WALTER J. BILDER

The division of legislative bodies in this country into two parts had its historical origin in a form of social structure which was composed of two social classes, namely: an aristocracy and the common people, an upper class and a lower class. The prototype for two-house legislatures was the English Parliament. The respective names of the two houses of the English Parliament, namely: the House of Lords and the House of Commons, are historic monuments to the two-class society to which the bicameral form of legislature owes its origin.

In the course of many centuries the governmental power of the House of Lords diminished to the vanishing point so that today all legislative power in the government of Great Britain is possessed by the House of Commons, and the House of Lords has become virtually a governmental vestige. Thus today England, the historical parent of our own bicameral legislative system, has a unicameral legislature.

During the 17th century, the American colonial legislatures almost without exception were unicameral in form. In their unicameral form the colonial legislatures consisted of the colonial Governor and his Council and a group of deputies elected by the people. In New Jersey the frame of government

drawn up by the proprietors in 1665 vested the legislative power in an Assembly comprised of the Governor, six to twelve Councilors and twelve Deputies elected by the people. However, the people of the colonies came to recognize that the Governor and his Council really were the spokesmen of the royal or proprietory rulers and that only the Deputies were the agents of the people. This idea that the members of the single Assembly represented two distinct and different social orders led gradually to the division of the legislature into two houses, meeting and voting separately; and by 1763 all of the colonies except Pennsylvania and Delaware had bicameral legislatures.

The Declaration of Independence in 1776 necessitated the establishment of state governments and between 1776 and 1781 eleven of the thirteen colonies framed new constitutions. Nine of these state constitutions provided for bicameral legislatures and two of them, namely, Pennsylvania and Georgia, adopted constitutions providing for a single legislative chamber. It is notable that Pennsylvania had a unicameral legislature from 1701 to 1776 and retained this unicameral form of legislature after it became a state until the year 1789.

by New Jersey in 1776 required that a member of the upper branch of the legislature should be a freeholder of the county and be worth at least 1,000 pounds, while a member of the lower branch was only required to be worth 500 pounds.

With reference to this difference between the qualifications which the voters were required to have in respect of the upper house of the state legislatures and the lower house/ respectively a noted historian says: "the barriers to universal manhood suffrage in the early American states served as a defense for property rights, and in most of the states the Senate afforded special representation to wealth. The representation of mere man was left to the lower house . . . this was a conscious purpose in the formation of the second chamber."

When the federal Convention met in Philadelphia in 1787 and drew up a Constitution providing for a bicameral federal legislature, the delegates were naturally under the influence of the example of the bicameral system which existed in most of the states from which they came. But the real cause of the provision for a bicameral Congress was the deadlock between the small states and the large states, the former demanding that there should be a single chamber in which all of the states would have equal voting strength (known as the

The adoption of the bicameral form of legislature by most of the colonies after they became independent states was attributable to the fact that, although there was no aristocracy in the colonies, there were well recognized social distinctions based on wealth instead of on birth. Accordingly, the upper house of the bicameral legislature in the independent states was regarded as a convenient device for the special representation of the wealthy and propertied class. What secured this special representation was the fact that there were two general types of political restrictions on the right to vote or the right to hold office. These restrictions were based on the ownership of property or the amount of income, and the amount of property or income which a person was required to have in order to be qualified to vote for the election of members of the upper house of the legislature or to hold office in the upper house was much greater than the amount of property or income which was required with reference to the lower house. In this connection it is notable that Thomas Jefferson objected to Virginia's maintaining the same qualification for the electors of both houses of the legislature in that state on the ground that if both houses represented the same electorate, one of the houses would be superfluous and should be dispensed with. The Constitution adopted

New Jersey plan) and the large states demanding a two-house Congress with membership in both houses to be based on proportionate representation (known as the Virginia plan.) This deadlock was broken by the Connecticut Compromise under which the states were to have equal representation in the Senate and proportional representation in the House of Representatives. This arrangement was copied in the states like New Jersey, where representation in the state Senate was afforded to geographical units as such.

In another very important respect the example of the federal Constitution was followed by the states, namely: the assignment of special powers and functions to the upper house not shared by the lower house. In the case of the federal Constitution this governmental differentation between the Senate and the House of Representatives was dictated by the fact that the federal Constitution-makers actually feared the possession of too much governmental power by the people. To quote a noted historian, the delegates to the Constitutional Convention "were almost without exception members of the upper, propertied classes. They were alarmed by such signs of incipient democracy as Shay's Rebellion . . . in Massachusetts. To them democracy was synonymous with confusion and licentiousness."

In the same vein Alexander Hamilton said: "All communities divide themselves into the few and the many. The first are the rich and well born, the other the mass of the people. The voice of the people has been said to be the voice of God; and however generally this maxim has been quoted and believed, it is not true in fact. The people are turbulent and changing; they seldom judge or determine right. Give therefore to the first class a distinct, permanent share in the government. They will check the unsteadiness of the second, and as they cannot receive any advantage by a change, they therefore will ever maintain good government."

In line with this view, the federal Constitution originally was framed to provide for the election of the Senate by the state legislatures so that the Senate would not be subject to popular control and therefore would be a bulwark of the properties classes against the propertyless masses. This view was expressed by Edmund Randolph, one of the delegates, in the following words: "The object of the second branch is to control the democratic branch of the national legislature." It is thus plainly evident that in adopting the bicameral form of legislature, the states were endorsing an idea that an upper house of the legislature was needed in order to

afford special protection to the interests of the relatively small wealthy portion of the electorate against legislation adverse to their interests by the lower house which represented the mass of the electorate who were without wealth.

In considering the question of whether the proposed new Constitution of New Jersey shall provide for a bicameral legislature or a unicameral legislature, it is of transcendant and critical importance to realize that if a bicameral form of legislature is adopted, the people of New Jersey will not be following an example furnished either by New Jersey's present Constitution or the Constitution of 1844 which preceded it. For, under those Constitutions representation in the upper house of the legislature is based, not upon proportional representation, but on geographical divisions of the state treated as political units. Thus in the year 1938, eight of the state's counties containing four-fifths of the population of the state had eight Senators, while thirteen counties containing one-fifth of the population of the state, had thirteen Senators. The situation today is comparable to what it was in 1938.

However, if the proposed new Constitution of this state provides for a bicameral legislature, both houses of the

legislature must be based upon proportional representation. This means that a bicameral system under the proposed new Constitution would be something totally novel and untried in the history of this or any other state. Therefore it would lack totally the powerful support which any form of social action always derives from historical precedent or past experience. A bicameral system in which both houses are based upon proportional representation would be a political innovation. It follows from this important fact that all of the usual arguments advanced to justify a bicameral system would be wholly inapplicable. The incontrovertible fact is that a bicameral legislature in the proposed new Constitution of New Jersey would produce a sheer duplication in the legislative portion of the structure of our state government.

Chief among the traditional arguments advanced to justify a bicameral legislature is the claim that an upper house is needed to check the legislative power of the lower house. Obviously, such an argument is inapplicable to a bicameral legislative system in which both houses are based on proportional representation. For, if so applied, the argument would amount to saying that the people of the state need to elect two sets of legislative representatives so that each

set can act as a check on the other. Such an argument is self-evidently absurd. Indeed, if each of two sets of legislative representatives were really to perform the function of checking the action of the other, the resulting situation could only be aptly described by Benjamin Franklin's statement in which he likened a two-house legislature to a wagon with a horse hitched to each end pulling in the opposite direction.

I have said that if the people of New Jersey now adopt a Constitution which provides for a bicameral legislation they will not be following any historical political precedent but will be making an unheard-of political innovation. Yet, in another sense, the provision of a bicameral form of legislature in the proposed new Constitution will not be the breaking of new political ground but will be the continuing occupation of very old political ground,- ground which is utterly unsuitable for and incompatible with a democratic society. For,the bicameral form of legislature originated in a two-class society, one in which there was an upper social class and a lower social class; the bicameral system has always derived its claimed justification from the alleged need for protecting the interests of the upper class

from injury by the legislative action of the lower class; and the inclusion of the bicameral system in the proposed new Constitution of this state will serve to perpetuate a socially-invidious and ~~solely~~ virtually-obstructive political anachronism.

In conclusion, I would like to call attention to the all-important fact that this Constitutional Convention affords to the people of this state a golden opportunity to do away with one of the most harmful and anti-democratic features of the state's present governmental structure, namely: the power of each member of the Senate virtually to control appointments to office in his county which are within the appointive power of the state's Executive to make. Not the least of the salutary results of a unicameral legislature in this state will be the abolishment of this dictatorial anomaly in our democratic form of state government.

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annual report 1971

WICHE

the western interstate commission for higher education

annual report 1971

WICHE

A REPORT TO THE GOVERNORS, THE LEGISLATORS, AND THE PEOPLE OF THE 13 WESTERN STATES.

WESTERN INTERSTATE COMMISSION FOR HIGHER EDUCATION.

P.O. DRAWER P, BOULDER, COLORADO 80302,

JANUARY, 1972

Alaska • Arizona • California • Colorado • Hawaii • Idaho • Montana • Nevada • New Mexico • Oregon • Utah • Washington • Wyoming

WICHE is a public agency through which the people of the West work together across state lines to expand and improve education beyond the high school.

HISTORY:

- was created to administer the Western Regional Education Compact, which has been adopted by the legislatures of all the 13 western states;
- was formally established in 1951, after ratification of the compact by five state legislatures; program activities began in 1953.

ORGANIZATION:

- is composed of 39 commissioners, three from each state, appointed by their governors; they serve without pay;
- is served by a small professional staff, supplemented by consultants, councils, and committees.

PURPOSE:

- seeks to increase educational opportunities for western youth;
- assists colleges and universities to improve both their academic programs and their institutional management;
- aids in expanding the supply of specialized manpower in the West;
- helps colleges and universities appraise and respond to changing educational and social needs of the region;
- informs the public about the needs of higher education.

PROGRAM AND PHILOSOPHY:

- serves as a fact-finding agency and a clearinghouse of information about higher education and makes basic studies of educational needs and resources in the West;
- acts as a catalyst in helping the member states work out programs of mutual advantage by gathering information, analyzing problems, and suggesting solutions;
- serves the states and institutions as an administrative and fiscal agent for carrying out interstate arrangements for educational services;
- has no authority or control over the member states or individual educational institutions; it works by building consensus based on joint deliberation and the recognition of relevant facts and arguments.

FINANCES:

- is financed in part by appropriations from the member states of $15,000 annually; the states also contribute $7,500 each to participate in a regional program in mental health, mental retardation, special education, corrections, rehabilitation, and the helping services;
- receives grants and contracts for special projects from private foundations and public agencies; for each dollar provided by the states during Fiscal Year 1972, WICHE will expend more than $17 from non-state sources; in the past 16 years, grant and contract commitments have exceeded $25 million.

a message from the director

Twenty years ago, in 1951, the Governors of five Western states signed legislation establishing the Western Regional Education Compact. By 1953, three other states joined; the first executive director was appointed; and program activity began. By 1959, all 13 eligible states had joined.

To date, the 13 western states have invested $3,053,000 in WICHE's operation.

Question: What have the states received in return?

Answer: The "seed money" provided by the western states has made them beneficiaries of a host of significant regional programs. These programs have been mounted by WICHE and largely funded by private and public agencies, with grants totalling $25 million. Over the years, the ratio of state dollars to grant dollars has been nearly eight to one. And this current year, the ratio is $17 of grant support to $1 of state support. In other words, just measuring dollar-for-dollar value, WICHE has proved to be a good investment for the western states.

This year's annual report can only highlight a few of WICHE's significant contributions. But as in years past, WICHE has continued its efforts to increase and improve educational opportunity for the people of the West, and to assist the colleges and universities to improve both their academic programs and their institutional management.

For example, the Student Exchange Programs, WICHE's oldest programs, have been expanded once again. New fields of professional education have been included which are not offered by sending states. This year, the number of exchange students rose to an all time high of 790. These students come from 11 states and attend 42 different professional schools. Since 1953, WICHE has served as the educational broker on behalf of the sending states and the receiving schools. In total, this accounts for 7,747 student years.

Currently, WICHE's 45 separately budgeted programs are organized under three divisions: General Regional Programs, Mental Health and Related Areas, and the National Center for Higher Education Management Systems at WICHE. The activities of each of these divisions are briefly outlined in the body of this report.

Fee Increase

At WICHE's annual meeting last August, the Commissioners voted to request the state legislatures to raise the WICHE yearly appropriation from its present $15,000 per state to $28,000. It will be ten years (1963) since WICHE last made such a request. The increase was carefully considered by the Commission, whose members agreed that this modest increase (an average of 6.4% per year) is needed to offset inflation and to provide for the increased costs of on-going programs.

These additional dollars will strengthen WICHE:

- by providing seed money for developing new programs to meet emerging, crucial higher education needs;
- by providing dollars for important grants which do not provide 100% funding;
- by providing a better balance between "hard" state dollars and "soft" grant dollars, to insure WICHE's continued viability;
- and by insuring the continuation of the biennial Legislative Work Conference.

But most important, it will reaffirm the West's commitment to WICHE and to the regional approach for solving selected problems in higher education.

The Commissioners and staff feel confident that WICHE has proved that it can grow with the times, and respond to contemporary needs. Over the years, WICHE has effectively identified higher education problems in the West and contributed significantly to their solution. This has been demonstrated by the increasing support of granting agencies, which have spotted WICHE as a doer in higher education.

Thus after ten years of accomplishment, the Commissioners did not hesitate to request an adjustment of the WICHE appropriation from the states. They felt confident that WICHE had proved its ability to pay the highest of dividends for the states' investment.

We seek the support of all those who think likewise.

Robert H. Kroepsch

Robert H. Kroepsch
Executive Director

1971—1972
Chairman
Francis A. Barrett, M.D., Wyoming
Vice-Chairman
Dr. Roy E. Lieuallen, Oregon

commissioners

As of January, 1972

The WICHE Commission is composed of 39 dedicated men and women, who serve without pay as the board of directors for the organization. They are the decision makers, the providers of ideas, and the takers of the western pulse in higher education.

Each western state is represented by three commissioners, appointed to four-year terms by the governor. One commissioner from each state must be actively involved in higher education. The other two are drawn from such wide-ranging fields as state government, medicine, law, business, and other areas.

ALASKA

*Mrs. Delio Pruhs, Fairbanks
John S. Hellenthal, Attorney, Anchorage
Dr. William R. Wood, President, University of Alaska

ARIZONA

*Dr. Richard A. Harvill, President Emeritus, University of Arizona
W.O. (Fred) Craft, Jr., Assistant U.S. Attorney, Phoenix
Dermont W. Melick, M.D., Coordinator, Arizona Regional Medical Program, College of Medicine, University of Arizona

CALIFORNIA

*Dr. Rita R. Campbell, Senior Fellow, Hoover Institution, Stanford University
Dr. Glenn S. Dumke, Chancellor, California State College and University System, Los Angeles
Dr. W. Ballentine Henley, President of the Board of Trustees, United Church of Religious Science, Los Angeles

COLORADO

*Dr. Kathryn M. Smith, Dean, School of Nursing, University of Colorado Medical Center
Dr. William E. Morgan, President Emeritus, Colorado State University
C. Gale Sellens, President, Lakeside National Bank, Wheatridge

HAWAII

*Dr. Frederick P. Haehnlen, Jr., Professor of Educational Psychology, University of Hawaii

John B. Connell, Life Underwriter, Insurance Company; Communications Coordinator, Model Cities Program, Kailua

George Goto, M.D., Honolulu

IDAHO

*Martha D. Jones, M.D., Boise

Dr. John B. Barnes, President, Boise State College

Dr. William E. Davis, President, Idaho State University

MONTANA

*Warren D. Bowman, M.D., Billings

Edward W. Nelson, Executive Secretary, The Montana University System, Helena

Herman C. Ross, D.V.M., Kalispell

NEVADA

*Dr. Juanita Greene White, State Assemblyman, Boulder City

Fred M. Anderson, M.D., Regent, University of Nevada

Dr. Thomas T. Tucker, Chairman, Department of School Administration and Supervision, College of Education, University of Nevada

NEW MEXICO

*Carter Kirk, Land Developer, Deming

Dr. Ferrel Heady, President, University of New Mexico

Clory B. Tafoya, Principal, Valencia Elementary School, Los Lunas

OREGON

*Mrs. Edna Scales, Portland

Dr. Roy E. Lieuallen, Chancellor, Oregon State System of Higher Education, Eugene

Lynn W. Newbry, State Senator, Ashland

UTAH

*Richard J. Maughan, Member, State Board of Higher Education; Attorney, Salt Lake City

Dr. G. Homer Durham, Commissioner, State Board of Higher Education, Salt Lake City

Mrs. Dorothy K. Watkiss, Member, University of Utah Institutional Council

WASHINGTON

*Gordon Sandison, State Senator; Insurance Broker, Port Angeles

James Furman, Executive Coordinator, Council on Higher Education, Olympia

Dr. Glenn Terrell, President, Washington State University

WYOMING

*Richard R. Jones, State Senator, Cody

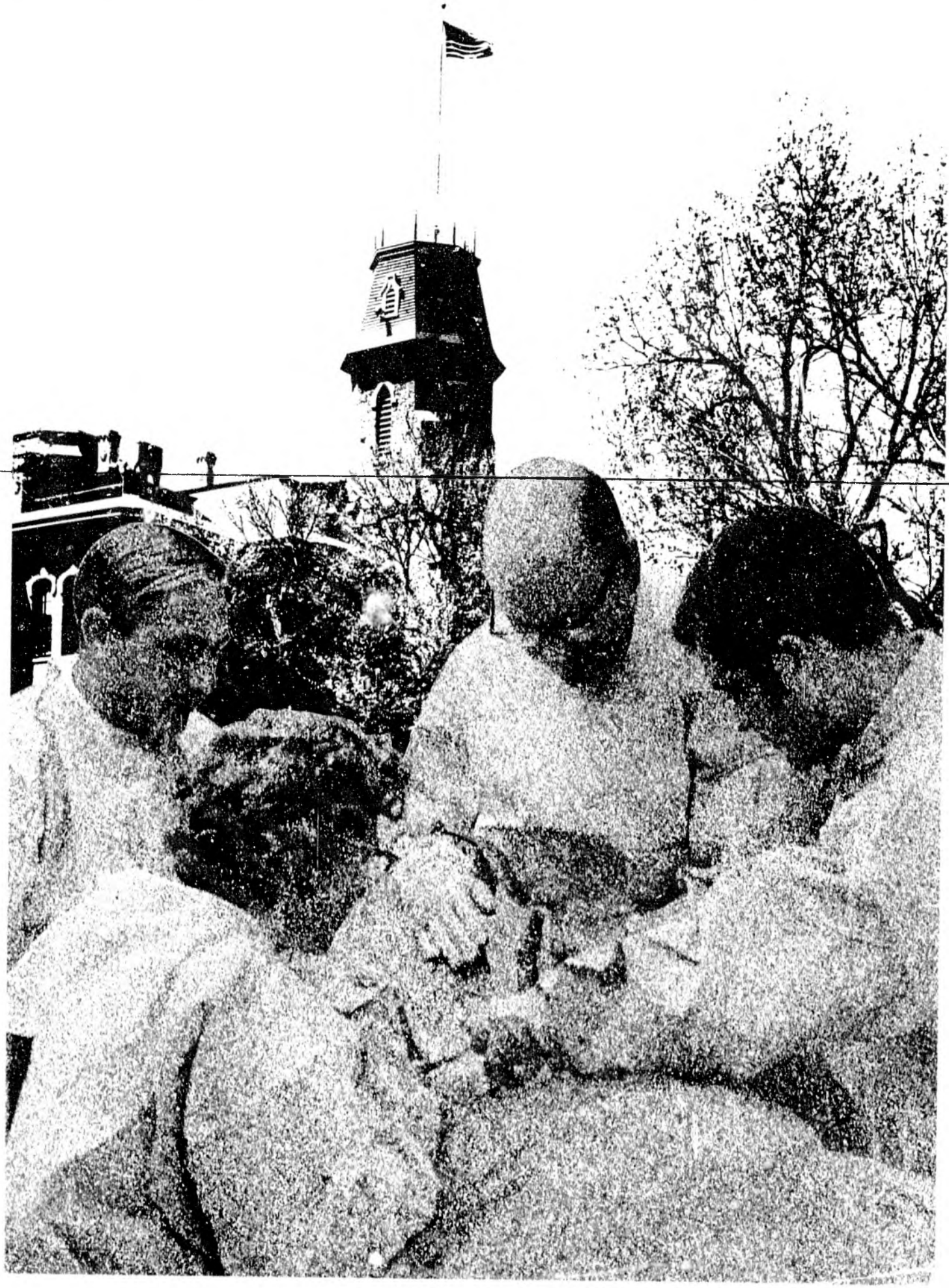
Francis A. Barrett, M.D., Cheyenne

Dr. William D. Carlson, President, University of Wyoming

*Members, Executive Committee

chairmen of WICHE

1951-53	**Dr. O. Meredith Wilson**	Dean, University College, University of Utah
1953-54	**Dr. Tom L. Popejoy**	President, University of New Mexico
1954-55	**Dr. G. D. Humphrey**	President, University of Wyoming
1955-56	**Frank L. McPhail, M.D.**	Physician, Great Falls, Montana
1956-57	**Ward Darley, M.D.**	President, University of Colorado
1957-58	**Frank J. Van Dyke**	Attorney, Medford, Oregon
1958-59	**Dr. Fred D. Fagg, Jr.**	President Emeritus, University of Southern California
1959-60	**Dr. Richard A. Harvill**	President, University of Arizona
1960-61	**Alfred M. Popma, M.D.**	Physician, Boise, Idaho
1961-62	**Dr. C. Clement French**	President, Washington State University
1962-63	**Dr. Charles J. Armstrong**	President, University of Nevada
1963-64	**Dermont W. Melick, M.D.**	Physician, Phoenix, Arizona
1964-65	**Dr. Willard Wilson**	Secretary, University of Hawaii
1965-66	**Mrs. Thomas Scales**	Collector of Customs, Portland, Oregon
1966-67	**Dr. William R. Wood**	President, University of Alaska
1967-68	**Gordon Sandison**	State Senator, Port Angeles, Washington
1968-69	**Dr. Merle E. Allen**	Director, Coordinating Council of Higher Education, Utah
1969-70	**John G. Mackie**	Assistant Professor, Colorado Mountain College; Attorney, Carbondale
1970-71	**Dr. Rita R. Campbell**	Senior Fellow, Hoover Institution, Stanford University, California
1971-72	**Francis A. Barrett, M.D.**	Physician, Cheyenne, Wyoming



division of general regional programs

From the surgical table to the campus, WICHE's Division of General Regional Programs carries forth projects and programs which strike to the core of many western needs in higher education.

In this division, higher education is viewed from the broadest possible perspective. Programs are developed to meet both on-campus and off-campus needs.

Dr. Kevin Bunnell

Mrs. Patricia Locke (at right), director, WICHE's Ethnic Programs in Higher Education, outlines program plans for increasing access to higher education for Blacks, Chicanos, Asians, and Indians.

In recent years, health has been a major concern in the West. Therefore, this division, responding to the need, has concentrated on health education. One example is the $1 million-a-year Mountain States Regional Medical Program covering the states of Idaho, Montana, Nevada, and Wyoming. Other examples include seven separate programs in nursing education. And there is the Student Exchange Program, which now offers interstate educational opportunities in eight health fields.

The Division of General Regional Programs has responded to other educational needs, as well. Programs have been mounted to improve and expand education's offerings for ethnic minorities, to train library personnel, to give college students a taste of real life with internship experiences, and to boost educational opportunities for community college students.

Division Director Kevin Bunnell describes the General Regional Programs as flexible. They are ready to meet new, and even unpredicted, needs in higher education. Of course as a regional agency, WICHE concentrates on interstate and interinstitutional programming.

According to Dr. Bunnell, program development is the heart of this division. The sole mission of the Special Higher Education Programs (SHEP) unit is to take the western pulse and create new and needed programs. Other division programs also concentrate on project development.

The products of this creativity have been many and varied. But perhaps most impressive have been the Mountain States Regional Medical Program and the SHEP-created National Center for Higher Education Management Systems, now a separate WICHE division with national importance.

division of general regional programs

Jack Arbolino, executive director, College-Level Examination Program, College Entrance Examination Board, speaks at a WICHE conference on Credit by Examination.

These Wyoming physicians carefully examine the subject during a surgical refresher course conducted by the Mountain States Regional Medical Program.

STUDENT EXCHANGE PROGRAMS

To share the educational resources of the West by providing opportunities for professional education when the specialty is not offered within the boundaries of the sending state through a system of student exchanges implemented at cooperating schools. Student exchange models may or may not involve interstate exchange of money.

Above. The topic was teaching innovations for nursing educators. Prof. Crystal Lange (top, right) of Delta (Mich.) College, coaches this nurse in simulation gameplaying. Chalk in hand, James Kent, Denver-based urban expert, explains community development.

Right. AA-degree nursing faculty pick up mental health concepts. Mrs. Joyce Reiswig (left), nursing instructor, Loma Linda U., jots notes during on-the-ward training. Miss Sandra Garfield (right), educational coordinator, Resthaven Psychiatric Hospital, explains the basics of psychodrama.

SPECIAL HIGHER EDUCATION PROGRAMS

To identify pertinent problems confronting general higher education in the West; to explore alternative solutions to these problems in cooperation with the West's colleges and universities; to begin preliminary program development designed to meet identified needs of the region; and to operate on a continuing basis a small number of higher education programs which provide necessary services to the people of the West.

MOUNTAIN STATES COMMUNITY COLLEGE CONSORTIUM

To enhance educational opportunities for students in community colleges in the four-state area of Idaho, Montana, Utah, and Wyoming. This will be achieved through interstate and interinstitutional cooperation and programming geared to the resolution of common problems that participating institutions share as small, geographically isolated, "developing institutions."

ETHNIC PROGRAMS IN HIGHER EDUCATION

To expand minority group access to higher education and to improve the relevance of educational experiences for these students and their communities.

WESTERN COUNCIL ON HIGHER EDUCATION FOR NURSING

To increase educational opportunities for students in nursing by developing programs in nursing education, based on sound educational principles; to identify and organize ways of coping with general nursing problems; and to improve care of patients by disseminating this knowledge throughout the western region.

CONTINUING EDUCATION PROGRAM FOR NURSES

To improve the leadership skills of nurses in teaching, supervision, and administrative positions through a series of short conferences aimed toward improving patient care provided for agencies and institutions employing the participant nurses.

NURSING RESEARCH CONFERENCES PROGRAM

Through an annual conference on nursing research, to share research findings, to receive and give stimulation for further research, and to facilitate the application of findings to patient care. Faculty are stimulated to use results of research in planning nursing school curricula.

REGIONAL PROGRAM FOR NURSING RESEARCH AND DEVELOPMENT

To provide a three-year program of consultation and work clinics directed toward increasing skills of nurses who are undertaking research, particularly in the area of patient care and care delivery, and then assisting these nurses to develop research projects. The goal of the program is to increase the number and quality of nursing research projects in the West.

IMPROVEMENT OF NURSING CURRICULA

To improve and revise curricula in western schools of nursing through integration of selected core concepts of nursing into associate degree, baccalaureate, and graduate programs; to provide information on and stimulate the use of additional innovations in the teaching-learning process.

CONTINUING EDUCATION PROGRAM FOR PSYCHIATRIC NURSES

To assist faculty in associate degree nursing programs to increase their content and skills in psychiatric mental health concepts throughout the nursing curriculum; and to increase the use of psychiatric mental health concepts by nurses in any health care setting.

Resources Development Intern Barbara Greebe trained Lakewood (Colo.) policemen in videotaping techniques last summer.

NURSE FACULTY DEVELOPMENT TO MEET MINORITY GROUP NEEDS

To increase the numbers of minority group students who are recruited and complete nursing programs and to modify existing programs of nursing to include content which will increase the potential of their graduates to provide services relevant to the health needs of minority group communities. The project proposes to achieve these aims through a three-year regional faculty development program.

CONTINUING EDUCATION PROGRAM FOR LIBRARY PERSONNEL

To demonstrate and evaluate the effectiveness of a variety of continuing education methods, materials, and programs in preparing library personnel in all types of libraries and to effect positive change in the delivery of library services.

The soft whirring of 16 mm. cameras backgrounded the 13th annual College and University Self-Study Institute on "The Public Challenge and the Campus Response." Speakers included Dr. Warren Martin, of the Center for Research and Development in Higher Education, Berkeley; and Dr. John Silber, president, Boston U.

MOUNTAIN STATES REGIONAL MEDICAL PROGRAMS

To develop programs in response to major needs in the four states of Idaho, Montana, Nevada, and Wyoming for continuing education for health personnel and for facilities which will strengthen the capacity of physicians and other health professionals to treat heart disease, cancer, stroke, and related diseases.

Operational Programs

1. Core Operation
2. Coronary Care Training—Montana
3. Cancer Education and Treatment Center (Mountain States Tumor Institute)
4. Continuation Education for Health Professionals in Montana
5. Rocky Mountain Tumor Registry
6. Continuing Nursing Education—Nevada
7. Continuing Education in Inhalation Therapy for Physicians, Therapists, and Nurses
8. Consulting Team Approach to Continuing Education for Health Service Personnel in Rural Communities in Nevada
9. Continuing Nursing Education—Idaho
10. Coronary Care Training—Southwest Idaho
11. Continuation Education for Nursing—Wyoming
12. Continuation Education for Nursing—Montana

RESOURCES DEVELOPMENT INTERNSHIP PROGRAM

To promote the productive interchange of ideas between the academic community, including students, and the participants in community organizations throughout the West, especially by means of the process of service-learning, by building bridges between educational institutions and community organizations, and by developing new and innovative supplementary projects.

division of mental health and related areas

It's a leap of lifetimes and of life styles—from the bloody past and grey frustration of the streets in Watts, here symbolized by Watts Towers, to the bright, sun-filled promises of this young artist for whom the behavioral sciences offer up their best.

Such is the range encompassed by WICHE's Division of Mental Health and Related Areas. Eight separate programs cover the span from "street training" in such poverty pockets as Watts, California; to special on-campus programs for students, faculty, and administrators; to continuing education efforts for the full range of mental health professionals.

Designed to meet a variety of western needs, WICHE's health programs are diverse and specialized.

Robert L. Stubblefield, M.D.

But when Division Director Robert Stubblefield, M.D., discusses programming, he talks in terms of *integration* and *interdependence*.

For Dr. Stubblefield, integration means more than mental health programs working together. It means closely relating division programs with programs in health and education. It means a broad perspective of mental health issues and needs—a perspective that is sociological and biological, as well as psychological. In other words, the idea is to create a united front for the common good.

The Division of Mental Health and Related Areas was created in 1956 at the request of the Western Regional Conference of the Council of State Governments. The creation of the division and its advisory board, the Western Council on Mental Health Training and Research, was based on a two-year survey of the needs of the western region.

As for future objectives, Dr. Stubblefield has charted divisional emphases in the areas of •drugs and drug abuse education, •teacher training in early childhood education, and •continuing professional education in the two fields of program evaluation and geriatrics. He also noted an interest in developing programming dealing with Indians and other ethnic groups. These programs would examine family and cultural strengths and develop a core of mental health manpower.

Raymond Feldman, M.D., former director, WICHE Mental Health Division, retired in September, 1971.

division of mental health and related areas

A founding father of mental health worker training, Dr. John True, of Johns Hopkins Hospital, was a principal speaker at a four-state WICHE conference on community college mental health worker programs.

Calling for a return to Indian religions and philosophies, Bud Mason (center), alcoholism worker, Rapid City, S. Dakota, spoke to 100-plus Indians from five southwestern states at a WICHE conference on Indian mental health issues—alcoholism and suicide. Be-feathered dancers from the Albuquerque Indian School were featured at one evening session.

Mrs. Menola Upshaw laughs heartily at a quip, while discussing new styles of training programs for regular teachers in the area of special education at a WICHE conference. Mrs. Upshaw is supervisor, Special Education Division, Denver Public Schools.

T. George Harris, editor, *Psychology Today*, sparked life into a breakfast discussion on education for master's-level psychologists at a conference in San Diego, co-sponsored by WICHE and the American Psychological Association.

CONTINUING PSYCHIATRIC EDUCATION FOR PHYSICIANS PROGRAM

To increase the supply of psychiatrist-teachers for nonpsychiatric physicians of the West, in areas remote from training institutions; to provide demonstration study opportunities for physicians practicing in these areas and to stimulate the development of ongoing training programs for them; and to provide liaison for the western region in this field.

WESTERN CONFERENCE ON THE USES OF MENTAL HEALTH DATA

To develop methods of training mental health statisticians, to develop new methods for effective collection and utilization of mental health data, and to develop a vehicle for communication and collaborative research among interested professionals in this field.

COMMUNITY COLLEGE MENTAL HEALTH WORKER PROGRAM

To develop community college educational programs in mental health in order to meet the manpower needs for service delivery in rural areas and to emphasize, particularly, the recruitment and training of Spanish-American and Indian students from rural areas.

First angry words, then a nervous rapprochement as Chicanos from six states met in a continuing education conference on "Implementing Organizational Change in the West." Participants included (l. to r.) Bernardo Lujan, of Denver; Eloy Apodaca, director, Chicano Institute, Seattle, Washington; Dr. Juan Ramos, special assistant to Director, National Institute of Mental Health; and Miss Julia Soto, of Tucson, Arizona.

SPECIAL EDUCATION FOR GENERAL EDUCATORS

To improve the understanding and capability of general educators—especially those already working in regular classrooms, in the inner city, and in geographically remote areas—in teaching exceptional children, by providing assistance to institutions and agencies in the 13 western states as they plan special training programs and special education programs for the delivery of services.

IMPROVING MENTAL HEALTH SERVICES ON WESTERN CAMPUSES

To assist four-year colleges and universities in the 13 western states to improve the organization and delivery of mental health related services throughout their campus communities.

Staffers from California Youth Authority institutions tested their grit and learned first-hand about ghetto life during four days of "street training" in Watts, California last spring. Ghetto-bred trainers were used for the sessions. They included 15-year-old Kenny Carter (left), brother of Black Panther "Bunchy" Carter, who was shot down by a rival group of black militants; and Volly Bastine (above, left), teacher, Drew Junior High School. Above, right: On the street, this white CYA trainee finds himself alone and very lonely.

MENTAL HEALTH CONTINUING EDUCATION

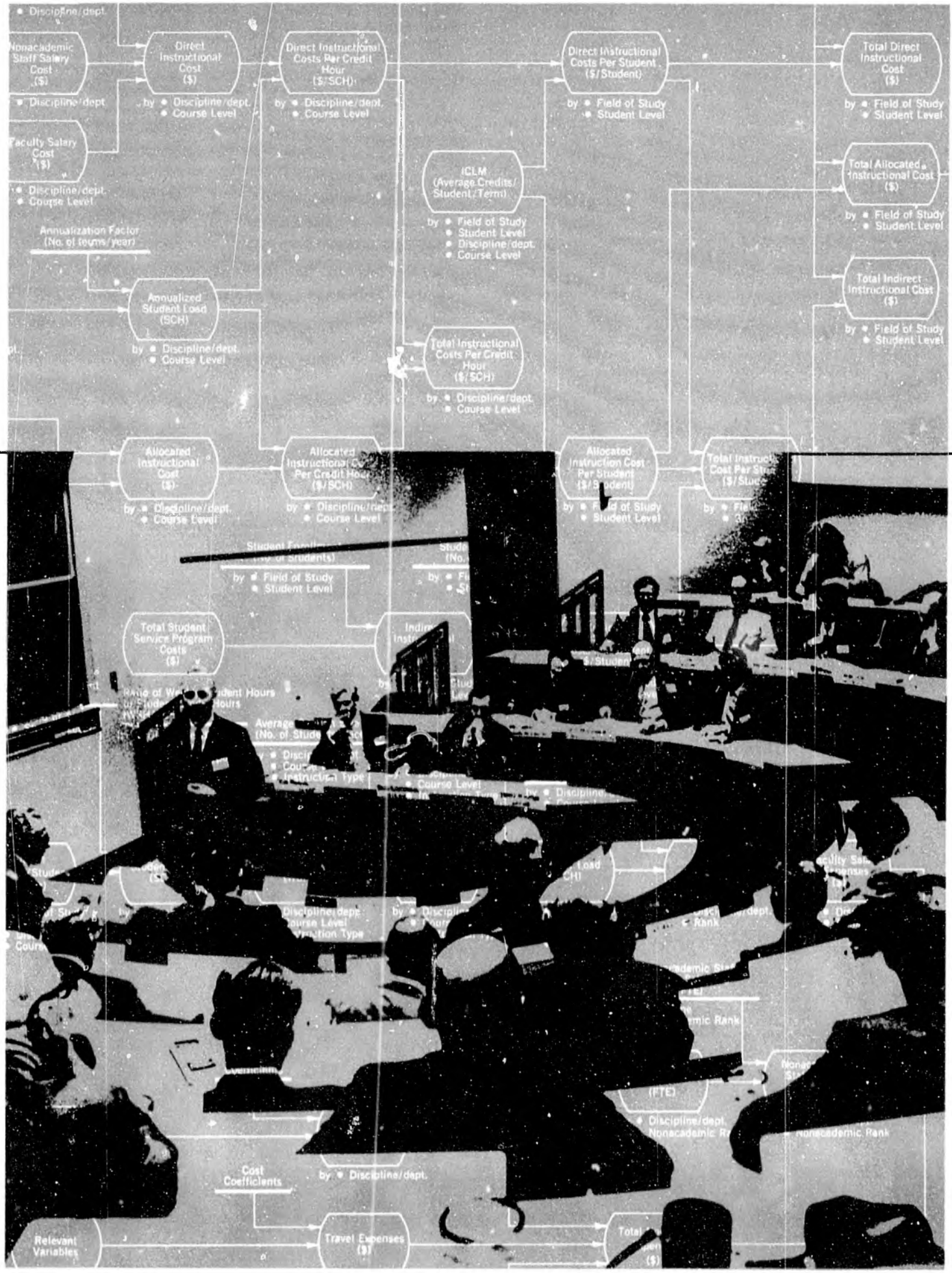
To help develop a collaborative field of continuing education for mental health personnel in the West, a field linked by mutual planning among leaders in university programs and treatment agencies and characterized, eventually, by a variety of flexibly designed, short, intensive courses for members of the core professions in both urban and rural settings.

DEANS AND FACULTY OF SCHOOLS OF SOCIAL WORK PROGRAM

To involve the deans of the graduate schools of social work in the western states in a program of continuing education which provides for their own professional development and enables them to share in the development of opportunities for continuation of their faculties; and to provide support for a regional workshop program for graduate school faculty.

CORRECTIONS PROGRAM

To provide in-service training for juvenile and adult correctional personnel in eleven of the thirteen western states under two separately funded projects—Regional Institute for Corrections, Administrative Study; and Nationwide Educational Programs for Institutionalized Children.


Discipline/dept.
Nonacademic Staff Salary Cost ($)
Discipline/dept.
Faculty Salary Cost ($)
Discipline/dept. Course Level
Annualization Factor (No. of terms/year)
Direct Instructional Cost ($)
by Discipline/dept. Course Level
Direct Instructional Costs Per Credit Hour ($/SCH)
by Discipline/dept. Course Level
Annualized Student Load (SCH)
by Discipline/dept. Course Level
ICLM (Average Credits/ Student/Term)
by Field of Study Student Level Discipline/dept. Course Level
Direct Instructional Costs Per Student ($/Student)
by Field of Study Student Level
Total Direct Instructional Cost ($)
by Field of Study Student Level
Total Allocated Instructional Cost ($)
by Field of Study Student Level
Total Indirect Instructional Cost ($)
by Field of Study Student Level
Total Instructional Costs Per Credit Hour ($/SCH)
by Discipline/dept. Course Level
Allocated Instructional Cost ($)
by Discipline/dept. Course Level
Allocated Instructional Cost Per Credit Hour ($/SCH)
by Discipline/dept. Course Level
Allocated Instruction Cost Per Student ($/Student)
by Field of Study Student Level
Total Instructional Cost Per Student ($/Student)
by Field of Study Student Level
Student Full-Time Equivalent (No. of Students)
by Field of Study Student Level
Total Student Service Program Costs ($)
Ratio of Weighted Student Hours to Student Hours
Average (No. of Students)
Discipline/dept. Course Level Instructional Type
Course Level
Discipline/dept. Course Level Instruction Type
Rank
Nonacademic Rank
(FTE)
Discipline/dept. Nonacademic Rank
Nonacademic Rank
Cost Coefficients
by Discipline/dept.
Relevant Variables
Travel Expenses ($)

national center for higher education management systems at WICHE

The National Center for Higher Education Management Systems (NCHEMS) means people working together to solve some of the tough problems in higher education—principally management problems.

This WICHE Division has three broad goals: (1) the improvement of institutional management, (2) the improvement of statewide coordination of higher education, and (3) the improvement of decision-making processes on the highest national levels.

The process for achieving these goals is to design, develop, and facilitate the implementation of systems for planning and management which can be used at all levels of higher education.

Basically, the NCHEMS systems are tools—management tools. And when they are put to work, they help the decision maker in higher education to do a better job. The tools help the administrator gather the pertinent raw data and translate these isolated facts into useful information. All of this means the quick identification of more and clearer options for education's managers, who then should make better decisions.

Dr. Ben Lawrence

Dr. Robert Huff, director, NCHEMS Training and Implementation Unit is shown here with a slide from one of the unit's instructional presentations.

A central part of decision making and NCHEMS work is *accountability*, that catchword that asks: Do the benefits of higher education justify the costs?

NCHEMS Director Ben Lawrence notes that legislators, parents, and the public in general want to know what they are getting for the tax dollar. Educators, too, are concerned with accountability and other budget questions. They must balance tight money against rising costs, increased enrollments, and new program demands. NCHEMS is busy developing the tools to help answer those questions raised by this growing demand for accountability.

Even with all the talk of accountability, systems, and computer-age technology—the key in NCHEMS is people. These people are in all 50 states and at 725 institutions who use these management tools and are affected by them. For this reason, NCHEMS staff involves them at every level of program construction and implementation, seeking their advice and asking their consultation.

In other words, the principal designers and constructors of NCHEMS programs are the people affected by them. They include college and university faculty and administrators, students, members of governing boards and coordinating councils, legislators, and others.

As indicated by its title, this WICHE Division has been designated as a "national center" by the U.S. Office of Education, which is funding NCHEMS at $1 million yearly. Before the name change this year, NCHEMS was known as the Division of Planning and Management Systems.

NCHEMS is composed of 23 separate programs, which are generally divided into three units. The units are Development and Applications, Research, and Training and Implementation.

national center for higher education management systems at WICHE

MANPOWER ACCOUNTING MANUAL
To provide standard categories for classifying and reporting employee activities typically associated with jobs and positions in colleges and universities.

DATA ELEMENT DICTIONARY
To establish uniform sets of definitions for the data to be used in the Center's program. Uniform data elements are the foundation for the development of compatible data bases in the participating institutions.

PROGRAM CLASSIFICATION STRUCTURE
To design a taxonomy of higher education programs that will serve as the framework for comparable data exchange and reporting, assist in program budgeting, and serve as the framework for the development of generalized analytical models.

STUDENT FLOW MODELS
To develop analytical models that will predict student enrollment and simulate student progression through postsecondary education at both the institution and state system level.

FACULTY ACTIVITY ANALYSIS
To develop standard procedures for analyzing faculty activities and to design techniques that may be used to assist in compatible exchange of the data.

RESOURCE REQUIREMENTS PREDICTION MODEL
To develop simulation models to project resource requirements to aid institutional decision makers in the allocation of higher education resources.

INFORMATION EXCHANGE PROCEDURES
To define conventions regarding the manner in which institutional data may be aggregated and arrayed for interinstitutional comparison.

COST FINDING PRINCIPLES
To develop costing methodologies that will permit cost analysis of the various activities in higher education.

HIGHER EDUCATION FINANCE MANUALS
To describe procedures for translating institutional financial data into program structures designed to meet the particular needs of decision makers at the institutional, state, and national levels.

FACILITIES INVENTORY AND CLASSIFICATION MANUAL
To revise the federal *Higher Education Facilities Classification and Inventory Procedures Manual.*

NATIONAL SEMINAR ON HIGHER EDUCATION MANAGEMENT
To conduct a national seminar for the purpose of identifying issues fundamental to developing and implementing comprehensive state planning and management systems.

WICHE's 7th biennial Legislative Work Conference keyed on NCHEMS management systems during three days of sessions on "Legislative Decision Making in Higher Education: How To Get the Facts." Speakers included Rep. Genie Chance (right), of Alaska; keynote speaker John Keller (below, left), consultant, Hawaii Department of Budget and Finance; and Sen. Harold Giss (below, right), of Arizona.

Seventy educational leaders, government officials, and state legislators examined the issues and design of statewide planning for postsecondary education at the 3rd national invitational seminar co-sponsored by NCHEMS. Among the participants were *at left*, Dr. Lyman Glenny, associate director, Center for Research and Development in Higher Education, Berkeley; and *above*, Sen. Lynn Newbry (left), of Oregon with Dr. Roy Lieuallen, chancellor, Oregon State System of Higher Education.

GENERAL TRAINING
To promote the adoption and implementation of new higher education management tools and techniques.

TRAINING MATERIALS AND TECHNIQUES
To develop a variety of training materials and techniques for use in providing instructional experiences that will ensure that the new management tools being developed under the Center's aegis will be fully understood by the higher education community.

Dr. Robert Wallhaus (above), director, NCHEMS Research Unit, and Dr. Warren Gulko (left), director, NCHEMS Development and Applications Unit, answer questions and explain details of their programs at the Legislative Work Conference, in Phoenix.

TRAINING NETWORK
To meet the training needs of institutions and agencies throughout the country on the development and implementation of management technologies.

CENTER PRODUCT WORKSHOPS
To develop and conduct the Center product workshops to include details of specific Center products.

VISITING PROFESSIONALS TRAINING PROGRAM
To provide an opportunity for institutional or agency representatives to obtain a full understanding and working knowledge of NCHEMS developmental work and to contribute in a meaningful fashion to some specific aspect of the Center's developmental work.

A STUDY OF FEDERAL FINANCING PLANS FOR HIGHER EDUCATION
Phase I: To evaluate and make recommendations for implementation relative to a specific federal general assistance plan for higher education. Phase II: To investigate systematically the financial needs of higher education and to develop and analyze alternative federal financing plans with the objective of making recommendations for implementing a plan or set of plans that best addresses the identified financial needs of higher education

STATEWIDE PLANNING SYSTEMS
To conceptualize statewide planning systems that will result in design specifications for such additional programs as analysis of manpower trends, statewide planning and resource allocation models, and information systems for statewide planning.

STUDENT FLOW
To advance the state-of-the-art in student flow analysis by generalizing such concepts as student cohorts, transitions, state-of-the-system, and transition events to encompass a wide range of decision viewpoints of various decision makers. To investigate the stability and predictability of student flow in institutions in statewide systems.

RESOURCE UTILIZATION ANALYSIS
To develop techniques which will aid institutions in more efficient utilization of the resources available to them. This project is primarily directed to such operational or logistical functions of institutions as inventory management, work scheduling, space utilization, and course scheduling.

OUTPUTS OF HIGHER EDUCATION
To improve planning, evaluation, and decision making in higher education by developing quantitative measures and qualitative understandings of the outputs of education programs.

RESOURCE ALLOCATION AND PLANNING MODELS
To develop long-range improvements in the use and predictive capabilities of resource allocation and planning models. To develop techniques that facilitate the study of the resource implications of institutional output experiments and development of methodologies for studying feasible planning of alternatives.

the WICHE student exchange

	MEDICINE																	DENTISTRY								VETERINARY MEDICINE			
	LL	STAN	ARIZ	UCLA	UCSF	UCSD	UCD	UCIRV	COLO	HAW	NEV	NM	ORE	USC	UTAH	WASH	NC	TOTAL	LL	UCLA	UCSF	ORE	UOP	USC	WASH	TOTAL	CSU	UCL	WSU	TOTAL
ALASKA	1		1		1				2			2	4			5	1	17							2	2				
ARIZONA	3	3			1	1			5				1	6	3			23	7	8	3	11	8	16	2	55	19	1	10	30
COLORADO																			1	1	1	9	1	1	7	21				
HAWAII		1		6	1		1		3					1	1	17		31	1	2	1	3		2	2	11	1		2	3
IDAHO	1	1	2			1			2			1	22		18	10		58	1	1	1	18	4		13	38	13		19	32
MONTANA	2	2			1				18			1	11		4	11		50	1			9			4	14	22		34	56
NEVADA	2	1	1	3	1		1		5			6	7		4			31	3	3	2	10	10	6	2	36	7	1	7	15
NEW MEXICO																			1	1		?	3	2		9	24		7	31
OREGON																											12	1	26	39
UTAH																			1		1	4	1		3	10	11	1	4	16
WYOMING	1	4							13			3	4	2	5	5		37				3			4	7	23		3	26
TOTAL	10	12	4	9	5	2	2		48			13	49	9	35	48	1	247	16	16	9	69	27	27	39	203	132	4	112	249

RECEIPT OF SUPPORT FEES BY INSTITUTION

Institutions			Support Received	State Total
ARIZONA				$ 12,000
ARIZ	University of Arizona		$ 12,000	
	Medicine	$12,000		
CALIFORNIA				$412,335
LL	Loma Linda University		$ 74,134	
	Medicine	$30,000		
	Dentistry	38,400		
	Physical Therapy	4,534		
	Occupational Therapy	1,200		
STAN	Stanford University		36,000	
	Medicine	36,000		
UCD	University of California, Davis		13,200	
	Medicine	$ 6,000		
	Veterinary Medicine	7,200		
UCLA	University of California, Los Angeles		65,400	
	Medicine	$27,000		
	Dentistry	38,400		
UCSD	University of California, San Diego		6,000	
	Medicine	6,000		
UCSF	University of California, San Francisco		41,000	
	Medicine	$15,000		
	Dentistry	21,600		
	Physical Therapy	4,400		
USC	University of Southern California		97,267	
	Medicine	$27,000		
	Dentistry	64,800		
	Physical Therapy	4,267		
	Occupational Therapy	1,200		
UOP	University of the Pacific		64,800	
	Dentistry	64,800		
CHILD	Childrens Hospital of Los Angeles		,734	
	Physical Therapy	,734		

Institutions			Support Received	State Total
CALIFORNIA Continued				
CSLB	California State College at Long Beach		1,200	
	Physical Therapy	1,200		
UCOPT	University of California, Berkeley		1,200	
	Optometry	1,200		
LAOPT	Los Angeles College of Optometry		8,400	
	Optometry	8,400		
UCIRV	University of California, Irvine		—	
	Medicine	—		
JOSE	San Jose State College		—	
	Occupational Therapy	—		
COLORADO				$401,700
COLO	University of Colorado		$153,700	
	Medicine	$144,000		
	Physical Therapy	9,700		
CSU	Colorado State University		248,000	
	Veterinary Medicine	237,600		
	Occupational Therapy	10,400		
RANGE	Rangely College		—	
	Dental Hygiene	—		
HAWAII				
HAW	University of Hawaii		—	
	Medicine	—		
IDAHO				$ 7,000
ISU	Idaho State University		$ 7,000	
	Dental Hygiene	7,000		

as of December 15, 1971

program 1971-1972

DENTAL HYGIENE									PHYSICAL THERAPY									OCCUPATIONAL THERAPY							OPTOMETRY				STATE FUNDS		
ISU	LL	RANGE	UCSF	NM	ORB	USC	WASH	TOTAL	CHILD	LL	CSLB	STAN	UCSF	COLO	USC	UTAH	WASH	TOTAL	LL	JOSE	UPS	USC	CSU	WASH	TOTAL	PACU	LAOPT	UCOPT	TOTAL	Students	Funds	
																							1		1	3			3	23	$ 59,582	ALASKA
													1	1	1			3			1	1			2	4			4	117	264,800	ARIZONA
																														21	50,400	COLO.
									2						1		2	5	1		1		1		3	4			4	57	140,567	HAWAII
									1					2	1		1	5												133	330,467	IDAHO
2					3			5																						125	289,400	MONT.
5				2	1			8	2				1					3			1		1		2	9	4		13	108	237,734	NEVADA
														1				1					4		4	3	3		6	51	90,700	N. MEX.
											1		1	2		1	4	9			8		1		9					57	93,466	OREGON
																														26	52,800	UTAH
																							1		1	3		1	4	75	180,600	WYO.
7				2	4			13	2	3	1		3	6	3	1	7	26	1		11	1	9		22	26	7	1	34	794	$1,790,516	TOTAL

	Institutions		Support Received	State Total
NEVADA				
NEV	University of Nevada Medicine		—	
NEW MEXICO				$41,000
NM	University of New Mexico		$ 41,000	
	Medicine	$ 39,000		
	Dental Hygiene	2,000		
OREGON				$347,800
ORE	University of Oregon		$310,600	
	Medicine	$147,000		
	Dentistry	165,600		
	Dental Hygiene	4,000		
PACU	Pacific University Optometry		31,200	
UTAH				$105,200
UTAH	University of Utah		$105,200	
	Medicine	$104,000		
	Physical Therapy	1,200		
WASHINGTON				$461,499
WASH	University of Washington		$247,299	
	Medicine	$144,000		
	Dentistry	93,600		
	Physical Therapy	9,699		
WSU	Washington State University Veterinary Medicine		201,600	
UPS	University of Puget Sound Occupational Therapy		12,600	
NORTH CAROLINA				$ 1,982
NC	University of North Carolina Medicine		1,982	

PAYMENTS BY FIELDS:

Medicine	Dentistry	Veterinary Medicine	Dental Hygiene
$738,982	$487,200	$446,400	$13,000

Physical Therapy	Occupational Therapy	Optometry
$38,734	$25,400	$40,800

FOR PURPOSES OF COMPARISON	1970	1971
Medical students	234	247
Dental students	183	203
Dental hygiene students	17	13
Veterinary students	236	249
Physical therapy students	25	26
Occupational therapy students	5	22
Optometry students	5	34
Total students	705	794
Support fees	$1,631,203	$1,790,516

summary of cash receipts and disbursements for the year ended june 30,1971

Source of Income:

CASH BALANCE, JULY 1, 1970		342,117
CASH RECEIPTS, 1970-71		
Appropriations from Member States	195,000	
Student Exchange Support Fees from States	1,633,303[1]	
State Mental Health Contributions	90,000	
Grants and Contracts	4,423,360	
Institute and Seminar Fees	28,666	
Interest	46,553	
Sale of Publications and Other Training Materials	34,409	
Miscellaneous	8,058	6,459,349
TOTAL CASH AVAILABLE FOR USE		6,801,466

Cash Disbursements by Program or Activity:

WICHE ADMINISTRATIVE AND BASIC OPERATION FUNDS	560,065[2]	
PROGRAM FUNDS:[3]		
Student Exchange Coordination	14,439	
Student Exchange Support Payments to Schools	1,629,603[1]	
Special Higher Education Programs	60,598	
Institutional Research Conference	21,986	
Continuing Education for Library Personnel	40,343	
Administrative Development for Department Chairmen	10,397	
Higher Education Programming for Satellite Communication	3,415	
Rocky Mountain Community College Consortium	788	
Nursing Council Program	50,169	
Leadership Continuing Education Program for Nurses	247,048	
Improvement of Nursing Curricula	105,821	
Nursing Measuring Instruments Program	685	
Nursing Research Conferences	22,692	
Continuing Education for Psychiatric Nurses	65,035	
Nursing Faculty Development for Minority Group Needs	11,178	
Regional Medical Program	1,740,046	
Resources Development Internships	118,537	
Planning and Management Systems Programs	918,596	
Psychiatric Education for Physicians Program	42,802	
Regional Institute for Corrections, Administrative Study	63,156	
Regional Training for Teachers of the Confined Delinquent	33,918	
Special Education and Rehabilitation Program	72,205	
Mental Health Continuation Education Program	82,279	
Undergraduate Helping Services Program	30,552	
Improving Mental Health Services on Western Campuses	61,213	
Mental Health Data Conference	77,569	
Mental Health Manpower Office	59,319	
Social Work Graduate Deans and Faculties Program	29,942	
Community College Mental Health Worker Program	43,640	
Refunds to Grantors	423	6,218,459
CASH BALANCE, JUNE 30, 1971		583,007[4]

(1) The difference between these two amounts reflects amounts carried over to the next year.

(2) This includes expenses of the executive director's office, associate directors' offices (that portion allocated for administration and program development), administrative services office, publications unit, public information unit, personnel office, and meetings of the Commission and the Mental Health Council.

(3) Direct cost expenditures only are shown for program funds. Indirect costs are charged internally to programs, but they are not included in program expenditures above because they are reflected in the WICHE administrative and basic operation expenditures.

(4) This balance represents primarily advance payments on grants in addition to a contingency balance of $247,854 and an operating reserve of $15,000, both of which have been authorized by the Commission.

In accordance with the provisions of the Western Regional Education Compact, the Commission provides for an annual independent audit of its books. On July 13, 1971, the firm of Haskins and Sells, certified public accountants, completed this audit for the year ended June 30, 1971. A copy of their report has been sent to the Governor of each state. Single copies are available on request.

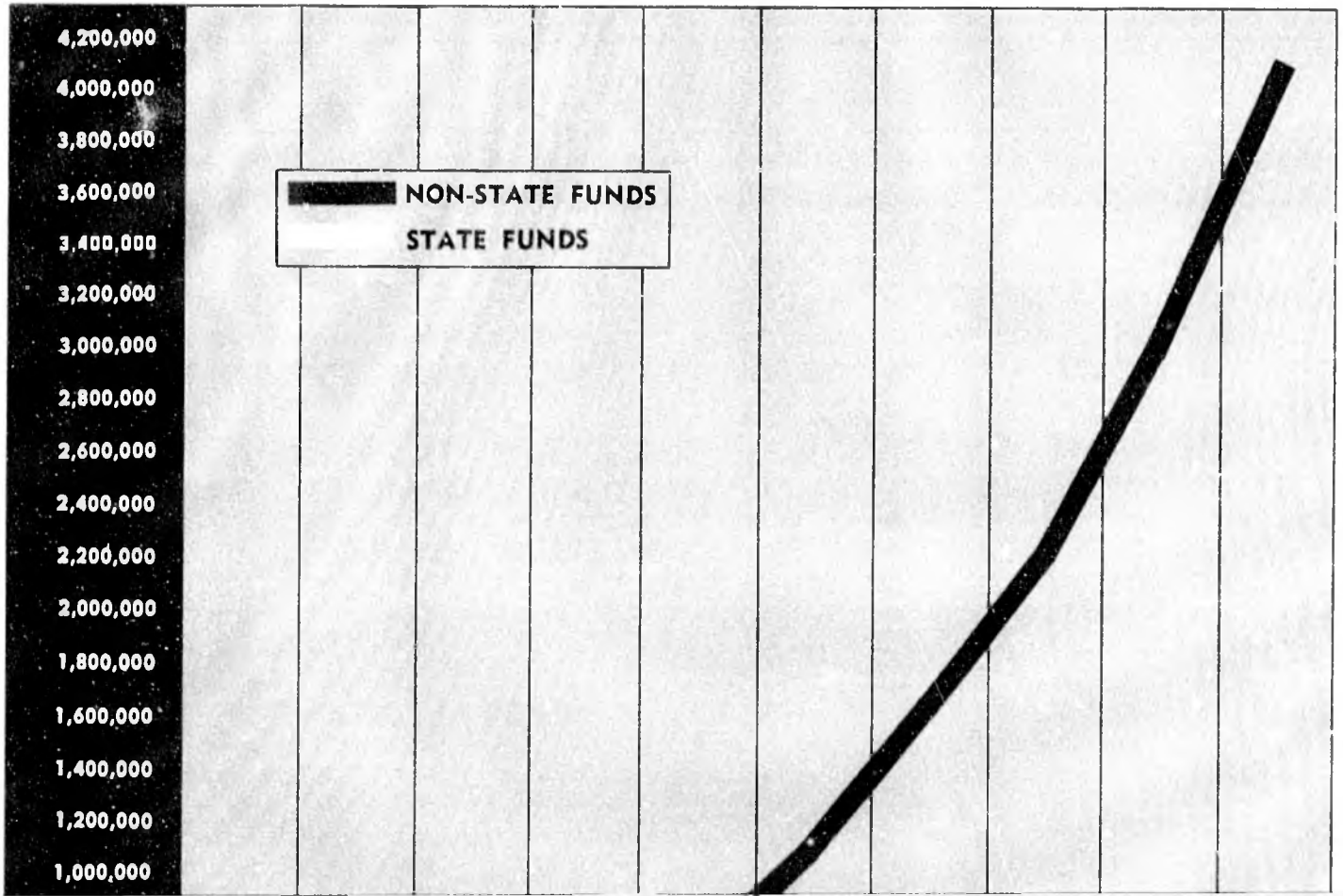
John C. Staley,
Administrative
Services Officer

10 Year Comparison of State and Non-State Funds, 1961-62, 1970-71

STATE FUNDS:
State appropriations, distributed in accordance with the year due. Does not include state funds paid to professional schools under the Student Exchange Program.

NON-STATE FUNDS:
Funds expended for special regional projects from grants from private foundations and public agencies outside the region.

YEAR	STATE FUNDS	NON-STATE FUNDS
61-62	130,000	364,111
62-63	130,000	492,095
63-64	195,000	582,278
64-65	195,000	598,546
65-66	202,500	683,668
66-67	217,500	1,156,366
67-68	255,000	1,618,063
68-69	270,000	2,230,661
69-70	285,000	3,134,973
70-71	285,000	4,134,390



publications

WICHE publications are available free, except where noted, while the supply lasts, from the Publications Unit, WICHE, P.O. Drawer P, Boulder, Co. 80302. Publications noted as out of print are obtainable through interlibrary loans from any of the depository libraries listed. A complete list of available publications is available from the WICHE Publications Unit.

I. GENERAL

WICHE ANNUAL REPORT 1970. A brief description of WICHE activities during 1970. (Out of Print.)

WICHE REPORTS ON HIGHER EDUCATION. A newsletter containing information about WICHE programs and articles of general interest on higher education. Copies of the last four issues are usually available.

THIS IS WICHE. A leaflet describing WICHE's activities and goals.

LEGISLATIVE DECISION MAKING IN HIGHER EDUCATION: HOW TO GET THE FACTS. The program for WICHE's Legislative Work Conference on Higher Education. (The proceedings of this conference will be available in March 1972.)

THE INSIDE . . . WICHE's bimonthly internal house organ.

II. REGIONAL PROGRAMS —GENERAL

COMMUNICATING NURSING RESEARCH: METHODOLOGICAL ISSUES IN RESEARCH. Marjorie V. Batey, editor.

ABOUT WCHEN. A revised edition of a pamphlet describing the history, organization, and programs of the Western Council on Higher Education for Nursing.

A DESCRIPTIVE APPROACH TO A COMMUNITY. A 60-minute videotape of a presentation by Dr. James Kent of the Foundation for Urban and Neighborhood Development during the summer sessions of the WICHE Nursing Curriculum Improvement Project. Available on either ½" Sony or 1" Ampex. Rental charge $5.00.

GUIDELINES FOR DEVELOPING CONTINUING EDUCATION PROGRAMS IN NURSING IN THE WEST. Prepared by the Western Council on Higher Education for Nursing.

COMMUNICATING NURSING RESEARCH: IS THE GAP BEING BRIDGED? Marjorie V. Batey, editor.

YOUR STATE CAN HELP YOU SECURE YOUR EDUCATION IN MEDICINE, DENTISTRY, DENTAL HYGIENE, OCCUPATIONAL THERAPY, OPTOMETRY, PHYSICAL THERAPY, VETERINARY MEDICINE. The informational brochure of WICHE's Student Exchange Program.

THE PUBLIC CHALLENGE AND THE CAMPUS RESPONSE. The announcement of the 13th Annual College and University Self-Study Institute. (The proceedings of this institute will be available in February 1972 at $3.50 per copy.)

THE MINORITY STUDENT ON THE CAMPUS: EXPECTATIONS AND POSSIBILITIES. Robert A. Altman and Patricia O. Snyder, editors. $3.50.

FRESHMAN AND TRANSFER VACANCIES IN WESTERN COLLEGES AND UNIVERSITIES — FALL, 1971. The report of a WICHE survey.

CREDIT BY EXAMINATION. Robert A. Altman, Carolyn M. Byerly, and J. Quentin Jones, editors.

MINERAL ENGINEERING STUDENT EXCHANGE PROGRAM. A folder describing this WICHE program and listing the participating states and cooperating institutions.

WICHE RESOURCES DEVELOPMENT INTERNSHIP PROGRAM. A folder describing this WICHE program.

RESOURCES DEVELOPMENT INTERNS' REPORTS. Each intern submits a report of the recommendations or results of his project. These reports, a partial list of which follows, are published in limited quantity and are distributed to selected agencies and interested individuals.

A METHODOLOGY FOR EVALUATING THE CALIFORNIA STATE LIBRARY SERVICE TO INDUSTRY, by Ellery Sorkin.

LAND USE CLASSIFICATION PROJECT, by Kent Mollohan.

SURVEY OF LAND USE TOOLS AND IMPLEMENTATION, by Craig Kirkwood.

MOBILE AND MODULAR HOME REGULATIONS, by Kathy Adams.

FUNDING FOR AIRPORT DEVELOPMENT, by Erick Sowell.

THE PUEBLO RESERVOIR AND PUEBLO WEST, by Gary Schillinger.

EMPLOYER TRAINING NEEDS AND THE DENVER CONCENTRATED EMPLOYMENT PROGRAM, by Martha Daly.

LAKEWOOD STREET RIGHT-OF-WAY REPORT, by N. Fraser Lambert.

INTERN PROGRAM PUBLIC RELATIONS, by Jennie Bourne.

INTERNSHIPS IN DRUG EDUCATION: A FEASIBILITY STUDY, by Lee Cheaney.

HOUSING REHABILITATION, by Daniel Cook.

LOCAL GOVERNMENT MODERNIZATION, by Robert Bellandi.

A SKILL CENTER FOR THE RENO/SPARKS AREA, by George Cotton.

STATE OF NEW MEXICO ECONOMIC DEVELOPMENT PROFILE, by Ralph Rounds.

BERNALILLO'S WATER AND SEWER SYSTEMS, by Keith Wegan.

CITY-COUNTY CONSOLIDATION, by Bruce Harder.

REVENUE ESTIMATING OF OREGON'S PERSONAL AND CORPORATE INCOME TAX, by Robert Lund.

TRANSPORTATION NEEDS IN CHEYENNE'S MODEL NEIGHBORHOODS, by Kathryn Krieger.

SOIL DATA FOR LAND-USE PLANNING, by Rex Burns.

MOUNTAIN GROWTH AND DEVELOPMENT—JEFFERSON COUNTY, by Elizabeth Losinski.

MONTANA COMMUNITY BETTERMENT CONTEST, by Randy Swartout.

A SURVEY OF RETAIL BUYING HABITS, by Howard Heinicke.

ALBUQUERQUE GOALS PROGRAM, by Robert M. Jones.

AQUACULTURAL POSSIBILITIES IN KEAUKAHA, by Frances Liu.

INFORMATIONAL NEEDS OF SMALL BUSINESSMEN IN THE CENTRAL BUSINESS DISTRICT OF HILO, HAWAII, by Lloyd Matsunami.

DENVER CONCENTRATED EMPLOYMENT PROGRAM SERVICE DELIVERY SYSTEM, by Daniel Kagan.

OREGON'S INTERNATIONAL TRADE, 1970, by William Beebe.

PUEBLO PLANS FOR THE FUTURE, by Dana Heuchemer.

NEW INDUSTRY AND CLARK COUNTY, by Jerald Powell.

COUNCILS OF GOVERNMENTS: WHICH WAY THE FUTURE?, by Bruce Harder.

PROPOSED TRAMWAY ANALYSIS FOR THE PORT OF CASCADE LOCKS, by Wilbur Conder, Larry McCallum, and Morton Michelsen.

HEALTH SCIENCES INFORMATION NETWORK. A folder prepared for the WICHE Mountain States Regional Medical Program, Wyoming.

WYOMING HEALTH PROFILE, UPDATED SUPPLEMENT. WICHE Mountain States Regional Medical Program, Wyoming.

CASSETTES FOR CARDIAC CARE. A folder prepared for the Coronary Care Training Program of the WICHE Mountain States Regional Medical Program, Montana.

ECG FUNDAMENTALS FOR THE DIAGNOSIS OF ARRHYTHMIAS. The announcement of two courses offered by the Coronary Care Training Program of the WICHE Mountain States Regional Medical Program, Montana.

CORONARY CARE TRAINING FOR PHYSICIANS—PHASE II. The announcement of two training courses offered by the Coronary Care Training Program of the WICHE Mountain States Regional Medical Program, Montana.

ECG MONITORING FOR THE ANESTHESIOLOGIST. The announcement of a three-day symposium offered by the Coronary Care Training Program of the Mountain States Regional Medical Program, Montana.

CORONARY CARE SKI WEEKEND. The announcement of a course offered by the Coronary Care Training Program of the WICHE Mountain States Regional Medical Program, Montana.

III. REGIONAL PROGRAMS—MENTAL HEALTH AND RELATED AREAS

IMPROVING MENTAL HEALTH SERVICES ON WESTERN CAMPUSES: SALARY DATA FOR CAMPUS MENTAL HEALTH PROFESSIONALS IN THE WEST, MONOGRAPH NO. 1. James H. Banning and Lu Anne Aulepp.

IMPROVING MENTAL HEALTH SERVICES ON WESTERN CAMPUSES: STAFFING PATTERNS OF CAMPUS MENTAL HEALTH FACILITIES IN THE WEST, MONOGRAPH NO. 2. James H. Banning and Lu Anne Aulepp.

IMPROVING MENTAL HEALTH SERVICES ON WESTERN CAMPUSES: PROGRAM ACTIVITIES AND STUDENT UTILIZATION OF CAMPUS MENTAL HEALTH FACILITIES IN THE WEST, MONOGRAPH NO. 3. James H. Banning and Lu Anne Aulepp.

CAMPUS COMMUNITY MENTAL HEALTH SERVICES. Lu Anne Aulepp, editor. A newsletter printed monthly during the academic year.

COMMUNITY COLLEGE MENTAL HEALTH WORKER PROGRAM. A folder describing this WICHE program.

SPECIAL EDUCATION FOR GENERAL EDUCATORS. A folder describing the objectives and methods of this WICHE program.

SUMMER WORK-STUDY PROGRAM IN MENTAL HEALTH AND RELATED AREAS. A folder describing the program and listing participating schools.

WESTERN GRADUATE PROGRAMS IN CLINICAL PSYCHOLOGY. The results of a survey performed by WICHE's Mental Health Manpower Office.

MENTAL HEALTH MANPOWER IN THE WEST. A general overview of mental health manpower characteristics presented by WICHE's Mental Health Manpower Office.

HAWAII MENTAL HEALTH MANPOWER STUDY 1970. John J. Blaylock. Published by WICHE's Mental Health Manpower Office.

COLORADO MENTAL HEALTH MANPOWER: AN EMPIRICAL STUDY. Robert B. Abelson. Published by WICHE's Mental Health Manpower Office.

COLORADO MENTAL RETARDATION MANPOWER: SURVEY OF THE DEPARTMENT OF INSTITUTIONS 1970. Robert J. Stephens, et al. Published by WICHE's Mental Health Manpower Office.

publications continued

WESTERN GRADUATE PROGRAMS IN SOCIAL WORK. The results of a survey performed by WICHE's Mental Health Manpower Office.

INTERDISCIPLINARY PROGRAMMING FOR INFANTS WITH KNOWN OR SUSPECTED CEREBRAL DYSFUNCTION, edited by Gene Hensley and Virginia W. Patterson. $1.00.

MENTAL RETARDATION MANPOWER IN THE WEST. A brief description of selected characteristics of 5,143 people working in state facilities for the mentally retarded in nine western states. Prepared by WICHE's Mental Health Manpower Office.

SELECTIVE MANPOWER DIMENSIONS IN THE CALIFORNIA DEPARTMENT OF MENTAL HYGIENE: A PRELIMINARY SURVEY. Marshall Fels. Published by WICHE's Mental Health Manpower Office.

A SURVEY AND STUDY 1969-1970. A survey and study of Idaho Mental Health workers performed jointly by the Idaho Division of Mental Health and WICHE's Mental Health Manpower Office.

MASTER'S DEGREE PSYCHOLOGISTS. The report of a conference co-sponsored by WICHE and the American Psychological Association.

ACCOUNTING GUIDELINES FOR MENTAL HEALTH CENTERS AND RELATED FACILITIES. Prepared by David L. Salsbery, CPA, and edited by Paul M. McCullough.

ELEVENTH ANNUAL TRAINING INSTITUTE FOR PSYCHIATRIST-TEACHERS OF PRACTICING PHYSICIANS 1971: INNOVATIVE STRATEGIES FOR CONTINUING EDUCATION AND THE PHYSICIAN'S EMOTIONAL WELL-BEING. Raymond Feldman, editor.

UNDERGRADUATE EDUCATION FOR REHABILITATION AND OTHER HELPING SERVICES. The final report of this WICHE program that operated from 1965 through June 1971. (Limited distribution.)

CORRECTIONS PROGRAM: A REGIONAL APPROACH TO TRAINING. A folder describing this WICHE program and its two projects.

REGIONAL INSTITUTE FOR CORRECTIONS, ADMINISTRATIVE STUDY. A folder describing the methods and objectives of a regional approach to management training in the justice system.

REGIONAL INSTITUTE FOR CORRECTIONS, ADMINISTRATIVE STUDY. A management training design and program guide. Bruce J. Martin, editor.

NATIONWIDE EDUCATION PROGRAMS IN CORRECTIONS. A folder describing the methods and objectives of this Corrections Program project.

PERSPECTIVES ON SOCIAL WORK EDUCATION IN THE 1970s. A report of a program in continuing education for deans and faculties of Graduate Schools of Social Work. Charles W. McCann, editor. (Limited distribution.)

IV. NATIONAL CENTER FOR HIGHER EDUCATION MANAGEMENT SYSTEMS

Most of the publications of this WICHE division are available on a fiscal year annual subscription. The publications marked with a single asterisk below are part of the 1970-71 subscription; those marked with a double asterisk are a part of the 1971-72 subscription. Single subscription, $15. Five subscriptions all mailed to the same address, $30. Ten subscriptions all mailed to the same address, $40. All publications listed below are available without subscription at the prices noted.

*INVENTORY OF EDUCATIONAL OUTCOMES AND ACTIVITIES, PRELIMINARY FIELD REVIEW EDITION, TECHNICAL REPORT 15. Robert A. Huff. $1.00.

THE RESOURCE REQUIREMENTS PREDICTION MODEL 1 (RRPM-1): AN OVERVIEW, TECHNICAL REPORT 16. Warren W. Gulko. (Out of Print.) (See Technical Reports 19-23 below.)

**NCHEMS Newsletter. A newsletter reporting technical and professional news about this WICHE division.

**HIGHER EDUCATION FACILITIES PLANNING AND MANAGEMENT MANUALS, TECHNICAL REPORTS 17-1 THROUGH 17-7. Harold L. Dahnke, et al. Manual 1, An Overview. Manual 2, Classroom and Class Laboratory Facilities. Manual 3, Office and Research Facilities. Manual 4, Academic Support Facilities. Manual 5, General Support Facilities. Manual 6, Program Planning and Analysis: The Basis for Institutional and Statewide Facilities Planning. Manual 7, Reference Guide. Sold as a set only. $7.50.

**HIGHER EDUCATION FACULTY AND STAFF ASSIGNMENT CLASSIFICATION MANUAL, PRELIMINARY DRAFT, TECHNICAL REPORT 18. W. John Minter. (Out of print.) The final edition of this publication under the title A MANUAL FOR MANPOWER ACCOUNTING IN HIGHER EDUCATION will be published and distributed by the National Center for

Educational Statistics, U.S. Office of Education, in 1972.

**HIGHER EDUCATION MANAGEMENT. A periodical designed to discuss issues related to higher education management.

DATA COMPARABILITY IN HIGHER EDUCATION. Ben Lawrence, et al. (Limited distribution.)

**A RESOURCE REQUIREMENTS PREDICTION MODEL (RRPM-1): AN INTRODUCTION TO THE MODEL, TECHNICAL REPORT 19. Warren W. Gulko and K. M. Hussain. $5.00 (See note under TECHNICAL REPORT 23.)

A RESOURCE REQUIREMENTS PREDICTION MODEL (RRPM-1): GUIDE FOR THE PROJECT MANAGER, TECHNICAL REPORT 20. K. M. Hussain. $5.00.

A RESOURCE REQUIREMENTS PREDICTION MODEL (RRPM-1): REPORT ON THE PILOT STUDIES, TECHNICAL REPORT 21. K. M. Hussain and James S. Martin, editors. $5.00.

A RESOURCE REQUIREMENTS PREDICTION MODEL (RRPM-1): INPUT SPECIFICATIONS, TECHNICAL REPORT 23. Michael J. Haight, et al. $5.00.

NOTE: RRPM-1 Packet 1 consists of two copies each of the four publications listed immediately above. The cost of Packet 1 is $30.00. When ordering please specify RRPM-1 Packet 1.

RRPM-1 Packet 2 consists of A RESOURCE REQUIREMENTS PREDICTION MODEL (RRPM-1) PROGRAMMER'S MANUAL, TECHNICAL REPORT 22, and a tape of RRPM-1 computer programs. The version of RRPM-1 released in December 1971 (RRPM-1.3) was the general model which was designed for large universities. Other specialized versions will become available as follows: Community College (RRPM-1.4), January 30, 1972. Four-year Public College (RRPM-1.5), March 1, 1972. Private College (RRPM-1.6), June 1, 1972. To order, please write or call for special RRPM-1 Packet 2 order blank covering complete tape specifications. $150.00.

**FACULTY ACTIVITY ANALYSIS: OVERVIEW AND MAJOR ISSUES, TECHNICAL REPORT 24. Leonard C. Romney. $1.00.

**STUDENT FLOW MODELS: A REVIEW AND CONCEPTUALIZATION, PRELIMINARY FIELD REVIEW EDITION, TECHNICAL REPORT 25. C. C. Lovell, $1.00.

STATEWIDE PLANNING FOR POSTSECONDARY EDUCATION: ISSUES AND DESIGN. Lyman A. Glenny and George B. Weathersby, editors. $3.50.

**COST FINDING PRINCIPLES AND PROCEDURES: PRELIMINARY FIELD REVIEW EDITION: TECHNICAL REPORT 26. Gordon Ziemer, et al. $2.00.

A RESOURCE ALLOCATION AND PLANNING MODEL FOR HIGHER EDUCATION. Robert A. Wallhaus. (Limited distribution.)

PROGRAM CLASSIFICATION STRUCTURE, PRELIMINARY DRAFT. Warren W. Gulko. (Limited distribution.)

GENERAL INSTITUTIONAL ASSISTANCE: A SCHEME THAT DEPENDS ON THE EDUCATIONAL EFFORTS OF THE STATES AND THE ATTENDANCE CHOICE OF STUDENTS. Wayne Kirschling and Rudy Postweiler. (Limited distribution.)

A SYNOPSIS OF A TECHNICAL PAPER ENTITLED GENERAL INSTITUTIONAL ASSISTANCE: A SCHEME THAT DEPENDS ON THE EDUCATIONAL EFFORTS OF THE STATES AND THE ATTENDANCE CHOICE OF STUDENTS. Wayne Kirschling and Rudy Postweiler. (Limited distribution.)

WICHE DEPOSITORY LIBRARIES

Library Periodicals
University of Alaska Library
College, Alaska 99701

Gifts and Exchanges
University of Arizona Library
Tucson, Arizona 85721

Documents General Library
University of California
Berkeley, California 84720

Education and Psychology Library
University of California
Los Angeles, California 90024

Documents Division Librarian
Norlin Library
University of Colorado
Boulder, Colorado 80302

University of Hawaii Library
2550 The Mall
Honolulu, Hawaii 96822

University of Idaho Library
Moscow, Idaho 83843

Monroe C. Gutman Library
Harvard University
Appian Way
Cambridge, Massachusetts 02138

University of Montana Library
Missoula, Montana 59801

Government Publications Dept.
University of Nevada Library
Reno, Nevada 89501

Government Publications Division
University of New Mexico Library
Albuquerque, New Mexico 87106

Documents and Serial Section
Teachers College Library
525 West 120th Street
New York, New York 10027

University of Oregon Library
Attn: Acquisitions Librarian
Eugene, Oregon 97403

Serials Order Department
University of Utah Library
Salt Lake City, Utah 84112

General Reference Section
University of Washington Library
Seattle, Washington 98105

University of Wyoming Library
Laramie, Wyoming 82070

The WICHE staff is a unique cadre of highly trained individuals. These men and women are recognized experts in such fields as medicine, psychiatry, higher education management, nursing, and others. Furthermore, each has that special touch and technique, so necessary for the guidance of group action—an indispensable quality for interstate cooperation.

The 96 professional WICHE staffers are located in the central office in Boulder, Colorado, and in the five offices of the Regional Medical Program in Idaho, Montana, Nevada, and Wyoming.

These men and women are the implementors of WICHE programming.

In addition to the professional staff, special note should be taken of the dedicated and very able members of the WICHE supporting staff. They are the secretaries, clerks, typists, mailroom personnel, and others, who also lend their talents to improve interstate cooperation in the West.

WICHE: staff

As of January, 1972

ADMINISTRATION

Robert H. Kroepsch, Ed.D., Executive Director
Bob L. Brown, B.S., Personnel Director
Jean Davis, Administrative Assistant to the Executive Director
Grant A. Duncan, Graphic Artist
Lee E. Gladish, B.A., Publications Specialist
Lawnie D. Gold, Manager of Printing and Duplicating
Marilynn R. Hajek, B.S., Accounting Manager
W. Wray MacLeod, Manager of Purchasing and Physical Plant
Donald E. Morrow, B.A., Accounting/Auditing Specialist
JoAn S. Segal, M.L.S., Librarian
John C. Staley, B.S., Administrative Services Officer
Gerald S. Volgenau, M.S., Public Information Officer

DIVISION OF GENERAL REGIONAL PROGRAMS

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Marie F. Branch, M.A., Project Director, Faculty Development to Meet Minority Needs Program
Jon R. Bunnell, B.S., Staff Assistant, Nursing Programs
Carolyn M. Byerly, B.S., Staff Assistant, Special Higher Education Programs
Lee Cheaney, B.A., Staff Associate, Resources Development Internship Program
Terry A. Cline, M.A., Staff Associate, Rocky Mountain Community College Consortium
Jo Eleanor Elliott, A.M., Director, Nursing Program
Peter Hiatt, Ph.D., Director, Continuing Education Program for Library Personnel
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Sally Lazar, M.S., Project Director, Psychiatric Nursing Project
Patricia Locke, B.A., Director, Minority Student Opportunity Program
Paula R. Palmer, B.A., Staff Assistant, General Regional Programs
Virginia W. Patterson, B.A., Director, Student Exchange Programs
Juereta Smith, M.A., Project Director, Nursing Curriculum Improvement Project

DIVISION OF MENTAL HEALTH AND RELATED AREAS

Robert L. Stubblefield, M.D., Associate Director, WICHE, and Director, Division of Mental Health and Related Areas

LuAnne Aulepp, B.A., Staff Associate, Improving Mental Health Services on Western Campuses

Leonard M. Baca, M.A., Staff Associate, Special Education for the General Educator Program

James H. Banning, Ph.D., Director, Improving Mental Health Services on Western Campuses

Bernard L. Bloom, Ph.D., Consultant, Mental Health Programs

Stanley W. Boucher, M.S.W., Director, Mental Health Continuing Education Programs

James A. Bradshaw, Ed.D., Director, Special Education for the General Educator Program

Frank Dell'Apa, Ed.D., Director, Corrections Program

Bruce J. Martin, B.A., Project Director, Regional Institute for Corrections, Administrative Study

Richard Martinez, M.S.W., Director, Community College Mental Health Worker Program

Charles W. McCann, D.S.W., Consultant, Deans and Faculty of Schools of Social Work

Paul M. McCullough, Ph.D., Director, Western Conference on the Uses of Mental Health Data Program

Julia M. O'Rourke, Staff Assistant, Corrections Program

Paul H. Ries, M.P.H., Project Director, Nationwide Education Programs in Corrections

Alfred L. Tate, B.S., Staff Associate, Nationwide Education Programs in Corrections

Bob L. Brown
Personnel Director

NATIONAL CENTER FOR HIGHER EDUCATION MANAGEMENT SYSTEMS at WICHE

Ben Lawrence, Ph.D., Associate Director, WICHE, and Director, National Center for Higher Education Management Systems at WICHE

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William J. Collard, M.S., Training and Implementation Program

Warren W. Gulko, Ph.D., Director, Development and Applications Program

Michael J. Haight, M.A., Staff Associate, Training and Implementation Program

Vaughn E. Huckfeldt, M.S., Staff Associate, Ford Research Unit

Robert A. Huff, Ph.D., Director, Training and Implementation Program

Richard S. Johnson, M.S., Staff Associate, Development and Applications Program

Dennis P. Jones, M.S., Assistant Program Director, Development and Applications Program

Wayne R. Kirschling, Ph.D., Staff Associate, Ford Research Unit

Charles W. Manning, Ph.D., Staff Associate, Training and Implementation Program

James S. Martin, B.A., Staff Associate, Development and Applications Program

Sid S. Micek, M.A., Research Associate, Ford Research Unit

W. John Minter, Ph.D., Staff Associate, Policy Planning and Program Development

Kathleen Neward, B.S., Staff Assistant, Training and Implementation Program

Laszlo A. Pook, M.S., Graduate Associate, Development and Applications Program

Leonard C. Romney, M.A., Staff Associate, Development and Applications Program

Karyn E. Smith, B.A., Staff Assistant

James R. Topping, Ph.D., Staff Associate, Development and Applications Program

Robert A. Wallhaus, Ph.D., Director, Ford Research Unit

Paul Wing, M.S., Staff Associate, Ford Research Unit

Michael E. Young, B.S., Staff Associate, Training and Implementation Program

FIELD STAFF FOR MOUNTAIN STATES REGIONAL MEDICAL PROGRAM

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C. Edgar Smith, Ph.D., Staff Associate

Helen Thomson, B.A., Information Specialist

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William J. Coffman, M.S., Staff Associate

Phoebe Lindsey, B.A., Staff Assistant

Eileen K. Merrell, M.P.H., Staff Associate

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Esther R. Lantz, M.N., Staff Associate

NEVADA OFFICE—Reno

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Wilma Fredericksen, Information Specialist

NEVADA OFFICE—Las Vegas

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Hugh Collett, M.D., Coordinator for Continuing Education for the Health Professionals

WYOMING OFFICE—Cheyenne

Claude O. Grizzle, M.D., Sub-Regional Director

Virginia E. Black, B.S., Staff Associate

Donald L. Erickson, M.P.H., Staff Associate

CORONARY CARE TRAINING PROGRAM—Missoula, Montana

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Gerald Dietlert, M.D., Consultant

James E. Gouaux, M.D., Consultant

Lillian LaCroix, B.S., Staff Associate

CORONARY CARE TRAINING PROGRAM—Las Vegas, Nevada

Philip R. Akre, M.D., Consultant

John A. Bowers, M.D., Consultant

INHALATION THERAPY PROJECT—Las Vegas, Nevada

Richard Browning, M.D., Consultant

Bonnie Perry, R.N., Consultant

public and private granting agencies

In the past 16 years, WICHE has received grant and contract commitments totaling more than $24 million from public and private granting agencies for the support of a wide variety of regional programs which have contributed to the development of the 13 western states. Most of these agencies have made two or more grants to WICHE, thus underscoring a growing national interest in regional cooperation. In the last analysis, the people of the West are the ones who benefit from the investment of this risk capital, and on their behalf WICHE expresses appreciation to the organizations and agencies listed below.

Carnegie Corporation of New York
The Commonwealth Fund, New York
The Danforth Foundation, St. Louis, Mo.
Easter Seal Research Foundation, Chicago
ESSO Education Foundation, New York
Max C. Fleischmann Foundation, Reno, Nev.
The Ford Foundation, New York
The Grant Foundation, Inc., New York
National Science Foundation, Washington, D.C.
Jessie Smith Noyes Foundation, Inc., New York
United Cerebral Palsy Research and Educational Foundation, Inc., New York
W. K. Kellogg Foundation, Battle Creek, Mich.
U.S. Department of Commerce
Economic Development Administration
U.S. Department of Justice
Office of Law Enforcement Assistance
U.S. Department of Health, Education and Welfare
Office of Education
Office of Juvenile Delinquency and Youth Development
Public Health Service
Division of Chronic Diseases
Division of Community Health
Division of Nursing
Division of Regional Medical Programs
National Institute for Child Health and Human Development
National Institutes of Health
National Institute of Mental Health
Rehabilitation Services Administration

councils, committees, advisory groups

Each year, the annual report has listed the names of those westerners who have contributed to WICHE's cooperative efforts. Last year, 14 pages were devoted to this purpose.

In 1971, more westerners than ever were involved in WICHE's programming. But in the interest of economy —and with deep regret—this feature has been omitted from this publication.

We hope that the professional growth that has resulted from this involvement—together with the personal satisfaction of working with colleagues across state lines —will suffice in lieu of public recognition and acknowledgment.

Without the contributions of these hundreds of westerners who give of their time, energy and wisdom, there would be no WICHE. To them, the people of the West owe a huge debt of gratitude.

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WICHE NEWS

WESTERN INTERSTATE COMMISSION FOR HIGHER EDUCATION

P.O. DRAWER P., BOULDER, COLORADO 80302
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ANYTIME RELEASE

Twenty-four Alaska students are now attending professional schools in other western states under a special low-tuition plan coordinated by the Western Interstate Commission for Higher Education (WICHE), according to Mrs. Donald Pruhs, of Fairbanks, one of the state's three WICHE commissioners.

The 24 students are pursuing professional studies in medicine, dentistry, occupational therapy, and optometry.

"Under the exchange program," said Mrs. Pruhs, "these western professional schools contract through WICHE to admit qualified students from states which have no professional schools in these fields.

"As a sending state, Alaska certifies that the student is an eligible resident. When he is accepted by a state university, he pays only the in-state tuition--the same rate paid by residents of that state. At private institutions, the student receives a substantial reduction in tuition fees. The state of Alaska then reimburses the school for the remainder of the educational expenses."

(Editors: See list of students by hometown, p. 2)

(more)

This year, 790 young westerners are pursuing their professional education as WICHE exchange students, which involves a transfer of more than $1.7 million among the 13 western states.

"The program benefits everyone involved--the students, the states, and the schools," stated Mrs. Pruhs.

"The student only pays in-state tuition," she said. "The states without certain professional schools are able to provide training for future doctors, dentists, veterinarians, and other professionals. And the schools get direct payments, which help cover the actual cost of educating an out-of-state student."

Mrs. Pruhs is Alaska's representative on the WICHE executive committee. Alaska's other commissioners are John S. Hellenthal, attorney, Anchorage; and Dr. William R. Wood, president, University of Alaska.

The Western Interstate Commission for Higher Education, which administers the Exchange Program, is a public agency supported by the 13 western states. Its primary responsibility is to help the states improve their higher education programs through regional cooperation.

Alaska Exchange Students

Optometry

Anchorage: Tom Roselius, Pacific University.

3. Fairbanks: Dennis A. Swarner, Pacific University.

Ketchikan: Michael P. Johansen, Pacific University.

(more)

Medicine

Aleknagik: Ernest L. Ford, Loma Linda University.

Anchorage: Robert W. Baird, Jr., University of Washington; Ronald C. Dobson, University of New Mexico; Alex Kutas, University of Oregon; John C. Mues, University of Washington; William H. Ragle, University of Colorado; Robert D. Wimmer, University of Arizona; and Wandal W. Winn, University of New Mexico.

Auke Bay: Joanne Wallington, University of California, San Francisco.

College: C. Dukeminier, University of Colorado.

Edgecumbe: Susan J. Salo, University of Washington.

Fairbanks: Robert W. Bundtzen, University of Washington; David R. Grube, University of Oregon; Kenneth C. Haycraft, University of Oregon; and Craig S. Schmidt, University of Oregon.

Juneau: Patrick Maloney, University of Washington.

Petersburg: Floyd Strand, University of North Carolina.

Dentistry

Anchorage: Brian L. Daniel, University of Washington; and William R. Sedwick, University of Washington.

Occupational Therapy

Anchorage: Betty Kenny, Colorado State University.

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the
Western
Interstate
Commission
for
Higher
Education

this is WICHE

WHAT IS WICHE?

WICHE, the Western Interstate Commission for Higher Education, is a nonprofit agency created by the 13 western states. This Commission administers the Western Regional Education Compact, which is an agreement among the states to work cooperatively to improve educational programs and facilities. WICHE was formally established in 1951; program activity began in 1953.

GOVERNING BOARD Each state is represented on the governing board by three commissioners, appointed by the governor. These 39 men and women, who serve without pay, come from a broad variety of professions, including education, state government, medicine, law, business, and others.

FINANCES. Each member state appropriates $15,000 a year to finance WICHE's general activities. The western states also contribute an additional $7,500 to support WICHE's programming in mental health, mental retardation, education of the handicapped, and corrections. The majority of WICHE's 45 individual programs and projects are supported by foundation and public agency funds. For fiscal year 1971-72, these grant and contract funds provide approximately 17 dollars for each dollar given by the states.

WICHE's GOALS. •*Improve the quality of education beyond the high school* •Expand educational opportunities, including those in continuing education •*Coordinate and expand interstate and interinstitutional cooperative programs* •Help institutions of higher education improve both academic administration and institutional management •*Assist the education community in appraising and responding to the changing needs of the West* •Raise the public level of understanding of the role of higher education.

PROGRAM AND PHILOSOPHY. •WICHE serves as a fact-finding agency and a clearinghouse of information about higher education. It also makes basic studies of educational needs and resources. •*WICHE acts as a catalyst to help member states work out educational programs of mutual advantage.* •WICHE serves western states and institutions as an administrative and fiscal agent for carrying out interstate arrangements for educational services. •*WICHE works by building concensus; it has no control over the member states or individual institutions.*

Continued on inside back cover.

THIS IS WICHE

CURRENT PROGRAMS AND PURPOSES

GENERAL

1. **LEGISLATIVE WORK CONFERENCE**
   To strengthen understanding and communication among western legislators, public officials, and educators; to provide a forum for the discussion of critical problems in the 13 western states; and to gain insights which will assist the Commission and its staff in developing programs for interstate cooperation.

DIVISION OF GENERAL REGIONAL PROGRAMS

2. **STUDENT EXCHANGE PROGRAMS**
   To share the educational resources of the West by providing opportunities for professional education when the specialty is not offered within the boundaries of the sending state through a system of student exchanges implemented at cooperating schools. Student exchange models may or may not involve interstate exchange of money.

3. **SPECIAL HIGHER EDUCATION PROGRAMS**
   To identify pertinent problems confronting general higher education in the West; to explore alternative solutions to these problems in cooperation with the West's colleges and universities; to begin preliminary program development designed to meet identified needs of the region; and to operate on a continuing basis a small number of higher education programs which provide necessary services to the people of the West.

4. **MOUNTAIN STATES COMMUNITY COLLEGE CONSORTIUM**
   To enhance educational opportunities for students in community colleges in the four-state area of Idaho, Montana, Utah, and Wyoming. This will be achieved through interstate and interinstitutional cooperation and programming geared to the resolution of common problems that participating institutions share as small, geographically isolated, "developing institutions."

5. **ETHNIC PROGRAMS IN HIGHER EDUCATION**
   To expand minority group access to higher education and to improve the relevance of educational experiences for these students and their communities.

6. **WESTERN COUNCIL ON HIGHER EDUCATION FOR NURSING**
   To increase educational opportunities for students in nursing by developing programs in nursing education, based on sound educational principles; to identify and organize ways of coping with general nursing problems; and to improve care of patients by disseminating this knowledge throughout the western region.

7. **CONTINUING EDUCATION PROGRAM FOR NURSES**
   To improve the leadership skills of nurses in teaching, supervision, and administrative positions through a series of short conferences aimed toward improving patient care provided by agencies and institutions employing the participant nurses.

8. **NURSING RESEARCH CONFERENCES PROGRAM**
   Through an annual conference on nursing research, to share research findings, to receive and give stimulation for further research, and to facilitate the application of findings to patient care. Faculty are stimulated to use results of research in planning nursing school curricula.

9. **REGIONAL PROGRAM FOR NURSING RESEARCH AND DEVELOPMENT**
   To provide a three-year program of consultation and work clinics directed toward increasing skills of nurses who are undertaking research, particularly in the area of patient care and care delivery, and then assisting these nurses to develop research projects. The goal of the program is to increase the number and quality of nursing research projects in the West.

10. **IMPROVEMENT OF NURSING CURRICULA**
    To improve and revise curricula in western schools of nursing through integration of selected core concepts of nursing into associate degree, baccalaureate, and graduate programs; to provide information on and stimulate the use of additional innovations in the teaching-learning process.

11. **CONTINUING EDUCATION PROGRAM FOR PSYCHIATRIC NURSES**

To assist faculty in associate degree nursing programs to increase their content and skills in psychiatric mental health nursing; to increase the use of psychiatric mental health concepts throughout the nursing curriculum; and to increase the use of psychiatric mental health concepts by nurses in any health care setting.

12. **NURSE FACULTY DEVELOPMENT TO MEET MINORITY GROUP NEEDS**

To increase the numbers of minority group students who are recruited and complete nursing programs and to modify existing programs of nursing to include content which will increase the potential of their graduates to provide services relevant to the health needs of minority group communities. The project proposes to achieve these aims through a three-year regional faculty development program.

13. **CONTINUING EDUCATION PROGRAM FOR LIBRARY PERSONNEL**

To demonstrate and evaluate the effectiveness of a variety of continuing education methods, materials, and programs in preparing library personnel in all types of libraries and to effect positive change in the delivery of library services.

14. **MOUNTAIN STATES REGIONAL MEDICAL PROGRAMS**

To develop programs in response to major needs in the four states of Idaho, Montana, Nevada, and Wyoming for continuing education for health personnel and for facilities which will strengthen the capacity of physicians and other health professionals to treat heart disease, cancer, stroke, and related diseases.

Operational Programs

1. Core Operation
2. Coronary Care Training—Montana
3. Cancer Education and Treatment Center (Mountain States Tumor Institute)
4. Continuation Education for Health Professionals in Montana
5. Rocky Mountain Tumor Registry
6. Continuing Nursing Education—Nevada
7. Continuing Education in Inhalation Therapy for Physicians, Therapists, and Nurses
8. Consulting Team Approach to Continuing Education for Health Service Personnel in Rural Communities in Nevada
9. Continuing Nursing Education—Idaho
14. Coronary Care Training—Southwest Idaho
11. Continuation Education for Nursing—Wyoming
12. Continuation Education for Nursing—Montana

15. **RESOURCES DEVELOPMENT INTERNSHIP PROGRAM**

To promote the productive interchange of ideas between the academic community, including students,

and the participants in community organizations throughout the West, especially by means of the process of service-learning, by building bridges between educational institutions and community organizations, and by developing new and innovative supplementary projects.

DIVISION OF MENTAL HEALTH AND RELATED AREAS

16. **CONTINUING PSYCHIATRIC EDUCATION FOR PHYSICIANS PROGRAM**
To increase the supply of psychiatrist-teachers for nonpsychiatric physicians of the West, in areas remote from training institutions; to provide demonstration study opportunities for physicians practicing in these areas and to stimulate the development of ongoing training programs for them; and to provide liaison for the western region in this field.

17. **WESTERN CONFERENCE ON THE USES OF MENTAL HEALTH DATA**
To develop methods of training mental health statisticians, to develop new methods for effective collection and utilization of mental health data, and to develop a vehicle for communication and collaborative research among interested professionals in this field.

18. **COMMUNITY COLLEGE MENTAL HEALTH WORKER PROGRAM**
To develop community college educational programs in mental health in order to meet the manpower needs for service delivery in rural areas and to emphasize, particularly, the recruitment and training of Spanish-American and Indian students from rural areas.

19. **SPECIAL EDUCATION FOR GENERAL EDUCATORS**
To improve the understanding and capability of general educators—especially those already working in regular classrooms, in the inner city, and in geographically remote areas—in teaching exceptional children, by providing assistance to institutions and agencies in the 13 western states as they plan special training programs and special education programs for the delivery of services.

20. **IMPROVING MENTAL HEALTH SERVICES ON WESTERN CAMPUSES**
To assist four-year colleges and universities in the 13 western states to improve the organization and delivery of mental health related services throughout their campus communities.

21. **MENTAL HEALTH CONTINUING EDUCATION**
To help develop a collaborative field of continuing education for mental health personnel in the West, a field linked by mutual planning among leaders in university programs and treatment agencies and

characterized, eventually, by a variety of flexibly designed, short, intensive courses for members of the core professions in both urban and rural settings.

22. **DEANS AND FACULTY OF SCHOOLS OF SOCIAL WORK PROGRAM**
To involve the deans of the graduate schools of social work in the western states in a program of continuing education which provides for their own professional development and enables them to share in the development of opportunities for continuation of their faculties; and to provide support for a regional workshop program for graduate school faculty.

23. **CORRECTIONS PROGRAM**
To provide in-service training for juvenile and adult correctional personnel in eleven of the thirteen western states under two separately funded projects—Regional Institute for Corrections, Administrative Study; and Nationwide Educational Programs for Institutionalized Children.

NATIONAL CENTER FOR HIGHER EDUCATION MANAGEMENT SYSTEMS at WICHE

24. **PERSONNEL CLASSIFICATION MANUAL**
To provide standard categories for classifying and reporting employee activities typically associated with jobs and positions in colleges and universities.

25. **DATA ELEMENT DICTIONARY**
To establish uniform sets of definitions for the data to be used in the Center's program. Uniform data elements are the foundation for the development of compatible data bases in the participating institutions.

26. **PROGRAM CLASSIFICATION STRUCTURE**
To design a taxonomy of higher education programs that will serve as the framework for comparable data exchange and reporting, assist in program budgeting, and serve as the framework for the development of generalized analytical models.

27. **STUDENT FLOW MODEL**
To develop analytical models that will predict student enrollment and simulate student progression through postsecondary education at both the institution and state system level.

28. **FACULTY ACTIVITY ANALYSIS**
To develop standard procedures for analyzing faculty activities and to design techniques that may be used to assist in compatible exchange of the data.

29. **RESOURCE REQUIREMENT PREDICTION MODEL**
To develop simulation models to project resource requirements to aid institutional decision makers in the allocation of higher education resources.

30. **INFORMATION EXCHANGE PROCEDURES**
To define conventions regarding the manner in which institutional data may be aggregated and arrayed for interinstitutional comparison.

31. **COST FINDING PRINCIPLES**
To develop costing methodologies that will permit cost analysis of the various activities in higher education.

32. **HIGHER EDUCATION FINANCE MANUALS**
To describe procedures for translating institutional financial data into program structures designed to meet the particular needs of decision makers at the institutional, state, and national levels.

33. **FACILITIES INVENTORY AND CLASSIFICATION MANUAL**
To revise the federal *Higher Education Facilities Classification and Inventory Procedures Manual.*

34. **NATIONAL SEMINAR ON HIGHER EDUCATION MANAGEMENT**
To conduct a national seminar for the purpose of identifying issues fundamental to developing and implementing comprehensive state planning and management systems.

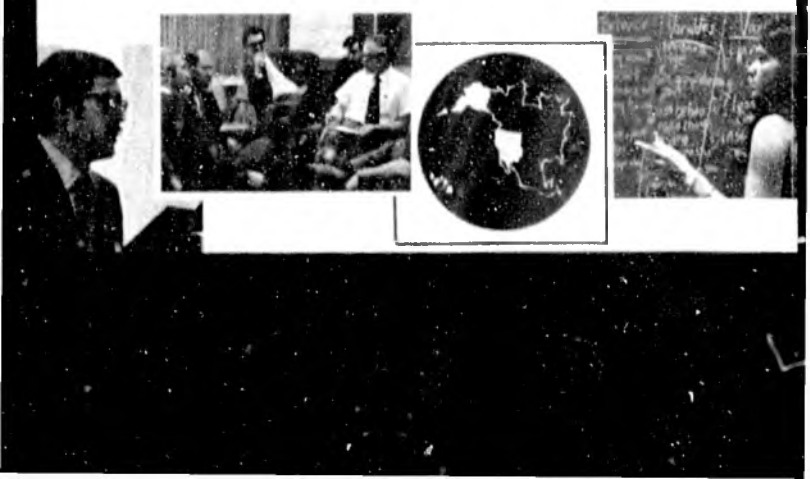
35. **GENERAL TRAINING**
To promote the adoption and implementation of new higher education management tools and techniques.

36. **TRAINING MATERIALS AND TECHNIQUES**
To develop a variety of training materials and techniques for use in providing instructional experiences that will ensure that the new management tools being developed under the Center's aegis will be fully understood by the higher education community.

37. **TRAINING NETWORK**
To meet the training needs of institutions and agencies throughout the country on the development and implementation of management technologies.

38. **CENTER PRODUCT WORKSHOPS**
To develop and conduct the Center product workshops to include details of specific Center products.

39. **VISITING PROFESSIONALS TRAINING PROGRAM**
To provide an opportunity for institutional or agency representatives to obtain a full understanding and working knowledge of NCHEMS develop-



mental work and to contribute in a meaningful fashion to some specific aspect of the Center's developmental work.

40. **A STUDY OF FEDERAL FINANCING PLANS FOR HIGHER EDUCATION**
Phase I: To evaluate and make recommendations for implementation relative to a specific federal general assistance plan for higher education. Phase II: To investigate systematically the financial needs of higher education and to develop and analyze alternative federal financing plans with the objective of making recommendations for implementing a plan or set of plans that best addresses the identified financial needs of higher education.

41. **STATEWIDE PLANNING SYSTEMS**
To conceptualize statewide planning systems that will result in design specifications for such additional programs as analysis of manpower trends, statewide planning and resource allocation models, and information systems for statewide planning.

42. **STUDENT FLOW**
To advance the state-of-the-art in student flow analysis by generalizing such concepts as student cohorts, transitions, state-of-the-system, and transition events to encompass a wide range of decision viewpoints of various decision makers. To investigate the stability and predictability of student flow in institutions in statewide systems.

43. **RESOURCE UTILIZATION ANALYSIS**
To develop techniques which will aid institutions in more efficient utilization of the resources available to them. This project is primarily directed to such operational or logistical functions of institutions as inventory management, work scheduling, space utilization, and course scheduling.

44. **OUTPUTS OF HIGHER EDUCATION**
To improve planning, evaluation, and decision making in higher education by developing quantitative measures and qualitative understandings of the outputs of education programs.

45. **RESOURCE ALLOCATION AND PLANNING MODELS**
To develop long-range improvements in the use and predictive capabilities of resource allocation and planning models. To develop techniques that facilitate the study of the resource implications of institutional output experiments and development of methodologies for studying feasible planning of alternatives.

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SELECTED WICHE PUBLICATIONS

The following publications and a complete list of all available WICHE publications are available free, except where noted, from Publications Unit, WICHE, P.O Drawer P, Boulder, Colorado 80302

WICHE REPORTS ON HIGHER EDUCATION. A quarterly newsletter concerning WICHE program activities and allied subjects.

YOUR STATE CAN HELP YOU SECURE YOUR EDUCATION IN MEDICINE, DENTISTRY, DENTAL HYGIENE, OCCUPATIONAL THERAPY, OPTOMETRY, PHYSICAL THERAPY, VETERINARY MEDICINE. An informational brochure describing WICHE's Student Exchange Programs.

THE MINORITY STUDENT ON THE CAMPUS. R.A. Altman and P.O. Snyder, eds. $3.50.

THE PUBLIC CHALLENGE AND THE CAMPUS RESPONSE. R.A. Altman and C.M. Byerly, eds. $3.50. (Available Dec. 1, 1971)

CREDIT BY EXAMINATION. R.A. Altman and J.Q. Jones, eds. Proceedings from workshops cosponsored by WICHE and The College Entrance Examination Board.

COMMUNICATING NURSING RESEARCH: IS THE GAP BEING BRIDGED? M.V. Batey, ed.

ABOUT WCHEN. A brochure describing the goals, objectives, and methods of the Western Council on Higher Education for Nursing.

ELEVENTH ANNUAL TRAINING INSTITUTE FOR PSYCHIATRIST-TEACHERS OF PRACTICING PHYSICIANS 1971: INNOVATIVE STRATEGIES FOR CONTINUING EDUCATION: CONTINUING EDUCATION AND THE PHYSICIAN'S EMOTIONAL WELL-BEING. R.A. Feldman, ed.

ACCOUNTING GUIDELINES FOR MENTAL HEALTH CENTERS AND RELATED FACILITIES. Prepared by D.L. Salsbery in collaboration with the Cost Systems Task Force, Western Conference on the Uses of Mental Health Data. P.A. McCullough, ed.

HIGHER EDUCATION MANAGEMENT. A periodical designed to discuss issues related to the National Center for Higher Education Management Systems at WICHE.

STUDENT FLOW MODELS: A REVIEW AND CONCEPTUALIZATION. C.C. Lovell, $1.00

VALUE CHANGE AND POWER CONFLICT IN HIGHER EDUCATION. W.J. Minter and P.O. Snyder, eds.

INTERDISCIPLINARY PROGRAMMING FOR INFANTS WITH KNOWN OR SUSPECTED CEREBRAL DYSFUNCTION. G. Hensley and V.W. Patterson, eds. $1.00.

WHAT IS WICHE? Continued

DIVISIONS. WICHE is composed of three major divisions, which constitute the organizational framework for 45 separate programs and projects.

THE DIVISION OF GENERAL REGIONAL PROGRAMS. This division currently sponsors 14 programs, covering a wide range of activities in higher education. They include a student exchange program for western students in the health sciences, a four-state Regional Medical Program, a program development unit, continuing education and research projects in nursing, a program to increase access of ethnic-minorities to higher education and to improve educational relevance for these students, on-the-job internships for college students, and a continuing education program for library personnel.

THE DIVISION OF MENTAL HEALTH AND RELATED AREAS. This division, which now has eight programs, was formed in 1956 at the request of the Western Regional Conference of the Council of State Governments. Programs in this division include continuing education for mental health professionals and for physicians in the field of psychiatry; the development of mental health worker programs in community colleges; improving mental health services on western campuses; and continuing education for deans and faculties of social work schools, for correctional personnel, and for general educators in the area of special education for the handicapped.

NATIONAL CENTER FOR HIGHER EDUCATION MANAGEMENT SYSTEMS at WICHE. This division, established in 1969, has 23 separate programs and represents a national effort in higher education. NCHEMS aims to improve higher education management through the design, development, and implementation of planning and management systems at institutional, state, and national levels.

The WICHE states are:

Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

WESTERN INTERSTATE COMMISSION
FOR HIGHER EDUCATION

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File: HCR #9

In recent years, the number of applicants to law school has risen much more rapidly than has the capacity of law schools to handle them.[1] It has become harder for all but the best qualified to get into particular law schools or, indeed, to get into law schools generally. In the fall of 1970, an American Bar Association survey showed that the country's law schools were essentially filled to capacity, with fewer than 1,000 first-year places unfilled because qualified students had not applied, and that there were no spaces at all at more than 90 percent of the law schools. Furthermore, the number of applications for fall 1971 admission rose at least 30 percent in law school capacity.

The increase, which is far in excess of projections based on student populations, is frustrating to both the applicants and the law schools. Up to a point, many schools welcome the chance to be more selective and get a more highly qualified student body, but by now an increasing number of schools are troubled by the number of fully qualfied applicants they must turn down. This is especially true in light of the opinion, widespread among legal educators and bar leaders, that the need of American society for people trained in the law is far from satisfied. Leaders of law schools and the bar are giving increased attention to the problem, but any long-range solution will come too late to help the 1972 or 1973 law school applicant.

[1]Twelve new law schools have been approved by the ABA since 1955, bringing the total to 140. First year students have increased from 8,700 to 17,000 during the same time period -- Digest of Educational Statistics, 1970.

Prelaw Handbook -- Association of American Law Schools and the Law School Admission Test Council.

January 27, 1972
2600 Northern Lights Boulevard
Anchorage, Alaska 99503

Gentlemen:

The purpose of this contact with you is to bring to your attention the plight of Alaskan students attempting to enter law school.

For varied reasons, law study has become extremely popular in the last two years. With an increasing number of applications, entrance requirements have stiffened significantly, especially for non-residents applying to state universities. Alaskan students fall into this category. The enclosed proposal includes what I consider to be the detrimental effects of this residency discrimination.

In the next few weeks I plan to outline three possible alternatives for remedial action. This factual presentation deals with unilateral action on your part. A second remedy will be sought through the logical vehicle, the Western Interstate Commission for Higher Education (WICHE; as Title 14, Chap. 40, Article 7) despite past opposition. A third alternative will examine the possibilities of legislative action including the feasibility of Alaska purchasing law school seats from Northwest schools.

Will you please consider this proposal and the forthcoming information with an eye towards development of a strong position on behalf of your profession.

Thank you for your attention.

Sincerely,

Martin D. Wells

Martin D. Wells
2600 Northern Lights
279-6005

A PROPOSAL

to the

ALASKA BAR ASSOCIATION

INASMUCH as it is the responsibility of the Citizenry of the State of Alaska to care for its offspring by offering the total amount of education as is possible, and

WHEREAS: Alaska does not have a law school at its state university, and

WHEREAS: 42 of 50 states offer preferential treatment to their state resident law candidates, and

WHEREAS: In the last two years, law school applications have increased 300% in many institutions, and

WHEREAS: Repercussions from this situation may include:

A. Alaskans being forced to study in schools far from the Northwest region, thus jeopardizing valuable contacts that are of prime importance during law school and upon returning to the state to practice law;

B. Alaskans being forced to borrow heavily to attend Outside private universities to the detriment and/or exclusion of other loan candidates;

C. Alaskans being forced to enter little-known, obscure schools, or four-year night schools to the possible detriment of their early careers;

D. The Alaska Bar's becoming inundated with attorneys from other states moving here to the possible detriment of the state due to their Outside orientation and perspective, and

WHEREAS: No reciprocal residency provisions now exist, as they have previously, that would alleviate the financial and proximity problems,

THEREFORE it is hereby proposed that the Alaska Bar Association take the following action:

A. IMMEDIATELY convey the interest of the Alaska Bar Association in its resident law school candidates by:

1. Sending letters to all law schools in the nation, with emphasis on the Northwest schools, urging them to accept qualified Alaskans in place of those non-resident applicants who have residency advantages in their home states,

2. Making this letter available to Alaskan students to include in their application material,

3. Properly publicizing this effort so its effectiveness will be maximized.

B. IMMEDIATELY seek the cooperation of the law schools in the Northwest in effecting an agreement allowing Alaskans to apply:

1. As in-state residents, or

2. On non-resident qualifications paying in-state tuition, or

3. On resident qualifications, paying out-of-state tuition,

in return for which the University of Alaska would allow students from those states to pursue graduate studies in Alaska under the same conditions.

C. ULTIMATELY urge the funding and establishment of a law school and legal center for the State of Alaska.

Submitted by

Martin D. Wells

I. INASMUCH as it is the responsibility of the Citizenry of the State of Alaska to care for its offspring by offering the total amount of education as is possible, and

II. WHEREAS: Alaska does not have a law school at its state university, and

III. WHEREAS: 42 of 50 states offer preferential treatment to their state resident law candidates, and

In Colorado:

> Based on the qualifications of all students granted regular admission to the Fall, 1971, entering class, it is not anticipated that applicants whose grade point averages or law School Admission Test scores are significantly below the following will be granted admission for the Fall, 1972. (Depending on the number of applications received and completed, higher qualifications may be required.)[2]

Resident		Non-Resident	
GPA	LSAT	GPA	LSAT
2.90	575	3.1	615

In Montana:

> Enrollment pressures are such that we can no longer accept applications for the University of Montana Law School from individuals who are not residents of Montana.[3]

In Idaho:

> The requirements for admission of resident students are somewhat lower than for non-residents wishing admission. We anticipate that residents will need around a 2.6 grade point average and a 560 LSAT score approximately, while non-resident applicants would need around a 3.00 grade point average and at least a 600 LSAT. It should be kept in mind, however, that these are only estimates at this time. Out of last year's entering freshman class there were 35 non-residents and 81 Idaho residents accepted.[4]

[2] Supplement to University of Colorado Bulletin, Vol LXXI, No. 29, June 20, 1971, G.S. No. 1553.
[3] John McCabe, Assistant Dean, University of Montana
[4] Albert R. Menard, Jr., Dean, University of Idaho

III. Continued --

. In Oregon:

> In reply to your letter of December 30, 1971, we do not normally favor residents over non-residents for purposes of admission decisions. This policy is reflected in our tuition structure, where residents and non-residents pay the same amount. I should mention, however, that in cases where several applicants present the same prelegal credentials, our Committee on Admissions usually grants the admission to the resident of Oregon. But the majority of the decisions are not made on the basis of residency, but on prelegal record and other factors our Committee feels are important. [4]

In Maryland:

> In the admission decision preference is certainly given to those who are residents of Maryland. In fact, we expect that only about 15% of the 175 students who will be admitted into the class beginning in September, 1972, will be classified as non-residents. Preference is also shown to residents in regard to the award of certain categories of financial aid.[5]

LSAT Score	Percent Below	156,094 Tested 1966-69
750	99.6	
725	99	
700	97	Non-residents generally
675	95	required 600
650	91	
625	86	Residents generally
600	79	required 550
575	71	
550	62	Assuming a normal distri-
525	52	bution across the curve,
500	42	this means 21% qualify
475	33	as non-resident while the
450	25	top 38% can qualify as
425	18	residents.
400	13	
375	8	
350	5	
325	4	
300	2	
275	1	
250	0.8	

[4] Becky Anderson, Admissions Secretary, University of Oregon
[5] James Forsythe, Assistant to the Dean, University of Maryland

IV. WHEREAS: In the last two years, law school applications have increased 300% in many institutions, and

University of Oregon:

The number of applicants and the size of our entering class for the last three years has been: 1969: 655 applicants, 156 registered students; 1970: 656 applicants, 151 registered students; and 1971: 1905 applicants, 140 registered students. We have presently received more applications for the fall of 1972 than the level we were at at this time last year. Thus, it would appear admission competition will remain at least as high, and probably exceed, the competition level of last year. [6]

School	Applied/Accepted in 1971[7]
Boston Univ.	6,000/325
Catholic Univ.	2,000/189
Dickinson	1,300/140
Duke	2,000/140
Florida State	1,500/150
George Washington	4,000/400
Harvard	6,300/525
Stanford	3,800/155
U.C. Berkeley	5,500/275
U.C. Davis	1,367/157
Oregon	1,905/140
U. Pennsylvania	3,000/200

V. WHEREAS: Repercussions from this situation may include:

A. Alaskans being forced to study in schools far from the Northwest region, thus jeopardizing valuable contacts that are of prime importance during law school and upon returning to the state to practice law;

[6] Becky Anderson, Admissions Secretary, University of Oregon
[7] Prelaw Handbook -- Association of American Law Schools and the Law School Admission Test Council.

V. Continued --

B. Alaskan being forced to borrow heavily to attend Outside private universities to the detriment and/or exclusion of other loan candidates;

Estimated Tuition and Fees by Type and Control of Institution, 1971-72 [8]

	All Institutions	Universities	Other 4-yr. Insitutions	2 year Institutions
Public	383	527	394	174
Private	1,830	2,161	1,754	1,351

Tuition Charge/year. Source: Prelaw Handbook

(P) Private (S) State	School	Resident	Non-Resident
P	Albany	$2,000	$2,000
P	Boston Univ.	2,200	2,200
P	William & Mary	660	1,600
S	Indiana	800	1,800
S	Ohio State	735	1,855
P	Stanford	2,805	2,805
S	Alabama	610	1,120
S	Arizona	420	1,310
S	U.C. Berkeley	700	2,200
S	U.C.L.A.	666	1,866
S	Colorado	553	1,821
P	Univ. Denver	2,400	2,400
S	Michigan	900	2,300
S	Washington	555	1,641

[8] U.S. Department of H.E.W., Office of Education, publication "Higher Education Basic Student Charges"

V. Continued --

C. Alaskans being forced to enter little-known obscure schools, or four-year night schools to the possible detriment of their early careers;

D. The Alaska Bar's becoming inundated with attorneys from other states moving here to the possible detriment of the state due to their Outside orientation and perspective, and

of the last 60 bar candidates, only 12 could claim residency of more than one year. Source: ABA Ales.

VI. WHEREAS: No reciprocal residency provisions now exist, as they have previously, that would alleviate the financial and proximity problems,

Tuition and residency reciprocity existed with several northwest states during territorial days. These "gentlemen's agreements" have long since lapsed for lack of authority.

VII. THEREFORE it is hereby proposed that the Alaska Bar Association take the following action:

A. IMMEDIATELY convey the interest of the Alaska Bar Association in its resident law school candidates by:

1. Sending letters to all schools in the nation, with emphasis on the Northwest schools, urging them to accept qualified Alaskans in place of those non-resident applicants who have residency advantages in their home states,

2. Making this letter available to Alaskan students to include in their application material,

3. Properly publicizing this effort so its effectiveness will be maximized.

B. IMMEDIATELY seek the cooperation of the law schools in the Northwest in effecting an agreement allowing Alaskans to apply:

1. As in-state residents, or

2. On non-resident qualifications paying in-state tuition, or

VII. Continued --

3. On resident qualifications paying out-of-state tuition,

in return for which the University of Alaska would allow students from those states to pursue graduate studies in Alaska under the same conditions.

C. ULTIMATELY urge the funding and establishment of a law school and legal center for the State of Alaska.

HCR-49

THE ALASKA COURT SYSTEM

PROPOSED THREE-YEAR COURT FACILITIES BUILDING

PROGRAM FOR THE STATE OF ALASKA

FISCAL YEARS

1972-73

1973-74

1974-75

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ALASKA COURT SYSTEM

PRESENT AND PROJECTED COURT FACILITIES PROGRAM

Status of Current Facilities Construction:

Major facilities financed and under planning and construction:

Anchorage
Ketchikan
Juneau

Fairbanks Court Space Requirements:

We have not included the city of Fairbanks within our court facilities program request due to the study and planning made by SUA, Inc. The SUA report indicates the urgency of the Court System for space both immediately and through 1985.

The report states that the existing building is not optimally designed for use as a court building, and every consideration should be given to providing a new court facility.

Recent legislation (Senate Bill No. 153) and opinions relating to the place of trial; and changing Rule 18, Rules of Criminal Procedure, now require that the superior court be brought to the bush areas as stated in AS 22.10.030, 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; 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. AS 22.10.030, Sec. 2 further states that 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.

The Alaska Court System in determining its capabilities of following legislative intent must submit a large three-year

capital improvements program in regard to both physical court facilities and upgrading of court libraries sufficient to take care of minimal superior court needs in the various election districts.

BUSH FACILITIES PROPOSAL

Major court facilities that each provide for Superior, District, and Magistrate Courts should be allocated a minimum of 12,00 square feet per building and are located as follows:

Location	Judicial District			Election District	
	Pro-posed	Pre-sent	Poss. Prop.	Will Be	Was
	FY 72/73				
Bethel	5	4	3	16	14
Barrow		2		21	17
Kotzebue		2		22	17
Sitka		1		4	3
	FY 73/74				
Kenai		3		12	10
Palmer		3		10	7
Seward		3		11	9
Wrangell		1		3	2

MAJOR COURT FACILITIES

12,000 sq. ft. space requirements for courts containing superior, district and magistrate operations. This building will require an architectural design.

Superior Court:

Courtroom - Jury Room	1,700 sq. ft.	
Offices - Judge, Secretary, In-court Deputy	650	
Clerical and Work Area	900	
Vault, Storage, Supply Areas	800	
Jury and Witness Assembly (Superior and District)	700	
Administrative and Family Court Requirements	600	
		5,350 sq. ft.

District and Magistrate Court:

Courtroom - Jury Room (Hearing Room)	1,500 sq. ft.	
Offices - Judge, Secretary, In-court Deputy	650	
Clerical and Recording Work Areas	1,200	
Vault, Storage, Supply Areas	800	
Witness Assembly	400	
Magistrate Office	250	
		4,800 sq. ft.

General Court Needs:

Public Law Library (Law Clerk)	1,200 sq. ft.	
Prisoner Holding	400	
Rest Rooms	800	
		2,400 sq. ft.
Direct Court Total		12,550 sq. ft.

MAJOR COURT FACILITIES

Space should be considered for ancillary court agencies as follows:

1.	District Attorney and Staff	600 sq. ft.
2.	Public Defender	600
3.	Parole - Probation	800
4.	Alaska Legal Services (OEO Funded)	300
		2,300

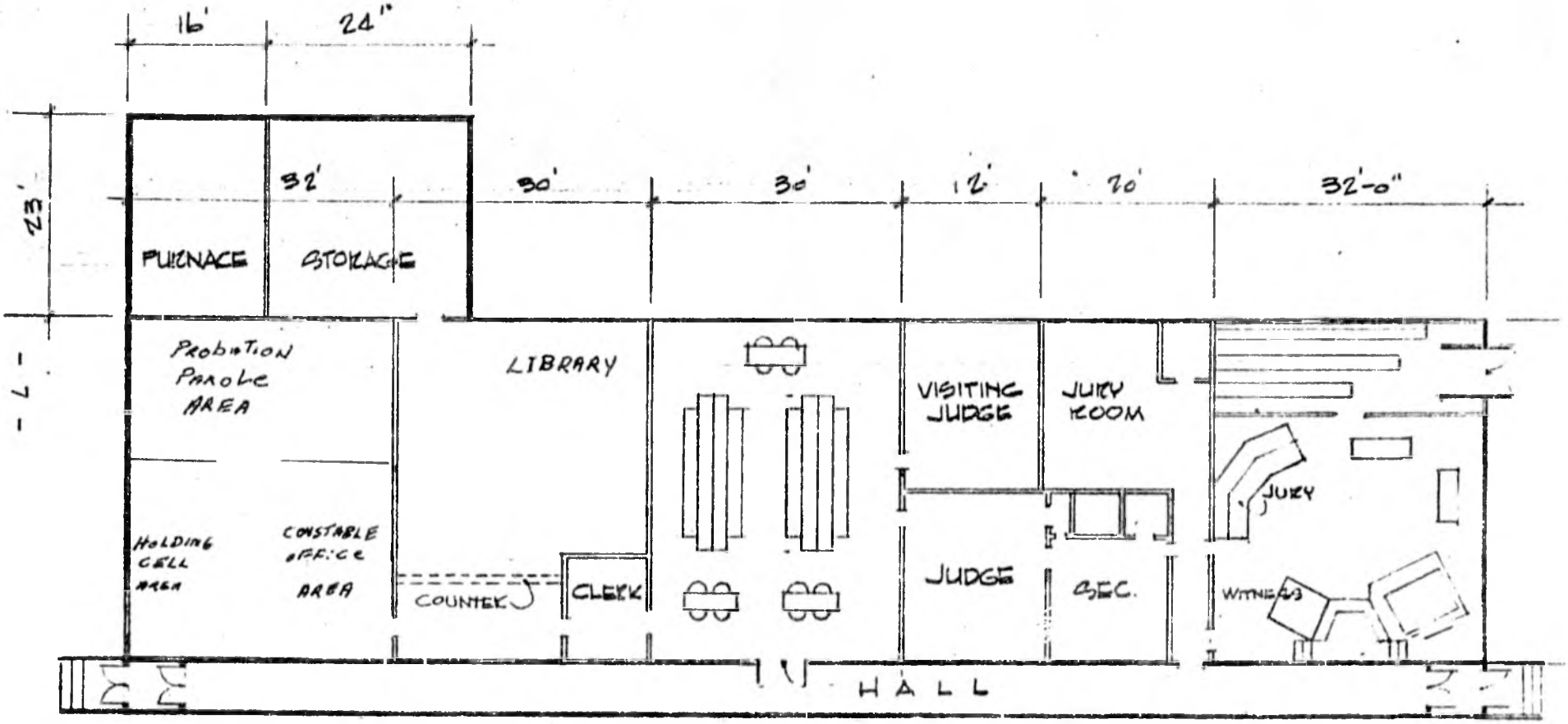
Court request does not include space requirements for mechanical, electrical, telephone, and janitorial needs as this will vary by facility and it is assumed that court space will most probably be joined to other State Building needs and be accomplished in overall planning.

BUSH FACILITIES PROPOSAL

To enable the Court System to hold Superior Court trials in every election district, it is essential that a plan for a building of 5,800 square feet be provided with a construction schedule as follows:

Location	Judicial District			Election District	
	Proposed	Present	Poss. Prop.	Will Be	Was
	FY 72/73				
Cold Bay		3		14	12
Dillingham		3		15	13
Tanana		4		18	15
Saint Marys	5	2	3	24	19
	FY 73/74				
Delta Junction (Big Delta)		4		19	6
Glenallen		3		8	6
Haines		2		6	5
Homer		3		12	10
McGrath	5	4	3	17	15
Valdez		3		8	6
	FY 74/75				
Cordova		3		7	6
Old Harbor (K.I.)		3		13	11
Petersburg		1		3	2
Tok		4		19	16
Yakutat		1		6	5

Suggested Floor Plan for 5,800 square foot Bush Justice Facilities



SCALE: 1/16" =

BUSH FACILITIES PROPOSAL

FY 72/73

The Alaska Court System, in conjunction with the State Police and Village Police Programs for up-grading services and minor bush facilities, propose the following three-year program for new facilities of approximately 3,800 square feet per building:

Location	Judicial District Pro-posed	Pre-sent	Poss. Prop.	Election District Will Be	Was
Angoon		1		4	3
Craig		1		1	1
Pelican		1		6	5
Skagway		1		6	5
Buckland		2		22	17
Gambell		2		23	18
Point Hope		2		22	18
Teller		2		23	17
Unalakleet		2		23	19
Wainwright		2		21	17
Girdwood		3		10	8
Naknek		3		15	13
Port Lions (Afognak Island)		3		13	11
Unalaska		3		14	12
Eagle		4		20	16
Fort Yukon		4		17	16
Galena		4		18	15
Nenana		4		18	15
Aniak	5	4	3	17	15
Emmonak	5	2	3	24	19
Hooper Bay	5	2	3	24	19
Mekoryuk (Nunivak Island)	5	4	3	16	14
Mountain Village	5	2	3	24	19
Quinhagah	5	4	3	16	14
Tununak	5	4	3	16	14

BUSH FACILITIES PROPOSAL

FY 73/74

The Alaska Court System, in conjunction with the State Police and Village Police Programs for up-grading services and minor bush facilities, propose the following three-year program for new facilities of approximately 3,800 square feet per building:

Location	Judicial District			Election District	
	Pro-posed	Pre-sent	Poss. Prop.	Will Be	Was
Hoonah		1		6	5
Kake		1		3	2
Elim		2			
Kiana		2		22	17
Noatak		2		22	17
Noorvik		2		22	17
Savoonga		2		23	18
Selawik		2		22	17
Wales		2		23	18
Manokotak		3		15	13
Sand Point		3		14	12
St. Paul Island		3		14	12
Seldovia		3		12	10
Talkeetna		3		9	7
Togiak		3		15	13
Whittier		3		10	9
Arctic Village		4		21	16
Bettles		4		18	15
Cantwell		4		18	15
Nulato		4		18	15
Ruby		4		18	15
Chevak	5	2	3	24	19
Holy Cross	5	2	3	16	14
Nunapitchuk	5	4	3	19	14
Tuluksak	5	4	3	16	14

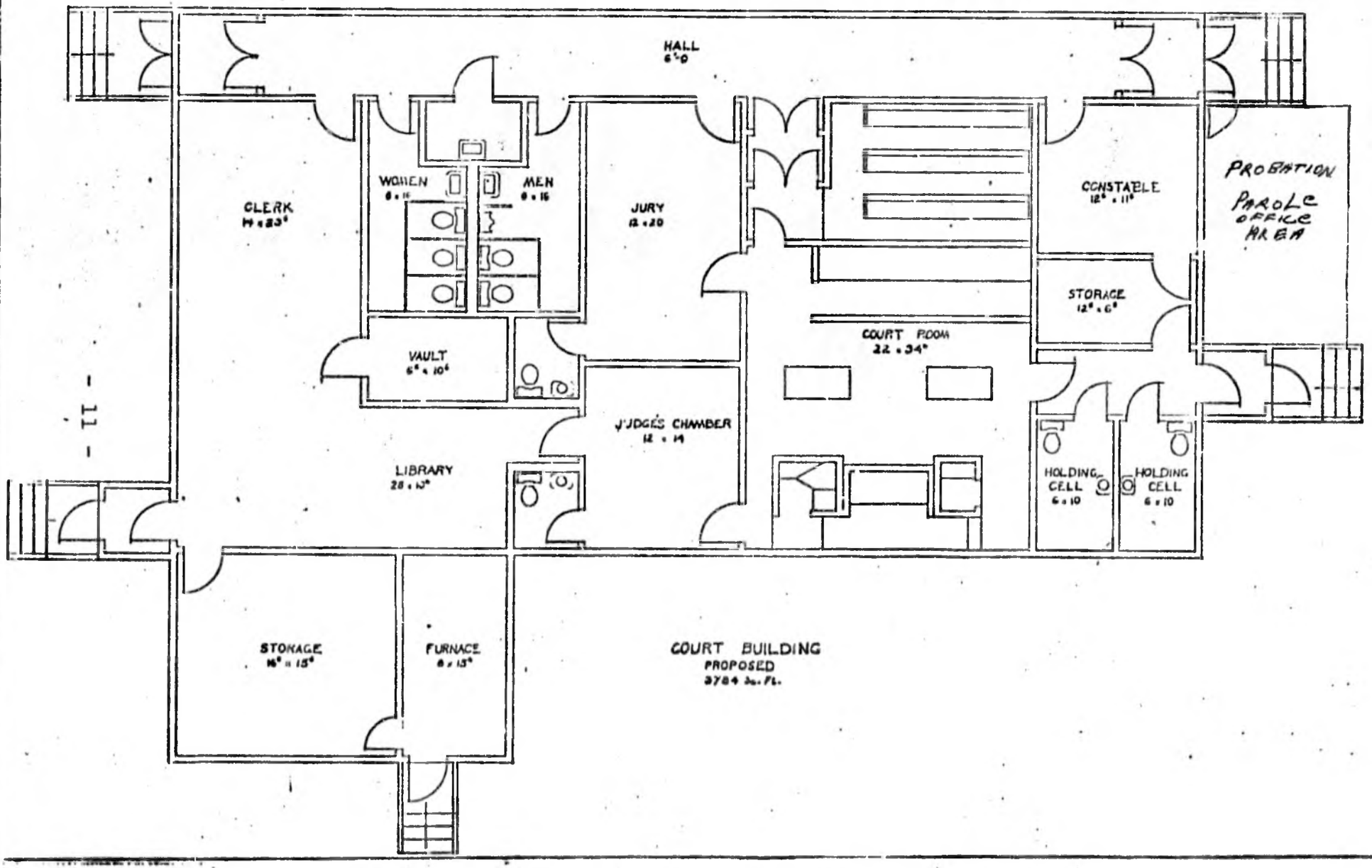
BUSH FACILITIES PROPOSAL

FY 74/75

The Alaska Court System, in conjunction with the State Police and Village Police Programs for up-grading services and minor bush facilities, propose the following three-year program for new facilities of approximately 3,800 square feet per building:

Location	Judicial District			Election District	
	Pro-posed	Pre-sent	Poss. Prop.	Will Be	Was
Ambler		2		22	17
Deering		2		23	17
Kivalina		2		22	17
Koyuk		2		23	18
Saint Michael		2		23	18
Shaktoolik		2		23	18
Shungnak		2		23	18
Egegik		3		15	13
Koliganek		3		15	13
Larsen Bay (K.I.)		3		13	11
Tyonek		3		12	10
Allakaketc (Alatna)		4		18	15
Barter Island (Kaktovik)		4		16	18
Beaver		4		20	16
Stevens Village		4		21	16
Akiak	5	4	3	16	14
Akiachak	5	4	3	16	14
Alakanuk	5	2	3	24	19
Eek	5	4	3	16	14
Kipnuk	5	4	3	16	14
Kwethluk	5	4	3	16	14
Napakiak	5	4	3	16	14
Tooksook Bay	5	4	3	16	14

Suggested Floor Plan for 3,800 square foot Bush Justice Facilities



NOMENCLATURE

The population information was extracted from the 1970 U. S. Census Second Count reports, "Summary of Race and Housing for Places within Alaska," "Housing Totals for Places in Alaska" and "Preliminary 1970 Census Counts of American Indians and Alaska Natives." The form of government and borough in which the community is located is also indicated. There are 10 organized boroughs in Alaska, and the rest of the state is classified as "unorganized borough," with governmental responsibility vested in the state legislature. Local governments are classified as one of five types of cities under Alaska law and also "traditional villages," IRA rule, which are cities of the first class with charters adopted by local referendum, and the four classes specified by state enabling legislation. The first, second, third and fourth class cities are all incorporated under Alaska law, with rights and powers as prescribed, while the "traditional villages" are not incorporated. They are governed by tribal councils chosen by the villages with the authority granted by the villagers themselves. IRA villages are those incorporated under the federal Indian Reorganization Act, but not under state law. They have substantially the same status as traditional villages, but are somewhat more formalized. One last classification used in this report is "unincorporated," which denotes a community with no functioning government at all. In many cases the borough in which they are located provides government services as needed, or the population may be so small as to make local organization unnecessary.

The power section is admittedly not complete. Alaska Village Electric Cooperative (AVEC) has energized 33 villages and will serve 11 more this year. But information is sketchy on other electric utility service in the remote areas. There are privately operated generators, or village-owned facilities and service by tie-line from the urban utilities. And, of course, many places still have no power at all.

In the transportation facilities section an attempt is made to give a picture of each community's situation. Those on the highway system are identified, as these communities are different in many ways from the remote communities. The "roads" item shows local road mileage where known, or the fact that the village has a local road system. It can be assumed that most local roads are unpaved.

NOMENCLATURE

More communities are served by airport than by highway. The airports are very important to the life and economy of these places, and airstrip characteristics are given in some detail. The code meanings related to airstrips are as follows:

D - dirt or turf runway
G - gravel runway
H - hard-surface runway
S - seaplane landing area available

The runway designation is followed by a number indicating the length in hundreds of feet, and this is followed by the letter "L" if the strip is lighted. For example, H50L would mean a lighted hard-surfaced runway 5,000 feet long. If the airport has fuel available for aircraft, this is shown by "F". Scheduled airline service is shown by "AC" followed by a number indicating the number of days per week, and "J" indicating jet fuel is available. If "I" is shown, it means the field has navigation facilities and is equipped for instrument approach.

Major court facilities that each provide for Superior, District, and Magistrate courts should be allocated a minimum of 12,000 square feet per building and are located as follows:

	(1) Location	House Election District ** Will Was	(1) Population 1970	(2) % Native Population	(3) Form of Government	(4) Judge: Superior, District or Magistrate	(5) Village or City Police	(6) St. Trooper / St. Paid Village Police	(7) Transportation Road + Water	(8) Airport By Type	(9) Electric Power	(10) School By Type + Grades	(11) Military	(12) Public Library / Jail	(13) Communications
1	SITKA	4(6)	3370	25	Home Rule	S, D, M	City	AST	Dock-Ferry Local RDS	A 3Ob, F, AC? J,E	City	SITKA K-12	NONE	City Jail/FBI	AP&T
25(4)3	BETHEL	16 (14)	2416	77	4th Class (C)	D, M	City	AST+2	Local RDS Dock-L	J, E F, AC	City, DG	STR K-12	USAF/VA	" " / "	RADIO/TELE
1 2	KOTZEBUE	22 (19)	1696	79	" " "	M (Proposed D)	City	AST	LCL RDS	H60, J, E F, AC?	City	BIA K-12	USAF	" "	RAC, TEL, ARW
2	BARROW	21 (17)	2104	90	" " "	M (AUTH. D)	City	AST	LOC RDS	H65C, F, AC6, JI	City	BIA K-9	USAF/VA	" "	" " "
	FY 73/74														
1	WRANGELL	3 (2)	2029	21	Home Rule	D M	City	AST	Dock-Ferry LCL RDS	65C, AC?	City	City, K-12	NONE	City Jail	RAD/TEL/ARW
3	SEWARD	11 (9)	1589	14	" "	M	City	NONE	Dock-Ferry Hwy Numb/FBI LCL RDS/DOT	64BE, F, AC	City	Kenai, BIA K-12	NONE	" "	" "
3	PALMER	16 (9)	1140	3	" "	M	City	AST	Hwy Num-FBI LCC RDS	H60L, F	MVEA	MSB K-12	NONE	" "/VA	" " RAC
3	KENAI	12 (10)	3533	5	" "	S, M	City	AST	Hwy Num/FBI Snd Ster/Hwy Dock-Ferry, Local	H95L, F, AC? J,E	KP Power	KP K-12	USAF	" "/"	" " "

* 5 = proposed 5th Judicial District
(4) = present Judicial District
3 = possible proposed extension of 3rd Judicial District

** Will = proposed 24 House Election District as per State Constitution
Was () = Old House Election District

To enable the Court System to hold Superior Court trials in every election district, it is essential that a plan for a building of 5,800 square feet be provided with a construction schedule as follows:

Judicial District	Location	Elect Dist	Population 1970	% Native Population	Form of Government	Judge Superior District Magistrate	City or Village Police		AST or St. Pol. V. Non Police	Transportation Rds/Wtr	Airport By Type	Electric Power	School By Type + Grades	Military	Library/ Jail	Community Centers
FY 72/73 WILL WAS																
3	Cold Bay	14 (12)	256	13	No Home	M	City	No Chief	None	Dock/Lcl Rds	4500, F, AC-1	Lcl Gen	STR 1-8	USAF	None	None
3	Dillingham	15 (13)	914	64	2nd Class	M	City		1 AST	Dock/Lcl Rds	6500, F, AC-1	" "	City K-12	NG	City, Jail	" "
4	Tanana	18 (15)	120	97	4th Class	M	None		AST	Lcl Rds Dock	6000, F, AC-1, 2	Lcl Gen	STR 1-12	None	" Lib	" "
5	St Marys	24 (19)	389	91	2nd Class	M	None		5 VP	Dock	650, F, AC-1, 2	Avgas/Dsl	STR K-12	None	None	None
FY 73/74																
3	Valdez	8 (6)	1005	15	Home Rule	M	City		1 ST	HW Rds/Air Dock Lcl Rds	6000, F, AC-5	City	City K-12	None	City, J/L	A/T, Apt
3	Homer	12 (10)	1083	5	1st Class	M	City		1 AST	Dock Lcl Rds	4500, F, AC-1	City (Pri)	KPB K-12	None	City J	A/T
3	Haines	6 (5)	463	24	1st Class	M	City		1 AST	HW Dock Rds	6000, F, AC-1	City ?	HB K-12	USA	None	A/T
3/3	McGrath	17 (15)	279	59	2nd Cl	M	None		** None Fish & Game	Dock Lcl Rds HW	4500, F, AC-1	Lcl Gen	STR 1-12	USAF	None	None
3	Glennallen (Old Delta)	8 (6)	363	11	No Formal	M	None		1 AST 5	Dock Lcl Rds HW	D-20	Pri/SBA	STR K-12	None	None	A/T
4	Delta Junction	19 (16)	909	1	4th Class	M	?		AST	HW	4000, F, I	Lcl Gen	City K-12	USA	None	A/T
FY 74/75																
1	Yakutat	6 (5)	190	82	2nd Class	M	City		None	Lcl Rds Dock	4200, F, AC-1	City	City K-12	None	J	A
3	Cordova	7 (6)	1164	16	Home Rule	M	City		1 AST	Lcl Rds Dock	4200, F, AC-1	City DF	City K-12	None	L/J	A/T
3	Old Harbor Kodiak	13 (11)	290	93	4th Class	Peace M	City		None	Lcl Rds Dock	620, AC-6	AVGAS/DF	KIB K-8	None	L	A
1	Petersburg	3 (2)	2042	15	Home Rule	M	City		1 AST	Lcl Rds Dock - Ferry	650, F, AC-1	City	City K-12	None	None	A
4	Tok	19 (16)	214	12	No Formal	M	None		1 AST	Lcl Rds HW	6300	Pri	STR K-12	None	None	A/T

** Fish & Game Protection Officer

* 5 = proposed 5th Judicial District
(2) (4) = present Judicial District
3 = possible proposed extension of 3rd Judicial District

The Alaska Court System in conjunction with the State Police and Village Police

Programs for up-grading services and minor bush facilities propose the following 3-year Program for new facilities of approximately 3,784 sq ft per building.

FY 72/73

Judicial District		Location	Elect Dist W.H.	Elect Dist Was	Population 1970	% Native Population	Form of Government	Judge Superior District Magistrate	City or Village Police	St. Trooper/ St Pol Village Police	Transportation Rds/Wtr	Airport By Type	Electric Power	School Type & Grades	Military	Library/ Jail	Community Centers
1	1	Hydaburg	4 (5)		460	94	4th Class	Acq M	City	None	Dock-Barge Wtr-Dock	5100 ft, AC	Avec/DG	Str K-8	None	None	R/T
2	1	Craig	1		292	56	3rd "	M	City	Post	Loc Rds	5100 ft, AC	City	City K-12	None	None	R/T
3	1	Pelican	6 (5)		133	20	2nd "	Ruth M	City	None	Dock Loc Rds	5100 ft AC	City	City K-10	None	None	R/T
4	1	Skagway	6 (5)		694	6	1st "	M	City	None	Ferry/RR	H33, F, AC3	City DG	City K-12	"	"	R/T
5	2	Buckland	22 (17)		104	99	4th Class	M	Village	None	Loc Rds	620, AC2	Loc Gen	Str K-8	None	None	R/T
6	2	Gambell	23 (18)		392	96	4th "	M	None	SPVP	Dock	4445, AC2	Avec/DG	BIA K-8	NG	"	R
7	2	Point Hope	22 (18)		386	99	4th "	M	Village	None	Dock	6414, F, AC3	" "	Str K-6	None	"	R
8	2	Teller	23 (19)		220	89	4th "	M	None	SPVP	Dock Rd-Wainwright	610, AC3	Loc Gen	Str K-8	"	"	R
9	2	Unalakleet	23 (19)		434	92	IRA	M	"	"	None	4602, F, AC3	" "	BIA K-12	USAF	"	R
10	2	Wainwright	21 (17)		315	99	4th Class	M	Village	None	"	644, AC3	" "	" K-8	None	"	R
11	3	Girdwood	10 (8)		120 (202 RS)	20	2nd Class	Prop M	None	None	Seward Hwy Loc Rds	620	Pri	Str	None	None	R/T
12	3	Eklutna	15 (13)		198	21	2nd "	M	"	Post	Dock Loc Rds	H2L, F, AC2	City	BIA K-12	USAF	"	R/T
13	3	Fort Wainwright (Fairbanks 13 (11)			227	81	4th "	Prop M	City	None	Loc Rds	620, AC6	KIUK	K/B-K-8	None	City LB	R/T
14	3	Unalaska	14 (12)		178	69	1st "	M	City	"	Dock	546, F, AC	City DG	City K-12	"	None	R/T
15	4	Eagle	20 (16)		56	11	1st Class	Prop M	None	None	Summer Rd Str	636 AC2 AC7 2	Pri Gen	Str K-8	None	None	R/T
16	4	Fort Yukon	17 (16)		448	84	4th "	M	City	"	Loc Rds	650, F	City	Str K-12	USAF NG	"	R/T
17	4	Galena	18 (15)		320	88	Trad'l	M	None	Asst	Dock Loc Rds	H44, F, AC6	Pri Gen	Str K-8	USAF	"	R/T
18	4	Nenana	18 (15)		362	39	1st Class	M	Village	"	Dock New-Rds Dock	636, F, I	City Gen	City K-12	None	"	R/T
19	5 (4)	Kiniak	17 (15)		205	82	Trad'l	M	Village	None	None	650, F, AC3	Avec/DG	Str	USAF	None	R/T
20	5 (3)	Emmonak	24 (19)		139	96	4th Cl	M	None	SPVP	"	2434, AC3	" "	BIA K-8	NG	"	R
21	5 (3)	Hooper Bay	24 (19)		490	99	4th "	M	Village	None	"	H40, AC3	" "	" K-12	NG	"	R
22	5 (3)	Mt. Village	24 (17)		419	94	4 "	M	None	SPVP	Dock	621 AC3	" Pri Gen	BIA K-8	None	"	R
23	5 (4)	Kiwalik (N2)	16 (14)		249	94	4 "	M	Village	None	Dock-Loc Rds	636 AC2	" DG	BIA K-8	"	"	R
24	5 (4)	Quinhagak	16 (14)		340	98	IRA Village	Prop M	"	"	None	620 AC	" "	BIA K-8	"	"	R
25	5 (4)	Tununak	16 (14)		294	99	Unified 4th	M	None	SPVP	Loc Rds	624 AC1	" "	BIA K-8	"	"	R

* 5 = proposed 5th Judicial District
() = present Judicial District
3 = possible proposed extension of 3rd Judicial District

The Alaska Court System in conjunction with the State Police and Village Police

Programs for upgrading services and minor bush facilities propose the following 3-year program for new facilities of approximately 3,784 sq ft per building.

FY 73/74

Judicial District	Location	Elect Dist Will	Elect Dist Was	Population 1970	% Native Population	Form of Government	Judge: Superior District Magistrate	City or Village Police	ST Troopers/ ST Prob Officer Post	Transportation Rds/Wtr	Airport by type	Electric Power	School By Type Grades	Military	Library/ Jail	Comm. Center
1	1	HOONAH	6	(5)	948	92	1ST Class	M	City	AST	FERRY LCL RDS DOCK	628, 550 F ACP	City	City, K-12	USAF	LIB	R/J
2	1	KAKE	3	(2)	448	91	1ST "	M	City	NONE	LCL RDS DOCK	5100 F ACP	City	City, K-12	USAF	NONE	R/J
3	2	EEK		( )	174	99	4TH Class	** TBP-M	Village	NONE	NONE	DIB AC3	AVEC/DG	BIA 1-8	NG	LIB	R
4	2	KIANA	22	(19)	278	99	4TH "	** M	None	SPVP	DOCK	640F AC3	" "	BIA K-8	NONE	NONE	R
5	2	NOATAK	22	(17)	293	98	IRA Village	TBP-M	Village	NONE	BARGE	624 AC2	" "	STR 1-8	"	"	R
6	2	NOORVIK	22	(19)	462	99	4TH Class	M	"	"	DOCK	618 AC3	" "	STR 1-8	"	"	R
7	2	SHISHMAREF	23	(18)	364	99	4TH "	PROP M	NONE	SPVP	NONE	640 AC2	" "	BIA K-8	"	"	R
8	2	SELAWIK	22	(17)	429	98	4TH "	M	"	"	DOCK	D16 AC3	" "	STR 1-8	"	"	R
9	2	WALES	23	(19)	131	92	4TH "	M	Village	NONE	"	D15, AC3	LCL GEN	" 1-8	"	"	R
10	3	MANOKOTAK	15	(13)	214	96	4TH Class	** TBP-M	Village	NONE	NONE	G26,	AVEC/DG	STR 1-8	NONE	NONE	R
11	3	SAND POINT	14	(12)	360	74	4TH "	M	NONE	AST	LCL RDS, DOCK/FERRY	G36F, DC4 AC3	LCL GEN	STR 1-8	"	LIB	R/J
12	3	ST PAUL ISLAND	14	(12)	450	95	1ST "	M	City	AST	LCL RDS DOCK	G52L F	City	STR K-8	"	JAIL	R
13	3	SELDOVIA	12	(10)	439	32	1ST "	ANN M	City	NONE	FERRY/DOCK LCL Rds	62F	PRI COOP	KPB 9-12	"	"	R/J
14	3	TALKEETNA	9	(7)	188	5	No Formal	** TBP-M	NONE	"	SPUR RR LCL Rds	640L, F	" GEN	MSB 1-12	"	NONE	R/J
15	3	TOGIAK	15	(13)	383	98	4TH CLASS	TBP-M	Village	"	NONE	630 AC3	AVEC/DG	STR 1-8	"	"	R/J
16	3	WHITTIER	10	(9)	130	4	" "	PROP M	City	"	RR and LCL RDS	NONE	City	STR 1-8	"	"	R/J
17	4	ARCTIC VILLAGE	21	(16)	85	99	TRAD'L	** TBP-M	NONE	NONE	NONE	4-45 AC3	PRI GEN	STR K-7	NG	NONE	R/J
18	4	BETTLES	18	(15)	100	95	Unknown	AUTH M	NONE	"	DOCK LCL RDS NW-FAA	550, AC	PRI GEN	STR 1-8	NONE	"	R/J
19	4	CANTWELL	18	(15)	62	69	TRAD'L	M	"	AST-2		626 F	LCL GEN	STR	"	"	R/J
20	4	NULATO	18	(15)	308	97	4TH Class	AUTH M	"	NONE	DOCK	624 F, AC2	AVEC/DG	STR 1-10	"	"	R/J
21	4	RUBY	18	(15)	145	92	TRAD'L	TBP-M	"	"	BARGE	626 AC2	PRI GEN	STR 1-8	"	"	R/J
22	5 (3)*	CHEVAK	24	(19)	389	99	4TH Class	** TBP-M	Village	NONE	DOCK	D8, AC3	AVEC/DG	BIA K-8	NG	NONE	R
23	5 (3)*	NAPAKIAK	16	(14)	199	99	" "	" "	"	"	"	G22F, AC2	" "	STR 1-8	NONE	NONE	R/J
24	5 (3)*	NUNAPITCHUK	19	(14)	250	95	" "	" "	"	"	NONE	620 AC	LCL GEN	BIA K-8	"	"	R
25	5 (3)*	TULUKSAK	16	(14)	195	99	" "	" "	"	"	"	D25 AC2	"	" K-8	"	"	R

* 5 = proposed 5th Judicial District
() = present Judicial District
3 = possible proposed extension of 3rd Judicial District

** TBP-M = to be proposed Magistrate post

The Alaska Court System in conjunction with the State Police and Village Police Programs for upgrading services and minor bush facilities propose the following 3-year program for new facilities of approximately 3,784 sq ft per building.

FY 74/75

Judicial District		Location	Elect Dist Will (Was)	Population 1970	% Native Population	Form of Government	Superior District Magistrate**	City Or Village Police	St. Trooper/ St. & Village Police	Transportation Rds/Wtrs	Airport By Type	Electric Power	School By Type Grades	Military	Library/ Jail	Communications
1	2	AMBLER	22 (17)	149	94	Trad'l	TBP-M	Village	None	Barge	D17, AC2	Loc Gen	STR 1-8	None	None	R
2	2	DEERING	23 (17)	85	96	4th Class	" "	"	"	"	G23 AC2	Pri "	STR 1-8	NG	"	R
3	2	SHUNGNAK	23 (18)	165	99	" "	" "	"	"	Barge	G14 AC2	AVEC/DF	" 1-8	None	"	R/T
4	2	KIVALINA	22 (17)	188	97	4th Class	TBP-M	None	None	Barge	D20 AC2	AVEC/DF	STR 1-8	None	None	R
5	2	KOYUK	23 (18)	122	100	" "	" "	"	State Ferry	None	G20 AC2	" "	" 1-8	"	"	R
6	2	ST MICHAEL	23 (18)	809	92	" "	" "	Village	None	Loc Rds Dock	D00F AC3	" "	BIA K-8	"	"	R
7	2	SHAKTOOLIK	23 (18)	151	95	" "	" "	"	"	None	G27, AC2	" "	" K-8	"	"	R
8	3	EGEGIK	15 (13)	148	50	Trad'l	TBP-M	None	None	Dock None	G19 AC8	Pri Gen	STR 1-8	None	None	R
9	3	KOLIGANEK	15 (13)	192	99	"	"	"	"	Barge	G22 AC5	" "	" "	"	"	R
10	3	LARSEN BAY (K)	13 (11)	109	82	"	"	"	"	Dock	S100 AC3	" "	KIB K-8	"	"	R
11	3	TYONEK	12 (16)	232	95	IRA Village	" "	"	"	Loc Rds	6351 AC	" "	KPB K-8	"	"	R/T
12	4	ALLAKAKET (ALATNA)	18 (6)	194	99	Trad'l	TBP-M	None	None	None	G30 AC3	Pri Gen	STR 1-8	USAF	None	R/T
13	4	BEAVER	20 (W)	101	86	"	"	"	"	Barge	G37 AC1	" "	BIA K-8	None	"	R
14	4	BARTER ISLAND (KAKTOVIK)	16 (18)	123	88	"	"	"	"	"	G48L, F AC2	" "	" K-8	USAF/NG	"	R/T
15	4	STEVENS VILLAGE	21 (W)	94	99	IRA Village	"	"	"	"	D22 AC3	" "	STR 1-8	None	"	R
16	5(4)3*	AKIAK	16 (14)	171	99	4th Class	TBP-M	Village	None	None	D20 AC	Pri Gen	BIA K-8	NG	None	R
17	5(4)3*	AKIACHAK	16 (19)	312	96	IRA Vil.	"	"	"	"	D19 AC	" "	" K-8	None	"	R
18	5(2)3*	ALAKANUK	24 (19)	265	93	4th Cl.	"	"	"	"	D15 AC3	" "	BIA K-8	NG	"	R
19	5(4)3*	EEK	16 (14)	186	90	" "	"	None	SPUP	Dock	S50 AC2	AVEC/DF	BIA K-8	None	"	R
20	5(9)3*	NAPAKIAK	16 (19)	270	98	" "	"	"	"	None	S100 AC5	Pri Gen	" "	"	"	R
21	5(9)3*	KIPNUK	16 (19)	325	98	Trad'l	"	"	"	Dock	S30 AC2	" "	" "	"	"	R
22	5(4)3*	KWETHLUK	16 (14)	408	96	IRA Vil	"	Village	None	Barge	G18 AC2	Loc Gen	" K-8	NG	"	R
23	5(4)3*	TOKSOOK BAY	16 (14)	257	95	Trad'l	"	Village	None	None	G20, AC8	AVEC/HE	" K-8	None	"	R

* 5 = proposed 5th Judicial District
() = present Judicial District
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** TBP-M = to be proposed Magistrate Post

MAJOR COURT FACILITIES

PRESENT SPACE AND PRESENT DEFICIENCIES

FY 1972/73

Bethel:

Located in the Fourth Judicial District - court presided over by District Court Judge, Nora Guinn.

Current Space - ASHA - The court has 1,654 sq. ft. of space in the Bethel State Building shared with other state agencies.

Deficiencies of present space:

1. Courtroom too small - inadequate jury area;
2. No space for a judge's office or secretarial or in-court deputy work area;
3. No private room for conference purposes;
4. No vault or storage areas;
5. Inadequate clerical work area and the general public must wait in the open hall;
6. Unsatisfactory reference library both as to content and space provision;
7. No jury or witness assembly areas;
8. No provision for a reading section;
9. No space provided for ancillary court agencies.

Barrow:

Located in the Second Judicial District - court presided over by full-time Magistrate, Sadie Neakok.

Current Space - Up until January 25, 1972 Magistrate Neakok held court and operated from her home. As of January 25 we have rented 324 sq. ft. of office space in the post office building.

Projected Space Programs - The Court System joined in the planning for an ASHA combined state facility. Funds were appropriated for construction last year. All development was held in abeyance subject to possible inclusion of state agencies along with the City of Barrow in a federally funded airport facility, the Barror Terminal Corporation.

MAJOR COURT FACILITIES

PRESENT SPACE AND PRESENT DEFICIENCIES

FY 1972/73

Deficiencies of present space:

1. No courtroom or jury space;
2. Inadequate court facilities for clerical work area and no space for recording functions;
3. Unsatisfactory reference library both as to content and space provision;
4. No space for ancillary court agencies.

Kotzebue:

Located in the Second Judicial District - court presided over by Magistrate, Fletcher Gregg.

Current Space - Court is presently being held at the magistrate's home. By March 15, 1972 we will have two small offices comprising 360 sq. ft. total, located in the police building, for Magistrate Gregg.

Projected Space Program - The Court System joined in the planning for an ASHA combined state facility. Funds were appropriated by the legislature last year. However, this space is not adequate under present and future court needs.

Deficiencies of present space:

1. No courtroom or jury space;
2. Inadequate court facilities for clerical work area and no space for recording functions;
3. Unsatisfactory reference library both as to content and space provision;
4. No space for ancillary court agencies.

Sitka:

Located in the First Judicial District. Court System judicial officers:

MAJOR COURT FACILITIES

PRESENT SPACE AND PRESENT DEFICIENCIES

FY 1972/73

1. Superior Court Judge, Victor Carlson;
2. District Court Judge, Roger DuBrock;
3. Magistrate, Ernest W. Hillman.

Current Space - Court facilities are comprised of 4,686 sq. ft. leased from C & R Builders, other state agencies have space in this building.

Deficiencies of present space:

1. No superior courtroom or jury space;
2. Inadequate space for superior court support staff and all related court functions;
3. No vault or storage areas;
4. District court has insufficient space for the recording section;
5. Unsatisfactory reference library;
6. Need improved jury and witness assembly areas;
7. More space is required for ancillary court agencies;
8. Additional rest rooms and mechanical facilities are desperately needed;
9. Present parking space unsatisfactory.

MAJOR COURT FACILITIES

PRESENT SPACE AND PRESENT DEFICIENCIES

FY 1973/74

Kenai:

Located in the Third Judicial District. Court System judicial officers:

1. Superior Court Judge, James Hansen;
2. Magistrate, Jess Nicholas, Jr.

Current Space - Court facilities are comprised of 3,310 sq. ft. leased from Reliable Builders.

Deficiencies of present space:

1. Additional courtroom (hearing room) and jury space required;
2. Inadequate space for superior court support staff and related court functions;
3. No vault or storage areas;
4. Magistrate court has insufficient clerical working area as well as a need for recording space;
5. Need additional jury and witness assembly areas;
6. Require a prisoner holding facility;
7. Unsatisfactory reference library both as to content and space;
8. More space required for ancillary court agencies;
9. Additional parking space required.

Palmer:

Located in the Third Judicial District. Court presided over by Magistrate, Dorothy B. Saxton.

Current Space - Court facilities are comprised of 900 sq. ft. leased from the American Legion in Palmer.

Deficiencies of present space:

1. Additional courtroom and jury space is required;
2. Inadequate vault and storage areas;
3. Magistrate court has insufficient clerical working area as well as a need for recording space.

4. Need jury and witness assembly areas;
5. No prisoner holding facility;
6. Unsatisfactory reference library both as to content and space;
7. No space for ancillary court agencies;
8. Parking space required.

Seward:

Located in the Third Judicial District. Court presided over by Magistrate, Genevieve Schaefermeyer.

Current Space - Court facilities are comprised of 833 sq. ft. of space in the Seward State Court Building and City Hall. Other state agencies have 5,139 sq. ft. of space.

Deficiencies of present space:

1. Additional courtroom and jury space is required;
2. Inadequate vault and storage areas;
3. Magistrate court has insufficient clerical working area as well as a need for recording space;
4. Need jury and witness assembly areas;
5. No prisoner holding facility;
6. Unsatisfactory reference library both as to content and space;
7. No space for ancillary court agencies;
8. Parking space required.

Wrangell:

Located in the First Judicial District. Court System judicial officers:

1. District Court Judge, Harris Bullerwell;
2. Magistrate, Joel Wing.

MAJOR COURT FACILITIES

PRESENT SPACE AND PRESENT DEFICIENCIES

FY 1973/74

Current Space - Court facilities are comprised of 511 sq. ft. of space leased from GSA. This space is located in the Post Office Building in Wrangell.

Deficiencies of present space:

1. Inadequate space for superior courtroom use and has no jury facilities;
2. Inadequate vault and storage areas;
3. Magistrate court has insufficient clerical working area as well as a need for recording space;
4. Need jury and witness assembly areas;
5. No prisoner holding facility;
6. Unsatisfactory reference library both as to content and space;
7. No space for ancillary court agencies;
8. Parking space required.

BUSH FACILITIES PROPOSAL

12,000 sq. ft. buildings, each providing for Superior, District, and Magistrate Courts. Estimated cost per building by location and year.

FY 72/73

Bethel:

Anchorage cost 62.98 + 20% + 6% + 6% = $84.92 sq. ft.*

2 floors	12,000 x 84.92 =	$ 1,019,040
foundation	6,000 x 42.46 =	254,760
	Total	$ 1,273,800

Barrow:

Anchorage cost 62.98 + 50% + 6% + 6% = $106.15 sq. ft.*

2 floors	12,000 x 106.15 =	$ 1,273,800
foundation	6,000 x 53.08 =	318,480
	Total	$ 1,592,280

Kotzebue:

Anchorage cost 62.98 + 30% + 6% + 6% = $92.09 sq. ft.*

2 floors	12,000 x 92.09 =	$ 1,105,080
floundation	6,000 x 46.05 =	276,300
	Total	$ 1,381,380

Sitka:

Juneau cost 65.02 + 6% + 6% = $73.06 sq. ft.*

2 floors	12,000 x 73.06 =	$ 876,720
foundation	6,000 x 36.53 =	219,180
	Total	$ 1,095,900

FY 73/74

Kenai:

Anchorage cost 62.98 + 5% + 6% + 6% + 6% = $78.77 sq.ft.*

2 floors	12,000 x 78.77 =	$ 945,240
foundation	6,000 x 39.39 =	236,340
	Total	$ 1,181,580

Palmer:

Anchorage cost 62.98 + 6% + 6% + 6% = $75.02 sq. ft.*

2 floors	12,000 x 75.02 =	$ 900,240
foundation	6,000 x 37.51 =	225,060
	Total	$ 1,125,300

* This figure was arrived at from the SUA, Inc., Volumes 1 and 2, Analysis of Facilities Requirements, State of Alaska.

BUSH FACILITIES PROPOSAL

Seward:	Anchorage cost 62.98 + 5% + 6% + 6% + 6% = $78.77 sq. ft.*		
	2 floors	12,000 x 78.77 =	$ 945,240
	foundation	6,000 x 39.39 =	236,340
		Total	$ 1,181,580
Wrangell:	Juneau cost 65.02 + 6% + 6% + 6% = $77.44 sq. ft.*		
	2 floors	12,000 x 77.44 =	$ 929,280
	foundation	6,000 x 38.72 =	232,320
		Total	$ 1,161,600
	Grand Total per 8 buildings		$ 9,993,420

* This figure was arrived at from the SUA, Inc., Volumes 1 and 2, Analysis of Facilities Requirements, State of Alaska.

BUSH FACILITIES PROPOSAL

5,800 sq. ft. buildings enabling Superior Court trials in every election district. Estimated cost per building by location and year.

	FY 72/73	
Cold Bay:	$55.00 per sq. ft.* x 5,800 =	$ 319,000
Dillingham:	$55.00 per sq. ft.* x 5,800 =	$ 319,000
Tanana:	$55.00 per sq. ft.* x 5,800 =	$ 319,000
Saint Marys:	$55.00 per sq. ft.* x 5,800 =	$ 319,000
	Total per FY 72/73	$ 1,276,000
	FY 73/74	
Delta Junction: (Big Delta)	$60.00 per sq. ft.* x 5,800 =	$ 348,000
Glenallen:	$60.00 per sq. ft.* x 5,800 =	$ 348,000
Haines:	$60.00 per sq. ft.* x 5,800 =	$ 348,000
Homer:	$60.00 per sq. ft.* x 5,800 =	$ 348,000
McGrath:	$60.00 per sq. ft.* x 5,800 =	$ 348,000
Valdez:	$60.00 per sq. ft.* x 5,800 =	$ 348,000
	Total per FY 73/74	$ 2,088,000
	FY 74/75	
Cordova:	$65.00 per sq. ft.* x 5,800 =	$ 377,000
Old Harbor: (K.I.)	$65.00 per sq. ft.* x 5,800 =	$ 377,000

* Division of Buildings, Alaska State Housing Authority - five year bid experience of these two state agencies with buildings in these areas is the estimated cost per sq. ft. as shown.

BUSH FACILITIES PROPOSAL

Petersburg:	$65.00 per sq. ft.* x 5,800 =	$ 377,000
Tok:	$65.00 per sq. ft.* x 5,800 =	$ 377,000
Yakutat:	$65.00 per sq. ft.* x 5,800 =	$ 377,000
	Total per FY 74/75	$ 1,885,000
	Grand Total per 15 buildings	$ 5,249,000

* Division of Buildings, Alaska State Housing Authority - five year bid experience of these two state agencies with buildings in these areas is the estimated cost per sq. ft. as shown.

BUSH FACILITIES PROPOSAL

3,800 sq. ft. buildings up-grading minor bush facilities. Estimated cost per building by location and year.

FY 72/73

Angoon:	$55.00 per sq. ft.* x 3,800 = $	209,000
Craig:	$55.00 per sq. ft.* x 3,800 = $	209,000
Pelican:	$55.00 per sq. ft.* x 3,800 = $	209,000
Skagway:	$55.00 per sq. ft.* x 3,800 = $	209,000
Buckland:	$55.00 per sq. ft.* x 3,800 = $	209,000
Gambell:	$55.00 per sq. ft.* x 3,800 = $	209,000
Point Hope:	$55.00 per sq. ft.* x 3,800 = $	209,000
Teller:	$55.00 per sq. ft.* x 3,800 = $	209,000
Unalakleet:	$55.00 per sq. ft.* x 3,800 = $	209,000
Wainwright:	$55.00 per sq. ft.* x 3,800 = $	209,000
Girdwood:	$55.00 per sq. ft.* x 3,800 = $	209,000
Naknek:	$55.00 per sq. ft.* x 3,800 = $	209,000
Port Lions: (Afognak Island)	$55.00 per sq. ft.* x 3,800 = $	209,000
Unalaska:	$55.00 per sq. ft.* x 3,800 = $	209,000
Eagle	$55.00 per sq. ft.* x 3,800 = $	209,000
Fort Yukon:	$55.00 per sq. ft.* x 3,800 = $	209,000
Galena:	$55.00 per sq. ft.* x 3,800 = $	209,000

* Division of Buildings, Alaska State Housing Authority - five year bid experience of these two state agencies with buildings in these areas is the estimated cost per sq. ft. as shown.

BUSH FACILITIES PROPOSAL

3,800 sq. ft. buildings for FY 72/73 continued

Nenana:	$55.00 per sq. ft.* x 3,800 =	$ 209,000
Aniak:	$55.00 per sq. ft.* x 3,800 =	$ 209,000
Emmonak:	$55.00 per sq. ft.* x 3,800 =	$ 209,000
Hooper Bay:	$55.00 per sq. ft.* x 3,800 =	$ 209,000
Mekoryuk: (Nunivak Island)	$55.00 per sq. ft.* x 3,800 =	$ 209,000
Mountain Village:	$55.00 per sq. ft.* x 3,800 =	$ 209,000
Quinhagah:	$55.00 per sq. ft.* x 3,800 =	$ 209,000
Tununak:	$55.00 per sq. ft.* x 3,800 =	$ 209,000
	Total per FY 72/73	$ 5,225,000

* Division of Buildings, Alaska State Housing Authority - five year bid experience of these two state agencies with buildings in these areas is the estimated cost per sq. ft. as shown.

BUSH FACILITIES PROPOSAL

3,800 sq. ft. buildings up-grading minor bush facilities. Estimated cost per building by location and year.

FY 73/74

Hoonah:	$60.00 per sq. ft.* x 3,800 = $	228,000
Kake:	$60.00 per sq. ft.* x 3,800 = $	228,000
Elim:	$60.00 per sq. ft.* x 3,800 = $	228,000
Kiana:	$60.00 per sq. ft.* x 3,800 = $	228,000
Noatak:	$60.00 per sq. ft.* x 3,800 = $	228,000
Noorvik:	$60.00 per sq. ft.* x 3,800 = $	228,000
Savoonga:	$60.00 per sq. ft.* x 3,800 = $	228,000
Selawik:	$60.00 per sq. ft.* x 3,800 = $	228,000
Wales:	$60.00 per sq. ft.* x 3,800 = $	228,000
Manokotak:	$60.00 per sq. ft.* x 3,800 = $	228,000
Sand Point:	$60.00 per sq. ft.* x 3,800 = $	228,000
St. Paul Island:	$60.00 per sq. ft.* x 3,800 = $	228,000
Seldovia:	$60.00 per sq. ft.* x 3,800 = $	228,000
Talkeetna:	$60.00 per sq. ft.* x 3,800 = $	228,000
Togiak:	$60.00 per sq. ft.* x 3,800 = $	228,000
Whittier:	$60.00 per sq. ft.* x 3,800 = $	228,000
Arctic Village:	$60.00 per sq. ft.* x 3,800 = $	228,000
Bettles:	$60.00 per sq. ft.* x 3,800 = $	228,000

* Division of Buildings, Alaska State Housing Authority - five year bid experience of these two state agencies with buildings in these areas is the estimated cost per sq. ft. as shown.

BUSH FACILITIES PROPOSAL

3,800 sq. ft. buildings for FY 73/74 continued

Cantwell:	$60.00 per sq. ft.* x 3,800 =	$ 228,000
Nulato:	$60.00 per sq. ft.* x 3,800 =	$ 228,000
Ruby:	$60.00 per sq. ft.* x 3,800 =	$ 228,000
Chevak:	$60.00 per sq. ft.* x 3,800 =	$ 228,000
Holy Cross:	$60.00 per sq. ft.* x 3,800 =	$ 228,000
Nunapitchuk:	$60.00 per sq. ft.* x 3,800 =	$ 228,000
Tuluksak:	$60.00 per sq. ft.* x 3,800 =	$ 228,000
	Total per FY 73/74	$ 5,700,000

* Division of Buildings, Alaska State Housing Authority - five year bid experience of these two state agencies with buildings in these areas is the estimated cost per sq. ft. as shown.

BUSH FACILITIES PROPOSAL

3,800 sq. ft. buildings up-grading minor bush facilities. Estimated cost per building by location and year.

FY 74/75

Ambler:	$65.00 per sq. ft.* x 3,800 = $	247,000
Deering:	$65.00 per sq. ft.* x 3,800 = $	247,000
Kivalina:	$65.00 per sq. ft.* x 3,800 = $	247,000
Kovuk:	$65.00 per sq. ft.* x 3,800 = $	247,000
Saint Michael:	$65.00 per sq. ft.* x 3,800 = $	247,000
Shaktoolik:	$65.00 per sq. ft.* x 3,800 = $	247,000
Shungnak:	$65.00 per sq. ft.* x 3,800 = $	247,000
Egegik:	$65.00 per sq. ft.* x 3,800 = $	247,000
Koliganek:	$65.00 per sq. ft.* x 3,800 = $	247,000
Larsen Bay: (K.I.)	$65.00 per sq. ft.* x 3,800 = $	247,000
Tyonek	$65.00 per sq. ft.* x 3,800 = $	247,000
Allakaketc: (Alatna)	$65.00 per sq. ft.* x 3,800 = $	247,000
Barter Island: (Kaktovik)	$65.00 per sq. ft.* x 3,800 = $	247,000
Beaver:	$65.00 per sq. ft.* x 3,800 = $	247,000
Stevens Village:	$65.00 per sq. ft.* x 3,800 = $	247,000
Akiak:	$65.00 per sq. ft.* x 3,800 = $	247,000

* Division of Buildings, Alaska State Housing Authority - five year bid experience of these two state agencies with buildings in these areas is the estimated cost per sq. ft. as shown.

BUSH FACILITIES PROPOSAL

3,800 sq. ft. buildings for FY 74/75 continued

Akiachak:	$65.00 per sq. ft.* x 3,800 =	$ 247,000
Alakanuk:	$65.00 per sq. ft.* x 3,800 =	$ 247,000
Eek:	$65.00 per sq. ft.* x 3,800 =	$ 247,000
Kipnuk:	$65.00 per sq. ft.* x 3,800 =	$ 247,000
Kwethluk:	$65.00 per sq. ft.* x 3,800 =	$ 247,000
Napakiak:	$65.00 per sq. ft.* x 3,800 =	$ 247,000
Tooksook Bay:	$65.00 per sq. ft.* x 3,800 =	$ 247,000
	Total per FY 74/75	$ 5,681,000
	Grand Total per 73 buildings	$16,606,000

* Division of Buildings, Alaska State Housing Authority - five year bid experience of these two state agencies with buildings in these areas is the estimated cost per sq. ft. as shown.

BUSH FACILITIES PROPOSAL

Total for 8 12,000 sq. ft. buildings	$ 9,993,420
Total for 15 5,800 sq. ft. buildings	5,249,000
Total for 73 3,800 sq. ft. buildings	16,606,000
GRAND TOTAL for 3 year building project	$ 31,848,420

NO ATTEMPT HAS BEEN MADE TO DETERMINE COSTS OF PROVIDING WATER FOR ANY FACILITIES UNDER THIS REQUEST NOR ANY ACCOUNTING FOR WASTE DISPOSAL. IT IS OUR UNDERSTANDING THAT THE STATE AND FEDERAL GOVERNMENTS HAVE SPECIFIC RESPONSIBILITIES UNDER SEVERE TIME SCHEDULES AS DESIGNATED IN THE WATER QUALITY ACT.

No. 6

Form SA 1

SB-1

MEMORANDUM State of Alaska

TO: The Honorable William J. Moran
State House of Representatives

DATE : April 26, 1971

FROM: Robert P. Isaac RPI
Assistant to the Commissioner
Department of Education

SUBJECT: Re CSSB 1

In regard to CSSB 1, it would appear that paragraph 3, Sec. 18.65.220 pertaining to curriculum development would be in conflict with 14.40.170 (b) (2) relating to the course of instruction for the university.

Perhaps a better approach would be: "The Board of Regents, in cooperation with the Police Standards Council, shall establish minimum curriculum standards . . ." This would avoid the conflict and yet permit the Council to have considerable input.

Michigan State University has one of the most widely acclaimed police education programs. Perhaps the Legislative Council could determine who establishes their curriculum, etc.

In our opinion there is no question that various agencies and organizations have a lot to offer in curriculum development; and, generally, those involved in curriculum development will seek their assistance. However, it is a well accepted principle that responsibility for curriculum development should be with the educational agency.

RPI:mg

File: 023.1

SB-28

Table 4.—*Index of Crime by State, 1970*

Area	Population	Total Crime Index	Violent crime	Property crime	Murder and nonnegligent manslaughter	Forcible rape	Robbery	Aggravated assault	Burglary	Larceny $50 and over	Auto theft
ALABAMA											
Standard Metropolitan Statistical Area	1,901,095										
Area actually reporting	90.8%	44,314	5,130	39,184	190	323	1,278	3,339	18,906	14,016	6,262
Estimated total	100.0%	47,455	5,511	41,944	210	356	1,347	3,601	20,291	15,114	6,566
Other cities	544,894										
Area actually reporting	59.7%	5,861	985	4,879	26	26	100	833	2,395	2,012	472
Estimated total	100.0%	9,820	1,652	8,167	44	44	168	1,396	4,014	3,372	781
Rural	1,008,170										
Area actually reporting	33.5%	2,308	1,005	1,303	50	20	72	894	658	533	120
Estimated total	100.0%	6,935	3,019	3,916	150	237	216	2,436	1,978	1,570	360
State total	3,454,165	61,219	10,435	50,784	404	637	1,731	7,413	28,264	20,055	7,607
Rate per 100,000 inhabitants		1,885.4	305.7	1,579.7	11.7	18.5	50.3	215.2	703.1	580.2	220.5
ALASKA											
Standard Metropolitan Statistical Area	None										
Other cities	94,659										
Area actually reporting	100.0%	1,251	584	667	18	51	181	336	1,119	1,309	697
Estimated total	216,744										
Rural	100.0%	3,576	254	3,322	19	28	36	171	1,703	1,178	736
Area actually reporting	302,173	8,130	840	7,290	37	79	217	507	2,887	3,187	1,916
State total		2,690.5	278.0	2,412.5	12.2	26.1	71.8	167.8	955.0	1,054.2	634.3
Rate per 100,000 inhabitants											
ARIZONA											
Standard Metropolitan Statistical Area	1,320,153										
Area actually reporting	99.8%	51,654	5,558	46,096	141	462	1,967	3,052	15,701	18,013	8,083
Estimated total	100.0%	51,804	5,569	46,235	141	463	1,970	3,050	15,715	18,058	8,058
Other cities	171,705										
Area actually reporting	97.0%	5,167	611	4,556	0	36	158	417	1,584	2,102	455
Estimated total	101.0%	5,329	630	4,699	0	37	162	431	1,627	2,230	467
Rural	277,620										
Area actually reporting	45.9%	2,182	205	1,977	10	21	16	158	544	853	380
Estimated total	100.0%	3,937	363	3,574	18	37	29	279	1,000	1,560	685
State total	1,769,478	61,070	6,562	54,508	159	537	2,161	3,760	18,342	21,848	9,208
Rate per 100,000 inhabitants		3,451.2	370.8	3,080.4	9.0	30.4	122.2	212.5	1,036.7	1,234.8	520.4
ARKANSAS											
Standard Metropolitan Statistical Area	555,100										
Area actually reporting	99.1%	16,870	2,151	14,719	61	120	443	1,527	7,254	5,256	2,209
Estimated total	100.0%	17,020	2,172	14,848	62	121	447	1,542	7,327	5,309	2,212
Other cities	171,000										
Area actually reporting	14.0%	1,026	227	799	22	31	44	127	374	341	84
Estimated total	100.0%	8,432	1,621	6,811	22	32	110	733	3,107	2,677	1,027
Rural	576,253										
Area actually reporting	37.4%	2,181	276	1,905	28	31	31	186	841	827	237
Estimated total	100.0%	5,834	771	5,063	74	83	83	531	2,248	2,138	599
State total	1,323,295	39,845	4,564	35,281	194	336	640	2,676	13,182	11,097	3,811
Rate per 100,000 inhabitants		1,011.4	115.8	895.6	10.1	17.1	48.6	136.5	670.1	564.1	193.7
CALIFORNIA											
Standard Metropolitan Statistical Area	18,560,696										
Area actually reporting	100.0%	816,443	92,111	724,332	1,301	6,259	40,810	43,742	353,055	260,055	111,222
Other cities	951,804										
Area actually reporting	100.0%	70,852	3,[illegible]	[illegible]	25	97	994	2,817	[illegible]	[illegible]	[illegible]
Rural	861,307										
Area actually reporting	100.0%	21,[illegible]	1,[illegible]	[illegible]	50	139	782	1,[illegible]	10,[illegible]	8,102	[illegible]
State total	19,354,131	8,9[illegible]	94,[illegible]	[illegible]	1,376	7,[illegible]	[illegible]	48,[illegible]	[illegible]	277,[illegible]	[illegible]
Rate per 100,000 inhabitants		4,[illegible]	4[illegible]	[illegible]	6.9	35.1	[illegible]	225.3	[illegible]	1,[illegible]	[illegible]

See footnote at end of table.

SB-28

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / POUCH K — STATE CAPITOL
JUNEAU 99801

February 8, 1972

Alaska State Legislature
House
Judiciary Committee
Pouch V
Juneau, Alaska

Re: Senate Bill No. 28 (Violent Crimes Compensation Board)

Dear Chairman Moran:

In response to your request of January 24, 1972, I will submit the information available from our records on this subject.

During the last nine months of 1971, the District Attorneys within the Department of Law processed the files of 444 defendants who were charged with crimes listed in Senate Bill No. 28.

Since our records only reflect those cases where an arrest was made it may not be a very meaningful statistic in the overall picture. I have spoken with the Commissioner of Public Safety and I believe that their report will be much more informative to the Committee because it will contain information on cases where no arrest was made.

If I may be of further service in this matter please advise.

Sincerely,

Norman C. Gorsuch
Deputy Attorney General

NCG:ss

SB-28

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

POUCH N — STATE CAPITOL
JUNEAU 99801

February 4, 1972

Representative William J. Moran
Chairman, Judiciary Committee
Alaska State Legislature
Pouch V - State Capitol
Juneau, Alaska 99801

Reference: Senate Bill 28

Dear Representative Moran:

We have compiled such information as is available concerning victims of violent crimes during 1971, 1970 and 1969. Because precise data that we need was not available we have made interpolations based upon the best information we could draw from.

Assignment of cost figures to these interpolations is even more difficult because there are absolutely no reported data of that nature. To arrive at possible costs we allowed the maximum $10,000 for a death and projected injuries at $2,200, which is a figure used for injury cost by the National Safety Council in accident loss computations.

We find by these imprecise means that the cost of compensation during calendar 1971 might have been $390,800.

Our 1970 figures were based upon the FBI Uniform Crime Report for 1970. These statistics indicated a possible cost of $317,600.

The 1969 Uniform Crime Report statistics would indicate a possible cost of $231,400.

I have enclosed the base data from which we arrived at these costs and hope that this may be of some use to you.

Very truly yours,

Emery W. Chapple, Jr.
Commissioner

Enclosures

FOLLOWING DATA PREPARED FOR USE IN CONSIDERATION OF SENATE BILL 28, COMPENSATION FOR VICTIMS OF VIOLENT CRIMES

ALASKA STATE TROOPER CASES ONLY - 1971

11	20 HOMICIDES: (50% of total)	9 fall within the four items listed under Section 44.58.110 (b).
2	20 MANSLAUGHTER: (10% of total)	18 fall within the four items listed under Section 44.58.110 (b).
	54 RAPES (Reported): (6% of total)	12 of which were unfounded. It is unknown how many of remaining 22 fall within the four items listed under Section 44.58.110 (b), however, it is felt very few if any. Depending upon interpretation of "personal injury" it is unlikely more than two would be compensational under SB 28.
	12 ATTEMPTED RAPES — 0 —	1 of which was unfounded. Remaining 11 as above.
	193 ASSAULTS WITH DEADLY WEAPON 10% of total	Which includes assault with intent to kill, maim, etc. Appears only ten to fifteen percent would be eligible for compensation. In most instances there either was no "personal injury"; relative involved; or person assaulted involved in criminal offense.
	142 SEX OFFENSES (Reported): - 0 -	This includes indecent acts with children; statutory rape; incest; lewd, indecent or obscene acts; crime against nature, etc. Again depending on interpretation of "personal injury", few (if any) would fall within category eligible for compensation.

CITY POLICE - 1971 (9 MAJOR POLICE DEPARTMENTS)

22	HOMICIDES	
4	MANSLAUGHTER	
71	RAPES	Breakdown as given above on AST cases not available from any of the city police departments.
10	ATTEMPTED RAPES	
385	ASSAULTS WITH DEADLY WEAPON	
255	SEX OFFENSES	

FOLLOWING DATA PREPARED FOR USE IN CONSIDERATION OF SENATE BILL 28,
COMPENSATION FOR VICTIMS OF VIOLENT CRIMES

ALASKA STATE TROOPER CASES ONLY - 1971

20	HOMICIDES:	9 fall within the four items listed under Section 44.58.110 (b).
20	MANSLAUGHTER:	18 fall within the four items listed under Section 44.58.110 (b).
34	RAPES (Reported):	12 of which were unfounded. It is unknown how many of remaining 22 fall within the four items listed under Section 44.58.110 (b), however, it is felt very few if any. Depending upon interpretation of "personal injury" it is unlikely more than two would be compensational under SB 28.
12	ATTEMPTED RAPES	1 of which was unfounded. Remaining 11 as above.
193	ASSAULTS WITH DEADLY WEAPON	Which includes assault with intent to kill, maim, etc. Appears only ten to fifteen percent would be eligible for compensation. In most instances there either was no "personal injury"; relative involved; or person assaulted involved in criminal offense.
142	SEX OFFENSES (Reported):	This includes indecent acts with children; statutory rape; incest; lewd, indecent or obscene acts; crime against nature, etc. Again depending on interpretation of "personal injury", few (if any) would fall within category eligible for compensation.

CITY POLICE - 1971 (9 MAJOR POLICE DEPARTMENTS)

22	HOMICIDES	
4	MANSLAUGHTER	
71	RAPES	Breakdown as given above on AST cases not
10	ATTEMPTED RAPES	available from any of the city police
385	ASSAULTS WITH DEADLY WEAPON	departments.
235	SEX OFFENSES	

ALASKA STATE TROOPERS CASES ONLY - 1969

14 HOMICIDES: 9 fall within the four items listed under Section 44.58.110 (b)

8 MANSLAUGHTER: All fall within the four items listed under Section 44.58.110 (b)

1 KIDNAPPING

50 RAPES Reported: 17 of which were unfounded. It is unknown how many of remaining 33 fall within the four items listed under Section 44.58.110 (b), however, it is felt very few if any.

10 ATTEMPTED RAPES: 3 of which were unfounded. Remaining 7 same as above.

116 ASSAULTS WITH A DEADLY WEAPON: Statistics not available to indicate how many would fall within items listed under Section 44.58.110 (b).

189 SEX OFFENSES reported: This includes indecent acts with children, statutory rape, incest, lewd, Indecent or obscene acts, crime against nature, etc. Appears only 26 victims may possibly be eligible for compensation under requirements set forth in SB

JUNEAU CITY POLICE DEPARTMENT

None of the requested statistics available.

FAIRBANKS POLICE DEPARTMENT - 1969

4 HOMICIDES
0 MANSLAUGHTER
0 KIDNAPPING
5 RAPES
21 ASSAULTS WITH DEADLY WEAPON
39 SEX OFFENSES

No breakdown available as given in AST cases

ANCHORAGE POLICE DEPARTMENT - 1968 (Latest year available)

7 HOMICIDES
2 MANSLAUGHTER
20 RAPES
2 ATTEMPTED RAPES
26 ASSAULTS WITH DEADLY WEAPON
117 SEX OFFENSES

No breakdown available as given in AST cases

1970 Unif. Crime Rpts.

Anchorage Pop. - 32,600 79 Assaults 567

1969 30-83-321

Table 4.—*Index of Crime by State, 1969*

[See footnotes at end of table]

Area	Population	Total Crime Index	Violent crime	Property crime	Murder and non-negligent manslaughter	Forcible rape	Robbery	Aggravated assault	Burglary	Larceny $50 and over	Auto theft
ALABAMA											
Standard Metropolitan Statistical Area	1,931,000										
Area actually reporting	91.3%	39,405	5,142	34,263	247	279	1,115	3,501	16,939	12,465	4,869
Estimated total	100.0%	41,316	5,452	35,914	271	305	1,168	3,708	17,820	13,050	5,044
Other cities	615,000										
Area actually reporting	61.5%	5,040	709	4,331	31	34	79	565	2,038	1,615	458
Estimated total	100.0%	8,197	1,153	7,044	50	55	129	919	3,317	2,952	745
Rural	965,000										
Area actually reporting	37.9%	2,312	855	1,457	62	31	57	685	751	609	97
Estimated total	100.0%	6,104	2,257	3,847	164	131	151	1,808	1,981	1,600	256
State total	3,531,000	55,617	8,542	46,805	485	491	1,448	6,415	23,158	17,602	6,045
Rate per 100,000 inhabitants		1,576.0	220.4	1,325.5	13.7	14.0	41.0	181.7	655.8	498.5	171.2
ALASKA											
Standard Metropolitan Statistical Area	None										
Other cities	98,000										
Area actually reporting	92.6%	3,862	384	3,478	15	40	143	190	1,101	1,515	819
Estimated total	100.0%	4,173	426	3,747	16	50	155	205	1,193	1,637	917
Rural	184,000										
Area actually reporting	100.0%	3,279	198	3,081	11	33	35	116	1,202	1,093	751
State total	282,000	7,452	624	6,828	27	83	190	321	2,455	2,795	1,668
Rate per 100,000 inhabitants		2,642.6	221.3	2,421.3	10.0	29.4	67.4	114.8	870.6	990.2	591.5
ARIZONA											
Standard Metropolitan Statistical Area	1,233,000										
Area actually reporting	99.7%	45,551	4,959	39,615	82	321	1,551	2,979	19,149	13,781	6,685
Estimated total	100.0%	46,063	4,965	39,738	82	321	1,555	2,984	19,180	13,835	6,697
Other cities	194,000										
Area actually reporting	97.1%	4,804	517	4,287	10	31	107	369	1,754	2,112	421
Estimated total	100.0%	4,947	532	4,415	10	32	110	380	1,806	2,175	434
Rural	207,000										
Area actually reporting	96.4%	2,529	226	2,303	10	33	56	127	1,023	986	294
Estimated total	100.0%	2,623	235	2,388	10	34	58	133	1,061	1,022	305
State total	1,634,000	53,633	5,732	46,541	102	389	1,692	3,513	22,053	17,032	7,436
Rate per 100,000 inhabitants		3,283.2	350.8	2,848.1	6.0	23.0	99.9	210.3	1,302.6	1,004.8	438.6
ARKANSAS											
Standard Metropolitan Statistical Area	618,000										
Area actually reporting	100.0%	16,536	2,701	14,045	100	100	631	1,870	6,631	6,669	1,351
Other cities	455,000										
Area actually reporting	6%	1,155	389	3,766	21	19	74	475	1,785	1,588	393
Estimated total	100.0%	6,285	951	5,484	32	29	109	781	2,709	2,352	402
Rural	872,000										
Area actually reporting	11.7%	2,376	412	1,824	27	54	59	272	982	732	110
Estimated total	100.0%	3,311	574	2,537	65	129	142	638	2,536	1,756	264
State total	1,935,000	28,295	4,550	23,735	197	347	883	3,089	11,717	10,178	2,020
Rate per 100,000 inhabitants		1,418.3	230.1	1,188.2	9.9	17.4	44.4	148.4	587.3	509.7	101.3
CALIFORNIA											
Standard Metropolitan Statistical Area	17,302,000										
Area actually reporting	99.9%	750,600	86,894	663,706	1,303	6,735	38,497	40,319	305,237	231,708	127,711
Estimated total	100.0%	751,250	86,947	664,303	1,304	6,739	38,511	40,373	304,492	232,012	127,799
Other cities	515,000										
Area actually reporting	99.2%	23,500	1,468	22,032	31	89	431	914	9,113	10,419	2,480
Estimated total	100.0%	23,676	1,475	22,201	31	89	433	919	9,158	10,491	2,427
Rural	1,656,000										
Area actually reporting	100.0%	24,320	1,476	22,850	48	295	296	837	12,241	8,087	1,647
State total	19,473,000	799,246	89,898	709,354	1,383	7,053	39,240	42,129	325,891	251,109	131,973
Rate per 100,000 inhabitants		4,104.5	461.7	3,642.8	7.1	36.2	201.5	216.4	1,673.6	1,289.5	677.8

Table 4.—*Index of Crime by State, 1970*

Area	Population	Total Crime Index	Violent crime	Property crime	Murder and nonnegligent manslaughter	Forcible rape	Robbery	Aggravated assault	Burglary	Larceny $50 and over	Auto theft
ALABAMA											
Standard Metropolitan Statistical Area	1,801,095										
Area actually reporting	84.8%	44,311	5,130	39,181	190	323	1,278	3,339	18,906	14,016	6,262
Estimated total	100.0%	47,455	5,511	41,971	210	356	1,317	3,601	20,291	15,114	6,566
Other cities	541,801										
Area actually reporting	58.7%	5,804	935	4,869	20	26	100	883	2,307	2,012	552
Estimated total	100.0%	9,889	1,652	8,177	41	41	168	1,396	1,014	3,372	791
Rural	1,065,176										
Area actually reporting	33.3%	2,368	1,005	1,363	50	79	72	804	656	632	113
Estimated total	100.0%	6,935	3,019	3,916	150	237	216	2,416	1,978	1,599	339
State total	3,441,165	61,219	10,183	51,036	401	637	1,731	7,413	26,263	20,085	7,696
Rate per 100,000 inhabitants		1,565.1	295.7	1,550.7	11.7	18.5	50.3	215.2	763.1	583.2	223.5
ALASKA											
Standard Metropolitan Statistical Area	None										
Other cities	80,030										
Area actually reporting	100.0%	1,551	586	3,065	18	51	181	336	1,119	1,509	949
Rural	216,141										
Area actually reporting	100.0%	3,576	251	3,325	19	28	36	171	1,068	1,328	729
State total	302,173	8,150	840	7,310	37	79	217	507	2,557	3,237	1,676
Rate per 100,000 inhabitants		2,696.5	278.0	2,418.5	12.2	26.1	71.8	167.8	750.9	1,071.2	554.3
ARIZONA											
Standard Metropolitan Statistical Area	1,320,151										
Area actually reporting	98.8%	51,603	5,555	46,138	111	462	1,947	3,035	22,826	15,291	8,013
Estimated total	100.0%	51,801	5,595	46,228	111	463	1,969	3,050	22,867	15,315	8,035
Other cities	171,765										
Area actually reporting	97.0%	5,167	611	4,556	6	36	128	441	1,935	2,162	459
Estimated total	100.0%	5,329	630	4,699	6	37	132	455	1,997	2,230	472
Rural	277,603										
Area actually reporting	55.9%	2,197	265	1,932	10	21	16	158	814	883	215
Estimated total	100.0%	3,932	398	3,534	18	34	29	283	1,456	1,580	386
State total	1,772,482	61,062	6,623	54,461	135	534	2,130	3,788	26,319	19,125	8,893
Rate per 100,000 inhabitants		3,445.2	373.6	3,071.6	7.6	30.1	120.2	213.7	1,485.0	1,079.2	501.8
ARKANSAS											
Standard Metropolitan Statistical Area	545,909										
Area actually reporting	93.9%	16,529	2,134	14,395	81	179	625	1,249	7,013	6,276	1,106
Estimated total	100.0%	17,610	2,275	15,335	88	191	671	1,325	7,474	6,687	1,174
Other cities	171,642										
Area actually reporting	66.6%	4,908	623	4,285	22	31	95	477	3,283	1,731	331
Estimated total	100.0%	7,312	917	6,395	33	47	141	723	3,450	2,627	318
Rural	805,753										
Area actually reporting	37.0%	2,181	242	1,939	28	31	31	199	927	833	179
Estimated total	100.0%	5,703	771	5,010	71	90	82	528	2,903	2,213	394
State total	1,523,304	30,625	3,963	26,740	192	328	894	2,576	13,827	11,527	2,386
Rate per 100,000 inhabitants		1,003.8	260.2	1,755.6	12.6	21.5	58.7	169.1	907.6	756.7	156.6
CALIFORNIA											
Standard Metropolitan Statistical Area	18,260,009										
Area actually reporting	100.0%	810,642	92,111	718,531	1,361	6,752	40,616	43,442	350,867	260,055	107,309
Other cities	561,801										
Area actually reporting	100.0%	20,852	1,343	19,509	25	97	419	802	8,616	8,565	2,328
Rural	801,527										
Area actually reporting	100.0%	21,879	1,277	20,602	10	136	242	889	10,205	8,407	1,960
State total	19,953,154	853,373	94,731	758,642	1,376	7,005	41,277	45,093	369,688	277,330	111,577
Rate per 100,000 inhabitants		4,307.0	478.8	3,832.1	6.9	35.4	208.9	225.9	1,773.0	1,384.9	564.2

See footnotes at end of table.

SB-28

Some States Aid Victims of Crime

EDITOR'S NOTE—There has long been a clamor for society to compensate victims of crime. Seven states now have laws providing compensation to victims of crime or persons injured in aiding victims of crime, and with federal government backing, there may be more on the books soon. A report on the situation:

By LOUISE COOK
Associated Press Writer

Donna M. Morrissey, a young registered nurse, was shot in the left shoulder by an unknown assailant as she got out of a car at a Boston skating rink Dec. 23, 1970.

While Donna was recovering, her father told her about a Massachusetts law which, under certain conditions, provides monetary compensation for victims of a criminal act.

On March 22, 1971, Donna filed a claim for compensation and after a June 14 hearing, the 25-year-old nurse was awarded $765.20. Three months later, Donna received her money.

Massachusetts is one of six states in the nation with laws compensating victims of crime. A seventh, Nevada, compensates persons injured in aiding the victims of crime.

A bipartisan group of legislators hopes to encourage other states to enact similar laws and, as a stimulus, is preparing a bill for Senate action under which the federal government would pay 75 per cent of the costs of compensation programs established by the states in accordance with federal standards.

Arguments in favor of such legislation include:

William Brown, attorney general of Ohio: "We do everything we can to rehabilitate the criminal, so it's only fair that we help the victim."

Robert Morris, University of Chicago Law School professor, who helped draft a crime compensation bill pending in Illinois:

"It's an extraordinary community which says help your neighbor, but the hell with it if you get hurt."

In addition to Massachusetts, the states already with such victims-of-crime compensation laws are New York, New Jersey, California, Hawaii and Maryland.

The Massachusetts law is fairly typical of the compensation statutes, although the different states have different maximum awards.

It allows the filing of claims for compensation by victims injured in a crime or by certain dependents of victims killed in a crime.

The law provides for compensation of up to $10,000 to victims who have lost more than $100 or two continuous weeks of earnings or support, provided the sum is not covered by public or private insurance. All expenses—including medical costs—are included in the $100 figure which is automatically deducted from any compensation payment. Donna Morrissey, therefore, actually received $665.20 of her $765.20 award.

Claims are filed in District Court and payments are determined by the court which must decide whether a crime was committed, whether the crime directly resulted in personal injury or death and whether police records show the crime was reported promptly.

The law took effect July 1, 1968 and the state attorney general, Robert F. Quinn, says most of the claims filed since then have resulted from assault and battery cases. The state paid $4,498.58 in fiscal 1968-69, $60,885.76 in 1970 and $27,162.33 for the first four months of 1971—the last period for which figures were available.

The number of claims has been lower than expected, according to a spokesman in the attorney general's office. "Most people don't know about this program," he said. "I've even met lawyers who don't know what it is."

The proposal before Congress, in addition to picking up part of the tab for state compensation programs, also would provide compensation up to $50,000 for victims of violent crimes committed in the District of Columbia, in national parks and forests, on Indian reservations and aboard airplanes and ships.

Even without the hope of federal money, many states and officials have been considering some sort of compensation law.

An Associated Press sampling showed proposals for such a law pending in a group of states that includes Pennsylvania, Georgia, Illinois, Milwaukee, Michigan, Florida, Missouri and Ohio. Washington, Delaware, Kansas and Arkansas legislators considered such measures in the past and defeated them and there are moves to introduce compensation bills in Colorado and Rhode Island.

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09.40.220, but the undertaking shall not be for an amount exceeding the judgment. (§ 15.04 ch 101 SLA 1962)

Cross reference.—See Civ. R. 69.

Am. Jur., 41 [illegible] and C.J.S. references: [illegible] Arrest, [illegible] to 115; [illegible] Attachment [illegible] 7 [illegible].

[illegible] to [illegible], 21 ALR 125, [illegible] ALR 1118.

Construction and application [illegible] 613.

Constitutionality of statutes [illegible] in [illegible] ALR 81.

33 C.J.S. [illegible] tions § 107 et seq.

Sec. 09.35.050. Imprisonment on execution. A person arrested on execution shall be imprisoned in jail and kept at his own expense until satisfaction of the execution or his legal discharge. (§ 15.05 ch 101 SLA 1962)

Cross reference.—See Civ. R. 69.

ALR reference.—Construction and applicability of statute authorizing arrest and civil action for personal injury, 33 ALR 618.

Sec. 09.35.060. Execution after death of judgment debtor. If the judgment debtor dies after judgment, execution may be issued on the judgment in the manner and with the effect as if he were still living, except that no action may be taken within six months from the granting of letters testamentary or of administration upon the estate of the deceased without leave of the court having jurisdiction over the probate of the estate. (§ 15.06 ch 101 SLA 1962)

Cross reference.—See Civ. R. 69-(d)(2).

Sec. 09.35.070. Property liable. All goods, chattels, money, or other property, both real and personal, or an interest in the property of the judgment debtor not exempt by law, and all property and rights of property seized and held under attachment in the action are liable to execution. (§ 15.07 ch 101 SLA 1962)

Cross [illegible]. See Civ. R. 69-(b)(1).

Levy and [illegible] of railroad line and franchises [illegible] include general corporate franchises. [illegible] v. Lathrop, 1 Alaska 107.

The [illegible] franchise of a corporation is not real [illegible]; particular franchises, the right to control [illegible] in line and collect tolls therefor, may partake of the nature of real property. [illegible], 1 Alaska 107.

Am. Jur. and ALR references.—21 Am. Jur., Executions, §§ 16 to 502; 30A Am. Jur., Judgments, §§ 479 to 567.

Levy on property of public utility under federal control, 4 ALR 1650; 8 ALR 969; 10 ALR 956; 11 ALR 1453; 19 ALR 698.

Money or other property taken from prisoner as subject of seizure under execution, 16 ALR 378; 45 ALR 574; 48 ALR 583; 151 ALR 758.

Municipal funds and credits as subject to levy under execution against municipality, 89 ALR 863.

Growing crops as subject to levy and seizure, 103 ALR 464.

Interest of spouse in estate by the entirety as subject to execution for individual debt, 166 ALR 969.

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selected and reserved by the judgment debtor or his agent at the time of the levy, or as soon after levy and before sale as the [illegible] becomes known to him:

[illegible] judgment debtor received for his per[illegible] earned at any time within 30 [illegible] immediately [illegible], but not exceeding $350 if he [illegible] of a [illegible] $200 if he is a single [illegible] affidavit or otherwise [illegible] are necessary for his use or for the use of his family which is supported in whole or in part by his labor;

(2) books, pictures, and musical instruments belonging to the judgment debtor not to exceed $300 in value;

(3) necessary wearing apparel belonging to the judgment debtor for the use of himself or his family; watches or jewelry not to exceed $200 in value;

(4) the tools, implements, apparatus, motor vehicles, books, office furniture, business files, animals, laboratory, and any other article necessary to enable any person to carry on the trade, occupation, or profession by which that person habitually earns his living to the value of $1,800, including sufficient quantity of food to support the animals, if any, for six months;

(5) the following property belonging to the judgment debtor and in actual use or kept for use by and for his family: animals, household goods, furniture, and utensils to the value of $1,200, including food sufficient to support the animals, if any, for six months, and provisions actually provided for family use and necessary for the support of that person and family for six months;

(6) all property of a public or municipal corporation;

(7) no article of property mentioned in this section is exempt from execution issued on a judgment recovered for its price, and, in the event the article of property has been sold or exchanged for other property, the proceeds of the sale or the article for which it was exchanged is not exempt from execution. (§ 15.08 ch 101 SLA 1962)

Cross reference. See Civ. R. 69-(b)(1).

Sec. 09.35.090. Homestead exemption. The homestead of the family is, or the proceeds of the homestead are exempt from [illegible] judicial sale for the satisfaction of any liability contracted or judgment on debt except as provided in this section. The homestead consists of the actual abode of and owned by the family or some member of the family. It shall not exceed $8,000 in value, and not exceed 160 acres in extent if located outside a town or city

laid off into blocks or lots, or not exceed one-fourth of one acre if located in a town or city. This section does not apply to decrees for the foreclosure of a mortgage or deed of trust properly executed. If the owners of a homestead are married, it shall be executed by husband and wife. When an officer levies upon a homestead, the owner or the wife, husband, agent, or attorney of the owner may notify the officer that he claims the premises as his homestead, describing it by metes and bounds, lot or block, or legal subdivision. The officer shall notify the creditor of the claim, and, if the homestead exceeds the maximum in this section and he deems it of greater value than $8,000, then he may apply to the court for the appointment of three disinterested persons to appraise the homestead, commencing with the 20 acres of the lot upon which the dwelling is located, appraising each lot or 20 acres separately; and, if the homestead exceeds $8,000, then the officer shall proceed to sell all in excess of $8,000 by lots or smallest legal subdivisions, offering them in the order directed by the judgment debtor if he chooses to direct; otherwise, he shall sell them so as to leave the homestead as compact as possible. The homestead is exempt from sale or legal process after the death of the person entitled to the homestead for the collection of a debt for which it could not have been sold during his lifetime. (§ 15.09 ch 10[illegible] SLA 1962)

Cross reference.—See Civ. R. 69-(b)(3).

The [illegible] of homestead exemption is a [illegible] right and can be exercised [illegible] time after levy and before sale. Wendler v. Brenneman, 7 Alaska [illegible].

Order of confirmation may preserve right to raise question of homestead. Where the confirmation of sale is allowed without prejudice to defendant's right thereafter to make claim of her homestead exemption in proceeding within the jurisdiction of the court, defendant may raise question of her homestead right by an action of ejectment or to quit title, if the purchaser takes possession, or she may [illegible] obtain a perpetual injunction to prevent the issuance of a deed to the purchaser after the expiration of the time for redemption. Williams v. Thompson, 7 Alaska 601.

It was the legislative intent to make the assertion of a homestead exclusive, either on the parties or court. Williams v. Thompson, 7 Alaska 601.

Jurisdiction of court to determine claim of homestead.—See Williams v. Thompson, 7 Alaska 601.

Only one tract can be claimed as homestead.—One may have several tracts of land, houses, or homes; but only the one which he actually designates, points out, and selects as provided by law, can be claimed as the homestead. Seagreen v. Wendler, 5 Alaska 715.

It is not necessary for a person to live continuously on his homestead; but the fact of absence suggests, at least, the possibility that property claimed as a homestead was not a homestead. Williams v. Thompson, 7 Alaska 601.

Homestead character is not lost by use for business as well as residence purposes.—The homestead character of property is not destroyed by its use for business purposes while at the same time being occupied mainly as a residence. Wendler v. Brenneman, 7 Alaska 13.

Tenants in common are each entitled to a homestead exemption in the same property. Wendler v. Brenneman, 7 Alaska 13.

And right can only be waived intentionally.—Before it could be said that tenants in common, or either of them, waived their legal right of homestead exemption, there must be both knowledge of the right and the intention to relinquish it. Wendler v. Brenneman, 7 Alaska 13.

Statements to creditors do not estop claim.—One claiming a homestead exemption cannot be estopped by virtue of statements made to creditors. Wendler v. Brenneman, 7 Alaska 13.

Homestead may be purchased with nonexempt property.—A debtor may acquire a homestead and hold it exempt from execution for pre-existing debts not then reduced to judgment, although the homestead is purchased with, or obtained by exchange for, nonexempt property, and fraud cannot be imputed to such an act. In re Bocash, 10 Alaska 206.

Even by insolvent debtor.—An insolvent debtor, knowing himself to be insolvent, may acquire a homestead for himself and family, and hold the same exempt from his creditors, although purchased with nonexempt assets, and fraud cannot be imputed to such fact. In re Bocash, 10 Alaska 206.

The homestead exemption may be asserted even as to property purchased by an insolvent debtor with the proceeds of nonexempt property, in the absence of any specific equity existing in favor of a creditor, and the fact that the purchase is made for the very purpose of acquiring a homestead exempt from execution does not alter the rule. In re Bocash, 10 Alaska 206.

And service of notice of proceedings supplementary to execution does not prevent purchase.—The service on a judgment debtor of a notice requiring him to appear and answer regarding his assets, in a proceeding supplementary to and in aid of execution, without any order being made forbidding the transfer or other disposition of his property by him, does not give the judgment creditor any lien on his funds, nor prevent him from purchasing and paying for a homestead with them, which cannot be sold for the satisfaction of the judgment. In re Bocash, 10 Alaska 206.

As a general rule fraud cannot be predicated upon a disposition of the homestead; the same being exempt, the creditor could not subject the same to the satisfaction of his claim, and is therefore not injured or prejudiced by a conveyance or transfer thereof. Seagreen v. Wendler, 5 Alaska 715.

But transfer to put homestead beyond reach in event of moving may be fraudulent.—The transfer of the homestead from the husband to the wife is a fraud upon creditors, where it is not the bona fide intent to invest the wife with the real ownership, but to put it beyond the reach of the husband's creditors, in the event of their removal from said homestead. Seagreen v. Wendler, 5 Alaska 715.

Failure to introduce evidence waives allegation as to value.—Where no evidence was introduced upon either side as to the value of property in which a homestead exemption was claimed, defendant's allegation as to the value of the property was deemed abandoned. Wendler v. Brenneman, 7 Alaska 13.

Sec. 09.35.100. Execution against property. The person to whom the writ is directed shall execute the writ against property of the judgment debtor until the judgment is satisfied. (§ 15.10 ch 101 SLA 1962)

Cross reference.—See Civ. R. 69.

ALR and C.J.S. references.—Injunction against waste to protect judgment lien, 103 ALR 387.

33 C.J.S. Executions § 124.

Sec. 09.35.110. Execution procedure. All property shall be levied upon or released from levy in the manner that similar property is attached or released from attachment, and the proceed-

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arrangements for disposition of the matter as are just under the circumstances.

(5) If the judgment creditor cannot, after due diligence, locate the judgment debtor, he may file an affidavit of that fact with the court, and upon application, the court may authorize him to serve the notice required under this section by mailing the notice by certified mail to the last known address of the judgment debtor.

(6) Each court which issues writs of execution shall, by order, designate a trustee or other individual as the officer for administration of this section. This individual shall receive funds paid into the court, and is the appropriate person for service of claims for exemption by the judgment debtor and for performance of other duties that the court may direct. (§ 1 ch 175 SLA 1970)

Legislative committee report.—For report on ch. 175, SLA 1970 (HB 363 am S), see 1970 House Journal Supplement No. 3.

Sec. 09.35.070. Property liable.

Liquor license is not subject to attachment or execution.—A liquor license issued by the State of Alaska is not a property right but merely a personal privilege and, as such is, not subject to attachment or execution. 1967 Ops. Att'y Gen., No. 4.

Action against insurer. — A judgment creditor is entitled to an assignment of any claim its judgment debtor may have against the debtor's insurance carrier, without regard to whether or not such a claim in fact exists. Pennington v. Rimmer, 8 Alas. L.J. No. 5, p. 92 (May, 1970).

In Theodore v. Zurich Gen. Accident & Liab. Ins. Co., Sup. Ct. Op. No. (File No. 43), 364 P.2d 51 (1961), the Alaska supreme court held that a judgment creditor of the assured could maintain an action against the insurer (no assignment by the assured was stated in the decision to have been given). Pennington v. Rimmer, 8 Alas. L.J. No. 5, p. 92 (May, 1970).

Sec. 09.35.080. Exemptions. The following property is exempt from execution, except as otherwise specifically provided when selected and reserved by the judgment debtor or his agent at the time of the levy, or as soon after levy and before sale as the existence of the levy becomes known to him:

(1) the income of the judgment debtor, regardless of when it became payable, for work performed during the preceding 30 days, or otherwise earned or inured to his benefit within the 30-day period; the 30-day period shall be reckoned back from the date of the levy, but the exemption may not exceed $350 if he is the head of a family, and the amount of $200 if he is not the head of a family; the amount of the exemption shall be computed after deductions and payments, required by law or court order, so as to assure the judgment debtor the receipt of the first $350 per month if he is the head of a family or $200 if he is not the head of a family, when it appears by the debtor's affidavit or otherwise that the income is necessary for his use or for the use of his family which is supported in whole or in part by his income;

(2) books, pictures, and musical instruments belonging to the judgment debtor not to exceed $300 in value;

(3) necessary wearing apparel belonging to the judgment debtor for the use of himself or his family; watches or jewelry not to exceed $200 in value;

(4) the tools, implements, apparatus, motor vehicles, books, office furniture, business files, animals, laboratory, and any other article necessary to enable any person to carry on the trade, occupation, or profession by which that person habitually earns his living to the value of $1,800, include sufficient quantity of food to support the animals, if any, for six months;

(5) the following property belonging to the judgment debtor and in actual use or kept for use by and for his family: animals, household goods, furniture, and utensils to the value of $1,200, including food sufficient to support the animals, if any, for six months, and provisions actually provided for family use and necessary for the support of that person and family for six months;

(6) all property of a public or municipal corporation;

(7) no article of property mentioned in this section is exempt from execution issued on a judgment recovered for its price, and, in the event the article of property has been sold or exchanged for other property, the proceeds of the sale or the article for which it was exchanged is not exempt from execution. (§ 15.08 ch 101 SLA 1962; am § 1 ch 31 SLA 1966; am § 1 ch 96 SLA 1969)

Cross reference.

As to exemption of teachers' retirement salaries from taxation and process, see AS 14.25.200.

Effect of amendments.—The 1969 amendment rewrote paragraph (1) as amended in 1966.

Legislative committee reports.—For legislative committee report on ch. 31, SLA 1966, see House Journal (1966), p. 591. For report on ch. 96, SLA 1969 (CSSB 191 am H), see 1969 House Journal, p. 718.

Sec. 09.35.085. Exemption for child support payments. In addition to the exemptions set out in § 80 of this chapter, the amount which the judgment debtor has been ordered to pay to a court trustee as child support payments under Rule 67 of the Rules of Civil Procedure is exempt from execution. (§ 2 ch 31 SLA 1966)

Legislative committee report.—For legislative committee report on ch. 31, SLA 1966, see House Journal (1966), p. 591.

Sec. 09.35.087. Exemption for liquor licenses. In addition to the exemptions set out in §§ 80 and 85 of this chapter, the liquor license of a judgment debtor is exempt from execution. (§ 1 ch 18 SLA 1968)

Revisor's note (1968).—In ch 18 SLA 1967 the first portion of AS 09.35.087 provided that "since a liquor license is a privilege granted by the state . . . this privilege should be revocable only by the state."

Sec. 09.35.230. Redemption by lien creditor from purchaser. A lien creditor may redeem the property at any time within 60 days after the date of the order confirming the sale on paying the amount of the purchase money, with interest at the rate of eight

adequate comparison of credit costs as between different types of open end credit plans.

(Pub. L. 90–321, title I, § 143, May 29, 1968, 82 Stat. 158.)

EFFECTIVE DATE

Section effective July 1, 1969, see section 504(b) of Pub. L. 90–321, set out as a note under section 1631 of this title.

§ 1664. Advertising of credit other than open end plans.

(a) Exclusion of open end credit plans.

Except as provided in subsection (b) of this section, this section applies to any advertisement to aid, promote, or assist directly or indirectly any consumer credit sale, loan, or other extension of credit subject to the provisions of this subchapter, other than an open end credit plan.

(b) Advertisements of residential real estate.

The provisions of this section do not apply to advertisements of residential real estate except to the extent that the Board may by regulation require.

(c) Rate of finance charge expressed as annual percentage rate.

If any advertisement to which this section applies states the rate of a finance charge, the advertisement shall state the rate of that charge expressed as an annual percentage rate.

(d) Requisite disclosures in advertisement.

If any advertisement to which this section applies states the amount of the downpayment, if any, the amount of any installment payment, the dollar amount of any finance charge, or the number of installments or the period of repayment, then the advertisement shall state all of the following items:

(1) The cash price or the amount of the loan as applicable.

(2) The downpayment, if any.

(3) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended.

(4) The rate of the finance charge expressed as an annual percentage rate.

(Pub. L. 90–321, title I, § 144, May 29, 1968, 82 Stat. 158.)

EFFECTIVE DATE

Section effective July 1, 1969, see section 504(b) of Pub. L. 90–321, set out as a note under section 1631 of this title.

§ 1665. Nonliability of advertising media.

There is no liability under this part on the part of any owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated. (Pub. L. 90–321, title I, § 145, May 29, 1968, 82 Stat. 159.)

EFFECTIVE DATE

Section effective July 1, 1969, see section 504(b) of Pub. L. 90–321, set out as a note under section 1631 of this title.

SUBCHAPTER II.—RESTRICTIONS ON GARNISHMENT

§ 1671. Congressional findings and declaration of purpose.

(a) The Congress finds:

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

(2) The application of garnishment as a creditors' remedy frequently results in loss of employment by the debtor, and the resulting disruption of employment, production, and consumption constitutes a substantial burden on interstate commerce.

(3) The great disparities among the laws of the several States relating to garnishment have, in effect, destroyed the uniformity of the bankruptcy laws and frustrated the purposes thereof in many areas of the country.

(b) On the basis of the findings stated in subsection (a) of this section, the Congress determines that the provisions of this subchapter are necessary and proper for the purpose of carrying into execution the powers of the Congress to regulate commerce and to establish uniform bankruptcy laws. (Pub. L. 90–321, title III, § 301, May 29, 1968, 82 Stat. 163.)

EFFECTIVE DATE

Section 504(c) of Pub. L. 90–321 provided that: "Title III [which enacted this section and sections 1672—1677 of this title] takes effect on July 1, 1970."

§ 1672. Definitions.

For the purposes of this subchapter:

(a) The term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(b) The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

(c) The term "garnishment" means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt. (Pub. L. 90–321, title III, § 302, May 29, 1968, 82 Stat. 163.)

EFFECTIVE DATE

Section effective July 1, 1970, see section 504(c) of Pub. L. 90–321, set out as a note under section 1671 of this title.

§ 1673. Restriction on garnishment.

(a) Maximum allowable garnishment.

Except as provided in subsection (b) of this section and in section 1675 of this title, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected 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 by section 206 (a)(1) of Title 29 in effect at the time the earnings are payable,

whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

(b) Exceptions.

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.

(c) Execution or enforcement of garnishment order or process prohibited.

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 1001 et seq. of Title 11, Bankruptcy.

EFFECTIVE DATE

Section effective July 1, 1970, see section 504(c) of Pub. L. 90–321, set out as a note under section 1671 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1675 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 wilfully 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 504(c) of Pub. L. 90–321, set out as a note under section 1671 of this title.

§ 1675. Exemption for State-regulated garnishments.

The Secretary of Labor may by regulation exempt from the provisions 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 504(c) of Pub. L. 90–321, set out as a note under section 1671 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1673 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 504(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 garnishment 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, see section 504(c) of Pub. L. 90–321, set out as a note under section 1671 of this title.

Chapter 42.—INTERSTATE LAND SALES [NEW]

Sec.
1701. Definitions.
1702. Exemptions.
1703. Prohibitions relating to sale or lease of lots in subdivisions; voidability of contracts or agreements.
1704. Registration of subdivisions.
(a) Filing of statement of record.
(b) Payment of fees; use by Secretary.
(c) Filing deemed to have taken place upon receipt of statement of record accompanied by fee.
(d) Availability of information to public.
1705. Information required in statement of record.
1706. Effective date of statements of record and amendments thereto.
(a) Thirtieth day after filing or such earlier date as determined by Secretary; acceleration of subsequent statement over earlier recording.
(b) Incomplete or inaccurate statements of record.
(c) Amendment of statement of record.
(d) Suspension of statement of record containing untrue statement or omission of material fact; notice and hearing; termination of order of suspension.
(e) Examination to determine issuance of order; access to records; order suspending statement of record upon failure to cooperate.
(f) Service of notices.
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1708. Cooperation with State authorities; jurisdiction of real estate commission or similar body of State.
1709. Civil liabilities.
(a) Suit for untrue statement or omission to state material fact in statement of record.
(b) Suit for sale or lease in violation of section 1703 of this title or by means of property report containing untrue statement or omission to state material fact.
(c) Damages recoverable.
(d) Contribution.
(e) Amount recoverable.
1710. Review of orders; jurisdiction; procedure; conclusiveness of findings; additional evidence; modification of findings by Secretary; stay.
1711. Limitation of actions.
1712. Contrary stipulations void.
1713. Additional remedies.
1714. Investigations, injunctions, and prosecution of offenses.
(a) Permanent or temporary injunction or restraining order; jurisdiction.
(b) Investigations; publication of information concerning violations.
(c) Oaths and affirmations; subpoena power.
(d) Contempt; court order requiring attendance and testimony of witnesses; jurisdiction.
(e) Self-incrimination.
1715. Administration; delegation of functions, duties and powers; hearing officers; appeals from decisions; public hearings; record of hearings.

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Mass. Closing Juvenile Jails

BY BILL KOVACH
The New York Times

AMHERST, Mass. — The State of Massachussetts is moving ahead rapidly with a program to abolish institutions for juvenile offenders and to replace them with community-based work and educational programs.

Tho program, in the formative stages for nearly two years, is designed to, within the next six months, make this the first state to abolish all juvenile prisons.

The experiment has received federal grants to aid its implementation.

In the past two months, three juvenile institutions — including the nation's oldest jails for boys and girls — have been closed and more than 200 of the state's 800 young offenders are in community-based facilities.

According to Dr. Jerome G. Miller, head of the Youth Services Department, directing the effort, the only way to reform the penal system is to dismantle its institutions.

"We made a basic decision after I took this job two years ago that it would do no good to pump more money and more programs into the existing system because the system can chew up reforms faster than you can dream up new ones," said Miller. "It is a sick system that destroys the best efforts of everyone in it and we decided to look for alternatives."

The per capita cost of jailing a juvenile for a year was about $10,000, or, as Miller pointed out, "enough to send a child to Harvard University with a $100 a week allowance, a summer vacation in Europe, and once a week psychotherapy."

Most of that money was required to maintain the institutions and, he said he decided it could be better spent for more personal work with the youthful offender in a program designed to integrate him back into the community rather than to segregate him.

One of the alternatives to buildings and bars is a program at the University of Massachussetts campus here called Juvenile Opportunities Extension, or, JOE.

Directed by Larry L. Dye, JOE is a recognized student activity (funded and run by the students) and is part of a major effort by the university's students to involve themselves in community affairs. Through JOE, 100 former inmates of the now-closed juvenile prisons are paired with student volunteers from their home community.

The juvenile and the student (called an advocate) live together in dormitories or apartments and jointly work together to find a way to bring the juvenile back into his local community. Designed as a month-long program, the two are expected to develop a living arrangement, at home if possible, and an educational or employment schedule.

Other alternatives serve 130 former juvenile inmates. Most of these are in group homes where the youngsters are directed and supervised by foster parents. Some of the larger group homes have staffs enlarged by the addition of state employes who formerly worked at the institutions that have been shut down.

"Whatever the arrangement," Miller said, "the thrust is the same — to get the kid out of an impersonal institution and into a more personal situation where he or she can be worked with more intensively."

By Lester Velie

The Child Trappers

The game is called "trap the child." It is played by judges, social workers and corrections officials in courtrooms, in bureaucratic mazes and in prison cells. It is known officially as the juvenile-court system, and yearly it mangles the lives of thousands of our children

For an outsider, the first glimpse of a fellow human being caged in solitary confinement in a six-by-ten-foot cell—prisoners call it "the hole"—is a harrowing one. But when the caged one is a child, the sight will trouble sleep that night, and for many nights thereafter.

Last August, at the Illinois Industrial School for Boys at Sheridan, I counted 26 boys, some as young as 15, who had been locked in the hole from five days to two months. One was Carman Tate, a slim, fine-featured boy of 17 whose dark-tan coloring reflected his black-Latin origins. Some deep, inner cry of protest so filled the boy's eyes with pain that one winced to look at him.

Carman had already spent three of his adolescent years locked away from mother, friends and school when I first saw him. What crime had he committed while outside? None known to the criminal code. The charge that set him on the path to this maximum-security prison was "running away from home for two days." His story reveals how the juvenile-court system traps and mangles children in the name of saving them.

The "saving" of Carman Tate began when he was 13. In the ghetto rioting that followed the assassination of Martin Luther King, Jr.,

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some drapes were set afire in a school in Carman's neighborhood. Carman, who, with thousands of others, was milling around the streets that night, was picked up and charged with the arson. Since children get no bail, the boy spent 28 days behind bars in the local detention center awaiting disposition of his case. Then, as it turned out, the case was dismissed for lack of evidence. But Carman faced a still more difficult charge: his parents' word that he stayed out late, was "beyond their control."*

Actually, as a court investigator and a psychiatrist reported, it was Carman's parents who were beyond control. When Carman was nine, a stepfather had entered his life—a Chicago policeman, giant in size and quick with his fists. To make a man of young Carman, he would send him to a dark cellar, scare him out of his wits, then yell "sissy!" at the youngster's terror. The stepfather also had a store and made Carman work long, after-school hours, without pay or allowance. When the boy rebelled, the stepfather beat him. When Carman's mother interceded, he beat her, too.

At the time of the stepfather's arrival, Carman was an average student, attending school regularly. Soon, however, he became listless in class and, because of the long hours in the store, sometimes fell asleep. He had to repeat the fifth grade. Once, when Carman was 13, he stayed away from school for 25 days. The reason, his mother told a social worker, was that Carman had to baby-sit for his sisters while his mother worked. But to the school, he was a habitual truant.

All this was spread before the juvenile-court judge after the arson charge had been dismissed, plus the psychiatrist's advice that Carman's parents, as well as Carman, get counseling. But juvenile courts are not in business to save adults. Only Carman got the treatment—a year on probation. Having become a ward of the court, he was ordered to obey his parents, observe a curfew and attend school regularly—or else. Since Carman's probation did nothing about his difficulty with his stepfather, the "or else" descended within four months. Carman was adjudged a delinquent for violating probation and turned over to the Illinois Youth Commission.

Prior to assigning Carman to one of the state's 18 juvenile detention centers, the commission tested him at a "diagnostic center." Here a social worker strongly recommended "family counseling." Carman's place, obviously, was in his home.

But Carman didn't go home. Somewhere out there in the corrections bureaucracy, some paper-shuffler had pinned crimes on the boy that he had never committed: unlawful possession of narcotics, and setting fire to a school. Carman had

*In some states, including Illinois, any minor under 18, after a second complaint of his being "beyond the control of his parents" or a "habitual truant," can be locked up until he is paroled or until he reaches 21.

never been accused of a narcotics charge; the arson complaint had been dismissed. Yet the final diagnostic-staff decision concluded: "Because of his possible arsonist tendencies," the boy had to be put away in a secure setting. He was bundled off in a prison van to the state training school for boys at St. Charles, the second most secure juvenile-detention facility in Illinois.

It took eight leisurely months for the child-savers at St. Charles to discover that Carman merited parole. But less than two weeks after his release, Carman was back on a parole-violation charge. He was defiant, his parents had told the parole officer. True. Ordered out of the house by his stepfather, Carman had cried out to his mother: "If I can't be with you, I might as well be locked up!"

Sent again to the diagnostic center at Joliet, Carman learned that his stepfather had died. Since a happy home now awaited him, reason screamed: *Send this boy home!* Instead, he was taken to the training school for boys at Sheridan, the maximum-security institution where I met him. It was a routine department matter; no judge, lawyer or parent was advised.

During his first year at Sheridan, Carman spent a total of 82 days—1968 hours—in solitary. Once (eight days) was for threats (by the slightly built 15-year-old) to hit a guard; another time (14 days) for disrespect to a counselor and refusing an order. When he was not in solitary, he lived with some of the most desperate young felons in the state.

As the months passed, with no word about parole, Carman descended into bitterness. He came to feel that only a black revolution against an oppressive white establishment could free him. So, in the spring of 1971, Carman joined other inmates in a "black revolution" riot aimed at calling attention to their plight.

The spark was the authorities' use of a powerful tranquilizer, Thorazine, injected to immobilize misbehavers. A psychiatrist later testified at an inquiry into Sheridan that "Thorazine is a dangerous drug which should be used only as part of a program of psychiatric therapy." Yet Sheridan's part-time psychiatrist was not consulted about the drug's use. Nor did the prison's part-time doctor always examine the injected boy. The result was that one asthmatic inmate, 19-year-old Anthony Jones, subjected to a heavy daily dose for four consecutive days, died by strangulation.

Because Jones was a leader of the Black Power organization inside Sheridan, inmates looked on his death as calculated murder. During the riot that subsequently broke out, inmates knifed one guard to death. Later another guard was seriously beaten, and Carman was accused in this incident. Since this was a serious charge, Carman, now 16, was taken before an adult criminal court and indicted for aggravated battery—which carries a one-to-ten-year sentence in Illinois.

Last October, Carman's lawyers were planning to plead the boy guilty to the charge, in return for a specific sentence in an adult penitentiary which—with time off for good behavior—could free Carman within a year. In the mad world of juvenile correction, then, Carman could extricate himself from the juvenile-court trap by "committing" a crime, his first.

The Crime of Childhood. Carman's case is not an isolated one. Each year, more than 440,000 other non-criminal minors under 18 are trapped by our juvenile-court system.

Item: Over her parents' tearful pleas to let 15-year-old Sharon R. go home, a juvenile-court judge sent the girl to an Indiana reformatory. Police said the girl had stayed out beyond the nine o'clock minors' curfew and had sassed a policeman.

Item: Fifteen-year-old Pamela W., an intelligent child, has spent almost three years locked up. Her mother appealed to a Chicago juvenile court when Pamela, at ten, developed emotional problems. Pamela then spent months alternating between foster homes and detention centers—until 1969 when, without court order, she was dumped into a state insane asylum, although she was sane. Here, for "treatment," Pamela was spread-eagled on a bed, her ankles and hands bound with ropes, once for 28 days, another time for 30 days. When the girl struck one of her tormentors, she was charged with assault and committed by a juvenile court to a state training school where, at age 13, she endured 792 hours of solitary confinement. When I saw her last fall, she was still awaiting parole.

How did crimes against children like these begin? The juvenile court and the concept of juvenile delinquency are American inventions, mothered by welfare workers of the 1880s, to save children from lives of crime. The way to do it, they theorized, was to catch the youngster in "pre-delinquent" misbehavior, remove him from his family and put him into "protective custody," where he would get the care and discipline to prepare him for solid citizenhood.

However, this well-intentioned theory was codified in vague laws that gave the state awesome power to intervene in the lives of non-criminal children. Indeed, some statutes seem to make childhood itself a crime. California's law, for example, says: "Any person under 21 who persistently refuses to obey his parents, guardian, custodian or school authorities or who from any cause is in danger of leading an idle, dissolute or immoral life is within the jurisdiction of the juvenile court."*

Because those caught up in such broad legal nets were to become "wards of the court," and the state was to become their parent, a new kind of court was created to deal only with juveniles. (In many states,

*As this article was written, the constitutionality of part of this law was under consideration by the U.S. Supreme Court.

however, adult criminal courts continue to handle serious offenders over 15, and in some states over 12.) The new court would be run by a new kind of judge—a wise and benign counselor who would prescribe treatment for the child, instead of passing sentence. And presumably, this judge would have the tools for therapy: psychiatric care, counseling and foster homes.

But neither judges nor tools matched the lofty aims of the child-savers. Today the National Council on Crime and Delinquency (NCCD), which has studied juvenile courts and detention in almost every state, says: *"The quickest route to a criminal career is via the juvenile court."* One study has found that one fifth of all juvenile-court judges were not members of the bar; one half hadn't even graduated from college.

In El Paso, Texas, one judge bundled children off to detention without ever seeing them. He simply initialed a mimeographed form, filled out by a parent, declaring the child to be a delinquent. One such "delinquent" was a 16-year-old girl whose mother went off on a two-week spree with a lover and signed away the child as an "incorrigible"—so using the detention home as a baby-sitter.

The Trap Is Set. For a close-up view of a juvenile court at work, let's visit Illinois' Cook County (Chicago). Here, to enter a juvenile courtroom, you need the written permission of the chief judge. This, you are told, is to protect the anonymity of the juvenile. But the secrecy protects the system more than it does the child.

The court I entered is where the first step in the juvenile judicial process takes place—an arraignment that leads to the dismissal of a case or to more court appearances. A black 11-year-old stands mute, as adults take three minutes flat to agree on a decision that may damage him for the rest of his life.

An assistant state's attorney reads the accusation which charges the boy with "illegal trespass to a vehicle," *i.e.*, joyriding in a stolen car, driven by another. The young public defender, who had not seen the boy before, does not speak to his client or challenge the state's attorney. He pleads the boy guilty.

The judge questions the boy to determine whether he understands what has been said. Then, as the boy stands silent, he tells him that he will be placed under court supervision for six months. At the end of that time, if the boy has behaved, the charge will be dismissed and the case record destroyed.

The trap has been set. Truancy from school, disobeying his parents or a probation officer's complaint will bring the boy back to court. Then he may go to jail for disobeying the judge's orders—although, because of the guilty plea, the original charge was never tried and proved.

Strangely, as other children face the judge, the public defender pleads

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virtually all his clients guilty. Why? In the Cook County juvenile court, parents and children are first questioned by law students and recent law graduates who—as "investigators" for the public defender—spend about ten minutes on each case. They note the child's name, his school record, past difficulties, if any, and then advise the parents.

"We kind of push for admissions (guilty pleas) on arraignment *if the kid has anything at all to do with the charge*," a law student told me. How the investigator determines this is not clear, for he does no investigating. The parent, not knowing what he or she is getting the child into, usually agrees to the guilty plea and supervision.

Even where court-appointed lawyers fight to send the child home, heavy case loads make the job difficult. In some cities public defenders each handle as many as 50 juvenile cases a day. And in small towns, many juvenile-court judges waive legal niceties altogether. When OEO lawyers sued every juvenile court in Texas last summer, charging failure to protect children's rights, the U.S. District Court for Eastern Texas sent a questionnaire to some 2400 jailed children all over the state. Half of them had not had a lawyer.

To all this, add the common practice of "dumping" non-criminal children, who languish in detention centers while judge and social workers seek a foster home, a shelter or psychiatric care. Such facilities are extremely hard to come by. The President's Crime Commission has pointed out that more than 80 percent of juvenile-court judges "had no psychologist or psychiatrist available on a regular basis." In short, the juvenile-court system simply can't keep the promise—made by its inventors—to use the behavioral and medical sciences to prevent or cure delinquent behavior.

Let's return to the Cook County Juvenile Court to watch judge, public defender and social worker make a promise that, unkept, dumps a 15-year-old who has done no one any harm. The courtroom we now enter is where the judge decides what to do with a child who has been held over after arraignment. It takes him an average of 12 minutes.

A sturdy boy, Gregory C., faces the judge. At an earlier hearing, Gregory had been adjudged a "minor in need of supervision," a term by which Illinois differentiates non-criminal children from delinquents. That was two months ago, when Gregory's mother had complained that he stayed away from home overnight. Since then, he has been behind bars in the Audy Home, a high-security detention center, while a social worker looked for a foster home. The social worker tells the judge that he still hasn't found one. Gregory's mother refuses to take him home.

A public defender has an idea. He takes the mother aside, and in an off-the-record huddle, urges her to agree to a finding of neglect against

her. This will turn Gregory into a "neglected child" and it will be easier to find a place for him. The mother demurs, then agrees, and the judge orders Gregory back to the lockup—pending further search for a foster home.

Tragic Odds. Is such dumping unusual? No. The Chicago Citizens Committee on the Juvenile Court found that 331 children *under six* had been dumped into the Audy Home in a recent year. Another 447 were six to 12 years old. Sometimes the bureaucracy, having dumped a child, loses or forgets him. Billy N., left temporarily at Audy when he was six, remained there on and off until he was 16!

If Gregory had been adjudged a delinquent he would probably have been sent to a training school. Many of these places are massive maximum-security facilities—overcrowded, located far from the homes of the children, and, according to NCCD, control their inmates with physical repression.

For example, at the Gatesville State School for Boys in Texas, as U.S. Senate investigators heard: "Security is maintained by a 24-hour horse patrol, 24-hour jeep patrol, and an eager kennel of dogs who are trained to chase younger children. [In April 1969, 200 of the "school's" inmates were under 12.] . . . A day without a beating is the exception, and torment is the order of the day."

Says Massachusetts Youth Services Commissioner Jerome G. Miller: "Almost anything we could do is better than what we have been doing." He wants to shut down his state's ten juvenile-correction institutions by 1974.

What are the odds that a juvenile graduate from a training school or reformatory can go straight? Less than 50-50, says NCCD. When the FBI studied several thousand repeaters of all ages it found three of every four offenders under 20 were repeaters within the next four years. At the school at Sheridan, Ill., an official who used to inspect state prisons said: "Over the years, I saw hundreds of inmates at Pontiac (an adult prison) whom I had first met as Sheridan boys."

In Philadelphia, Family Court Administrative Judge Frank J. Montemuro, Jr., summed up the horror of our juvenile courts: "We're running a feeding system for the adult-criminal court."

The delinquency doctors are telling us that the treatment is part of the disease. Isn't it time we tried another treatment?

In Part II of this series, The Reader's Digest will examine some possible solutions to the problems of juvenile justice.

Half-truths are like half a brick—they can be thrown farther.
—Vice Admiral Hyman G. Rickover

SB-68

NIGHT LETTER Sent 5-5-71 5:00 p.m.

To: Rep. Genie Chance, Juneau, Alaska

From: Harold J. Butcher, Anchorage

Strongly urge House conferees accept Senate Bill 68 as introduced by Thomas, et.al., as originally proposed by the undersigned and attached to memorandum of justification.

My proposal, as reflected in Senate Bill 68 simply adds one paragraph to the statute and requires no alteration or changes in preceding statutes. The languege contained in the last line of Senate Bill 68 "on order of the court" simply reiterates the same language as presently contained in the last line of 47.10.080(b)(1), as adopted in 1970. That language "on order of the court" has never created any problems between the court and the Division of Corrections. That language "on order of the court" also reiterates the same language in the statute as it existed before the amendment of 1970 in the original statute as it has stood since its adoption in 1962. The House verdon, in my opinion, detracts from the clear purpose of the statute as it has stood since 1962.

Please do your best to get a bill passed as the amendment is badly needed now.

Lowell:
This telegram sent to Genie Chance, May 5.

H.J.B.

SB-68

to take advantage of the training grants provisions of the Social Security Act, as amended, the state, through the department, consents and agrees to all conditions required by federal statute and regulation necessary for the state to participate fully in the training grants or other programs. (§ 51-1-3(p) ACLA 1949; added by § 4 ch 133 SLA 1957)

Sec. 47.05.050. Policy. It is the public policy of the state to cooperate and coordinate with the United States government and its agencies in providing for and administering federal and state laws for old age assistance and the other assistance which is provided for or extended to the people of the state. (§ 51-1-4 ACLA 1949)

Chapter 10. Delinquents and Wards of the Court.

Article
1. Juvenile Courts (§§ 47.10.010—47.10.142)
2. Juvenile Institutions (§§ 47.10.150—47.10.220)
3. Care of Children (§§ 47.10.230—47.10.260)
4. General Provisions (§§ 47.10.270—47.10.290)

Article 1. Juvenile Courts.

Section
10. Jurisdiction
20. Investigation and petition
30. Summons and custody of minor
40. Release of minor
50. Appointment of guardian ad litem
60. Waiver of jurisdiction
70. Hearings
75. Young adult advisory panels
80. Judgments and orders
90. Records
100. Retention of jurisdiction over minor
110. Appointment of guardian or custodian
120. Support of minor
130. Detention
140. Temporary detention and detention hearing
142. Emergency custody and temporary placement hearing

Sec. 47.10.010. Jurisdiction. (a) Proceedings relating to a minor under 18 years of age residing or found in the state are governed by this chapter, except as otherwise provided in this chapter, when the minor

(1) violates a law of the state, or an ordinance or regulation of a political subdivision of the state;

(2) by reason of being wayward or habitually disobedient is uncontrolled by his parent, guardian or custodian;

(3) is habitually truant from school or home, or habitually so conducts himself as to injure or endanger the morals or health of himself or others;

(4) is abandoned by his parent, guardian or custodian;

(5) lacks proper parental care by reason of the faults, habit or neglect of his parent, guardian or custodian;

(6) associates with vagrant, vicious or immoral people, or engages in an occupation or is in a situation dangerous to life or limb or injurious to the health, morals, or welfare of himself or others;

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(7) is an orphan who has no relatives willing and able to assume custody and care;

(8) has been released by his parent or parents, or guardian, to the department for adoptive purposes; or

(9) is in need of special care or training not otherwise provided.

(b) When a minor is accused of violating a traffic statute or regulation, or a traffic ordinance or regulation of an incorporated municipality, excepting a statute the violation of which is a felony, the procedure prescribed in §§ 20—90 of this chapter may not be followed, except that a parent, guardian or legal custodian shall be present at all proceedings. The minor accused of a traffic offense shall be charged, prosecuted, and sentenced in the district court in the same manner as an adult.

(c) In a controversy concerning custody of a minor, the court may appoint a guardian of the person and property of a minor and may order support from either or both parents. Custody of a minor may be given to the Department of Health and Social Services, and payment of support money to the department may be ordered. (§ 4 art I ch 145 SLA 1957; am § 1 ch 76 SLA 1961; am §§ 1, 2 ch 110 SLA 1967; am § 1 ch 64 SLA 1969; am § 6 ch 104 SLA 1971)

Cross references. — See Rules of Children's Procedure, Alaska Rules of Court Procedure and Administration. As to prosecution of minor driving vehicle without owner's consent, see AS 28.35.010 (d).

Effect of amendments — The 1967 amendment rewrote the introductory language of subsection (a) and rewrote subsection (c).

The 1969 amendment, in the first sentence of subsection (b), deleted "AS 28.35.030, 28.35.040, or AS 28.35.050 —28.35.110, or" following "excepting," and substituted "may" for "need." In the second sentence of that subsection the amendment substituted "shall" for "may" and inserted "in the district court."

The 1971 amendment substituted "Department of Health and Social Services" for "Department of Health and Welfare" in the last sentence in subsection (c).

Editor's note. — Section 7, ch. 110, SLA 1967, as amended by § 80, ch. 69, SLA 1970, provides: "In exercising its jurisdiction under AS 47.10, the superior court may designate district judges and magistrates as masters under Civil Rule 53."

Legislative committee reports. — For report on amending bill, see 1961 House Journal, p. 140. For report on ch. 64, SLA 1969 (CSHB 10), see 1969 House Journal, p. 362.

Jurisdiction to regulate custody of infants does not depend upon domicile of parents. Clegg v. Abood 13 Alaska 187 (1951).

It has its origin in the protection that is due to the incompetent or helpless. Clegg v. Abood, 13 Alaska 187 (1951).

The court acts as parens patriae, protecting the child whose custody is in dispute and making its award solely according to the interests and welfare of the child. This is true, regardless of the settled or transient character of the parents' residence, or even of a child abandoned by its parents. Clegg v. Abood, 13 Alaska 187 (1951).

Hence, the residence of the child suffices, though the domicile of the parents be elsewhere. Clegg v. Abood, 13 Alaska 187 (1951).

Effect of decree of another court in custody cases. — That a parent brings the child into the jurisdiction of a court in violation of the decree of another court, will not deprive the court of the state where the child presently resides from determining matters of custody in cases of changed circumstances. Clegg v. Abood, 13 Alaska 187 (1951).

When person over or under certain age. — With respect to penal statutes, whether a person is over or under a certain age depends upon whether he has reached that particular anniversary of his birthday or not. State v. Linn, Sup. Ct. Op. No. 47 (File No. 122), 363 P.2d 361 (1961).

Requisites to determination of delinquency. — Before a juvenile can be determined delinquent in a proceeding which could result in commitment to an institution, thus curtailing his freedom, certain requisites must be met. First, written notice of the charges must be given to the juvenile and his parents sufficiently in advance of the proceedings to allow preparation to meet the charges. Second, the child and his parents must be apprised of the right to counsel, including appointed counsel in case of indigency. Third, the child may exercise his privilege against self-incrimination. Lastly, absent a valid confession, the determination of delinquency cannot be sustained in the absence of sworn testimony, which is subject to cross-examination. E.J. v. State, Sup. Ct. Op. No. 628 (File No. 1144), 471 P.2d 367 (1970).

The required standard of proof has been increased from "a preponderance of the evidence" to "beyond a reasonable doubt" in the adjudicatory stages of at least those delinquency proceedings in which a child is charged with an act that would be a crime if committed by an adult. E.J. v. State, Sup. Ct. Op. No. 628 (File No. 1144), 471 P.2d 367 (1970).

Violations of AS 04.15.060. — In cases involving violations of AS 04.15.060, offenders between the ages of 18 and 21 years may be punished as for a misdemeanor by fine or imprisonment; but offenders between the ages of 17 and 18 years must instead be proceeded against under the provisions of the juvenile laws. Purdy v. United States, 16 Alaska 173, 146 F. Supp. 762 (D. Alas. 1956)

Appeal after serving sentence. — If there remain collateral legal disabilities apart from the sentence, an appeal is not mooted even though the sentence has been served. E.J. v. State, Sup. Ct. Op. No. 628 (File No. 1144), 471 P.2d 367 (1970).

Am. Jur., ALR and C.J.S. references. — 27 Am. Jur., Infants, §§ 101 to 112; 31 Am. Jur., Juvenile Courts and Delinquents, Dependent and Neglected Children, §§ 13 to 50.

Another court's jurisdiction over a child as affected by assumption of jurisdiction by juvenile court, 11 ALR 147; 78 ALR 317; 146 ALR 1711.

Vagrancy of minors, 14 ALR 1507.

Constitutionality of statute which, for reformatory purposes, deprives parent of custody or control of child, 60 ALR 1342.

Power of juvenile court to exercise continuing jurisdiction over infant delinquent or offender, 76 ALR 657.

Age of child at time of alleged offense or delinquency, or at time legal proceedings are commenced, as criterion of jurisdiction of juvenile court, 123 ALR 446.

Marriage as affecting jurisdiction of juvenile court over delinquents or dependents, 14 ALR2d 336.

Homicide by juvenile as within jurisdiction of juvenile court, 48 ALR2d 662.

43 C.J.S. Infants §§ 6, 93 et seq.

Sec. 47.10.020. Investigation and petition. (a) Whenever a person informs the court of the facts which bring a minor within this chapter, the court shall appoint a competent person or agency to make a preliminary inquiry and report for the information of the court to determine whether the interests of the public or of the minor require that further action be taken. Upon the receipt of the report, the court may informally adjust or dispose of the matter without a hearing, or it may authorize the person having knowledge of the facts of the case to file with the court a petition setting out the facts. Where the court informally adjusts or disposes of the matter, the minor may not be detained or taken into the custody of the court, and the matter shall be closed by the court upon adjustment or disposition.

(b) The petition and all subsequent pleadings shall be styled as follows: "In the matter of ....., a minor under 18 years of age." The petition may be executed upon the petitioner's information and belief, and shall be verified. It shall include the following information:

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(1) the name, address and occupation of the petitioner, together with his relationship to the minor, and his interest in the matter;

(2) the name, age and address of the minor;

(3) a brief statement of the facts which bring the minor within this chapter;

(4) the names and addresses of the minor's parents;

(5) the name and address of the minor's guardian, or of the person having control or custody of the minor.

(c) If any of the facts required in this section are not known by the petitioner, he shall state in his petition that those facts are unknown to him. (§ 5 art I ch 145 SLA 1957)

Sec. 47.10.030. Summons and custody of minor. (a) After a petition is filed and after further investigation which the court directs, if the person having custody or control of the minor has not appeared voluntarily, the court shall issue a summons which (1) recites briefly the substance of the petition; (2) clearly states that at the hearing it is possible that parental rights and responsibilities may be terminated forever and that the minor may at the hearing be committed to the Department of Health and Social Services for possible adoption; and (3) directs the person having custody or control of the minor to appear personally in court with the minor at the place and at the time set forth in the summons.

(b) If the person summoned is not the parent or guardian of the minor, the court shall also give the parent or guardian notice of the place and time of the hearing. The court may also subpoena the parent of the minor, or any other person whose testimony may be necessary at the hearing. A summons, subpoena or other process may be served by a person authorized by law to make the service. Where personal service cannot be made, the court may direct that service of process be made by registered mail.

(c) If the minor is in such condition or surroundings that his welfare requires the immediate assumption of his custody by the court, the court may order, by endorsement upon the summons, that the officer serving the summons shall at once take the minor into custody and make the temporary placement of the minor which the court directs. (§ 6 art I ch 145 SLA 1957; am § 1 ch 110 SLA 1960; am § 6 ch 104 SLA 1971)

Effect of amendment. — The 1971 amendment substituted "Department of Health and Social Services" for "Department of Health and Welfare" in item (2) of subsection (a).

ALR references. — Notice to parent, and hearing, before commitment of delinquent, dependent, or neglected children, 76 ALR 247.

Right to and appointment of counsel in juvenile court proceedings, 60 ALR2d 691.

Sec. 47.10.040. Release of minor. A minor who is taken into custody may, in the discretion of the court and upon the written promise of the parent, guardian or custodian to bring the minor before the court at a

time specified by the court, be released to the care and custody of the parent, guardian or custodian. The minor, if not released, shall be detained as provided by § 140 of this chapter. The court may determine whether the father or mother or another person shall have the custody and control of the minor for the duration of the proceedings. If the minor is over 14 years of age, his desires in the matter shall be given consideration by the court. (§ 7 art I ch 145 SLA 1957)

Sec. 47.10.050. Appointment of guardian ad litem. Whenever in the course of proceedings instituted under this chapter it appears to the court that the welfare of a minor will be promoted by the appointment of a guardian ad litem, the court may make the appointment. (§ 8 art I ch 145 SLA 1957)

Sec. 47.10.060. Waiver of jurisdiction. (a) If the court finds at a hearing on a petition that there is probable cause for believing that a minor is delinquent and finds that the minor is not amenable to treatment under this chapter, it shall order the case closed. After a case is closed under this subsection, the minor may be prosecuted as if he were an adult.

(b) Repealed by § 8 ch 110 SLA 1967, effective January 1, 1968.

(c) Repealed by § 8 ch 110 SLA 1967, effective January 1, 1968.

(d) A minor is unamenable to treatment under this chapter if he probably cannot be rehabilitated by treatment under this chapter before he reaches 21 years of age. In determining whether a minor is unamenable to treatment, the court may consider the seriousness of the offense the minor is alleged to have committed, the minor's history of delinquency, the probable cause of the minor's delinquent behavior, and the facilities available to the division of youth and adult authority for treating the minor.

(e) If a person who has been tried as an adult under this section has completed his sentence and five years have elapsed, he may petition (or the Department of Health and Social Services may petition for him) the superior court to seal the records of all criminal proceedings against him and all punishments assessed against him, except for traffic offenses, while he was a minor. If the superior court finds that the punishment assessed against the person has had its intended rehabilitative effect, the superior court shall order the record of proceedings and the record of punishments sealed. Sealing the records restores civil rights removed because of a conviction. No person may ever use records so sealed for any purpose. (§ 9 art I ch 145 SLA 1957; am § 1 ch 118 SLA 1962; am §§ 3, 8 ch 110 SLA 1967; am § 6 ch 104 SLA 1971)

Effect of amendments. — The 1967 amendment rewrote subsection (a) and repealed subsections (b) and (c).

The 1971 amendment substituted "Department of Health and Social Services" for "Department of Health and Welfare" in the first sentence of subsection (e).

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Sec. 47.10.070. Hearings. The court may conduct the hearing in an informal manner in the courtroom or in chambers. All hearings under this chapter are without a jury and the usual rules of evidence do not apply. However, a hearing may be held before a young adult advisory panel in accordance with § 75 of this chapter. The court shall give notice of the hearing to the department and it may send a representative to the hearing. The court shall also transmit a copy of the petition to the department. The representative of the department may also be heard at the hearing. The public shall be excluded from the hearing, but the court, in its discretion, may permit individuals to attend a hearing, if their attendance is compatible with the best interests of the minor. (§ 10(1) art I ch 145 SLA 1957; am § 1 ch 49 SLA 1966)

Effect of amendment. — The 1966 amendment added the second sentence.

Legislative committee report. — For report on ch. 49, SLA 1966, see 1966 House Journal, p. 52.

Constitutionality. — See In re Gault, 387 U.S. 1, 87 Sup. Ct. 1428, 18 L. Ed. 2d 527 (1967), discussing due process requirements in juvenile delinquency proceedings.

ALR references. — Power of juvenile court to require testimony by children, 151 ALR 1229.

Applicability of rules of evidence in juvenile delinquency proceedings, 43 ALR2d 1128.

Degree of proof in juvenile delinquency proceedings, 43 ALR2d 1138.

Sec. 47.10.075. Young adult advisory panels. (a) Unless the minor objects, the court may select a young adult advisory panel to hear the case and advise the court of a recommended judgment and order. The court may consider any of the panel recommendations in making its judgment and order in the case.

(b) The principal of each high school shall submit annually to the court a list of the students enrolled in grades 10, 11 and 12. The court shall determine the method of selecting the members of each panel.

(c) A student shall be excused from attending school during the time he is serving as a panel member. No student may serve more than once each year on a panel.

(d) A student shall be excused from service as a panel member if he submits a written request to the court indicating the reason he does not wish to serve. (§ 2 ch 49 SLA 1966)

Legislative committee report. — For report on ch. 49, SLA 1966, see 1966 House Journal, p. 52.

Sec. 47.10.080. Judgments and orders. (a) The court, at the conclusion of the hearing, or thereafter as the circumstances of the case may require, shall find and enter a judgment that the minor is or is not a delinquent, or a child in need of supervision, or dependent minor.

(b) If the court finds that the minor is delinquent, it shall

(1) order the minor committed to the Department of Health and Social Services for an indeterminate period of time not to extend past a specified date or in any event past the day the minor becomes 19, except

that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment, and may direct the minor's placement in a juvenile correctional school, detention home, or detention facility designated by the department; the minor may be released from placement or detention and placed on probation on order of the court; or

(2) order the minor placed on probation, to be supervised by the department, and release him to his parents, guardian, or a suitable person; if the court orders the minor placed on probation, it may specify the terms and conditions of probation; the probation may be for an indeterminate period of time, not to extend past a specified date and in no event past the day the minor becomes 19, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment.

(c) If the court finds that the minor is dependent, it shall

(1) order the minor committed to the department for an indeterminate period of time not to exceed the date the minor becomes 19 years of age, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment;

(2) order the minor released to his parents, guardian, or some other suitable person; if the court releases the minor, it shall direct the department to supervise the care and treatment given to the minor; the department's supervision may not extend past the date the minor becomes 19 years of age, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment; or

(3) by order, terminate parental rights and responsibilities of one or both parents and commit the child to the department or to a legally appointed guardian of the person of the child, if one of the following conditions exists:

(A) Each parent, or the surviving parent, or one parent if the other has been deprived of custody and visitation rights wishes to relinquish the child to the department or to a legally appointed guardian of the person of the child for adoptive purposes, and the relinquishment is in writing, signed and acknowledged before the court or duly authorized representative of the department and filed with the court;

(B) the child has been abandoned for a period of not less than six months by

(i) both parents, or

(ii) the surviving parent, or

(iii) one parent if the other has been deprived of custody and visitation rights;

(C) each parent, the surviving parent, or one parent if the other has been deprived of custody and visitation rights has been judicially determined to be of unsound mind and the disability has not been

removed and the parent has been hospitalized for reasons of mental illness diagnosed as permanent or of long duration; or

(D) each parent, or the surviving parent, or one parent if the other has been judicially deprived of custody and visitation rights, has demonstrated by his conduct, proven by clear and convincing proof amounting to more than a preponderance of the evidence that he is unfit to continue to exercise his parental rights and responsibilities.

(d) An order issued under (c) (3) of this section authorizes the commissioner of health and social services or his designee or the guardi of the person of the child to consent to the adoption of the child.

(e) If the court finds that the minor is not delinquent, a child in need of supervision, or dependent, it shall immediately order his release from its custody and his return to his parents, guardian, or custodian, and close the case.

(f) A minor found to be delinquent, a child in need of supervision, or dependent is a ward of the court as long as he is committed to the department or the department has the power to supervise his actions. The court shall review an order made under (b) or (c) (1) or (2) or (j) of this section annually, and may review the order more frequently to determine if continued placement, probation, or supervision is in the best interest of the minor and the public, and to determine if the minor is being treated fairly. The department or the minor's parents or guardian is entitled to a review on application. The minor need not be present at the review.

(g) No adjudication under this chapter upon the status of a child may operate to impose any of the civil disabilities ordinarily imposed by conviction upon a criminal charge, nor may a minor afterward be considered a criminal by the adjudication, nor may the adjudication be afterward deemed a conviction, nor may a minor be charged with or convicted of a crime in a court, except as provided in this chapter. The commitment and placement of a child and evidence given in the court are not admissible as evidence against the minor in a subsequent case or proceedings in any other court, nor does the commitment and placement or evidence operate to disqualify a minor in a future civil service examination or appointment in the state.

(h) The department shall pay all court costs incurred in all proceedings in connection with the adjudication of delinquency under this chapter, including hearings which result in the release of the minor.

(i) A minor, his parents or guardian acting on his behalf, or the department may appeal a judgment or order, or the stay, modification, setting aside, revocation, or enlargement of a judgment or order issued by the court under this chapter.

(j) If the court finds the minor is a child in need of supervision it shall make any of the following orders of disposition for his supervision, care and rehabilitation.

(1) any order which is authorized under (c) of this section; or

(2) order the minor placed on probation under those conditions and limitations that the court may prescribe. (§ 10(2) art I ch 145 SLA 1957; am § 2 ch 110 SLA 1960; am § 2 ch 118 SLA 1962; am § 1 ch 40 SLA 1967; am §§ 1—4 ch 27 SLA 1970; am §§ 12—15 ch 245 SLA 1970; am § 6 ch 104 SLA 1971)

Effect of amendments. — The 1967 amendment rewrote subsection (c) (3) (B).

The first 1970 amendment added "or thereafter as the circumstances of the case may require" and "or a child in need of supervision" in subsection (a), inserted "a child in need of supervision" in subsection (e), inserted "a child in need of supervision" in the first sentence of subsection (f), and near the beginning of the second sentence of that subsection inserted "or (j)." The amendment also added subsection (j).

The second 1970 amendment substituted "19, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment" for "21" in subsections (b) (1) and (b) (2), substituted "19" for "21" and added the exception in subsections (c) (1) and (c) (2).

The 1971 amendment substituted "Department of Health and Social Services" for "Department of Health and Welfare" in subsection (b) (1) and "commissioner of health and social services" for "commissioner of health and welfare" in subsection (d).

Legislative committee reports. — For report on amending bill, see 1960 House Journal, p. 494.

For report on ch. 40, SLA 1967 (HB 131), see 1967 House Journal, p. 339. Chapter 245, SLA 1970 (HCSSB 399 am H), was identical to CSHB 406 (Jud.). For report on CSHB 406 (Jud.), see 1970 House Journal Supplement No. 6.

A judge cannot consider a juvenile offense as a criminal conviction for the purpose of prescribing a mandatory sentence. Berfield v. State, Sup. Ct. Op. No. 581 (File No. 960), 458 P.2d 1008 (1969).

The judge's consideration of factors relating to accused's life, characteristics, background and behavior prior to reaching the age of 18 years did not mean that he considered accused a criminal or that he was using the juvenile offenses as criminal convictions in determining the sentence to impose. Berfield v. State, Sup. Ct. Op. No. 581 (File No. 960), 458 P.2d 1008 (1969).

Sec. 47.10.090. Records. (a) The court shall make and keep records of all cases brought before it. The court's official records may be inspected only with the court's permission and only by persons having a legitimate interest in them. All information and social records pertaining to a minor and prepared in the discharge of his official duty by an employee of the court or by a federal, state or city agency are privileged and shall not be disclosed directly or indirectly to anyone without the court's permission. However, a state or city law enforcement agency shall disclose information regarding the case which is needed by the person or agency charged with making a preliminary investigation for the information of the court.

(b) The name or picture of a minor under the jurisdiction of the court may not be made public by a newspaper radio, or television station in connection with the minor's status as a delinquent or dependent child, except as authorized by order of the court. A person who violates this provision is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than $500 or by imprisonment for not more than one year, or by both. (§ 10(3) (4) art I ch 145 SLA 1957)

Sec. 47.10.100. Retention of jurisdiction over minor. (a) The court

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(d) If the court finds that probable cause exists, it shall determine whether the minor should be detained pending the hearing on the petition or released. It may either order the minor held in detention or order him to be released to the custody of a suitable person pending the hearing on the petition. If the court finds no probable cause, it shall order the minor released and close the case.

(e) Except for temporary detention pending a detention hearing, no minor may be detained except by court order. (§ 15 art I ch 145 SLA 1957; am § 3 ch 118 SLA 1962; am § 2 ch 100 SLA 1971; am § 6 ch 104 SLA 1971)

Effect of amendments. — The first 1971 amendment deleted "or evading the person having legal custody of him" following "justice" in the first sentence of subsection (a).

The second 1971 amendment substituted "Department of Health and Social Services" for "Department of Health and Welfare" in the first sentence of subsection (b).

Sec. 47.10.142. Emergency custody and temporary placement hearing. (a) The Department of Health and Social Services may take emergency custody of a minor upon discovering any of the following circumstances:

(1) the minor has been abandoned;

(2) the minor has been grossly neglected by his parents or guardian, as "neglect" is defined in AS 47.17.070(5), so that immediate removal from his surroundings is, in the determination of the department, necessary to protect his life;

(3) the minor has been abused, as "abuse" is defined in AS 47.17.070(1), so that immediate medical attention is necessary, in the determination of the department.

(b) A minor who has left home and is evading the person having legal custody of him may obtain the services of the department. The department shall assess the situation and furnish the minor with the social services it considers appropriate to protect the well-being of the minor and to preserve his family life if preserving it is considered desirable under the circumstances. If, after assessing the situation, considering the wishes of the minor, and furnishing appropriate social services, the department considers it necessary, the department may take emergency custody of the minor.

(c) When a child is taken into custody under (a) or (b) of this section, the department shall immediately, and in no event more than 12 hours later unless prevented by lack of communication facilities, notify the parents or the person or persons having custody of the child and the court of the action and file with the court a petition alleging dependency.

(d) The court shall immediately, and in no event more than 48 hours after being notified unless prevented by lack of transportation, hold a hearing at which the minor, if his health permits, and his parents or guardian, if they can be found, shall be permitted to be present. The

court shall determine whether probable cause exists for believing the minor to be a dependent minor, as defined in § 290(3) of this chapter. The court shall inform the minor, and his parents or guardian if they can be found, of the reasons given as constituting probable cause and the reasons given as authorizing his temporary placement.

(e) If the court finds that probable cause exists it shall order the minor committed to the department for temporary placement, or order him returned to the custody of his parents or guardian subject to the department's supervision of his care and treatment. If the court finds no probable cause it shall order the minor returned to the custody of his parents or guardian. (§ 3 ch 100 SLA 1971; am § 6 ch 104 SLA 1971)

Effect of amendment. — The 1971 amendment substituted "Department of Health and Social Services" for "Department of Health and Welfare" at the beginning of subsection (a).

Article 2. Juvenile Institutions.

Section		Section	
150.	General powers of department over juvenile institutions	190.	Conditions governing detention
160.	Duties of department	200.	Releasing juveniles after commitment
170.	Power of cities to maintain and operate home or facility	210.	Youth counsellors
180.	Operation of homes and facilities	220.	Grants-in-aid

Sec. 47.10.150. General powers of department over juvenile institutions. The Department of Health and Social Services may

(1) purchase, lease or construct buildings or other facilities for the care, detention, rehabilitation and education of dependent or delinquent minors;

(2) adopt plans for construction of juvenile homes, juvenile detention facilities, and other juvenile institutions;

(3) adopt standards and regulations under this chapter for the design, construction, repair, maintenance and operation of all juvenile detention homes, facilities, and institutions;

(4) inspect periodically each juvenile detention home, facility, or other institution to insure that the standards and regulations adopted are being maintained;

(5) reimburse cities maintaining and operating juvenile detention homes and facilities;

(6) enter into contracts and arrangements with cities and state and federal agencies to carry out the purposes of this chapter;

(7) do all acts necessary to carry out the purposes of this chapter;

(8) adopt the regulations necessary to carry out this chapter;

(9) accept donations, gifts or bequests of money or other property for use in construction of juvenile homes, institutions or detention facilities;

(10) operate juvenile homes when municipalities are unable to do so;

(11) receive, care for, and place in a juvenile detention home, the minor's own home, a foster home, or correctional school or treatment institution all minors committed to its custody under this chapter. (§ 3 art II ch 145 SLA 1957; am § 1 ch 152 SLA 1959; am § 6 ch 104 SLA 1971)

Effect of amendment. — The 1971 amendment substituted "Department of Health and Social Services" for "Department of Health and Welfare" near the beginning of this section.

Am. Jur. reference. — 26 Am. Jur., Houses of Correction, Reformation and Refuge, § 1 et seq.

Sec. 47.10.160. Duties of department. The Department of Health and Social Services shall

(1) accept all minors committed to the custody of the department and all minors who are involved in a written agreement under § 230(c) of this chapter, and provide for the welfare, control, care, custody, and placement of these children in accordance with the provisions of this chapter;

(2) require and collect statistics on juvenile offenses and offenders in Alaska;

(3) conduct studies and prepare findings and recommendations on the need, number, type, construction, maintenance, and operating costs of juvenile homes, facilities and the other institutions, and adopt and submit a plan for construction of the homes, facilities, and institutions when needed, together with a plan for financing the construction programs;

(4) examine, where possible, all facilities, institutions, and places of juvenile detention in Alaska and inquire into their methods and the management of juveniles in them. (§ 5 art II ch 145 SLA 1957; am § 4 ch 110 SLA 1967; am § 4 ch 100 SLA 1971; am § 6 ch 104 SLA 1971)

Effect of amendments. — The 1967 amendment deleted "handled by all district magistrate courts" following "offenders" in paragraph (2).

The first 1971 amendment inserted "all minors who are involved in a written agreement under § 230(c) of this chapter, and" in paragraph (1).

The second 1971 amendment substituted "Department of Health and Social Services" for "Department of Health and Welfare" near the beginning of this section.

Sec. 47.10.170. Power of cities to maintain and operate home or facility. (a) A city having a population of 1700 or more, according to the latest decennial census, or found by the department to have a present population of 1700 or more may maintain and operate a juvenile detention home or facility.

(b) The city may receive grants-in-aid from the state for costs of operation of the homes or facilities. (§ 5 art II ch 145 SLA 1957)

Sec. 47.10.180. Operation of homes and facilities. (a) The Department of Health and Social Services shall adopt standards and

regulations for the operation of juvenile detention homes and juvenile detention facilities in the state.

(b) The department may enter into contracts with cities and other governmental agencies for the detention of juveniles before and after commitment by juvenile authorities. No contract may be made for longer than one year. (§ 8 art II ch 145 SLA 1957; am § 3 ch 97 SLA 1960; am § 6 ch 104 SLA 1971)

Effect of amendment. — The 1971 amendment substituted "Department of Health and Social Services" for "Department of Health and Welfare" in subsection (a).

Sec. 47.10.190. Conditions governing detention. When the court commits a minor to the custody of the department, the department shall arrange to place the juvenile in a detention home, facility or another suitable place which the department designates for that purpose. A juvenile detained in a jail or similar institution at the request of the department shall be held in custody in a room or other place apart and separate from adults. (§ 9 art II ch 145 SLA 1957)

Sec. 47.10.200. Releasing juveniles after commitment. A juvenile delinquent who by his conduct gives sufficient evidence that he has reformed may be released at any time under the conditions and regulations which the department considers proper, if it appears to the satisfaction of the department that there is a reasonable probability that the juvenile will remain at liberty without violating the law. (§ 10 art II ch 145 SLA 1957)

Sec. 47.10.210. Youth counsellors. The department may employ youth counsellors. Youth counsellors shall exercise the duties of probation officers and shall prepare preliminary investigations for the information of the court. They shall also carry out other duties in the care and treatment of minors which are consistent with the intent of this chapter. Youth counsellors have the powers of a peace officer with respect to the service of process, the making of arrests of minors who violate state or municipal law, and the execution of orders of the court relating to juveniles. The youth counsellors shall assist and advise the courts in the furtherance of the welfare and control of minors under the court's jurisdiction. (§ 11 art II ch 145 SLA 1957)

Sec. 47.10.220. Grants-in-aid. The Department of Health and Social Services may accept grants-in-aid from the federal government or private foundations and may accept other gifts consistent with the purposes of this chapter. (§ 13 art II ch 145 SLA 1957; am § 6 ch 104 SLA 1971)

Effect of amendment. — The 1971 amendment substituted "Department of Health and Social Services" for "Department of Health and Welfare."

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Article 3. Care of Children.

Section
230. Powers and duties of department over care of child
240. Adequacy of home or institution
250. Standards of care
260. Payment of costs

Sec. 47.10.230. Powers and duties of department over care of child. (a) The Department of Health and Social Services shall arrange for the care of every child committed to its custody by placing him in a foster home or in the care of an agency or institution providing care for children inside or outside the state. The department may place a child in a suitable family home, with or without compensation, and may place a child released to it, in writing verified by the parent, or guardian or other person having legal custody, for adoptive purposes, in a home for adoption in accordance with existing law.

(b) The department may pay the costs of maintenance which are necessary to assure adequate care of the child, and may accept funds from the federal government which are granted to assist in carrying out the purposes of this chapter, or which are paid under contract entered into with a federal department or agency. No child under the care of the department may be placed in a family home or institution that does not maintain adequate standards of care.

(c) The department may receive, care for, and make appropriate placement of minors accepted for care for a period of up to six months on the basis of an individual voluntary written agreement between the minor's parent, legal guardian, or other person having legal custody and the department. The agreement may include provisions for payment, in whole or in part, to the department for the minor's care and treatment. The agreement entered into shall not operate to prohibit a minor's parent, legal guardian, or other person who had legal custody from regaining care of the minor at any time. (§ 1 art III ch 145 SLA 1957; am § 5 ch 100 SLA 1971; am § 6 ch 104 SLA 1971)

Effect of amendments. — The first 1971 amendment added subsection (c).

The second 1971 amendment substituted "Department of Health and Social Services" for "Department of Health and Welfare" in the first sentence of subsection (a).

Sec. 47.10.240. Adequacy of home or institution. (a) A representative of the department shall visit, as often as is considered necessary, every foster home or institution in which a child is placed, and if not satisfied as to the care given, may remove the child from the foster home or institution and place him elsewhere.

(b) The person or institution receiving a child shall submit the reports the department requires as to the education, health and welfare of the child and the conditions under which he is living. (§ 2 art III ch 145 SLA 1957)

Sec. 47.10.250. Standards of care. The Department of Health and Social Services shall establish standards of care and regulations desirable for the welfare of every child under its care. (§ 3 art III ch 145 SLA 1957; am § 6 ch 104 SLA 1971)

Effect of amendment. — The 1971 amendment substituted "Department of Health and Social Services" for "Department of Health and Welfare."

Sec. 47.10.260. Payment of costs. The department shall pay the proper and necessary costs of the court and witnesses and other expenses necessarily incurred in the enforcement of §§ 230—260 of this chapter. (§ 4 art III ch 145 SLA 1957)

Article 4. General Provisions.

Section
270. Appropriation
280. Purpose of chapter
290. Definitions

Sec. 47.10.270. Appropriation. Funds to carry out this chapter shall be provided for in the general appropriation act of the legislature. (§ 1 art IV ch 145 SLA 1957)

Sec. 47.10.280. Purpose of chapter. The purpose of this chapter is to secure for each minor the care and guidance which is as nearly as possible equivalent to that which should be given him by his parents. The principle is recognized that minors under the jurisdiction of the court are wards of the state, subject to its discipline and entitled to its protection, and that the state may act to safeguard them from neglect or injury and to enforce the legal obligation due to them and from them. (§ 2 art I ch 145 SLA 1957)

Sec. 47.10.290. Definitions. In this chapter, unless the context otherwise requires,

(1) "court" means the superior court of the state;

(2) "delinquent minor" is a minor whom the court determines is within the provisions of § 10 (a) (1) of this chapter;

(3) "dependent minor" is a minor whom the court determines is within the provisions of § 10 (a) (4), (5), (6), (7), (8), or (9) of this chapter;

(4) "juvenile detention facility" means separate quarters within a city jail used for the detention of delinquent minors;

(5) "juvenile detention home" or "detention home" is a separate establishment, exclusively devoted to the detention of minors on a short-term basis and not a part of an adult jail;

(6) "minor" is a person under 18 years of age;

(7) "child in need of supervision" is a minor whom the court determines is within the provisions of § 10 (a) (2), (3) or (6). (§ 1 art I ch 145 SLA 1957; am § 5 ch 110 SLA 1967; am §§ 5, 6 ch 27 SLA 1970)

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Sec. 47.15.060. Enforcement. The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which are within their respective jurisdiction. (§ 6 ch 88 SLA 1960)

Sec. 47.15.070. Additional procedures not precluded. In addition to the procedures provided in articles IV and VI of the compact for the return of a runaway juvenile, the particular states, the juvenile or his parents, the courts, or other legal custodian involved may agree upon and adopt any plan or procedure legally authorized under the laws of this state and the other respective party states for the return of the runaway juvenile. (§ 7 ch 88 SLA 1960)

Sec. 47.15.080. Short title. This chapter may be cited as the Uniform Interstate Compact on Juveniles. (§ 8 ch 88 SLA 1960)

Chapter 17. Child Protection.

Section
10. Purpose
20. Persons required to report
30. Action on reports; termination of parental rights
40. Central registry; confidentiality
50. Immunity
60. Evidence not privileged
70. Definitions

Sec. 47.17.010. Purpose. In order to protect children whose health and well-being may be adversely affected through the infliction, by other than accidental means, of harm through physical abuse or neglect requiring the attention of a practitioner of the healing arts, the legislature requires the reporting of these cases by practitioners and others to the appropriate public authorities. It is the intent of the legislature that, as a result of these reports, protective services will be made available in an effort to prevent further harm to the child, to safeguard and enhance the general well-being of the children in this state, and to preserve family life whenever possible. (§ 1 ch 100 SLA 1971)

Sec. 47.17.020. Persons required to report. (a) The following persons who, in the performance of their professional duties, have cause to believe that a child has suffered harm as a result of abuse or neglect shall immediately report the harm to the nearest office of the department:

(1) practitioners of the healing arts;
(2) school teachers;
(3) social workers;
(4) peace officers, and officers of the division of corrections;
(5) administrative officers of institutions.

(b) This section does not prohibit the named persons from reporting

cases which have come to their attention in their nonprofessional capacities nor does it prohibit any other person from reporting a child's harm which he has cause to believe is a result of abuse or neglect. These reports shall be made to the nearest office of the department.

(c) If the person making a report of harm under this section cannot reasonably contact the nearest office of the department, and immediate action is necessary for the well-being of the child, the person shall make the report to a peace officer. The peace officer shall take immediate action to protect the child and shall, at the earliest opportunity, notify the nearest office of the department. (§ 1 ch 100 SLA 1971)

Sec. 47.17.030. Action on reports; termination of parental rights. (a) If a child, concerning whom a report of harm is made, is believed to reside within the boundaries of a local government exercising health functions for the area in which the child is believed to reside, the department may, upon receipt of the report, refer the matter to the appropriate health or social services agency of that local government. For cases not referred to an agency of a local government, the department shall, for each report received, investigate and take action, in accordance with law, which may be necessary to prevent further harm to the child or to insure the proper care and protection of the child.

(b) A local government health or social services agency receiving a report of harm shall, for each report received, investigate and take action, in accordance with law, which may be necessary to prevent further harm to the child or to insure the proper care and protection of the child. In addition, the agency receiving a report of harm shall forward a copy of its report of the investigation, including information the department requires by regulation, to the department.

(c) Action shall be taken regardless of whether the identity of the person making the report of harm is known.

(d) Before the department or a local government health or social services agency may seek the termination of parental rights, under AS 47.10.080(c) (3), it shall offer protective social services and pursue all other reasonable means of protecting the child. (§ 1 ch 100 SLA 1971)

Sec. 47.17.040. Central registry; confidentiality. (a) The department shall maintain a central registry of all investigation reports but not of the reports of harm.

(b) Investigation reports and reports of harm filed under this chapter are considered confidential and are not subject to public inspection and copying under AS 09.25.110 and 09.25.120. However, in accordance with department regulations, investigation reports may be used by appropriate governmental agencies with child-protection functions, inside and outside Alaska, in connection with investigations or judicial proceedings involving child abuse, neglect, or custody. (§ 1 ch 100 SLA 1971)

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Sec. 47.17.050. Immunity. A person who, in good faith, makes a report under this chapter, or who participates in judicial proceedings related to the submission of reports under this chapter, is immune from any civil or criminal liability which might otherwise be incurred or imposed. (§ 1 ch 100 SLA 1971)

Sec. 47.17.060. Evidence not privileged. Neither the physician-patient nor the husband-wife privilege is a ground for excluding evidence regarding a child's harm, or its cause, in a judicial proceeding related to a report made under this chapter. (§ 1 ch 100 SLA 1971)

Sec. 47.17.070. Definitions. In this chapter

(1) "abuse" means the infliction, by other than accidental means, of physical harm upon the body of a child;

(2) "child" means a person under 16 years of age;

(3) "department" means the Department of Health and Social Services;

(4) "institution" means a private or public hospital or other facility providing medical diagnosis, treatment, or care;

(5) "neglect" means the failure to provide necessary food, care, clothing, shelter, or medical attention for a child;

(6) "practitioner of the healing arts" includes chiropractors, dentists, health aides, nurses, optometrists, osteopaths, physical therapists, physicians, psychiatrists, psychologists, religious healing practitioners, and surgeons. (§ 1 ch 100 SLA 1971; am § 6 ch 104 SLA 1971)

Effect of amendment. — The 1971 amendment substituted "Department of Health and Social Services" for "Department of Health and Welfare" in paragraph (3).

Chapter 20. Exceptional Children.

Section	Section
10. Assistance authorized	40. Purpose
20. Standards for assistance	50. Definitions
30. Appropriations	

Sec. 47.20.010. Assistance authorized. The Department of Health and Social Services may provide professional guidance and financial assistance to organized groups of parents according to standards and regulations devised by the department for providing special services, evaluation and special training required by exceptional children who are educable or trainable but physically or mentally retarded. (§ 2 ch 118 SLA 1961; am § 6 ch 104 SLA 1971)

Effect of amendment. — The 1971 amendment substituted "Department of Health and Social Services" for "Department of Health and Welfare."

Sec. 47.20.020. Standards for assistance. The department shall

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Sec. 47.10.070. Hearings. The court may conduct the hearing in an informal manner in the courtroom or in chambers. All hearings under this chapter are without a jury and the usual rules of evidence do not apply. However, a hearing may be held before a young adult advisory panel in accordance with § 75 of this chapter. The court shall give notice of the hearing to the department and it may send a representative to the hearing. The court shall also transmit a copy of the petition to the department. The representative of the department may also be heard at the hearing. The public shall be excluded from the hearing, but the court, in its discretion, may permit individuals to attend a hearing, if their attendance is compatible with the best interests of the minor. (§ 10(1) art I ch 145 SLA 1957; am § 1 ch 49 SLA 1966)

Effect of amendment.—The 1966 amendment added the second sentence.

Legislative committee report.—For legislative committee report on ch. 49, SLA 1966, see House Journal (1966), p. 52.

Constitutionality.—See In re Gault, 387 U.S. 1, 87 Sup. Ct. 1428, 18 L. Ed. 2d 527 (1967), discussing due process requirements in juvenile delinquency proceedings.

Sec. 47.10.075. Young adult advisory panels. (a) Unless the minor objects, the court may select a young adult advisory panel to hear the case and advise the court of a recommended judgment and order. The court may consider any of the panel recommendations in making its judgment and order in the case.

(b) The principal of each high school shall submit annually to the court a list of the students enrolled in grades 10, 11 and 12. The court shall determine the method of selecting the members of each panel.

(c) A student shall be excused from attending school during the time he is serving as a panel member. No student may serve more than once each year on a panel.

(d) A student shall be excused from service as a panel member if he submits a written request to the court indicating the reason he does not wish to serve. (§ 2 ch 49 SLA 1966)

Legislative committee report.—For legislative committee report on ch. 49, SLA 1966, see House Journal (1966), p. 52.

Sec. 47.10.080. Judgments and orders. (a) The court, at the conclusion of the hearing, or thereafter as the circumstances of the case may require, shall find and enter a judgment that the minor is or is not a delinquent, or a child in need of supervision, or dependent minor.

(b) If the court finds that the minor is delinquent, it shall

(1) order the minor committed to the Department of Health and Welfare for an indeterminate period of time not to extend past a specified date or in any event past the day the minor becomes

19, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment; and may direct the minor's placement in a juvenile correctional school, detention home, or detention facility designated by the department; the minor may be released from placement or detention and placed on probation on order of the court; or

(2) order the minor placed on probation, to be supervised by the department, and release him to his parents, guardian, or a suitable person; if the court orders the minor placed on probation, it may specify the terms and conditions of probation; the probation is to be for an indeterminate period of time, not to extend past a specified date and in no event past the day the minor becomes 19, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment.

(c) If the court finds that the minor is dependent, it shall

(1) order the minor committed to the department for an indeterminate period of time not to exceed the date the minor becomes 19 years of age, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment;

(2) order the minor released to his parents, guardian, or some other suitable person; if the court releases the minor, it shall direct the department to supervise the care and treatment given to the minor; the department's supervision may not extend past the date the minor becomes 19 years of age, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment; or

(3) by order, terminate parental rights and responsibilities of one or both parents and commit the child to the department or to a legally appointed guardian of the person of the child, if one of the following conditions exists:

(A) Each parent, or the surviving parent, or one parent if the other has been deprived of custody and visitation rights wishes to relinquish the child to the department or to a legally appointed guardian of the person of the child for adoptive purposes, and the relinquishment is in writing, signed and acknowledged before the court or duly authorized representative of the department and filed with the court;

(B) the child has been abandoned for a period of not less than six months by

(i) both parents, or

(ii) the surviving parent, or

(iii) one parent if the other has been deprived of custody and visitation rights;

(C) each parent, the surviving parent, or one parent if the other has been deprived of custody and visitation rights has been judicially determined to be of unsound mind and the disability has not been removed and the parent has been hospitalized for reasons of mental illness diagnosed as permanent or of long duration; or

(D) each parent, or the surviving parent, or one parent if the other has been judicially deprived of custody and visitation rights, has demonstrated by his conduct, proven by clear and convincing proof amounting to more than a preponderance of the evidence that he is unfit to continue to exercise his parental rights and responsibilities.

(e) If the court finds that the minor is not delinquent, a child in need of supervision, or dependent, it shall immediately order his release from its custody and his return to his parents, guardian, or custodian, and close the case.

(f) A minor found to be delinquent, a child in need of supervision, or dependent is a ward of the court as long as he is committed to the department or the department has the power to supervise his actions. The court shall review an order made under (b) or (c)(1) or (2) or (j) of this section annually, and may review the order more frequently to determine if continued placement, probation, or supervision is in the best interest of the minor and the public, and to determine if the minor is being treated fairly. The department or the minor's parents or guardian is entitled to a review on application. The minor need not be present at the review.

(j) If the court finds the minor is a child in need of supervision it shall make any of the following orders of disposition for his supervision, care and rehabilitation:

(1) any order which is authorized under (c) of this section; or

(2) order the minor placed on probation under those conditions and limitations that the court may prescribe.

(am § 1 ch 40 SLA 1967; am §§ 1—4 ch 27 SLA 1970; am §§ 12—15 ch 245 SLA 1970)

Effect of amendments. — The 1967 amendment rewrote subsection (c)(3)(B).

The first 1970 amendment added "or thereafter as the circumstances of the case may require" and "or a child in need of supervision" to subsection (a), inserted "a child in need of supervision" in subsection (e), inserted "a child in need of supervision" in the first sentence of subsection (f), and near the beginning of the second sentence of that subsection inserted "or [illegible]." The amendment also added subsection (j).

The second 1970 amendment substituted "19, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not re-

sponded to treatment" for "21" in subsections (b)(1) and (b)(2), substituted "19" for "21" and added the exception in subsections (c)(1) and (c)(2).

As the rest of the section was not affected by the amendments, it is not set out.

Legislative committee reports.—For legislative committee report on ch. 40 SLA 1967 (HB 151), see House Journal (1967), p. 339. Chapter 215, SLA 1970 (HCSSB 339 am H), was identical to CSHB 406. For report on CSHB 406, see 1970 House Journal Supplement No. 6.

A judge cannot consider a juvenile offense as a criminal conviction for the purpose of prescribing a mandatory sentence. Berfield v. State, Sup. Ct. Op. No. 581 (File No. 960), 458 P.2d 1008 (1969).

The judge's consideration of factors relating to accused's life, characteristics, background and behavior prior to reaching the age of 18 years did not mean that he considered accused a criminal or that he was using the juvenile offenses as criminal convictions in determining the sentence to impose. Berfield v. State, Sup. Ct. Op. No. 581 (File No. 960), 458 P.2d 1008 (1969).

Sec. 47.10.100. Retention of jurisdiction over minor. (a) The court retains jurisdiction over the case and may at any time stay execution, modify, set aside, revoke, or enlarge a judgment or order, or grant a new hearing, in the exercise of its power of protection over the minor and for his best interest, until he becomes 19 years of age, unless sooner discharged by the court, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment. An application for any of these purposes may be made by the parent, guardian, or custodian acting in behalf of the minor, or the court may, on its own motion, and after reasonable notice to interested parties and the appropriate department, take action which it considers appropriate.

(b) If the court determines at a rehearing that it is for the best interests of the minor that he be released to the care or custody of his parent, guardian, or custodian, it may enter an order to that effect and the minor is discharged from the control of the department.

(c) If a minor is adjudicated a delinquent, a child in need of supervision, or a dependent before his eighteenth birthday, the court may retain jurisdiction over him after his eighteenth birthday for the purpose of supervising his rehabilitation, but the court's jurisdiction over him under this chapter never extends beyond his nineteenth birthday, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment. The department may retain jurisdiction over a child between his eighteenth and nineteenth birthdays for the purpose of supervising his rehabilitation, if he is committed to the custody of the department before his eighteenth birthday, except that the department may petition the court for continued supervision for an additional one-year period

Sec. 47.10.070. Hearings. The court may conduct the hearing in an informal manner in the courtroom or in chambers. All hearings under this chapter are without a jury and the usual rules of evidence do not apply. However, a hearing may be held before a young adult advisory panel in accordance with § 75 of this chapter. The court shall give notice of the hearing to the department and it may send a representative to the hearing. The court shall also transmit a copy of the petition to the department. The representative of the department may also be heard at the hearing. The public shall be excluded from the hearing, but the court, in its discretion, may permit individuals to attend a hearing, if their attendance is compatible with the best interests of the minor. (§ 10(1) art I ch 145 SLA 1957; am § 1 ch 49 SLA 1966)

Effect of amendment.—The 1966 amendment added the second sentence.

Legislative committee report.—For legislative committee report on ch. 49, SLA 1966, see House Journal (1966), p. 52.

Constitutionality.—See In re Gault, 387 U.S. 1, 87 Sup. Ct. 1428, 18 L. Ed. 2d 527 (1967), discussing due process requirements in juvenile delinquency proceedings.

Sec. 47.10.075. Young adult advisory panels. (a) Unless the minor objects, the court may select a young adult advisory panel to hear the case and advise the court of a recommended judgment and order. The court may consider any of the panel recommendations in making its judgment and order in the case.

(b) The principal of each high school shall submit annually to the court a list of the students enrolled in grades 10, 11 and 12. The court shall determine the method of selecting the members of each panel.

(c) A student shall be excused from attending school during the time he is serving as a panel member. No student may serve more than once each year on a panel.

(d) A student shall be excused from service as a panel member if he submits a written request to the court indicating the reason he does not wish to serve. (§ 2 ch 49 SLA 1966)

Legislative committee report.—For legislative committee report on ch. 49, SLA 1966, see House Journal (1966), p. 52.

Sec. 47.10.080. Judgments and orders. (a) The court, at the conclusion of the hearing, or thereafter as the circumstances of the case may require, shall find and enter a judgment that the minor is or is not a delinquent, or a child in need of supervision, or dependent minor.

(b) If the court finds that the minor is delinquent, it shall

(1) order the minor committed to the Department of Health and Welfare for an indeterminate period of time not to extend past a specified date or in any event past the day the minor becomes

19, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment and may direct the minor's placement in a juvenile correctional school, detention home, or detention facility designated by the department; the minor may be released from placement or detention and placed on probation on order of the court; or

(2) order the minor placed on probation, to be supervised by the department, and release him to his parents, guardian, or a suitable person; if the court orders the minor placed on probation, it may specify the terms and conditions of probation; the probation may be for an indeterminate period of time, not to extend past a specified date and in no event past the day the minor becomes 19, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment.

(c) If the court finds that the minor is dependent, it shall

(1) order the minor committed to the department for an indeterminate period of time not to exceed the date the minor becomes 19 years of age, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment;

(2) order the minor released to his parents, guardian, or some other suitable person; if the court releases the minor, it shall direct the department to supervise the care and treatment given to the minor; the department's supervision may not extend past the date the minor becomes 19 years of age, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment; or

(3) by order, terminate parental rights and responsibilities of one or both parents and commit the child to the department or to a legally appointed guardian of the person of the child, if one of the following conditions exists:

(A) Each parent, or the surviving parent, or one parent if the other has been deprived of custody and visitation rights wishes to relinquish the child to the department or to a legally appointed guardian of the person of the child for adoptive purposes, and the relinquishment is in writing, signed and acknowledged before the court or duly authorized representative of the department and filed with the court;

(B) the child has been abandoned for a period of not less than six months by

(i) both parents, or

(ii) the surviving parent, or

(iii) one parent if the other has been deprived of custody and visitation rights;

(C) each parent, the surviving parent, or one parent if the other has been deprived of custody and visitation rights has been judicially determined to be of unsound mind and the disability has not been removed and the parent has been hospitalized for reasons of mental illness diagnosed as permanent or of long duration; or

(D) each parent, or the surviving parent, or one parent if the other has been judicially deprived of custody and visitation rights, has demonstrated by his conduct, proven by clear and convincing proof amounting to more than a preponderance of the evidence that he is unfit to continue to exercise his parental rights and responsibilities.

(e) If the court finds that the minor is not delinquent, a child in need of supervision, or dependent, it shall immediately order his release from its custody and his return to his parents, guardian, or custodian, and close the case.

(f) A minor found to be delinquent, a child in need of supervision, or dependent is a ward of the court as long as he is committed to the department or the department has the power to supervise his actions. The court shall review an order made under (b) or (c) (1) or (2) or (j) of this section annually, and may review the order more frequently to determine if continued placement, probation, or supervision is in the best interest of the minor and the public, and to determine if the minor is being treated fairly. The department or the minor's parents or guardian is entitled to a review on application. The minor need not be present at the review.

(j) If the court finds the minor is a child in need of supervision it shall make any of the following orders of disposition for his supervision, care and rehabilitation:

(1) any order which is authorized under (c) of this section; or

(2) order the minor placed on probation under those conditions and limitations that the court may prescribe.

(am § 1 ch 40 SLA 1967; am §§ 1—4 ch 27 SLA 1970; am §§ 12—15 ch 245 SLA 1970)

Effect of amendments. — The 1967 amendment rewrote subsection (c)(3)(B).

The first 1970 amendment added "or thereafter as the circumstances of the case may require" and "or a child in need of supervision" [illegible] subsection (a), inserted "a child in need of supervision" in subsection (e), inserted "a child in need of supervision" in the first sentence of subsection (f), and near the beginning of the second sentence of that subsection inserted "or (j)." The amendment also added subsection (j).

The second 1970 amendment substituted "19, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not re-

sponded to treatment" for "21" in subsections (b)(1) and (b)(2), substituted "19" for "21" and added the exception in subsections (c)(1) and (c)(2).

As the rest of the section was not affected by the amendments, it is not set out.

Legislative committee reports.—For legislative committee report on ch. 10, SLA 1967 (HB 131), see House Journal (1967), p. 330. Chapter 215, SLA 1970 (HCSSB 360 am H), was identical to CSHB 406. For report on CSHB 406, see 1970 House Journal Supplement No. 6.

A judge cannot consider a juvenile offense as a criminal conviction for the purpose of prescribing a mandatory sentence. Berfield v. State, Sup. Ct. Op. No. 561 (File No. 960), 458 P.2d 1005 (1969).

The judge's consideration of factors relating to accused's life, characteristics, background and behavior prior to reaching the age of 18 years did not mean that he considered accused a criminal or that he was using the juvenile offenses as criminal convictions in determining the sentence to impose. Berfield v. State, Sup. Ct. Op. No. 561 (File No. 960), 458 P.2d 1005 (1969).

Sec. 47.10.100. Retention of jurisdiction over minor. (a) The court retains jurisdiction over the case and may at any time stay execution, modify, set aside, revoke, or enlarge a judgment or order, or grant a new hearing, in the exercise of its power of protection over the minor and for his best interest, until he becomes 19 years of age, unless sooner discharged by the court, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment. An application for any of these purposes may be made by the parent, guardian, or custodian acting in behalf of the minor, or the court may, on its own motion, and after reasonable notice to interested parties and the appropriate department, take action which it considers appropriate.

(b) If the court determines at a rehearing that it is for the best interests of the minor that he be released to the care or custody of his parent, guardian, or custodian, it may enter an order to that effect and the minor is discharged from the control of the department.

(c) If a minor is adjudicated a delinquent, a child in need of supervision, or a dependent before his eighteenth birthday, the court may retain jurisdiction over him after his eighteenth birthday for the purpose of supervising his rehabilitation, but the court's jurisdiction over him under this chapter never extends beyond his nineteenth birthday, except that the department may petition the court for continued supervision for an additional one-year period for minors who have not responded to treatment. The department may retain jurisdiction over a child between his eighteenth and nineteenth birthdays for the purpose of supervising his rehabilitation, if he is committed to the custody of the department before his eighteenth birthday, except that the department may petition the court for continued supervision for an additional one-year period

. . . while five spiffy new paint schemes achieve high promotional impact . . . and win some new riders, too

Cr[illegible] savings averaging 4c a mile — equivalent to de-pr[illegible]n — have been posted the first year by 15 new GM[illegible] diesel-powered 3301's purchased by Spokane Transit system.

[illegible] cents a mile is the difference in operating costs between this fleet and the average of all other coaches owned by the system.

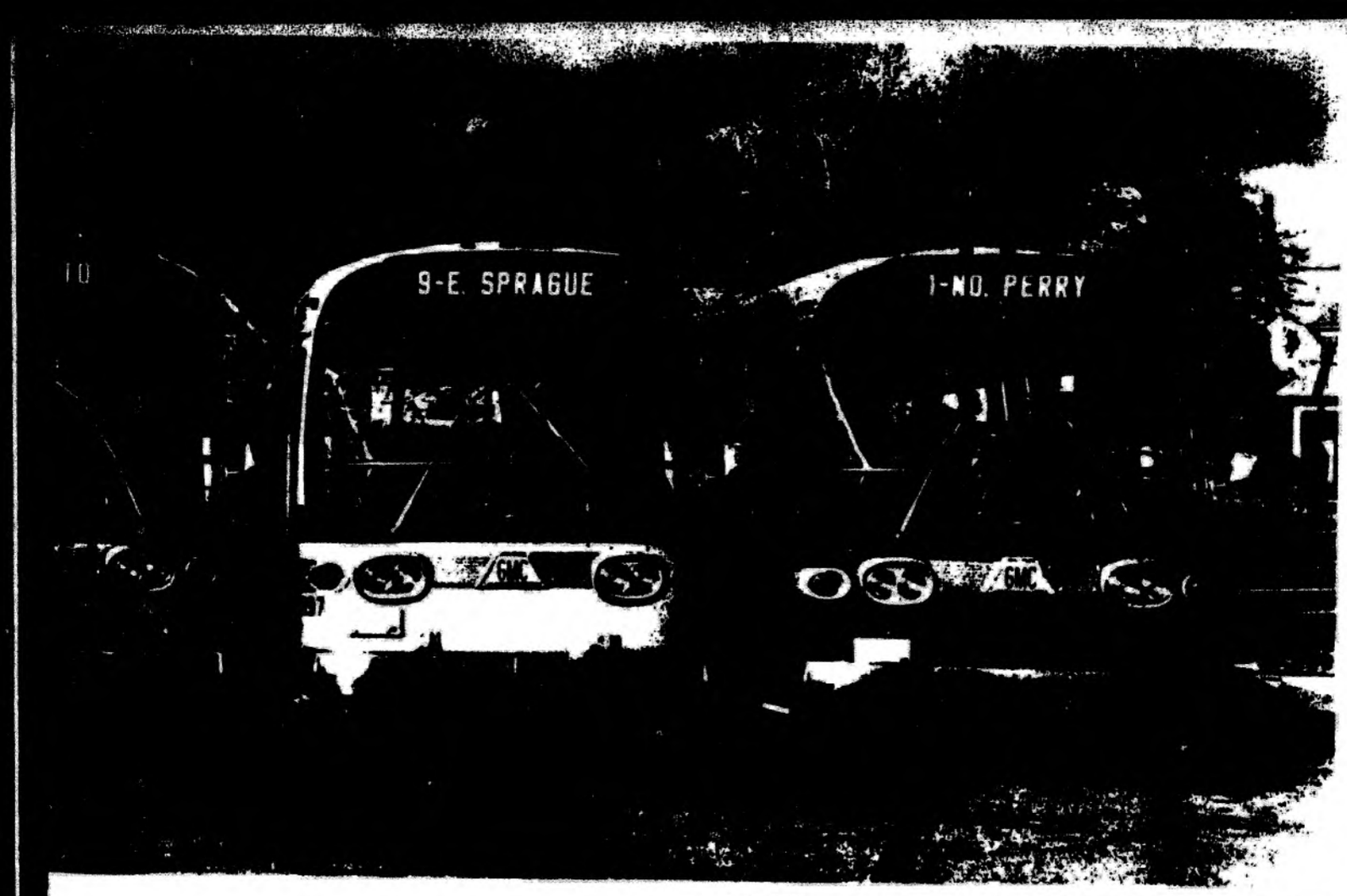
[illegible] of the saving is in fuel, since the new buses have been averaging 6.5 miles per gallon, nearly 2 miles per gallon better than the remaining fleet. All are GM[illegible] models ranging from a few 4507's up through Nov[illegible] 4517's. There are 66 coaches in the system.

In 740,958 miles, only 9 road calls

Operating 740,958 miles during their first 12 months, or 49,397 miles per vehicle, management reports only 9 road calls, 7 of which involved broken drive belts, for an average of 82,328 miles per call.

Engines have been trouble-free requiring only routine service. Likewise transmissions. Nor have there been any problems with air suspension.

"Considering our present requirements, the 33-passenger coach fits very well into our system," reports Robert V. Harder, General Manager. "We are planning a fleet of two-thirds small coaches and the other third, 45-passenger models. This means we will gradually phase out our older 45's and replace them with



additional 3301's as soon as funds become available.'

During the last year, while representing 22% of the fleet, the 3301's operated 37% of the mileage.

Reliability of the system's all-GMC fleet has resulted in excellent manpower-to-bus ratios. For example maintaining 66 coaches are 7 first class mechanics 2 second class mechanics, 5 utility men and 4 cleaners

Excitement in new colors

To focus city-wide attention on the new fleet, it was decided to use five different paint schemes, all of them bright and colorful — with interiors to match

"This multiple paint scheme created much favorable comment both locally and around the nation.' says Mr. Harder. "The maintenance cost is not any higher. However, it does affect our inventory of paint and repair materials." Subsequently, all older vehicles were repainted in one of the system's five new colors

More recently the system has been sustaining public interest with a Name-the-Bus contest.

Spokane Transit System serves a population of about 185,000 people with 117 one-way road miles. In 1969 the system operated 2,077,646 miles while carrying 4,123,685 people.

Estimates of passenger volume for 1970 have been projected in excess of 4,500,000.

Overseeing transit operations on behalf of the city are Mayor of Spokane David Rodgers, right; William Parker, Transit Commission Chairman, left; and Robert Wilkinson, Assistant Chairman, center.

While the system remains privately owned, it operates under a unique lease-management arrangement with the city, providing everything necessary for the operation on a cost-of-service basis. Recent legislation provides a subsidy of about $500,000 annually through a household transit tax of 73¢ per month per residence dwelling. As a result, 15 new buses have been purchased, headways increased and fares reduced. Responding to better service, passenger volume has been running higher throughout 1970.

SB-88

SENATE BILL 88 (Bar Association)

1. The present Board of Governors, as of 1955, includes 3 members from Southeastern, and 3 from the Second and Fourth Judicial Districts combined.

2. Half of the lawyers, or more, in the state are in the Anchorage area, and under the one-man--one-vote concept, Anchorage has felt that they should have greater representation on the 9-man board.

3. Obviously, the Ketchikan, Juneau and Tanana Valley Bar Associations don't approve, but the situation had almost reached the stage of throat-cutting.

4. Some of the members were even threatening to bolt the organization.

   At the May, 1970 Alaska Bar Association convention, a compromise resolution was approved. That compromise is reflected in this bill, which merely reconstitutes the board as follows:

   a. The Anchorage representation increases from 3 to 4.

   b. One of the 3 members is taken away from the Southeastern representation and one is taken from the 2nd and 4th District, making the apportionment 4--2--2.

   c. The 9th member will be elected on a state-wide basis.

5. All local bar associations and the State Bar, the Board of Governors, have approved the bill.

6. The second half of the bill merely provides that those members currently serving on the board will serve out their allocated terms. Only as each goes off the board will the new plan go into effect.

Offered: 2/2/71
Referred: Judiciary

IN THE SENATE BY THE JUDICIARY COMMITTEE

SENATE BILL NO. 88

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the Alaska Bar Association; and providing for an effective date."

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

* Section 1. AS 08.08.050(a) is amended to read:

(a) Two [THREE] members of the board shall be elected by and from among the members of the association resident in the first judicial district; four [, THREE] members of the board shall be elected by and from among the members of the association resident in the third judicial district; two [, AND THREE] members by and from among the members of the association resident in the combined area of the second and fourth judicial districts; and one member at large from the entire state. [NO MORE THAN TWO MEMBERS MAY BE RESIDENT PRACTICING ATTORNEYS IN THE FOURTH JUDICIAL DISTRICT WHEN THERE ARE FOUR OR MORE RESIDENT PRACTICING ATTORNEYS IN THE SECOND DISTRICT.]

* Sec. 2. AS 08.08.050(c) is amended to read:

(c) Three board members shall be elected annually (on the following triennial rotation:) with the following

(1) in the first year, one member at large and two members from the third judicial district;

(2) in the second year, one member from the combined area of the second and fourth judicial districts, one member from the third judicial district, and one member from the first judicial district; and

(3) in the third year, one member from the first judicial district, one member from the combined area of the second and fourth

SB-99

Box 4 - W
Spenard, Alaska 99503

10 February 1971

State Representative
William Moran
Pouch V
Juneau, Alaska 99801

Dear Mr. Moran:

The bill introduced by Senators Groh, Rader, Ziegler and Ray to rescind certification of the Constitutional Referendum is a direct threat to all elective processes, past, present and future. It also amounts to an outright and outspoken accusation that we who voted for the Convention are dolts who did not know what we were voting for. I resent the implication involved and state categorically that I consider myself an interested and intelligent voter and that I knowingly and willfully voted in favor of the Constitutional Convention. Further, I have made many inquiries among friends and acquaintances and found that each who did vote in favor of the Referendum did so in the same willful and intelligent manner.

It is alarming to realize that a possibility exists within the Legislature to overturn the mass will of the voters at the ballot box. I feel that the Senators who introduced this measure have performed an obvious disservice to the people of the State of Alaska, and on that basis should seriously consider resigning from their present elective seats.

There is a group of us here in the Anchorage area, as well as another group in the Fairbanks area, who are organized to fight the legal action now pending in the courts in Juneau in the same issue. If the courts rule favorably for the plaintiffs and void the Referendum, we are poised to immediately bring the matter back into the courts and will challenge the outcome of all other elections held at the same time (3 November 1970).

There are many valid and serious reasons as to why the Convention must be held and a majority of us are convinced that the changes cannot be accomplished by the Legislature due to the very nature of them.

I thank you for your very kind attention and urge you to defeat the dangerous measure introduced by Senators Groh, Rader, Ziegler and Ray.

Very truly yours,

Jack A. Pearson

SB 113

March 5, 1971

MEMORANDUM

TO: The Honorable John Rader, Chairman
Senate Local Affairs Committee

The Honorable Mike Miller, Chairman
House Local Affairs Committee

FROM: Robert P. Isaac
Assistant to the Commissioner
Department of Education

SUBJECT: Review of Senate Bill 113, Municipal Code

I am herewith transmitting a review of the education provisions in Senate Bill 113. In our opinion the proposed code, if modified as suggested, would meet most of the objections which have been raised.

A small committee of school administrators and school board members would like an opportunity to meet with the respective legislative local affairs committees when hearings are again scheduled to discuss Senate Bill 113 as redrafted.

R. P. I.

RPI:cjb

Attachment

March 5, 1971

MEMORANDUM

TO: The Honorable John Rader, Chairman
Senate Local Affairs Committee

The Honorable Mike Miller, Chairman
House Local Affairs Committee

FROM: Cliff R. Hartman
Commissioner of Education

By: Robert P. Isaac, Assistant to the Commissioner

SUBJECT: Senate Bill 133, Revised Municipal Code in Respect to its Educational Provisions

We have reviewed the revised municipal code in respect to its education provisions, and we are especially concerned over the apparent omission of a specific education provision for school districts co-terminus with home rule municipalities.

A number of district superintendents, school board members, and other persons involved in education have also expressed a similar concern.

Section 29.33.050 pertaining to education is almost identical to a similar provision in the present borough law Title 7, (7.15.030). This section in the proposed revision applies only to the operation of schools in general law cities and boroughs.

Section 29.13.100 specifies the limitations on home rule powers and indicates the sections of the general code which may not be modified by a charter. Significantly, Section 29.13.100 does not include Section 29.33.050, Education, thereby giving a home rule municipality considerable latitude in legislating educational matters. It is our contention that education is a State function and delegated to the municipalities for administration and operation. We do not believe this delegation of the administrative-operational responsibility of schools also implies a delegation of the Legislature's legislative prerogatives.

As you may know, there is a local court case which revolves around this very matter; and while a decision has not yet been reached by the court, case law strongly supports State law as being superior to charter provisions if there is a conflict between the two.

Proponents of the concept that a charter may supercede State law argue that home rule municipalities may legislate on matters of local concern, including education, even though it might mean that charter provisions take an opposite view in respect to the law. They further argue that the Legislature, by placing the municipal education provision in the municipal code, have made education a matter of local concern.

We do not agree with this supposition. We believe that the specific provision in the existing borough code, Section 7.15.030 and its proposed successor, Section 29.13.100 in the revised code, are adopted by reference in Title 14 by Section 14.14.065, thereby defining this section as a general education law.

We do not argue that a municipality does not have a local concern or interest in education; however, we do believe that all municipal districts should be governed by the same basic laws and that a home rule municipality charter should not be in conflict with law.

The Department of Education is charged with the general management and supervision of the public school system and must do so in accordance with State law.

If a municipality also has legislative authority in respect to education, it would mean requiring the Department to adjudicate district education matters not only under State law, but under the provisions of home rule charters. As has happened already, we would foresee school boards requesting clarification and interpretation of law when conflicts arise. In this connection, it is likely a request of this nature would be referred to the Department of Law for an opinion. Whatever direction the opinion might give, the Department of Education is required to follow that direction (unless subsequently changed by court or legislative action). In order to write an opinion, the Department of Law would also have to read the charter and law together to arrive at a conclusion. In our opinion, such a procedure would be chaotic and unworkable and would only lead, ultimately, to greater devisiveness between local municipal governing bodies and school boards.

The Legislature, in accordance with the Constitution, has delineated quite clearly its intent in providing for public education. The following sequence of constitutional and State law provisions indicates how this was accomplished and the application of these provisions to the foregoing discussion:

Constitution: Article VII, Health, Education, and Welfare

> Section 1. Public Education. The Legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

Title 14:

> Section 14.03.010. Establishment of a School System. There is established in the State a system of public schools to be administered and maintained as provided in this title. (Sec. 1, Ch. 98, SLA 1966)
>
> Section 14.14.065. Relationship Between City School District and City. The relationships between the school board of a city school district and the city council and executive are governed in the same manner as provided in AS 07.15.330 for the school board of a borough school district and the borough assembly and executive. (Sec. 1, Ch. 98, SLA 1966)

By reference, Section 14.14.065 adopts 07.15.330 (29.33.050) and establishes it as general law to be observed by city and borough school districts, whether home rule or not.

Although there might be a number of alternatives, it would appear the most feasible recommendation we could make is to include Section 29.33.050 in the home rule limitations, Section 29.13.100. Such a revision would at least maintain the status quo.

If it is believed Section 29.33.050 is not adequate for both general law and home rule municipalities, we would then recommend the Legislature make such revisions as might be necessary. Our only case in point is that the education provisions should be in law and not in the charter, unless the law is repeated in the charter for convenience.

We would be glad to meet with the committees on this matter at their convenience.

RPI:cjb

Attachment

File: 023.1
023.2
022

SB 123

State Shoplifting Laws — A Chains Best Friend

Shoplifting laws have been enacted in forty-nine states. The District of Columbia has no laws which deal with the specific crime of shoplifting. California, while it has no shoplifting law, as such, the law of arrest allows a police officer to make an arrest when he has reasonable cause to believe a felony has been committed by the person arrested without incurring liability for false arrest. Decisions of the State Supreme Court and other appellate courts have held that a merchant or his employee may detain a suspected shoplifter for a reasonable time if he has probable cause to believe goods have been stolen (Collyer v. Kress; 5 California 2d, 175).

The first decision by the high court of any of the 49 states which have shoplifting laws was handed down by the Supreme Court of North Carolina on December 13, 1961. The Decision ruled the law was valid and sustained the conviction of shoplifter. (State v. Hales). The following chart indicates by a dot each state's inclusion in shoplifting laws of the United States.

	1	2	3	4	5		1	2	3	4	5
Alabama	●	●	●			Montana	●	●	●		
Alaska	●			●	●	Nebraska	●	●	●		
Arizona	●	●	●		●	Nevada	●	●	●		
Arkansas	●	●	●	●	●	New Hampshire	●			●	●
California (See Above)						New Jersey	●	●	●	●	
Colorado	●	●	●	●	[A]	New Mexico *	●	●	●	●	[A]
Connecticut	●			●	●	New York	●	●	●		
Delaware	●	●	●	●	●	North Carolina	●			●	●
Florida	●	●	●			North Dakota	●	●	●		
Georgia	●	●	●		[A]	Ohio *5	●	●			●
Hawaii	●	●	●			Oklahoma	●	●	●	●	●
Idaho	●			●	●	Oregon	●	●	●		●
Illinois	●	●	●			Pennsylvania	●	●	●	●	●
Indiana	●	●	●	●	●	Rhode Island	●	●			●
Iowa	●	●	●	●	●	South Carolina	●	●	●	●	●
Kansas *	●		●		[A]	South Dakota	●	●	●	●	●
Kentucky	●	●		●	●	Tennessee	●	●	●	●	●
Louisiana	●	●	●	●		Texas	●	●	●		[A]
Maine	●			●	●	Utah	●	●	●		
Maryland	●		●		[A]	Vermont	●	●			
Massachusetts	●		●	●		Virginia	●		●		●
Michigan	●		●			Washington	●		●		●
Minnesota	●	●	●			West Virginia	●	●	●		[A]
Mississippi	●	●	●	●	[A]	Wisconsin *	●	●	●	●	[A]
Missouri	●	●	●	●		Wyoming	●	●	●		●

Chart based on information supplied by the Association of General Merchandise Chains and the Institute of Distribution

*As last amended 1969. *8 Amendment of 1969. *1959, Wisconsin enacted additional law permitting a person to threaten or use force against another for the purpose of preventing or terminating what he believes to be an unlawful interference with his property. Third persons may use similar means to defend another's property provided property belongs to a merchant and third party is his employee or agent of property.

Provisions of Shoplifting Laws

1) Definition of shoplifting or theft of merchandise. This includes any or all of the following: removing unpurchased goods from within the store with intent to steal; concealment of unpurchased goods with intent not to pay for same; alteration of price tag or other markings; transfer of goods to another person or another container with intent to steal. One who assists or abets is also guilty.

2) Right of detention. This includes giving the right to a merchant, his employee or a peace officer to detain a suspected shoplifter for a number of reasons. These vary in different states and can include questioning with regard to ownership of the goods and questioning witnesses to the alleged act. This right is limited to a reasonable time—sometimes defined in the law—with the manner of detention also a reasonable one. Probable cause must exist for believing a crime was committed and the suspect committed the act. Few laws define probable cause and reasonable grounds with the judicial criteria usually being what the careful and prudent man would do under the circumstances.

3) Immunity from suit. This includes immunity from various civil and criminal actions if the merchant, his employee or peace officer takes the suspect into custody to detain him in a reasonable manner and for a reasonable length of time. Such custody and detention does not make merchant, his employee or officer liable for slander, false arrest, false imprisonment or unlawful detention.

4) Presumption of guilt. This includes wilful concealment of goods as *prima facie evidence* that intent to shoplift the items existed with the suspect having the burden to prove that this intent did not exist. This presumption often includes the presumption that finding unpurchased goods indicated that the items were wilfully concealed with intent to steal.

5) Penalties. This includes graduated fines and imprisonment penalties as a deterrent with some states (indicated by [A] adding felony punishment by imprisonment for not less than one year nor more than 20 years.

SB 103

STATE OF WASHINGTON
JOHN J. O'CONNELL
ATTORNEY GENERAL
TEMPLE OF JUSTICE
OLYMPIA, WASHINGTON 98501

May 19, 1967

Honorable Harold E. Wolf
State Representative
Twenty-second District
Clark Road
Yelm, Washington

Dear Representative Wolf:

By letter previously acknowledged you have requested an official opinion of this office on several questions concerning the provisions of chapter 76, Laws of 1967.

For purposes of discussion, we shall set forth in full the language of § 3 of this act, which reads as follows:

> "In any civil action brought by reason of any person having been detained on or in the immediate vicinity of the premises of a mercantile establishment for the purpose of investigation or questioning as to the ownership of any merchandise, it shall be a defense of such action that the person was detained in a reasonable manner and for not more than a reasonable time to permit such investigation or questioning by a peace officer or by the owner of the mercantile establishment, his authorized employee or agent, and that such peace officer, owner, employee or agent had reasonable grounds to believe that the person so detained was committing or attempting to commit larceny or shoplifting on such premises of such merchandise. As used in this section, 'reasonable grounds' shall include, but not be limited to, knowledge that a person has concealed possession of unpurchased merchandise of a mercantile establishment, and a 'reasonable time' shall mean the time necessary to permit the person detained to make a statement or to refuse to make a statement, and the time necessary to examine employees

> and records of the mercantile establishment relative to the ownership of the merchandise."

Notably, § 2 of the act contains an identical provision with respect to ". . . any criminal action . . ."

Before turning to your questions, we should note and explain that the provisions of §§ 2 and 3 of chapter 76, Laws of 1967, supra, are merely phrased in terms of providing a merchant or a shopkeeper with a defense against civil or criminal liability with regard to matters involved in detaining a suspected shoplifter, where the merchant or shopkeeper has complied with the provisions of the new law. In other words, the new provisions do not purport to authorize any particular activity by a merchant or shopkeeper; rather, they simply provide a defense for him in the event he is sued or prosecuted, assuming that he can show that he acted within the terms of the sections.

The statute itself is patterned after a New York statute (New York Laws of 1960, chapter 1005, codified as General Business Law, § 218). There has been no reported experience under the New York act as of the date of this writing, and the source of the statute is mentioned here only because, knowing the source, it is evident that the new sections of chapter 76 were intended to have at least as broad, and perhaps broader application than the New York statute. The New York statute specified the types of action in which the defense would be available to a shopkeeper. Our statute makes the defense available in any criminal action, in the case of § 2, and in any civil action, in the case of § 3, ". . . brought by reason of any person having been detained on or in the immediate vicinity of the premises of a mercantile establishment for the purpose of investigation or questioning as to the ownership of any merchandise. . . ."

Preliminary to answering your questions some general observations concerning the common law right of a shopkeeper to detain a person who is reasonably suspected of having shoplifted an article of merchandise might be helpful to an understanding of our analysis of the questions presented. First, it should be noted that without statutory authority a shopkeeper could detain a customer or patron of his store who apparently had not paid for what he had received, for a reasonable length of time to investigate the circumstances. Rogers v. Sears, Roebuck & Company, 48 Wn. 2d 879, 297 P. 2d 250 (1956);

Restatement of Torts 2d, § 120 A; 22 Am. Jur. 368; 35 C.J.S. 640. Grounded as it was on the right to protect or recapture one's property, the right to detain a shoplifter necessarily ceased upon the return of the goods taken or the expiration of a reasonable time to investigate the taking. See, Teel v. May Department Stores Co., 348 Mo. 696, 155 S.W. 2d 74, 137 A.L.R. 495 (1941); Restatement of Torts, § 120 A, Comment "f". While it is a general rule that whether the detention was lawful must be determined as of the time of the detention (35 C.J.S. 640), some courts have made a distinction between the right to detain for purposes of recaption of property and a detention for the purpose of vindicating public justice, holding in the latter case that a subsequent acquittal or dismissal of criminal charges has a bearing on the lawfulness of the detention. See, Annos. 35 A.L.R. 645; 92 A.L.R. 2d 15; 35 C.J.S. 660.

In a case where the employee of a drug store was also a deputy police officer, and the act which gave rise to the detention was prosecuted, resulting ultimately in acquittal of the suspect, our court did not see fit to discuss the dual nature of the employee's right to detain the suspect. Instead it based its opinion upon the fact that the employee, a police officer, was entitled to assert a defense of reasonable cause. Sennett v. Zimmerman, 50 Wn. 2d 649, 314 P. 2d 414 (1957). Analysis of that case leaves one with the inference that had the employee not been a police officer the mere fact that he had reasonable grounds to believe that the person detained had taken property from the store in which he was employed would not have been a defense to him or the store in the subsequent suit by the suspect.

In any event, subsequent to that case the legislature passed chapter 229, Laws of 1959 making shoplifting a distinct crime, authorizing a peace officer to make an arrest without a warrant for that misdemeanor, even though it was not committed in his presence, and made "reasonable cause" a defense to certain civil actions brought against the peace officer by a person suspected of shoplifting. The loose language of the last-mentioned section was criticized by Professor Arvil A. Morris, 34 Washington Law Review 308. Repeal of that section and substitution therefor of chapter 70, Laws of 1967 brings us to your questions.

You ask for a legal interpretation of "reasonable grounds" as that term is used in the statute. The statute itself defines the term as follows:

> ". . . As used in this section, 'reasonable grounds' shall include, but not be limited to, knowledge that a person has concealed possession of unpurchased merchandise of a mercantile

establishment . . . "

Because the determination of what "reasonable grounds" might include is susceptible to so many variables, dependent upon the particular circumstances in the context of which the term is sought to be defined, it is impossible to define the term with any precision. Certainly, the fact-finder in a suit in which the new statute is involved will, in most circumstances, decide whether the merchant had reasonable grounds to detain the suspect. Some general observations may be made, however. Whether the detention contemplated by this section is an arrest, it does seem clear that it is something akin to arrest and that the general criteria for determining an officer's right to arrest for a felony provides guidelines. In State v. Massey, 68 Wn. 2d 88, 411 P. 2d 422 (1966) the Washington Supreme Court outlined these rules as follows:

> ". . . (1) An officer has cause for an arrest if he has reasonable grounds for suspicion, together with evidence of circumstances to warrant a cautious man in believing the accused to be guilty. State v. Hughlett, 124 Wash. 366, 214 Pac. 841 (1923). (2) An officer has probable cause to arrest without a warrant if he has knowledge which would convince a cautious but disinterested person that the accused is guilty of a felonious offense. State v. Darst, 65 Wn. 2d 808, 399 P. 2d 618 (1965); State v. Smith, 56 Wn. 2d 368, 353 P. 2d 155 (1960); Beck v. Ohio, 379 U.S. 89, 13 L. Ed. 2d 142, 85 Sup. Ct. 223 (1964); Wong Sun v. United States, 371 U.S. 471, 9 L. Ed. 2d 441, 83 Sup. Ct. 407 (1963). (3) An officer is not required to have knowledge of evidence sufficient to establish the guilt of the accused beyond a reasonable doubt. Draper v. United States, 358 U.S. 307, 3 L. Ed. 2d 327, 79 Sup. Ct. 329 (1959)."

By paraphrasing the above rules, substituting shopkeeper where officer appears, detention where arrest appears, and shoplifting where felonious offense appears, it is suggested that a fairly good set of guidelines are set out for a merchant wishing to stay within the terms of the statute being discussed, at least until more precise rules are defined by the courts in construing the term as used in this section.

Your next question—what is a reasonable time? — like the previous question, is not susceptible to precise definition. The definition within the statute is:

> ". . . 'reasonable time' shall mean the time necessary to permit the person detained to make a statement or to refuse to make a statement, and the time necessary to examine employees and records of the mercantile establishment relative to the ownership of the merchandise."

It is obvious that here the legislature has expanded the term "reasonable time" beyond the confines inherent in the term as it was understood at common law. Perhaps the most precise statement of what a reasonable time for detention is, absent statutory authority, is found in Comment "f" of the Restatement of Torts 2d, § 120 A, which reads:

(2)

> "The privilege is one of detention on the premises for only the time necessary for a reasonable investigation. Investigation does not mean discovery of all of the facts, but only such inquiry as may reasonably be made under the circumstances, promptly and without undue detention. What is a reasonable time will depend upon all of the circumstances, including the nature of the misconduct suspected, the amount involved, the explanation or denial offered by the other, his willingness to cooperate, and the time required to consult readily available sources of information. Normally, such a reasonable time will be short. Fifteen minutes may be too long where all that is necessary is to ask a clerk whether the other has paid. If the detention is continued beyond the time reasonably necessary for investigation, the actor is liable for the excessive detention."

(3)

The statute authorizes detention beyond that set forth in the underscored portion of the quote to the extent that it permits detention for "the time necessary to make a statement or refuse to make a statement." Detention for this purpose was clearly not authorized at common law. See, Teel v. May Department Store Co., supra.

Does "reasonable time" include the time necessary for an officer to arrive on the scene? Of course, if an officer arrives while the storekeeper is taking a statement or examining employees

and records relative to the ownership of the merchandise allegedly taken, clearly the merchant is within the terms of the statute, and the defense afforded by it is available to him. A more knotty problem arises when an officer has not arrived on the scene at the time the statutory purposes have been accomplished. Since the statutory definition is in derogation of the common law, and since a statute in derogation of common law is to be strictly construed, (Sutherland, Statutory Construction, 3d Ed. § 6201,) the cautious answer would be that a detention, after accomplishment of the questioning relative to the statement and investigation of the employees and records of the mercantile establishment, is unlawful; and, consequently, the defense afforded by the statute may be lost to a merchant seeking to avail himself of it. (A strong argument can be made, however, reaching the opposite result. The legislature is presumed to be aware of existing statutes relating to the same subject. Hatzenbuhler v. Harrison, 49 Wn. 2d 691, 306 P. 2d 745 (1957). It is thus presumed to be aware of the existence of chapter 229, Laws of 1959. That statute, by singling out shoplifting as a separate offense and authorizing a peace officer to arrest without a warrant when he had reasonable cause to believe a suspect had committed that crime was certainly a legislative attempt to ease the dilemna created by the common law rules regarding unlawful detention and to facilitate prosecution of shoplifters. Morris, 34 Washington Law Review 308. The repeal of section 3 of that act, permitting the defense of reasonable cause to be asserted by a peace officer sued as a result of such a detention, and a substitution therefor of the present section granting a defense not only to peace officers but to the owner of the store and his authorized employees in no way would indicate a recession by the legislature from that position.)

Because both terms, "reasonable grounds" and "reasonable time", are incapable of accurate abstract definition, it is strongly urged that shopkeepers who intend to vigorously avail themselves of their right to detain shoplifting suspects consult with their attorney regarding a standard practice to be followed by the store and its authorized employees relating to shoplifting. Certainly, what that practice might be will vary depending upon the type of business conducted and other circumstances.

Your final question has to do with the responsibility of a shopkeeper to advise a detained suspect of his constitutional rights. There is at present no obligation on the part of a private citizen, or for that matter, on police officers, to advise a detained person of such constitutional rights as the

right to remain silent, the right to an attorney, etc. Certainly, whether or not the suspect had been so advised would in no way be material to the question of whether the shopkeeper acted within his rights and within the terms of the statute under discussion. Whether a statement obtained from such a suspect without having first advised him of his constitutional rights would be admissible in a criminal prosecution is an issue we do not reach in this opinion.

We hope this has been of some assistance to you.

Very truly yours,

JOHN J. O'CONNELL
Attorney General

RICHARD A. MATTSEN
Assistant Attorney General

RAM:lm

SB-123

ALASKA RETAIL ASSOCIATION

POSITION PAPER ON SB 123
RELATING TO THE DETENTION OF SUSPECTED SHOPLIFTERS

Nearly everyone will agree that the crime of shoplifting is epidemic throughout the United States. The latest national figures indicate that shoplifting causes losses to the consuming public amount to 3 billion dollars annually. This, indeed, contributes heavily to our present high cost of living. It has been stated, moreover, that shoplifting, coupled with internal theft, is responsible for about 30% of all business failures in the United States.

Specific figures on shoplifting losses for Alaska are not available. However, the Anchorage Chief of Police estimates that retailers of all sizes throughout the State lose an average of $7,000 apiece each year. As there are approximately 2,000 retailers of all types in Alaska, this means that Alaskans are subject to a loss of $14,000,000 annually.

Existing statutes and municipal codes, if enforced, are adequate to help combat the shoplifting problem. The main problem encountered in Alaska, and all other areas, in enforcement is the understandable reluctance of merchants, and even professional store detectives, to apprehend suspected shoplifters for fear of being subjected to false arrest litigation.

SB 123, relating to the detention of suspected shoplifters, would, we feel, provide just the right degree of protection to merchants and their agents against frivolous false arrest suits. This protection would encourage merchants to make apprehensions when a crime is apparently in process, thus helping to combat this very serious crime wave.

SB 123 is designed to allow reasonable protection to the merchant or his agent without promoting undue harassment of customers and without violating the rights of those who may be accused. It requires that the merchant, or his agent, have reasonable grounds to suspect that a crime has been committed before being allowed to detain a suspect. The circumstances of the detention must be such that the merchant or his agent had specific cause to believe a theft was in process before he would have an effective defense under this law and that the detention was accomplished in a reasonable manner and only for a reasonable time.

In summary, the general lack of prosecution is probably the one single factor which has contributed to making the crime of shoplifting so widespread in our country. Professional shoplifters and, indeed, amateur thieves are encouraged in their activities as they feel secure in the knowledge that the merchant is reluctant to prosecute. As this reluctance is caused, in a large part, by the merchant's fear of false arrest suits, or criminal action for false arrest, we feel that the provisions of SB 123 would aid greatly in encouraging retailers to prosecute those who are stealing from all of us.

We respectfully urge your favorable consideration of SB 123 as we are convinced that its provisions will aid significantly in combating a serious and costly crime -- shoplifting.

Dean Ehrich
Executive Director

ANCHORAGE NATURAL GAS COMPANY

A Divison of Alaska Public Service Corp.

P. O. BOX 6288
ANCHORAGE, ALASKA 99502

3000 SPENARD ROAD
PHONE 277-5551

SB 136

March 16, 1971

Honorable William J. Moran, Chairman
Judiciary Committee
House of Representatives
Juneau, Alaska

Dear Chairman Bill Moran:

While we were writing our comments on SB 136 yesterday, it passed the Senate. Apparently there was little notice of any public hearing, if any. We believe this Bill deserves closer review, for reasons given in the enclosures. Perhaps none of these reasons came to the attention of the Senators during its brief stay in Committee. By telephone today we have requested the opportunity to be heard on this matter (probably before the House Commerce Committee).

In the past, the fuel oil dealers (and subdividers) have entered regulatory proceedings against us, before the Commission. Although they admitted in their testimony that the public should have a free choice among all forms of fuel service, by their practice, and by the proposed amendment (SB 136), they would perpetuate their monopolistic practices.

We believe that the purpose of "regulation" would be thwarted by trailer court operators and subdividers (and where applicable, by apartment house owners) being left free to extract the "kick-back" described by Mr. Hall (Executive Director of the Commission), while refusing to allow natural gas service to be offered to their tenants. Surely the Legislature would not permit these practices to continue unchecked by the authority of the Public Utility Act and Commission.

We would appreciate advance notice and opportunity to appear when hearings are scheduled on this proposed amendment.

Very truly yours,

ANCHORAGE NATURAL GAS COMPANY

By Dale

Dale Teel
President

DT:kl
Enclosures

Alaska Public Service Corporation

P. O. BOX 6288
ANCHORAGE. ALASKA 99502

3000 SPENARD ROAD
PHONE 277-5551

March 15, 1971

Honorable Joe Josephson
and Honorable Ron Rettig
Alaska Senate
Juneau, Alaska 99801

Gentlemen:

We have just received copies of SB136, which would revise the definition of a public utility for the purpose of avoiding "....unnecessary regulatory procedures over petroleum fuel dealers delivering to trailer courts and apartment buildings..." except "when the consumer has no alternative in his choice of supplier of a comparable product at an equal or lesser price."

We have obtained a copy of the comments made by Mr. Don Hall, Executive Director of the Alaska Public Utilities Commission, regarding regulation of fuel dealers in general and this Bill in particular; Mr. Hall's comments were made in response to an inquiry by Mr. Robert Butler, Deputy Commissioner of Commerce. Copy of Mr. Hall's memorandum is enclosed; we believe his enclosures, which are obtainable from Mr. Butler, may be quite helpful to you in following his comments.

We have submitted our own comments on the fuel dealers' formal requests for exemption from regulation (APUC Cause U-7-71 through Cause U-11-71) by letter to the Alaska Public Utilities Commission, and copy of these comments is also enclosed for your review.

We hope you will understand our position--that when the tenants of trailer parks and apartment houses are precluded from the opportunity to receive or have natural gas utility service, an effective monopoly may exist even though it may be shared by two or more fuel oil dealers, which would be allowable without regulation under the language of your Bill (SB136).

The "kickback" referred to in Mr. Hall's memorandum to Mr. Butler is of course a central issue in this matter. We believe that such "kickback," which is referred to in our letter as an "incentive payment," explains the unwillingness of owners and operators of trailer courts and apartment house projects to allow natural gas service to be installed on their properties. In some cases, notably in the trailer court called "Dimond Park Estates," the owners are themselves also owners of the fuel distribution system. This project involves 400 trailer spaces, and may at

present dominate the house trailer market of the Anchorage area. No "kickback" may be in effect on this project, but the restraint of competition through refusal to allow natural gas service to be installed still would produce an effective monopoly which is normally cause for regulation.

Anchorage Natural Gas has always welcomed competition and has never sought to impose burdensome regulations upon underground oil and propane utilities. We do seek to see elimination or control of practices which appear to be unfair to consumers as well as to us. We believe that the Certificate of Public Convenience and Necessity which was issued to us by the Alaska Public Utilities Commission is being seriously infringed by continuation of such practices and that the best interest of a large portion of the public in our service area is harmed as a result.

All we ask is the opportunity to compete. We do not favor "...unnecessary regulatory procedures," nor are we seeking any competitive privilege other than relief from "affiliated interest" agreement by our competitors which effectively excludes us from an opportunity to compete. We do not believe SB136 can be administered to achieve the intended purpose and still protect the public interest. We are opposed to this Bill because:

1. It would foster -- and legitimize -- the continuation of "kick-backs" by dealers of oil and propane to owners of trailer courts and apartment houses.

2. It would perpetuate the condition in which Anchorage Natural Gas is being excluded from competition to serve trailer courts and apartment houses.

3. It would allow -- and practically invite -- price fixing by dealers of oil and propane, and would thus be in restraint of competition.

4. It would foster the continuation of shoddy and unsafe installation of underground systems for oil and propane, with obvious hazard to residents of areas so served.

For the foregoing reasons, we would request that if hearings are scheduled on SB136, we and our attorneys (Law Firm of Robison, McCaskey, Strachan, and Hoge) be notified by collect telegram or telephone so that we may have the opportunity to appear and support our position as necessary.

Very truly yours,

Dale Teel
President

cc: Mr. Don Hall and
Each Commissioner
Alaska Public Utilities Commission

Alaska Public Service Corporation

P. O. BOX 6288
ANCHORAGE, ALASKA 99502

3000 SPENARD ROAD
PHONE 277-5551

March 11, 1971

Alaska Public Utilities Commission
700 MacKay Building
338 Denali Street
Anchorage, Alaska 99501

Cause Nos. U-71-7/U-71-11
Inclusive

Gentlemen:

This letter is in response to the various Notices received from the Commission regarding Certification (or Exemption) of the fuel oil and propane dealers (Applicants) listed in the attached summary.

Alaska Public Service Corporation has been certificated by the Commission to provide natural gas utility service in the greater Anchorage area and on the Kenai peninsula, and is thus in competition with these Applicants to serve the energy requirements of these areas. Our position is that such competition is in the public interest and that regulation should not serve to inhibit such competition. However the practices of various of these Applicants appear to us to warrant an in-depth investigation by the Commission before a decision is made to exempt any of the Applicants from regulation by the Commission.

Specifically, we believe that competition is now being inhibited in many instances, if not generally, through the mechanism of an "incentive" paid to developers or owners of land on which these Applicants' fuel delivery systems are installed. The developers or owners of land served by Applicants underground systems become "affiliated interests" and subject to jurisdiction of the Commission, by their agreements or contracts with the Applicants. We understand the "incentive" is as much as 2¢ per gallon of fuel oil sold to the end users served by these systems, and a lesser amount per gallon of propane. We further believe that as a result of such "incentive payments" the developers or owners are resisting or refusing to allow natural gas distribution systems to be installed in the Applicants' areas of operations, or are discouraging their tenants or customers from giving fair consideration of natural gas utility service where it has been made available, thereby creating an effective monopoly by the fuel dealer serving the area. We further believe that in several cases some of the Applicants or their affiliated interests are owners or otherwise in control of the land served by them and that in such cases natural gas has been placed in an unfair position.

KA PUBLIC SERVICE CORPORATION
O. BOX 6288
CHORAGE. ALASKA

We believe that the Commission can and should move to prohibit the payment of such "incentives" by Applicants to the developers or owners of land and to restrain both applicants and developers and owners of land from discouraging the acceptance of natural gas by the end users of fuel in their areas of operation on such land. We believe moreover that where Applicants are the developers or owners of such land (or affiliated interests thereof), such Applicants should be ordered not to preclude or resist the reasonable and lawful efforts of Alaska Public Service Corporation (or other fuel sources) to compete for, attract, and serve the end users of fuel in such areas, and should be ordered to cooperate with Alaska Public Service Corporation (and others) as to access to the land for the purpose of construction, operation, maintenance of natural gas distribution facilities and appliances on such land.

If the foregoing position were to be adopted by the Commission, then Alaska Public Service Corporation would not oppose Applicants' requests for exemption (more accurately, "partial exemption, under AS 42.05.711(d)") from the full effect of regulation, specifically in whatever of Applicants' areas of operation natural gas service has been made available to end users in such areas.

We recognize the benefits of having the Commission and its staff and resources available to the public for receiving complaints and resolving matters of dispute, and we believe the Commission should not suspend its jurisdiction in this respect, or in the respect of safety (e.g., enforcement of the Pipeline Safety Act of 1969), or in the respect of preventing collusion or conspiracies or practices which would inhibit competition both among the Applicants and by Alaska Public Service Corporation, as a certificated natural gas utility serving most of the subject areas. We believe the Commission is empowered to achieve these benefits without the need for the full extent of filings, hearings, fiscal and other reporting, and formal proceedings which would be costly and burdensome to both the Commission and the Applicants.

Appropriate legal briefs and additional comments will be supplied during the course of these proceedings.

Very truly yours,

Dale Teel
President

Enc.: Listing of APUC Notifications to which foregoing letter pertains

cc: Each Applicant
Each Commissioner

ALASKA PUBLIC SERVICE CORPORATION
P. O. BOX 6288
ANCHORAGE, ALASKA

Attachment to APSC Letter
to Alaska Public Utilities Commission
Regarding Application of Various Fuel Oil & Propane Dealers
For Exemption from Regulation as Public Utilities

Cause No.	Notice Date	Reply Date	Applicant
U-71-7	February 22	March 12	Standard Oil Company 1689 C Street Anchorage, Alaska 99502
U-71-8	February 23	March 15	Peters Creek Fuel & Service, Inc. Post Office Box 128 Eagle River, Alaska 99577
U-71-9	February 25	March 15	Day and Night Fuel Company, Inc. 608 East Fireweed Anchorage, Alaska 99503
U-71-10	February 25	March 15	Denali Fuel Company et al 1525 East Fourth Avenue Anchorage, Alaska 99501
U-71-11	February 25	March 15	Petrolane-Anchorage Gas Service, Inc. et al 1200 Whitney Road Anchorage, Alaska

(Alaska Public Service Corporation opposes Exemption of above from regulation except in the event, and to the extent, that natural gas service is made available to end users in each of the respective utility systems operated by the above Applicants. Refer to attached letter and Legal Brief for further details.)

Certificate of Service

We hereby confirm that we have served a copy of this letter on Applicant(s) listed above, by mail to the address(es) listed in the Notice(s) of Application; and to each Commissioner by separate mailings.

RECEIVED
MAR 11 '71

March 11, 1971

Alaska Public Service Corporation

EX DIR	
DEP DIR	
ATTY	
ANALYST II	
ENGR	
ANALYST I	
ACCT II	
FILE	

MEMORANDUM

State of Alaska
DEPARTMENT OF COMMERCE

John info to me return to me Paul.

TO: Mr. Robert E. Butler
Deputy Commissioner
Department of Commerce

DATE : March 3, 1971

FROM: Don Hall
Executive Director
Alaska Public Utilities Commission

SUBJECT: S. B. 136
Revision of
AS 42.05.701 (2) (E)

SUMMARY

Complying with your request for comments on S. B. 136 is far easier said than done as you can see by the length of this memorandum and the amount of back-up material that accompanies it. Therefore, I thought it might be helpful and time-saving to summarize, at the outset, some of the main points I have developed and documented. Here they are:

1. In my view, the question of whether fuel oil dealers, or any other person or firm, should or should not be regulated, or exempt from regulation, in whole or in part, is properly a matter of legislative policy concerning which administrators, such as I, should not comment. Therefore, I respectfully decline to make any recommendation other than suggest the facts be examined to see if they fully support a finding that regulation of the operations in question is "unnecessary" as indicated in the stated purpose of the Bill.

2. The question should not be resolved solely on the basis of alternative choices by the customer as to comparable products and service related to the price paid. Our research, and some of the enclosures, indicate that the following factors should also be considered:

   A. Public safety as evidenced by faulty construction, faulty maintenance or unsafe practices. At least two trailer homes were destroyed by fire in Anchorage last November, and another badly damaged, resulting in an estimated loss of $40,000. (See Exhibits A and B)

   B. Trailer court owners and housing developers sometimes incur no investment toward the installation of storage and/or pipeline distribution facilities; yet receive a kick-back of 1¢ per gallon on every gallon sold for "dedicating" their trailer court (or housing development) to oil.

C. Complaints have been filed by consumers who looked to the Commission for the redress of grievances stemming from allegations that fuel dealers have failed to restore service quickly during cold weather--even after repeated pleas for help. (See Exhibit B-1)

3. Fuel dealers, such as Petrolane, distribute propane to trailer courts and apartment houses in much the same fashion that fuel oil dealers distribute their product, but they are not exempt. This does not appear to be equal or fair treatment. Nor does it appear reasonable that trailer court and apartment house owners who operate their own oil pipeline distribution systems should be regulated while dealers who operate in other trailer courts and apartments are exempt under certain conditions.

4. The Bill would be even more difficult to administer than sec. 42.05.711 (e) of the present law because of numerous practical difficulties. To put it more bluntly, it would create an administrative nightmare.

5. The Bill is poorly drafted, first, because it amends the wrong section. In my view, it should amend AS 42.05.711 which deals with exemptions, rather than the section containing definitions. Second, it does not clearly state the legislative intent, despite the effort to do so--which, incidentally is one of the questions that seems to bother oil dealers about the present law. They expect us to tell them what the Legislature intended, and we simply don't know. For example, the stated purpose makes reference to trailer courts and apartments but does not mention dealers who distribute fuel oil, by pipeline, to office buildings and housing developments. In my opinion, it would be better to simply exempt fuel dealers from the law completely (and without any qualification), if that is what is desired, rather than attempt to regulate them only under the stated conditions which would invite disputes between dealers and their customers; yet leave the Commission virtually powerless to resolve complaints filed with the Commission.

6. There are approximately 73 fuel dealers in Alaska now subject to regulation that would be affected by S. B. 136. Several of them have filed applications with the Commission for total exemption from AS 42.05 pursuant to AS 42.05.711 (d) thereof, or in the alternative, for a certificate of public convenience and necessity. If S. B. 136 is enacted, these pending

applications would, of course, be dismissed as moot and all other dealers would be relieved from the necessity of even filing applications. Further, any that might be subject to regulation in the future could very easily avoid it by changing their price if the customer was in an area in which he had one of the alternative choices mentioned in the Bill.

7. By order of the Commission all fuel dealers are temporarily exempt from all provisions of AS 42.05 until April 1, 1971 to give them ample opportunity to file applications with the Commission. (See Exhibit D) It was for this reason we stated, on page 16 of our first annual report, that it "...would be no surprise to the Commission if they should seek legislation to specifically exclude their operations from regulation under the APUC Act."

DETAILS

Your request for comments on Senate Bill No. 136 brings up a rather delicate question of policy; namely, whether I, as an administrator of the APUC Act, should take a position as to whether or not petroleum fuel dealers should be exempt from the Act under certain conditons. In the past I have consistently refused to take a position either for or against the regulation (or exemption) of any operation. I see no reason why I should now. However, I owe it to you, and to the Legislature, to report some pertinent background facts that may be of some assistance in arriving at an appropriate decision. (See Exhibit G)

In the first place, the problem does not relate soley to the price the customer pays which seems to be the main thrust of the proposed amendment. There is also the matter of safety to be considered. This was first brought to our attention here in Anchorage on November 23, 1970 when a fire destroyed two mobile homes and bably damaged a third one--all reportedly due to a malfunction in the Shato Trailer Park's community fuel system. The damage was estimated at $40,000 (See Exhibit A, attached).

I am also enclosing photos indicating that sub-standard construction practices are employed in a number of mobile home courts in Anchorage that are served directly or indirectly by local fuel dealers. (See Exhibit B) I cannot honestly affirm that all of the pictures portray systems installed by fuel oil distribution firms as distinguished from those installed by propane distributors (which, I note, are not involved in S. B. 136). Some may be owned and operated by the owners of the trailer parks rather than by dealers. But I

understand they all are served via pipelines from central storage tanks and that tenants generally do not have a free choice of furnishing their own individual fuel tanks and of purchasing oil directly from any local fuel dealer they may select.

While on the subject of safety, I must report that the Federal Department of Transportation has entered into an agreement with the APUC whereby the Commission will endeavor to enforce the Federal safety standards which are applicable to all gas pipelines in the State (See Exhibit C). This agreement was made pursuant to Section 5 (b) of the Natural Gas Pipeline Safety Act of 1968, and the rules and regulations issued thereunder (See Exhibit E). If we had not entered into this agreement, the Federal Department of Transportation would have already preempted the entire field of gas utility safety regulation in Alaska. Thus, unless the State desires to lose jurisdiction over gas pipeline safety, by default, it really has no choice but to help the Department of Transportation enforce its regulations. I wrote you a memorandum on this subject dated February 6, 1971, a copy of which is attached hereto as Exhibit F.

The main point of what I have just said about safety is this: How can the State reasonably exempt distributors of oil by pipeline, as to safety, (or as to anything else for that matter) and at the same time subject distributors of propane to all the provisions of AS 42.05 including safety? It would seem that the public need for regulation, or the justification for exemption from regulation, should not rightfully depend upon whether the pipeline distributor sells oil or gas. After all, they both sell an essential fuel that heats trailers and they distribute it by pipeline as well as delivering their product to individual customers. I say this only to point out a basic inconsistency--not because I have taken a position for or against the regulation of either kind of a fuel distributor.

Another inconsistency of S. B. 136 is that it singles out, for special treatment, fuel dealers that distribute petroleum products to the public for compensation while ignoring the fact that many mobile home court owners, who also distribute petroleum products to their own tenants for compensation via pipelines, would still be subject to regulation. This does not appear to be fair or reasonable.

Your attention is invited to the fact that this entire matter is now before the Commission in Docket No. U-70-85 and two orders have been written. A copy of the entire file in this proceeding is attached as Exhibit D of this memorandum. We are now in the process of issuing public notices so that all persons and firms in the entire State that may be utilities under AS 42.05.701 (2) (D) or (E) will have an opportunity to comply with the Commission's order that they must apply for a

certificate covering their operation as a condition precedent to considering their applications for exemption. The 6 fuel dealers that have already filed the required applications seek complete exemption from AS 42.05 pursuant to AS 42.05.711 (d). Alternatively, they desire a certificate. They now have until April 1, 1971 to make application pursuant to our order dated February 2, 1971 in U-70-85. But if they can get the law amended to exempt them from regulation, obviously those that have not applied will be spared the trouble of making application and the Commission will simply dismiss the applications then pending.

I understand the fuel dealers are not at all happy with the Commission, mainly because it has not felt free to go along with their contention that the Legislature never intended to regulate them in the first place. This may be so. Maybe it was a legislative oversight that they appear to be utilities, but who are we to say it was? If that is all that is involved, then certainly this Legislature is in a position to correct the oversight.

I am not yet in a position to give you completely reliable figures on the full extent of the problem of regulating oil distributors (as defined by AS 42.05.701 (2) (E)) or of regulating natural or manufactured gas distributors (as defined by AS 42.05.701 (2) (D)), but I do have a pretty good idea from our own research (with the aid of Carl Sullivan representing the Oil Heat Institute) and from other sources including the State Revenue Department. With the above qualifications, this is approximately what it looks like now for the entire State:

Kind of Fuel Distributed by Pipeline to 10 or More Customers

	Oil	Gas
Number of Cities	7	6
Number of Locations	47	33
Number of Operators	73	2
Number of Customers	2,413	863

From the standpoint of administering AS 42.05 as applied to all utilities presently defined as such by AS 42.05.701 (2) (E), I shudder to think of it as though cold steel were being plunged into my warm quivering human flesh, particularly so if the APUC is going to have its budget cut for next year. Just think of it. We now have 125 regulated utilities. This would increase the total to 198, a 63% increase. How in the world could we reasonable be expected to do an adequate job of regulating that many more utilities, with no more personnel than we now have is incomprehensible. On the other hand, if the Legislature feels that these operations should be regulated we shall just have to do the best we can with the resources placed at our disposal--but, you can depend upon it, we shall be severely criticized. If we had any idea of how many utility

operations of this kind there may be, we would have requested a lot more personnel than we did ask for in our great ignorance.

I think the underlined part of S. B. 136 will create administrative problems that just won't quit--ever. For example:

1. Who will decide disputes between consumers and the dealers that serves them as to whether or not the consumer has "no alternative in his choice of supplier of a comparable product and service at an equal or lesser price,"--the dealer, the consumer, or the Commission? If there is a question as to whether the Commission has jurisdiction to entertain the customer complaint, how would it be decided?

2. What is a "comparable product"? Would it include natural or manufactured gas? Would the decision be based upon the BTU content of the fuel?

3. Would the words "and service", following the word "product" include electric service since it might be argued that electricity furnished for space heating is a "comparable" service because both would supply trailer homes and apartments with heat, for cooking and space-heating?

4. In determining whether a comparable product or service could be purchased at "an equal or lesser price", what would be the common denominator for the determination as between heavy (like PS 300) and light oil (like diesel 182), propane, natural gas, and electricity? Who would decide disputes in this regard?

Getting back to the stated purpose of S. B. 136, I note that the expression "unnecessary regulatory procedures" is used. This is precisely the main issue now before the Commission in U-70-85. (See Exhibit D) The law under which gas and propane distributors are now seeking exemption is AS 42.05. 711 (d) which provides that the Commission, "... on a finding that no legitimate public interest will be served, may exempt a utility from all or any portion of the chapter." It may develop that the Commission will find, after a public hearing, that they should be exempt from some, all, or no provisions of AS 42.05. S. B. 136, if enacted, would simply mean the Commission would dismiss all the applications then pending, and close the proceeding as the issue would be moot. This is precisely what was done in respect to a case involving the regulatory status of the Kenai Pipeline Company when the law was amended (in 1968) to specifically exclude it.

Another thing I notice about the stated purpose of S. B. 136 is the fact that it includes dealers delivering to trailer courts and apartment buildings, but excludes those that may possibly be delivering to other multi-tenant structures such as office buildings. Still another situation that I actually know of here in Anchorage is not covered by the stated purpose. In this regard, I refer to a dealer here who furnishes oil to an entire housing development via pipelines connected with a central storage tank. It does not seem reasonable that such an installation would be exempt if others of a similar nature, that are mentioned, are included.

In short, Mr. Butler, I think S. B. 136 is poorly drafted and would cause more administrative headaches than it could possible eliminate if it is passed. Further, I do not think it would be fair to exempt petroleum fuel dealers without, also, exempting dealers who distribute propane or manufactured gas.

I hope I have covered the subject adequately.

By Don Hall

DH:eb
Encl.

Colored Photos of Two Trailer Homes

Destroyed by Fire and Another Badly

Damaged

EXHIBIT A

Photos Indicating Sub-standard Construction Practices in Mobile Home Courts in Anchorage Served Directly or Indirectly by Fuel Dealers

EXHIBIT B

Copy of Complaint Filed Before the Alaska Public Utilities Commission by F. Joseph Tirapelli and Gloria Tirapelli vs. Denali Fuel Company, Inc., John Mlacker, Jack Linton, and Jack Wong, a Partnership under the Name of S.L.M. PARTNERSHIP D/B/A PLAZA 36

and

Newspaper Clipping Regarding Suit Filed in Court

EXHIBIT B-1

Agreement Between the Secretary of Transportation and APUC Under Section 5 (b) of Gas Pipeline Safety Act of 1968

EXHIBIT C

U-70-85

In the Matter of the Certification of:

Alaska Fuel and Transfer, Inc.,
AAA Fuel, Inc.,
Arctic North Star Fuel,
Ace Fuel Service,
Day & Night Fuel, Inc.,
Inlet Fuel Co.,
Spenard Fuel, Inc.,
Peters Creek Fuel,
Denali Fuel Co.,
Fairbanks Fuel,
Petroleum Sales,
Peters Express,
Northern Gas and Oil,
Sourdough Heating, Inc.,
Johnnie's Express

and Others Similarly Situated.

EXHIBIT D

Natural Gas Pipeline Safety Standards Prescribed by Department of Transportation Pursuant to Natural Gas Pipeline Safety Act of 1968

EXHIBIT I.

Memorandum to Mr. Robert E. Butler

dated February 6, 1971

"Gas Pipeline Safety"

EXHIBIT F

Copy of Your Memo to Me of February 24, 1971, and Copy of Senate Bill 136, Requesting My Comments

EXHIBIT G

Copy Corrected
February 24, 1971

NOTICE OF APPLICATION FOR

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

The ALASKA PUBLIC UTILITIES COMMISSION hereby gives notice that the STANDARD OIL COMPANY, an Alaska Corporation, has filed an application (Cause No. U-71-7) for an exemption from Sections 221 - 281 of the Alaska Public Utilities Commission Act (AS 42.05) or, in the alternative (under protest) for a certificate of public convenience and necessity to furnish fuel oil delivery products public utility service in the following areas: Trailer City, 4420 Emard St., South Mountain View, Alaska; Maggies Trailer Court, 4503 Spenard Road, Anchorage, Alaska. The applicant states that the rate charged to its cutomers is 24.4 cents per gallon of fuel oil. More detailed information may be obtained from the applicant through its Attorney in Fact, Mr. Victor S. Schutzky, whose address is 1649 C Street, Anchorage, Alaska. The complete filing is available for inspection at the offices of the Alaska Public Utilities Commission, 700 MacKay Building, 338 Denali Street. Anchorage, Alaska 99501.

Any interested party may file with the Commission by 4:30 P.M. on March 12, 1971, a statement of his views and specific reasons in favor of, or in opposition to, the granting either of the exemption as requested or else of authority to the applicant to operate as a fuel oil delivery products public utility, together with written confirmation that the same statement has also been served on the applicant.

DATED at Anchorage, Alaska this 22nd day of February, 1971.

J. Lowell Jensen
Deputy Director

NOTICE OF APPLICATION FOR

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

The ALASKA PUBLIC UTILITIES COMMISSION hereby gives notice that the PETERS CREEK FUEL & SERVICE, INC. has filed an application (Cause No. U-71-8) for an exemption from Sections 221-281 of the Alaska Public Utilities Commission Act (AS 42.05) or, in the alternative, (under protest) for a certificate of public convenience and necessity to furnish fuel oil delivery utility service in the following areas in the vicinity of Eagle River, Alaska: Lazy Mountain Trailer Court, Sunny Slopes Subdivision, Eagle River Trailer Court, Eagle River Heights North Subdivision. The applicant states that the rates charged at present to its central distribution system customers are 24.4¢/gal. for No. 1 heating oil and 23.2¢/gal. for No. 2 heating oil. More detailed information may be obtained from the applicant whose address is P. O. Box 128, Eagle River, Alaska 99577. The complete filing is available for inspection at the offices of the Alaska Public Utilities Commission, 700 MacKay Building, 338 Denali Street, Anchorage, Alaska 99501.

Any interested party may file with the Commission by 4:30 PM on March 15, 1971, a statement of his views and specific reasons in favor of, or in opposition to, the granting either of the exemption as requested or else of authority to the applicant to operate as a fuel oil delivery public utility, together with written confirmation that the same statement has also been served on the applicant.

DATED at Anchorage, Alaska this 23rd day of February, 1971.

J. Lowell Jensen
Deputy Director

NOTICE OF APPLICATION FOR

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

The ALASKA PUBLIC UTILITIES COMMISSION hereby gives notice that DAY AND NIGHT FUEL COMPANY, INC. has filed an application (Cause No. U-71-9) for an exemption from Sections 221-281 of the Alaska Public Utilities Commission Act (AS 42.05) or, in the alternative (under protest), for a certificate of public convenience and necessity to furnish fuel oil delivery public utility service (through central tank and pipeline distribution systems) within the following service areas: Top Hand Trailer Court, 2409 McRae Road, Spenard, Alaska; Grizzly Trailer Court, 4222 Spenard Road, Spenard, Alaska. The applicant's stated rate is 23.7¢ per gallon of fuel oil. Its tariff also provides for a $25.00 deposit and monthly customer billing. More detailed information may be obtained from the applicant whose address is 608 East Fireweed, Anchorage, Alaska 99503. The complete filing is available for inspection at the offices of the Alaska Public Utilities Commission, 700 MacKay Building, 338 Denali Street, Anchorage, Alaska 99501.

Any interested party may file with the Commission by 4:30 P.M. on March 15, 1971, a statement of his views and specific reasons in favor of, or in opposition to, the granting either of the exemption as requested or else of authority to the applicant to operate as a fuel oil delivery public utility, together with written confirmation that the same statement has also been served on the applicant.

DATED at Anchorage, Alaska this 25th day of February, 1971.

J. Lowell Jensen
Deputy Director

NOTICE OF APPLICATION FOR

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

The ALASKA PUBLIC UTILITIES COMMISSION hereby gives notice that DENALI FUEL COMPANY/DENALI DISTRIBUTORS, INC. has filed an application (Cause No. U-71-10) for an exemption from Sections 221-281 of the Alaska Public Utilities Commission Act (AS 42.05) or, in the alternative (under protest) for a certificate of public convenience and necessity to furnish fuel oil delivery public utility service (through central tank and pipeline distribution systems) in the following locations in the Greater Anchorage and Eagle River areas: Alaskan Village Mobile Home Court, Chateau Trailer Court, Clearwater Trailer Court, Cowdery Brothers Construction, Dimond Estates, East Anchorage Trailer Court, Forest Park, Four Seasons, Frank's Trailer Court, Glacier Terrace Courts, Green Acres, Johnson Trailer Court, Kathy C Estates, Kluane Terrace, La Honda Trailer Park, Mountain View Trailer Court, Muldoon Estates, Penguin Trailer Court, Piper Trailer Court, Plaza 36, Rangeview Trailer Park, Rebischke's Court, Riviera Terrace, Scenic View, South Park Estates, Spruce Park Trailer Court, Totem Trailer Court, Trails End Trailer Court, Vagabond Trailer Court, Waterbury Trailer Court, White Birch Trailer Court, Hamilton Park, Ocean View Subdivision and Palos Verdes Subdivision. The applicant has filed a tariff which includes its rates and regulations relating to security deposits, installation charges, connection fees, automatic refueling, service labor charges, billing period, and terms of payment. The stated rates are 23.7¢ per gallon for No. 1 fuel oil and 22.5¢ per gallon for No. 2 fuel oil. The security deposit is $25.00 and the connection fee is $15.00 per customer. More detailed information may be obtained from the applicant

whose address is 1525 East 5th Avenue, Anchorage, Alaska 99501. The complete filing is available for inspection at the offices of the Alaska Public Utilities Commission, 700 Ma-Kay Building, 338 Denali Street, Anchorage, Alaska 99501.

Any interested party may file with the Commission by 4:30 PM on March 15, 1971, a statement of his views and specific reasons in favor of, or in opposition to, the granting either of the exemption as requested or else of authority to the applicant to operate as a fuel oil delivery public utility, together with written confirmation that the same statement has also been served on the applicant.

DATED at Anchorage, Alaska this 25th day of February, 1971.

J. Lowell Jensen
Deputy Director

U. 71-10
12 p

DENALI DISTRIBUTORS, INC.

EXHIBIT C

Applicant does not desire to render a service to the public in general, does not wish to hold itself out or offer its service to the public at large and does not wish to dedicate its operations to public use.

The business in which applicant desires to engage itself consists of the delivery of fuel oil to mobile home occupants in trailer courts and the delivery of fuel oil to occupants of dwellings in subdivisions.

The facilities which applicant proposes to utilize consist of bulk storage tanks in excess of 300 gallon capacity located within the trailer courts, pipes extending from the storage tanks in the trailer courts to the trailer spaces in the trailer courts, and separate meters to measure the consumption of each customer in each trailer court. The same facilities are utilized in connection with a housing development, or subdivision.

The type of customers consist of mobile home and permanent home owners and occupants in specified trailer courts and subdivisions. The number and location of the trailer courts and subdivisions is presented in Exhibits I and E attached hereto. The approximate number of maximum potential individual customers in trailer courts ranges from twenty-four at Green Acres Trailer Court and Piper Trailer Court to four hundred at Dimond Estates. At the present time, applicant proposes to deliver fuel oil from pipes connected to a storage tank in each of six subdivisions; namely, Hamilton Park Subdivision, formerly State Manor Subdivision, Ocean View Subdivision, Kluane Terrance Trailer Estates Subdivision, Palos Verdes Subdivision, Muldoon Estates

Subdivision and Sunny Slopes Subdivision. The remainder of applicant's proposed operations will be in trailer courts.

As part of its overall business of fuel oil delivery. Denali Fuel Company presently engages in the delivery of fuel oil to mobile home occupants in trailer courts and to occupants of dwellings in Subdivisions utilizing the facilities outlined above, except Denali Fuel Company presently has no operating facilities at Muldoon Estates Subdivision, Sunny Slopes Subdivision or Palos Verdes Subdivision. Denali Fuel Company does not presently deliver fuel oil to all of the potential customers specified as potential users in Exhibit I, since many of the potential users presently obtain fuel oil, or a different product for heating, from a competitor (See Exhibit III) of Denali Fuel Company. Denali Fuel Company, therefore, requests that the Commission find no legitimate public interest in regulating any of its operations. See Exhibit D.

DENALI DISTRIBUTORS, INC.

EXHIBIT D

No legitimate public interest is served by regulating any of the business of Denali Fuel Company, or applicant herein, because its business is not the type intended to be regulated, does not have the characteristics of a business intended to be regulated, and is already regulated by competition and other governmental requirements. Furthermore, the Commission has no jurisdiction to regulate any of the business of Denali Fuel Company, as no portion of its business is a defined public utility under the Alaska Public Utilities Act, either literally or within the intent of the Legislature.

One of the marks of a public utility is the monopolistic characteristics of its operations. This factor of monopoly gives rise to a reason for public protection through control and regulation. Contrariwise, the fuel oil delivery business, in general, and with respect to centralized delivery systems in trailer courts and housing developments, is a highly competitive business.

The sale of fuel oil by means of tank wagon delivery to a common storage tank in a trailer court or housing subdivision for further delivery through pipes from the common tank to customers in the trailer court or subdivision is a merchandising operation: the sale of a commodity and not of a utility service. A metered sale to individual customers in the trailer court or subdivision does not change the essential nature of the transaction.

Another one of the distinguishing marks of a utility operation is that it is affected with a public interest. The distribution of fuel oil by the use of a centralized storage tank and pipes directing the fuel to customers in a trailer court or subdivision is not affected with a public interest. There is no holding out or offer to service the public at large. The mere

fact that it may be considered to be of the nature of one of the necessities of life should not affect an industry with a public interest. A consumer in a trailer court or housing subdivision is no more dependent upon obtaining fuel oil for heating from one supplier at a constant price than he is upon obtaining other fuels such as coal, wood, kerosene, liquefied petroleum gas, or, for that matter, the same type of fuel oil from a different dealer on an individual or pipeline basis. There are many necessities of life, including such prime necessities as food and clothing, whose distribution and sale are made from a centralized location, but are not considered a public utility subject to regulation.

The supply of fuel oil through a pipeline system in a trailer court or housing subdivision makes no demands on the public for privileges peculiar and characteristic of a public utility; such as, the right to use public property and the exercise of eminent domain over private property.

Because of the non-competitive nature of its operation, an ordinary gas company is usually characterized by certain features which are lacking in the case of a fuel oil supplier. The fuel oil supplier employs the technique of marketing his product through a pipeline system in a trailer court or housing development on private property by permission of the owner. The installation of gas utility mains, by which the gas is delivered to users, requires, generally, the use of easements along or across public highways or the exercise of eminent domain over private property.

Furthermore, the operation of a public utility requires a monopolistic form of business. In order to prevent the lack of competition from affecting the service rendered to the public, governmental regulation of such a business becomes a paramount

policy consideration. The delivery of fuel oil is a highly competitive business and therefore does not meet the requirements for public utility regulation.

For this Commission to determine under the provisions of the Alaska Public Utilities Commission Act that it is within the public interest to exercise jurisdiction over and regulate the sale of fuel oil, merely because the product is marketed from a central tank through a pipeline system to ten or more people, would also mean that the Commission could assume jurisdiction over and regulate the sale of gasoline through all gasoline service stations in the State of Alaska. Certainly the Legislature of the State of Alaska, in enacting the Public Utilities Commission Act, did not contemplate, and could not have contemplated, any such broad interpretation of the Act. The Legislature specifically included AS 42.05.711(d) in the Alaska Public Utilities Act, authorizing the Commission to exempt an operation from any or all portions of the Act when no legitimate public interest will be served by regulating the operation. There is a distinct difference between the operation of a public utility engaged in the sale and distribution of electricity, gas or water, or the rendition of telephone service and that of one engaged in the delivery and sale of fuel oil. The distributor of electricity, gas or water and the supplier of telephone service are generally the sole suppliers of their particular product or service in and affecting an entire community. The delivery of fuel oil is not so limited. In the Anchorage area alone, there are at least thirteen suppliers of fuel oil, each of whom compete with the others.

Attached hereto as Exhibit IV is a survey of prices posted by all fuel oil suppliers in the Anchorage area. It is obvious from an inspection of this exhibit that there is a variation in pricing and that competition exists. The prices listed

in the columns for No. 1 and No. 2 fuel with a storage tank capacity of greater than 300 gallons are, to the best information and belief of Applicant, the rates applied with respect to central delivery systems and are also the rates applied to customers who have a 300 gallon, or greater, tank and who are not connected to a central delivery system.

It is also an attribute of a public utility that it be affected with a public interest. A mere legislative declaration with regard to this is insufficient. This point the United States Supreme Court has made clear in Wolff (Charles) Packing Co. v. Court of Industrial Relations, 262 U.S. 522, 539. The United States Supreme Court has also said the following in Williams v. Standard Oil Company, 278 U.S. 235, 240:

> "A business or property, in order to be affected with a public interest, must be such or be so employed as to justify the conclusion that it has been devoted to a public use and its use thereby in effect granted to the public. . . . Negatively, it does not mean that a business is affected with a public interest merely because it is large or because the public are warranted in having a feeling of concern in respect of its maintenance."

In view of this statement, it would seem that the question of whether the business of delivering fuel oil from a central tank through pipes to consumers in a trailer court or subdivision has become clothed with a public interest would turn in some degree upon the question as to whether the public has become peculiarly dependent upon the business and whether the distributor-marketer has evidenced an intent to grant the use of the business to the public. The situation in the case of the centralized supply of fuel oil is very much like that expressed by the United States Supreme Court in the case of Michigan Public Utilities Commission v. Duke, 266 U.S. 570:

> "Plaintiff is a private carrier. His sole business is interstate commerce, and it is limited to the transportation covered by his three contracts. He has no power of eminent domain or franchise under the state, and no greater right to use the highways than any other member of the body public. He does not undertake to carry for the public, and does not devote his property to any public use. He has done nothing to give rise to a duty to carry for others. The public is not dependent on him or the use of his property for service, and has no right to call on him for transportation."

Each consumer in a trailer court or subdivision wherein a centralized supply system is located is perfectly free to obtain his needs from someone other than the system owner. The consumer can have an individual tank, barrel or container positioned at his door for his own individual use.

A private business, operated under private contracts and not devoted to a public use, should not by legislative fiat or order of a public service commission be declared a public utility, since there would be in a sense the taking of private property for public use without just compensation, inconsistent with the due process clause of the Fourteenth Amendment to the United States Constitution.

There is not a dedication to public use of the centralized supply systems for fuel oil in a privately owned trailer court or housing development. Fuel oil, marketed through a pipeline system in a trailer court or housing development, is not sold to the general public like the utility gases. There is no open offer of sale. The supplier is free to refuse to deliver to any individual consumer in the trailer court or housing development. Furthermore, the means of tank wagon transportation, necessary to bring the product to trailer courts and subdivisions, and other incidental matters in connection with the transportation, handling and storage of fuel oil, indicate that the product

is not adaptable to the sale, distribution and furnishing to the public at large in unlimited quantities from a single dealer. Necessarily, the service rendered by a public utility must be so dedicated to the public that it becomes affected with the public interest. There must be an offer to sell to and serve the public generally, the right of use of public property, and in most cases condemnation of private property. Such is not the case in the sale of fuel oil to consumers in a trailer court, housing development, or elsewhere. Each sale is an independent sale and transaction between the seller and an individual customer. The fuel oil supplier does not hold himself out, nor should he be expected, to sell to the public generally.

The nature of the business of fuel oil delivery and the methods employed for marketing its products, together with the fact that there exists competition among the various dealers, contradicts common dedication to the public use. It is the factor of monopoly, absent in the case of centralized supply systems herein under consideration, which gives rise to a reason for public protection through control and regulation. Since the supply of fuel oil in trailer courts and housing developments is a highly competitive industry, to regulate the owners of the centralized systems, designed to more effectively market their product in such locations, would effectively eliminate this competition. The effect of an elimination of competition in an already competitive industry was noted as follows by the Ohio Supreme Court in Paramount Gas Utilities Co. v. Public Utilities Commission (1932), 125 Ohio St. 211, 180 N.E. 897:

> "If any mercantile establishment, selling its goods to the public in general, could have its business adjudged as falling within the jurisdiction of the Commission, and thereby eliminate, or at least greatly diminish competitors from unfairly coming into a determined

field, evidently all distinction between mercantile operations, carried on by persons, partnerships, corporations, or associations, and public utilities, as now generally recognized by law, would promptly disappear, and the Commission would, quite, as promptly, be completely swamped in any effort the Commission might make to take care of the situation thus arising, and the general provisions of the public utilities law would become broadened far beyond anything that the legislature ever had in mind in the enactment of the public utilities statutes."

Denali Fuel Company, and Applicant under protest herein, further contend that none of its operations are subject to the Commission's jurisdiction because none of its operations fall within the definition of public utility stated in AS 42.05.701(2). The Commission contends that a central supply system for fuel oil in a trailer court and housing development falls within the definition of AS 42.05.701(2)(E). This Subsection requires the owning, operating, managing or controlling of a pipeline or system for distribution of petroleum products to the public for compensation. Denali Fuel Company does not charge its customers for the delivery of fuel oil through the centralized system located in trailer courts and housing developments; i.e., there is no charge to the customer for the use or maintenance of the centralized system. Therefore, Denali Fuel Company is not being compensated for the customer's use of a pipeline or system.

The Commission is also referred to Applicant's Exhibit B herein, for an illustration of other governmental means by which standards are set with respect to various aspects connected with central fuel oil delivery systems, thus illustrating that there are already regulations imposed in the interests of the consumer's health and safety.

EXHIBIT IV

COMPETITION SURVEY-FUEL OIL SUPPLIERS - ANCHORAGE

Name of Business	No. 1 Fuel (Stove Oil) Price per Gal. 300 gal. tank or greater	No. 2 Fuel (Furnace Oil) Price per Gal. 300 Gal. tank or greater	No. 1 Fuel (Stove Oil) Price per Gal. Less than 300 gal. tank	No. 2 Fuel (Furnace Oil) Price per gal. Less than 300 gal. tank	Burner Service Work Yes or No	Hourly Rate Burner Service a. Regular Time B. Overtime	Minimum Charge Per Delivery	Twenty-Four Hour Service Yes or No
Ace Fuel	24.7 ¢	23.5 ¢	25.7 ¢	24.5 ¢	No	---	$ 10.00	No
Arctic North Star	24.4 ¢	23.2 ¢	25.4 ¢	24.2 ¢	Yes	a. $ 12.00 b. $ 18.00	None	No
Burnie Heating	22.7 ¢	21.5 ¢	22.7 ¢	21.5 ¢	Yes	a. $ 12.00 b. $ 18.00	Under 100 gal.	Yes
Day and Night Fuel	23.7 ¢	22.5 ¢	24.75¢	23.5 ¢	Yes	a. $ 18.00 b. $ 27.00	20 gal.	Yes
Denali Fuel	23.7 ¢	22.5 ¢	24.7 ¢	23.5 ¢	Yes	a. $ 13.00 b. $ 19.50	$ 10.00	Yes
Inlet Fuel	24.7 ¢	23.5 ¢	25.7 ¢	24.5 ¢	Yes	a. $ 12.00 b. $ 14.00	None	Yes
Katmai Oil	22.7 ¢	21.5 ¢	24.7 ¢	23.5 ¢	No	---	$ 15.00	No
Union Oil	22.7 ¢	No Delivery	22.7 ¢	21.5 ¢	No	---	5 Gal. Minimum	No
Spenard Fuel	23.7 ¢	22.5 ¢	24.7 ¢	23.5 ¢	Yes	a. $ 12.00 b. $ 18.00	$ 10.00	Yes
Peters Creek Fuel	23.7 ¢	22.5 ¢	26.7 ¢	25.5 ¢	Yes	a. $ 12.00 b. $ 12.00	25 Gal. Minimum	Yes
Alaska Heat	23.7 ¢	22.5 ¢	25.7 ¢	24.5 ¢	Yes	a. $ 16.00 b. $ 24.00	$ 10.00	Yes
Norgas	21.0 ¢	20.5 ¢	24.0 ¢	23.0 ¢	No	---	Under 71 Gal.	No
Standard Oil	**21.1 ¢**	No Delivery	**23.1 ¢**	**21.9 ¢**	**No**	**---**	**None**	**No**

DENALI DISTRIBUTORS, INC.

EXHIBIT F

Applicant proposes to charge, for fuel oil delivered through individual metered units connected to applicant's system in a trailer court or subdivision, a price not to exceed the retail price of the least expensive oil of a class suitable to such customer's needs based on the delivered price appertaining to 300 gallon capacity tanks posted in the Greater Anchorage area.

RATES

Stove oil : $0.237 per gallon - No. 1 Fuel

Furnace oil : $0.225 per gallon - No. 2 Fuel

SECURITY DEPOSIT

Per Customer: $25.00

INSTALLATIONS

No charge to customer for installation of storage tank, pipeline from tank to location or meter setting.

CONNECTION FEE

Per Customer: $15.00
This charge is made only if necessary to install copper tubing from the meter to customer's furnace and for firing furnace.

REFUELING

Automatic checking and refilling of the storage tank provided without additional charge to customers.

SERVICE LABOR CHARGE

No charge to customers for repair to meters, storage tank or pipes between them.

Furnace Service (If requested): $13.00 per hour
$19.50 per hour overtime

CYCLE BILLING PERIOD

Monthly

TERMS

1% service charge if bills not paid within sixty (60) days.

Denali Fuel Company, as it presently operates, posts the above rates for customers in trailer courts and subdivisions connected to a common storage tank located at the court or subdivision. These rates are the same posted rates for all customers having a storage tank with a capacity greater than 300 gallons. These rates do not exceed the posted rates for customers having a storage tank with a capacity less than 300 gallons, who are not connected to a trailer court or subdivision system.

No charge is made to any customer for the use or maintenance of the centralized distribution system.

NOTICE OF APPLICATION FOR

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

The ALASKA PUBLIC UTILITIES COMMISSION hereby gives notice that PETROLANE-ALASKA GAS SERVICE, INC., PETROLANE-ANCHORAGE GAS SERVICE, INC., and PETROLANE-QUEEN GAS, INC. have filed a joint application (Cause No. U-71-11) for an exemption from Sections 221-281 of the Alaska Public Utilities Commission Act (AS 42.05) or, in the alternative, an application (under protest) of PETROLANE-ALASKA GAS UTILITIES, INC. for a certificate of public convenience and necessity to operate as an LP-Gas fuel delivery public utility in the following areas: Dimond Estates, Plaza 36, Kathy O' Estates, Frank's Trailer Court, Alaska Village, Trailer City, Top Hand, Maggie's and East Anchorage Mobile Home at Anchorage; Best View at Chugiak; Badger Mobile Homes, Wayne's Trailer Park, Lakeview Terrace, Birdview and Wildwood Trailer Court at Fairbanks; Ocean Crest, Mt. View Trailer Court, and M.B. Development at Ketchikan; Mobil Haven and Thunder Mt. at Juneau; Perron's Trailer Court at Valdez. The application contains tariffs which include rates and regulations relating to deposits, connection fees, installation, automatic refueling, service labor charges, credit policies, taxes, billings, terms of payment, and other provisions for service. Seperate rate schedules are included for Anchorage, Fairbanks, Juneau, Chugiak, Valdez and Ketchikan. More detailed information may be obtained from the applicant whose address is 1200 Whitney Road, Anchorage, Alaska 99501. The complete filing is available for inspection at the offices of the Alaska Public Utilities Commission, 700 MacKay Building, 338 Denali Street, Anchorage, Alaska 99501.

Any interested party may file with the Commission by 4:30 P.M. on March 15, 1971, a statement of his views and specific reasons in favor of,

or in opposition to, the granting either of the exemption as requested or else of authority to the applicant to operate as an LP-Gas fuel delivery public utility, together with written confirmation that the same statement has also been served on the applicant.

DATED at Anchorage, Alaska this 25th day of February, 1971.

J. Lowell Jensen
Deputy Director

SB-248

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

M E M O R A N D U M

January 25, 1972

TO: Members of the House Judiciary Committee

FROM: Russell E. Mulder

SUBJECT: Uniform Probate Code

At various times since the adjournment of the 1971 session, the Legislative Council has solicited the courts, the Alaska Bar Association, local bar associations and individual bar members to study the proposed Uniform Probate Code and submit their comments and suggestions. Attached are the replies received which you will probably wish to consider concerning SB 248.

It is encouraging to note that while both the Alaska Bar Association and Probate Master Gray have offered various suggested changes, they both are in agreement that the Uniform Probate Code is an acceptable approach for probate revision.

I am also attaching a series of correspondence between Professor Richard V. Wellman (chief drafter of the UPC), Frederick O. Eastaugh (one of Alaska's members of the National Conference of Commissioners on Uniform State Laws) and Charles Horowitz (also a member of the National Conference) relating to the need for the retention of certain provisions in the UPC which have been objected to by some. The sections in question are AS 13.16.040 and AS 13.16.455. I believe Professor Wellman's explanations should be helpful.

Att.

REM:ic

Superior Court
State of Alaska
THIRD JUDICIAL DISTRICT
941 FOURTH AVENUE, ROOM 224
ANCHORAGE, ALASKA
99501

KEIFER L. GRAY

STANDING MASTER
PROBATE MASTER

June 15, 1971

Honorable Edward V. Davis
Acting Presiding Judge
Superior Court
Anchorage, Alaska

Dear Judge Davis:

In response to your request that I furnish you suggestions in connection with the revision of the Probate Code to be presented at the City Council chambers in this City on June 25 and 26 since I will not personally be here at that time, you are informed that the following suggestions are made.

It is suggested that wherever the word "county" is used that we substitute instead "judicial district."

ESTATES

Section 1-401, regarding notices under paragraphs (1) and (2), it is suggested "10 days" rather than "14 days" as set forth in the proposed code.

Section 2-109, paragraph (1), add "provided the Native rights through blood of any person so adopted may be retained if provided for in the decree of adoption."

Section 2-401, the homestead allowance should be a minimum of "$8,000" instead of "$5,000" as listed in the proposed bill.

Section 2-502, add a paragraph (a) which states "Wills other than self-proving wills under Section 2-504 may be proven by

the affidavits of the two witnesses to the will or, where one witness is deceased or cannot be located, by the testimony of one subscribing witness and other proof satisfactory to the Court."

Add Section 2-903. [Procedure for Non-Intervention Wills.]
If the last will and testament of a decedent provides that the estate shall be settled without the intervention of any Court, title of the decedent passes to the devisee or heirs on death. It is necessary only that the executor, or person or corporation nominated in his place if he fails to serve, submit the will to the Court, prove it, secure letters testamentary, file an inventory, and submit proof of solvency. Thereafter, the estate shall be managed and settled without the intervention of any Court. However, notice to creditors requiring them to submit their claims within three months shall be published once each week for four weeks in a newspaper of general circulation in the judicial district where the will is probated. The party probating the will may file a final account with the Court if he desires and he shall make a report of any inheritance tax due the State or the United States and pay the same from estate funds. Nothing contained in this section shall be construed to prevent the Court from ordering the filing of a final account if a petition demanding a final account is filed by an heir, devisee, legatee, creditor, the State or Federal Government or a person showing he is adversely affected by the failure to file the account. Provided further that a full and complete report must be submitted to the Court within one year from the date of filing such will for probate and that proof of final distribution should be filed simultaneously. Extensions beyond this period of time may be granted only on a specific order by the Court for good cause shown and then not to exceed six months.

Section 3-203(f), paragraph (1), substitute the figures "19" for the figures "21."

Section 3-706, the last paragraph after the comma, instead of "he may file the original of the inventory with the court" it should read "he shall file the original of the inventory with the court," substituting the word "shall" for the word "may."

Section 3-1201(1), change the value from "$5,000" to "$6,000."

Section 3-1204, add paragraph (d), "The Superior Court may authorize the disposal in a manner it prescribes of personal property which has not been disposed of under this section by the end of six months if no heirs or claimants have been located."

Add Section 3-1205. [Settlement Directed by Court.]
When a judge receives information that a person has died in his judicial district leaving an estate of $6,000 or less and no qualified person has appeared to take charge of the assets, the judge may immediately appoint some person, corporation, or attorney to settle the estate in the manner provided for in Section 3-1201 through 3-1204 of this chapter or the appointee may administer the estate in the manner provided for in the administration of small estates.

GUARDIANSHIPS

Section 5-103, item (1), the age should be "19 years."

Section 5-104, the time should be "not exceeding one year unless sooner revoked."

Section 5-204, add "or has failed to properly exercise his duties as such."

Section 5-207(e), add this paragraph to read, "A bond in the amount to be fixed by the Court may be required of the guardian as the circumstances require."

Section 5-209(d), add "at least once every year unless ordered sooner."

Section 5-424, change the age from "18" to "19."

From my examination of the Uniform Probate Code the above suggestions for changes have been made. It is felt that the code itself embodies an excellent change and one which sets forth clearly the law in every case which would be a distinct

advantage to our present code since a great deal of our present code has been built up solely through practice and does not set forth the facts as it should. It is my belief that the adoption of this code will greatly strengthen and simplify the handling of probate matters in the State and it is recommended that it be adopted.

Very truly yours,

Keifer L. Gray
Probate Master

KLG:ljd

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November 29, 1971

Legislative Affairs Agency
The Legislature
State of Alaska
Pouch Y State Capitol
Juneau, Alaska 99801

Attention: Russell E. Mulder, Deputy Director

Subject: Proposed Probate Code

Gentlemen:

In response to your memorandum on this subject dated October 4, 1971 addressed to members of the Alaska Bar Association, and at the direction of the Board of Governors of the Alaska Bar Association I report herewith the comments of the Real Property, Probate and Trust Committee of the association as reported to the Board of Governors at Anchorage, 6 November 1971. These comments and suggestions set forth the views of the Board of Governors. They are not intended to be totally exhaustive, but do reflect the views of the Association as expressed by the said committee, as follows:

1. The committee, based upon comments of reviewers in other states, considered recommending elimination or revision of Part 3 of the UPC (Informal Probate and Appointment Proceedings), (Article 3 of the work draft copy of the Legislative Affairs Agency). Objections were voiced in the belief that insufficient controls to protect creditors and heirs was afforded. However, it is concluded that sufficient safeguards are provided in the uniform code and no objections are taken to Article 3 as set forth in the redraft.

2. On the whole the UPC is acceptable, to the committee with few exceptions which are listed below.

a. UPC Section 2-401, Article II, Exempt Property and Allowances (Article 4, Sec. 13.11.125 et seq. of work draft copy). The use of a description such as "Homestead Allowance" for the widow of decedent and for minor and

dependent children might well be confused with the "Homestead Exemption" provided under A.S. 09.35.090, and the exemptions provided in Sec. 13.11.130 of the work draft copy may be confused with the exemptions provided by A.S. Sec. 09.35.080. We read the probate allowances and exemptions to be in addition to the homestead exemption and other exemptions as now provided under A.S. 09.35.080 and 09.35.090. We recommend that the probate code eliminate the description "Homestead Allowance" and substitute "Widow's and Childrens' Allowance". Likewise, we recommend the description "Exempt Property" be changed to "Personal Property Allowance".

b. Section 13.16.450 of the work draft copy in conformance with the uniform code allows four months for presentation of claims by creditors. We recommend this be changed to ninety (90) days to conform to our present probate code. Ninety days is considered sufficient, and will shorten the length of the probate proceedings.

c. We disagree with the power given a foreign personal representative under Section 4-201 of the UPC, which requires only that the non-resident fiduciary may secure removal of assets of a non-resident decedent from Alaska upon furnishing a copy of his appointment and an affidavit as to death, Alaska administration, and entitlement to payment. Nothing is said or provided concerning Alaska debts of the non-resident decedent, except that should a creditor in Alaska know of the death and the whereabouts of assets in Alaska, that creditor may object. This is considered inadequate and likely to result in no recovery in most cases. Suit against the foreign representative in the foreign jurisdiction is not a good remedy. We recommend that Sec. 4-201 be expanded to require some notice to Alaska creditors prior to removal of the assets from Alaska. We would add the following additional requirement to Sec. 4-201.

> "In addition to the foregoing requirements the domiciliary foreign representative shall furnish to any person having possession or control of personal property, or other asset sought to be removed from Alaska, proof that notice has been published in a newspaper of general circulation in the Borough or City where such assets are

located, at least once a week for three (3) weeks, that such property or other asset will be removed unless objections are made. Such notice shall specify the personal property or asset and its location in Alaska."

d. Section 2-901 UPC (Sec. 13.11.315 of draft copy) provides for deposit of wills with any court. This should be restricted to the Superior Courts inasmuch as the inferior courts, particularly in sparsely settled areas will not have the personnel or facilities to administer this provision. Basically we feel that Sections 2-901 and 2-902 might well be eliminated since they will burden the courts with additional duties, although it is assumed that the rules of court would require a charge to be made? The commentary to the UPC suggests that a central filing system be established soon and a statute be enacted requiring the registrar of the will to notify the central bureau so that any inquiries could be directed to the central bureau. All this seems unnecessary, and will require no end of additional court rules, record keeping, etc.

Should any further comments be desired it is suggested that you direct any inquiries directly to Kenneth McCaskey, Chairman, Real Property, Probate and Trust Committee, Alaska Bar Association, 921 W. Sixth Avenue, Anchorage, Alaska 99501.

Respectfully Yours,

Peter LaBate

Peter LaBate, President
Alaska Bar Association

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November 24, 1971

RECEIVED
NOV 29 1971
ROBERTSON, MONAGLE
EASTAUGH & BRADLEY

F. O. Eastaugh, Esq.
Commissioner on Uniform State Laws
P. O. Box 1211
Juneau, Alaska 99801

Dear Commissioner:

Thank you very much for your letter of November 18, 1971 and the most welcome news contained therein that the Uniform Probate Code now stands a good chance of passage at the forthcoming session of the Alaska legislature.

I have examined with interest the proposed changes summarized in Mr. Mulder's memorandum addressed to the members of the Alaska Bar Association and your own comments.

Because of the pressures of my work, I will be unable to do much more than call attention to a matter which I hope will be reconsidered. It is your Item (4), which expresses a doubt concerning the wisdom of establishing an absolute three-year limit on commencing probate. I have talked to our chief reporter, Richard V. Wellman, and have asked him to write to you directly so that you may have the benefit of his views on the importance that the three-year limitation plays in the Code. Would it be possible at the same time for you to send him a copy of the material which you sent me so that if anything occurs to him that should be called to your attention he may be in a position to write you concerning the matter. Will you please send me a copy of your letter so that both he and I will be aware of what each is doing.

Again, my thanks to you and my personal regards to both yourself and Mrs. Eastaugh.

Sincerely,

CHARLES HOROWITZ

CH:vm

P.S. While talking to Professor Wellman I was informed that he had just received a letter from Professor Richard Effland of Arizona State University that Arizona will probably be introducing the Code at the next legislative session.

THE UNIVERSITY OF MICHIGAN
LAW SCHOOL
HUTCHINS HALL
ANN ARBOR, MICHIGAN 48104

November 29, 1971

Comm. Disc.
RECEIVED
DEC - 3 1971
ROBERTSON, MONAGLE
EASTAUGH & BRADLEY

Frederick O. Eastaugh, Esq.
Box 1211
Juneau, Alaska 99801

Dear Fred:

Charles Horowitz telephoned recently to tell me that an important Alaskan committee had decided to make affirmative recommendations to your Legislature regarding the Uniform Probate Code. This is very good news. It puts Alaska with Arizona which, as I learned only a day or so ago, now has a totally favorable recommendation from a Law Revision Commission committee that spent a year in study of U.P.C.

Charles also indicated that he understood from your account to him that the Alaskan committee's recommendation would delete §3-108 which puts a three year from death time limit on proceedings to probate wills or administer estates. He asked me what I thought of this deletion and I responded that it would make hash out of much that Article III is designed to accomplish. He urged me to get my views on to you. This letter is designed to do just that.

The Committees and Reporters who created U.P.C. were not certain that three years from death was the correct deadline for probate and administration proceedings, but they were unanimously of the view that some cut-off on the possibility of probate and administration was necessary.

In Model Probate Code, §83 proposes a 5 year from death time limit on probate and administration proceedings. The statutory notes to M.P.C. report variations in state statutes prescribing probate limitations ranging from one year to twenty.

We know that at common law, there was no fixed time limit barring probate of a will. But, it was also true at common law that a will of land was like a deed in that no probate was essential as a preliminary to use of a will in evidence as a muniment of title.

But quite apart from historic sources concerning limitations on probate, §3-108 serves so many purposes in the functioning of Article III of U.P.C. that its deletion will cause serious difficulties unless it is offset by some careful re-drafting.

Consider these points:

(1) 3-108's three year limitation on probate serves as the time limit for contest of an informally probated will.

(2) 3-108's limitation serves to end questions concerning late-discovered wills that turn up after an estate has been distributed as intestate.

(3) 3-108's limitation period settles an estate as intestate and as lien-free if no will is probated and no administration is commenced. The public has been demanding a way by which inheritances can be perfected without an official act. Section 3-108 teams up with 3-101 to provide such a way. Few heirs will be content with the fact that inheritances will be non-marketable for the period prescribed by 3-108, so it's unlikely that many will avail themselves of the possibility. Nevertheless, it's quite important for good will purposes, and to restore public confidence in probate, that the possibility be available. Even those who use it may find title examiners insisting on a court determination of heirship (not barred by 3-108), but then again, not all heirship patterns are disputable or difficult to prove.

(4) The bar of 3-108 on administration bars the elective share proceedings under Article II, Part 2.

(5) The limitations in §3-1006 will not make any sense if 3-108 is deleted.

(6) Deletion of 3-108 seriously undercuts the effort reflected in Article II, Part 1 to make intestacy a recommended estate plan for many persons of ordinary means. This objective, in turn, is integral to the effort to re-establish confidence in sole ownership until death, and in state laws governing inheritance.

(7) Leaving 3-108 in the Code will not reduce the incentive for many inheritors and fiduciaries to use protective adjudications. The time for the end of questions relating to inheritances can be accelerated very appreciably by use of the formal proceedings provided in Article III, Part 4 and in §3-1001 and 3-1002.

I hope you can get your committee to reconsider the proposal to abandon this important time limit. Please let me know if I can be of any assistance in clarifying the matter.

Sincerely,

Richard V. Wellman

RVW:cjk

cc: The Honorable Charles Horowitz

ROBERTSON, MONAGLE, EASTAUGH & BRADLEY
ATTORNEYS AT LAW
P. O. BOX 1211
JUNEAU, ALASKA 99801

R. E. ROBERTSON (1895-1961)
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200 NATIONAL BANK OF ALASKA BLDG.
PHONE 586-3340
CABLE ADDRESS: ROMEA

December 3, 1971

Professor Richard V. Wellman
The University of Michigan Law School
Hutchins Hall
Ann Arbor, Michigan 48104

COPY

Re: Uniform Probate Code

Dear Dick:

Thank you for your letter of November 29 which contains exactly the information I was about to write you for.

I can accept all of the reasons you so aptly demonstrated for the questioned provision in the Code regarding the three year period of limitations for proceedings to probate wills or commence the administration of estates.

However, we have a problem in Alaska that might not be shared in the Lower 48. Most of us have at one time or another been faced with the necessity of probating estates some ten or more years after death in order to clear title to realty. We usually find it necessary to probate one or two estates in order to clear title and are sometimes able to do so for a nominal cost less than the cost of a quiet title action.

As you suggest 3-108 may be the perfect solution to such problems, and if the limitation period of this section will not satisfy the title companies it could well be that the suggested court determination of heirship could be handled at nominal cost to solve most problems.

Your comments or further suggestions would be helpful.

Our Legislative Council met this past Monday and it is my understanding this point was discussed but left for legislative committee action when the bill is introduced. I am accordingly taking the liberty of sending copies of this letter and of your letter, to Senator Robert Ziegler, who is Chairman of our Legislative Council and who will be most influential in determining the action to be taken in the forthcoming session, and also to John Elliott who as you know is Director of Legislative Affairs.

As Charles Horowitz suggested, I am enclosing a copy of the Code modified to conform to the Alaska Bill Drawing Manual with the accompanying memorandum from Russell E. Mulder, Deputy Director of Legislative Affairs.

I was in Anchorage last week to attend Bob Eastaugh's wedding. Jim Bradley came up for it. Avrum Gross is reviewing the Code for the Juneau Bar Association. Both Jim and Av wanted to be remembered to you.

Sincerely,

FOE:bh
Encs.
cc: The Honorable Charles Horowitz
Senator Robert Ziegler Sr.
John Elliott, Esq.

F. O. Eastaugh

RECEIVED
DEC 3 1971
LEGISLATIVE AFFAIRS
AGENC

UNIFORM PROBATE CODE—ILLEGITIMACY—Inheritance and the Illegitimate: A Model for Probate Reform

I. INTRODUCTION

On May 20, 1968, the United States Supreme Court handed down landmark decisions in *Levy v. Louisiana*[1] and *Glona v. American Guarantee & Liability Insurance Company*.[2] In *Levy*, five illegitimate children sued under article 2315 of the Louisiana Civil Code[3] for damages for the wrongful death of their mother. The suit was dismissed by the Louisiana district court, which held that illegitimate children had no cause of action under the Louisiana statute. In *Glona*, a Texas domiciliary brought a diversity action in federal district court in Texas for the wrongful death of her illegitimate son, caused by an automobile accident in Louisiana. The Texas district court dismissed the suit, holding that under Louisiana law the mother had no cause of action for the death of her illegitimate child. The Supreme Court granted the petition for certiorari in *Glona*[4] and noted probable jurisdiction in *Levy*.[5] With Justice Douglas writing for a majority of six in each case,[6] the Court reversed both decisions, holding that the Louisiana wrongful-death statute denied equal protection of the law both to illegitimate children and to their parents.

Levy and *Glona*, read narrowly, stand only for the proposition that a state wrongful-death statute cannot discriminate between beneficiaries solely on the basis of legitimacy. Read in their broadest sense, however, the opinions in the two cases condemn generally any classification based on legitimacy. A major problem with the opinions is that Justice Douglas did not specify the grounds on which he based his decision. Thus, the potential scope of the holdings is open to question. Several recent cases[7] have interpreted *Levy* to condemn all classifications based on legitimacy. Similarly,

1. 391 U.S. 68 (1968).

2. 391 U.S. 73 (1968).

3. LA. CIV. CODE ANN. art. 2315 (West Supp. 1969).

4. 389 U.S. 969 (1967).

5. 389 U.S. 925 (1967).

6. Justices Black and Stewart joined Justice Harlan, dissenting, in both cases. 391 U.S. at 76.

7. *See* King v. Smith, 392 U.S. 309 (1968), especially Justice Douglas, concurring, at 392 U.S. at 336 (AFDC payments); Munn v. Munn, 450 P.2d 68 (Colo. 1969) (support); R—— v. R——, 431 S.W.2d 152 (Mo. 1968) (support); *In re* Estate of Jensen, 162 N.W.2d 861 (N.D. 1968) (inheritance). *But see* Strahan v. Strahan, 304 F. Supp. 40 (W.D. La. 1969) (inheritance).

several commentators have argued persuasively that the *Levy* reasoning should be extended by a test of "close scrutiny" under the equal protection clause of the fourteenth amendment,[8] to areas of the law other than wrongful death and should be extended with equal force to the child-father relationship as well as the child-mother relationship.[9]

One area of the law in which there traditionally has been discrimination against the illegitimate is that of inheritance. While most states allow an illegitimate to inherit from his mother by intestate succession on an equal footing with legitimate offspring,[10] only three states[11] allow an illegitimate to inherit from the father equally with legitimate offspring. Rather, most states require the father formally to recognize or acknowledge his illegitimate offspring in order for the child to be able to inherit from the father by intestacy.[12] In a few other states a judgment in a paternity action gives the illegitimate child the right to inherit from his father.[13] Not all states allow illegitimates to inherit from the mother's family, and only a few allow them to inherit from the

---

8. The courts tend to apply a close-scrutiny test over classifications when the interests at stake are deemed fundamental (*see* Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966) (voting) and Douglas v. California, 372 U.S. 353 (1963) (right of the criminally accused to a proper defense)), or when the classification involved is inherently suspect (*see* Brown v. Board of Educ., 347 U.S. 483 (1954) (race)).

9. The general consensus among the commentators seems to be that either a close-scrutiny test should be applied or, in any event, the traditional state interests in supporting discrimination against illegitimates—to encourage marriage, to discourage promiscuity, and so forth—should no longer be considered "rational." *See generally* Krause, *Equal Protection for the Illegitimate*, 65 MICH. L. REV. 477 (1967); Krause, *Legitimate and Illegitimate Offspring of Levy v. Louisiana—First Decisions on Equal Protection and Paternity*, 36 U. CHI. L. REV. 338 (1969); Gray & Rudovsky, *The Court Acknowledges the Illegitimate: Levy v. Louisiana and Glona v. American Guarantee & Liability Insurance Co.*, 118 U. PA. L. REV. 1 (1969); Comment, *The Expanding Rights of the Illegitimate*, 3 CREIGHTON L. REV. 135 (1970); Note, *Equal Protection and the Applicability of Levy v. Louisiana to Succession Law*, 44 TUL. L. REV. 640 (1970); Note, *Inheritance Rights of Illegitimate Children Under the Equal Protection Clause*, 54 MINN. L. REV. 1336 (1970); Recent Development, 21 CASE W. RES. L. REV. 292 (1970).

10. *See* Note, *Illegitimacy*, 26 BROOKLYN L. REV. 45, 76-79 (1959).

11. Arizona, North Dakota, and Oregon have abolished illegitimacy as a legal status. *See* ARIZ. REV. STAT. ANN. § 14-206 (1956) ("A. Every child is the legitimate child of its natural parents. . . . B. Every child shall inherit from its natural parents and from their kindred heir, lineal and collateral, in the same manner as children born in lawful wedlock. . . ."); N.D. CENT. CODE § 56-01-05 (Supp. 1969) ("Every child is hereby declared to be the legitimate child of his natural parents. . . . He shall inherit from his natural parents, and from their kindred heir, lineal and collateral. . . ."); ORE. REV. STAT. § 109.060 (1968) ("The legal status and legal relationships and the rights and obligations between a person and his descendants, and between a person and his parents, their descendants and kindred, are the same for all persons, whether or not the parents have been married.").

12. *See* Note, *Illegitimacy*, 26 BROOKLYN L. REV. 45, 76-79 (1959).

13. *Id.*

father's family.[14] Furthermore, when a testator makes a bequest to his "children" in a will, many states have construed that term to include only legitimate children.[15] Thus, most states discriminate against illegitimates in their inheritance laws, although there are local variations concerning the manner and extent of the discrimination.

In light of *Levy* and *Glona*, and their progeny, the state inheritance statutes that discriminate on the basis of legitimacy are of dubious constitutionality.[16] Moreover, there has been over the past decade a perceptible trend in state and federal laws to bring the illegitimate child into a position of parity with his legitimate counterpart with regard to various legal rights.[17] Furthermore, commentators such as Norman Dacey[18] have soundly criticized probate laws on various grounds, and have exerted discernible pressure for a reform of probate law into a system more responsive to present-day needs. In light of these developments, therefore, it is likely that many states will be revising their inheritance statutes to provide illegitimates with certain legal rights that compare favorably with those accorded legitimate offspring.

The Uniform Probate Code (Code),[19] which was approved by the American Bar Association in August 1969, deals with the prob-

14. *Id.*

15. *See* Annot., 34 A.L.R.2d 4 (1954) (Right of Illegitimate Child To Take Under Testamentary Gift to "Children").

16. The commentators have painstakingly explored the constitutional issues involved. *See* sources cited at note 9 *supra*. In general, the consensus seems to be that while the right to inherit by intestacy—being a matter of statutory grace—is probably not a basic civil right, any classification based on legitimacy is probably inherently suspect—just as is a classification based on race. Thus the strict test of close scrutiny under the equal protection clause should apply. *See* note 8 *supra*. Furthermore, myths of a "rational purpose" (for a statement of the rational-purpose or reasonable-basis test of equal protection under the fourteenth amendment, see Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911)) to support discrimination against illegitimates—discouraging promiscuity, preserving the family unit, promoting morality—have been largely exploded by the same commentators. On the other hand, a federal district court in Strahan v. Strahan, 301 F. Supp. 40 (W.D. La. 1969), recently held Louisiana's intestacy statute, which denies to unacknowledged illegitimates the rights of inheritance enjoyed by legitimate issue of an intestate decedent, to be reasonable under the rationality test of the equal protection clause—the test that the court felt was applicable. The court identified two rationales sufficient to justify the statutory discrimination: (1) encouraging marriage and discouraging promiscuity, and (2) Louisiana's interest in maintaining stability of land titles. 304 F. Supp. at 42. The *Strahan* decision is criticized in Comment, *The Expanding Rights of the Illegitimate*, 3 CREIGHTON L. REV. 135, 155 (1970); Note, *Equal Protection and the Applicability of Levy v. Louisiana to Succession Law*, 44 TUL. L. REV. 640, 642 (1970); Recent Development, 21 CASE W. RES. L. REV. 292, 293-94 (1970).

17. *E.g.*, WIS. STAT. ANN. § 852.05 (Supp. 1970), and official comment. *See* Note, *The Rights of Illegitimates Under Federal Statutes*, 76 HARV. L. REV. 337 (1962).

18. *See, e.g.*, N. DACEY, HOW TO AVOID PROBATE (1966).

19. The Uniform Probate Code [hereinafter UPC] was promulgated by the National Conference of Commissioners on Uniform State Laws, and approved by the House of Delegates of the American Bar Association in August 1969.

lem of inheritance by illegitimates both with regard to intestate succession—section 2-109—and also with regard to the construction of a bequest to "children" by will—section 2-611. This Note will examine the issue whether the Code, which presents a comprehensive model for probate reform, deals with the problem of inheritance by illegitimates in an appropriate, desirable, and constitutional manner. The Code provisions concerning illegitimacy relate to many other provisions of the Code in which childhood status is relevant;[20] therefore, it will be useful to analyze these other provisions in order to assess the over-all effect of section 2-109 and section 2-611 in an integrated probate system. On the other hand, the formulae set out in sections 2-109 and 2-611, if constitutional, could constitute a desirable model for probate reform—even apart from the entire reform package of the Code—for those states that wish to, or, indeed, who are forced to, reform their laws in this important area.

II. The Illegitimate and Intestate Succession Under the Uniform Probate Code

A. *Section 2-109*

1. *Meaning*

Article 2 of the Code deals with intestate succession and wills. Under that article, section 2-109 defines "child" for the purpose of intestate succession. Furthermore, since section 1-201, the general definitional section of the Code, adopts the section 2-109 definition of "child," that definition is established for all purposes throughout the Code.[21] Section 2-109 provides:

> If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person,
>
> (1) an adopted person is the child of an adopting parent and not of the natural parents except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent.
>
> (2) In cases not covered by (1), a person born out of wedlock is a child of the mother. That person is also a child of the father, if:
>
> (i) the natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or
>
> (ii) the paternity is established by an adjudication before the death of the father, or is established thereafter by clear and con-

20. *See* pt. II. B. *infra*.

21. UPC § 1-201(5) provides: "'Child' includes any individual entitled to take as a child under this Code by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild or any more remote descendant."

> vincing proof, except that the paternity established under this subparagraph (ii) is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his, and has not refused to support the child.

The language of the statute seems to be clear for the most part, but there may be an ambiguity that could best be dealt with in a comment to the statutory language. Subsection (2) is intended to define the right of an illegitimate who is not subsequently adopted under subsection (1) to inherit by intestacy. Such a person is always the "child" of the mother, and is also the "child" of the father if he is legitimated by the marriage of his natural parents or if he or his mother can establish the identity of the natural father to the satisfaction of subparagraph (2)(ii) of the section. Although the language of subsection (2) seems to be clear on its face, it appears to contain a latent ambiguity in that subparagraph (2)(i) runs headlong into "one of the strongest presumptions" in this area of the law—the presumption of legitimacy.[22] This doctrine, which derives from English law[23] and which is very common in American jurisdictions,[24] raises a strong presumption, usually rebuttable only by proof of impotency or nonaccess, that any child born in wedlock is legitimate.[25] The presumption is an outgrowth of the time when bastardy was not only a source of reproach and ridicule, but also a source of grave material and legal disadvantage. Although the stigmas attached to bastardy, both personal and legal, have gradually dissipated somewhat over the years, the presumption has remained.[26] The source of the crucial ambiguity lies in the fact that the term "wedlock" is used in a more narrow sense in the Code than it is in the presumption of legitimacy.

It seems clear from a reading of section 2-109 that the policy of that section is to enable illegitimates to inherit from their natural parents—hence "wedlock" is intended to mean marriage between the natural parents of a child. The policy of the presumption of legitimacy, however, is to avoid bastardization of as many children as possible—hence "wedlock" simply means any marriage at all. Accordingly, the presumption has been held to override an acknowledgment by the true father from an adulterous relationship when there was no clear proof of nonaccess or impotence of the legal husband.[27] Therefore, since the policy of section 2-109

22. *See* Lanford v. Lanford, 151 Colo. 273, 377 P.2d 115 (1962).

23. Banbury Peerage Case, 1 Sim. & St. 153, 57 Eng. Rep. 62 (Ch. 1811).

24. *See, e.g.*, Lanford v. Lanford, 151 Colo. 273, 377 P.2d 115 (1962); Ellis v. Woods, 214 Ga. 105, 103 S.E.2d 297 (1958).

25. *See, e.g.*, Gravely v. Gravely, 353 S.W.2d 333 (Tex. 1961).

26. *See* V. Saario, Study of Discrimination Against Persons Born Out of Wedlock 143-47 (1967).

27. Reyes v. Flemming, 158 F. Supp. 566 (D.P.R. 1958); George v. Bertrand, 217

dictates that "wedlock" means marriage only between the natural parents, that interpretation should be made explicit either in the statute or in a comment to that section, and the presumption of legitimacy should be similarly limited in those jurisdictions that may adopt the Code formulation of section 2-109.

2. *Constitutionality*

Assuming that section 2-109 can be read literally, subject to the above qualifications, it must, of course, pass the test of the equal protection clause of the fourteenth amendment in order to be valid. While Justice Douglas did not clearly specify the equal protection test which he applied in *Levy and Glona*,[28] it appears that section 2-109 would be valid vis-à-vis inheritance by illegitimate children under either the rationality test[29]—the basic test of equal protection—or under the close-scrutiny test[30]—the test applied when a basic civil right or an inherently suspect classification is involved.[31] The provision would be valid for the simple reason that it makes no classification on the basis of illegitimacy. Section 2-109(1) makes no distinction whatever between legitimates and illegitimates, and section 2-109(2) merely establishes a burden of proof[32] of paternity in the child-father relationship which the illegitimate must meet before he can inherit from his natural father. Substantively, section 2-109(2) takes the position that all children have the right to inherit equally from their natural parents. The draftsmen of the provision recognized, however, that while there are few, if any, problems of proof in ascertaining the child-mother relationship, such problems may be substantial indeed in ascertaining the child-father relationship. Thus, section 2-109(2)(ii) sets out a standard of proof for the illegitimate or his next friend to meet in establishing paternity if it has not been established by adoption under subparagraph (1). By imposing a burden of proof, then, section 2-109(2) does not entail a classification that must pass muster before the appropriate equal protection test, but rather, it entails a standard that must be measured by due process considerations.

S.2d 47 (Ct. App. La. 1968), *writ of review denied*, 253 La. 647, 219 S.2d 177, *cert. denied*, 396 U.S. 974 (1969).

28. *See* text accompanying notes 7-9 *supra*.

29. *See* Morey v. Doud, 354 U.S. 457, 465-66 (1956). *See also* note 16 *supra*.

30. *See* McLaughlin v. Florida, 379 U.S. 184 (1964); Oyama v. California, 332 U.S. 633 (1948); Korematsu v. United States, 323 U.S. 214 (1944). *See also* note 8 *supra*.

31. Gray & Rudovsky, *supra* note 9, at 15, suggest that perhaps the Court in *Levy* and *Glona* has taken a middle ground between the rationality and strict-scrutiny tests.

32. In *Glona*, Justice Douglas suggested that the danger of fraudulent claims is properly handled by an appropriate burden of proof rather than by making a classification which amounts to a denial of equal protection. 391 U.S. at 75-76.

One of the prime purposes of imposing a burden-of-proof requirement is to prevent fraudulent claims.[33] So stated, such a requirement certainly serves a valid state purpose. However, if the burden imposed is too heavy—that is, if it is tantamount to a bar to recovery in a substantial number of cases—it may operate as a deprivation of property without due process of law on those unable to meet the unreasonable burden.[34] It does not appear, however, that the standard adopted in section 2-109(2)(ii) is so onerous as to be violative of due process. If the only means of establishing paternity were by an adjudication before the death of the father, the standard would be of doubtful validity since the illegitimate's legal rights would be determined by the volitional acts of other people—the father by acknowledgment, or the mother by prosecuting a paternity suit. By allowing clear and convincing proof of paternity after the father's death, however, the statute, unlike many of the present provisions requiring acknowledgment by the father while he is alive,[35] allows the child or his next friend to gather appropriate proof of paternity in cases in which the father has died without acknowledging the child. The "clear and convincing" standard of section 2-109 is consistent with other burdens of proof relating to legal relationships involving deceased persons.[36] Thus, it appears that the provisions of section 2-109 governing inheritance of the illegitimate child by, through, or from his natural father are constitutional.

On the other hand, there may be raised grave doubts concerning the constitutionality of that portion of section 2-109 relating to the right of a father or his kindred to inherit from or through his illegitimate child. The Code provides that even if paternity is established under section 2-109(2)(ii), the father and his kindred cannot inherit from or through the child "unless the father has openly treated the child as his, and has not refused to support the child."[37] The rationale behind that provision seems to be to encourage fathers at least informally to acknowledge and support their illegitimate children. While this purpose may be a rational one under traditional equal protection analysis, it cannot stand if the close-scrutiny test of equal protection is applied. The Supreme Court has held in *Skinner v. Oklahoma*[38] that a statute touching

33. 391 U.S. at 76.

34. *See, e.g.*, Manley v. Georgia, 279 U.S. 1 (1929).

35. *See* note 12 *supra* and accompanying text.

36. *Compare, e.g.*, N.M. STAT. ANN. § 20-5-2 (Supp. 1969) (interested party cannot obtain judgment against a deceased person on his own evidence unless such evidence is corroborated by other material evidence) *with* W. VA. CODE ANN. § 57-3-1 (1966) (interested party shall not be examined as a witness in regard to any personal transaction or communication between himself and a deceased except on his own behalf).

37. UPC § 2-109(2)(ii).

38. 316 U.S. 535 (1942).

on fundamental rights must not be underinclusive. Yet section 2-109(2)(ii) arguably is underinclusive since it does not cut off the rights of all fathers who desert or fail to support their children, but rather cuts off the rights of only those who happen to have illegitimate children. Thus the constitutionality of the last clause of section 2-109(2)(ii) may turn on how the right to inherit is characterized or on how the use of ancestry (in the sense of legitimacy) as a means of classification is viewed.[39] If the right to inherit is deemed a basic civil right, or if classification based on legitimacy is deemed suspect—as is classification based on race—then the strict test of equal protection will apply,[40] and the last clause of section 2-109(2)(ii) may not pass that test.

3. *Desirability*

If section 2-109 meets the tests of the equal protection and due process clauses of the fourteenth amendment, as it probably does, it still must accomplish a desirable distribution in order to be appropriate for adoption by the various states either with or without the rest of the Code package. The law of intestate succession has two principal aims: to achieve a distribution of property at death which society deems fair, and to distribute property according to the presumed intent of the deceased.[41] If a socially equitable distribution were the sole aim of intestacy statutes, the distribution plan based on the definition of "child" in section 2-109(2) could not be faulted. It seems only fair that the natural offspring of decedents should be the object of their bounty in the state's estate plan. Illegitimate offspring are no less deserving of their natural parents' bounty because of a mere accident of birth than are their legitimate brethren. In fact, given the extent of the stigma that still attaches to bastardy,[42] it could be argued that illegitimates may be more entitled to compensation in the form of inheritance than legitimate children, at least from the standpoint of social justice. At any rate, it seems clear that from the standpoint of equitable distribution the most desirable plan is to treat legitimates and illegitimates as nearly equally as possible, especially in light of the proof considerations that must be taken into account—and section 2-109(2) accomplishes this end.

However, achieving a socially equitable distribution is only one of the goals of intestacy statutes; reflecting the presumed intent of the ordinary testator in lieu of a valid will is the other primary goal. With regard to this latter goal it could readily be argued that most decedents, especially fathers, would not wish to have

39. *See* note 10 *supra*.

40. *See* notes 29 & 30 *supra* and accompanying text.

41. *See* Gray v. Rudovsky, *supra* note 9, at 24.

42. *See* V. SAARIO, *supra* note 26, at 143-47.

their illegitimate offspring included among their heirs. But if the statute is designed to reflect presumed intent, it must still do so within constitutional limits. If the normal testator's presumed intent is in fact frustrated by the provisions of section 2-109(2), it is clear that the fourteenth amendment requires that result. In *Shelley v. Kraemer*,[43] the Supreme Court held that the equal protection clause prohibits court enforcement of restrictive covenants based on race. The reasoning of *Shelley* can be applied by analogy to the instant situation—a state is not allowed by statute or other state action to attribute a discriminatory intent to those who may not in fact have had such an intent.[44] Given the additional fact that a testator who is so inclined can exclude illegitimate children from his estate by disinheriting them by will, there appears to be no reason whatever to inject a presumption of discriminatory intent into the intestacy laws. Rather, the burden of discrimination properly lies with the testator.[45] Thus, it appears that the legal-estate plan of the Code based on the definition of "child" in section 2-109(2) reaches a desirable result in light of both social values and presumed intent.

Section 2-109(1), which relates to inheritance by adopted persons, also seems to achieve a desirable disposition. That subsection is apparently designed to apply to three types of situations, only two of which deal directly with illegitimacy. The first situation involves the case in which the parents of a legitimate child are divorced, one of the parents subsequently remarries, and the new step-parent adopts the child. This situation, by its very nature, would not arise with regard to an illegitimate child. The second situation is the case in which one of the natural parents of a child, whether legitimate or illegitimate, dies, the surviving spouse remarries, and the new step-parent adopts the child. In such a case the child would only be the child of the surviving spouse and the step-parent, and not of the deceased natural parent. Thus, adoption would cause the child, whether legitimate or illegitimate, to lose his right to inherit through his deceased natural parent, to the extent that he has not already done so before the act of adoption takes place. The third situation involves the case in which an illegitimate child is born, one of the natural parents marries a spouse other than the other natural parent, and such new spouse adopts the child. In this case, the child would inherit by, from, and through only his married natural parent and step-parent, not from the other natural parent. Similarly, the other natural parent

43. 334 U.S. 1 (1948).

44. *Cf.*, Reitman v. Mulkey, 387 U.S. 369 (1967).

45. An individual is free to discriminate against anyone he pleases so long as no state action is involved. *See generally* Shelley v. Kraemer, 334 U.S. 1 (1948); Civil Rights Cases, 109 U.S. 3 (1883).

could not inherit by, from, and through the child, at least by intestacy.

Section 2-109(1), insofar as it relates to illegitimates in the second and third situations just mentioned, appears to be desirable both from the standpoint of social justice and that of the presumed intent of the deceased. Furthermore, section 2-109(1) is not inconsistent with the statutory provisions presently in force in many states with regard to adopted children.[46] At first glance, it might appear that section 2-109(1) fails to take adequate account of natural filial relationships in that adoption causes a child to lose his right to inherit by, through, or from his other natural parent.[47] On the other hand, there are persuasive reasons why an adopted child should not inherit by, through, or from his other natural parent. In the first place, any social-justice argument that could be made to the contrary is neutralized by the fact that the illegitimate will be taking by intestacy by, through, or from someone—namely the adopting parent as well as his or her natural-parent spouse. In addition, insofar as section 2-109(1) is designed to reflect the presumed intent of both the adopting parent and the other natural parent it seems to do so—surely the adopting parent would wish to make his adopted child the object of his bounty, and it is almost as likely that the other natural parent would not wish for his estate to be distributed to a child who has been adopted, and in many cases reared, by another person.[48] Finally, in many adoption cases, the other natural parent may not be known to the child —especially an illegitimate child—and it would seem to be a valid

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46. *See, e.g.*, MICH. COMP. LAW ANN. § 702.86 (1968); N.J. STAT. ANN. § 9:3-30 (1968).

47. In fact, the traditional rule in many states has been that an adopted child still retains his right to inherit by, from, and through his natural parents, and in some states this is still the rule. *See, e.g.*, ALA. CODE tit. 27, § 5 (Supp. 1969). The trend in recent years, however, has been to subordinate the interest of fostering natural filial relationships to that of fostering unity in the adopting family. The New York experience in this regard is instructive. Until 1963, New York law, in accordance with the traditional rule, provided that an adopted child inherited from his natural as well as his adopting parents. Ch. 147, § 1, [1961] N.Y. Laws 781-82. In 1963 the law was changed to provide that an adopted child retained the right to inherit from his natural parents only when a natural parent remarried and consented to the adoption of the child by his or her spouse. N.Y. DOM. REL. LAW § 117 (McKinney 1964). Finally, in 1966 the law was changed further to provide that "[w]hen a natural . . . parent . . . marries or remarries, and consents that the stepfather or stepmother may adopt such child, such consent shall not . . . affect the rights of such consenting spouse and such foster child to inherit from and through each other and the natural and adopted kindred of such consenting spouse." N.Y. DOM. REL. LAW § 117 (McKinney Supp. 1969). In addition to fostering family unity, the effect of the present New York provision, as well as that of UPC § 2-109, is to give the adopted child the same relative rights that a natural child of the same parents would have.

48. Adoption statutes and procedures generally produce a clean break between the natural parents and the child. Especially in the case of agency adoptions, the natural parents often do not know who the adopting parents are. *See, e.g.*, Katz, *Judicial and Statutory Trends in the Law of Adoption*, 51 GEO. L.J. 64, 66-69 (1962).

state interest to attempt to protect the new family unit by not creating an economic incentive for the child to investigate his natural parentage.[49] Thus, it is submitted that the Code's solution of treating an adopted child as the child of the adopting parent in place of the other natural parent is the best way of dealing with situations involving illegitimacy and adoption.

B. *The Impact of Section 2-109 on Other Provisions of the Uniform Probate Code Relating to Intestate Succession*

Section 2-109, which treats the illegitimate offspring as the child of the natural mother in all cases, and the child of the natural father if certain conditions of proof are met, cannot be viewed in a vacuum. Although that section could be severed from the rest of the Code, it forms an integral part of article 2 relating to intestate succession and wills. As mentioned above, the general definitional section of the Code in article 1 adopts the section 2-109 definition of "child" throughout the entire Code.[50] In article 2 itself, the new and broader definition of "child" affects no less than fifteen other sections.[51] It may be useful to survey some of those sections briefly to discern the over-all impact of section 2-109 on inheritance law and to point out certain areas where draftsmen may wish to adjust their planning to take the impact of section 2-109 into account.

The intestate share of the surviving spouse is determined by section 2-102.[52] Since the share of the surviving spouse varies depending on the existence of issue of the decedent, treating illegitimates as heirs of a deceased father would change the spouse's

49. Full integration of the adopted child into the adopting family is a major social objective of adoption. Lingering ties with one or both natural parents would seem to undermine that objective. *See* Katz, *supra* note 48.

50. *See* note 21 *supra* and accompanying text.

51. Naturally, since UPC § 2-109 defines "child" and since children are an essential beneficiary in any intestacy scheme, the substantive and procedural rules governing intestate succession which the UPC sets forth will be applicable to illegitimates as well as legitimate children. *See, e.g.*, UPC § 2-104 (children must survive the testator for 120 hours in order to take an intestate share); UPC § 2-107 (halfbloods take as if they were of the whole blood); UPC § 2-111 (debts owed to the decedent will only be charged against the debtor's share); UPC § 2-801 (renunciation). Treating illegitimates as children under these provisions, however, does not create any special problems for draftsmen.

52. UPC § 2-102 provides:

The intestate share of the surviving spouse is:

(1) if there is no surviving issue or parent of the decedent, the entire intestate estate;

(2) if there is no surviving issue but the decedent is survived by a parent or parents, the first [$50,000], plus one-half of the balance of the intestate estate;

(3) if there are surviving issue all of whom are issue of the surviving spouse also, the first [$50,000], plus one-half of the balance of the intestate estate;

(4) if there are surviving issue one or more of whom are not issue of the surviving spouse, one-half of the intestate estate.

The same analysis would apply to UPC § 2-102A for community property states.

share considerably, at least when the father has no legitimate issue. Rather than taking the whole intestate estate under section 2-102(1) or the first 50,000 dollars plus one half of the remaining estate under sections 2-102(2) or (3) if illegitimates were not treated as heirs of the father, the widow would now take one half of the intestate estate under section 2-102(4). Thus, because of the effect that section 2-109 has on section 2-102, the married father of illegitimate offspring who wants his wife to inherit his entire estate would be forced to draft a will to achieve that particular disposition.

Section 2-103[53] allocates that portion of the intestate estate which remains after the surviving spouse takes her share, or the entire estate if there is no surviving spouse. Under section 2-103(1), treating illegitimate children as heirs of the father will affect the size of the shares that pass to legitimate children. It is not difficult to imagine a case in which heirs who would otherwise take per capita would be relegated to taking by representation by virtue of the existence of an illegitimate child of a degree closer to the parent, since shares are determined pursuant to section 2-106, relating to representation, and the illegitimate simply would be added to the class of heirs at the appropriate level. Similarly, illegitimates can take by representation through their dead parents, thus creating another class of heirs in some cases, and reducing the per capita shares of the first degree accordingly. Perhaps even more important than its effect on section 2-103(1) is the possible effect of section 2-109 on sections 2-103(2), (3), and (4). Under those provisions, the share of the decedent's parents, his brothers and sisters, and his grandparents respectively are all contingent on the absence of surviving issue. Thus, if a man died leaving an illegitimate son and two aged parents, his entire estate would go to the

53. UPC § 2-103 provides:

The part of the intestate estate not passing to the surviving spouse under Section 2-102, or the entire intestate estate if there is no surviving spouse, passes as follows:

(1) to the issue of the decedent; if they are all of the same degree of kinship to the decedent they take equally, but if of unequal degree, then those of more remote degree take by representation;

(2) if there is no surviving issue, to his parent or parents equally;

(3) if there is no surviving issue or parent, to the brothers and sisters and the issue of each deceased brother or sister by representation; if there is no surviving brother or sister, the issue of brothers and sisters take equally if they are all of the same degree of kinship to the decedent, but if of unequal degree then those of more remote degree take by representation;

(4) if there is no surviving issue, parent or issue of a parent, but the decedent is survived by one or more grandparents or issue of grandparents, half of the estate passes to the paternal grandparents if both survive, or to the surviving paternal grandparent, or to the issue of the paternal grandparents if both are deceased, the issue taking equally if they are all of the same degree of kindship to the decedent, but if of unequal degree those of more remote degree take by representation; and the other half passes to the maternal relatives in the same manner; but if there be no surviving grandparent or issue of grandparent on either the paternal or the maternal side, the entire estate passes to the relatives on the other side in the same manner as the half.

illegitimate son. In much the same manner, treating an illegitimate as an heir may prevent escheat under section 2-105.[54] Draftsmen must be especially wary of section 2-103 since the existence of illegitimate heirs may cause distribution of the intestate estate contrary to the wishes or expectations of many decedents with illegitimate offspring. It is now necessary to advise such persons to write a will rather than rely on the intestacy laws.

Treating illegitimates as heirs of the father also has an important effect on section 2-108[55] relating to afterborn heirs. Under that provision, illegitimates who are conceived before a decedent's death but born thereafter will be heirs as if they were born during the lifetime of the decedent. Thus, the juxtaposition of sections 2-108 and 2-109 could give rise to a spate of fraudulent claims by pregnant "gold diggers." In such cases the "clear and convincing" proof requirement for establishing paternity under section 2-109 should prove its usefulness.

Section 2-109 also has an important impact on section 2-110[56] relating to advancements. Under section 2-110 an illegitimate, as an heir, is subject to having receipts treated as advancements in certain cases. The provision is sufficiently clear that support payments, for instance, would not be treated as advancements unless a writing to that effect can be produced. It should be noted, however, that an astute draftsman could make good use of section 2-110, since a father who is supporting illegitimate children in another household may wish to designate such support payments as advancements in order to make what he feels to be an equitable distribution of his estate. Section 2-110 would seem to allow him to make such a designation.

The effect of section 2-109 on section 2-112[57] dealing with alienage could also prove to be important and lead to some difficulties, since alien illegitimates would be entitled to take as heirs under that provision. In light of the number of American servicemen and travelers going abroad each year, it is not unlikely that

54. UPC § 2-105 provides: "If there is no taker under the provisions of this Article, the intestate estate passes to the [state]."

55. UPC § 2-108 provides: "Relatives of the decedent conceived before his death but born thereafter inherit as if they had been born in the lifetime of the decedent."

56. UPC § 2-110 provides:

> If a person dies intestate as to all his estate, property which he gave in his lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a contemporaneous writing by the decedent or acknowledged in writing by the heir to be an advancement. For this purpose the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue, unless the declaration or acknowledgment provides otherwise.

57. UPC § 2-112 provides: "No person is disqualified to take as an heir because he or a person through whom he claims is or has been an alien."

such servicemen and travelers father a number of alien illegitimate children.[58] However, it seems doubtful that many alien illegitimates will be able to sustain the "clear and convincing" proof burden of section 2-109(2)(ii). Moreover, international conflict-of-laws problems could arise in this area regarding choice of law, and could be especially troublesome if the child is born in a country that does not recognize paternity actions.

It should be noted that section 2-109 will also affect provisions of the Code other than those dealing strictly with intestate succession, since on the basis of that section, illegitimates may be able to take against a valid will in certain instances. For example, an illegitimate child could be a pretermitted heir under section 2-302[59] just as a legitimate child could be. Section 2-302 could present the draftsman with substantial problems since that section not only presumes the existence of a will but further presumes that the omission of an afterborn illegitimate child in that will was unintentional, except in enumerated circumstances. If an afterborn illegitimate child is deemed to be a pretermitted heir, he is entitled to take against the will the value which he would have received if the testator had died intestate. Furthermore, under section 2-302(b) an illegitimate child is entitled to a like share if the testator omitted him from his will in the belief that the child was dead. It may be that, in light of the relationship between sections 2-109 and 2-302, draftsmen will insert in many wills a provision to the effect that afterborn illegitimate children are purposely excluded from the testator's will, in order to make certain the circle of heirs in a given estate plan. This procedure would also provide a solution to the pregnant "gold digger" problem, alluded to earlier,[60] which might arise in this context as well.

Illegitimates may also be able to take the homestead allowance, exempt-property allowance, and family allowance against a will

58. *See, e.g.*, V. SAARIO, *supra* note 26, at 15.

59. UPC § 2-302 provides:

(a) If a testator fails to provide in his will for any of his children born or adopted after the execution of his will, the omitted child receives a share in the estate equal in value to that which he would have received if the testator had died intestate unless:

(1) it appears from the will that the omission was intentional;

(2) when the will was executed the testator had one or more children and devised substantially all his estate to the other parent of the omitted child; or

(3) the testator provided for the child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

(b) If at the time of execution of the will the testator fails to provide in his will for a living child solely because he believes the child to be dead, the child receives a share in the estate equal in value to that which he would have received if the testator had died intestate.

(c) In satisfying a share provided by this section, the devises made by the will abate as provided in Section 3-902.

60. *See text* following note 55 *supra*.

pursuant to sections 2-401 [61] 2-402,[62] and 2-403[63] respectively. Under section 2-401, if there is no surviving spouse, the minor or dependent illegitimate children have a right to share the homestead allowance of 5,000 dollars with other legitimate minor or dependent children. Thus, illegitimate children may be entitled to a homestead allowance when there otherwise would be none, as in the case in which a single man who was the father of a minor illegitimate child disposed of his entire estate by will. Similarly, under section 2-402 an illegitimate child is entitled to share in the exempt-property allowance for an estate up to a total of 3,500 dollars if there is no surviving spouse. In contrast to the homestead allowance, in order to be entitled to the exempt-property allowance illegitimates need not be minors or dependent on the decedent. Fur-

61. UPC § 2-401 provides:

A surviving spouse of a decedent who was domiciled in this state is entitled to a homestead allowance of [$5,000]. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to [$5,000] divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided, by intestate succession or by way of elective share.

62. UPC § 2-402 provides:

In addition to the homestead allowance, the surviving spouse of a decedent who was domiciled in this state is entitled from the estate to value not exceeding $3,500 in excess of any security interests therein in household furniture, automobiles, furnishings, appliances and personal effects. If there is no surviving spouse, children of the decedent are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than $3,500, or if there is not $3,500 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the $3,500 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share.

63. UPC § 2-403 provides:

In addition to the right to homestead allowance and exempt property, if the decedent was domiciled in this state, the surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by him are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than one year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments. It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children; otherwise to the children, or persons having their care and custody; but in case any minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his guardian or other person having his care and custody, and partially to the spouse, as their needs may appear. The family allowance is exempt from and has priority over all claims but not over the homestead allowance.

The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share. The death of any person entitled to family allowance terminates his right to allowances not yet paid.

thermore, illegitimates would be able to take advantage of the family-allowance provision of section 2-403 up to a total of 6,000 dollars during the period of administration of the estate. If the spouse survives, the family allowance is paid to her (or him) for the care of herself and the children living with her. But if the minor or dependent illegitimate child is not living with the surviving spouse, the allowance is apportioned between such spouse and such child. This situation would be fairly common in cases in which the parents of the illegitimate child do not live together. If no spouse survives the family allowance is paid directly to children who qualify. It should be noted that the homestead, exempt-property, and family allowances all are created by statute and, as such, entitle qualified persons to take against the will regardless of a testator's contrary intent.

From this brief survey of other relevant Code sections to which section 2-109 relates, it is clear that the repercussions of treating illegitimates as heirs of the natural parents whenever possible can have a profound effect on the distribution of estates. Thus, estate planners must be alert to the implications of section 2-109 in order to develop secure estate plans. Section 2-109 assures that if a testator wishes to discriminate against his illegitimate offspring, the law will not accomplish that task for him.

III. The Illegitimate and the Class Gift to Children Under the Uniform Probate Code

Part 6 of article 2 of the Code deals with rules of construction for wills and contains the other crucial Code provision dealing with illegitimates—section 2-611. As the general comment to part 6 suggests, "all of the 'rules' set forth yield to a contrary intent expressed in the will and are therefore merely presumptions."[64] Nonetheless, rules of construction are an important aspect of inheritance law, for all too often testators fail to make clear their intentions in a will, and courts need some guidance in the form of legal presumptions in construing wills. Section 2-611 is that rule of construction which defines "child" in a class-gift terminology. That section provides that:

> Halfbloods, adopted persons, and persons born out of wedlock are included in class gift terminology and terms of relationship in accordance with rules for determining relationships for purposes of intestate succession, but a person born out of wedlock is not treated as the child of the father unless the person is openly and notoriously so treated by the father.[65]

64. UPC art. 2, pt. 6, general comment.

65. UPC § 2-611.

Thus, section 2-611[66] adopts the basic formula of section 2-109 and adds another condition that the illegitimate must fulfill before he can be presumed to take under a bequest to children. The import of the provision is clear: the illegitimate child will always be included in a bequest to "children" by the mother; on the other hand, the same illegitimate child will only be included in a bequest to "children" by the father if the illegitimate can first establish paternity under section 2-109 *and* if the father openly and notoriously treats the child as his own. Section 2-611 by its terms only requires that an illegitimate be treated openly and notoriously as the child of the father in order to be included under a class gift to children. But the definition of "child" as used in section 2-611 comes from section 1-201(3) which extends the section 2-109 definition of "child" throughout the Code.[67] Thus, it seems that an illegitimate must satisfy requirements of both sections 2-109 and 2-611 in order to be included in a class gift to children.

Since a statutory presumption such as that found in section 2-611 constitutes state action no less than judicial enforcement of a restrictive covenant,[68] such a presumption must stand up to constitutional scrutiny under the fourteenth amendment. Section 2-611 poses no due process problems since it creates only a rebuttable presumption.[69] It may, however, be constitutionally suspect under the equal protection clause. The rationale behind the presumption in section 2-611 seems to be the "family-unit" theory,[70] which assumes that a testator normally wishes his bounty to pass to those within his family unit. As a general rule, the family-unit theory may be factually supportable, and may form a good basis for attempting to discern the actual intent of most testators. But unfortunately the "open and notorious" requirement of section 2-611 represents an imprecise application of the family-unit doctrine in that it requires too heavy a burden of proof from too small a group of people. One problem with section 2-611 is that only illegitimates need show open and notorious treatment by the father. If the provision is meant to foster the family-unit theory, why should not such a showing be required from *all* of a testator's children, legitimate and illegitimate alike? If a testator deserts both legitimate and illegitimate children, it would not be reasonable to allow only the legitimate children to take under a bequest to "children" when neither group actually has been treated as children by the father. On the other hand, a showing that the testator deserted

66. *See also* UPC § 3-101 which provides that the UPC will apply to wills drafted before the UPC becomes effective.

67. *See* note 21 *supra* and accompanying text.

68. *See* text accompanying note 48 *supra*.

69. *See* note 34 *supra*.

70. *See* Gray & Rudovsky, *supra* note 9.

all his children may be sufficient to rebut the presumption in section 2-611 against the illegitimate children. Thus, in large measure, the constitutionality and desirability of section 2-611 turns on the type and quantum of evidence that is required by a court to rebut the presumption contained therein.

Assuming that section 2-611 is neither undesirable nor unconstitutional even though it discriminates on the basis of legitimacy, one further problem remains with the formulation of that section. The requirement that the father treat the illegitimate as his child "openly and notoriously" in order for the child to be deemed an heir under a bequest to children may be challenged from the standpoint of desirability, not on the basis of any discrimination, but rather on its face as too strict a standard. It is arguable that such a requirement may be unrealistic since the imposition of that requirement may assume that the social stigma attached to bastardy has disappeared to a greater extent than it actually has.[71] In today's world it does not seem unlikely that a father might love and willingly support an illegitimate child and still not treat him as his own "openly and notoriously." Social convention is still too potent a force for many people openly to admit paternity of a bastard. Thus, a lesser showing of family unity than "open and notorious" treatment as a child would probably be more desirable under section 2-611. Clearly some recognition by the father of the parent-child relationship should be required. However, since the facts of each case are likely to be quite varied, it would be preferable to treat this issue on a case-by-case basis in order to determine the actual intent of the father, rather than to impose a strict per se standard such as the "open and notorious" requirement. Moreover, it must be remembered that since section 2-611 raises only a rebuttable presumption, testators are free explicitly to define "children" in their wills to include or exclude illegitimates as they see fit.

Thus it appears that although section 2-611 does create a classification based on illegitimacy, the discrimination it fosters is probably not so unreasonable as to violate the equal protection clause. Insofar as the presumption of section 2-611 has a factual basis, allows a court to discern the testator's actual intent in each case, and is rebuttable, it should be upheld in the courts. On the other hand, the standard of the presumption could be improved by modifying the "open and notorious" requirement to one which recognizes that many fathers may be unwilling, for a variety of social reasons, openly to acknowledge illegitimate children. Alternatively, the "open and notorious" requirement or a modification thereof could be applied to legitimate children as well in order to extend the family-unit theory to its logical limit.

71. *See* V. SAARIO, *supra* note 26, at 145-47.

IV. Conclusion

Illegitimacy has always been a fact of life in civilized society. So, too, has bastardy carried with it a special social stigma. But modern society has been gradually eliminating its outworn taboos. At the same time, the number of illegitimate births continues to rise[72] as illegitimacy proves to be more socially acceptable. In light of the large number of illegitimate children born in the United States every year,[73] American law, including inheritance law, can no longer afford to treat the bastard as *filius nullius* solely on account of an accident of birth. The bastard must be welcomed into society on a level of parity with his legitimate brothers. The provisions of the Uniform Probate Code dealing with illegitimates make a solid attempt to achieve that level of parity in the field of inheritance law. With only minor modifications necessary to avoid possible constitutional problems, the provisions of the Code appear to establish an appropriate model for reform in this important area, whether they be adopted in conjunction with the rest of the Uniform Probate Code or grafted onto an existing state probate system.

UNIFORM COMMERCIAL CODE—SALES—Sections 2-508 and 2-608—Limitations on the Perfect-Tender Rule

Just as parties to marriage contracts do not always live happily ever after, it is a fact of commercial life that a buyer and seller do not always live happily ever after the consummation of a sales contract. Even when the seller is satisfied with the arrangement, the buyer may try to cancel the contract either because he believes the seller has not and will not live up to his promise, or because changed circumstances have caused the buyer to feel that his purchase was not a good deal.

Buyer attempts to avoid sales contracts can occur in two contexts —merchants dealing with each other at arm's length, and merchants dealing with consumers. Contracts casebooks are full of cases involving merchant-buyers who cornered the glue or bolt market only to watch the price subsequently plummet. It was early observed that such a buyer will "often try to escape from a performance within the

72. *See* Krause, *Equal Protection for the Illegitimate*, 65 Mich. L. Rev. 477 (1967).

73. In 1963 there were 259,400 illegitimate live births in the United States. U.S. Census Bureau, Statistical Abstract of the United States 47, 51 (1965).

Some Effects of the Uniform Probate Code on Estate Planning

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CHAPTER 70-19

Some Effects of the Uniform Probate Code on Estate Planning

RICHARD V. WELLMAN *

¶70.1900 Introduction

The Uniform Probate Code is the product of a joint project of the Real Property, Probate and Trust Law Section of the American Bar Association and the National Conference of Commissioners on Uniform State Laws. The work started in 1962 and culminated in August 1969 when the Code, then in its sixth preliminary draft, was approved and promulgated by the sponsoring organizations. Early in 1970, an official paperback edition of the Code and official comments were published by the West Publishing Company.

It is fair to predict that the Uniform Probate Code will be of considerable interest to bar committees and legislatures across the country. In many states, probate laws are obviously obsolete. Also, Dacey and other popular writers have "Naderized" probate to the point where there is very great interest in corrective legisla-

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tion. The Code represents the careful effort of several dozen lawyer-experts whose principal objective was to produce a balanced package with broad acceptability. Preliminary drafts were reviewed by hundreds of lawyers, trustmen, life underwriters and other representatives of special points of view. Study committees organized by local bar committees combed the preliminary drafts and contributed enormously to the refining process which continued for three full years after the first tentative draft was made available in 1966. This preparation process insures that the Code will provide a useful and persuasive format for probate law improvement throughout the United States. Surely it is time for estate planners to begin to assess the probable impact of the Code on their work.

¶70.1901 The Code and Estate Planning—An Overview

The Uniform Probate Code will affect estate planning in the enacting states in many ways. From a technical point of view, it modernizes many basic estate planning tools so that existing preferences regarding devices for achieving various objectives should be reconsidered by advisors who wish to achieve optimum benefits for their clients. Additionally, some new planning tools will have to be assessed. Further, if the Code is widely adopted by the states, it could have a marked impact on the planning of multi-state estates. Finally, the Code will enable planners to review and re-evaluate existing wills, trusts and contracts because the publicity generated by its enactment will stimulate many estate owners to move to their counselors for a checkup.

¶70.1902 The Code and Wills in General

The Uniform Probate Code advances the proposition that the will should be as much like the revocable trust as possible in terms of procedural advantages and disadvantages relating to transfers at death. The Code will not change the fact that wills are ambulatory and contestable after death; nor does it alter the concept that inter vivos trusts create present authority over trust assets which may be unaffected by the settlor's death. However, the Code offers the executor a quick and simple route to a position like that of a trustee of a well-drafted trust over all of the assets of a dece-

dent's estate. The Code also contains several features which should shrink the threat of will contests so that the mere possibility of contest should no longer deter the use of wills.

¶70.1902.1 Obtaining Letters Testamentary

Informal probate and appointment is the procedure by which the person who is named the executor of an apparently well-executed will can secure full authority over the estate assets very quickly after the testator's death.[1] The proponent must sign a sworn application containing detailed information about the decedent's survivors and circumstances relevant to the validity of the will.[2] The application is made to the registrar of the probate court who need not be a lawyer.[3] Unless and until inheritance tax laws change to meet the situation, or unless some interested person has filed a demand for notice, the registrar may respond to the application without delay or notice to anyone and without the necessity of receiving testimony of attesting witnesses.[4] Hence, in uncontested cases involving no apparent irregularity which might move the registrar to reject the application,[5] letters testamentary can be obtained by a single trip to the courthouse after the expiration of a mandatory waiting period of five days from the testator's death.

¶70.1902.2 Fiduciary Powers

Once he receives letters, an executor appointed under the Code may exercise statutory powers which are designed to relieve third persons with whom he deals of any concern regarding his authority.[6] Land, securities, interests in going businesses and other assets may be sold, liened or otherwise used in any way that would be possible with reference to trust assets being handled by a trustee under a well-drafted trust instrument.[7] The Code also protects executors from certain risks of personal liability arising from transactions occurring during administration, and for distributions made in good faith and before being impugned by a later contest.[8] Finally, administration may be "independent." This means that there is no statutory requirement that the personal representative

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[1] For annotations, see end of chapter.

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return to the appointing court for approval of his accounts, discharge or any other occasion.[9]

¶70.1902.3 Widow's Election

The Code's provisions protecting a surviving spouse are designed to give meaningful rights in infrequently encountered instances where a deceased spouse has dealt unfairly with the survivor, without impeding administration in ordinary cases.[10] A spouse who has not altered his or her position by a simple written agreement or release as permitted by the Code[11] is entitled to one-third of the probate estate augmented by certain nonprobate values which are added for computation purposes.[12] But, to get more than the decedent has given, the survivor must take credit for all benefits received from the decedent by any means, including benefits passing by life insurance and pension plan.[13] Also, neither the court nor the decedent's executor has any responsibility to see that the surviving spouse's best interests are protected. Rather, the aggrieved survivor has six months after letters are issued within which to file a lawsuit against the estate and other successors.[14] In summary, the elective share provisions should be of less concern to estates being settled under wills than the threat of litigation is today in many states insofar as it relates to the widow's rights against revocable trusts.[15]

¶70.1902.4 Will Contests Under the Code

Opportunities for will contests under existing laws which enable unhappy heirs to tie up estates and coerce settlements are greatly reduced by the Code. The named executor who secures probate and appointment promptly and informally receives full authority to administer.[16] Once appointed, he may precipitate litigation (formal probate) to test the validity of known claims against the will and to eliminate unknown claims.[16] This process minimizes the likelihood that a contest will restrict administration. If a contest occurs before appointment, the named executor has priority to serve as special administrator pending resolution of the contest.[17] A section is included which throws the initial burden of proof and the burden of persuasion on contestants with respect to the usual grounds of undue influence and lack of capacity.[18]

Finally, the Code offers the enacting state an option in regard to whether a right to trial by jury will apply to will contests.[19] Overall, these several provisions should reduce the possibility of will contests in ordinary situations from that which exists today in many states.

¶70.1902.5 Advantages of Wills Under the Code

In addition to the tax advantages presently associated with the use of probate rather than trust estates, a Code estate settlement under a will may be preferable to a settlement under a revocable trust for any of several reasons. The ability of a personal representative to protect purchasers, transfer agents and others with whom he deals from doubts concerning the validity or meaning of the will, or his authority to act for the estate, is made clear by explicit statutory language which applies to all kinds of assets.[20] The Code includes renunciation provisions which are applicable to transfers through probate, but not to inter vivos transfers.[21] An enacting state may see fit to extend these provisions to all donative transfers. Unless it does, however, devisees under wills will have significantly greater opportunity than beneficiaries of living trusts to reduce their income, gift and estate taxes by careful use of the statutory system for renunciation. Also, although the validity of a trust may be determined in litigation by or against known disputants, resolution of disputes concerning the validity of trusts is frequently clouded by jurisdictional questions.[22] By contrast, the Code permits the validity of a will to be established in post-mortem probate proceedings as against all known and unknown persons with contrary interests, and with reference to known and later discovered assets.[23] The probate court of the decedent's domicile has exclusive jurisdiction for this purpose, and interested persons can be tied into the judgment by mailed notice and publication.[24] Such proceedings are not required, however, and if they occur, are not entwined with full court control of the estate or the personal representative.[25]

¶70.1902.6 Limitations on Wills Under the Code

The probate court of the decedent's last domicile will continue to allow heirs to contest wills. Hence, it will continue to be true

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that wills may be challenged somewhat more easily than revocable trusts.[26] The Code contains a three-year statute of limitations for contest of wills probated without notice, and a much shorter period for contest of formally probated wills.[27] Still, if a fight is anticipated, the estate planner will likely continue to recommend use of a revocable trust rather than a will.

Furthermore, until the Code is widely adopted, revocable trusts will continue to offer the most efficient mechanism for handling testamentary transfers of land or assets located in several different states.

¶70.1903 Testamentary Trusts

In addition to the new efficiencies relating to probate administration, the Code eliminates other technical and procedural limitations which may have discouraged the use of purely testamentary (as distinguished from pour-over) trusts. Provisions in Article VII make it clear that a testamentary trust may be administered by any trustee selected by the testator and at a place which is convenient or indicated by the will.[28] Local residency requirements and restrictions relating to qualification to engage in business at the place of probate are avoided. Article III provisions protect the executor who delivers assets to a trustee designated by will.[29] The testamentary trustee is not required to be appointed or approved by the probate court; nor are accountings to the court of the testator's domicile or elsewhere required.[30] Trustees of all family trusts are covered by a common set of provisions which enable them to resort to the probate court for resolution of problems or to secure protection.

Finally, the Code permits life insurance contracts to be drawn so that death benefits may be paid to a trustee of a trust established by will without being deemed part of the decedent's probate estate.[31] This provision should enable planners to make even greater use of life insurance.

¶70.1904 Inter Vivos Trusts

Notwithstanding the foregoing provisions which encourage the use of wills, the Code is not antagonistic to inter vivos trusts. Indeed, by paving the way to the creation of trusts via the very

simple method of signing a will, the Code should serve more to popularize all forms of trusts than to detract in any serious way from the existing, nontechnical, reasons for recommending living trusts. Similarly, Article VII of the Code should encourage the use of trusts by allowing a probate court to acquire jurisdiction over all persons interested in a particular trust question. Mailed notice of trust litigation will be effective for inter vivos as well as testamentary trust beneficiaries, and minors and unascertained beneficiaries can be tied into the decree by forward-looking provisions dealing with representation of interests.[32] Guardians ad litem are not eliminated, but their use under the Code should be far less common than at present.

It should be emphasized that the probate court's relationship to trusts is passive and nonsupervisory. The court cannot make an order regarding a trust except in response to a petition by an interested person and after notice. The power to issue orders does not continue once the proceedings under a given petition have been resolved.[33] As noted earlier, there are no statutory requirements for orders regarding accounts, distribution or other details of administration. However, unlike the situation involving the personal representatives of decedents and conservators of estates of disabled persons, the Code does not contain statutory powers for trustees.[34] Careful drafting of trust powers, then, will still be important, unless the state concerned has adopted the Uniform Trustees' Powers Act or its equivalent.

¶70.1905 Intestate Succession

Intestacy under present law is invariably undesirable. Therefore, estate planners are more accustomed to avoiding intestate succession than to using it as part of a plan. Nevertheless, the Code's version of intestate succession improves substantive and procedural aspects of the so-called "law's estate plan" to the point where advice to allow property to pass intestate may be given without hesitation in many more situations than at present.[35]

On the substantive side of intestacy,[36] the spouse takes all when (a) the decedent leaves no issue or parent; or (b) the decedent leaves no issue by a prior marriage, or no issue but a parent, and the distributable estate is worth less than $50,000. The spouse takes one-half when there are issue by a prior marriage, and the

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first $50,000 plus one-half of the excess over this amount when issue or parents survive. Issue take one-half of the intestate estate if any issue are by a prior marriage and split the excess over $50,000 with the spouse in other cases where both issue and spouse survive. If there is no spouse, issue take all. If there are no issue, parents split the excess over $50,000 with the spouse. If no issue or spouse survives, parents or descendants of parents take, and if there is none, grandparents and descendants of grandparents take. More remote relatives are not heirs. No person is an heir unless he survives the decedent by five days.[37] Adopted children are fully transplanted into the adopting family, and persons born out of wedlock who prove parentage before death of the father, or by clear and convincing proof thereafter, are treated like legitimate children for purposes of receiving inheritances.[38]

On the procedural side, all of the advantages applicable to probate proceedings are available also in intestacy.[39] Included is an opportunity to secure a binding adjudication that the decedent died intestate and determining his heirs.[40]

It is unlikely that this "new look for intestacy" will have any significant impact on estate planning for persons whose estates fall within Federal estate tax brackets. Indeed, liberal new rules regarding illegitimate and adopted children may provide additional incentives for the wealthy to alter the law's plan. Perhaps the most likely consequence of the new look will be that lawyer-planners will be able to assist clients with modest estates far more efficiently than at present. For example, under the Code, the best advice in many more cases than can possibly be imagined under present law anywhere simply will be to execute a will designating an executor and his alternate.

¶70.1906 Other New Planning Tools

As suggested previously, the Code's new system for intestacy will be an important estate planning tool. Similarly, the new treatment in Article V of the ancient problems of guardians and conservators will bring new flexibility to the planner for use in various specialized situations. For example, careful study of the powers and duties of a court-appointed conservator for a minor may lead many planners to eliminate elaborate sub-trusts which are frequently inserted in complex plans simply to avoid guardianship.

¶70.1906.1 Durable Powers of Attorney

Article 5 of the Code authorizes a written power of attorney to include language indicating that the authority conferred remains in effect notwithstanding later incompetency of the principal.[41] A properly worded power remains effective in periods of known incompetency and periods of uncertainty as to whether the principal is dead or alive. Durable powers should prove to be useful supplements to—if not substitutes for—revocable trusts to protect an owner from risks of senility or incompetence.

¶70.1906.2 Facility of Payment Provisions

A section in Article V of the Code protects any person owing money to a minor in amounts up to $5,000 per year who makes payment to any person having the care or custody of the minor, or deposits the sum owed in a savings account in the minor's name.[42] This provision will add to the utility of insurance and annuity contracts which provide benefits in relatively small amounts for minors.

¶70.1906.3 Renunciation Provisions

The Code specifically allows the partial or total renunciation of interests passing by will or intestacy.[43] A renounced interest passes as if the person renouncing his interest predeceased the decedent. In many situations, renunciation will have the effect of passing the renounced interest to the issue of the person renouncing, either by operation of the section dealing with lapse or by operation of the rules of intestacy. Thus, inheritance can be redirected to the next generation when tax or other considerations dictate.

¶70.1906.4 Multiple-Party Bank Accounts

Several provisions in the Code strengthen accounts in financial institutions in the name of two or more persons.[44] The provisions dealing with joint accounts, trust accounts and pay-on-death accounts authorize a variety of will substitutes for the individual who wishes to retain full control of deposit rights until death, while

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providing another with the power to withdraw balances remaining at death free of probate procedures.

¶70.1906.5 Minors and Incompetents

A general provision in Article V of the Code authorizes a probate court to respond to petitions regarding the estate problems of minors or incompetents which do not require appointment of a guardian or conservator.[45] Using it, minors' contracts may be ratified; settlements of injury claims may be approved; and various arrangements made for elderly persons, as for example, the conversion of his assets into an annuity contract for his benefit.

¶70.1907 Multi-State Estate Planning

If the Code is widely adopted, a series of provisions should have the effect of eliminating the need for administrations in several states where planning is accomplished by will or intestacy. Courts of enacting states are directed to abide by adjudications as to the domicile of a decedent when made in formal probate proceedings in another state which were commenced prior to the local proceedings.[46] Courts of enacting states are also directed to accept determinations as to the validity and construction of a will made in a proceeding after notice at the decedent's domicile.[47] If local administration becomes necessary, a series of provisions serve to give the personal representative appointed in the state of domicile priority to administer assets in an enacting state.[48] Other provisions protect local debtors of a decedent making payment to the personal representative appointed in the state of domicile, provided payment is not made prior to 60 days from the date of death and that no protest blocking payment has been made by a resident creditor of the decedent.[49] Also, a personal representative appointed in the state of domicile may file copies of his appointment with a local office and thereby acquire all powers of a personal representative appointed locally.[50]

The Code strengthens the ability of a testator to choose the law applicable to his estate. Enacting states are directed to recognize a will as valid if the will would be valid under the rules of almost any state having some connection to the will.[51] Another provision

permits a testator to select the law of any state to control the meaning and effect of his will unless the result offends the public policy of the enacting state.[52]

Finally, multi-state planning using trusts is facilitated. Assets may be transferred by will or by deed to trustees located in other jurisdictions.[53] Trustees of other states may act as trustees of land located in an enacting state without being charged with "doing business" in that state. Each trust has a "home base," located at the "principal place of administration" of the trust, which place can be fixed by the trust instrument.[54]

¶70.1908 Existing Estate Plans Under the Code

As drafted, the "effective date" provision of the Code directs applicability to wills written before enactment, but becoming effective by testator's death thereafter.[55] One important provision in the Code establishes a rule of construction that various class gift terms—such as "heirs" and "issue"—include certain persons who would be deemed related to the designated ancestor for intestate succession purposes.[56] Thus, the Code's new provision regarding rights of adopted persons and children born out of wedlock may become applicable to existing wills.

Other sections of the Code which will affect existing wills include provisions that: (a) beneficiaries are required to survive the testator five days, unless the will contains some language on the point;[57] (b) anti-lapse directions apply to gifts to any descendant of a testator's grandparents who predeceases the testator leaving issue;[58] (c) specific gifts of encumbered assets, whether land or personal property, pass the described asset subject to encumbrances and without exoneration unless the will directs otherwise;[59] (d) the surviving spouse (or children if there is no spouse) has a right to $3,500 of chattels as exempt property,[60] a right which may nullify chattel bequests in estates where the value of the chattel property is low; and (e) the surviving spouse and dependent minors are entitled to $5,000 value exemption called "homestead exemption" plus amounts needed for support during administration.[61] These rights, which are terminable interests under the Code, have priority over creditors' claims and will directions.

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¶70.1909 Conclusion

Enactment of the Code probably will be accompanied by a good deal of publicity about new and expanded estate planning devices. Estate planners can anticipate an upturn in requests for analyses and advice as various popular publications begin to inform the public about new opportunities under the Code.

Overall, the impact of the Code on estate planning will depend largely on the planners. For those who prefer to stick close to familiar patterns, the principal impact of the Code will be the need to carefully review existing will and trust forms. Others will experiment in various ways with some of the new opportunities offered by the Code. In time, estate planning should be considerably affected by the Code, but changes will be gradual and responsive to the interests of planners in meeting the needs of clients.

ANNOTATIONS

References are to the official text of the Uniform Probate Code (West Publishing Co., 1970).

¶70.1902.1 Obtaining Letters Testamentary

[1] See UPC, Art III, Pt 3 (§§3-301–3-311).
[2] UPC §3-301.
[3] UPC §§1-307, 3-105.
[4] UPC §§3-302, 3-306, 3-307, 3-310.
[5] UPC §§3-304, 3-305, 3-309, 3-311.

¶70.1902.2 Fiduciary Powers

[6] UPC §§3-307(b), 3-701, 3-703, 3-711, 3-714.
[7] UPC §§1-201(11), 1-201(33), 3-715.
[8] UPC §3-703.
[9] UPC §§3-704; *Cf.* UPC, Art III, Pt 5 (§§3-501–3-505).

¶70.1902.3 Widow's Election

[10] UPC Art II, Pt 2.
[11] UPC §2-204.
[12] UPC §§2-201, 2-202.
[13] UPC §2-202(3).
[14] UPC §2-205.

¶70.1902.4 Will Contests Under the Code

[15] UPC §§3-307(b), 3-701, 3-703, 3-704.
[16] UPC §§1-201(20), 3-401.
[17] UPC §3-615(a).
[18] UPC §3-407.
[19] The brackets in §1-306 indicate the option.

¶70.1902.5 Advantages of Wills Under the Code

[20] UPC §3-714.
[21] UPC §2-801.
[22] Under §7-201 and related sections, litigation "concerning the internal affairs of trusts" is within the exclusive jurisdiction of the probate court. The provisions of §§7-103 and 1-401 relate to §7-201 and permit the proper court to acquire jurisdiction over interested persons by mailed notice like that available in will contest proceedings. However, inasmuch as a suit to establish a trust would not fall within §7-201, §7-204 applies, and the usual rules governing jurisdiction of persons would control.
[23] UPC §3-412.
[24] UPC §§3-105, 3-201, 3-403.
[25] UPC §3-107.

¶70.1902.6 Limitations on Wills Under the Code

[26] This proposition is the corollary of the point discussed at Note 22, *supra*, to the effect that it is substantially easier to initiate effective litigation to test the validity of a will than it is to test the validity of an inter vivos trust.
[27] UPC §§3-108, 3-412.

¶70.1903 Testamentary Trusts

[28] UPC §§3-913, 7-105.
[29] UPC §3-913.
[30] UPC §7-201.
[31] UPC §6-201.

¶70.1904 Inter Vivos Trusts

[32] See Note 22, *supra;* UPC §1-403.
[33] UPC §7-201.
[34] UPC note under Art VII, Pt 4.

¶70.1905 Intestate Succession

[35] UPC Art II, Pt 1, §§2-801, 2-802.
[36] UPC §§2-102, 2-103.
[37] UPC §2-104.
[38] UPC §2-109.

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[39] UPC Art III.
[40] UPC §3-401.

¶70.1906.1 Durable Powers of Attorney

[41] UPC §5-501.

¶70.1906.2 Facility of Payment Provisions

[42] UPC §5-103.

¶70.1906.3 Renunciation Provisions

[43] UPC §2-801.

¶70.1906.4 Multiple-Party Bank Accounts

[44] UPC Art VI, Pt 1.

¶70.1906.5 Minors and Incompetents

[45] UPC §5-409.

¶70.1907 Multi-State Estate Planning

[46] UPC §3-202.
[47] UPC §3-408.
[48] UPC §§3-203, 3-308, 3-309.
[49] UPC §§4-201–4-203.
[50] UPC §§4-204–4-206.
[51] UPC §2-506.
[52] UPC §2-602.
[53] UPC §7-105; see also Note 28, *supra*.
[54] UPC §7-102.

¶70.1908 Existing Estate Plans Under the Code

[55] UPC §8-101.
[56] UPC §2-611.
[57] UPC §2-601.
[58] UPC §2-605.
[59] UPC §2-609.
[60] UPC §2-402.
[61] UPC §§2-401, 2-403.

THE UNIFORM PROBATE CODE APPROVED: A BOLD AND PROGRESSIVE REFORM

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Historical Background

History in law reform was created at Dallas on August 7, 1969, when the National Conference of Commissioners on Uniform State Laws promulgated the Uniform Probate Code. In the judgment of the writer, this was one of the boldest and one of the most progressive achievements of the National Conference, unsurpassed even by the Uniform Commercial Code. Whereas the Uniform Commercial Code had as a base the old Negotiable Instruments and Sales Acts supported by the commercial motivation of interstate uniformity, the Probate Code cuts into a field of new statutory policy in suggesting that law relating to the transfer of property by death which has heretofore been considered largely a matter of local concern, should be elevated to a platform of national importance with resulting uniformity and predictable simplicity.

In the week following the adoption of the Code by the National Conference of Commissioners, the Section of Real Property, Probate and Trust Law in its sessions held in conjunction with the American Bar Association meeting, approved the Code, and subsequently the House of Delegates of the American Bar Association likewise approved the Code and directed the Real Property, Probate and Trust Law Section to institute studies of the Code among the various local bar associations of the United States with the end in view that the Code would receive wide attention and adoption.

The first printed version of the Code is now available from Prentice-Hall, and this will be followed at a later date by a publication of the Code with final minor stylistic corrections by the West Publishing Company.

To the Pennsylvania lawyer there is very little in the Uniform Probate Code that will seem new or radical. Taken as a whole, the Code is perhaps the greatest compliment that could be produced for the draftsmen of the Pennsylvania statutory system of probate and estate administration as originally created in the Five Sisters Acts of 1917, and as more recently amended and restated in the series of legislative acts which comprise what is our present Pennsylvania code.

In these two articles we will give a brief summary of the history and contents of the Uniform Probate

Code, with comment on those Sections of the Code which might be adopted in Pennsylvania.

Origin of the Model Probate Code

The origins of the Uniform Probate Code go back to 1946 when the Section of Real Property, Probate and Trust Law of the American Bar Association brought out the Model Probate Code. That work had a definitive effect on the laws of a number of states which at that time and thereafter were reviewing and amending their probate and estate administrative procedures. The Advisory Committee of Pennsylvania Legislature had the Model Probate Code before it when the Pennsylvania statutes went through their extensive revisions beginning in 1945. Missouri adopted the Model Probate Code in great part and a number of other states used it as a guide in the revision of their laws.

In 1962 the Council of the ABA Section of Real Property, Probate and Trust Law concluded that the time had come to review and revise the 1946 Model Probate Code in the light of decisional law and development since its promulgation. A committee was formed and the support and interest of New York University Law School was obtained.

At the same time, a New York State Legislature Commission was in the process of extensive revision the New York probate and ate administrative law, and financial help was given to the Code project which produced certain basic studies that were useful to the New York Commission.

From the beginning, the Council of the Real Property, Probate and Trust Law Section interested the National Conference of Commissioners on Uniform State Laws in the project. It was then envisioned by some that if the National Conference adopted the proposal, the project would have far greater chances of success because of the prestige of the Conference and its greater financial backing.

By 1964 a distinguished committee of draftsmen was put together under the Chairmanship of Richard V. Wellman of the University of Michigan Law School. Money was collected from individual lawyers, a few banks and from a few foundations. The National Conference of Commissioners fully adopted the plan: the sights were set not merely upon a review of the Model Probate Code, but upon a complete revision of the law, extensive in scope. It was further concluded that this work should be channeled toward a uniform statute.

The objective of uniformity developed strength as increasing criticism was directed at lawyers and courts by many writers and by the public generally. Never before had there been so much popular attention directed to the probate laws as that which followed the attack made by Dacey and others on probate procedures.

This criticism had the result of spurring the action of the two committees, one of the National Conference of Commissioners on Uniform State Laws, and the other, the Special Committee of the Section of Real Property, Probate and Trust Law of the American Bar Association. Additional funds were obtained and the Uniform Probate Code became the major project of the National Conference of Commissioners, leading to its adoption at the Dallas meeting.

The Uniform Code Follows Pennsylvania Law

At the beginning of this article it was noted that a Pennsylvania lawyer thumbing through the Uniform Probate Code as finally promulgated would not be surprised or startled by anything he saw. Once he got over the unfamiliar stylistic approach of the new Code in which it differs from the draftsmanship of Pennsylvania statutes, he would find that what is set forth in the Uniform Probate Code is substantially Pennsylvania law.

We must realize that the laws relating to the transfer of property by death have had an ancient and diverse evolutionary growth, from practice in the Ecclesiastical courts, the English chancery courts, and the common law courts. The New England states adopted the system of probate known as probate in solemn form, where notice must be given to all parties in interest and hearing held before an appropriate administrative or judicial authority in order to effect probate. These states also followed a system of supervised administration in which virtually every step of the personal representative in paying creditors and making distribution in accordance with the will or the intestate laws had to be effected through a court hearing with notice, testimony, findings, and decree. This system was predominantly followed throughout the Middle Western States and finally penetrated to the West Coast in modified form. It has been said that in the nineteenth century there was a great suspicion of personal representatives, and allegedly a great deal of embezzlement of decedents' property. As a consequence, the majority of our states set up highly restrictive probate systems for administering decedent's estates, requiring the personal representative to submit his every act to court supervision.

Pennsylvania, New Jersey and Delaware and to some degree Maryland were unique in adopting the form of probate known as probate in common form without notice, and the procedure of distributing an estate on receipt and release without court supervision.

The Drafting Committee, with all of the evidence before it, decided initially that the approach of the Uniform Code should give a choice to the parties to elect probate in common form, or probate in solemn form with notice, and also should include the choice of unsupervised administration as well as avenues for supervised administration, that

is, a method whereby the personal representative could be brought before the court at any step of the administration to justify his acts, or whereby the entire administration from start to finish would be under direct supervision of the Court.

This approach of maximum flexibility is the cornerstone of the entire Code, and it is perhaps the Code's most notable achievement. It could therefore become the law of Pennsylvania without affecting in any substantial way what is now our practice.

The Uniform Probate Code is far more than an all inclusive statutory plan. It is all of that, but much more. It is a treatise, a compendium of the law, relating to the transfer of property by death, and the administration of decedent's estates, the estates of incompetents, and of trusts. It is the most comprehensive effort in this field ever produced in the common law, and it rewards review by any lawyer interested in this particular field of jurisprudence.

Contents of the Code

Article I is concerned with definitions and also a description of the jurisdiction of the Probate Court. The entire Code is based on the assumption that each jurisdiction will have or will create a probate court having the full power of a court of general jurisdiction similar to the Orphans' Court Division of the Common Pleas Court under the Pennsylvania Constitution with direct appeal to the state's highest appellate tribunal. This is a radical departure for many jurisdictions where probate and estate administrative matters are handled by laymen acting as "probate" or "surrogate" judges.

Article II logically refers to intestate succession and the execution of wills. A singular part of this Article is expansion of the share of the surviving spouse.

Part 2 of Article II sets forth the elective share of the surviving spouse, again a novel concept and different from what we have in Pennsylvania although the basic approach is somewhat similar. The Code creates what is called the "augmented estate," which Mr. Hauptfuhrer discusses in the following article.

Article II, Part 3 relates to the rights of the spouse and children unprovided for by the will, giving the spouse the same share he would have received if the decedent had left no will unless it appears that the omission was intentional, and the same basic principle applies to pretermitted children.

Article II, Part 4 sets forth certain property which is exempt from creditor's rights, and to which the surviving spouse and children have a claim, such as homestead allowances, not interesting to Pennsylvanians, and a $3,500 exemption, including household furniture, automobiles and similar tangible personal property.

The family allowance is not set forth as a specific figure as in Pennsylvania law, but the surviving spouse and minor children of the decedent are entitled to a "reasonable allowance" from the estate for their maintenance during the period of administration.

Article II, Part 5 sets forth the principles for the execution of wills.

Article II, Part 6 sets forth rules of will construction, and Article II, Part 7 states that a contract to make a will is enforceable.

Article II, Part 8 contains general provisions, the most interesting being that relating to renunciation. This section states that any heir or person succeeding to an interest by intestacy or under a testamentary provision can renounce his interest by filing his renunciation at a certain time and place.

Article III is the most arresting, and in some respects the most controversial, because it is the article that sets forth probate and estate administrative procedure. While it is not the purpose of this article to analyze the coverage in this article or its applicability to existing Pennsylvania law, it must be emphasized that probate in common form, is the preferred approach. Any interested party may nonetheless force the probate to be accomplished in solemn form, and the personal representative may elect to follow that course. The administration may proceed out of court as in Pennsylvania, and can be terminated after payment of creditors and taxes and distribution of the estate, by appropriate filing of a release with the court, which terminates after a given period of time the liability of the executors, a concept not in our present law. In the alternative, at any stage of the proceedings the personal representative on his own motion may petition the court in any matter, and he may be forced to do so by any interested party. At the termination of a supervised accounting he must file an account with the court with due notice and thereafter can be discharged. Thus there is in essence what we now have in Pennsylvania practice.

Article IV relates to ancillary administration and here again is something of a landmark effort. In this section, emphasis is placed on the domiciliary or principal administration, and if uniformly adopted, this act would permit the domiciliary or principal administrator to collect the debts of the decedent, no matter in what state they might have arisen, and to distribute the real and personal property of the decedent among creditors and beneficiaries no matter in what state or states the real or personal property might be located.

Article V relates to the protection of persons under disability and their property, providing separate systems of guardianship to protect the persons of minors and of mental incompetents. It also provides a system of protective proceedings, including conservatorship, for the management of the property of

persons who are under disability. It is unique in giving to the guardian the power of a trustee, and expanding that power to provide that the guardian can make inter vivos gifts on behalf of his ward, make willls for him, and even arrange for his divorce. It also contains a useful provision that a power of attorney will survive incompetency, and there is a method of quickly getting a guardian or conservator appointed ex parte to protect the property of an incompetent person where there is danger that it may be taken from him by fraud or accident before complete proceedings can be established. This again is a landmark article and it contains many innovations.

Article VI relates to non-probate transfers such as joint interests, tentative trusts, "P.O.D. accounts" and similar types of property interests which do not go through probate, but where death does affect the transfer of property.

Article VII relates exclusively to the administration of inter vivos and testamentary trusts. There is nothing in this section that would prove new to a Pennsylvania lawyer, except the requirement of trust registration. The Code puts upon the trustee the obligation to register the trust in the county of the principal place of administration, the purpose being to provide not only a jurisdictional forum for all court action, but also to provide a method of control or supervision of the trust, if needed.

The Need for Uniformity and the Future of the Code

Why should the law of probate and estate and trust administration, and the administration of incompetent's estate be made uniform? For centuries these fields of law have been considered of parochial concern, a concept which arose from the fact that in earlier times, when our patterns of law were established, the principal source of wealth was real estate. It is inherent in the common law that the law relating to real estate is to be determined by the jurisdiction in which the land lies.

However, one of the phenomena of the economy of the last hundred years has been the alteration in our forms of wealth. Today wealth in greater part is represented by choses in action, notes, bonds, checking accounts, savings accounts, and by stock certificates representing fractional percentages in corporate enterprises. At the same time, our population has grown to over 200 million, and while there is still too large a percentage of that population at the poverty level, there is also an enormously increased percentage of the population having substantial property in the form of intangibles. This is evident by the increase in the number of wills that are being probated and the number of intestate administrations being granted in every jurisdiction.

There is the further factor that the population as a whole has be-

come far more mobile. State boundaries no longer are of any concern to the citizen of the United States. In the course of his lifetime he may have a residence in two, three, four, half a dozen, or a dozen states, and he may have from time to time acquired property interests in all of them. He not infrequently maintains a residence in two states, and we include not only the affluent. He will have banking connections in two or more states, and indeed he may have established inter vivos trusts in states in which he does not reside because of favoring a particular corporate fiduciary of prominence in the field of trust administration. The complexity, prolixity, and diversity is increasing not decreasing. With the inevitable population growth we shall certainly face greater problems in estate and trust administrations.

The time has already arrived when it seems ridiculous that the accident of where a will is probated on the basis of domicile, should determine procedural and substantive rights of creditors who may be scattered in many states. It is palpably absurd that the accident of a man dying intestate on the eastern bank of the Delaware River should face a different pattern of distribution of his estate from what would result if he had died on the western bank of the River.

These are the long range considerations that led the National Conference of Commissioners, after extensive study and debate, to determine upon a *uniform* probate code. It was fully recognized that there are articles and sections of the Code that commend themselves more than others to the consideration of uniform adoption throughout the states. Such sections, for instance, are those relating to creditors rights, to the methods of probate of the will of the decedent, and to the basic concept of intestate succession, and the share of the surviving spouse.

It is recognized that not all of the states are going to adopt this Code in the exact form in which it was promulgated. Studies will be made by various state and local bar associations over the next few years and various state legislatures will adopt perhaps part but not all of the Code. The Drafting Committee of the National Conference of Commissioners will be kept in office for another two years, and the Special Committee of the Real Property Probate Trust Law Section of the ABA will continue its work of study and promulgation of the Code. It is hoped that local bar associations in Pennsylvania will follow the lead of the Philadelphia Bar Association, which created a special sub-committee of its Orphans' Court Committee to study the Uniform Probate Code and make recommendations for adoption in this jurisdiction. Similar studies should originate in the Allegheny County Bar, and in many other county bars throughout the state, and these should be consolidated, hopefully, in studies that will be directed by the Real Property Pro-

bate and Trust Law Section of the Pennsylvania Bar Association. Ultimately the results of these studies should be concrete recommendations to the Advisory Committee of the State Legislature, to the end that the Pennsylvania statutes in these fields can be implemented, and in some respects modified and amended, so as to bring Pennsylvania in substantial conformity with the Uniform Code.

One of the advantages of having the National Conference of Commissioners adopt a code as a Uniform Code is the practical one that the Commissioners, by virtue of such adoption, are obliged to bring to the legislatures of their respective states, the Uniform Probate Code as adopted in Dallas. This will be the first step that will set the ball rolling in each jurisdiction, and it will then be up to the lawyers in each state to address themselves to the Code and to test its adaptability to their particular jurisdictions.

Maryland has already revamped its entire system of probate and estate administrative procedure and has passed its new statute in substantially the form of the Probate Code, which becomes effective January 1, 1970. Connecticut and Wisconsin are both in the throes of reexamination of their statutes, and the Uniform Probate Code will be recommended to the legislative committees of these states for adoption. Other states may be provoked or inspired by the Uniform Probate Code to create legislative commissions for the revision of their respective laws.

It is a long road. It cannot be covered quickly, but the ultimate objective of securing, through the United States, essentially similar laws with respect to the distribution and devolution of property on death would be a boon to all our citizens. Much effort has been spent over the past years in creating uniformity in the laws of the several states relating to the inter vivos transfer of property interests. The Uniform Commercial Code is a landmark in this field. Yet every citizen of this country must face the fact of death, and the inevitable transfer of property interests at that time. Certainly an interstate legal system providing for simplicity and uniformity in the transfer of property at this final moment is a desirable objective of law reform.

THE UNIFORM PROBATE CODE—A MODERN APPROACH FOR PENNSYLVANIA

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Last winter, as the National Conference of Commissioners on Uniform State Laws was revising the Fourth Working Draft of the Uniform Probate Code, the Orphans' Court Committee of the Philadelphia Bar Association appointed a special subcommittee to review the latest drafts of that code and to advise the Orphans' Court Committee whether the substance and procedure proposed by the Uniform Probate Code would be desirable in Pennsylvania. During the period of the subcommittee's study, the Fifth Working Draft of the Code was published and the study was directed to that draft. It is substantially the Fifth Draft which was approved this August by the National Conference of Commissioners on Uniform State Laws in Dallas and which was subsequently approved by the House of Delegates of the American Bar Association.

The subcommittee was comprised of Philip Bregy (author of *Intestate, Wills and Estates Acts of 1947*), John Walsh (Register of Wills of Philadelphia County), J. Pennington Straus (former Chairman of the American Bar Association Section on Real Property, Probate and Trust Law), Joseph Coghlan (former Law Clerk to Orphans' Court Judge Robert Bolger), Henry Beerits (partner of Morgan, Lewis & Bockius) and the author as chairman. This is a personal and subjective reaction to the Code—growing out of the subcommittee's work.

The task of the subcommittee was great in view of the size of the project (the Fifth Draft contains 341 pages) and the time limits imposed upon it. Under the circumstances, it was necessary for the subcommittee to concentrate on the broad policy aspects of the Code. In like manner, this report can be only a brief and broad overview of the Code. Neither the subcommittee nor the author have compared, in any detail, the provisions of the Code with their statutory and case law counterparts under existing Pennsylvania law. The focus of the subcommittee's study was on the desirability and feasibility of the Code. While the subcommittee members all specialize in probate, estate and trust law, it should be recognized that some of the "off the cuff" comments with regard to Pennsylvania law might very well be in error. The subcommittee had in mind always that it should be more concerned with what the law of Pennsylvania should be than

what it may or may not be at the present time.

Title

The first observation should be that the title of the Uniform Probate Code is a misnomer. The Code covers a great deal more than probate matters. It concerns itself also with minors and other persons under disability and the administration of their property, with non-probate transfers such as jointly-owned property and tentative trusts, and with trust administration. In general it would be a broad codification of many laws which we find today in our Intestate Act, Wills Act, Estates Act, Incompetents' Estates Act, Orphans' Court Act, Register of Wills Act, Fiduciaries Act and in a great body of our case law.

The second observation is that the Uniform Probate Code—while having uniformity among the states as its principal objective—has as a secondary objective the simplification of probate procedures throughout the United States. Many states have probate rules which require a lawyer to go to court with a petition—after notice and followed by a hearing—in order to effect the simplest procedure in the administration of an estate. Many of these costly and time consuming procedures have been the focus of recent public criticism. The Uniform Probate Code's provisions would provide an answer for much of such criticism without sacrificing many of the procedural safeguards which have grown up through the years for good reason. To a large degree the Code places on interested parties (particularly creditors) the obligation to come forward to protect their own interest. If the Code is adopted in Pennsylvania such parties would probably pay closer attention to what is going on in the administration of an estate than they do today.

Article I—General Provisions

As stated in Mr. Straus's paper, Article I contains the general provisions, definitions and outline of the jurisdiction of the probate court as a court of general jurisdiction with appeals going directly to an appellate court for reconsideration on the record. The probate court may include a registrar (Register of Wills), who need not be a judge or lawyer, to whom the judge can delegate certain ministerial functions. This is not unlike much of the judicial operations currently in effect in Pennsylvania with the exception that the office of Register of Wills is somewhat downgraded.

While most of the definitions in this section are self-explanatory it should be noted that a "conservator" is one appointed by a court to manage the estate of a disabled person or a minor, whereas a "guardian" is one who is qualified as the guardian of the person pursuant to either testamentary or court appointment.

Article II—Intestate Succession and Wills

Article II is perhaps the most important article in the Code. It deals with both intestate succession

and wills and contains provisions which would change the substantive law of many states.

Intestacy

The Code deals with real and personal property without distinction. That should create no problem of significance for Pennsylvania practitioners but it would bring about noticeable changes in other jurisdictions. The commentators to the Code consider the principal features under the intestate succession part of Article II to be as follows:

"(1) A larger share is given to the surviving spouse, if there are issue, and the whole estate if there are no issue or parent.

(2) Inheritance by collateral relatives is limited to grandparents and those descended from grandparents. This simplifies proof of heirship and eliminates will contests by remote relatives.

(3) An heir must survive decedent for five days in order to take under the statute. This is an extension of the reasoning behind the Uniform Simultaneous Death Act and is similar to provisions found in many wills.

(4) Adopted children are treated as children of the adopting parents for all inheritance purposes and cease to be children of natural parents; this reflects modern policy of recent statutes and court decisions.

(5) In an era when inter vivos gifts are frequently made within the family, it is unrealistic to preserve concepts of advancement developed when such gifts were rare; the statute therefore provides that gifts during lifetime are not advancements unless declared or acknowledged in writing."

While some may consider the changes of questionable value, it must be remembered that the testator may always elect different rules for distribution of his estate by executing a will.

By way of illustration, the Code would give to the surviving spouse, where there is no surviving issue but where the decedent is survived by a parent, the first $50,000 and then ½ of the balance of the net intestate estate. If there are surviving issue, all of whom are issue of the surviving spouse also, the surviving spouse would again receive the first $50,000 plus ½ of the balance of the net intestate estate; but where there are surviving issue one or more of whom are not issue of the surviving spouse, then the $50,000 preference is removed and the surviving spouse receives only ½ of the net intestate estate.

The Code contains a requirement that an heir must survive the intestate decedent by five days in order to be entitled to his share. The five-day survival provision requires survivorship by 120 hours and is designed to avoid multiple administration and in some instances to prevent property from passing to persons not desired by the decedent. It is believed that the five-day period would be generally beneficial and it is doubted that it would create any hardships by holding up the administration of an estate unduly. Also, it would not put a cloud upon the marital deduction under section 2056(b)(3) of the Internal Revenue Code if the spouse survives for the five days (even though it would deprive the estate of the marital deduction if the surviving spouse died

within the five-day period). As the marital deduction is normally a problem for larger estates, the five-day period could be easily "drafted around" by any competent scrivener.

Under the intestate section not only are adopted children fully engrafted upon the inheritance tree of their adopting parents, but also under certain circumstances an illegitimate child is considered the child of the father. The circumstances under which such relationship would be deemed to exist could be a subject for considerable discussion but it is probably fair to say that the policy trend is in favor of the direction taken by the Code.

The Code would alter the common law relating to advancements in that only written evidence of the intent that an inter vivos gift be considered as an advancement on one's inheritance would be admissible. The Commissioners obviously concluded that if a donor wanted an inter vivos transfer to be treated as part of a beneficiary's inheritance he could easily make a will and adjust the respective interests of his beneficiaries accordingly.

Elective Share

Part II of Article II would provide substantive law changes for almost all jurisdictions. It deals with the elective share of a surviving spouse and injects an entirely new concept of the property to be considered in determining the amount to be allocated to an electing spouse. In essence the concept is an extension of Section 11 of the Pennsylvania Estates Act. The Code provides that a surviving spouse may take an elective share of an "augmented net estate." In brief, the augmented net estate includes transfers by the decedent during marriage (a) to persons other than the surviving spouse where the decedent has retained for himself a lifetime benefit or control, (b) to jointly-held property with right of survivorship, (c) within two years of death to the extent that the aggregate transferred to any one donee in either of the years exceeds $3,000, (d) to the surviving spouse and (e) by way of life insurance or similar benefits payable to the surviving spouse.

The commentators' notes to the section indicate that the purpose of augmenting the probate estate in computing the elective share is two-fold:

"1. To prevent the owner of wealth from making arrangements which transmit his property to others by means other than probate deliberately to defeat the right of the surviving spouse to a share, and

2. To prevent the surviving spouse from electing a share of the probate estate when the spouse has received a fair share of the total wealth of the decedent either during the lifetime of the decedent or at death by life insurance, joint tenancy assets and other non-probate arrangements."

The category of transfers by the decedent during his lifetime, includes only transfers during the marriage, and it would therefore be possible for a person to provide for

children by a prior marriage, as by a revocable living trust, without concern that such provisions could be upset by later marriage and an election by the surviving spouse.

The surviving spouse under the Code would have an elective share equal to ⅓ of the augmented net estate. If a married person is domiciled in another state and owns property which is located in Pennsylvania there would be no election under Pennsylvania law to the Pennsylvania property. The Uniform Probate Code would, of course, include in the domiciliary state all of the property located in Pennsylvania.

Obviously, the substantive law changes and the policy behind them can be widely debated; however, it appears that the Code has a great deal to be said in its favor.

Exempt Property

Another noteworthy provision concerns "exempt property." In short, the Code would give a surviving spouse (or minor children in the absence of a surviving spouse) a "homestead allowance" of $5,000. In addition the surviving spouse would be entitled to an "exempt property allowance" on household furniture, automobiles, furnishings, appliances and personal effects to an aggregate value not exceeding $3,500. Finally, in addition to the two previous exemptions, the surviving spouse (and dependent children) would be entitled to a reasonable allowance from the estate for their maintenance during the period of administration. The determination of the latter obviously could lead to court proceedings in many cases until working ground rules are developed and refined.

Execution of Wills

Part V of Article II deals with the formalities of execution and revocation of wills. For many states the provisions contained in this part will greatly liberalize their procedures, as the Code contains only minimum formalities. Insofar as Pennsylvania is concerned the Code would permit any person 18 years of age or older who is of sound mind to make a will. Such reduction of the mimimum age seems to be in keeping with the times. With the exception of holographic wills, every will must be in writing signed by the testator and witnessed by two witnesses, although there is no requirement that the witnesses observe the testator sign and they can sign the document at any time after execution and need not sign in each other's presence. The signing of the will by the witness would, of course, increase the execution formalities over those currently required under Pennsylvania law.

The Code contains an interesting provision for "self-proved" wills. Under the Code a will may—at the time of its execution or at any subsequent date—be made self-proved by the acknowledgment thereof by the testator and the affidavits of the attesting witnesses

made before an officer authorized to administer oaths and evidenced by the officer's certificate under official seal attached or annexed to the will. The advantage of a self-proved will is that it can be admitted to probate without the testimony of any subscribing witnesses. In all other respects, it is treated no differently than a will which is not self-proved.

Construction of Wills

The rules for construction of wills are not significantly dissimilar from existing Pennsylvania rules except that there is the carryover from the intestate provisions of the five-day survivorship provision. The Code provides that a beneficiary who fails to survive the testator by 120 hours is deemed to have predeceased the testator unless the will provides otherwise.

The Code provides that adjustments should be made in bequests because of stock dividends and stock splits and similar types of corporate reorganization. Such provision might be an improvement over our current case law, but the particular section of the Code is introduced by the phrase "if the testator intends that specific gift of certain securities . . ." and our courts could well end up exactly where they are today with the question being: what did the testator intend?

The section contains more liberal provisions with regard to engrafting adopted persons on the family tree of the adopting parents and denying them inheritance from their natural parents. Ademption by satisfaction is eliminated as was the principle of advancement under the intestate section. In such cases the testator must provide either in a contemporaneously written document or by will that an inter vivos gift is to be deducted from the gift in the will.

The Code contains provisions with regard to the effect of marriage or divorce after the execution of the will and also provisions that are comparable to our Slayers' Act.

Deposit of Wills

An interesting new concept for Pennsylvania is a provision for the lifetime deposit of a will by a testator. Under the Code the testator may lodge the will with the court for safekeeping. Some states already have statutes which permit the deposit of wills, and wills so deposited are supposed to be kept completely confidential. The Commissioners obviously believed that the experience in such states has been beneficial.

Article III—Probate of Wills and Administration

Article III of the Code deals with the actual probate of wills and the administration of estates and Pennsylvania practitioners may require some "adjusting time" to become familiar with the Code's rules.

Alternative Procedures

Under the Code there are alternative procedures that may be fol-

lowed in connection with the administration of the estate. One is deemed the formal procedure and involves court review of almost all of the steps required in the administration of an estate. The other is referred to as the informal procedure and corresponds in many respects to the current practice in Pennsylvania. An executor or personal representative can start down either procedure and the Code contains provisions whereby the administration of the estate can be switched from either the informal to the formal or from the formal to informal procedure during the course of administration. The existence of the formal procedures would probably not impose any great hardship on Pennsylvania practitioners, most of whom it is believed would follow the informal procedure route in the settlement of estates. Personal representatives acting under the informal procedure have full powers to deal with the various assets of the decedent's estate and purchasers from such personal representatives or from distributees of such personal representatives are fully protected. Non-adjudicated settlement of estates is feasible under the Code. In essence, the Code visualizes the court's role in the settlement of estates as a passive one. Unless asked to do so under the formal procedure route the court becomes involved only when some interested party asks it to become involved to secure resolution of a problem.

Will Contests

Practitioners in some counties will find comfort in the provisions of the Code which allow only one will contest rather than the two (Register of Wills first and then the Orphans' Court) which is the practice under some existing rules.

Appraisals

For those states where there have been political abuses in connection with the appointment of appraisers of estates' assets the Code greatly simplifies matters and brings them into line with the general practice in Pennsylvania. Under the Code it is the personal representative's obligation to prepare an inventory of the property owned by the decedent and to indicate the fair market value of each item as of the date of death. The personal representative may employ a qualified or disinterested appraiser to assist him in ascertaining such market value. If he chooses to use an appraiser, he is required to indicate the name of such appraiser on the inventory.

Powers

The Code gives a personal representative exceedingly broad powers to deal with the property and claims of the decedent. The Code does however require joint action by co-personal representatives unless the will provides otherwise. There are only certain limited exceptions to this general joint action rule and it may cause testators to

reflect more carefully when selecting personal representatives.

Compensation

A personal representative is entitled to reasonable compensation for his services under the Code even though the will may contain an express provision for such compensation. In that event he may renounce the provision in the will and elect the reasonable compensation provided by law.

Small Estates

The provisions of Part 12 of Article III deal with special situations in the settlement of estates and seem generally worthy of adoption. One such provision creates procedures for the settlement of a small estate on affidavit. That procedure should be an easier procedure than is currently provided by Section 202 of the Fiduciaries Act, and it is believed that there would be any number of small estates where such simplified procedure would be helpful. It is recognized, however, that the liberalization of rules in this area could provide opportunities for wrong-doers. The affidavit procedure would apply to estates up to $5,000 and would be available only thirty days after the death of the decedent. The Code also provides provisions similar to Section 202 of the Fiduciaries Act for closing small estates where the amount involved does not cover the various "allowances" and the costs of administration, funeral, etc.

ARTICLE IV—FOREIGN PERSONAL REPRESENTATIVES: ANCILLARY ADMINISTRATION

In brief, Article IV is designed to simplify the administration of multiple-state estates through unifying the administration and emphasizing the domiciliary administration insofar as possible. It is interesting to note that this article includes not only personal representatives appointed under the various states of the United States, but also includes certain common law foreign countries with laws quite similar to ours—such as England, Ireland and Canada (but not the Province of Quebec).

Collection by Affidavit

Article IV simplifies the procedures whereby the domiciliary representative may collect the property that belonged to the decedent which may be located in another state. Under the Code he would simply deliver to the person possessing the decedent's property, 60 days after the death of the decedent, an affidavit stating only the date of death of the decedent, that there is no local administration, and that the person delivering the affidavit is the domiciliary personal representative entitled to the property. It does not require any statement, such as contained in Section 1101 of our Fiduciaries Act, to the effect that all local creditors have been paid. Under the Code the burden is on creditors to protect themselves by either taking some action locally within 60 days after death or by

proceeding in the jurisdiction in which the decedent was domiciled at the time of his death. The Code, on the other hand, protects third parties who are indebted to the decedent or to whom the decedent had entrusted the safekeeping of certain property by completely exonerating them from any further liability if they surrender property to the domiciliary representative on the strength of the affidavit provided by the Code. The affidavit procedure does not require the domiciliary representative to file copies of his appointment in the state where the property or claim is located or to produce a short certificate.

Formal Procedures

The domiciliary representative, if he wishes, could follow Code procedures similar to those currently provided in Pennsylvania law. He could file a copy of his appointment in the foreign state and enjoy the full authority that would be available to a local representative under the informal probate procedure. The Code makes it perfectly clear that a domiciliary representative has first preference to ancillary letters in the foreign state if formal proceedings in that state are indicated. Other persons who might be resident in the jurisdiction where the decedent's property is located are not foreclosed from applying for letters to which they might otherwise be entitled but they cannot obtain such letters until notice has been given to the domiciliary personal representative to come into the jurisdiction and to obtain letters.

Article V—Protection of Persons Under Disability and Their Property

Insofar as Pennsylvanians are concerned perhaps some of the most useful provisions of the Code are contained in Article V which has to do with the protection of persons under disability and their property.

Facility of Payment

To begin with, there is a facility-of-payment provision which enables persons owing funds to minors to distribute those funds in a pragmatic fashion where there has been no conservator appointed for the minor's estate. In particular, up to $5,000 a year can be paid (a) to the minor directly if he or she is 18 or married, or (b) indirectly by payment to the parent or the grandparent with whom the minor resides, or (c) indirectly by payment to the minor's guardian, or (d) indirectly by deposit in a savings account in the minor's name.

Guardian and Conservator

The Code could be at variance with some existing Pennsylvania practice in that the guardian of a minor's person may also be the conservator of the minor's estate.

Estate Planning

One provision which will be most welcomed by estate planners in this day of increasing numbers of senile

senior citizens is the Code's provision which would permit a conservator of a disabled person's estate to engage in estate planning for that person subject to court approval. While there have been a few lower court cases in Pennsylvania which have approved this practice on a substitution-of-judgment theory in a few special situations for affluent persons, it would undoubtedly be helpful to have statutory provisions which clearly accept the principle.

Separate Counsel

A requirement which might cause Pennsylvanians to raise their eyebrows is a provision that an alleged disabled person must have his own separate counsel in a hearing to determine his disability. The current Pennsylvania practice seems to provide more than adequate safeguards for disabled persons in such proceedings, but the provision should not be an exceedingly difficult provision to live with, although it may increase the costs of such proceedings.

Title

Those lawyers who are particularly intrigued with the concepts of title and vesting of title will be pleased to see that the Code contains a provision that title to real estate vests in a disabled person's conservator upon the appointment of such conservator.

Powers

A conservator is given broad powers to act without court approval in such areas as continuing the disabled person's business or incorporating it, or in mortgaging his property or even in determining and distributing principal and income. Of course, the conservator does exercise his judgment at his own risk; and accordingly, if he wishes, he can obtain the approval of the court in any situation where he feels that he needs the protection of a court decree.

Surcharge

A conservator can be held liable or be surcharged for loss only when there is a causal relationship between his breach of trust and the loss. For example, if an investment banker who is a conservator obtains bonds from a firm in which he is a partner at time when the purchase was generally thought wise, and such bonds later "turn sour," the conservator would not be a guarantor as a result of his technical self-dealing breach of trust. He would be liable only if it could be shown that his breach of trust caused the loss. That would be a change from current Pennsylvania law.

Bar to Claims

Another interesting concept involves the barring of claims against the disabled person by advertising by his conservator. If a creditor does not come forward within four months after such advertising his claim could be completely barred. The Code's philosophy of putting the burden on creditors may be

thought to be harsh to Pennsylvania lawyers who regularly represent clients who are creditors. The Commissioners apparently felt, on the other hand, that the conservator ought to be in a position to ascertain the debts of his ward. If the conservator takes reasonable steps to notify creditors and the persons to whom the disabled person owed money do not come forward, their failure to do so would be at their own peril and not at the risk of the conservator who should be trying to administer the estate in an orderly fashion.

Power of Attorney

Finally, this article contains provisions which all practicing attorneys should find useful: the "block-buster" power of attorney provisions. Under the Code, a power of attorney could be drawn which would survive disability. If by its terms the power of attorney is to be effective even in the event the person granting the power of attorney is declared incompetent, such provisions are valid and effective. Certainly each of us at one time or another is called upon to determine the effect of a power of attorney of a person who is in that wide, questionable area between competency and incompetency. The "block-buster" power of attorney seems to be a pragmatic solution for that problem.

Article VI—Non-Probate Transfers

Article VI of the Code purports to deal with non-probate transfers. (Incidentally this entire article of the Code is currently embodied in House Bill 1045 which is pending before the Pennsylvania legislature.) The article really deals with just two particular problems: (a) multiple party bank accounts and (b) tentative trusts.

Joint Accounts

With regard to joint bank accounts there is a new concept injected into the law. That concept is that each depositor owns his own "net contribution" to the account during his lifetime. The net contribution of a party is the sum of all deposits made by or for him less all withdrawals made by or for him which have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the balance. The net contribution also includes any deposit life insurance proceeds added to the account by reason of the death of the party whose net contribution is in question. Of course, evidence of what a person's net contribution is may be difficult to produce. In addition, each account is presumed to be a survivorship account in the absence of provisions to the contrary. Rebutting the presumption of survivorship may also be quite a challenge.

Tentative Trusts

The provisions with regard to tentative trust are even broader than those under the recently adopted Pennsylvania Banking Code. Under the Uniform Probate Code there may be any number of trustees to a tentative trust and any number of settlors and beneficiaries. The original case law with regard to such accounts was exceedingly restrictive and the Pennsylvania Banking Code liberalized those restrictions only modestly. The Probate Code would go even further.

Banks

In both the multiple party account and the tentative trust account the banks are protected in accordance with their deposit contracts just as they are under existing Pennsylvania law. The Code covers only the relationship among depositors and others named in the deposit contract. It does not purport to impose any liabilities on the banking institution which otherwise lives up to its contractual obligations. In view of the great variety of deposit contracts which exist in our state today, one cannot help but wonder whether the Uniform Probate Code would provide any easy answers to the problems in this area in the short run. Perhaps the question should be: Have we any better solutions?

ARTICLE VII—TRUST ADMINISTRATION

The final article of the Code is Article VII and it deals with trust administration. There would be a few changes brought about by the Code.

Trust Registration

Undoubtedly, the biggest change in the law insofar as Pennsylvanians are concerned centers upon the trustee's duty to register an inter vivos trust at the principal situs of administration. The penalty for not registering the trust is that failure to do so is automatic grounds for removal of the trustee and automatic grounds for denial of his compensation. It is difficult to visualize any professional trustee failing to register the trust when the Code contains such penalties and the additional provision that any clause in the trust instrument which purports to eliminate the requirement for registration shall be ineffective. The provision for registration of trusts applies equally to inter vivos and testamentary trusts and is available to foreign created trusts as well as those locally created. The place of registration is not necessarily related to the place where the trust was created, but is related to the place where the trust is primarily to be administered. The situs of administration in turn is supposed to be at a location appropriate to the purposes of the trusts and the interests of its beneficiaries.

Standard of Care

Another innovation written into Article VII has to do with the trustee's standard of care and per-

formance. Here present Pennsylvania law would be revised and corporate trustees or individual trustees with special skills (such as lawyers) would be held to higher standards of care when serving as trustees than would ordinary laymen when serving as trustees. Undoubtedly the trust companies will study such provisions carefully.

Powers

The article also contains the broad powers already recommended by the Uniform Trustees Powers Act. These powers are exceptionally broad and even include the power to delegate discretionary duties. Some questions will probably arise as to the effect of some of the broad powers on certain tax planning devices.

Conclusions

Overall the Uniform Probate Code would appear beneficial for Pennsylvania, even though it contains a number of provisions of debatable value for Pennsylvanians. Uniformity in itself is a desirable goal, but in addition the Code would provide some improvements in Pennsylvania law and procedure.

Pennsylvania at the present time is among the forerunners of states which have liberal, pragmatic and inexpensive probate procedures. Thus there is probably no imperative reason that Pennsylvania rush to adopt the Uniform Probate Code. Possibly it would be wise for the Pennsylvania legislature first to enact into law, by way of amendment to existing laws, those sections of the Code which are most desirable in order that our law, in both substance and procedure, be brought gradually into line with the provisions of the Code. Perhaps Pennsylvania should first wait to see what the experience of some other states is with regard to this particular uniform act. This is not to say that the Code is not a desirable, forward-reaching document. It is only to say that Pennsylvania today has very workable laws. They should not be replaced until we are reasonably certain that the replacements will be improvements.

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The 1969 Oregon Probate Code and Due Process

THE 1969 Oregon Probate Code[1] (hereinafter Code) takes effect on July 1, 1970.[2] The author believes that the dominant objective of the Code is to facilitate the prompt and economical transmission of wealth at death through the administration of decedents' estates. Moreover, it seems an almost self-evident truth that speed and economy are dependent on an efficient legal system.[3] The 1969 Code should facilitate efficient administration of decedents' estates for two basic reasons: codification and independent administration.

Codification. Throughout the Code, substantive and procedural law has been clarified. Old statutes and decades of case law have been integrated and restated in modern text.[4] This codification process necessi-

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[1] Or. Laws 1969, ch. 591, as amended by §§277-280, Or. Laws 1969, ch. 597.

[2] Or. Laws 1969, ch. 591, 306. Hereafter, as all references to Code sections will be to OREGON REVISED STATUTES (1969), the form "ORS §000.000" will be used in text and footnotes.

[3] Unfortunately, no caveat is required at this point. Even a more efficient legal system may not decrease costs during an inflationary period. But at least it should dampen the rising cost spiral.

[4] The following provisions are merely important examples of this process: ORS §111.085. Matters subject to probate court jurisdiction; ORS §§112.015-.115. Intestate succession; ORS §112.385. Nonademption of specific devises in certain cases; ORS §112.045. Pretermitted children; ORS §112.455-.555. Rights of slayer in property of a decedent; ORS §112.675. Renunciation of intestate succession or devise; ORS §114.105.-165. Elective share of surviving spouse; ORS §116.133. Abatement; ORS §116.303-.383. Apportionment of estate taxes; and ORS §117.005-.096. Estates of absentees.

tated statutory resolution of many policy issues. Those responsible for the Code, as draftsmen and legislators, believe experience will verify the wisdom of at least the majority of these policy decisions. At the minimum, the attorney will find a new certainty and completeness in the Code which will permit him to advise his clients of their rights with less costly and time-consuming resort to the courts. However, no matter how important these clarifying provisions will be, they do not reflect the Code's new theory of estate administration. The most significant increase in efficiency for most estates will come from independent administration.

Independent Administration. The Code adopts the theory of independent estate administration. This theory is not new. It has been in operation in England since 1925,[5] and, in modified form, has been utilized for many years in Texas[6] and Washington.[7] It constitutes the central administrative theme of the UNIFORM PROBATE CODE,[8] promulgated by the National Conference of Commissioners on Uniform State Laws in August 1969. Although the Oregon Probate Code does not adopt the UNIFORM PROBATE CODE, many of its sections are based on the UNIFORM PROBATE CODE.

Why has independent administration been selected as the method for achieving more efficient estate administration? For many years, probate reformers have focused attention on "Small Estates Acts" designed to extricate small estates from the probate morass. The 1969 Code reflects a policy determination that the vital issue is the potential controversy which may be involved in the administration of an estate, not the size of the estate. Hence, the goal of the Code is to free all noncontentious estates from mandatory court supervision, but to keep judicial protection available whenever reasonably demanded by interested persons.

SUMMARY OF ESTATE ADMINISTRATION UNDER THE CODE

Since the Code makes a radical departure from the traditional philosophy of estate administration in the United States, a knowledge of its general drift is essential to appreciate any analysis. A selection of the basic administrative provisions of the Code will be quoted, or briefly summarized, to furnish an overview of the new Oregon system. For purposes of due process analysis, special attention should be focused

[5] Fratcher, *Fiduciary Administration in England*, 40 N.Y.U. L. REV. 12 (1965).

[6] Winn, *Non-Judicial Administration of Estates in Texas*, 17 SW. L. J. 384 (1963).

[7] Fletcher, *Washington's Non-Intervention Executor—Starting Point for Probate Simplification*, 41 WASH. L. REV. 33 (1966).

[8] UNIFORM PROBATE CODE, intro., art. III; §3.704. The UNIFORM PROBATE CODE will be cited hereafter in the form "UPC §0-000."

on those provisions designed to give interested persons a reasonable opportunity to protect their rights.

> ORS §111.085. *Probate jurisdiction described.* The jurisdiction of the probate court includes, but is not limited to . . . (5) Administration, settlement, and distribution of estates of decedents . . . (8) Supervision and disciplining of personal representatives . . .

ORS §113.035. "*Petition for appointment of personal representative and probate of will.*"[9] Any interested person, or a named executor, may file the petition and seek estate administration. In addition to the facts prerequisite to the court's jurisdiction, the petition must include, so far as known, the names and addresses of heirs (whether or not a will is being offered) and devisees (if a will is being offered). A statement of the extent and nature of estate assets is required to enable the court to determine the amount of bond which may be required. No notice of the hearing on the petition is required; it is contemplated that ex parte appointment and probate will continue to be used in Oregon in most cases.

ORS §113.105. "*Necessity and amount of bond; bond notwithstanding will.*"[10] A bond is required of the personal representative unless he is the sole heir or devisee, or the will provides that no bond is required. Even in the latter situation, the court may require bond.

ORS §113.145. *Information to devisees and heirs.*[11]

(1) Upon his appointment a personal representative shall deliver or mail to the devisees and heirs named in the petition for appointment of a personal representative, at the addresses therein shown, information that shall include:

(a) The title of the court in which the estate proceeding is pending and the clerk's file number;

(b) The name of the decedent and the place and date of his death;

(c) Whether or not a will of the decedent has been admitted to probate;

(d) The name and address of the personal representative and his attorney; and

(e) The date of the appointment of the personal representative.

(2) The failure of the personal representative to give information under this section is a breach of his duty to the persons concerned, but does not affect the validity of his appointment, duties or powers or the exercise of his duties or powers.

. . .

ORS §113.155. *Publication of notice to interested persons.*[12]

(1) Upon his appointment a personal representative shall cause a notice to interested persons to be published once in each of three consecutive weeks in:

(a) A newspaper published in the county in which the estate proceeding is pending; or

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[9] *See* UPC §§3-301, 3-306, *and* 3-310.

[10] Compare UPC §§3-603, 3-604, 3-605, *and* 3-606. Under these provisions, a personal representative appointed in informal proceedings (ex parte) is not required to give bond unless expressly required by the will, or demanded by an interested person.

[11] Based on UPC §3-705.

[12] The UNIFORM PROBATE CODE does not require a published notice comparable to ORS §113.155. UPC §3-801 does require the conventional notice to creditors.

(b) If no newspaper is published in the county in which the estate proceeding is pending, a newspaper designated by the court.
(2) The notice shall include:
(a) The title of the court in which the estate proceeding is pending;
(b) The name of the decedent;
(c) The name of the personal representative and the address at which claims are to be presented;
(d) A statement requiring all persons having claims against the estate to present them, within four months after the date of the first publication of the notice, to the personal representative at the address designated in the notice for the presentation of claims; and
(e) The date of the first publication of the notice.
(3) The failure of the personal representative to cause a notice to be published under this section is a breach of his duty to the persons concerned, but does not affect the validity of his appointment, duties or powers or the exercise of his duties or powers.
. . .

It should be noted that subsection (2)(d) takes the place of a separate notice to creditors. ORS §111.005(19) defines interested persons as follows:

(19) "Interested person" includes heirs, devisees, children, spouses, creditors and any others having a property right or claim against the estate of a decedent that may be affected by the proceeding. It also includes fiduciaries representing interested persons.

. . .

ORS §113.195. *Removal of personal representative.*
(1) When a personal representative ceases to be qualified as provided in ORS §113.095, or becomes incapable of discharging his duties, the court shall remove him. (2) When a personal representative has been unfaithful to or neglectful of his trust, the court may remove him.
(3) When grounds for removal of a personal representative appear to exist, the court on its own motion or on the petition of any interested person, shall order the personal representative to appear and show cause why he should not be removed . . .

ORS §114.215. *Devolution of and title to property.*[13]
(1) Upon the death of a decedent, title to his property vests:
(a) In the absence of testamentary disposition, in his heirs, subject to . . . administration and sale by the personal representative; or
(b) In the persons to whom it is devised by his will, subject to . . . administration and sale by the personal representative.
(2) The power of a person to leave property by will, and the rights of creditors, devisees and heirs to his property, are subject to the restrictions and limitations expressed or implicit in . . . [this Act] to facilitate the prompt settlement of estates.

ORS §114.265. *General duties of personal representative.*[14] A personal representative is a fiduciary who is under a general duty to and shall collect the income from property of the estate in his possession and preserve, settle and distribute the estate in accordance with the terms of the will and . . . [of this Act], as expeditiously and with as little sacrifice of value as is reasonable under the circumstances.

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[13] Based on UPC §3-101.
[14] Based on UPC §3-703(a).

ORS §114.275. *Personal representative to proceed without court order; application for authority, approval or instructions.*[15] A personal representative shall proceed with the administration, settlement and distribution of the estate without adjudication, order or direction of the court, except as otherwise provided in [this Act]. However, a personal representative or any interested person may apply to the court for authority, approval or instructions on any matter concerning the administration, settlement or distribution of the estate, and the court, without hearing or upon such hearing as it may prescribe, shall instruct the personal repsentative or rule on the matter as may be appropriate.

Relative to its importance, this section may be unduly terse. Its basic thrust is that the personal representative *shall* proceed with administration without court order. He, or any interested person, *may* apply to the court for instructions. The fundamental alteration in the role of the court will be apparen. to any experienced probate attorney. Whereas in the past, the court had supervisory responsibility for business decisions involving the administration of estate assets, with the personal representative playing a more ministerial part, under the Code, judicial authority is passive until invoked by the personal represenative or an interested person. It is believed that the Code contemplates that the personal representative will make and execute business decisions within the scope of his authority over estate assets without seeking court instructions, unless he believes that there is genuine disagreement among persons interested in the estate as to the wisdom of those decisions.

The role of the court in response to petitions by interested persons concerned about the administration of the estate is more nebulous. They would hardly be seeking "authority" or "approval." Rather, they would probably want the personal representative instructed to act in a specified way, or to refrain from acting in a manner contemplated. Section 3-607 of the UNIFORM PROBATE CODE expressly authorizes the court to issue an order restraining the personal representative from performing specified acts, or exercising any of his powers. Also, the UNIFORM PROBATE CODE has express provisions, in sections 3-501 through 3-505, for a completely supervised administration, which may be requested by an interested person. However, the author believes that the jurisdiction and powers of the probate court as expressed in ORS §§111.085 and 111.095 are sufficiently broad to permit the court to issue orders restraining a personal representative from exercising any or all of his powers without further court order, thus requiring a partially or completely supervised administration. Although the word "instructions" in ORS §114.275 is perhaps ill-chosen, the basic theory of the Code would require that it be given an interpretation broad enough to permit

[15] ORS §114.275 is based on UPC §3-704. However, UPC §3-704 only applies to a personal representative. Petitions for orders from an interested person are authorized by UPC §3-105.

an interested person to invoke the full supervisory jurisdiction of the probate court in an appropriate case.

ORS §114.305. *Transactions authorized for personal representative.*[16] Except as restricted or otherwise provided by the will or by court order, a personal representative, acting reasonably for the benefit of interested persons, is authorized to:...

This section, then, includes 25 subsections granting the personal representative broad authority to administer estate assets without court approval or order. It should be emphasized that this section details transactions which are *authorized* for a personal representative, unless restricted by the will or by court order.

ORS §114.325. *Power to sell, mortgage, lease and deal with property.*[17]
(1) A personal representative has power to sell, mortgage, lease or otherwise deal with property of the estate without notice, hearing or court order.
(2) Exercise of the power of sale by the personal representative is improper, except after notice, hearing and order of the court, if:
(a) The sale is in contravention of the provisions of the will; or
(b) The property is specifically devised and the will does not authorize its sale; or
(c) A bond of the personal representative has been required and filed, the sale price of the property to be sold exceeds $5,000 and the bond of the personal representative has not been increased by the amount of cash to be realized on the sale, unless the court has directed otherwise.

Subsection (1) gives the personal representative a *power* over the title to estate property, which may be exercised without notice, hearing or court order. Because of this *power* over title, the personal representative may transfer a good title to a bona fide purchaser under ORS §114.385 even though exercise of the power may have been improper, *i.e.*, unauthorized, under subsection (2) above:

ORS §114.385. *Persons dealing with personal representative, protection.*[18] A person dealing with or assisting a personal representative without actual knowledge that the personal representative is improperly exercising his power is protected as if the personal representative properly exercised the power. The person is not bound to inquire whether the personal representative is properly exercising his power, and is not bound to inquire concerning the provisions of any will or any order of court that may affect the propriety of the acts of the personal representative. No provision in any will or order of court purporting to limit the power of a personal representative is effective except as to persons with actual knowledge thereof.

ORS §114.395. *Improper exercise of power; breach of fiduciary duty.*[19] If the exercise of power by a personal representative in the administration of an estate is improper, he is liable for breach of his fiduciary duty to interested persons for

[16] *Compare* UPC §3-715 *and* UNIFORM TRUSTEES' POWERS ACT §3.
[17] The concept of power over title is taken from UPC §3-711. Authority to sell, mortgage, or lease property of an estate is included in UPC §3-715(23), along with transactions generally authorized for a personal representative.
[18] Based on UPC §3-714.
[19] Based on UPC §3-712.

resulting damage or loss to the same extent as a trustee of an express trust. Exercise of power in violation of a court order is a breach of duty. Exercise of power contrary to the provisions of the will may be a breach of duty.

Under ORS §114.325(1), the personal representative has an unqualified power over the title to property of the estate. However, the circumstances under which he is authorized to use this power are covered by ORS §§114.305 and 114.325(2). An unauthorized exercise of this power is improper, and may be a breach of duty under this section.

ORS §116.083. "*Accounting by personal representative.*" The personal representative must file a verified account of his administration annually, at such other times as the court may order, and when the estate is ready for final settlement and distribution. Although the statute does not expressly so state, it is believed that an interested person could invoke a court-ordered accounting in an appropriate case by petitioning for "instructions" to the personal representative under ORS §114.275. The final account must also include a petition for distribution.

ORS §116.093. "*Notice for filing objections to final account and petition for distribution.*" The personal representative must mail a notice of the time for filing objections to his final account and petition for distribution to each heir at his last-known address if the decedent died intestate, to each devisee at his last-known address if the decedent died testate, and to any other person known to claim an interest in the estate. No published notice is required.

ORS §116.103. "*Objections to final account and petition.*" Any person entitled to notice may file objections, and if any are filed, the court must provide a hearing.

ORS §116.113. "*Decree of final distribution.*"[20] The decree must designate the persons in whom title to the estate property is vested. Subsection (4) provides:

The decree of final distribution is a conclusive determination of the persons who are the successors in interest to the estate and of the extent and character of their interest therein, subject only to the right of appeal and the power of the court to vacate the decree.

ORS §116.123. *Effect of approval of final account.*[21] To the extent that the final account is approved, the personal representative and his surety, subject to the right of appeal to the power of the court to vacate its final orders and to the provisions of ORS §116.213, are relieved from liability for the administration of his trust. The court may disapprove the account in whole or in part, surcharge the personal representative for any loss caused by any breach of duty and deny in whole or in part his right to receive compensation.

ORS §116.213. *Discharge of personal representative.*[22] Upon the filing of

[20] Based on MODEL PROBATE CODE §183.

[21] Based on MODEL PROBATE CODE §179.

[22] Based on MODEL PROBATE CODE §193; see FED. R. CIV. P. §60(b)(1), which provides: "[T]he court may relieve a party ... from a final judgment ... for ... (1) mistake, inadvertance, surprise, or excusable neglect."

receipts or other evidence satisfactory to the court that distribution has been made as ordered in the final decree, the court shall enter an order of discharge. The discharge so entered operates as a release of the personal representative from further duties and as a bar to any action against the personal representative and his surety. The court may, in its discretion and upon such terms as may be just, within one year after entry of the order of discharge, permit an action to be brought against the personal representative and his surety if the order of discharge was taken through fraud or misrepresentation of the personal representative or his surety or through the mistake, inadvertence, surprise or excusable neglect of the claimant.

THE PROBLEM OF DUE PROCESS

Section 1 of the fourteenth amendment to the Federal Constitution provides: "Section 1 . . . nor shall any State deprive any person of . . . property, without due process of law . . ."[23] The author believes that two aspects of the Code could raise problems under the due process clause. They will be characterized as the authority problem and the power problem. Two simple examples may be of assistance.

The Authority Example. The testator's will left all of his property to his son (S) and his daughter (D) in equal shares. S was named executor in the will, which expressly stated that no bond should be required. S was duly appointed personal representative, and no bond was required by the court.

D (age 22) left for Europe after an argument with her father (the testator) about one year before he died. Occasional postcards had arrived, from various countries. S diligently attempted to locate an address for D, through other relatives, and friends of D, without success. S was unable to mail D the information required by ORS §113.145, and as S and D were also the sole heirs of the testator, no other mailing was made. S published notice to interested persons as required by ORS §113.155.

The testator owned and lived in a modest home some 300 miles from S's residence. The house had not been well maintained during the testator's declining years, and S believed that it would not be prudent to invest estate funds in necessary repairs to prevent further deterioration, or to hire a management firm to secure tenants and handle routine upkeep problems. Although not required to raise funds to pay debts or administrative expenses, S felt that a sale from the estate was desirable. The will contained no provision concerning the sale of estate property.

Pursuant to his power of sale in ORS §114.325(1), his authority to sell in ORS §114.325(2), and the general mandate of ORS §114.275 to proceed with estate administration without court order, S sold the property. He accounted under ORS §116.083. He mailed no notice of

[23] U.S. CONST. amend. XIV, §1.

his accounting and petition for final distribution to D under ORS §116.093 as her "last known address" was the testator's home. After paying D's share of the estate to the Division of State Lands pursuant to court order secured under ORS §116.213, S obtained an order of discharge under ORS §116.213.

D subsequently returned and recovered her share of the estate from the Division of State Lands. More than one year after S had obtained his discharge, she filed suit against him. She contends:

(1) That S was negligent in making the sale in that he sold for a grossly inadequate price.

(2) That the court lacked jurisdiction to enter a discharge of S which would bar her suit because:

(a) She was given no actual notice of the administrative proceeding.

(b) Constructive notice by publication is inadequate under the due process clause where a statute authorizes a fiduciary to sell estate assets without judicial supervision.

The Power Example. Assume the same facts as in the authority example, except for the following variations. S knew D's address, but did not mail her information under ORS §113.145. S did not publish notice to interested persons as required by ORS §113.155. The will expressly directed that the homeplace not be sold. The purchaser (BFP) from S paid value, and had no actual knowledge that S was using his power of sale improperly under ORS §114.325(2).

D filed suit against BFP to recover her one-half interest in the property. She contends:

(1) That ORS §114.215(1)(b) vested a one-half interest in the property in her as a devisee at the death of the testator.

(2) That insofar as ORS §§114.215(1)(b), 114.325(1), and 114.385 purported to give S a power of sale over her property, in contravention of the express terms of the will, when she had neither actual (ORS §113.145[2]) nor constructive (ORS §113.155[3]) notice of the proceeding, they deprived her of her property without due process.

What Is Property? In both examples, the basic contention of the devisee is that the Code procedures deprive her of *property* without due process. In the authority example, it is a cause of action for damages against the personal representative. In the power example, it is land. But what "property" did the devisee "have" to lose?

ORS §114.215(2) is crucial to this question, for subsection (2) expresses a legislative determination that the rights of heirs and devisees to the decedent's property are subject to the restrictions and limitations of the Code to facilitate the prompt settlement of his estate. The property rights of the decedent may differ from those of his devisee. This article can hardly plumb the depths of the jurisprudential meaning

of property. But a noted economist provides the following frame of reference:

> Since therefore neither occupation, natural law nor labor gives an indefeasible title to private property, some philosophers were led to frame the so-called legal theory of private ownership which is in essence that whatever is recognized as such by the law is rightfully private property. Obviously, however, this is not an economic doctrine. Good law may be bad economics. The law generally follows at a respectful distance behind the economic conditions, and adjusts itself gradually to them. The legal theory tells us what property is, not why it is, nor what it should be. Thus we are finally driven to the social utility theory...In ancient as in modern communities, the individual is helpless as against society, however much under modern democracy society may see fit to extend the bounds of individual freedom. If we allow the individual to seize upon unoccupied wealth, if we recognize the existence of certain rights in what are deemed to be the products of labor, if we throw the mantle of the law around the elements of private property—in every case society is speaking in no uncertain voice and permits these things because it is dimly conscious of the fact that they redound to the social welfare. Private property is an unmistakable index of social progress. It originated because of social reasons, it has grown under continual subjection to the social sanction. It is a natural right only in the broad sense that all social growth is natural.[24]

A leading United States Supreme Court case, *Irving Trust Co. v. Day*,[25] demonstrates the application of these theories to the rights of succession to property of a decedent. In 1922, two days before his marriage, a man (hereafter referred to as decedent) obtained a written waiver of all rights in his estate at death from his prospective bride (hereafter referred to as widow). On August 21, 1930 decedent executed a will leaving only $2,000 to his widow. On September 1, 1930 (eleven days later) section 18 of the NEW YORK DECEDENT ESTATE LAW[26] became effective as to all wills executed after that date. It gave a surviving spouse a right to take an elective share against the will of the spouse who died first, and permitted waiver of this right by an instrument duly acknowledged. Although the waiver signed by the widow was not acknowledged, the rights of successors under the August 21 will were still immune from claims of the widow because created under a prior law. But the decedent wished to change his will, and whether he knew it or not, his effective testamentary rights after September 1, 1930 were sorely restrained, for any change would forfeit his testamentary control over the share of his estate subject to the widow's election. He made a codicil on July 6, 1934, thus republished his will, and subjected his estate to the widow's election. The widow claimed her elective share. The executor of the decedent's will contended that section 18 impaired the decedent's contract rights, and deprived his testamentary successors of property without due process.

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[24] E. SELIGMAN, PRINCIPLES OF ECONOMICS 133-134 (1905).
[25] Irving Trust Co. v. Day, 314 U.S. 556 (1942).
[26] N.Y. Laws of 1929, ch. 229, §4.

The Court's initial pronouncement on the constitutional issue appears to reflect the legal theory of private ownership of property:

> Rights of succession to the property of a deceased, whether by will or by intestacy, are of statutory creation, and the dead hand rules succession only by sufferance. Nothing in the Federal Constitution forbids the legislature of a state to limit, condition or even abolish the power of testamentary disposition over property within its jurisdiction.[27]

Under this sweeping language, New York could have eliminated the decedent's right of testamentary disposition, and thus deprived his testamentary successors of all rights. Reduced to its bold form, the proposition is that a state could not possibly deprive a person of property by its laws governing succession to a decedent's property, for the only property one has by succession is created by and subject to those laws.

Interestingly, the Court did not terminate its analysis at this point. It referred to the effect of section 18 as continuing, as obligations of a decedent's estate, social responsibilities he had assumed during life, and said that to effectuate this policy of providing for a surviving widow, New York could have refused to recognize any waiver by a spouse, acknowledged or not.[28] To whatever extent it was constitutionally relevant, the Court was obviously sympathetic with the benign social utility of New York's creation of property rights in the decedent's spouse at the expense of his testamentary successors.

Returning to ORS §114.215, the Legislature appears to have relied on the proposition that if the State of Oregon could constitutionally eliminate all rights of succession to a decedent's property, it could certainly create rights in successors "subject to restrictions and limitations to facilitate the prompt settlement of estates."

The author suspects, however, that for two reasons the logic of this analysis proves too much. First, as long as the due process clause purports to protect property rights, the federal courts can hardly leave the determination of whether or not property ever existed solely to the states. In the *Irving Trust Co.* case, the Supreme Court said that "the existence of the contract and the nature and extent of its obligations become federal questions for the purposes of determining whether they are within the scope and meaning of the Federal Constitution . . . [29] And, with reference to section 18 and the elective share which it created, the Court said: "The condition clearly was such as New York might, without restraint from the Federal Constitution, annex to the privilege of making a will under its law."[30] Why was the

[27] Irving Trust Co. v. Day, 314 U.S. 556, 562 (1942).
[28] 314 U.S. at 563-564.
[29] 314 U.S. at 561.
[30] 314 U.S. at 563.

condition (the elective share) clearly within New York's power? Whether viewed as "creating" property rights in the widow, or "shifting" property rights from persons who would otherwise be successors to the widow, section 18 was justified by the Court in terms of reasonable state social policy.

Second, even if Oregon could constitutionally deny any property rights in erstwhile successors of a decedent, the primary thrust of ORS §114.215 is quite the opposite, for subsection (1) provides that upon the death of a decedent, title to his property *vests* in his heirs and/or devisees. Until heirship is determined, or a will is established and immune from contest, we do not know who these persons are. But the statute vests property rights in them which until his death resided in the decedent. Although these rights are conferred subject to restrictions and limitations, they are expressed as vested.

Because succession to a decedent's wealth is so deeply rooted in our society, the *interests* of successors probably will continue to be characterized as property rights, and the statutory provisions governing establishment of rights of succession and administration of the wealth of the estate in which those rights exist, will have to withstand an attack under the due process clause.

The Authority Problem. The authority example involves a collateral attack on the finality of the judicial order discharging the personal representative. The contention is that the court lacked jurisdiction to issue an order barring suit by a devisee given notice of the proceeding only by publication when the personal representative was authorized, by statute, to sell estate assets without judicial supervision. The theory is that due process requires that interested persons be given a higher quality of notice in independent administration than in supervised administration. However, before this theory can be evaluated, the general notice requirements of due process in estate administration should be explored.

Professor Simes states:

> In jurisdictions where statutes provide for some sort of notice to initiate the administration, it is clear that publication is sufficient and that personal service on interested parties is not required.[81]

Moreover, it is well known that probate in common form, without any notice to interested persons, is the accepted practice in many states.[82] In these states, notice to interested persons is usually given after the appointment of a personal representative, by a published notice to creditors or a notice of appointment.[83]

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[81] Simes, *The Administration of a Decedent's Estate as a Proceeding in Rem*, 43 MICH. L. REV. 675, 695 and n. 73 (1945).

[82] *Id.* at 693-694 and n. 70.

[83] *Id.* at 694.

However valid these notice procedures were under due process in 1945, when Professor Simes wrote, they are currently subject to serious doubts. The foundation case for these doubts is *Mullane v. Central Hanover Bank and Trust Co.*[84] The *Mullane* case was not concerned with estate administration, but dealt with trust administration, and a New York statute[85] which permitted trust companies to pool small trust estates into common trust funds for investment management. The statute also provided that a trust company could obtain a judicial settlement of its accounts in a common fund as against all beneficiaries of participating trusts after notice of hearing published in a local newspaper, setting forth merely the name and address of the trust company, the name and date of establishment of the common trust fund, and a list of all participating estates, trusts or funds. A trust company sought a final judicial settlement of accounts after giving the minimum notice by publication required by the statute. The Supreme Court held that this notice was inadequate under the due process clause as a basis for an adjudication depriving known beneficiaries whose addresses were available of substantial property rights. The notice provisions were upheld, however, as to persons whose interests or addresses were not known to the trust company.

That the beneficiaries of the participating trusts and estates had property interests in the common trust fund was conceded by all. The trust company argued that because the New York courts had jurisdiction over the trustee and the fund, the proceeding was at least in the nature of a proceeding in rem, and constructive service by publication was consistent with due process as to all beneficiaries. The opposing contention was that the decree did not affect the relative interests of the beneficiaries in the fund which was subject to New York's jurisdiction, but terminated the personal rights of all beneficiaries to surcharge the trustee for breach of trust, and hence was a proceeding in personam which required personal service of process on nonresidents, and at least mailed notice to residents.

Perhaps the most significant aspect of the Court's holding was its extreme pragmatism. The Court emphatically rejected the in rem—in personam antithesis in the due process context. It recognized the duty of the state to provide procedures for the administration of trusts supervised by its courts which would efficiently serve the needs of fiduciaries and all beneficiaries. But the Court was equally cognizant of the individual interests to be protected, for it said that before individual beneficiaries could be deprived of property the adjudication must

[84] 339 U.S. 306 (1950)

[85] N.Y. Laws of 1937, ch. 687, §10-C, as amended by ch. 602 (1943) and ch. 158 (1944).

"be preceded by notice and opportunity for hearing appropriate to the nature of the case."[36] These are broad words, as the Court admits:

> The Court has not committed itself to any formula achieving a balance between these interests in a particular proceeding or determining when constructive notice may be utilized or what test it must meet.[37]

The Court did provide what it characterized as a few general principles. The temptation to quote these will be resisted. It is believed that they in turn, boil down to two fundamental principles, which will be stated; their application to the "particular proceeding" in the *Mullane* case will be summarized.

(1) If a reasonable means, which would be used by a person who actually desired to communicate information to another, is available, an interested person is entitled to notice by that or equivalent means.

Mullane holding. Notice by ordinary mail was required for all beneficiaries, resident and nonresident, whose addresses were known to the trust company in the normal course of business.

Mullane analysis.

(a) "[T]he mails today are recognized as an efficient and inexpensive means of communication."[38] Such a notice is reasonably certain to reach most of those interested in objecting to the accounting.

(b) In a common trust fund, the interests of individual beneficiaries are identical with those of the entire class. As long as most beneficiaries receive notice, necessary objections probably will be made, and will inure to the benefit of all. "Now and then an extraordinary case may turn up, but constitutional law like other mortal contrivances has to take some chances, and in the great majority of instances no doubt justice will be done."[39]

(c) Personal service of citation on beneficiaries with known addresses would, "... by reasons of delay if not expense, seriously interfere with the proper administration of the fund."[40]

(2) If no reasonable means are likely to be available to a person who actually desired to communicate information to another, an interested person is entitled to notice which is not less likely to succeed than other feasible and customary substitutes.

Mullane holding. Notice by publication was approved for all beneficiaries, resident and nonresident, whose interests or addresses were not known to the trust company in the normal course of business.

Mullane analysis.

(a) Although it is unlikely that such a notice will ever reach inter-

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[36] 339 U.S. at 313.
[37] *Id.* at 314.
[38] *Id.* at 319.
[39] *Id.*
[40] 339 U.S. at 318-319.

ested persons, it is not much more likely to fail than alternative choices open to the state.

(b) Diligence in investigation beyond the normal course of business would lead to the ascertainment of some previously uncertain future interests, and the discovery of some previously unknown addresses. But because of the large number of beneficiaries, the practical difficulties and costs of such a requirement would impose a severe burden on the common trust fund plan, and would likely dissipate its advantages.

A subsequent case, *Schroeder v. City of New York*,[41] is also considered quite important. The case arose from a condemnation proceeding under the New York City Water Supply Act[42] to divert a portion of the Neversink River twenty-five miles upstream from the owner's land. In compliance with the Act, the City published notices in newspapers in the City of New York and in the County in which the lands with water rights were located, and posted twenty-two notices (two more than required) along a seven-to-eight mile stretch of the river in the general vicinity of the land affected by the case. Neither the published nor posted notices named any affected land owners, explained the necessary procedures to recover damages for loss of water rights, or gave information that damage claims were barred three years after the City's action. No notice was posted on the land affected in the case, and no notice was mailed to the owner, although her name and address were, to quote the Court's value judgment, "readily ascertainable from both deed records and tax rolls . . . "[43] The owner did not file a claim for damages within the three-year period required by the Act, and the issue was whether the published and posted notices measured up to the quality of notice required by the due process clause. The Court held that they did not. But what would have been adequate? The Court said:

> The general rule that emerges from the *Mullane* case is that notice by publication is not enough with respect to a person whose name and address are known or very easy ascertainable and whose legally protected interests are directly affected by the proceedings in question.[44]

The Court said a single letter would have discharged the City's obligation.

Although the Court referred to *Mullane*, it does appear that a significant factual distinction produced a more stringent notice requirement. In *Schroeder*, the owner's property interests were directly affected, and the damage claims of other property owners would not protect her. In *Mullane*, mailing was required for beneficiaries whose addresses were known "in the normal course of business;" in *Schroeder*, the re-

[41] Schroeder v. City of New York, 371 U.S. 208 (1962).
[42] Administrative Code of City of New York, tit. K41.
[43] 371 U.S. at 210.
[44] 371 U.S. at 212-213.

quirement is addresses "known or very easily ascertainable." Applied to the facts, this means that the City had a duty to ascertain the owners of all lands with possible water rights on the Neversink River downstream of the diversion point, and to give them mailed notice. The message is clear. Where the circumstances are such that only the interested person can effectively protect his rights, a duty of due diligence exists to locate his address. And due diligence probably means a more extensive search than the searcher might be disposed to call "easy."

In the years since the *Mullane* decision the Supreme Court has not considered a case involving notice requirements in estate administration. The general guide remains " . . . notice and opportunity for hearing appropriate to the nature of the case."[45]

What is the nature of the case? "The proceeding to administer the estate of a decedent is properly described as strictly in rem."[46] The res is the property of the decedent located in the state in which the proceeding takes place; the purpose of the proceeding is to determine the rights of all persons in the world, whether they be the decedent's successors or creditors, in that property.[47]

In many states the administration of an estate is viewed as one continuous in rem proceeding, from the petition for appointment of a personal representative to the order discharging him.[48] If constitutional notice is given to interested persons at the beginning of such a proceeding, no further notice is required for subsequent judicial orders in that proceeding.[49] Professor Simes states that the trend is to adopt the one continuous proceeding theory.[50] This trend probably reflects the greater efficiency of such a procedure, for in a reasonably complex estate, a requirement of new notices to support court approval of even the relatively significant transactions would impose a considerable burden in delay and expense.

It seems reasonably clear that the 1969 Code is based on the one-continuous-in-rem proceeding concept. ORS §114-275 is most in point, for it provides that ". . . a personal representative or any interested person may apply to the court for authority, approval or instructions on any matter concerning the administration, settlement or distribution of the estate, and the court, without hearing or upon such hearing as it may prescribe, shall instruct the personal representative or rule on the matter as may be appropriate." The court could, of course, require a notice of hearing under ORS §111.215. But the foregoing provision also refers to orders without hearing. Of course, the personal

[45] Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950).
[46] Simes, *supra* note 31, at 704.
[47] *Id.* at 697-698; Riley v. New York Trust Co., 315 U.S. 343, 353-354 (1942).
[48] Simes, *supra* note 31, at 689.
[49] Michigan Trust Co. v. Ferry, 228 U.S. 346 (1912).
[50] Simes, *supra* note 31, at 691.

representative would want an order with some judicial effect, and an ex parte order could satisfy that need only if rendered within a continuous in rem proceeding preceded by constitutional notice to interested persons.

Certainly the state must provide for the orderly administration of decedents' estates. If an order of final distribution is to identify the successors to a decedent's property, and bind all other persons, constructive notice must obviously be adequate for some persons. During the period of administration a fiduciary must manage the estate assets, and, frequently, management will require sale. The fiduciary may seek protection by a court approval before he makes the sale, or by a judicial order of discharge after his final account has been approved. But unless he can be assured of effective protection at some point for necessary business decisions, he could hardly accept the fiduciary office. Although the *Mullane* case rejected the significance of state characterizations of proceedings as "in rem" or "in personam" for due process purposes, the judicial necessity of jurisdiction over a res, and an indefinite number of potentially interested persons, remains. Discarding the "in rem" label does not alter the nature of the case. If estates are to be administered, less notice must be required than in proceedings historically characterized as "in personam."

The author believes that, subject to one qualification which will be discussed subsequently, ORS §§113.145 and 113.155 satisfy the due process requirement of notice and opportunity for hearing appropriate to the nature of a continuous in rem proceeding for the administration of an estate.

ORS §113.145, it will be recalled, requires a personal representative, upon his appointment, to deliver or mail to the devisees and heirs, named in the petition for appointment of a personal representative, certain basic information. Notice by ordinary mail was approved in *Mullane* as an inexpensive and efficient means of communication with a relatively large group of interested persons. The number of heirs and devisees in an estate is frequently large. The substantive information required by section 113.145 seems fully adequate to permit the recipient to utilize the further provisions of the Code available to secure protection of his rights.

Moreover, information to devisees under a probated will and heirs (which would include a surviving spouse and issue under ORS §§112.025 and 112.045) would include, in the vast majority of cases, all potential successors. Two categories of potential devisees are not included; those under unknown instruments, and those under instruments known to the personal representative which have not been probated. Many decedents leave a series of revoked wills. Imposing a duty on the personal representative to search for such instruments, and to

give information to devisees named in any of them found or already known, would be burdensome, and would probably be either fruitless or unnecessarily disruptive. The Code adopts the view that it is better public policy to leave such interested persons with the notice afforded all persons by the death of an individual, and publication.[51]

However, ORS §113.145 only provides for information to devisees and heirs named in the petition for appointment under ORS §113.035, and names and addresses of heirs and devisees need be included in that petition only "so far as known." Granted, in *Mullane* the trust company was only required to mail notice to beneficiaries whose addresses were known in the regular course of business. But in the common trust fund the interests of all beneficiaries were identical; notice to most would probably secure protection for the rest. The sole heir disinherited by a will may well have to protect his own interests. In *Schroeder*, mailed notice was required for a landowner whose address was easily ascertainable, and who, under the circumstances, had to press her own damage claim.

How diligent a search for unknown persons, or known persons with unknown address, should be required of a personal representative? After all, the death of a person is likely to come to the attention of relatives who were at all close to him.

> They do not pretend that the facts of the fraud were shrouded in concealment, but their plea is that they lived in a remote and secluded region, far from means of information, and never heard of Broderick's death, or of the sale of his property, or of any events connected with the settlement of his estate, until many years after these events had transpired. Parties cannot thus, by their seclusion from the means of information, claim exemption from the laws that control human affairs, and set up a right to open up all the transactions of the past. The world must move on, and those who claim an interest in persons or things must be charged with knowledge of their status and condition, and of the vicissitudes to which they are subject. This is the foundation of all judicial proceedings in rem.[52]

Nevertheless, the author would advise his client who wished to rely on subsequent ex parte court orders to bar suit by an interested person who did not receive mailed information to be prepared to prove he searched with reasonable diligence.

ORS §113.155, the other notice statute, requires publication of a notice to "interested persons" including the title of the court in which the proceeding is pending, the name of the decedent, the name and address of the personal representative, and the usual information contained in a notice to creditors.[53]

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[51] *See* UPC §3-403, Comment.

[52] Case of Broderick's Will, 21 Wall (88 U.S.) 503 at 519 (1874).

[53] At this point one might reasonably wonder why ORS §113.145 requires "information" to persons, while ORS §113.155 requires published "notice." The author has already expressed his opinion that both sections will be required to

Assuming, then, that the notice requirements of sections 113.145 (with a diligent search for the addresses of heirs and devisees) and 113.155 would be adequate for a judicially supervised estate administration, are they adequate for independent administration? Are the rights of interested persons subject to more hazards under independent administration?

Of course, if the interested person receives notice of the proceeding, by mail, publication, or otherwise, protective provisions are available under either system.

(1) *Removal of personal representative.* Any interested person may petition the court to have a personal representative who "has been unfaithful to or neglectful of his trust" removed under ORS §113.195. If the interested person can establish that the personal representative has already been disloyal (unfaithful) or imprudent (neglectful), removal would seem to be in order in most cases. However, what if the evidence merely establishes that there is strong animosity between the personal representative and the interested person (which might lead to disloyalty), or that the personal representative lacks even ordinary managerial competence (which probably would lead to imprudent acts)? The court could have found such a person unsuitable and never appointed him under ORS §113.085. But the original appointment is ex

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meet minimum due process notice requirements for the continuous in rem estate proceeding contemplated by the Code. If so, both are notice provisions, and the word "notice" should have been used in ORS §113.145, rather than "information." The misnomer should have no legal significance in the Code, as long as the cause of the error is known.

The error was caused by copying a provision of the UNIFORM PROBATE CODE which was designed to accommodate a theory of estate administration not adopted in the Oregon Code. The UNIFORM PROBATE CODE provides for two categories of proceedings, formal and informal.

Informal proceedings for probate of a will, appointment of a personal representative, or closing an estate, may generally be conducted without notice to any interested persons. UPC §§1-201(s), 3-301, 3-705, and 3-1003; but see UPC §§3-306 and 3-310. These proceedings do not involve court adjudications, and interested persons become bound by them only by various statutes of limitations, and related provisions. UPC §§3-108, 3-703, 3-909, 3-1005 and 3-1006. Thus UPC §3-705 requires the personal representative to give information to heirs and devisees. With information of the administration, they can institute formal proceeding to secure such protection as they desire. But "information" is not "notice," and under the UNIFORM PROBATE CODE is not intended to confer jurisdiction on the court to issue an order binding an informed person. Much of the language of ORS §113.145, and unfortunately the word "information," was taken from UPC §3-705.

Formal proceedings are those conducted with notice to interested persons before a judge, without limitation as to subject matter (UPC §1-201). Adjudicative proceedings to determine testacy or secure appointment of a personal representative (UPC §§3-402 and 3-403), resolve administrative matters (UPC §3-105) and close an estate (UPC §3-1001), must be preceded by notice given under UPC §1-401.

Substantively, ORS §§113.145 and 113.155 give virtually the same notice as UPC §§-403 and 1-401, and for the same purpose, to support the court's jurisdiction to grant subsequent orders binding interested persons.

parte, and hence it is unlikely that the court would have had evidence of unsuitability available at that time. It would seem that the court should consider evidence of general unsuitability in acting on a removal petition in an appropriate case.

(2) *Order limiting authority of personal representative.* Any interested person may petition the court for an order instructing the personal representative to act, or refrain from acting, in a specified manner, under ORS §114.275. Engaging in a transaction made unauthorized by court order would be a breach of fiduciary duty, with resultant liability for loss to any interested person under ORS §114.395. It could also subject the personal representative to punishment for contempt of court under ORS §§111.085 and 111.095.

However, what if the interested person has received no actual notice of the proceeding from the personal representative upon his appointment? An examination of the alternatives open to the personal representative in a typical managerial transaction, and their practical impact on the rights of the interested person, should be useful. In the authority example, the personal representative made a business decision that certain real property ought to be sold. He had authority to make the sale without court order under ORS §114.325. Moreover, ORS §114.275 urged him to use that authority and to proceed with estate administration without court direction. He made the sale. By so doing he assumed the risk of liability, under ORS §116.063, for any loss to the estate which might arise if his conduct were subsequently found to be negligent. His final account under ORS §116.083 included the facts of the transaction. Had the interested person made herself known to the personal representative, she would have received mailed notice of his final account under ORS §116.093. She could have then filed objections under ORS §116.103, and ORS §116.123, possibly subjecting the personal representative to surcharge for breach of trust, as well as loss of his compensation as a fiduciary. In short, where the personal representative uses his authority under independent administration, he remains fully accountable for negligence until his final discharge, and for one year thereafter under ORS §116.213 if the interested person can satisfy the court that she permitted his order of discharge through her "mistake, inadvertence, surprise, or excusable neglect."

Moreover, his potential liability is made more meaningful under the Code because of stricter bond requirements under ORS §113.105. Even if the will waives bond, the court may, in its discretion, require one. It seems clear that an interested person could petition the court to exercise this discretion under ORS §114.275.

On the other hand, although the personal representative had authority to make the sale, he could have petitioned the court under ORS

§114.275 for approval before he did so. As long as the personal representative made a full and honest disclosure of the facts relevant to his proposed sale, the court's ex parte order of approval would give him protection under the one-continuous-in-rem-proceeding concept. The interested person would not then have a cause of action for the personal representative's negligence, even if she acquired knowledge of the estate proceeding before his final discharge, but she would have gained judicial supervision of the sale.

How much judicial scrutiny would the transaction probably have received? How much substantive protection is it likely that the court would have given? The Code's conclusion reflects the following analysis. The American court system is designed to adjudicate controversies between litigants; within this system, court supervision of noncontentious fiduciary decisions exists as an anomaly. Fiduciary decisions relative to the need for, and terms of, sale of estate assets will probably be based on economic considerations. Whether or not a given sale is prudent will depend on the best judgment of business experts, real estate men or securities investment counselors. A judge can hardly be assumed to possess such skills or have the time to conduct an independent investigation of the wisdom of a proposed transaction. Perforce, he must usually approve the decision already made by the fiduciary and his advisers. The unrepresented interested person will seldom acquire additional protection, for he is not present to offer an alternative solution to the court. But the personal representative will have bought protection, and the cost of this protection, in terms of attorney fees, is an administrative expense of the estate. The ultimate conclusion is that the practice of routine ex parte approval of proposed fiduciary transactions involves delay and expense, and produces very little protection for the estate. Thus the Code authorizes and charges the personal representative to make and act on his management decisions; to be prepared to defend their prudence at the time of his final accounting; in a word, to earn his fiduciary compensation.[64]

Does independent administration subject the interested person without actual notice of an estate proceeding to greater risks than supervised administration? The argument that his rights against the personal representative are strengthened is, at the very least, reasonable. Imposition of a higher standard of notice for independently administered estates could seriously impair the objective of the Code, speedy and economical administration of estates in the interests of all potential successors. What notice beyond a diligent search for the identity and

[64] The Code authorizes courts to grant ex parte approvals for contemplated fiduciary transactions; it may be that courts should move in the direction of refusing to grant approvals for business decisions which should properly be the responsibility of the fiduciary.

addresses of heirs and devisees, and a mailed notice, could be required? Personal service might be suggested. But if an address cannot be located, this is no better than a letter insofar as actual notice is concerned. If it were required in the name of due process, the fiduciary would be forced to return to the old practice of seeking court approval for all transactions. The author sees no sensible reason for such a result.

The Power Problem. The power example mounts a direct attack on the Code provisions granting the personal representative power to transfer good title to a bona fide purchaser even when exercise of the power is unauthorized. Certainly the Code is not designed to encourage or condone this conduct. ORS §114.325(2) states that a sale in contravention of the provisions of a will *is* improper except after notice, hearing and order of the court, and ORS §114.395 provides that a personal representative *is* liable for loss or damage to an interested person resulting from a breach of duty in the improper exercise of power. The last sentence of ORS §114.395 provides that "Exercise of power contrary to the provisions of the will *may* be a breach of duty." An emergency might make it necessary for a personal representative to sell assets in contravention of the terms of the will without taking time to secure prior court approval. Such a sale would be improper, yet in exceptional cases might not be a breach of duty. But in the absence of a compelling emergency, the breach of duty would be clear, and the personal representative would be liable for any resulting loss, no matter how prudent the sale might have been when made.

However, damages may be quite inadequate to an interested person who has been deprived of property with unique or sentimental value. Fairness forces us to reconsider the notice problem, for if an interested person had notice of the proceeding, a method for blocking the personal representative's unauthorized exercise of power would surely have been available.

The UNIFORM PROBATE CODE provides for a completely supervised administration in certain situations.[55] Under this procedure, the court may order the personal representative not to exercise all or certain powers without court approval, and these restrictions must be endorsed on the personal representative's letters of appointment. As a person dealing with a personal representative must determine his fiduciary status by examining his letters of appointment, the person could not be a bona fide purchaser if restrictions on powers were noted on the letters.

No express provisions for endorsing letters with restrictions on powers are included in the Oregon Code. The author believes, however, that ORS §§111.085 and 111.095 grant the court ample power

[55] UPC §§3-501 through 3-505.

to make endorsements, and that an interested person could petition under ORS §114.275 to invoke the court's power. Where the will directed that certain property not be sold, or contained a specific devise of certain property without authorizing its sale, the statutory restrictions on the sale of that specific property without court approval under ORS §114.325 could be endorsed on the letters of appointment. Moreover, the court could restrain a personal representative from making any sales without prior court approval, and have the letters so endorsed. In the power example, no information was mailed to a devisee with a known address, and no notice was published. Hence this remedy was not available to the devisee.

Both ORS §113.145(2) and ORS §113.155(3) expressly state that failure of the personal representative to give information, or publish notice, as required, does not affect the validity of his appointment, or the exercise of his duties or powers. These provisions supply indispensable support for ORS §114.385, which permits a person, such as a purchaser, to deal with a personal representative on the strength of his letters of appointment. But balanced against the loss to an interested person of irreplaceable property, why is it not proper to impose a greater duty of inquiry on the purchaser? The purchaser (in reality his attorney) could:

(1) Check the court file to ascertain that notices required by ORS §§113.145 and 113.155 have been given.

(2) Examine the will to see if sale is authorized under ORS §114.325(2) without court order, and if not, if a court order has been properly obtained.

(3) In an intestate proceeding, check the court file to ascertain if bond has been required, and if so, if it has been increased as required by ORS §114.325(2)(c).

A practical answer to point (1) above is that if the power of a personal representative to engage in binding transactions, such as sales, were contingent on whether or not he used reasonable diligence in mailing notice to heirs and devisees, or published notice with technical accuracy, a person dealing with a personal representative could seldom rely on his power.

However, the three points above raise a far more fundamental issue. The Code was written to facilitate the prompt and economical administration of thousands of estates. In the power example, one personal representative failed to give required notices, and made an improper sale. But unless the purchaser in this obvious hardship case is protected; unless the personal representative's power of sale can exist independent of his authority, then every purchaser from every personal representative in every estate must make certain of the authority of the fiduciary to sell.

The philosophy of the Code reflects a policy judgment now uniformly accepted in the United States in connection with the transfer of securities by a fiduciary. Suppose that the power example concerned the sale of securities registered in the testator's name at his death, rather than real property. For this transaction the personal representative would need both a buyer and a transfer agent willing to rely on his statutory power of sale. The buyer must be certain that his title will be upheld, and the transfer agent must be certain that it will not be subjected to liability, even if the fiduciary exceeded his authority in making the sale. Neither can rely unless a protective statute is in force in the state of incorporation of the issuing corporation, and the state where the transfer and issuance of a new certificate will take place.

As of 1967, either the UNIFORM COMMERCIAL CODE, the UNIFORM ACT FOR SIMPLIFICATION OF FIDUCIARY SECURITY TRANSFERS, or the MODEL FIDUCIARIES' SECURITIES TRANSFER ACT was in force in all American legal jurisdictions, and for practical purposes no distinction need be made between these jurisdictions.[56] As the UNIFORM COMMERCIAL CODE[57] has now been adopted in all states except Louisiana, the following analysis will be based on that CODE.

A person such as a decedent's successor, against whom the transfer of a security is wrongful for any reason, except an unauthorized endorsement, cannot recover possession of the security or any new security evidencing all or part of the same rights, from a bona fide purchaser.[58] An executor or administrator of a decedent who is a registered owner of a security is authorized to endorse the security for transfer.[59] And, failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, does not render his endorsement unathorized.[60] A bona fide purchaser is defined as a purchaser for value in good faith and without notice of any adverse claim.[61] Further, the fact that the purchaser has notice that the security is endorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute notice of adverse claims.[62]

But, protection for a would-be buyer would be fruitless if no trans-

[56] C. ISRAELS & E. GUTTMAN, MODERN SECURITIES TRANSFERS §12.01 (1967).

[57] The UNIFORM COMMERCIAL CODE will be cited hereafter in the form "UCC §0-000."

[58] UCC §8-315.

[59] UCC §8-308(3)(d).

[60] UCC §8-308(7).

[61] UCC §8-302.

[62] UCC §8-304. Section 7(a) of the UNIFORM ACT FOR SIMPLIFICATION OF FIDUCIARY SECURITY TRANSFERS (hereinafter cited as SIMPLIFICATION ACT) contains similar provisions, and is substantially comparable to ORS §114.385.

fer agent could risk making a transfer to him. Hence, neither an issuer[63] nor a transfer agent[64] is liable to a person suffering loss as a result of the transfer of a security if it has the necessary endorsements and had no duty to inquire into adverse claims. Where the endorsement is by a fiduciary appointed by a court, appropriate evidence of the appointment is specified to be an official court certificate, such as letters of appointment.[65] Although the issuer or transfer agent has a general duty to inquire into adverse claims upon proper notice, where the endorsement is by a fiduciary there is no duty to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer. Neither the issuer nor the transfer agent is charged with notice of the contents of any court record or file or other recorded or unrecorded document.[66]

The dominant purpose of article eight of the UNIFORM COMMERCIAL CODE is expressed by section 8-105: to make securities governed by that article negotiable instruments. But within the context of fiduciary transfers, the underlying reason for negotiability is stated in the Prefatory Note to the UNIFORM ACT FOR THE SIMPLIFICATION OF FIDUCIARY SECURITY TRANSFERS. "The main purpose of this Act is to render unnecessary the burdensome documentation which has been required by the transfer agent . . ." [67] If the corporation and transfer agent are liable for making a transfer which results from a fiduciary breach of duty, they must police the transfer. Documentation proving that the personal representative has been properly appointed, that he is complying with the will, and any law requiring court approval, must be required. This procedure would prevent some wrongful transfers. But the administrative expense in providing documentation it imposes on the overwhelming majority of proper transfers is enormous. In isolated transactions a market based on the premise of negotiability may deprive true owners of a margin of protection; but overall, the efficiency and reduced costs of negotiability redound to the benefit of sellers and purchasers.[68]

Should speed and economy only be provided in transfers of investment securities? At common law, the personal representative was considered the owner of all estate personal property, and consequently could sell personalty and transfer good title to a purchaser without the

[63] UCC §8-404(1).
[64] UCC §8-406.
[65] UCC §8-402. Section 4(a) of the SIMPLIFICATION ACT is comparable.
[66] UCC §8-403. Section 3 of the SIMPLIFICATION ACT is comparable.
[67] SIMPLIFICATION ACT, Commissioners' Prefatory Note.
[68] Folk, *Article Eight: A Premise and Three Problems*, 65 MICH. L. REV. 1379, 1386-1387 (1967).

necessity of a court order.[69] Where a different rule exists in the United States, it results from statutes which condition the personal representative's power of sale of personalty upon prior court authorization.[70] The historical origins of the rules governing sales of real property are well known. Real property descended directly to the heir. Were it available to the personal representative for the payment of debts, the performance of feudal military services might have been jeopardized.[71] Of course, land is now subject to sale for the payment of administrative expenses and the decedent's debts, but because the realty passed directly to heirs or devisees, statutes were required to authorize such sales.[72] And in the absence of a testamentary power of sale, these statutes require court approval as a prerequisite to a valid sale.[73]

The plight of the prospective purchaser from a fiduciary in the United States, whether he be a personal representative or a trustee, is much the same. One cannot be a bona fide purchaser from a trustee if he has knowledge that the trustee would be exceeding his authority in making the sale. If the purchaser knows that he is dealing with a trustee, he is charged with notice of the terms of the trust, and their correct legal interpretation, and hence of any lack of authority.[74] The draftsman can provide the trustee with the broadest of powers, or a modern statute such as the UNIFORM TRUSTEES' POWERS ACT may provide such powers.[75] The purchaser still has a duty of inquiry; he must examine the trust instrument to make certain that included powers are adequate, or that statutory powers have not been negated by the settlor. Professor Fratcher has aptly summarized the situation:

> The Uniform Fiduciaries Act and the Uniform Commercial Code have abolished the duty of inquiry in virtually all transactions concerning negotiable instruments and investment securities, but little has been done as to other types of transactions. One who purchases half a million dollars worth of corporate bonds from a trustee need not inquire into his powers to sell and to give a receipt for the price, but one who buys a pig or a rocking chair at a trustee's auction is bound to study the terms of the trust and determine at his peril their correct legal meaning. The duty of inquiry is especially onerous in land transactions because, if notice of a trust appears in the chain of title, not only the original purchaser from the trustee but every subsequent purchaser must diligently inquire into his powers. Might it not be better to eliminate the duty of inquiry in all transactions with trustees and make third parties who engage or assist in such transactions liable to the cestui que trust only when they have actual knowledge that the trustee is committing a breach of trust? The duty of inquiry is rarely of real value to the cestui,

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[69] T. ATKINSON, WILLS §122 (2d ed. 1953).
[70] *Id.*
[71] C. LANGDELL, BRIEF SURVEY OF EQUITY JURISDICTION 144 (2d ed. 1908).
[72] T. ATKINSON, *supra* note 69, at §213.
[73] *Id.*
[74] IV A. SCOTT, TRUSTS §§297, 297.1,-.5 (3d ed. 1967).
[75] UNIFORM TRUSTEES' POWERS ACT §3. This act has been adopted in Idaho, Kansas, Mississippi, and Wyoming.

yet it *impedes the effective administration of every trust by delaying necessary transactions and discouraging dealings with and assistance to trustees.* A trustee who is financially unable to respond in damages for his breaches of trust could be required to furnish a bond.[76]

The UNIFORM TRUSTEES' POWERS ACT adopts the thesis of Professor Fratcher, for it provides that:

[A] third person, without actual knowledge that the trustee is exceeding his powers or improperly exercising them, is fully protected in dealing with the trustee as if the trustee possessed and properly exercised the powers he purports to exercise.[77]

The primary purpose of this provision is to eliminate the delay and expense produced by the duty of inquiry in the vast majority of cases when the trustee is not committing a breach of trust. And this purpose cannot be achieved unless all purchasers, except those with actual knowledge of breach of trust, are protected.[78] No distinction is made between personal and real property transactions. Indeed, as Professor Fratcher points out, because title assurance in the United States is primarily based on recording systems and chain of title, merchantability of land is enhanced by statutory protection of bona fide purchasers from trustees.

Finally, the potential merits of this approach have led to its extension to transactions with personal representatives in the UNIFORM PROBATE CODE[79] and the Oregon Probate Code.[80]

As ORS §114.215 vests title to a decedent's property in his heirs or devisees, subject to sale by the personal representative, the ultimate result of the exercised power of sale is to *shift* the rights of interested persons from specific property to proceeds of sale, perhaps to be supplemented by the personal liability of the personal representative and his surety if a breach of fiduciary duty has resulted in loss. Neither the Oregon Probate Code, the UNIFORM PROBATE CODE, nor the UNIFORM COMMERCIAL CODE condition this shifting of rights on constitutional notice to interested persons. Could the UNIFORM COMMERCIAL CODE, adopted in all states except Louisiana, be constitutional, but not the Oregon Probate Code, or the UNIFORM PROBATE CODE when adopted? Returning to Professor Fratcher, if an interested person could be deprived of half a million dollars worth of stock in a corporation (per-

[76] Fratcher, *Trustees' Powers Legislation*, 37 N.Y.U. L. REV. 627, 662-663 (1962) (emphasis added).

[77] UNIFORM TRUSTEES' POWERS ACT §7. Charles Horowitz, who was chairman of the special committee which drafted the act, states that it adopts the approach proposed by Professor Fratcher. Horowitz, *Uniform Trustees' Powers Act*, 41 WASH. L. REV. 1, 7-8, 28-29 (1966).

[78] Horowitz, *supra* note 77, at 28-29.

[79] UPC §3-714.

[80] ORS §114.385.

haps including control of the corporation), it seems unlikely that loss of a pig (even as unique as Al Capp's Salome), should produce a contrary result. Will the relevant portions of the UNIFORM COMMERCIAL CODE be held unconstitutional? No case raising such a challenge has been discovered.

CONCLUSION

This article is developed around two hardship examples. In so doing, it demonstrates a syndrome commonly attributed to lawyers, an analytical approach oriented to the unusual case. Whether this is a virtue or a vice depends on the extent to which it leads to a focus on the trees to the exclusion of the forest.

The Code is designed to facilitate the transmission of wealth at death without unnecessary administrative delay and expense. The system developed must provide for the efficient succession to millions of dollars in thousands of estates. The primary focus of the Code is on the vast majority of estates. In order to achieve this goal the Code has adopted the theory of independent administration. The personal representative is given authority required for prudent management of estate assets without mandatory judicial supervision. He is given a power over the title to estate assets so that third parties can safely transact business with him. Perhaps the delay and expense inherent in the old system could be tolerated during the nineteenth century. But the twentieth century has already witnessed a remarkable increase in the relatively affluent percentage of the population. In a free enterprise economic system, it is highly desirable that the wealth of decedents be efficiently managed and kept freely alienable. This writer believes the Code meets the current needs of our society and is optimistic that it will meet economic requirements that will probably be characterized as imperative by the twenty-first century, only thirty years away.

THE UNIFORM PROBATE CODE: A POSSIBLE ANSWER TO PROBATE AVOIDANCE††

RICHARD V. WELLMAN†

Succession, or probate as it is more likely to be called, is currently quite controversial. This fact, though possibly useful to would-be speech makers, is unfortunate. There should not be any controversy about the rules protecting individual freedom in regard to personal savings. The fundamental principles, *e.g.*, the premise of private property that a decedent's unused savings should go as he indicates in his will or to his heirs if he leaves no will, are not disputed or disputable. Nor can the troubles of the area be attributed to contentiousness of survivors and other claimants. Wills are rarely challenged, and the occasional challenges are usually unsuccessful.[1] Creditors of decedents, protected in many situations by security or insurance, if not by survivors concerned about family credit ratings, are not a notable source of controversy.[2] Indeed, the controversy arises from the charge that we have more rules than we need.

Perhaps the presence of elaborate rules and procedures causes survivors to forego natural contentiousness. Perhaps we should accept the ponderousness of our system as the price for desirable tranquility. Still, there are other explanations for lack of disputes, which seem particularly applicable to small estates. Inheritance is a family matter. Any economic advantage one set of survivors might gain over another by stirring up trouble would be countered in most cases by displeasure and resentment by relatives or close acquaintances, rather than strangers. And, disappointment in regard to an expectancy is seldom as keen as other economic losses. We are quite accustomed to the idea that an estate owner is free to dispose of his savings as he pleases. Hence, losses of anticipated inheritances can be borne with equanimity and when there is something to inherit, it comes as a happy surprise! In sum, therefore, many of the

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†† This article is an adaptation of an address delivered at the Institute on Estate Planning and Administration in Indiana, Indiana State Bar Association, October 25, 1968.

1. Of 453 testate estates in a random sample studied in a recent survey of probate records in Cuyahoga County, Cleveland, Ohio, will contests occurred in only six, or 1.3 per cent of the cases. None were wholly successful. The survey was conducted by a sociology-law team at Case-Western Reserve University, Cleveland, Ohio. The results soon will be published. The manuscript from which the information was obtained is entitled *The Family and Inheritance*. Its authors are Marvin B. Sussman, Judith Cates and David Smith.

2. According to the manuscript of the Cleveland survey, ". . . we do not find that debts constitute a significant problem in the settlement of an estate."

usual components in succession tend to lead survivors to resolve any differences privately and amicably.

At some point, however, the size of the inheritance becomes large enough to induce would-be successors to disregard various environmental restraints in an effort to get something, or to get more. Whether this phenomenon exists in fact, or only in the minds of would-be decedents and their fiduciaries, is problematical. In either event, persons counselling owners of substantial estates are not likely to agree that survivors will not be contentious or that they will be able to resolve their differences without outside assistance. To them, a complex system for succession may tend to prevent problems before they become serious.[3]

Nonetheless, in estates of the size most frequently encountered,[4] the picture should be one of peace and harmony. Paradoxically, however, the factors in modest estates which should indicate legal tranquility appear to have contributed indirectly to the current hue and cry about probate. In any event, it is clear that we have a controversy about probate law. It is identified by the words *AVOID PROBATE*.[5] Mr. Dacey struck a raw nerve, as he learned to his delight, when his paperback of about fifty pages of text and 291 pages of duplicated forms ran first on the nonfiction best seller list in the late months of 1966. Total sales of this expensive packet of legal forms has passed 670,000.[6] Dacey's charges were quite specific and quite serious. He asserted that probate law and procedure are archaic, needlessly complex, and exist principally for the benefit of lawyers and probate judges. As a result, succession through probate is terribly time-consuming and costly. He also stated that lawyers cannot be trusted to give sound estate planning advice because of a conflict of interest; *i.e.*, the conflict between what is good for the client, and the lawyer's interest in probate fees.

His advice was explicit and alarming: Do not trust the law of succession. Opt out, and avoid probate by the use of self-declared trusts

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3. See *Probing the Source of Probate Pains*, The Wall Street Journal, May 14, 1968.

4. The Cleveland survey described in note 1 *supra* covered 659 estates which were identified in a five per cent simple random sample of all estates closed in Cuyahoga County between November 9, 1964 and August 8, 1965. Of the 659, forty-eight or 7.3 per cent involved assets of 60,000 dollars or over and eighty-five or 12.9 per cent involved assets of less than 2,000 dollars and so were released from administration. Four hundred fifty-three (68.7 per cent) were testate and 206 (31.3 per cent) were intestate. The mean testate estate grossed 41,218 dollars; the mean intestate estate grossed 8,599 dollars. The median testate estate size was 15,000 dollars gross; the median intestate estate was 6,000 dollars gross. The figures refer to the size of the probate estate. From these figures it can be said that half of the estates in probate involve well under 15,000 dollars gross.

5. N. Dacey, How to Avoid Probate (1965).

6. Dacey's full page ad in The New York Times, May 3, 1967, reported that more than 673,000 had been sold.

of various assets and by use of joint tenancy designations.

Unfortunately, from the view of those who dislike Dacey's charges, there is much in them that cannot be denied,[7] particularly if we focus on the estate of modest size and the relationships most commonly encountered in succession. Probate laws in almost all of our states, including some with recently adopted codes, are undeniably obsolescent. For example, intestacy laws nearly everywhere continue to divide estates between the spouse and children of a decedent, even through this pattern has not made sense since the family farm ceased to be the dominant feature of American family organization a couple of generations ago. Also, modern probate procedures are best explained by reference to colonial times when our rule assigning personal property of decedents to publicly appointed local officials at least served to protect local interests against unwanted claims from afar. This ancient starting point explains a heritage which haunts probate procedures in many states today. The assumption that administration of an estate requires a judicial proceeding is as doubtful as it is costly. The burden it imposes on succession has become more apparent as the Supreme Court has made lawyers realize that easy judicial notices via publication or posting cannot be considered due process if better notice is possible.[8] The absurdity of the assumption is nowhere more apparent than in our crowded cities where low paid probate clerks go through the motions of checking receipts against items of expenditure listed in accounts of personal representatives. One coming on such a scene from abroad might assume that outlays of public moneys rather than private family distributions were involved. However, he would soon learn that routine big-city probate audits are superficial affairs which serve best to remind us how futile it is to use public offices to check private family transactions.[9]

This is not to say that the probate situation is the product of a conspiracy by lawyers against the public, as Dacey suggests, or that probate laws do not work very well in many situations. Rather than a

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7. But we should be less than fair if we sought to excuse the abuses in the probating of wills that are inducements to avoiding probate. It is our belief that regardless of the merits of the revocable trust, it is the duty of a vigilant organized bar to take to heart the criticisms that have been aimed at lawyers and at the improper practices of the probate courts.
Editorial, *Avoiding Probate*, 52 A.B.A.J. 938, 939 (1966).

8. See Mullane v. Central Hanover Bank, 339 U.S. 306 (1950). There has been quite a bit of controversy concerning whether the *Mullane* case applies to probate proceedings. See Levy, *Probate in Common Form in the United States: The Problem of Notice in Probate Proceedings*, 1952 Wis. L. Rev. 420; Estate of Pierce, 245 Iowa 22, 60 N.W.2d 894 (1953).

9. As far as the writer knows, unless a question is raised by an interested person, the process is limited to determining whether receipts with which the accounting fiduciary charges himself have been properly expended and distributed.

conspiracy, what we have is the natural product of understandable conservatism in regard to changes of basic law. Coupled with this, we have a situation in which the basic law works well for persons of wealth who know that their affairs involve values which may invite trouble unless there is careful planning. These persons, whose affairs tend to be unusual, are rarely bothered by rules designed for the average person because they see to it that custom-made charters govern their estates.

But there is a vacuum of consumer interest in the laws which affect most directly the person whose estate is very modest and whose affairs are average. This vacuum has been principally responsible for the neglect of our estates codes. Legislatures respond to pressure. Decedents obviously pose no political problems, nor do the more thoughtful prospective decedents who can protect themselves by planning. Survivors tend to be happy with their windfall. Hence, probate laws have remained largely unchanged for generations, because the groups principally concerned with them, the lawyers and probate court officials, have found that they work very well for what they see to be the important cases; *e.g.*, the big estate where planning occurs, and the bitterly contested case. These professionals are paid to make rules work, rather than to question or to change them, and until recently at least, there has been almost no pressure for change. In a sense, the legal profession has demonstrated its technical proficiency by making the old laws work as long and as well as they have.

If, as I have suggested, probate laws which work unjustly for the average person are the product of history and historic indifference, one might expect that better legislation would appear rather quickly in this day of rising emphasis on estate planning. The combination of steadily rising levels of affluence, complex federal and state tax laws with burdensome rates and more and more public awareness of the advantages of planning which our burgeoning estate planning industry has generated, has made hundreds of thousands of persons newly conscious of their estates.

With the aid of paid and free advice, they are learning that succession via probate runs directly against such usually desired objectives as privacy in regard to family property matters, avoidance of delay in transmission at death and avoidance of periods of artificial non-liquidity following death. Joint estates, life insurance, living trusts and various extra-legal devices which avoid the shortcomings of probate are being utilized with steadily increasing frequency. Still, probate substitutes involve some personal and legal inconveniences when compared to the will. And, many people are sufficiently resentful about being pushed toward probate-avoiding devices by bad law that they would gladly

support legislative correction of the probate problems even though they also may move to protect themselves.

But, new statutes to correct probate problems are not going to be promoted or written by laymen. Lawyers must do the job and most other lawyers must support the results. The question is, how do lawyers view the probate problem?

My premise in regard to probate reform is that Dacey is simply wrong in suggesting that lawyers will not support probate law changes. There are too many reasons why lawyers should jump at the chance to get probate laws on a modern track. Let me elaborate.

Traditionally, the principal service of lawyers in relation to the succession process has involved the counselling of personal representatives and survivors. There are no better clients. But the importance of this role is shrinking in direct correlation to the extent to which individuals are using devices to avoid probate. Of course, an important new role for lawyers, garbed in the catchy words, "estate planning," has developed. These words used to mean will drafting. But, much modern estate planning is likely to center around non-probate devices. Indeed, if the sales of Dacey's book are an indicator, we should accept the fact that many laymen may shy away from use of a will. Surely, the layman is interested in substitutes. Seeing that the lawyer has no insurance, mutual investments, or joint accounts to sell, the layman is likely to believe that the lawyer can meet his estate planning needs only where the estate is large enough to warrant use of a trust.

Of course, if laymen also realized that lawyers might assist them with small trusts using family trustees, as well as with many other devices—that, indeed, a lawyer is an expert in probate avoidance—my concern about a shrinking role in estate matters for lawyers would not be so great. I am told that a good deal of new interest in estate planning by lawyers has been stimulated by the Dacey furor. But, lawyers also concede that much of this business probably would have come to them anyway. Any wide-spread discussion of estates, whether it is focused on the inadequacy of present rules, or on the advantages of a new code, would probably have some short-run effect in moving people to law offices.

I conclude, therefore, that the new "avoid probate" emphasis in estate planning works in several ways to discourage persons from using lawyers as estate planners. First, it is related to charges that the law is defective and that lawyers are in some degree responsible. Second, it has deprived lawyers of their best known stock-in-trade for estate planning, the will. Third, it has made lawyers appear to be useful only in regard to estates of unusual size and complexity.

Most estates are not of unusual size and complexity, at least so far

as estate owners are concerned. The practicing bar surely should be concerned with any trend suggesting that most estate owners understand they need some planning, but believe that lawyers have little to offer them. One disconcerting aspect is that a lawyer probably will not be the professional to whom the young family man turns first in his search for assistance in financial planning. By the time the typical person gets to the lawyer, his affairs have become complicated and much untangling becomes necessary. Worse, he may not get to the law office at all.

As a service industry, we cannot afford a posture that makes us appear useless to the average man. The other side of the coin is equally disconcerting. It is that present trends are shrinking the area of utility of estates lawyers to the point where their livelihoods may depend on continuance of a few relatively narrow provisions of our federal tax laws. When lawyers do participate in modern estate planning, the shift in the timing and character of their service means that they are working more for estate accumulators than for estate inheritors. There are significant differences between these groups in regard to their tolerance for legal fees. If put to a choice, would not lawyers prefer to be employed by inheritors? If so, there is additional reason for skepticism about the proposition that the lawyer's role in modern estate planning makes him uninterested in probate law reforms.

Probate law dilemmas are therefore lawyers' dilemmas. The probate controversy should not embarrass us—it should delight us. It has given us a great opportunity to solve some old problems. What remains to be seen, however, is whether lawyers will make the proper response to the probate controversy. In some instances to date, lawyer organizations have moved in precisely the wrong direction. Consider the action of the New York County Bar Association. That group sued to enjoin distribution of the Dacey book in New York on the ground that the author was engaged in the illegal practice of law. This action, which was in effect to say that the public should not read matters lawyers do not want them to read, simply tended to prove Dacey's charges that the bar would do whatever it could to keep the public from learning something about probate. Even if the suit in New York had resulted in a lawyer victory, which it did not,[10] the practicing bar in general stood to be seriously damaged by this emotional outburst.[11] As you can imagine, the litigation was publicized to the hilt by Mr. Dacey.[12]

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10. The decision of the New York Court of Appeals terminating the litigation is reported in The New York Times, Dec. 30, 1967, and TIME, Jan. 12, 1968.

11. In Florida, the content of a bar journal article criticizing Dacey seems now to be the subject of a libel action by Dacey against the lawyer group. See TIME, Jan. 12, 1968.

12. See the ad in The New York Times, May 3, 1967.

A somewhat more typical reaction by various lawyers has been to write and speak of the danger of following the Dacey form book approach to probate avoidance.[13] In the main, these pieces have done a good job of discrediting Mr. Dacey's advice concerning how probate is to be avoided.[14] But, the reasoned answer sometimes seems to interest a smaller circle than the emotional attack.

Moreover, many lawyer responses to Dacey's charges fail to offer the layman a practical solution to his estate problem. The usual message has been either that probate is not so bad after all, or that only lawyer-drawn trusts are safe. But, it is still obvious to most people that probate routines are expensive and senseless as applied to the ordinary estate, and the advice that everyone should see a lawyer, is increasingly impractical. Owners of ordinary estates are the ones who have been most frightened by the turmoil about probate, and many of these persons, being newly arrived in the status of having enough to worry about, do not know a lawyer. The suggestion that they find one is troublesome. It sounds expensive. Also, lawyers are busy and the general practitioner who serves the walk-in trade is becoming hard to find. Even if the layman with a modest estate can locate an estates lawyer, more likely than not he will encounter a product of recent law school emphasis on estate planning oriented around federal tax problems. If so, he may end up with a monstrous estate plan which will be worth its price only if all of his relatives suddenly die without plans and he is later wiped out in an airline accident causing gobs of double indemnity and travel insurance to fall into the pot.

These observations suggest the parameters of the probate problem. Obsolete laws and outmoded administrative institutions threaten to trap estates lawyers and to strip them of their traditional and principal function. Interest in estate planning for persons with complex affairs has diverted professional attention so that the loss of customary function does not appear to be as alarming as reflection suggests it may be. To correct the problem, major and meaningful steps must be taken to restore the confidence of the owner of small estates in the probate system. But, lawyers must offer the solutions. And, the general area of probate has been of such pervasive importance to lawyers for so long, that the process of persuading lawyers to concede that the present system is defective, and to apply their energies vigorously to its correction, stirs up professional doubts and emotions that threaten to render the bar

13. See Kinnaird, *Michigan Probate or How to Avoid Dacey*, MICH. ST. B.J., Mar. 1967, at 14; Strauss, Book Review, RES GESTAE Sept. 1966, at 5; Davis, Book Review, Chicago Tribune, Aug. 31, 1966.

14. See especially the review in CONSUMERS' REPORT, July, 1967, at 390-392.

impotent in the matter.[15]

Hopefully, the rapidly maturing Uniform Probate Code may provide some answers if it is approved by the Uniform Law Commissioners when they give it final consideration next July.[16] The project which is producing the Code is one for which every lawyer may claim credit. Originated by a sub-committee of the American Bar Association, financed almost entirely by lawyers' bar dues and gifts channeled through the American Bar Foundation, the project has been active since late 1962.[17] Because the project was well underway long before Mr. Dacey touched the public's sensitivity, it offers an explicit rejection of the charge that lawyers will never act on their own to sweep away probate dead wood. Moreover, the major features of the evolving Code will provide an affirmative, professional response to the major complaints about existing law.

Let me become more specific. The heart of the Code is its system of probate administration.[18] The basic scheme is not very original, but it may be both useful and acceptable. The idea is to offer the various major features of the different probate systems presently followed in our fifty states, as options, in a single system. Thus, under the draft Code, it will be possible for persons representing an estate to secure probate of a will very promptly after the testator's death by application to a non-judicial official of the probate court. Only a mandatory five day delay to permit family coordination and to discourage races is involved.[19] Probate with-

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15. For further example, the American Bar Association has been criticized for sponsoring and producing the film "The Revocable Trust—An Essential Tool For the Practicing Lawyer." The film suggests that legal fees can be avoided by use of the revocable trust. See *Avoiding Probate*, note 7 *supra*.

16. Preliminary consideration was given to portions of early drafts at annual meetings of the National Conference in 1965 and 1966. A first tentative draft was introduced in 1966 and an expanded and improved second draft was introduced at the 1967 meeting. Three days of full Conference attention was given to a fourth working draft at the Philadelphia meeting of the Conference in 1968. Three meetings of the Special Committee of Commissioners have been scheduled for the winter 1968-69, during which it is contemplated that one or possibly two additional drafts will be prepared. Present plans are to present a final draft to the National Conference at its meeting in Dallas in 1969.

17. The project originated in 1962 when a subcommittee of the Real Property, Probate and Trust Law Section of the American Bar Association was formed to revise the Model Probate Code. Soon thereafter, the project was taken over by the National Conference of Commissioners on Uniform State Laws, which has assumed sole responsibility for the research and drafting effort. The ABA committee continues to serve in advisory capacity, however.

18. Article III of the 4th Working Draft of the Uniform Probate Code covers probate procedures. (The 4th Working Draft is hereinafter cited as Code).

19. Neither probate nor appointment can occur until at least five days after the decedent's death. Code §§ 3-210; 3-216. However, provision is included for emergency appointment of a special administrator, if needed before five days have elapsed. Code § 3-313. But, by use of the "relation-back" idea, and by giving the personal representative

out notice, which permits a will to be put into effect without being finally adjudicated, is an old and respected feature in many states which have long permitted what is usually called "common form probate."[20] However, if the parties desire a binding adjudication of the will's validity, the draft Code offers an appropriate, optional procedure.[21] Either no-notice or formal probate can occur without administration. But, if persons want to collect and transfer assets, administration will be a practical necessity because only an appointed representative can protect transfer agents and others.

An executor or an administrator in intestacy may be appointed with no more fuss than is required to probate a will, just as is true in many states today. After securing letters, a personal representative under the Code becomes in effect a statutory trustee with the necessary powers and protections to permit him to accomplish the entire job of collecting assets, paying debts, and selling land or intangibles as needed to raise necessary cash and distributing the estate to the successor.[22] If desired, all of these steps can be handled without further court orders. Again, however, isolated adjudications to answer particular questions or general orders settling accounts are available as desired.

The Code accepts the proposition that the probate court's proper role in regard to settlement of estates is to answer questions which parties want answered rather than to impose its authority when it is not requested to see that otherwise peaceful settlements are correct. This idea, though it would change the law in Indiana, is not novel in American probate law. Pennsylvania procedures and practice have long sanctioned settlement of estates without any activity by public offices or officials other than common form probate and routine issuance of letters. New Jersey procedures are similar. New York's surrogate courts have little to do with personal representatives after appointment. In Georgia, Texas and Washington, wills can effectively provide that the probate court shall not supervise the work of executors, and all well-drawn wills in these areas routinely so provide.

But, the draft Code offers the option of supervised administration which features, like your present Indiana Code, the necessity of a court ordered distribution of assets to close the judicial proceedings, which are deemed to have been initiated by probate, and issuance of letters.[23]

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power to ratify acts of others done before appointment, it is hoped that use of special administrators may be avoided. Code § 3-401.

20. Simes, *The Function of Will Contests*, 44 MICH. L. REV. 503 (1946), also published in L. SIMES & P. BASYE, MODEL PROBATE CODE 682 (1946).

21. Code § 3-222 et seq.

22. Article III, Part 4, Code. See also Code § 3-104.

23. Code § 3-105 et seq.

All that is required is that some interested person request supervision by the court and that a need for it exist.

What is new about the procedural package? In a sense, nothing is new because each procedure has its tested counterpart somewhere among the states now. But the extension of familiar, easy procedures to intestate estates and the presence in the Code of clear options to handle various steps in testate or intestate administration, with or without court orders, will offer new advantages in procedure for every state.

In two other respects, however, the draft code offers somewhat newer ideas for improvement of succession in the United States. The most important is a new basic pattern of succession to intestate estates left by married persons.[24] The old system, found almost everywhere in this country, divides estates equally between the spouse and children of intestate decedents. The Code alters this so that the first 50,000 dollars will pass to the spouse, and any excess over 50,000 dollars will be divided between the spouse and children. There is a variation from this pattern if all children are not the children of both the decedent and the surviving spouse. The new pattern is deemed to reflect what an overwhelming majority of married persons want.[25] An impressive amount of data shows quite clearly that married persons of ordinary means do not want their estates divided between their spouse and children. If the children are young, expensive guardianships result from a parent's death without a plan. If the children are grown, their heirship may well reduce the spouse's share below what should be provided for predictable needs. Moreover, reducing the surviving spouse's share in favor of children deprives the survivor of a degree of control over children's inheritances which may be useful to bolster natural ties when problems of old age might strain the relationship.

Thus, the draft code rejects the feature of existing law which tends to compel every married person to make a will or employ a will substitute.

This new pattern of heirship, coupled with efficient procedures for intestate estates, should tend to reduce pressures on persons of modest means to make wills *or* avoid probate. In a sense, the Code offers a statutory estate plan which should be wholly satisfactory for most persons. Thus, the drafts offer the legal profession an answer to the question of

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24. Code §§ 2-102, 2-103.

25. See Dunham, *The Method, Process and Frequency of Wealth Transmission*, 30 U. Chi. L. Rev. 241 (1963). The Cleveland study mentioned in note 1 *supra* reports that 89.2 per cent of testate decedents who were survived by spouse and issue willed everything to the spouse. The survey also includes responses to interviewer questions by survivors. In the survivor sample, 87.2 per cent of those with spouse and issue planned to leave their entire estates to their surviving spouse. Where the decedent was survived by a spouse and collateral heirs, 85.8 per cent willed everything to the spouse.

how to accommodate the large bulk of estate owners without diverting professional attention from the increasing demands of persons with complex affairs. It will be much easier to give advice about intestacy than to mass produce wills.

In addition, the new Code, if widely adopted, will go far to reduce the problems of planning via wills for persons who own property in several states. Estate planning by will and testamentary trust presently is handicapped in regard to persons who may change residences from one place to another, or who would invest in land in more than one state. Lawyers, who are so important to persons who prefer to manage their own affairs, should vigorously support uniformity of estate law because it will increase the range and value of the planning devices which lawyers are uniquely well equipped to handle. Also, lack of uniformity of estate law may be pushing persons who anticipate moving about the United States toward nationally managed investment pools, and the pre-packaged estate plans which go with them. I have no quarrel with these arrangements if they are preferred over owner-controlled investments *on the merits*. We should see, however, that individualized ownership is not unduly handicapped by legal anachronisms.

The Uniform Probate Code thus offers some positive answers to current probate dilemmas. Properly explained and properly used by lawyers assisting survivors, it will offer a much easier answer to worried owners than Mr. Dacey's. The message might be: "Relax; keep your property for yourself; inheritance is safe and, like any alternative, as cheap or expensive as your survivors and creditors make it." Shortened, the message might simply be, "Save your money. Probate works well."

The new Code would let lawyers carry out this kind of promise to the public. When survivors of a decedent who did not avoid probate seek legal counsel, the attorney will find it easier to give efficient service, for many of the old procedural drawbacks are gone. The Code makes it possible to avoid public disclosure of the assets of a decedent. Court-appointed appraisers are eliminated. Probate bonds, which every testator avoids when he can, will not be needed unless demanded by survivors, and awkward judicial sales of real estate should become a thing of the past.

The legal system will offer protection, but will not force it. As a corollary of less required paperwork and fewer adjudications, legal fees in individual cases may go down, but if general confidence in the probate system is restored the overall effect should be a marked increase in the number and size of estates in which lawyers may be involved.

Still, there are substantial risks that the Code will not become the answer to probate avoidance. The principal worry lies in the difficulty

of marshalling lawyer opinion behind the project. There are some who believe that the probate controversy is a tempest in a teapot and that it would be a mistake to undo settled law in response to the new found public interest in estates. I am convinced, however, that these views are wrong. In my five years of work on the Code, I have heard from dozens of laymen, and I have discussed these matters with lawyers from every part of the country. Most lawyers concede that the law needs to be improved. The public wants a change of law. If there is doubt on any point, it relates simply to whether lawyers will react affirmatively to the obvious demand for change. Until now much of the pressure for change has been tempered by publicity to the effect that the Uniform Code project would result in significant improvement. If the organized bar disappoints the public and follows the advice of the "stand-patters" on this occasion, it will be inviting a new and serious wave of anti-lawyer opinion which I, for one, do not believe it can afford. Moreover, it will be missing a golden opportunity to get public support for law changes that are badly needed in order to get the will, the lawyer's stock-in-trade, back into the circle of approved methods for handling many estate planning demands.

Some lawyers, particularly older practitioners who enjoy good probate practices, express apprehension about the Code's impact on probate fees. However, old assumptions concerning probate fees are likely to be unreliable guides for the future whether or not the Uniform Code gains much support. The increasingly popular revocable trust and publicity about probate fees already have brought new fee fixing criteria into the picture. Further, the Uniform Code does nothing about probate fees other than to make the lawyer's work load in particular estates somewhat less predictable, and to get the probate court out of the business of determining or approving fees in routine cases. Perhaps the biggest difference will be that lawyers will be able to handle small estates efficiently enough to begin to realize a decent return for time invested. Certainly they would prefer to be well paid for two or three hours of work, rather than nurse a file along for months to pick up a few hundred dollars from a small estate.

As far as large estates are concerned, I see little reason to predict great change in the actual work which lawyers will perform. Of course, if all that is involved is the transfer of securities and the routine determination of taxes, work and fees may be modest. But corporate fiduciaries will want the protection of adjudicated settlements; fees will continue to be borne in large part by the government in the form of deductible expenses; survivors receiving big inheritances should not be any more hard-nosed about fees than they are today. Indeed, with increased pros-

pects that fees will be carefully explained and irritating rituals in court minimized, there may well be less resistance to good fees in big estates than is present today.

Some lawyers and trustmen may worry about loss of inter vivos trust business under the Code but if any diminution occurs, it will be because probate business grows. Moreover, if there is no reason for a trust except to avoid probate, it is not certain that professional trustees will find participation profitable. There is an essential and expensive contradiction between the idea that the trust company owns and controls and the notion that the settlor is still the owner. Yet a settlor who has kept a power of revocation is likely to see it just this way, especially if the whole purpose was merely to avoid probate. But, there should be no loss of the desirable revocable trust business. The Probate Code does nothing to reduce the advantages of revocable trusts for persons who want the investment, tax counselling, bookkeeping, and "senility-insurance" features offered by present trusts for management.

Indeed, by its inclusion of an up-to-date set of optional legal proceedings for trustees and beneficiaries of all kinds of trusts, without distinction between those created by will and those created inter vivos, the Code should encourage greater use of trusts.

Many lawyers who tend to favor the Code fear the reaction of the probate judiciary to the new package. They fail to take into account that probate judges and their employees everywhere have been hit with the main force of the probate controversy. These people are caught between an interest in serving the public which led them to accept public office, on the one hand, and unpopular and useless law which they must enforce, on the other. The Uniform Code, though it may be adapted to a wide variety of court organizations, advocates that probate courts be thought of as fully equivalent in terms of power to courts of general jurisdiction. The Code also expands the subject matter jurisdiction of the probate court, giving it clear authority to resolve controversies relating to all kinds of will substitutes, and to handle questions and accounts by inter vivos and testamentary trustees. Overall, the Code is designed to relieve probate judges of the unpopular and difficult job of riding herd on all estates, and to open the way to the development of a powerful and specialized court which should offer real opportunity for valuable and dignified service by incumbent and future probate judges. Surely many will favor such a package.

There are many other less obvious perils ahead for the Code, but all of them will evaporate if lawyers support the project. Some elements of the newspaper industry are unhappy with what they deem to be inadequate provisions for publications of legal notices, and peddlers of probate

bonds dislike the Code's provisions on bonds. Another, perhaps more worrisome, obstacle to the Code is the tendency of local committees of lawyers examining the Code to prefer familiar local rules of heirship and wills to any national model. This tendency easily could wreck the objective of uniformity. Committee by committee, the realization must spread that lawyers, and the people legal rules should serve, have everything to gain and nothing to lose by relinquishing their hold on traditional provincial rules regarding inheritance. Only very minor adjustments in basic rules will be necessary for most states to align present rules to the Code. The goal of expanding every estate lawyer's useful counselling range so that interstate succession problems can be handled is important.

But, do not let talk of doubts blur your perspective about the Code. Keep in mind that the Code will represent a very thoroughly considered professional response to problems which were identified by lawyers long before Mr. Dacey got excited. Literally hundreds of lawyers representing all kinds of practice in all parts of the country have been continuously involved in its preparation over the last five years.[26] Their diversity and their awareness of the great public interest in the project have enabled them to evolve drafts which offer fair balance between public and professional interests. If these drafts become law, millions of owners of modest estates may find reason to stop worrying about estate planning and probate because the law's estate plan will be as good as they can find. Thus, the law may at least stop pushing these people toward non-lawyer estate specialists. At the same time, lawyers will gain important new legal equipment to enable them to meet the interest of persons who know they have enough property to make planning and protection worthwhile. This is a charter which should attract wide support.

In passing, I should note that the conditions in Indiana which bear on the Code's chances of success here strike me as especially favorable. Your present Code, like the Uniform Code, has borrowed much from the old Model Probate Code of 1946. Your court organization, which presently recognizes the probate court as a court of significant power and stature, is essentially compatible with the Uniform Code. The

26. The advisory committee of the Real Property, Probate and Trust Law Section, was mentioned in note 17. Primary responsibility for the drafts has rested in the Special Committee on the Uniform Probate Code of the National Conference (see note 16 *supra*) with whom the Reporters have met frequently since 1962. This committee, numbering over twenty, is composed of lawyers from different states. Other subcommittees of the Real Property, Probate and Trust Law Section of the American Bar Association have studied and reported on the Code. More than 150 lawyers are involved in these committees. The American College of Probate Counsel, The Trust Division of the American Bankers Association and many state and local bar groups have had committees studying the drafts for some time.

interest of the bar of Indiana in estate planning, as reflected by the focus of this important meeting, is a very good omen. Your people, situated near the crossroads of the nation, are more interstate than provincial. Surely, you need to keep your laws in tune with, if not ahead of, those in neighboring states. Finally, I am delighted to learn that your Commission on Interstate Cooperation has recommended to the Indiana legislature that the Probate Code Study Commission be reconstituted with a charge to study the Uniform Probate Code. This is a very good start.

It remains to be seen, however, whether we lawyers can agree on anything so pervasive and so important to the general practice of law as a uniform probate code. If we can, and *if* we use the resulting new law intelligently, we will have our answer and that of the public to the probate avoidance controversy. If we cannot, we will not block changes in probate law and practice. Present trends, if unchecked, dictate that *probate avoidance* will become the main road with wills and intestacy becoming infrequently encountered by-ways. Present trends also suggest that estates law and lawyers will become increasingly irrelevant to the ordinary person's estate problems. Our failure to agree on a useful new Code will not change these trends. It will prove only that lawyers as a group are so incapable of constructive reform that they cannot even agree on changes which seem necessary to the perpetuation of the profession as we have known it. I, for one, am not yet ready to believe that this will be the case.

CONSERVATORSHIP UNDER UNIFORM PROBATE CODE

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I. INTRODUCTION

Article 5 of the Uniform Probate Code (hereinafter referred to as UPC) relates to minors and other persons under disability. I had contended most vehemently that the problems of minors and those of adult persons under disability were so dissimilar that it was not feasible to draft a statute which would adequately provide for both. I now state publicly that Professor Wellman and his able assistants who drafted the UPC have demonstrated that gasoline and water can indeed mix, provided the mixers have patience and adequate skill.

We have made great progress in protecting the rights of all citizens regardless of race, color or creed. Yet there is little in the press or elsewhere in regard to the rights of *adult* persons under disability. It is stated that about half of all the hospital beds in the United States are occupied by mentally ill persons.[1] Such persons are unable to organize to protect and preserve their property and to exercise freely their civil rights. Therefore, it is the duty of the bar associations, and particularly the American Bar Association, to act on behalf of this unfortunate segment of our society and to sponsor needed legislation. The person under a disability is not a second rate citizen.

As a boy I heard my seniors refer to patients in a state hospital for the mentally ill as lunatics, crazy and the like. The commitment to the hospital was a stigma, something that the family of the patient did not discuss. While there has been some change in the attitude of the public, a residue of such thinking remains with us. We know now, of course, that many of such patients are curable and that during their treatment they are capable of exercising many of their civil rights, such as voting.

In addition to the patient in a hospital for the mentally ill we have the elderly senile person, who makes his home with a son or daughter, and the unfortunate retarded person. In 1968 I probated the will of a retarded man who had the mentality of a boy of 14 and who died in his sixties. There were objections to the will but they were withdrawn.

There is no need here to discuss in detail guardianship of minors or guardians of the *person* of incapacitated adult persons. The provisions of Parts 2 and 3 of Article V of the UPC are clear in these two areas and do not present any particular problems. They are quite similar to existing statutes of most states. My experience is that guardians of the person, whether a minor or adult under disability, fill a rather limited role in any event. If, however, such appointment is needed, I direct your attention to

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*Chairman of the Section's Committee on Problems Relating to Persons under Disability.

[1] ALLEN, FORSTER & WEIHOFEN, MENTAL IMPAIRMENT AND LEGAL INCOMPETENCY (1968).

section 5-303. The draftsmen have fully protected the alleged incapacitated person to prevent an adjudication where one is not required. For example, he must be represented by counsel, a physician appointed by the court must examine him and he must be interviewed by a "visitor" designated by the court. Finally, he is entitled to be present at the hearing and to a trial by jury in open court. A hearing in chambers without a jury may be had if the ward or his counsel so requests and the physician and visitor approve the request.

II. Protective Proceedings

Part 4 of Article V of the UPC relates to the protection of the *property* of minors and adults under disability. The proceedings thereunder are called "protective proceedings," the person under disability a "protected person" and the fiduciary appointed by the court a "conservator."

A minor is stated to be a person under age 21. An adult person under disability is a person unable to manage his property and affairs effectively because of physical or mental disability, including mental retardation, senility, disease, habitual drunkenness, addiction to drugs, imprisonment, compulsory hospitalization, confinement, detention by a foreign power, disappearance or other reason or combination of reasons.

Section 5-401 provides that the court may appoint a conservator of a minor who has money or property that requires management or protection which he is unable adequately to provide or that funds are needed for his support and education and that protection is necessary or desirable to obtain or provide funds. Likewise, the court may appoint a conservator of an adult under disability if it determines that the person has property which will be wasted or dissipated unless proper management is provided, or that funds are needed for the support, care and welfare of the person or those entitled to be supported by him and that protection is necessary or desirable to obtain or provide funds.

If the court finds that sufficient grounds exist for the appointment of a conservator of an adult under disability, the statute provides that the court shall have the powers over his estate and affairs which he could exercise if present and not disabled, including the power 1) to make gifts; 2) to convey or release contingent and expectant interests in property, including inchoate dower, curtesy initiate and the right of survivorship incident to joint tenancy and tenancy by the entirety; 3) to exercise or release his powers as trustee or other fiduciary or donee of a power of appointment; 4) to enter into contracts; 5) to create revocable or irrevocable trusts of property of the estate which may last longer than his disability or life; 6) to sue for divorce or annulment of his marriage; 7) to exercise options to purchase securities or other property; 8) to elect options and change beneficiaries under insurance and annuity contracts and to surrender policies for their cash surrender value; 9) to exercise his right to an elective share in the estate of his deceased spouse and to renounce any interest by testate or intestate succession or by inter vivos transfer.

Provision is made for a hearing in respect to the exercise of certain of

the enumerated powers such as the exercise or release of powers and the making of gifts exceeding 20 per cent of any year's income of the disabled person. It will be noted that tax saving is the motivation for several of the powers. As for the power to sue for a divorce or annulment of marriage the comment states that the court should have the power to authorize the conservator to cut off the rights of the spouse of a disabled person who has abandoned or maltreated a minor or disabled person and thereby prevent a wrongdoer spouse from exercising his or her marital rights, such as support. I have recommended that the power of the court be extended to sue for a legal separation.

A questionnaire circulated to selected lawyers active in the American Bar Association shows that some of the enumerated powers are controversial, particularly the power to dissolve the marriage of a protected person. Such power cannot be exercised, however, without notice to the person, his spouse, his parents and children, his guardian, if any, and his conservator.

III. Appointment and Function

Assuming that the facts justify the appointment of a conservator, the court may appoint either a natural person or a corporation with general powers to serve as trustee. While the appointment of a conservator vests in him title to all property of the protected person, the statute states that the appointment is not a transfer or alienation within the meaning to the provisions of any federal or state statute or regulation, insurance policy, pension plan, contract or a will or trust agreement imposing restrictions upon or penalties for transfers or alienation by the protected person of his rights or interest.

Where the court finds that a basis exists for the appointment of a conservator of a disabled person it may authorize or direct any transaction necessary or desirable to achieve any security, service or care arrangement meeting the foreseeable needs of the protected person without the appointment of a conservator. For example, authority may be granted by court order to transfer real property and securities without an appointment. This provision effects savings in time and expenses otherwise incurred in a full conservatorship.

The alleged disabled person or minor or any person interested in his welfare may petition for the appointment of a conservator and nominate the conservator. The statute provides for priority of appointment of classes of persons, for the fixation of the bond (individuals), for filing of an inventory and accounting and like matters. As for the other statutory powers of a conservator I shall mention only that the prudent man rule governs investments.

In addition to providing for the necessary support of the disabled person the conservator under proper circumstances may with the approval of the court provide for the maintenance and support of other persons who had been maintained and supported in whole or in part by the protected person prior to the appointment of a conservator.

On the death of the protected person the conservator must deliver to

the court any will of such person in his possession and deliver the estate to the duly appointed personal representative of the decedent. Functionally, it would seem that if the protected person dies intestate, the conservator with court approval should be authorized to administer the estate and make ultimate distribution to the distributees.

While the statute imposes restrictions upon the right of the protected person to incur debts and to execute contracts, unless authorized by the court, the existence of a conservatorship has no bearing on the capacity of the protected person to marry, to vote or to exercise other civil rights.

Possibly one of the most important provisions of the UPC is that third persons dealing with or assisting a conservator are amply protected in that (1) the existence of all statutory powers conferred upon conservators and their proper exercise may be assumed without inquiry; and (2) a third party is not bound to assure the proper application of money or assets paid or delivered to a conservator. These provisions have particular significance when applied to land record and security transfers.

IV. Powers of Attorney

In most states the authority of an attorney-in-fact terminates with an adjudication of incompetency or the death of his principal. Part 5 of Article V of the UPC permits a principal who is *sui juris* to abrogate that rule by adding to the instrument, "This power of attorney shall not be affected by disability of the principal" or similar words. This authorizes the attorney-in-fact to act regardless of the later disability or incapacity of his principal or later uncertainty whether the principal is dead or alive. If a conservator is thereafter appointed for the principal, the attorney-in-fact must account to the conservator rather than to the principal. The conservator has the same power which the principal would have had but for his disability or incompetence to revoke, suspend or terminate all or any part of the power of attorney.

An attorney-in-fact acting in good faith may continue to exercise his authority as agent until he has actual knowledge of the death, disability or incompetence of his principal. An affidavit executed by the agent as to lack of actual knowledge of the revocation or termination of the power of attorney by death, disability or incompetence constitutes, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at such time.

V. Conclusion

I recommend the UPC for study to the end of sponsoring it in your state in whole or in part. While you may not agree with all of its provisions I am confident you will find that many provisions deserve your attention and that of your local bar association. I am pleased to note that Maryland has paved the way by enacting in 1969 a new Probate Code which with certain changes follows the patterns of the UPC.[2] That other states will follow is inevitable.

[2] *See* 4 REAL PROP., PROB. & TR. J. 253 (1969).

MULTIPLE-STATE ESTATES UNDER THE UNIFORM PROBATE CODE

ALLAN D. VESTAL*

1. THE UNIFORM PROBATE CODE

On August 7, 1969, the National Conference of Commissioners on Uniform State Laws adopted by a vote of the states the Uniform Probate Code. The following week the House of Delegates of the American Bar Association approved the Code.[1] In these actions a giant step forward was taken toward uniformity in probate law in the United States. Although no state has had the opportunity to consider and adopt the Uniform Code, there is reason to believe that a number of states will give serious consideration to the Code in the near future.

For some time in the post World War II period various segments of the legal profession and the lay public had been dissatisfied with the methods of passing property from one generation to another.[2] This had resulted in a number of probate revisions which have taken place or which have been urged.[3] In the decade of the sixties impetus for re-

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[1]The House of Delegates approved the UNIFORM PROBATE CODE with an amendment which provides:

> Resolved, that the Section of Real Property, Probate and Trust Law be authorized to present the views of the American Bar Association regarding the Uniform Probate Code with appropriate recommendations for implementation to state and local Bar Associations to make in-depth studies, including studies of the long-term advantages of uniformity on particular points of probate and related law, customs and practices; and that the National Conference of the Commissioners on Uniform State Laws be urged to continue its Special Drafting Committee.

After the adoption of the UNIFORM PROBATE CODE (hereinafter cited as UPC) by the National Conference and its approval by the House of Delegates of the American Bar Association, a version of the UPC was published by Prentice-Hall under the date of August 27, 1969. In a letter from the Executive Secretary to the Commissioners it was stated:

> This edition of the Code was printed by Prentice-Hall, Inc., and contains the changes made at Dallas.
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> However, it does not contain style changes which will appear in the official draft of the Uniform Probate Code.

[2]*See* M. BLOOM, THE TROUBLE WITH LAWYERS, ch. 11 (1968); *Let's Rewrite the Probate Laws*, CHANGING TIMES, Jan. 1969, at 39.

[3]For example, the IOWA PROBATE CODE was revised by a committee of the Iowa Bar Association and submitted to the Iowa General Assembly in 1963. IOWA CODE ch. 633 (1966). This was adopted almost without change by the legislature and became effective on January 1, 1964. On the new IOWA PROBATE CODE, see *Symposium on the New Iowa Probate Code*, 49 IOWA L. REV. 633 (1964) with forward

form has come from Wisconsin, Michigan, Oregon, Alabama, Maryland and other states. In the early 1960's the National Conference of Commissioners on Uniform State Laws (hereinafter the National Conference) and the Real Property, Probate and Trust Section of the American Bar Association both became actively interested in the matter of probate reform.[4]

In August. 1963, a joint meeting was held of the Model Probate Code Special Committee of the National Conference and members of the Section on Real Property, Probate and Trust Law of the ABA.[5] At this meeting the preliminary efforts of these two groups were merged into a common project, a "joint venture," "the development of a Model Probate Code."[6] Following this meeting in 1963, a group of reporters started work on drafting a code dealing with probate and related matters. At the Hollywood, Florida, meeting of the National Conference in August of 1965, a draft of part of the Code was presented for the first time. Following this beginning the personnel working on the project has changed,[7] the title of the project has changed,[8]

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by Willard L. Boyd (early draftsman of the UPC), and articles by Shirley A. Webster, Jack W. Peters, Matthew J. Heartney, Jr. and N. William Hines.

For a discussion of 1965 changes in New York probate law see Note, *Recent Reforms in the Law of Estates, Wills and Trusts*, 40 ST. JOHN'S L. REV. 230 (1966).

[4]The Conference has been interested in estate administration for a number of years as indicated by the uniform acts passed in the area. The UNIFORM FOREIGN PROBATED WILLS ACT was approved in 1915 (withdrawn); the MODEL EXECUTION OF WILLS ACT was drafted in 1940; the UNIFORM POWERS OF FOREIGN REPRESENTATIVES ACT was approved in 1944; the UNIFORM ANCILLARY ADMINISTRATION OF ESTATES ACT was approved in 1949; the UNIFORM PROBATE OF FOREIGN WILLS ACT was approved in 1950; and the MODEL SMALL ESTATES ACT was approved in 1951.

[5]This meeting was held in the Hotel Knickerbocker, Chicago, Illinois, during the 72d Annual Conference of the National Commissioners. Representing the ABA were J. Pennington Straus, Edward B. Winn, Harrison Durand, Paul Basye and William Fratcher (the latter two later became reporters on the UPC). Representing the National Conference were Allison Dunham, Earl Sachse, Clarke Gravel, Harvey S. Reynolds, Clarence Swainson, William Pierce, Herbert H. McAdams and Sverre Roang.

[6]This language is taken from the notes of the meeting and is attributed to Clarke Gravel, Chairman of the 1962-63 Model Probate Committee of the National Conference.

[7]The original chairman of the National Conference Committee was Judge Sverre Roang, of Janesville, Wisconsin, who was not renamed a Commissioner in 1967. In the Hawaii meeting Tom Martin Davis of Houston, Texas, and Charles Horowitz, of Seattle, Washington, were named co-chairmen of the Committee. During the crucial year, 1968-69, the members of this Special Committee on the UNIFORM PROBATE CODE were Fred T. Hanson (Nebraska), James T. Harrison (Montana), Thomas L. Jones (Alabama), Robert A. Lucas (Indiana), Miller Manier (Tennessee), Bert McElroy (Oklahoma), Godfrey L. Munter (D.C.), J. William O'Brien (Vermont), Russell W. Smith (Indiana), Clarence A. Swainson (Wyoming), C. P. Von Herzen (California), Joe W. Worley (Tennessee), Robert R. Wright (Arkansas), and the author of this article.

[8]The initial discussion was in terms of a "Model" Code. Later the goal became

and the scope of the project has been modified,[9] but the principal thrust has remained the same—the creation of simplified methods of transferring property on death and protecting the interests of certain legally incompetent persons. A great impetus to the development of the Code was given by a meeting of the draftsmen in 1967 at Boulder, Colorado.[10] During a five week session the draftsmen put together the so-called "Boulder Draft" which was the first extensive, cohesive draft covering all of the articles then proposed. A session of three draftsmen was held in Berkeley the following year and Article VII on trusts was produced in this meeting.[11] This is the background of the adoption of the Uniform Probate Code (UPC) in Dallas in 1969.

The UPC is composed of seven articles dealing with various phases of the very broad topic of estates of both decedents and persons under disability in addition to coverage of some non-probate transfers and trusts. Article I, General Provisions, covers the application of the act, definitions, the probate court itself, a general notice provision, right to trial by jury, and a broad fraud provision. Article II provides for intestate succession and wills. This includes elective share of the surviving spouse, pretermitted heirs, exempt property and allowances, rules of construction for wills, and contractual arrangements concerning death. This article in a bracketed section also deals with the effects of homicide on succession to property.

Article III covers the probate of wills and the administration of estates, either through supervised or independent administration. Parts of Article III deal with appointment proceedings, the personal rep-

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a Uniform Act. To the National Conference the difference is very significant. For a discussion of the distinction between a "Model" Act and a "Uniform" Act see HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS 328 (1968). Basically the "Uniform" Act has widespread support among the commissioners and is expected to have a good chance of enactment in a substantial number of jurisdictions.

[9]The addition of the Article on Trusts in 1968 was the most notable change.

[10]Attending the seminar in Boulder, Colorado, were draftsmen Paul E. Basye, Hastings College of the Law of the University of California, Richard Efland, now of the College of Law of Arizona State University, William F. Fratcher, School of Law, University of Missouri, James McDonald, Law School of University of Wisconsin, Eugene Scoles, now Dean of the School of Law, University of Oregon, Richard V. Wellman, Law School of the University of Michigan, Harold G. Wren, Law School of Boston College, and the author. Observers at the meeting were Thomas L. Jones of the Law School, University of Alabama (later named a Commissioner and a member of the Special Committee on the UNIFORM PROBATE CODE) and Thomas W. Mapp, School of Law, University of Oregon.

[11]The three men attending this meeting were Edward Halbach, Dean of the School of Law, University of California at Berkeley, Gene Scoles, now Dean of the School of Law, University of Oregon, and Richard Wellman, Law School of the University of Michigan.

resentative and his duties and powers, claims of creditors, distribution, and closing. The article also includes a provision for handling small estates.

Article IV covers the matters under consideration in this article, foreign personal representatives and ancillary administration.

Article V deals with the protection of persons under disability and their property. Article VI, on non-probate transfers, covers multiple-party accounts and provisions in contracts dealing with the effect of death. The final article, VII, deals with the administration of trusts. Although there is some interrelationship between articles, they generally can stand alone.[12]

The Uniform Probate Code was designed to remedy some of the deficiencies so readily apparent in the present scheme of property passage by probate administration. It may be true that the Code goes to extremes in attempting to solve some of the problems, but nonetheless radical steps seemed to be necessary. The National Conference has prepared a comprehensive document which deserves serious consideration by all members of the legal profession.

2. Foreign Personal Representatives; Ancillary Administration

Article IV deals with estates which involve more than a single state.[13] Generally, this involves the domiciliary jurisdiction[14] and a second state in which the decedent had property or in which a claim is asserted against the estate. Obviously more than two states can be involved. The multi-state contacts can arise in numerous ways. The retired Iowa farmer, who keeps his farm but moves to Florida and decides to reside there, may have property in both Iowa and Florida on death. The Illinois businessman, who decides to invest in a savings

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[12]In the latter stages of drafting there has been some pressure to separate some articles out for special treatment as model rather than uniform provisions. To the members of the N.C.C.U.S.L. this difference is very significant. The uniform laws have much more status or prestige. *See* note 8 *supra*.

[13]For a general discussion of the current state of the law on suits by and against foreign personal representatives see Currie, *The Multiple Personality of the Dead: Executors, Administrators, and the Conflict of Laws*, 33 U. Chi. L. Rev. 429 (1966).

[14]The UPC in section 3-402 provides for the situation where there is a conflict concerning the state of domicile. The final sentence states, "The determination of domicile in the proceeding first commenced must be accepted as determinative in the proceeding in this state." Since this is keyed to the action first commenced and not to the first judgment handed down, there may be some constitutional problem concerning full faith and credit. *See also* Riley v. New York Trust Co., 315 U.S. 343 (1942) (determination of domicile not entitled to full faith and credit as to those not parties to prior determination).

and loan association in California, on death will have a multi-state estate. If a Kansas motorist, killed in an automobile accident in Missouri, is at fault, his personal representative handling his estate in Kansas may find that he is involved in litigation in Missouri.[15] The Montana resident who invests in land in Arizona has a multi-state estate on death. All of these hypotheticals are commonplace; the American population is no longer tied to its place of birth. People are mobile; wealth is mobile.

Whenever more than one state is involved, administration at the present time is complex and difficult. Assembling assets from several states is not easy. While jurisdictions increase arithmetically, difficulties seem to increase geometrically. Just as troublesome is the possibility that the personal representative or the assets of the estate may be the subject of litigation in several states.

Article IV is designed to simplify and unify the estate administration. It may have some other collateral effects, but the main thrust is toward these goals.

3. Marshalling Assets of Estate; Collecting Debts or Property Owed to Decedent

One of the recurring problems in estate administration is collecting debts and property of a decedent outside the domiciliary jurisdiction. An example of this difficulty is found when the decedent has deposited money in a savings and loan association in a foreign state. The personal representative is forced to go to the foreign state to get this asset. Should the savings and loan association be willing to pay without court proceedings, this does not necessarily solve the difficulty completely. There remains the possibility that payment may not terminate liability.

The courts of a number of states have held that the personal representative appointed by the foreign, domiciliary court[16] may ac-

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[15]Brooks v. National Bank of Topeka, 251 F.2d 37 (8th Cir. 1958) (Kansas executor sued in federal court in Missouri by Florida residents). Note, *Should Iowa Again "Reach Out" for Estate Representatives of Non-resident Motorists?*, 44 Iowa L. Rev. 402 (1959); Note, *Amenability of Foreign Administrators to Suit Under Non-Resident Motorist Statutes*, 57 Yale L.J. 647 (1948).

[16]Although there may be some confusion about the terminology, it seems reasonable to separate probate courts in a given estate into a domiciliary court (in the state where the decedent was domiciled) and ancillary courts (all other states). *In re* Maxton's Estate, 335 Ill. App. 240, 81 N.E.2d 658 (1948); First Nat'l Bank v. Blessing, 231 Mo. App. 888, 98 S.W.2d 149 (1936); *In re* Smith's Estate, 126 Mont. 558, 255 P.2d 687 (1953); *In re* Smith's Estate, 55 Wyo. 181, 97 P.2d 677 (1940). A court may be ancillary although there has been no domiciliary administration. Payne v. Payne, 259 Ky. 99, 82 S.W.2d 805 (1931).

cept voluntary payment and give acquittance so long as no local creditors are prejudiced. For example, the Supreme Court of New Hampshire has stated,

> By comity, in the absence of the appointment of an ancillary administrator in this state, a foreign administrator may collect the assets of the estate located here when there is no prejudice to local interests . . . . If there is need, any creditors may petition for ancillary administration in this state.[17]

Minnesota,[18] California,[19] Connecticut,[20] New York[21] and Delaware[22] have reached similar conclusions. The Maryland court has stated, "[T]he general current of the decisions has held that such voluntary payment is valid, and a good discharge of the debt."[23]

Colorado and Florida have statutes covering this matter. Conditioned on "no prior written demand from a creditor" and a delay of six months, the Colorado statute protects a debtor of the estate by providing: "Upon such payment or delivery, such person is released to the same extent as if payment or delivery had been made to a personal representative appointed by a court of this state."[24] The Florida statute, along this same line, provides,

> All persons indebted to the estate of a decedent or having possession of personal property, either tangible or intangible, belonging to the estate of a decedent, who have received no written demand from a personal representative or curator appointed in this state, for payment of such indebtedness or the delivery of such property, are authorized to make payment of such indebtedness or to deliver such personal property to the foreign personal representative after the expiration of three months from the date of his appointment.[25]

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[17]Swann v. Bill, 95 N.H. 158, 161, 59 A.2d 346, 348 (1948). *See also* Wolfe v. Bank of Anderson, 123 S.C. 208, 212, 116 S.E. 451, 452 (1923).

[18]Dexter v. Berge, 76 Minn. 216, 220, 78 N.W. 1111, 1113 (1899) held that a foreign executor had the authority to receive a voluntary payment of indebtedness even without complying with a statute which preceded MINN. STAT. § 525.273 (1965) (providing that a foreign representative may collect debts after filing authenticated copy of his letter at office of local register of deeds).

[19]*See, e.g.*, Fishback v. J. C. Forkner Fig Gardens, Inc., 218 Cal. 401, 402, 23 P.2d 293 (1933); *In re* Rawitzer's Estate, 175 Cal. 585, 587, 166 P. 581, 582 (1917); Winbigler v. Shattuck, 50 Cal. App. 562, 563, 195 P. 707, 708 (Dist. Ct. App. 1920).

[20]*See* Selleck v. Rusco, 46 Conn. 370, 372 (1878).

[21]Mass v. German Sav. Bank, 176 N.Y. 377, 68 N.E. 658 (1903); Schluter v. Bowery Sav. Bank, 117 N.Y. 125, 22 N.E. 572 (1889); Parson v. Lyman, 20 N.Y. 103 (1859).

[22]*See* Bowles v. R. G. Dun-Bradstreet Corp., 25 Del. Ch. 32, 42, 12 A.2d 392, 396 (1940).

[23]Citizens Nat'l Bank v. Sharp, 53 Md. 521, 529 (1880).

[24]COLO. REV. STAT. ANN. § 153-6-9 (1963).

[25]FLA. STAT. ANN. § 734.30 (1963).

Florida also has a parallel statute dealing with bank accounts of nonresident decedents.[26]

Section 4-201 of the UPC is similar to the Colorado and Florida statutes in allowing voluntary payment. It provides that the personal representative from the domiciliary jurisdiction can, after the death of the decedent, contact

> any person indebted to the estate of a . . . decedent or having possession or control of personal property, or of an instrument evidencing a debt, obligation, stock or chose in action belonging to the estate of the . . . decedent . . . .

and ask for payment or delivery.[27] The personal representative is to present an affidavit stating:

(1) the date of the death of the nonresident decedent,
(2) that no local administration, or application or petition therefor, is pending in this state,
(3) that the domiciliary foreign personal representative is entitled to payment or delivery.[28]

Upon the presentation of this affidavit, the debtor or person in possession, if he acts in good faith, can pay or deliver to the domiciliary personal representative and will be discharged of his obligation.[29] This simplifies the handling of debts or assets in a non-domiciliary jurisdiction. At the present time in many states these can be handled with protection to the delivering party only through the opening of an ancillary administration.[30]

Under this section of the UPC the debtor of the estate is not required to make payment. If he wishes, he can refuse to pay and force the foreign personal representative to use other techniques available to him to collect the debt. This section does not cover the matter of transfer of securities since, it is felt, this "is adequately covered by section 3 of the Uniform Act for Simplification of Fiduciary Security Transfers."[31]

There is one apparent danger in the UPC provision. A resident creditor of the nonresident decedent may wish to look for satisfaction

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[26] FLA. STAT. ANN. § 654.04 (1966).
[27] UNIFORM PROBATE CODE § 4-201.
[28] *Id.*
[29] *Id.* § 4-202.
[30] *See, e.g.*, Robinson v. First Nat'l Bank, 45 F.2d 613, 614 (N.D. Tex. 1930), *aff'd*, 55 F.2d 209 (5th Cir. 1932); Noel v. St. Johnsbury Trucking Co., 147 F. Supp. 432, 433 (D. Conn. 1956); Jones v. Turner, 249 Mich. 403, 408-09, 228 N.W. 796, 798 (1930).
[31] UNIFORM PROBATE CODE § 4-201, Comment.

to the assets of the decedent located in the local state. He may not want the assets carried back to the domiciliary jurisdiction. Article IV provides that such a resident creditor may notify "the debtor . . . or the person having possession of the [decedent's] personal property" that the assets should not be delivered to a foreign personal representative. When such notice has been given, payment or delivery may not be made under section 4-201.[32] This provision is similar to the Colorado provision[33] and reflects the desire found in other states to protect local creditors of the decedent.[34]

4. Foreign Personal Representative Acting as Local Personal Representative With All Powers

Under the existing law of a number of states, the foreign personal representative has the power to maintain actions to recover debts owed to the decedent.[35] For example, the Kansas statute provides:

> A fiduciary duly appointed in any other state or country may sue or be sued in any court in this state, in his capacity of fiduciary, in like manner and under like restrictions as a nonresident may sue or be sued.[36]

Other states have similar provisions.[37] This power to sue may be given to the foreign personal representative only after he has met certain local requirements. In Indiana he is authorized to file a duly authenticated copy of his letters and give a bond "under the laws regulating the maintaining of suits by non-resident citizens."[38] In Arkansas he is required to file a bond.[39]

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[32] *See Id.* § 4-203.

[33] *See* Colo. Rev. Stat. Ann. § 153-6-9 (1963).

[34] *See, e.g.*, Ga. Code Ann. § 113-2404 (1959); Va. Code Ann. § 54.1-130 (Repl. Vol. 1968).

[35] *See* Note, *The Extraterritorial Authority of Executors and Administrators to Sue and Collect Assets*, 52 Iowa L. Rev. 890, 892-98 (1966) (analysis of state statutory authorization of foreign personal representatives to sue).

[36] Kan. Stat. Ann. § 59-1708 (1964).

[37] *See, e.g.*, Fla. Stat. Ann. § 734.30 (1963); Ga. Code Ann. § 113-2401 (1959); N.Y. Deced. Est. Law § 160 (McKinney Supp. 1966) *See also* Note, *supra* note 35, at 897-98.

[38] Ind. Ann. Stat. § 7-753 (Repl. Vol. 1953). A foreign personal representative may be allowed to sue in Indiana without producing a copy of his letters unless his capacity is challenged. Upton v. Adams' Executors, 27 Ind. 432 (1867). A foreign personal representative cannot sue on a note when ancillary administration has been granted. Hensley v. Rich, 191 Ind. 294, 132 N.E. 632 (1921).

[39] Ark. Stat. Ann. § 27-805 (Supp. 1965). For cases interpreting this and its progenitor see McGraw v. Simpson, 208 Ark. 471, 187 S.W.2d 536 (1945); St. Louis, I.M. & S. Ry. v. Cleere, 76 Ark. 377, 88 S.W. 995 (1905); Gibson v. Ponder, 40 Ark. 195 (1882).

The Conference chose to incorporate a provision in the UPC granting broad power to a domiciliary personal representative who files certain documents in the local state. Under section 4-204, if no local administration is pending, the foreign personal representative can file with the local court in a county in which the deceased had property (1) authenticated copies of his appointment, and (2) copies of his official bond if he has given one.[40] Upon filing these documents, the foreign personal representative may exercise "all powers of a local personal representative, and may maintain actions and proceedings in [the local state] subject to any conditions imposed upon nonresident suitors generally."[41]

The grant of "all powers of a local personal representative" to the foreign personal representative means that the foreign personal representative "has the same power over the title to property of the estate as an absolute owner would have . . . ." This power of the personal representative "may be exercised without notice, hearing, or order of court." The property, of course, is held in trust for the benefit of the creditors and other individuals having an interest in the estate.[42] Equating the foreign personal representative with the local personal representative also means that the former may have the power to "receive assets from fiduciaries, or other sources,"[43] and "prosecute or defend claims, or proceedings . . . for the protection of the estate . . . ."[44]

The Uniform Probate Code provides that the powers under sections 4-201 and 4-205 "shall be exercised only when there is no administration or application therefor pending in this state."[45] An application for ancillary administration terminates powers under the two sections to collect assets of the decedent and to exercise the powers of a local personal representative. However, "the local Court may allow the foreign personal representative to exercise limited powers to preserve the estate."[46] When a local personal representative is named, he then is "subject to all duties and obligations which have accrued by virtue of the exercise of the powers by the foreign personal representative and

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[40]For examples of similiar filing requirements see GA. CODE ANN. § 113-2405 (1959); KY. REV. STAT. § 395.170 (1969); MINN. STAT. § 525.275 (1961); MISS. CODE ANN. § 622 (1957); N.Y. DECED. EST. LAW § 160 (McKinney Supp. 1966); N.D. CENT. CODE § 35-01-25 (1960). For other examples of similar bond requirements see ALA. CODE tit. 61, § 151 (1958); KY. REV. STAT. § 395.170 (1969).

[41]UNIFORM PROBATE CODE § 4-205.

[42]*Id.* § 3-711.

[43]*Id.* § 3-715(2).

[44]*Id.* § 3-715(22).

[45]*Id.* § 4-205.

[46] *Id.*

may be substituted for him in any action or proceedings in this state."[47] This continuity in administration reflects the underlying policy of unifying estate administration which is found in the UPC.

Since there may be some confusion about the powers in this period of transition, the UPC protects a relying party by providing that:

> No person who before receiving actual notice of a pending local administration has changed his position by relying on the powers of a foreign personal representative shall be prejudiced by reason of the application or petition for, or grant of, local administration.[48]

5. Ancillary Administration

A. *Procedure*

Another method of dealing with the assets of a nonresident decedent, provided in the Uniform Probate Code, is ancillary administration.

Under the UPC the appointment of a personal representative can be sought first by persons given priority. These include:

(1) the person with priority as determined by a probated will including a person nominated by a power conferred in a will;
(2) the surviving spouse who is a devisee of the decedent;
(3) other devisees of the decedent;
(4) the surviving spouse of the decedent;
(5) other heirs of the decedent;
(6) 45 days after the death of the decedent, any creditor.[49]

It is clear that persons without priority may seek the appointment of a personal representative although only in a formal proceeding.[50] Should appointment be sought, then the local court must, if there are local assets of the decedent, appoint a personal representative and so open an ancillary administration of the estate. This ancillary administration will be instituted even though there is a domiciliary personal representative who has filed authenticated copies of his appointment and of his bond, if any.[51] This ancillary administration will probably be sought by someone other than the domiciliary personal representative since he can obtain all of the powers of a local personal representative

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[47] *Id.*
[48] *Id.*
[49] *Id.* § 3-203.
[50] *Id.* § 3-203(e). Formal proceedings are judicial and are covered by Article III, Part 4; Informal involve only the Registrar, § 1-401(11), and are covered by Article III, Part 3.
[51] *Id.* § 4-206.

without going through the procedures of informal or formal appointment.[52]

A non-domiciliary administration may be had where there is no administration in the place of domicile of the decedent. It is possible that a decedent might die with all of his assets outside his state of domicile or under circumstances so that there would be no administration at his place of domicile. This might happen, for example, in the case of an Iowa farmer who decided to retire to Florida. He might have a farm and equipment in Iowa—the bulk of his wealth—while his residence is in Florida. On death there might not be an administration in Florida, his place of residence, while there might be an administration in Iowa. This latter would be an ancillary, not domiciliary, administration.[53]

Ancillary administration under the UPC follows the general pattern of administration under Article III. There are, however, some points of difference. In an original administration there is a three year period of time within which the appointment of the personal representative must take place. This statute of limitation does not apply if there has been a prior appointment. If a personal representative has been appointed in one state, then additional appointments are possible under the UPC even though the three year period has run.[54]

The proper venue for the appointment of a personal representative is the place of domicile of the decedent. In the case of a non-resident there is no place of domicile in the state and the Code provides that the proper venue for an ancillary appointment is "any [county] where property of the decedent was located at the time of his death."[55] To solve some of the problems concerning the location of property, subsection (d) establishes some rules. It provides:

> A debt, other than one evidenced by investment or commercial paper or other instrument in favor of a non-domiciliary is located where the debtor resides or, if the debtor is a person other than an individual, at the place where it has its principal office. Commercial paper, investment paper and other instruments are located where the instrument is. An interest in property held in trust is located where the trustee may be sued.[56]

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[52] *Id.* § 4-205. A decedent in his will may provide for different personal representatives in the domiciliary jurisdiction and an ancillary jurisdiction. The UPC will not interfere with such a decision. *See* §§ 3-203(g), 3-611(b). This multiple appointment will destroy to some extent the unity sought under the UPC. A provision for different personal representatives can be implemented in the ancillary jurisdiction only by a formal appointment. *See* discussion Sections 5 B and C text *infra*.

[53] *See* cases cited note 16 *supra*.

[54] UNIFORM PROBATE CODE § 3-108.

[55] *Id.* § 3-201(a)(2).

[56] *Id.* § 3-201(d).

In the proceedings brought for the appointment of a personal representative in a non-domiciliary jurisdiction the procedures set out in Article III, Part 3 (informal appointment) or Part 4 (formal appointment) would be used. Those seeking the appointment of a personal representative could choose either of the tracks, formal or informal.[57]

B. *Informal Appointment*

The informal procedure, involving only the Registrar, is not available if a personal representative has been named in the domiciliary jurisdiction. Section 3-308 provides that an application for informal appointment must be denied if it is indicated that

> the decedent was not domiciled in this state and that a personal representative whose appointment has not been terminated has been appointed by a Court in the state of domicile . . . .

This indicates that an ancillary appointment, where there is a domiciliary personal representative, can be obtained only in a formal proceeding under Part 4 of the UPC.

The basic provision concerning the application for informal appointment is section 3-301 which includes a requirement of disclosure of, among other things, the place of domicile of the decedent and "a statement identifying and indicating the address of any personal representative of the decedent appointed in this state or elsewhere whose appointment has not been terminated."

Section 3-307, dealing with informal appointment, includes a proviso that

> if the decedent was a non-resident, the Registrar shall delay the order of appointment until 30 days have elapsed since death unless the personal representative appointed at the decedent's domicile is the applicant, or unless the decedent's will directs that his estate be subject to the laws of this state.

This provision, that a domiciliary personal representative can be appointed an ancillary personal representative through the informal procedure, seems inconsistent with section 3-308 which states that informal appointment is not available for a non-domiciliary decedent where a personal representative has been named in the state of domicile A state adopting the Uniform Probate Code would probably wish to resolve this apparent inconsistency by either (1) clearly allowing an informal appointment under section 3-308 if the domiciliary personal representative is the applicant, or (2) deleting the exception for the domiciliary personal representative in section 3-307. It would seem

[57] *Id.* § 4-207.

that the first alternative is preferable. If a domiciliary personal representative is the applicant, there would seem to be little reason for requiring a formal proceeding.

The notice provided in the informal appointment of a personal representative includes notice to all persons having a prior or equal right to appoint. The priority concerning appointment is established by section 3-203 and this includes in (g) the following:

> A personal representative appointed by a court of the decedent's domicile has priority over all other persons except where the decedent's will nominates different persons to be personal representatives in this state and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.

Therefore, anyone seeking an ancillary appointment where there is a domiciliary personal representative would be required, by this section, to notify the latter of the applicant's intention to seek an informal appointment. As indicated above, this informal appointment would be proper only if there is no known domiciliary personal representative.

C. *Formal Appointment*

In the typical estate where there is a domiciliary personal representative recourse would (absent the change suggested above) be to the appointment of an ancillary personal representative through the formal proceeding involving a judge. Notice under section 3-403 must be given to

> executors named in any will that is being, or has been, probated, or offered for informal or formal probate in the [county], or that is known by the petitioner to have been probated, or offered for informal or formal probate elsewhere, and any personal representative of the decedent whose appointment has not been terminated.

So here, as in the case of informal appointment, notice must be given to the domiciliary personal representative if there is one.

The appointment in the formal proceeding is provided for in section 3-414. Reference in that section is made to the priority established by section 3-203 which gives preference to the domiciliary personal representative. Here, as in the informal ancillary appointment, preference is given to the domiciliary personal representative in an attempt to maintain the unity of the estate administration.

D. *Estate Administration*

Once the ancillary personal representative has been named, the provisions of Article III control and the administration follows the general pattern established by that article.[58] There are, however, some special provisions for ancillary administrations dealing with exceptional problems which may arise.

The UPC attempts to minimize conflicting adjudications where assets are located in more than one state. To this end, section 3-408 provides that an adjudication in the court of the state of domicile

> determining testacy, the validity or construction of a will, made in a proceeding involving notice to and an opportunity for contest by all interested persons must be accepted as determinative by the courts of this state . . . .

By so applying the concept of res judicata/preclusion the UPC again emphasizes the unity of the estate administration. Recognizing that some jurisdictions may not provide for the probating of a will, section 3-409 provides in part:

> A will from a place which does not provide for probate of a will after death, may be proved for probate in this state by a duly authenticated certificate of its legal custodian that the copy introduced is a true copy and that the will has become operative under the law of the other state.

This procedure, of course, does not rise to the level of the binding effect of section 3-408 where a will has been established. It does, however, provide a simple method of proving the document.

Where an ancillary personal representative has been named, other than the domiciliary personal representative, there may be a desire to unify the administration by having the domiciliary personal representative named in the ancillary jurisdiction. Section 3-611 (b) states in its last sentence:

> Unless the decedent's will directs otherwise a personal representative appointed at the decedent's domicile, incident to securing appointment of himself or his nominee as ancillary personal representative, may obtain removal of another who was appointed personal representative in this state to administer local assets.

Under this a domiciliary personal representative can oust any person serving as ancillary personal representative regardless of the sequence of appointment.

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[58] *Id.* § 4-205.

During the course of the administration of the estate in the ancillary jurisdiction, the personal representative is under an obligation to notify creditors of his appointment.[59] Under the UPC the non-claim period, that time during which creditors must present their claims or else be barred, is four months, which runs from the date of the notice.[60] In the case of ancillary administration a serious problem arises where notice to creditors is given at different times in different jurisdictions. The problem of different statutes of limitations and different non-claims periods gave the draftsmen of the UPC a gr at deal of trouble. The final draft provides that any claims against the decedent's estate arising prior to the decedent's death are barred unless presented within the four-months' period, with the proviso that "claims barred by the non-claim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state . . . ."[61] So if the non-claims provision has run in the domiciliary jurisdiction before the first advertisement in the ancillary administration, claims will be barred in both jurisdictions. This may seem to be unfair to the local creditor who has relied on the assets of the decedent available in the local state. However, he does have the right to initiate administration[62] and should do so to protect himself if it is not started promptly by those with superior priority.

If the first advertisement in the ancillary state should occur before the running of the non-claim period in the domiciliary jurisdiction, then claims are not barred. Some interesting possibilities may occur under this section. Assuming that a domiciliary personal representative has been appointed, knowledgeable creditors will file in the domiciliary administration. Should there be, however, uncertainty about a group of creditors, an attempt might be made to extend the period for filing by starting an ancillary administration and thus taking advantage of secti on 3-803(1).

A creditor, with sixth priority forty-five days after the death of the decedent,[63] can seek an appointment as a personal representative. This would have to be in a formal proceeding.[64] The creditor could attempt to time his appointment to come close to the end of the four-months' non-claim period in the domiciliary jurisdiction. A vindictive creditor

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[59] *Id.* § 3-801.

[60] *Id.* § 3-803(1).

[61] This provides for three published notices at weekly intervals in a newspaper of general circulation in the county.

[62] UNIFORM PROBATE CODE § 3-203(a)(6).

[63] *Id.*

[64] Since a domiciliary personal representative has been named. See discussion at Section 5 C text *supra*.

could thus effectively extend the non-claim period for somewhat less than four months giving creditors who were unascertained or uncertain an additional period of time in which to file. This, of course, assumes the existence of assets of the decedent in the ancillary jurisdiction.

In the administration of the estate in the ancillary jurisdiction, the personal representative must recognize that "[a]ll assets of estates being administered in [the ancillary state] are subject to all claims, allowances and charges existing or established against the personal representative wherever appointed."[65] Should the assets in the domiciliary jurisdiction prove to be insufficient to pay homestead allowance, or family allowance, or exempt property allowance, then the assets in the ancillary jurisdiction would be used to make up the difference.

E. *Insolvent Estate*

The troublesome problem of the estate which is insolvent in a single state while solvent in other states has not been satisfactorily settled in the general provisions of the UPC. In the First Tentative Draft of the Model/Uniform Probate Code, dated July, 1966, in Part III, section 317, there was a provision dealing with an "insolvent estate transferred to federal bankruptcy court." This provision was included in section 3-112 of the Honolulu Draft, 1967, in the following language:

> Incident to a petition for supervised administration, if it appears that the estate is insolvent, the court may, upon petition of the principal creditor or creditors, order the proceedings transferred to the jurisdiction of the federal district court in bankruptcy, provided federal laws permit such court to administer an insolvent decedent's estate, and provided, further, that the rights of the surviving spouse and children of the decedent to homestead, family, and support allowances and to exempt property, are or can be protected in the process.

In the UPC there is no such provision concerning an insolvent estate. Section 3-815, however, does cover the payment of claims in case of insolvency. Under this section the family exemptions and allowances and prior charges are to be satisfied, and then all claimants whose claims have been allowed "either in this state or elsewhere in administrations of which the personal representative is aware" are to be paid equal proportions of his claim. The local jurisdiction in its distribution is authorized to balance out inequitable treatment given in another

[65] UNIFORM PROBATE CODE § 3-815(a).

state.[66] Section 3-815(c) sets forth a procedure to be used in a non-domiciliary jurisdiction when local assets available for the payment of claims are either greater than or smaller than necessary to pay the correct proportional share. If assets beyond the proper proportional share are available locally, these are to be transferred to the domiciliary personal representative.[67] Again, the unity theory which runs through this entire Code in its treatment of multi-state estates can be seen. The ancillary administraion does not stand apart from the domiciliary administration; rather the two are considered together.

F. *Final Distribution*

The provision concerning the final distribution of the estate in the ancillary jurisdiction also reflects the unity concept. This section, 3-816, provides:

> The estate of a non-resident decedent being administered by a personal representative appointed in this state shall, if there is a personal representative of the decedent's domicile willing to receive it, be distributed to the domiciliary personal representative for the benefit of the successors of the decedent . . . .

There are, however, exceptions to this general provision. First, if the decedent's will provides that his successors are to be identified "pursuant to the local law" of the forum state then the transfer of funds need not be made. Second, if according to the applicable choice of laws rules, the successors are to be determined "pursuant to the local law of [the forum state] without reference to the local law of the decedent's domicile."[67] One obvious application of this exception would be in the case of real property located in the forum state. Under the usual conflicts rule this property will pass according to the law of the state of situs—the forum state—and therefore the property would not be distributed to the domiciliary personal representative. The apparent reasoning is that if the law of the forum state is to be applied, the forum state should apply it.

A third exception to the transfer of funds to the domiciliary jurisdiction occurs when the local personal representative is unable to discover a domiciliary personal representative. If he cannot find a domiciliary personal representative through "reasonable inquiry," he has no duty to transfer funds. Finally, a court in a proceeding for

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[66] *Id.* § 3-815(b).

[67] *Id.* § 3-815(c). This section was derived from the UNIFORM ANCILLARY ADMINISTRATION OF ESTATES ACT as amended in 1955. 9 UNIFORM LAWS ANNOTATED 69-70 (1957).

closing under section 3-1001, or in a supervised administration, can order local distribution or make any other order regarding distribution which it feels appropriate.[68]

6. Jurisdiction Over Ancillary Personal Representative

Section 3-602 provides:

> By accepting appointment, a personal representative submits personally to the jurisdiction of the Court in any proceeding relating to the estate that may be instituted by any interested person.

This section also sets out the procedure to be used in serving notice on the personal representative. By using the procedure set forth, service can be made on any personal representative, domiciliary or ancillary, named by a court of the state. Since there is a substantial contact between the individual and the state there would seem to be no constitutional question about the validity of the provision for service.[69]

7. Jurisdiction Over Foreign Personal Representative

Section 4-301 is designed to deal with the foreign personal representative who has not been appointed a local representative by the local court. The foreign personal representative who (1) collects funds as authorized by section 4-201, (2) files his authenticated copies of his appointment thereby getting all the powers of a local personal representative, or (3) does any act as a personal representative which would give the state jurisdiction over him as an individual, submits to the jurisdiction of the courts of the local state.[70] In the case of collection of funds, jurisdiction is "limited to the money or value of personal property collected."[71]

In all of these situations there seems to be a sufficient minimum contact so that it is reasonable for the state to exercise jurisdiction over the foreign personal representative.[72]

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[68] Uniform Probate Code § 3-1001(a).

[69] McGee v. International Life Ins. Co., 355 U.S. 220 (1957); International Shoe Co. v. Washington, 326 U.S. 310 (1945).

[70] Uniform Probate Code § 4-301. Only a domiciliary personal representative can file authenticated copies of his appointment under section 4-204. Collecting funds under section 4-201 can be done only by a domiciliary personal representative; either a domiciliary or an ancillary personal representative could do acts in the state which might give the state jurisdiction over "him as an individual" thus giving the state jurisdiction over the personal representative.

[71] *Id.* § 4-301.

[72] *See* cases cited note 69 *supra*.

The UPC also provides in section 4-302, that "a foreign personal representative is subject to the jurisdiction of the courts of this state to the same extent that his decedent was subject to jurisdiction immediately prior to death." This provision covers the situation, for example, where the decedent, involved in an automobile accident outside the state of his residence, tortiously injured another person and died. Had the tortfeasor lived, the injured person would have been able to bring an action under the usual non-resident motorist provision.[73] Because of the death of the tortfeasor, a rather complex legal problem arises. Some states have held that they could not exercise jurisdiction over the person of the foreign personal representative even though he had been served in the forum state or had appeared in the proceeding. The theory seems to be that the person *qua* personal representative can be found only in the state of appointment and that only the courts of that state have any power over him.[74] The federal court sitting in Iowa, speaking to this point, stated:

> [A]n executor or administrator appointed in one state, cannot by voluntary appearance in an action in another state confer upon the court of such other state jurisdiction to render judgment against him in his representative capacity where there is no property belonging to the estate in the state where the action is brought.[75]

The court concluded that the Iowa provision for service on the foreign personal representative was invalid and that the court acquired no jurisdiction over the foreign administration.[76] Although there is some question about this judgment,[77] the Iowa General Assembly decided to use a different technique to reach assets of the non-resident motorist who is deceased.[78]

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[73]Joy, *Non-Resident Motorists Service of Process Acts*, 33 F.R.D. 151 (1964).

[74]Thorburn v. Gates, 225 F. 613 (S.D.N.Y. 1915); Burton v. Williams, 63 Neb. 431, 88 N.W. 765 (1902) (foreign personal representative could not be sued in Nebraska); State *ex rel.* Scott v. Zinn, 74 N.M. 224, 392 P.2d 417 (1964) (Texas personal representative not subject to suit in New Mexico). For a good discussion of the possibility of suing foreign personal representative see Note, *Amenability of Foreign Administrators to Suit Under Non-Resident Motorist Statutes*, 57 YALE L.J. 647 (1948).

[75]Knoop v. Anderson, 71 F. Supp. 832, 845 (N.D. Iowa 1947).

[76]*Id.* at 852.

[77]*See* Brooks v. National Bank of Topeka, 251 F.2d 37 (8th Cir. 1958) (contra to the *Knoop* case); *In re* Estate of Fagin, 246 Iowa 496, 504, 66 N.W.2d 920, 925 n.1 (1954) (Mulroney, J., dissenting). *See also* Note, *Amenability of Foreign Administrators to Suit Under Non-Resident Motorist Statutes*, 57 YALE L.J. 647, 653-54 (1948); Note, *Should Iowa Again "Reach Out" for Estate Representatives of Nonresident Motorists?*, 44 IOWA L. REV. 402 (1959); 36 IOWA L. REV. 128 (1950).

[78]*See* IOWA CODE § 321.512 (1966).

The more numerous group of states has decided that a state can exercise jurisdiction over the non-resident tortfeasor's personal representative named by another state. This is the path chosen by the UPC.[79]

The UPC, if adopted in the state of domicile of the deceased tortfeasor, would give the personal representative the right to defend when so served. Section 3-715 provides that a personal representative (here of the deceased tortfeasor) may "(22) prosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of his duties." Section 3-703(c) also provides:

> A personal representative of a decedent domiciled in this state at his death has the same standing to sue and be sued in the courts of this state and *the courts of any other jurisdiction as his decedent had immediately prior to death.* (Emphasis supplied.)

This provision, being tied to the status of the decedent prior to death, is the complementing provision to that dealing with service on the personal representative under conditions when the decedent could have been reached immediately prior to death.

> The mechanics of service are covered by section 4-303 which states:
> (a) Service may be made upon the foreign personal representative by registered or certified mail, addressed to his last known address, requesting a return receipt signed by addressee only. Notice by ordinary first class mail is sufficient if registered or certified mail service to the addressee is unavailable.
>
> Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this state on either the foreign personal representative or his decedent immediately prior to death.

The foreign personal representative so served is to be given at least thirty days in which to move or appear.[80]

8. Effect of Adjudication; Unity of Administration

The final section of Article IV provides:

> A prior adjudication rendered in any jurisdiction for or against any personal representative of the estate is as conclusive as to the local personal representative as if he were a party to the adjudication.[81]

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[79] Uniform Probate Code § 4-308.
[80] *Id.* § 4-303(b).
[81] *Id.* § 4-401.

This general statement of res judicata/preclusion in connection with the administration of the estate is still another part of the general attempt to unify the estate administration. This not only provides that adjudications in the domiciliary jurisdiction will be preclusive: it also provides that an adjudication in any other ancillary administration will be binding. This binding effect includes both issue preclusion and claim preclusion.[82] Although there is no fraud exception specifically set out, it is obvious that an adjudication resulting from fraud or collusion would not be binding.[83]

9. Thrust of Provisions

An examination of the provisions of Article IV indicates that the draftsmen have hoped to achieve some very specific ends. First is simplicity in the handling of the assets of the estate outside the domiciliary jurisdiction. Second is the unifying of the administration to avoid conflicting fiduciaries or, more positively, to simplify and expedite administration. Third is the goal of centralizing all of the problems in the domiciliary administration by allowing suits against the domiciliary personal representative in a number of jurisdictions. The unifying of administration is promoted, finally, by the res judicata/preclusion effect to be given adjudications "in any jurisdiction for or against any personal representative of the estate."

All of these attempts of the draftsmen—to simplify, to unify the administration, to centralize the problems of the estate—if successful will make estate administration a much more attractive way of handling the passage of property from one generation to another.[84] In the multistate estate provisions of the UPC, the draftsmen have presented a document which deserves the careful consideration of the legal profession.

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[82] *See generally* Vestal, *Extent of Claim Preclusions*, 54 Iowa L. Rev. 1 (1968); Vestal, *Res Judicata/Claim Preclusion: Judgment for the Claimant*, 62 Nw. U.L. Rev. 317 (1967); Vestal, *Preclusion/Res Judicata Variables: Nature of the Controversy*, 1965 Wash. U.L.Q. 158; Vestal, *Preclusion/Res Judicata Variables: Parties*, 50 Iowa L. Rev. 27 (1964).

[83] There is an overriding fraud provision in Uniform Probate Code § 1-106.

[84] Veilman, *The Uniform Probate Code: A Possible Answer to Probate Avoidance*, 44 Ind. L.J. 191 (1969).

UNIFORM PROBATE CODE

Some Current Comments

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In August of this year, after several working drafts and seven years of study in cooperation with the Real Property, Probate and Trust Law Section of the American Bar Association, the National Conference of Commissioners on Uniform State Laws promulgated the Uniform Probate Code, and the House of Delegates of the American Bar Association approved it.

Some General Comments

The work of the Conference was conducted in cooperation with an American Bankers Association Trust Division Liaison Committee. The Conference work has also been followed with interest by several groups including the American College of Probate Counsel, which is interested for obvious reasons; the Veterans Administration, which is concerned over veteran guardianships; newspaper groups, which are concerned over the code's minimum requirements for published notice; and insurance groups, which are concerned over the code's minimum requirements for posting bond. These activities are evidence that the code has broad significance, and will be presented to various state legislatures in the very near future.

Professor Richard V. Wellman of the University of Michigan Law School addressed the Midwinter Trust Conference and the Mid-Continent Trust Conference on this subject in 1968. The text of these talks has been printed in *Trusts & Estates* [T&E, Mar. '68, p. 238 and Jan. '69, p. 29] and in *The Trust Bulletin*, thus offering trust men an excellent written overview of the code.

As Chief Reporter for the Uniform Probate Code Project, Professor Wellman speaks to our industry as an advocate—indeed a brilliant advocate—of the code. Today I intend to cover briefly the contents of the code, raise some questions and indicate some of the code provisions which may have an impact upon the corporate fiduciary. I should also like to speculate briefly upon the probability that the code will be accepted by the several states.

It is clear that legislation of this magnitude will generate controversy. For example, although it has many forward-looking features, it may not meet the required standards of all communities and although it is immensely well integrated, there is something in it to offend everyone.

The code consists of eight articles. Let me outline them briefly.

General Provisions And Definitions

Article I contains general provisions and definitions. It covers court jurisdiction and notice. Here the purposes and policies of the code are stated. The code expressly encourages simplicity, speed and efficiency in the administration of estates.

The probate court is given subject matter jurisdiction over all trusts, whether created by will or otherwise, as well as jurisdiction over estates of decedents and protected persons.

Article I provides a definite statute of limitations applicable wherever fraud is perpetrated in connection with matters covered in the code. These provisions are intended to replace various existing equitable remedies and limitations, such as the uncertain limitation embodied in the principle of laches. Action must be commenced against the perpetrator of a fraud within two years from discovery of the fraudulent act, and against non-perpetrators within five years from the time the fraud was committed.

For example, if a will known to be a forgery is probated informally—an option provided in the code, under which no notice is required—and the contest period runs, heirs may proceed against the perpetrator within two years from discovery of the fraud, but may proceed against innocent distributees only if action is commenced within five years from the time of the fraudulent act. The same limitations would apply where a will has been fraudulently concealed.

Treatment of Fraud

Let me pause here for a general comment. The code concept of fraud is new and reflects a basic approach, repeated in the code, to the effect that persons interested in a decedent's estate should be free to prove a will or not; commence legal proceedings or not; have a personal representative appointed or not—all in terms of whether or not they are willing to assume the risks involved.

The traditional legislative approach to probate administration, in contrast to this, has been one of more formality. And while this very formality has been criticized and even ridiculed, such formality was probably developed in an effort to insure that heirs and creditors, including taxing authorities, would always receive some kind of notice, and to make it clear that all interested persons were protected by the presence of a personal representative, responsible to the court as well as personally responsible in the administration and distribution of an estate.

In very general terms the code would now say: "Injured party, you have your remedy against those who take innocently and against those who perpetrate a fraud, but your rights as against an innocent personal representative will be strictly limited. We want personal representatives to act without delay and without fear."

In the same general terms I suggest that innocent distributees whose inheritance is later recovered by a superior claimant, and injured parties who attempt to collect personally either against perpetrators of fraud or in-

From address at 43rd Western Trust Conference, San Diego, Calif., Nov. 1, 1969.

nocent distributees, may well be expected to let go with a far more pertinent outcry against our legal system and how it operates than Norman Dacey ever considered. If property is improperly distributed, legal costs of recovery will certainly be high and the problem aggravated by the very real possibility that defendants may have disposed of their windfall by the time they are reached.

Moreover, I fear that the innocent personal representative may not be safe from attack as might be assumed. Faced with a difficult case, a court may well broaden its concepts of fraud in order to place responsibility for injury where the court, in retrospect, feels the responsibility should be placed.

As between an innocent personal representative and an innocent injured heir it is not beyond my imagination, for example, that a court might conclude that a personal representative should have known that formal rather than informal administration was called for because the latter is better designed to give notice; that some greater investigation was called for or that some other such thing tainted his acts sufficiently to constitute "fraud" so that he rather than the innocent heir should suffer.

Probate And Administration

Article II covers intestate succession, wills, rules of construction, the spouse's elective share and custody by and deposit of wills with the court. The code provides for deposit of an executed will with any court for safekeeping.

Article III covers probate of wills and administration. The code provides an option of informal or formal probate of a will. Administration is not mandatory, but a personal representative may be appointed, again either informally or formally. Regardless of how an administration is commenced problems may be referred to the court for hearing after notice.

Article III includes the Uniform Estate Tax Apportionment Act without change. Incidentally, there are other uniform acts embodied in the code. For example, Article II includes the Uniform Testamentary Additions to Trust Act. In this regard while California, for example, has adopted the Uniform Testamentary Additions To Trust Act, the tax apportionment act has met with strong resistance, primarily on the grounds that our existing apportionment statutes in California are workable and the ultimate test of any such legislation is its workability. Introducing a change in this respect has been and will probably continue to be troublesome.

Article IV covers foreign personal representatives and ancillary administration.

Disability—Power of Attorney

Article V deals with the protection of persons under disability and their property. This article introduces some new terminology. "Guardian" as here used is the term to define what we know as guardian of the person, except that there are certain specified instances in which the guardian may in fact handle the property of the disabled or incompetent person.

The word "conservator" is here used to define what we now know as conservator or guardian of the estate. That is, it is the conservator who is primarily responsible for managing the property of the disabled persons.

Article V covers powers of attorney. In this article the flexibility of a power of attorney is substantially increased in order to permit persons to do that which a number of them are already doing anyway. That is, the code would permit using a power of attorney beyond the time when the principal becomes disabled. Under the new provisions, if a power of attorney contains language to the effect that the power shall not be affected by disability of the principal, or that it shall become effective upon the disability of the principal, or similar words showing intent that the authority conferred shall be exercisable notwithstanding disability, then the authority of the attorney in fact or agent is exercisable by him as provided in the power.

Article V also contains express provisions protecting persons who deal with the holder of a power of attorney, which power might previously have been revoked or terminated, so long as they had no actual knowledge of revocation, death, disability or incompetency of the principal.

Non-Probate Transfers

Article VI covers non-probate transfers. Like Article V, it is designed so as to include within the probate code specific coverage of various will-substitutes which are being used. Article VI deals with bank accounts which are joint, payable on death to named persons, or bank trust accounts, such as *Totten Trusts*. Provisions are included in Article VI defining more clearly than any existing law the rights of the various persons named in such bank accounts. This article includes protective provisions for banks in dealing with survivors as well as creditors of the depositor.

Administration of Trusts

Article VII is entitled "Trust Administration." It is contemplated that the probate court, as defined in the

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code, would have subject matter jurisdiction over all trusts administered in the state. Article VII requires registration of a trust.

A trust is registered by the trustee in a court of the state in the county of the principal place of trust administration. This registration is not a registration of the trust instrument. That is to say, there is no need for filing a copy of the trust instrument with the court. What is required is a disclosure of the name of the settlor or testator, the date of the trust and, of course, the identity of the trustee. There are provisions in Article VII designed to coerce the registration of trusts and to smoke out a number of "Dacey Trusts" now in existence.

Under Article VII, resort to the court is possible for any number of reasons in order to resolve actual controversy and to end up with a binding order which will serve as some protection to all persons concerned. A trustee under this section may resort to the court for review and settlement of interim or final accounts.

It is clearly stated that neither registration of a trust nor proceedings under Article VII will result in continuing court supervision. It is also provided here that the management and distribution of a trust are intended to proceed expeditiously, consistent with the terms of the trust, free of judicial intervention and without order, approval or other action of any court.

Possible Shortcomings

I am not entirely satisfied with these portions of the code since a trustee who may submit accountings might well conclude for any number of reasons that he must submit accountings to the court for approval, if only to cut off contingent liabilities Moreover, I should think some attention would have been given to the possibility that an attorney might provide in a trust which he drafts that the trustee must submit periodic accountings to the court.

For the corporate fiduciary, I believe we generally agree that court accounting procedures are somewhat more costly than non-court accounting procedures. If we accept that fact, and then recognize that a number of inter vivos trusts contain express fee provisions, I can envision some profit squeeze here because of the code provisions.

Article VIII is the effective date and repealer section. As I said earlier the code itself is immensely well integrated. I might add here that it also overlaps a number of other statutes in California. I am sure the same is true in other states. It is also clear that one cannot automatically repeal an entire existing probate statute and expect the Uniform Probate Code to cover all subjects which were dealt with in the repealed law. For example, the existing California Probate Code contains clear provisions eliminating bond requirements for the corporate fiduciary. The Uniform Probate Code is silent on this subject.

Advantage of Flexibility

As mentioned, the code does embrace some forward-looking features. The flexible system of administration of decedent's estates, involving formal and informal probate, formal and informal administration, supervised administration and so on is the heart of the Uniform Probate Code, and is based on the premise that the court's role in connection with probate and administration, and the court's relationship to personal representatives, who derive their power from public appointment, is wholly passive until some interested person invokes the court's power in order to resolve a controversy. In other words, as stated in the code comments, the state, through the court, should provide remedies which are suitable and effective to protect any and all rights regarding succession, but should be restrained from intruding into family affairs unless requested to do so.

Role of the Corporate Fiduciary

I am not yet certain how the corporate fiduciary will fit into this flexible probate system. I anticipate, for example, that a certain amount of pressure may be brought to bear on the corporate fiduciary to proceed informally wherever possible on the assumption that this will reduce costs. The corporate fiduciary is of course also interested in protecting itself and never has a personal interest in the estate of its customers. The code, it seems to me, has been drafted on the assumption that the personal representative in many if not most instances *will* have a personal interest in the estate and for that reason be willing to choose his alternative courses with regard to what is best for him.

I am a little timorous here. Banks may be pressured into pursuing a course which would disregard the fact that some risk and exposure is involved, particularly in the no-notice, informal alternatives which are available and optional with the personal representative. I suspect, in other words, that banks would generally proceed with supervised administration, but I hesitate to offer this as a recommendation since it is contrary to the spirit in which the code has been drafted and offered to the public.

(Continued on page 1136)

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Code's Forward-Looking Features

Whatever may be said about the flexible system of administration of decedent's estates which is embodied in the code it is at least possible to say that this, since it is the heart of the code, is the basic forward-looking feature of it. What has been written in our industry journals already is sufficient to explain some of the other major features of the code. Following are some forward-looking features, selected at random for review, based on personal experience:

1. The code provides that no person is disqualified to take as an heir because he or a person through whom he claims is or has been an alien. Existing reciprocity statutes in the several states, including Oregon and California, have caused expensive legal controversy in an attempt to prove up the current law on this subject in some foreign country. We have evidence that this type of litigation is being conducted notwithstanding severe doubts as to the constitutionality of such legislation. The constitutional limitation is based on the assumption that such statutes force an excursion by a state into foreign affairs, which matters are basically entrusted to the President and Congress.

2. The code clearly covers matters of accession and ademption. The code provides that if properties specifically devised are sold by a conservator prior to a testator's death the devisee has the right to receive a general pecuniary devise equal to the net sale price.

Incidentally, the code defines the term "devisee" to mean any person designated in a will to receive a gift, whether the gift is of real or personal property, and thereby would wipe out a problem I have had, particularly with older trust men and lawyers, in selecting the proper words when referring to a bequest, a devise or a legacy. So far as accessions are concerned, the code is pretty good with respect to stock splits and other corporate distributions, including mutual fund reinvestments under a plan originated by the testator.

3. The code attempts to set forth a definition of what is meant by "surviving spouse" where there have been a number of marriages and divorces, some of which were invalid. These provisions are set out in the intestate succession and wills portion of Article II of the code and include, as an illustration, a statement to the effect that the term "surviving spouse" does not include a person who, following a decree or judgment of divorce which may not have become final, then participates in a marriage ceremony with a third person.

While I regard this as a forward-looking feature of the code, I am somewhat concerned over the fact that no effort was made to deal with this rather complicated subject in Article V, concerning the protection of persons under disability. In this connection we as conservator are faced with the problems of support which arise where a husband becomes incapacitated having left a trail of marriages and divorces in an unresolved state of bigamy and confusion.

4. The code expressly permits the conservator to examine the will of his conservatee when the same is in custody of a third person.

5. The nomination provisions are very broad. Even the conservator of the estate of a protected person may exercise rights of nomination. While I regard these provisions with optimism and hope I am sure that the various public administrators are already sharpening their ax on this subject.

Representative's Investment Powers

6. The investment powers conferred upon a personal representative of a decedent's estate are very broad. Again it is contemplated that these powers will be exercised in a fiduciary capacity and without submitting investment questions to the court.

Several months ago, one of my colleagues in the trust business who works in a state which permits unsupervised administration, severely chastised California trust men for not attempting to change the California law on this point. He stated his opinion very bluntly to the effect that complicated investment transactions should be resolved by qualified corporate fiduciaries and not be tendered to some judge.

7. The code contains separate provisions regarding personal representatives, conservators and trustees, to the effect that such fiduciaries are individually liable for obligations arising from ownership or control of property of the estate or for torts committed in the course of administration *only* if they are personally at fault. There has been a great deal of dispute on this subject which these code provisions would tend to resolve.

Conservator's Powers

8. I am particularly interested in the provisions of Article V regarding the powers of a conservator as well as powers of the court with respect to the affairs of protected persons. After hearing, and upon determining that grounds for an appointment or other

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protective order exist with respect to a person, the court has for the benefit of that person all the powers over his estate and affairs which that person could exercise if present and not under disability, except the power to make a will.

These powers are stated to include the power to make gifts, to exercise or release a protected person's powers as trustee or personal representative, to enter into contracts, to create revocable or irrevocable trusts, and so on. Here for the first time we have in this proposed legislation recognition of the fact that trusts and other will substitutes do exist. I feel that the one major defect with most existing conservatorship and guardianship statutes is that they simply fail to contemplate that property will descend upon death of the protected person in any way other than by will or by intestate succession. It is curious to me, however, that while the court may create revocable trusts for the protected person it may not make a will for him or her.

Provisions Affecting Banks

With regard to banks, several provisions of the code should be studied carefully, including the following:

1. The code provides that an executor or administrator is entitled to reasonable compensation. It is entirely silent on the subject of attorney's fees. Enactment of the code would probably be followed by the informal adoption of a number of fee schedules or fee guidelines both for attorneys and for executors or administrators. I hope that the banks will be able to deal tactfully with attorneys and cooperate with them on this rather delicate point.

2. Bond is required under the code only if the court determines that a bond is necessary. This is true even where a will expressly requires bond. So long as the corporate fiduciary can obtain a blanket statutory exemption from bonding requirements, this type of provision may work to our benefit. That is to say, since the testator has no control over bonding he would, if the code were adopted, look to the corporate fiduciary as the best source of protection for his heirs. I personally prefer the bonding requirement even though testators in most cases waive bond. The reason for this is that all of us in this business suffer whenever any estate is raided and heirs suffer for lack of bonded protection.

3. I have already mentioned concern over the pressure which would be applied to banks to elect the informal, no-notice options available under the code. This pressure would probably be applied with the objective of keeping the costs down. As I stated before, this is where the representative has a personal interest as heir or as a relative of an heir who enjoys benefits under an estate. Banks never enjoy benefits under decedent's estates which they administer. Accordingly, the pressure to select the informal no-notice options would, under the code, present us with what is essentially a fee controversy right from the beginning.

Foreign Fiduciaries—Family Allowance

4. The provisions of the code regarding the conduct of trust business by foreign fiduciaries are of concern to me to the extent they permit foreign executors and administrators to act locally. The trust provisions of the code, however, expressly provide that a foreign corporate fiduciary may not administer trusts in a state unless it satisfies the laws of the state of administration relating to the qualification of a corporate fiduciary to conduct business there.

5. The family allowance provisions of the code authorize the personal representative of a decedent's estate to pay, as a lump sum or in periodic installments, a reasonable allowance for support of the surviving spouse of a decedent and his dependent children. This is a grant of discretionary powers, but the code does not specify what factors are to be taken into consideration in exercising such discretion.

The comment to this particular Code Section (2-403) does suggest the various factors to consider. I am nonetheless concerned since in the related provisions of Article V covering protected persons, and in particular Section 5-425, specific standards *are* set forth to guide the conservator in expending funds reasonably necessary for the support, education, care or benefit of the protected person. That is, he must pay due regard to the size of the estate, the duration of the conservatorship, a likelihood that the protected person may at some future time become able to manage his affairs, the accustomed standard of living of the protected person and members of his household as well as other funds or sources available for the support of that person. It is not clear to me why similar guidelines are not offered for the personal representative of a decedent's estate.

6. The code provides that any person may renounce an inheritance by a written instrument at any time within six months after the death of the decedent. This offers the heir an excellent opportunity to wipe out what may

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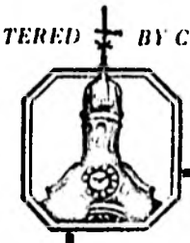

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In addition, unless our tax laws were also revised, I question whether the various tax collectors would read this renunciation privilege literally. I suspect the heir would be taxed as if he received the inheritance, at least in those cases where this will produce a larger tax.

7. The code provides that a will may be deposited by the testator or his agent with any court for safekeeping, under such rules as the court may promulgate. This section should have been drafted after consultation with those who do accept wills for safekeeping. The expense to the public of this kind of safekeeping service may well turn out to be prohibitive. The draftsmen might have considered the court custodian in a large metropolitan area dealing with hundreds of thousands of wills, for any one of which an individual may be repeatedly asking the custodian to bring out her wills and all of her holographic codicils so that she can look them over for another change. I use the feminine reference arbitrarily.

Appraisal

8. The code provides that the personal representative will act as appraiser for his own estate. While payment of a percentage of the total value of an estate to an appraiser may be obnoxious to some persons, it is also true in some states that the appraiser not only determines values but also computes the tax, which computation in some instances is a highly complex and technical job for which percentage fees may or may not be adequate. Whatever the case may be, adoption of the Uniform Probate Code with this provision in it would probably necessitate revision of the tax laws of any state.

9. The code provides that where there are two or more co-representatives, any co-representative may receive and receipt for property due the estate. Problems can and often do arise where banks act with family members as co-representatives. These problems are sufficiently common so that I am completely unable to understand why receipt of both co-representatives is not required. In my opinion, this provision makes sense only if representatives are generally bonded, and since the bonding requirements have for all practical purposes been eliminated I fail to understand the logic behind this particular section of the code.

Reform—Two Sides of the Coin

Some of the facts of life which are suggested as a basis for reconsidering existing laws on the management and distribution of the property of deceased and incapacitated persons have frequently been discussed. These include increasing affluence in our society, the complexity of modern investment techniques, the frequency of second and third marriages, the diffusion of family members, which is a part of the population mobility which our society seems to encourage, and increased taxes.

Professor Wellman has admitted that a number of sections of the code do not necessarily have to be accepted in every state. This makes the Uniform Probate Code different from other uniform laws which have been offered. The historical distinction between the uniform laws and the model codes is that the uniform laws are offered with the idea that no local changes would be made, whereas model codes were simply offered as a sort of food for thought which could be borrowed in whole or in part as any legislature might see fit. Professor Wellman has described the Uniform Probate Code, however, as a form of uniform model act, or model uniform act, but in any case he concedes at the outset that some localization is to be expected.

So far as the opposing groups are concerned, I feel that the various newspapers might oppose the code because of its broad no-notice provisions, and the general elimination of required published notice in legal newspapers. I suppose the insurance industry will object to the reduction of bonding requirements. Corporate fiduciaries as well as lawyers, will probably fe[illegible] the code to some extent because it requires them to study and learn an entire new approach to what has been a bread-and-butter portion of their work. All of this would indicate that we may now be entering a period of public debate and controversy over the subject of estate administration and distribution, which has in the past been a very dull subject.

I feel that the code will attract some attention on the grounds that it aims to reduce the number of required contacts with the court, thus reducing public expense or at least freeing a judge so that he can handle other m ters. Today it seems that our appel courts are being forced to devote inordinate amount of time trying define and balance the rights of individual citizen as against those the citizenry as a whole. This ma it important that controversy rega ing property matters, including esta and trusts, be resolved at the low possible level.

While the code may be a step that direction, we should recogn that a skillful and responsible job administration also tends to red controversy. This is where our indus deserves recognition. We have don fine job, often notwithstanding the v ious probate laws, and I would ho that this new code will not be accep if it operates to minimize the sign cance of our work.

One burden that the commission have not borne in the code or in th comments, or even in the prior wo ing drafts of the code, is the burden proof to show why uniformity is n essary in all the areas covered by code. I can understand, for examp why a uniform law on the subject intestate succession is advisable. I c also understand the advisability of ha ing more or less uniform approach in the several states to the treatm of persons who are incapacitated. T is understandable from the fact th people do move and it seems absurd impose technical legal barriers up free interstate mobility.

I am unable to endorse the bli proposal that uniformity is a desiral end in itself. In connection with th uniform laws it is my strong feeli that one must first ask if the propos new law is really better than the exi ing law. In California a great deal h been done recently to up-date our pr bate laws. We now have some limit authority to invest estate funds if will so provides. The claim period h been shortened. We have a new pr vision covering powers of a testame tary trustee. These are just a few many changes which have been ma here. I consider the existing Californ probate system to be quite good a certainly not subject to the criticis which has been generally directed t ward probate law and practice.

If there are provisions in the co which would improve existing law th I suggest we consider those provisio only and accept Professor Wellma suggestion that this package be treat like a model code.

Uniform Probate Code:

Probate costs are high because of antiquated procedures lawyers must follow.

By Harrison K. Chauncey, Jr.

A certain Jarndyce, in an evil hour, made great fortune, and made a great Will. In the question how the trusts under that Will are to be administered, the fortune left by the Will is squandered away; the legatees under the Will are reduced to such a miserable condition that they would be sufficiently punished, if they had committed an enormous crime in having money left them; and the Will itself is made a dead letter.
CHARLES DICKENS — BLEAK HOUSE 1853

THE SAVAGE CRITICISM of probate practice that Dickens vented in *Bleak House* had little effect in Victorian England, but in our day the public is not so placid. Criticism of our probate courts is increasingly harsh.[1] Indeed, in some Florida counties our judges have warned us that we are killing the goose that lays the golden egg of probate practice.

There is no question that estate administration is costly. But it is arguable that one reason those costs are high is due to the antiquated, time-consuming probate procedures that lawyers must follow. If those procedures could be streamlined the estate would not be overburdened in costs and the attorney would not be forced to spend valuable time in unproductive paper-shuffling.

In 1963 (two years before Norman Dacey came upon the national scene) a group of lawyers in the American Bar Association who were deeply concerned with our probate practice urged and eventually obtained approval for a study of probate practice by the National Conference of Commissioners on Uniform State Laws and the ABA Section of Real Property, Probate and Trust Law. The object of the study was to suggest reforms to, and update the Model Probate Code which had been completed in 1947.[2] The result was the Uniform Probate Code, promulgated in 1969.[3]

The reporters of the National Conference first endeavored to pinpoint the manner in which our probate laws impeded the efficient administration of estates. They found that the problem was, in some respects, historical.[4] Our probate courts occupy a position uniquely American; that is they are administrative rather than judicial courts. In civil jurisdictions no public agency becomes involved in the administration of a decedent's estate unless disputes arise. The draftsmen also concluded that our 50 jurisdictions have developed a variation of procedures that have unduly complicated the administration of estates, especially in multistate administration.[5]

Also, it is clear that the laborious and expensive procedures adopted by the various states in the name of protecting the beneficiaries and creditors have overburdened the probate courts and unnecessarily postponed distribution to beneficiaries for a period of from two to four years.

The probate practitioner might retort that the procedures developed by the probate courts in America are important. There is need for the protection of creditors, heirs and beneficiaries and the laws that have been developed do these things. Laymen, however, do not agree. They simply say, "I want my wife to get my estate"—and they find a way to do it. For

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Attempted Reform

example, 55 percent of all the land in Iowa was, in 1964, held as joint tenancies. Thirty percent of all savings accounts in New York in 1964 was held as joint tenancies. In 1965, shares traded on the New York Stock Exchange and valued at 48 billion dollars were jointly held.[6] The life insurance field has found it possible to merchandise various wealth-passing devices that avoid probate. And now the *inter vivos* trust is a favorite way to pass on property without a will and without subjecting a decedent's estate to probate procedures.

Although it may be that many of these probate-avoidance vehicles would have been successful no matter how little a lawyer charged or how simple probate might be, most fairminded members of the Bar will agree that there is an urgent need for reform in probate procedure. The draftsmen of the Code in promulgating it have suggested that a probate law flexible enough to serve a changing society is at least useful as a guide to probate reform in the various jurisdictions.[7]

Because the Uniform Probate Code contains more than 400 pages of typewritten text and combines in one code areas of the law now covered in many separate statutes, it would be impossible to discuss the entire work here in detail. About all that can be attempted is to give a general outline of the Code and highlight some of its more unfamiliar aspects.

Article I of the Code contains general provisions including definitions and the scope of probate jurisdiction of courts. It also codifies the present rules respecting fraud in estate matters.[8] Article II concerns intestate succession and wills. Article III gives the rules for probate of wills and administration of estates. Article IV is involved with foreign personal representatives and ancillary administration. Article V provides rules for protection of persons under disability and their property. Article VI governs nonprobate transfers. Article VII respects trust administration and Article VIII contains the repealer and effective date.

Four Changes in Florida

At least four substantial changes in Florida practice and substantive law would occur if the Code were adopted—and they would be controversial changes. The first is the concept called Code estate planning; the second is reform of widow's rights and the theory of the augmented net estate; the third is the new procedure for administering estates by revolutionizing (for Florida, at least) the probate practice rules; and fourth is the Code approach to ancillary administration. These four areas engendered much of the controversy during the drafting stages and certainly will continue to do so. Lawyers have been particularly vociferous in attacking the portions of the Code relating to descent and distribution and the Code estate plan.

Although present statutes on descent and distribution vary widely from state to state, the widow's share is usually less than half of the estate.[9] This type of intestacy statute seems to be totally unacceptable to the average American today. For example, in a recent study by sociologists and lawyers at Case-Western Reserve University, a survey of lawyers, laymen and trust men asked the question, "How would you wish your property to be left in the event you died without a will?" By far the majority of people surveyed indicated that they wanted all their property left to their surviving spouses.[10] Contrary to most state laws on intestacy that do not reflect the desires of the average person, the Code takes a new tack.

Spouse Gets Entire Estate

The Code would give the surviving spouse the entire estate if there is no surviving issue or parent of the decedent. The widow would receive the first $50,000 if there is surviving issue or a parent plus one-half of the balance of the estate. If there is surviving issue of the decedent but not of the surviving spouse, then the surviving spouse takes only half of the estate and the surviving issue takes the balance.[11]

The result of the provision is that many estates may be "Code probated." That is, no will would be necessary if a man wishes his spouse to receive one-half of an estate of $100,000. The full marital deduction would thus be saved and the interests of issue would be protected. It is obvious that a large number of estates in Florida would fall within this provision and it would make unnecessary many wills drawn today. It is therefore easy to see why Rich-

ard Wellman, chief reporter for the Code, found lawyers objecting to this provision of the proposed Code.[12] As might be imagined the draftsmen are accused of attempting to legislate lawyers out of business by providing a basic estate plan within the Code. This view not only makes the spokesmen appear to be grasping will-hoarders, it is also shortsighted for several reasons.

First, the average layman is keenly interested in probate matters and wants the substance and procedure of the practice reformed. Two surveys have been cited to support this. One survey was held in the 18th Senatorial District of Michigan where a state senator sent questionnaires to his constituents asking them to rank, in order of priority, 13 topics of possible legislative activity. Of the 500 returns picked at random from 3,500 responses the percentage of respondents indicating an interest in probate reform was topped only by concern about unsolicited credit card charges and cancellation of automobile insurance.[13] Another survey of a 35,000 member consumer organization in Detroit placed estate law reform second only to assistance in garnishment procedures.[14]

Second, the Code estate plan might actually enable the lawyer to use his time more effectively. Consider the relatively large amount of time the lawyer takes to draw a will for the small estate; and for which he can charge only a small fee. If the practitioner were able to avoid drafting the simple will and spend more time on complex estate plans for which he could charge a reasonable fee, both he and his clients might be better served.

Widow's Elective Share

Those who find the intestate succession provisions surprising will be staggered by the provisions dealing with the widow's elective share; it involves a concept known as the augmented net estate. To really understand the idea it is first necessary to understand what the draftsmen were trying to cure.

Suppose *T* has $1,000,000; and suppose that before his death he gives $600,000 jointly to *S1*, *S2* and himself. Then he gives away $200,000 to the community chest. He dies and his will leaves his entire probate estate to his wife. It also directs the executors to pay estate taxes from residue. In this case *T* could ignore the needs of his wife in giving the bulk of his estate to his sons and to charity, because in Florida dower extends only to personalty owned by *T* at the time of his death.[15]

Now suppose a different case. *T* gives $600,000 outright to his wife. He pays a gift tax and dies four years later leaving the rest of his estate, say, approximately $300,000 equally to his three sons. *W* elects to take against the will in Florida and she receives $100,000 of the $300,000. Of course, the sons' shares are burdened with the payment of estate taxes, administration expenses and debts. In this case the wife has used her dower privilege to obtain an unfair advantage and in the process, to destroy her husband's estate plan.

What would the Code do? Very simply, it gives the widow one-third of the "augmented estate." That is computed by adding to the value of the estate (reduced by the amount of claims, expenses and allowances) the sum of the following: (1) all *inter vivos* transfers by the testator to someone other than his wife including those in which he retained any life interest, control, power of revocation, or consumption or right of survivorship; transfers of over $3,000 to any one person within two years of death; and (2) generally all property derived from the decedent by the surviving spouse during marriage and owned by the spouse at the decedent's death, plus all such property transferred by the spouse during marriage to one other than the decedent.[16] The Code then directs that the wife's share be funded by deducting from one-third of the augmented estate all property comprising the augmented estate which has been transferred to her during the marriage, by the will or by intestate succession.[17] The balance, if any, is charged to the probate estate and other transferees of the decedent.

Although the fairness of the provisions respecting the augmented net estate must be admitted, there will be many instances in which the complexity of the device will generate extensive litigation. Collection problems also could be very difficult. Although the Code provides for collection in cases where estate assets are insufficient to fund the share,[18] the Code leaves some blanks that will need to be filled. For example, is income on transferred assets collectable? If so, for what period of time? Any legislature contemplating the enactment of the Code should weigh the prospect of extensive litigation against the basic fairness of the Code's approach to the widow's share

Independent Administration

Somewhat less complex than the augmented net estate, the concept of simplified or of independent administration forms the heart of the Code. It has been said that the purpose of independent administration is to provide a flexible system with as much or as little probate procedure as circumstances may require.[19]

The basic idea of independent administration is simple. The draftsmen assumed first that estate matters are administrative matters and not judicial. They also assumed that if there are no disputes and the rights of all persons are protected then court supervision of the administration of an estate is unnecessary.[21] But they also make provision for supervision of an estate when necessary or desirable.

For example, assume *T* dies and leaves a wife and three sons. His probate estate is $250,000 and his wife is named executrix. The wife

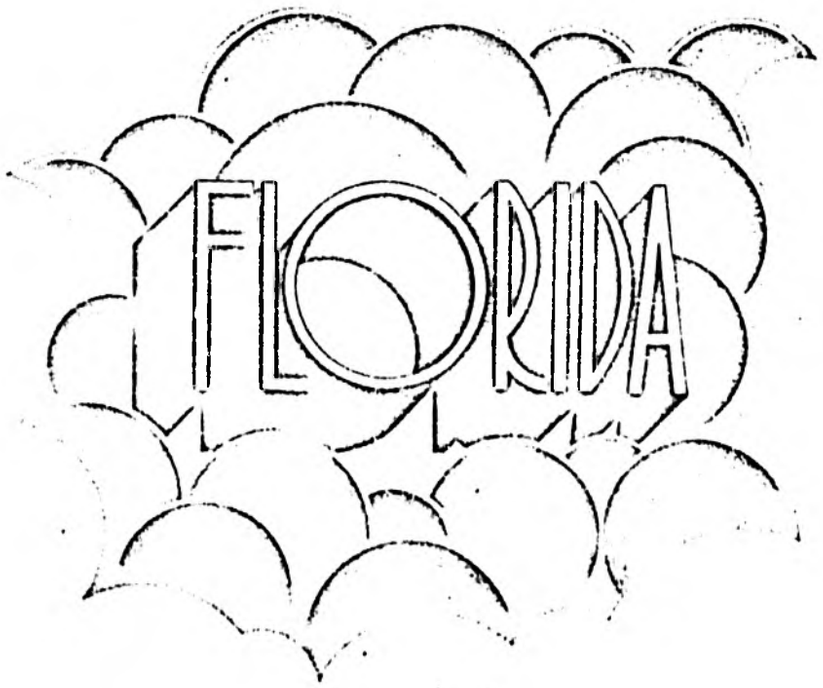
would proceed as follows: after five days from the decedent's death she may apply for informal probate before the registrar (the administrative official), which simply means that she files a short application with the registrar.[22] The will can accompany the application or be preproved or prefiled with the court. Upon the registrar's finding that the application is complete and verified and that the will appears validly executed, he will issue a statement of informal probate and appoint the widow executrix.[23] The executrix then administers the estate without the necessity of an appraiser by simply giving notice of her appointment and a copy of the inventory to the beneficiaries.[24] She publishes a notice to creditors and pays bills on the creditors' statements. No formal claims are necessary—although creditors may file such claims.[25] In general, the claims period expires four months from the issuance of letters.[26] At the end of the fifth month, the widow is free to distribute and file a sworn "closing statement" describing her administration.[27] After filing of the informal closing statement however, the widow is not discharged, but remains liable to creditors and interested parties for a period up to three years from the time of distribution.

This kind of simplified procedure would certainly eliminate much of the unnecessary and duplicative work incident to the administration of most moderate-sized estates, and that should be a welcome prospect. The problem, however, is whether the beneficiaries, contesting parties, creditors and even the fiduciary are adequately protected under the informal procedure.

Adequate Protection?

To illustrate, assume that *T* dies leaving his present wife, a former wife and a son by the former marriage who himself is a defendant in a divorce proceeding. (The example really is not that farfetched.) There is a probate estate of $500,000 and *T*'s widow and a bank are executors. The widow (and the bank) are worried that the son or the former wife or even the daughter-in-law might obstruct an informal proceeding, and perhaps contest the will.

Under the Code the executors may file a formal petition for probate asking that validity of the will be judicially determined and that the court (not the registrar) appoint the executors.[28] Upon the filing of this petition there must be notice to all heirs.[29] If the will is found to be valid, then (subject to a couple of exceptions) all right to contest it is terminated.[30] The executors, subject to the decision of the court, might then proceed in a variety of ways. On the one hand, the court might have found that the administration



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should be supervised by the court; or, it may have found that non-supervised informal administration would be preferable. The executors could perform some administrative steps informally and operate under supervised procedure for others; or they could administer the estate as did the widow in the former example and then formally petition for an order of settlement and discharge.[31]

If the court is persuaded to continue the estate in supervised administration, all important administrative matters may, upon motion, be approved by the court.[32] There could then be an order entered for the payment of claims, orders of distribution, orders for any compromises and the executors would file formal accountings. After an accounting proceeding and distribution and discharge, any rights any creditor or party might have had would be foreclosed except in the event of fraud.[33]

Finding Administrators

One seemingly troublesome question that might arise under the Code concerns the availability of supervised administration; that is, the supervisory proceeding is possible only when the court finds it to be necessary or when the will so directs.[34] Some contend this tends to put the burden on inexperienced and, perhaps, minor beneficiaries to come in and ask for supervised administration. The draftsmen answer that is exactly where the burden belongs because the beneficiaries are the best ones to protect their own rights.[35]

Perhaps some middle ground is preferable in Florida. An ombudsman or guardian or the registrar himself might be a proper person (in addition to the beneficiaries) to initiate a petition for supervised administration at any point. It may be unrealistic to hope that a beneficiary or a court, on its own motion, will find supervised administration necessary and some other policing official may be necessary.

The above examples give only the barest, oversimplified outlines of the procedure available under the Code. The important administrative concept is, of course, that any degree of either independent or supervised administration is possible. There can be no doubt of the flexibility of the proposed procedure.

Similarly, it is wasteful to go through the motions of obtaining court orders if none is really necessary. On the other hand, our Bar might argue that Florida now has a form of independent administration; orders are obtained only when the executor wants or needs them and partial distributions are often made without order for tax reasons. Even final distributions are sometimes made on simple receipt and release.

Statute Needs Reform

Although it is common knowledge that our courts and lawyers often wink at the statutory probate provisions and do not follow them, it is submitted that this is a sign that the statute needs reform.

Even assuming the Code does not survive its legislative trip in Florida, it and the critics of our current procedure will have accomplished much by focusing critical public attention on outmoded procedure.

The portion of the Code which could cause a mild panic in some parts of Florida is that respecting ancillary administration.[36] The Code sets the sweeping tone of Article IV by defining a foreign personal representative as any "personal representative of another jurisdiction."[37]

The first right that the foreign representative has in Florida (without any qualification here) is the right to demand a Florida debtor pay a debt to the foreign personal representative.[38] Although this flies in the teeth of the usual jurisdictional or territorial limitations on personal representatives, many states expressly permit this as an exception to that territorial limitation.[39]

Foreign Fiduciaries

The bombshell for Florida, however, is the provision allowing a foreign personal representative to file authenticated copies of his letters in the ancillary state and then act in all respects in that state as a domiciliary representative in a local, informal probate administration.[40] This provision would permit foreign corporate fiduciaries to act in Florida. It would be understandable if New York, Illinois, California and a few other states with powerful, national trust companies should approve this provision but it is difficult to see how it could pass through the Florida Legislature unscathed—no matter how socially beneficial it might be.

These highlights of the Code are by no means all the important provisions. The articles dealing with trusts, wills and guardianship are equally new to Florida and in most respects are convincing efforts to solve in a practical manner many difficult problems besetting the lawyer who advises fiduciaries.

Last summer at the American Bar Association meeting in Dallas, Texas, the Code was recommended for adoption to the states. If the history of the Uniform Commercial Code is pertinent—it was promulgated in 1952—it will be many years before Florida finally adopts the Code. □

FOOTNOTES

[1]See, generally, Bloom, *Time to Clean Up Our Probate Courts*, READER'S DIGEST, January 1970; reprinted from NATIONAL CIVIC REVIEW, September 1969.

[2]See Simes, *Improving Probate Procedure*, 38 T & E 277 (1948). Professor Simes details the efforts of the American Bar Association to reform the probate practice since 1879.

[3]The Uniform Probate Code, in its complete text, has been published as a service to the Bar, by Prentice-Hall, Inc. Copies are available at $3 per copy from the publisher at Englewood Cliffs, N.J. 07632. In Prentice-Hall, *Successful Estate Planning Ideas and Methods*, Harrison F. Durand has written a lucid *Introduction to the Uniform Probate Code*, ¶ 15,001 (Sept. 1969).

[4]See Prefatory Note, 5th Working Draft, Uniform Probate Code (1969).

[5]*Ibid.*

[6]See Report of Committee on Administration and Distribution of Decedents' Estates, 2 Real Prop., Prob. & Tr. J. 273 (1967) at 274.

[7]*Op. cit. supra* note 4.

[8]The Uniform Probate Code will be cited herein as UPC.

[9]In Florida the surviving spouse takes equally with the decedent's children unless she elects to take dower under § 731.34 Fla. Stat. 1969; so, if a decedent is survived by a wife and two children, the wife would receive only a third of the estate. § 731.23 Fla. Stat. 1969.

[10]Wellman, *Selected Aspects of Uniform Probate Code*, 3 Real Prop., Prob. & Tr. J. 199 (1968) at 204.

[11]UPC § 2-102. A detailed discussion of the intestate succession provisions appears in Professor Wellman's article cited at Note 10.

[12]Wellman, *op. cit. supra* note 10 at 205.

[13]*Id.* at 206.

[14]*Ibid.*

[15]§ 731.34 Fla. Stat. 1969.

[16]UPC § 2-201.

[17]UPC § 2-207.

[18]UPC § 2-207(b) and (c).

[19]See note 4 *supra*.

[20]*Ibid.*

[21]See the Introduction to Article II of the UPC.

[22]UPC §§ 3-301, 3-302.

[23]UPC § 3-303.

[24]Article III, Part 7, UPC; see also UPC §§ 3-703 and 3-704.

[25]See General Comment to Part 8 of Article III, UPC.

[26]UPC § 3-803.

[27]UPC § 3-1204; see also the more detailed discussion in Report of Committee on Administration and Distribution of Decedents' Estates, 3 Real Prop., Prob. & Tr. J. 143 (1968) at 152.

[28]UPC Part 4, §§ 3-401-414.

[29]UPC § 3-403 (a).

[30]UPC § 3-412. The exceptions referred to in the text are that such an order may be vacated if there is a later discovered will, an unknown heir is found or the alleged decedent is alive.

[31]UPC §§ 3-1101 and 3-1102.

[32]See the Comments to § 3-501 and 3-502 of the Code.

[33]Report of Committee on Administration and Distribution of Decedents' Estates, *op. cit. supra*, note 27 at 132.

[34]UPC § 3-502(2). See also Durand, *op. cit. supra* note 4 and the discussion beginning at page 395 in Wellman, *The Uniform Probate Code—Questions and Answers*, 3 Real Prop., Prob. & Tr. J. 388 (1968).

[35]See the *Report, op. cit. supra* note 6 at 279.

[36]UPC, Article IV.

[37]UPC § 1-201. This is one place where the draftsmen may have tried to do too much. In the introduction to the 5th Draft of the Code (page 211) the then proposed Article IV was available only to personal representatives in jurisdictions of the U.S. and others having a common law tradition. In the final draft this was omitted. Thus, if a state adopts the Code then *any* foreign personal representative (whether or not reciprocity exists) may exercise all Article IV powers.

[38]UPC § 4-201.

[39]Report of the Committee on Administration and Distribution of Decedents' Estates, 4 Real Prop., Prob. & Tr. J. 242 (1969) at 247.

[40]UPC §§ 4-204 and 4-205.

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The New Uniform Probate Code

by Richard V. Wellman

The product of a long study and gestation, the new Uniform Probate Code now has been approved by the American Bar Association and is available to the states for study and enactment. The new code modernizes one of the oldest and most creaky institutions of the law—an institution whose shortcomings have been a source of embarrassment for the legal profession.

LAST AUGUST the House of Delegates of the American Bar Association approved the Uniform Probate Code. This action came a few days after the code had been approved by the National Conference of Commissioners on Uniform State Laws, which sponsored the code in a co-operative project with the Real Property, Probate and Trust Law Section of the Association. The completion of the code and its approval mark an extraordinary achievement by the American Bar Association and the National Conference. The accomplishment indicates that lawyers serving these national organizations faced and resolved doubts about the desirability and feasibility of a significant reform of state probate laws. Similar doubts will be entertained by other lawyers as the code is considered for adoption in the several states.

To some lawyers, our tradition of nonuniform, local laws for the administration of decedents' estates, guardianships and trusts is a complete reason for opposing uniformity in probate laws. Others are traditionalists in the sense that the *status quo* will be favored until persuasive reasons for changes required to achieve uniformity become apparent. The negative or skeptical attitudes of many lawyers regarding the project pose a handicap.

The size of the code and the pervasive and complex nature of its concepts present additional difficulties. The printed code with official comments runs to 275 pages.[1] The subject of property rights at death is terribly complex. In many states it is intertwined with community property concepts that will continue to cause interstate diversities affecting succession, though all states adopt a common code of probate. Many of the old rules, although possibly not justified by the current attitudes of laymen, appear suitable to lawyers as points of departure for planning and drafting. Subjects like restrictions on testamentary power, the rights of dependents and creditors of a decedent and the role of formalities in preparing wills pose the trap of interminable debate for anyone advocating abandonment of provincial rules in favor of some national norm. The investment that counselors and estate planners have in an education that enables them to live with the existing complexities seems threatened by change.

Lawyers interested in probate law improvement soon realize that their work will not be much noticed by the public. The development of the new code received little financial or moral support from any but the sponsoring organizations and their members. The work, which forced participants to take a close look at the details as well as the over-all functioning of the nation's elaborate probate institution, attracted little outside attention. Representatives of the Trust Division, American Bankers Association, watched the formative process carefully but, except for a general memorandum of approval issued last summer in regard to the fifth working draft, avoided any assertion of control or influence. The American College of Probate Counsel was interested but provided little leadership or encouragement. Ultimately, hundreds of lawyers and other interested persons acquainted themselves with the major premises of the code, which remained fairly constant through six preliminary drafts. Their familiarity, of vital importance to final approval of the code,

1. See the official text of the code and appended comments prepared by West Publishing Company, which was published in March, 1970.

came about largely because of the hard work of the Section of Real Property, Probate and Trust Law, accomplished through committees that worked closely with the draftsmen from the inception of the project.

Why, in spite of these obstacles, did the project manage to produce an officially approved code? Several reasons can be identified. Many are relevant to the prospects for widespread adoption of the Uniform Probate Code.

The most important is the concern all members of the legal profession share for the recent and widespread public criticism of the American probate institution.[2] Much of the biting commentary has been directed most squarely at practicing lawyers. Some of it has suggested that a conspiracy exists among courts, legislatures and lawyers which works to rob survivors of their inheritances. The discussion weakened public confidence in an important American legal institution. Focusing on an area lawyers themselves have long recognized as needing reform, the criticism called for action rather than words. The profession answered in the form of the Uniform Probate Code.

History of the Project Goes Back to the 1940s

But the code is much more than a mere response to embarrassing criticism. Its roots go back to the early 1940s and the careful work which culminated in 1946 with the publication by the University of Michigan Law School of the Model Probate Code,[3] a project of a special committee of the Probate Law Division of the Real Property, Probate and Trust Law Section. Although not conceived as a uniform code or officially approved by more than a small advisory committee, the model code was a major effort to bring some rational order out of our chaotic probate laws. It had a significant influence on probate code changes adopted in several states after 1946.

The Uniform Probate Code project originated with a move in 1962 in the Real Property, Probate and Trust Law Section to revise the earlier work and to encourage wider recognition of its recommendations. The move reflected growing professional concern about a continued provincialism in probate and represented an effort to take advantage of more than a decade of experience with the earlier code. Viewed together, the two projects represent a long-standing, forceful effort by national committees of lawyers to improve probate law.

The long history of the project and the renewal of activity in 1962 allowed participants to release their accomplishments in time to take some advantage of the probate publicity. The first tentative draft of the code, rushed to completion by two reporters in the summer of 1966, reflected the benefit of nearly twenty years of experience with the earlier model code and four years of committee discussions about how that code might be improved and extended. The fact that the project was able to produce a comprehensive draft as quickly as it did following the wave of adverse probate publicity was a source of important support and momentum for the effort. Also the demonstration of progress served in some states to delay proposals for quick legislative reaction to adverse probate publicity. It is hoped that the code now will be received for local study by committees that will give some weight to the time-consuming care with which it was prepared.

Major Premises of the Code Are Based on Experience

The research and experience gained from the Model Probate Code project and the discussions from 1962 to 1966 enabled the evolution of some major premises that have proved popular. These good ideas, which served to offset much of the initial skepticism about the project, form the major characteristics of the new code. Framing a package that will enable the profession to meet the legitimate demands of the public, they provide some additional basis for believing that the code may be well received by state legislatures.

The area of probate procedure posed the toughest challenge for the code's architects. Intertwined with widely varying ideas across the country concerning the appropriate status, power and function of local probate offices, procedures relating to decedents' estates are characterized by local eccentricities that contribute significantly to the inefficiency of the succession process. Except for Louisiana, our states subscribe to the idea that wills must be probated after the testator's death and that a publicly appointed personal representative is the appropriate authority to marshal assets for the benefit of creditors and successors of decedents. Having said this, one has described the only common threads in the practice existing in the fifty states.

Sometimes postmortem proof of wills occurs in an adjudication after

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2. The principal probate critics are Norman F. Dacey, author of *How To Avoid Probate*, and Murray Teigh Bloom, author of two *Readers' Digest* articles on probate and of the book, *The Trouble With Lawyers*.

3. The book, PROBLEMS IN PROBATE LAW, INCLUDING A MODEL PROBATE CODE, 1946, is better known as MODEL PROBATE CODE. The volume includes a model code and comments (197 pages), an appendix of statutory notes comparing the code with statutes and cases in all states (110 pages), and four important law review articles by Lewis M. Simes and Paul E. Basye. Copies of a reprint in paperback form are available from Legal Publications, University of Michigan Law School.

notice. Usually, but not invariably, it is linked with the appointment of an executor. Sometimes the appointment of a personal representative in intestacy involves an adjudication after notice. Administrators in some states and executors under well-drawn wills in a few others assume the role of unsupervised fiduciaries who have no purely statutory obligation to account to their appointing authority or other tribunal. At the other extreme, probate administration is frequently a tightly controlled affair requiring several hearings to enable superintending courts to satisfy themselves of full compliance with all rules.

The code offers a flexible system for the administration of decedents' estates. The purpose is to offer alternatives that permit the details of procedure to be determined by the needs of each estate, rather than to be dictated by state statute. Another objective is to create substantial opportunities for some sets of survivors to avoid any contact with a public office if no will or need for administration appears within a set number of years after death.

Under the code, wills are ineffective unless probated after death.[4] Whether or not a will is probated, the appointment of a personal representative is optional,[5] but successors will find that appointment will be a practical necessity if they wish to protect transfer agents and purchasers during the first three years after a decedent's death.[6] After three years, unsecured claims against the decedent and any proceeding for probate or appointment in regard to his estate are barred.[7] This period of limitation co-ordinates with a provision passing title to all estate assets at death, subject to probate and administration, and aids survivors who want to avoid all probate or appointment steps.[8]

Timely proceedings for probate, appointment or both may be informal, nonadjudicative and handled by a probate registrar, or they may be formal, with a judge of a court having the power of a court of equity to enter a final order after notice and hearing on relevant questions.[9] After appointment, a personal representative may proceed without further court or registrar activity, using statutory duties and powers and periods of limitation to accomplish all objectives of administration.[10] Or a procedure called supervised administration is available on petition, so that persons who see some advantage to keeping an estate "in court" until distribution may obtain their goals under the code.[11] Unless supervised administration is ordered, the appointing court or registrar has no responsibility to check or answer for the acts of the appointee.[12]

A galaxy of remedies is provided for individuals having interests in estates, however, so that there is little prospect that any personal representative will get away with illegal conduct offensive to others.[13] The unsupervised personal representative has full optional access to an appropriate court for resolution of any problem or for judicial review of his administration and discharge.[14] The code includes a jurisdictional system for making interested persons parties to any proceeding by mailed notice, so that the option of obtaining judicial review of any question involving an estate may be pursued without undue procedural difficulty.[15]

Flexibility of the System Is Attractive to Lawyers

Several aspects of this flexible system of administration make it attractive to lawyers. First, each of its features is based on a tested characteristic of some state's existing probate law. Only the combination is different, and even it is similar to procedures now available in Pennsylvania.[16] Second, the system will enable lawyers in a particular state or part of a state to handle estates as they are accustomed to handling them or to innovate with new combinations designed to lower costs or improve client relations. No one will be pushed into strange new practices. If changes in practice occur, it will be because estate counselors and their clients desire change. Third, the system will enable an efficient handling of estates that, in view of the successors' circumstances, are small enough to be free of serious risks for the personal representative. Once a mandatory waiting period of five days from death has passed, a probate and appointment can be obtained through informal proceedings that can be completed in a single trip to the courthouse and without the necessity of notices or citations to witnesses or heirs.[17] Only an affidavit procedure is involved, and full control of estate assets can be gained by one willing to assume a trustee's responsibility, and administration can be completed without any return trip to the courthouse once the registrar makes the appointment. The idea of having efficient procedures available for use in any estate that appears risk free to the personal representative and other interested persons has more appeal for lawyers than dramatic proposals to exempt all estates under $60,000 or some other arbitrary figure from all probate requirements.[18] A full array of effective procedures may be more important to some persons who have interests in a $25,000 estate than to others who share an estate worth hundreds of thousands of dollars.

Finally, the code offers viable alternatives to the tight control over estate procedures assumed by probate magistrates over the generations. It is frequently difficult at the state level to find officials accustomed to control who are willing to relinquish any authority. These officials have tended to dominate local probate law revision efforts to the point that many probate code reforms entail the addition, rather than relaxation, of expensive and mandatory requirements. The national

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4. Section 3-102.
5. Sections 3-107, 3-301 and 3-401.
6. Sections 3-103, 3-307, 3-414, 3-601, 3-703 and 3-714.
7. Sections 3-108 and 3-803.
8. Section 3-101.
9. Sections 3-102, 3-103 and Parts 3 and 4 of Article III.
10. Sections 3-107, 3-701 and Parts 7 through 12 of Article III.
11. Part 5, Article III.
12. Section 3-107.
13. See, for example, sections 3-204, 3-602, 3-605, 3-607, 3-611 and 3-105.
14. Sections 3-105, 3-704, 3-1001 and 3-1002.
15. Part 4, Article I and Section 3-106.
16. See HASKINS, SMITH & GROSSMAN, PENNSYLVANIA FIDUCIARY GUIDE (1962).
17. See Part 3, Article III.
18. See Bloom, *Our Probate Mess*, 58 NAT'L CIVIC REV. 361 (1969), reprinted in the January, 1970, issue of READERS' DIGEST.

package, with a rational answer for every apprehension and the blessing of the American Bar Association, should help legislatures see that much of the probate bog is the result of the long-standing propensities of publicly elected probate officials to overemphasize the risks in estates administration to magnify their own role as public protectors. It remains to be seen, of course, whether legislatures will perceive the public interest in changes that reorder accumulated political power.

Should the Law of Intestate Succession Be Uniform?

Another sticky portion of the job of probate reform relates to the substantive law of intestate succession. What objectives justify a uniformity we have been able to do without? Why change the rules without good reason? The answers evolved by the project participants have favorable public relations implications for the Bar and wide practical appeal for lawyers whose clients, like most people of substance today, have business and personal connections with more than one state.

The code offers a respectable statutory estate plan for married persons of modest means. The principal feature of the code's scheme of exemptions is that approximately the first $15,000 of gross probate estate of a married decedent will pass to the surviving spouse ahead of creditors and the provisions of any will.[19] Intestate estate in excess of exemptions will pass entirely to the spouse unless it exceeds $50,000, or unless the decedent left issue by a prior marriage.[20] Common accident problems are avoided by a five-day survival requirement for heirs.[21] Modern considerations control the definitions of spouse and other takers by descent.[22] These features combine with the administrative system of the code, which treats administrators in intestacy exactly like executors and gives both offices the statutory power and protection necessary to permit efficiency in collection, management and distribution of estates.

The code reduces the pressure on married persons with modest estates to make wills in order to insure that the survivor will have full control of family resources. The many lawyers on committees controlling the project and others who reacted to the drafts were quickly in favor of this approach. Possibly they felt that the purpose of restoring confidence in a basic system for transmitting savings at death outweighed any possible advantage of a system that tends to force persons of average circumstances into law offices for wills. They felt that persons with estates falling within federal estate tax brackets would be moved by tax considerations to continue to support a high volume of personalized estate planning service.

The idea that the code offers persons of modest means a statutory plan having a potential for efficiency well beyond that of all highly touted will substitutes struck many as guaranteeing that the code would be popular from a political point of view. Without this broad appeal, the odds against getting the code's administrative system enacted over the protests of local politicians, who have vested interests in present systems, were heavy.

Standing alone, the idea of uniformity in the law of wills seems to many to be a good idea, but hardly worth fighting for. On the other hand, lawyers from metropolitan areas embracing two or more states tend to put the code's objectives of substantive uniformity and of unification of probate administration at domicile high on the list of reasons why the code should be vigorously supported.

Substantive uniformity in succession matters will depend on the general adoption of the code. In contrast, many of the code's ideas to enable unified administration of probate estates located in two or more states may be picked up by states that do not accept the entire code. One key procedure enables personal representatives appointed at the domicile of their decedents to secure authority to collect, sell and distribute local assets by local filing of their domiciliary letters.[23] Another involves submission to the jurisdiction of local courts by any nonresident who obtains local appointment as a personal representative.[24] The latter provision permits abandonment of residency requirements for executors and administrators, which have tended to complicate administration of multistate estates. Another section would require courts of enacting states to accept prior adjudications regarding validity and meaning of wills entered at decedents' domiciles.[25] Ancillary administrations remain possible under the code, but these and other provisions serve to reduce significantly the practical likelihood of multiple administrations.

A moment's reflection suggests that lawyers everywhere should applaud steps tending to make the will more suitable as an estate planning tool for the 1970s and beyond. If the will can be freed of procedural and stateline limitations, the advantages of its characteristics as a unilateral and ambulatory device tend, over time, to assure that it may again become the principal instrument for sophisticated estate planning. Lawyers are still much more closely associated in the public mind with the will than they are with other estate planning devices. Steps that tend to popularize the will tend to assure estate specialists of plenty of interesting work for the decades ahead.

Code Goes Beyond Subject of Decedents' Estates

The code ranges well beyond the subject of decedents' estates. It encourages, but does not demand, realignment of administrative and judicial responsibilities among public offices so that the judge who handles true adjudications relating to estates and other proceedings under the code will be indistinguishable from and ideally a part of the trial court of general jurisdiction.[26] Routine contacts required for every estate would be with local probate offices having the authority of the registrar described by the code. Other ways of allocating the public authority

19. Part 4, Article II.
20. Section 2-102.
21. Section 2-104.
22. Sections 2-109, 2-802.
23. Sections 4-204, 4-205.
24. Sections 3-602, 4-301 and 4-302.
25. Section 3-408.
26. Sections 1-302, 3-105 and 3-106.

contemplated are illustrated by the code and comments, however.[27] In short, it should be easy to fit the code's important features into almost every combination of probate office arrangement as now recognized.

In its coverage of guardianships and conservatorships, the code is best described as a collection of new, good ideas. There is virtually no dissent from the proposition that this badly neglected area of our state codes critically needs improvement, and the goal of uniformity supplies a needed catalyst to consideration of new ideas.

The code uses the term "guardian" to refer to what has been commonly known as a guardian of the person and "conservator" to refer to one who is concerned primarily with estate management.[28] Subject to veto power in the prospective ward, a guardian of a minor or an incompetent adult may attain official status by filing a written acceptance of appointment as expressed by the will of a parent or spouse.[29] When no one has the parental rights of a parent or guardian, or after removal of a testamentary guardian, the court may appoint a guardian for a minor or incapacitated person after notice and hearing. A conservator, who occupies a position much like that of trustee of all assets of a disabled person as it might be described in a well-drawn trust instrument, may be created only by court order in what are called "protective proceedings".

In protective proceedings, the court may solve an estate management problem without appointment of a conservator as, for example, by ratifying a minor's contract or ordering renewal of a lease or mortgage for a disabled adult, or it may determine that continuing management is necessary and appoint a conservator.[30] The proceedings are designed to handle cases in which a person disappears leaving dependents who should be assisted by use of his estate.[31] If a conservator is appointed, he may use statutory powers to manage and distribute the estate, and so avoid further contact with the court that neither he nor any person interested in the affairs of the disabled person desires or seeks.[32]

The code article dealing with the affairs of minors and disabled persons also includes various devices designed to eliminate many recurring reasons for guardians or conservators. One is a facility of payment provision which gives statutory protection to debtors of minors who make payment to parents and others as prescribed by the code.[33] Other provisions permit powers of attorney to be used as reliable sources of authority to manage the affairs of persons who may become incompetent after execution of powers.[34]

In general, the code avoids the temptation to straighten out the world of nontestamentary transfers at death and to co-ordinate it with that of transfers through probate. However, joint accounts, Totten trust accounts and related arrangements are the subject of a rather ambitious effort to strengthen these much-used arrangements and eliminate stateline booby traps. The general subject of joint tenancy is not touched by the code except indirectly through the position that a joint and survivor account should not be considered a joint tenancy at all, but merely a contract enforceable according to its terms, as far as the bank is concerned, and a valid mutual will which is good without probate between persons named as depositors.

The final article of the code deals with court procedures for testamentary and *inter vivos* trusts. Proceeding from the assumptions that many existing state laws require unnecessary and expensive qualification and accounting requirements for testamentary trustees and that frequently there is an absence of effective procedures for handling problems relating to *inter vivos* trusts, the article offers a common procedural system for both forms of trust. Under it, no trustee is under statutory compulsion to qualify or account in court for the affairs of the trust. However, there are provisions designed to establish a relationship between each trust and a court that is convenient to the trust's place of administration.[35] Either trustee or beneficiary may use that court as a forum for resolving issues which may require resolution. Orders are binding on the trust interests of all who are notified by mail of pending procedures.[36] The easy availability of optional court procedures will not embarrass the ability of trustees and beneficiaries who face no controversy to handle their business without making any court record indicating the assets, beneficiaries or terms of their arrangement.

Code Deserves Support

Lawyers will react with varying degrees of enthusiasm or dismay to the Uniform Probate Code. But the solid reasons that impelled hundreds of well-informed lawyers to urge and obtain overwhelming support from the House of Delegates for this most ambitious package of proposals should apply with more rather than less force to the question of local enactment.

The code offers an affirmative, balanced and long-range solution to the dilemma posed by our old and over-protective probate law. Its enactment should be accompanied and followed by a period of public education that should go far toward restoring public confidence in the basic institution of succession and in the lawyers who are so closely related to it. Many more lawyers than are involved in estate planning and probate work have been embarrassed by the controversy about our defective probate institution. The code gives them an answer to some serious problems that have proved to be practically beyond the power of individual state law reform efforts.

It remains to be seen whether most members of the legal profession have the ability to receive as well as give good counsel. If they have, the Uniform Probate Code may have a very significant impact on our state laws and the probate institution. If they have not, a tragedy of some dimension will occur if events prove that Norman F. Dacey was right when he said that lawyers would see that legislatures do nothing to correct probate law deficiencies.

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27. See comments following Sections 3-105 and 3-106.
28. Sections 5-209, 5-312 and 5-410 to 5-426.
29. Sections 5-201, 5-202, 5-203 and 5-301.
30. Sections 5-401, 5-409.
31. Section 5-401(b).
32. Sections 5-419 to 5-425.
33. Section 5-103.
34. See Part 5, Article V.
35. See Part 1, Article VI.
36. See Part 2, Article VII.

THE UNIFORM PROBATE CODE: BLUEPRINT FOR REFORM IN THE 70's

*Richard V. Wellman**

INTRODUCTION

PROBATE law changes slowly. On August 13, 1969, the House of Delegates of the American Bar Association promulgated the Uniform Probate Code, completing a project which began in 1962.[1] The UPC project has been described as a continuation of an earlier effort by elements of the ABA to modernize and unify American probate laws which resulted in preparation of the Model Probate Code.[2] Viewing the two projects as one, the 30 plus years of effort to improve probate law may appear as an exercise in killing an unwanted idea by perpetual debate.[3] The Connecticut story, as told by other contributors to this symposium, is representative of the experience in other states where efforts to improve probate law have been frustrated by foot-dragging tendencies of local elements who derive power or profit from the old rules. An observer might well conclude that national efforts at probate reform would be more of the same.

But there is more to the new Code. Though it may not have been conceived for purpose of reform, the recent project matured in a period of unparalleled public criticism of the existing probate institution.[4] Also, the project was supported by both ABA committees

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1. For a brief discussion of the action by the House of Delegates, *see* 55 A.B.A.J. 976 (1969).

2. *See* 4 REAL PROPERTY, PROBATE & TRUST L. J. 206 (1969).

3. The recent motion for final approval also chartered the Real Property, Probate and Trust Law Section of the American Bar Association to engage in continuing "in-depth" studies of the relative merits of uniformity and provincialism in regard to probate laws. The resolution of the House of Delegates authorizing the Section of Real Property, Probate & Trust Law to present the views of the Association followed a resolution of Section Council published in 4 REAL PROPERTY, PROBATE & TRUST L. J. 206 (1969).

4. N. DACEY, HOW TO AVOID PROBATE (1965); Bloom, *The Mess in Our Probate Courts*, READERS DIGEST, Oct., 1966; *Needed: Better Probate Laws*, CHANGING TIMES, Jan., 1969; *Personal Finance: How to Avoid a Costly Probate*, N. Y. Times, Nov. 14, 1966; *Probing the Source of Probate Pains*, Wall St. Journal, May 14, 1968; *The Probate Fuss*, LOOK MAGAZINE, Nov. 29, 1966; *Editorial*, Columbus ,Ohio Citizen-Journal, Jan. 18, 1967.

and the National Conference of Commissioners on Uniform State Laws. Bolstered by broad support, and challenged by the goal of framing rules meeting the diverse and idealistic demands of the Commissioners, the draftsmen sought to produce a truly useful guide to significant probate reform in the seventies.

And there are many reasons for believing that a forward-looking Code will be welcome on the state level. Widespread public discussion of probate law problems has resulted in the formation in many states of study committees charged with responsibility to recommend changes meeting on public concerns. UPC will provide conscientious committee members with a strongly recommended alternative to proposals from local probate officials whose control of probate rules has caused many of the current problems.[5] Practicing lawyers also are ready for a turnabout in probate law. The tendency for local probate officials to extend their responsibility through generation of more red tape for estates has been dominant too long. Consequently, existing legal requirements in many areas not only irritate the public but complicate settlement of quite modest estates to the point where someone, usually a lawyer, must work for very little or nothing if titles are to be cleared.[6] Also, the new Code probably would not have been promulgated were it not for a growing realization by the legal profession that its traditional monopoly in regard to estate services has been broken by the ever increasing array of popular devices for avoiding probate.[7] Streamlined probate procedure has become an important objective of law-oriented estate planners who must innovate constantly to keep abreast of client demands. Perhaps, there-

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5. UPC's procedural package, though designed to reduce the traditional control by probate officials of decedents' estates, can be described as conventional for it merely offers, as options for use in every state, various procedures which exist today in the various states. *See* "Introduction to Article III", *Uniform Probate Code*, 34, (Prentice-Hall, 1969). [Hereinafter cited as UPC.]

6. Informal surveys conducted by members of the Committee on Professional Economics, Michigan State Bar Association, resulted in unpublished estimates that between 35 and 45 hours of professional time is required to handle the usual responsibilities of counsel for a personal representative in Michigan. It might be noted, however, that Michigan's probate code requires a minimum of three court appearances for the simplest estate.

7. *See* Wellman, *The Lawyer's Stake in Probate Reform*, 47 MICH. ST. B .J. 10 (1968), reprinted in 9 LAW OFFICE ECONOMICS & MANAGEMENT 415 (1969); Wellman, *The Uniform Probate Code: A Possible Answer to Probate Avoidance*, 44 IND. L.J. 191 (1969).

fore, three decades of talk about probate law improvement will produce results the public will find beneficial.

I. From Court to Complexity: The American Probate Problem

One confronted with the task of describing today's American probate institution is best advised to seek another approach or other employment. Happily, there is a way out. The legal situation has been so lightly touched by change in the twenty-three years since Simes and Basye prepared their careful analyses of probate laws, that their articles continue to provide an accurate picture.[8] It is one of disarray. There is general agreement that wills must be validated by probate after death to be effective to prove a bequest or devise,[9] and that creditors of decedents should seek their remedies against publicly appointed personal representatives.[10] But local procedures for probate of wills range from procedures involving little more than public deposit of a will, with appropriate, accompanying affidavits,[11] through various intermediates,[12] to formal litigation against every-

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8. Simes and Basye, *The Organization of the Probate Court in America*, 42 Mich. L. Rev. 965 and 43 Mich. L. Rev. 113 (1944); *The Function of Will Contests*, 44 Mich. L. Rev. 503 (1946). The same articles appear in Problems of Probate Law — Model Probate Code (1946) at 385, 683. The latter volume is better known as Model Probate Code and this shorter reference will be used hereinafter.

9. *See* comment to § 85, Model Probate Code; T. Atkinson, Wills 503 (2d ed. 1953).

10. Louisiana adheres to the civil law view that acceptance of a succession by an adult heir makes the acceptor personally liable for the decedent's debts. LSA Civ. Code (Rev. 1950) Art. 1013. *See* Rheinstein, *European Methods for Liquidation of the Debts of Deceased Persons*, 20 Iowa L. Rev. 431 (1935).

11. In Texas, common form probate may occur on the strength of a petition accompanied by a deposit of a "pre-proved" will. A will may be pre-proved in the Texas Probate Code which became effective January 1, 1956, by attachment of an acknowledgement of the testator and affidavits of attesting witnesses in the form prescribed by § 59, Chapter 4, Vernon's Ann. Civ. St.. However, it appears that a probate magistrate in Texas may, in the exercise of discretion, decline to probate a will which has been presented to him.

12. Connecticut procedures involve probate after notice before one called a judge. However, any elector of a probate district, whether or not trained in law or licensed to practice, can be elected probate judge. Also, the notice may be "public" or "private". "Public notice" consists merely of publication. Gill v. Bromley, 107 Conn. 281, 140 A. 721 (1928). Indiana statutes patterned after the Model Probate Code direct that a petition for probate of a will shall be "heard forthwith" by the court or by the clerk if filed when the court is in vacation. Notice to interested persons occurs after probate and appointment of a personal representative. The new Iowa code gives the district attorney authority (which

one in the world.[13] Administration may be a dispensable procedure which affects testate and intestate estates only when unpaid creditors or title clearance considerations compel it;[14] or it may be inseparable from probate of a will in testate cases,[15] and it may be required in intestate estates to prevent opportunities for public administrators to take over.[16] Once commenced by appointment of an executor or administrator, administration may resemble a form of non-court trust in that the appointee is expected to proceed on his own to settle the estate in accordance with legal duties, with no more being required by or of the appointing or other authority unless some interested person petitions for relief.[17] More commonly the appointee is obliged to return for authority to take various steps required for estate settle-

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may be exercised by the clerk) to order probate immediately upon receipt of a will and petition for probate. Testimony of one of the attesting witnesses is sufficient, and may be supplied by affidavit executed after the testator's death. Notice follows probate.

13. Illinois Probate Act, 1955 ILL. REV. STAT., Chapter 3, Par. 63, *et seq.*; LAWS ANN., § 702.21 *et seq.*

14. Careful analysis of the perils of attempting to settle estates by family agreement appear in Basye, *Dispensing with Administration*, 44 MICH. L. REV. 329 (1945). *See also* HASKINS, SMITH & GROSSMAN, PENNSYLVANIA FIDUCIARY GUIDE ch. 1 (1962).

15. ABA members from twenty-three states responded to a questionnaire prepared by the Committee on Administration and Distribution of Decedents' Estates which included a question about probate without administration. The respondents from twelve states (Col., Fla., Iowa, Md., Mo., N.Y., N.C., N.D., Ohio, Penn., Tex., Vt.) indicated that a will could be probated without appointment of an executor, while answers from eleven states (Ill., Kan., Me., Mich., Minn., N.H., Okla., Ore., R.I., Wash., Wisc.) indicated the contrary.

16. For example, Michigan statutes authorize the public administrator to petition for administration whenever it appears that the surviving spouse or kin have neglected to petition within 30 days after death. In practice, the power conferred appears not to be exercised frequently except where the decedent resided in a large metropolitan area and left no resident kin.

17. The text describes administration under a non-intervention will in Texas. *See* Marschall, *Independent Administration of Decedents' Estates*, 33 TEXAS L. REV. 95 (1954); Woodward, *Independent Administration Under the New Texas Probate Code*, 34 TEXAS L. REV. 687 (1956). "While he takes charge of and administers the estate of his testator without action of the county court in relation to the settlement of the estate, and may do, without an order, every act which an executor administering an estate under the control of the court may do with such order, he is uncontrolled, uninformed, unchecked and untrammeled by orders of the court, directing, informing or commanding what he shall do in the management and administration of the estate. He is an executor at large, exercising his own judgment and discretion, acting and doing what he pleases, unless brought to account for his actions by someone interested in the estate . . ." Altgelt v. Mernitz, 37 Civ. 397, 83 S.W. 891, 894 (Tex.Civ.App. 1904).

ment and the appointing authority is expected to review and approve accounts and make other orders deemed necessary to assure proper performance of the appointee's duties.[18]

Also, the public office controlling inheritances varies markedly from state to state in name and stature. For example, both New York and New Jersey confer original jurisdiction for probate of wills and issuance of letters on officials called surrogates.[19] However, the surrogate's office in New York has grown to become a powerful court with complete, original jurisdiction over matters involving probate and appointment,[20] while the New Jersey surrogate who is also clerk of the probate division of the county court, may handle only uncontested probates and appointments.[21] The New Jersey officer resembles Pennsylvania's "register of wills" in that both appear to perform approximately the same function once performed by the English "ordinary", who had little effective power other than to probate wills and issue letters.[22] Thus, neither New Jersey's surrogate nor Pennsylvania's register may entertain proceedings for approval of accounts. But, one must not conclude that the title of "ordinary" always signifies similar limitations on authority. Thus, Georgia uses this term for its probate official to whom it gives jurisdiction to handle common form and solemn form probates, proceedings for orders of sale and proceedings for review of accounts.[23] However, orders of the Georgia "ordinary" in contested matters are reviewable by trial de novo in the superior court.[24] Nor does the term "probate court" con-

18. In fifteen of twenty-three states covered by returned questionnaires, ABA members reported that personal assets cannot be sold by a personal representative without court order or express will-power. The same survey reports that a personal representative's final account must be approved before he can make final distribution. *Estate Administration: Current Practices and Proposed Uniform Probate Code*, 3 Real Property, Probate & Trust L. J. 143 (1968).

19. McKINNEY'S CONSOL. L. CONST. ART. VI, § 12(d), 3-A . . . STAT. ANNO., § 3-17. The term "surrogate" reflects the circumstance that the governor of the New York province held the probate authority exercised in England by the ordinary, which was exercised through delegates. A Dr. Bridges, appointed probate deputy by Lord Cornbury in 1702, seems to have been the first to use the title "surrogate". REPPY and TOMKINS, HISTORICAL AND STATUTORY BACKGROUND OF THE LAW OF WILLS 165. (1928).

20. *See* McKINNEY'S CONSOL. L., CONST., ART. VI, §§ 11, 12, 25.

21. N. J. STAT. ANN., §§ 2A—3-2, 3A—2-3.

22. PURDON'S PENNA. STAT. ANN., Title 20, §§ 1840.201, 1840.205, 1840.207; T. ATKINSON, WILLS 15-19 (2d ed. 1953).

23. GA. CODE ANN. (Rev. 1959) § 24.1901.

24. GA. CODE ANN. (Rev. 1959) § 6-201.

vey any meaning which can be safely exported from one state to another. For example, differences outweigh similarities when one tries to compare the Massachusetts' version with the organization carrying the same name in Connecticut. The former is a lawyer-manned court of considerable stature,[25] while the latter connotes a job for which any qualified elector in a probate district is qualified.[26] It goes without saying that activities of the two kinds of organization have quite different legal significance.

How can this jungle of procedures and organizations be explained? Obviously, the shape of probate rules in each state is rooted more in local history than in the English traditions regarding the subject which all states save Louisiana[27] have accepted. The old assumptions that wills should be publicly established after death, and that personal representatives should be publicly appointed or identified, have survived, to be sure. But the differences in these requirements as they exist today in the several states are so great as to suggest that the old ideas have served principally as a cover for more important considerations. The variety demonstrates that the dominant factor in growth of our probate institution has been the preoccupation of our legislative and legal community with the power represented by assets of decedents. The story of probate is a story of expansion and dispersal of this power among local politicians and the legal profession.

The variety of the country's probate offices and procedures also provides legislators who become serious about probate reform with a wide assortment of working models for comparison with local assumptions. Hopefully, comparative study will lead to reconsideration of a series of incremental judgments which the political and legal communities in some key states seem to have made with inadequate attention for any but their own concerns.

The complexity of the probate institution is, of course, a major reason for its perpetuation. Relatively few lawyers, including many who regularly handle simple estates, seem to be well founded in regard to the rationale and weaknesses of their own state's probate rules. Even fewer have had the necessity or opportunity to learn

25. Atkinson, *The Development of the Massachusetts Probate System*, 42 MICH. L. REV. 425 (1943).

26. CONN. GEN. STAT. (Rev. 1958) § 45-6.

27. Under the Civil Law concept of universal succession which is accepted in Louisiana, unqualified acceptance of an ancestor's estate by an adult heir makes the inheritor personally liable for the decedent's debts. *See supra* note 10.

about the laws of several states. There will be few improvements in the law in this area if the process of change requires many to grasp most of the procedural niceties of several states. The discussion must focus on some fairly simple propositions.

With full recognition of the risks of generalization, it is suggested that legislative discussion about probate reform should center around three major questions: (a) Is a "court" the appropriate agency to handle routine applications for probate and appointment? (b) Are routine probate and appointment orders properly viewed as adjudications which must conform to all requirements of procedural due process of law which might apply to a condemnation proceeding, for example? (c) Should responsibility for accurate and complete administration of decedents' estates be assumed by any state agency?

In areas where probate procedures and bureaucracies have ballooned to maximum proportion, each of these questions has been answered affirmatively.[28] Understandably, local experts in these areas are convinced about the propriety,[29] if not the necessity, of their complex systems. Nevertheless, examples from other states are available to show that different answers produce wholly satisfactory and vastly simpler results.

A. Courts as the Proper Agencies to Administer State Authority Over Estates.

It is unclear whether English ordinaries exercised much effective control over decedents' estates. Summaries of English probate history suggest a declining role which, at the time of formation of American colonies, probably was reduced to the point where it served to assure that authority over personal assets of a decedent passed to one who solemnly undertook to collect and distribute with full regard for rights of the decedent's creditors and family.[30] In recognizing and appointing personal representatives, ordinaries doubtless performed

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28. States such as California and Illinois which confer probate jurisdiction on the court having general civil jurisdiction and whose probate procedures involve required, fully supervised administration for all but small estates, provide the best examples.

29. *See* Marshall, *Probate Code — The New Look*, 47 TAXES 139 (1969). *See also* 47 TAXES 244 (1969) for a reply to Judge Marshall's article.

30. *See* Bordwell, *An Introduction to Wills and Administration*, 14 MINN. L. REV. 1 (1929); Simes and Bayse, *The Organization of the Probate Court in America*, 42 MICH. L. REV. 965, 967-970. (1940).

a magistrate's role, but it seems inaccurate to bracket them with courts in the present sense of the term. In any event, judicial authority over estates and personal representatives seems to have been sufficiently diffused between the ordinaries, the law courts and chancery to provide fair assurance in most cases that no judge with significant authority could exert much unwanted control over an estate after the business of identifying the personal representative had occurred.[31]

In England, the awkward rule which attributed the title of a decedent's goods to his personal representative after appointment, probably worked well because of the role of the ecclesiastical authorities. The same rule created a troublesome gap in control of family assets when applied in colonies which sought to avoid a state church. Representatives of the civic authority appeared on the scene to remedy the problem.

In some American colonies whose probate history has been carefully reconstructed, early patterns indicate that although local delegates or magistrates had little to do with testate estates other than to receive proof of wills and inventories, they exercised virtually unlimited power over goods of intestates.[32] Understandably, law and organizations to enforce it grew to control this power which, in a

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31. Simes, *op. cit.*, note 30, pp. 391-395.

32. Atkinson, *The Development of the Massachusetts Probate System*, 42 MICH. L. REV. 425 (1943). At page 436, the author reports as follows regarding the contents of an unpublished judicial notebook of a magistrate who served in what later became Springfield: "Pynchon's notebook confirms what may be found in the regularly organized courts. Proof of wills, grants of administration and exhibition of inventories were apparently necessary in all cases. Generally, further matters were settled by agreement without coming again into court, but if there were doubt, dispute or special circumstances the court would determine the matter. In an early case the court appointed commissioners to settle the executor's account; after confirmation of the report, the executor was discharged. Particularly in the division of small intestate estates there was the utmost judicial discretion and paternalism both as to the shares which each member of the family should receive and the time, form and manner of payment. The magistrates' notions of the welfare of the particular family seem to have been the sole criterion in many cases." *See also*, the account of the development of the law of probate and administration in New York by Surrogate Charles P. Daly (later Chief Justice), in Matter of Brick's Estate, 15 Abb. Prac. Rep. 12, 17-31. Concerning the power of local delegates of the governor to supervise the estate of intestates, Surrogate Daly notes, at p. 24,: "This power of supervising the estate of intestates was in consequence of a clause in the act of 1692, which provided, that where any any person died intestate, two freeholders of the town, to be annually elected, should inquire into the real and personal estate of the deceased, and make an inventory of it, and return it, under oath, to the person in the county delegated

community where wills probably were unusual,[33] must have been very obvious. Also, the circumstances were lacking which served in England to prevent the ordinary's jurisdiction over testamentary causes from becoming a self-expanding legal complex.[34] The local probate officials exercised the same state-delegated power as that of local magistrates exercising general civil and criminal jurisdiction. Only the reason for and the technique of exercise distinguished the probate official. The importance of their power increased as they asserted authority over wills and real estate like that formerly exercised by various tribunals in England. Imperceptibly, the assumption

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by the governor to supervise the estate of intestates; that the persons delegated should cause the goods and chattels to be sold, retaining the proceeds for those who should appear and have a right to claim them . . ."

33. Some guess work about will-making habits in the seventeenth century can be based on data from this century. Various studies suggest that the tendency for persons to make and leave wills has increased markedly during the 20th century. Powell and Looker, examining the period from 1915 to 1929 found a steady increase. Among the jurisdictions studied, the range was from 25 percent testate in Cook County, Illinois, to 64 percent testate in Chelain County, Washington. Powell and Looker, *Decedents' Estates*, 30 COLUM. L. REV. 930 (1930). Studies relating to Dane County, Wisconsin, found testate cases accounting for 61.9% of estates in 1929, 45.9% in 1934, and 39.1% in 1944. A study of Cook County, Illinois records in the years 1953 and 1957 indicates that 58% of estates involve wills. Dunham, *The Method, Process and Frequency of Wealth Transmission at Death*, 30 U. CHI. L. REV. 250 (1962). A careful study, as yet unpublished, of Cuyahoga County, Ohio, probate records shows 69% of the estates to involve wills. Sussmah, Cates and Smith, "The Family and Inheritance" (1963 manuscript). It suggests also that testacy is positively associated with age (75% and up of all persons over 70 leave wills), marital status (single persons are least likely to have wills; married and widowed persons are most likely), and size of estate (median testate estate is $15,000 gross, compared with $6,000 for intestate; average testate estate is $41,218, compared with $8,599 for intestate.) Overall, this data suggests that except for the wealthy, will-making habits turn importantly on the amount of information persons have about probate laws.

34. The principal circumstance, of course, was that testamentary causes were under the jurisdiction of ecclesiastical courts which, from a relatively early date, declined in importance as the temporal courts grew in power. As explained in Bordwell, *Introduction to Wills*, 14 MINN. L. REV. 1 (1929), this eventually resulted in a situation where the tribunal which touched every estate served effectively only to accept proof of due execution of wills and to issue letters of authority to personal representatives. The Law Court's writ of prohibition prevented the ecclesiastical court from exercising authority over executors and administrators. Eventually, the court of Chancery developed effective procedures to handle problems involving administration and distribution of estate, but it asserted jurisdiction only in those cases brought before them by proper pleading of an interested person. *See also* SIMES AND FRATCHER, CASES AND MATERIALS ON FIDUCIARY ADMINISTRATION (2d ed. 1956) at 12-18 and authorities cited.

grew that agencies handling routine probate matters should be thought of as specialty courts, having within the range of the subject matters assigned to them approximately the power of any court of general jurisdiction.[35]

The notion that routine probates and grants of administration are properly the business of an office which is, or aspires to be, a court in the usual sense of the word is at the root of most of today's probate complications. Of course, lawyers have not questioned the connection, for the presence of a court creates a service monopoly protecting lawyers, not only from other specialists, but from survivors themselves.[36] Even though required estate procedures in a given state have remained or become minimal, the routing of every estate to an office resembling a court leaves the legal profession pretty much in control of the situation. The arrangement would be acceptable were it not for the historic tendency of judges and lawyers to serve each other's need for function and status, a tendency which has been particularly obvious in probate matters. Here, public ignorance and dispersal, distaste for death planning and lack of concern by survivors about pre-receipt erosion of inherited assets have left an open field for those who would emphasize, rather than minimize, the need for expensive safeguards. The assumption that a court is the proper agency to handle essential services to decedents' estates undoubtedly contributes to pyramiding legal requirements.

What is the alternative? In England, the modern system enables persons interested in estates to apply in person for letters to any of 26 District Probate Registries, or in cases of estates of small value, to any of 374 customs and excise offices.[37] If a solicitor is involved, a mailed application suffices.[38] Two-thirds of approximately 300,000 grants of probate per year are made in District Probate Registries which, as of the time of Professor Fratcher's careful report, were manned by a total of seventeen District Registrars receiving annual salaries in the £3,550 to £4,100 range.[39] The systems in Pennsylvania and New Jersey bear some resemblance to the English system in that

35. *See* Atkinson, *supra* note 25; Reppy & Tomkins, *supra* note 19.

36. *See* State ex rel. Baker v. County Court of Rock County, 29 Wisc.2d 1, 138 N.W.2d 162 (1965).

37. Fratcher, *Fiduciary Administration in England*, 40 N.Y.U. L. Rev. 12, 49 (1965).

38. *Id.* at 49.

39. *Id.* at nn, 241 and 258.

the fundamental steps of probate and appointment are handled by a statutory official who, though connected to a court having jurisdiction over estates, acts on his own in routine cases.[40] In both states, the power of the magistrate is sharply limited so that he has a relatively minor role in contested cases, and no responsibility to review acts and accounts of his appointees. The probate offices in these states constitute a standing contradiction to any assumption that a modern state must interpose a powerful court between survivors and the estates they would claim.

B. Probate and Appointment As Adjudications Requiring Notice

The initial step in administration of a testate estate is to secure probate of the will. If there is no will, the appointment of an administrator starts things. The English procedures first followed in the early colonies included common form probate,[41] which is generally understood to permit wills to be proved and appointments to be made without notice to interested persons, delay or elaborate proofs.

Traditionally, orders so obtained have not been accorded the respect or finality accorded orders entered in ordinary judicial proceedings, but they have served an obvious purpose in situations in which there was no contention.

Early intestate administrations differed somewhat in that the probate magistrate through his appointees seems simply to have taken charge of intestate estates coming to his attention. The notion that appointment of an administrator in intestacy involves a finding that there is no will was a much later development which is still incomplete.[42]

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40. PENN. CONST., ART. 5 § 22. For Pennsylvania, *see* 20 PURDON'S PENN. STAT. ANN. §§ 1840.201, 1840.207. *See also,* HASKINS, SMITH & GROSSMAN, PENNSYLVANIA FIDUCIARY GUIDE (1962) §§ 3.4, 3.14, 3.15; Straus, *The Uniform Probate Code Approved: A Bold and Progressive Reform,* 41 PENN. B. ASS'N. Q. 71 (1969); Hauptfuhrer, *The Uniform Probate Code — A Modern Approach for Pennsylvania,* 41 PENN. B. ASS'N. Q. 79 (1969).

41. Simes, *The Function of Will Contests,* 44 MICH. L. REV. 503 (1946).

42. In Michigan, for example, a later discovered will cannot be probated after an estate has been settled and closed under a prior will and normal periods for vacation and delayed appeal have passed. But, if the estate was distributed as intestate after a finding that there was no will, there appears to be no time limit on proceedings to probate a later discovered will. This curious situation is attributable, in part, to a statute which provides for revocation of letters of administration incident to probate of a later discovered will. *See* In re Broffee's Estate, 206 Mich. 107, 172 N.W. 541 (1919); Young v. Young, 200 Mich. 236, 167 N.W. 23 (1918). *Cf.* In re Butts' Estate, 173 Mich 504, 139 N.W. 244 (1913).

In both New York and Massachusetts, common form probate simply disappeared as the estates court grew in power and stature.[43] Presumably, the office holders aided their evolution toward the status of powerful judges by adopting procedures like those followed in regular courts.

Common form probate still exists in some states as an optional method of establishing a will or initiating an administration.[44] In many, the choice between notice and no-notice procedures gives successors some control over the time when the probate order becomes conclusive.[45]

Following the lead of the Model Probate Code, several states have accepted the idea that probate of a will initiates a continuous court proceeding which is not concluded until entry of an order approving final distribution and discharging the personal representative.[46] The logic of this approach permits notice of probate to be given after administration has been commenced, for until the closing order, the position of those who would take in the absence of a will is not finally determined.[47] The system offers significant advantages over that of

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43. *See* Surrogate Fowler's account of New York history involving common form probate in In re Hock, 74 Misc. 15, 129 N.Y.S. 196 (Sur.Ct. 1911). Atkinson notes that early probate laws in Massachusetts provided very little guidance concerning the necessity and manner of notice of proceedings before probate magistrates and lists the present notice requirements under the heading "Modern Developments". Atkinson, *supra* note 25, at 442 and 449. In *The Function of Will Contests, supra* note 41, Simes suggests that the abandonment of the English system of ex parte probate by many jurisdictions may have been due to extension of probate court jurisdiction to land as well as to a tacit assumption that due process requires that interested persons be given advance notice of orders affecting them.

44. Simes, *supra,* note 41. The Codes of New Hampshire, Indiana, Missouri and Arkansas have been changed in regard to notice since publication of the Simes article.

45. The Florida procedures described by Simes provide an example. Simes, *supra* note 41. *See also* GA. CODE ANN. (Rev. 1959, Supp. 1969) §§ 113-601, 113-605; 12 DEL. CODE § 1310.

46. The Codes of Arkansas, Indiana, Iowa and Missouri provide examples.

47. MODEL PROBATE CODE §§ 64-81. The Code enables will proponents to use a prior notice probate proceeding to shorten the time available for contestants to raise all objections except revocation by subsequently discovered will. Under § 81, the order of probate or grant of administration remains vulnerable to proof of another will "not theretofore presented to the court" which is offered "prior to the decree of final distribution." If the estate was opened on an assumption of intestacy, the order may be vacated for good cause under section 19 at any time prior to the expiration of the time for appeal from the closing order. The effect of these provisions is to require full administration and closing of an estate as a

states which require notice to all interested persons to proceed entry of an order of probate or determining intestacy. The tactical position of trouble-making heirs is enhanced very considerably when, as is true in many prior notice states, only special administrators with quite limited powers can be appointed to manage the estate pending entry of the order of probate.[48]

Nevertheless, the cost of probate or appointment without prior notice to interested persons is too high when the package includes a

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condition to complete finality of an order of probate which was entered after full notice and hearing. The authors offer the following observations which tend to justify the Model Probate system:

> As to noncontentious matters, the situation may be different. Here it is conceivable that the estate could be distributed without any judicial intervention at all. Indeed, the Roman law system, with its conception of universal succession, accomplished just that. And the modern tendency of legislation in the United States to dispense entirely with administration in the case of small estates is to the same effect. Nevertheless, there are many cases where some judicial action is desirable even though there are no controversies among the interested parties. This becomes particularly important in view of the current trend, elsewhere noted, to provide that the probate court distribute land by its decree. In spite of the lack of disagreement among persons interested in the estate, they may well need the aid of the court to determine what is a just basis of distribution; they may wish to distribute in such a way as to avoid disputes in the future; and, to further that end, they may desire to have an official record of the distribution which has been made. Thus, the noncontentious business of the court is an important function of the judicial organization. No statistics are required to justify the observation that the vast majority of smaller estates is handled by American probate courts without any controversies whatsoever. Administration in court is then desired solely for the purpose of having the property of the decedent disposed of in an orderly way.

48. Prior notice of probate is required in Massachusetts and New York, as well as in many other states. The following appears in Report No. 3.3A, N.Y. Commission on Estates 2d Report (March 31, 1968) at 60:

> In a large number of cases on the probate trial calendar, the person who files objections to the probate of the will has no reasonable basis to expect any measure of success in the contest except that which may inure to him because of his ability to delay the administration of the estate. Estate representatives and beneficiaries are frequently willing to pay the nuisance value of a contest in order to avoid delay and even greater expense. We believe that a grant to an estate fiduciary of an authority somewhat greater than that possessed by an executor will speed the administration and reduce the number of feigned objections. One of the advantages of probate in the common form is said to be its discouragement of groundless probate contests. That is an objective which would save much time and money for the people of the State.

The new provisions governing the appointment of temporary administrators in New York appear at § 901 *et seq.*, SCPA (McKinney, 1967).

requirement of court supervision and closing of every estate. A more flexible concept works quite satisfactorily today in Pennsylvania and New Jersey where probate and appointment by limited power magistrates may initiate administrations which need not be closed by court order.[49]

It may be contended that an order determining the validity, invalidity or absence of a will denies procedural due process if it is entered without prior notice to interested persons.[50] The concern is valid if it is also conceded that a probate settlement necessarily involves an adjudicative process resolving recognized private rights. The steady self-induced growth of local probate magistrates toward the position of powerful judges has gone hand in hand with development of probate as a court proceeding.

The Model Probate Code, reflecting the drive of three decades ago to organize and rationalize the existing situation rather than the current concern about probate simplification, added impetus to this view.[51] Serious efforts to simplify probate must involve review of these developments, for the cost of the courts and lawyers necessarily involved under an adjudicative approach is simply more than the public should or will tolerate. The English system[52] as well as those presently working in Pennsylvania and New Jersey point to a better

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49. *See* HASKINS, SMITH & GROSSMAN, PENNSYLVANIA FIDUCIARY GUIDE (1962), for a discussion of Pennsylvania procedures. *See especially* §§ 4.8 and 15.2. For New Jersey, *see* the authority referred to in note 40.

50. *See, Informal Proceedings Under the Uniform Probate Code: Notice and Due Process*, 3 PROSPECTUS 39 (1969); Comment, 53 IOWA L. REV. 508 (1967).

51. The Model Probate Code originated in the Probate Division, the Real Property, Probate and Trust Law Section, American Bar Association. Professor Simes used research resources of the University of Michigan Law School to secure assistance for the project and the same resources made publication of the volume possible. In conversations with the principal participants, the author has formed the impression that the earlier project had to be cut along very conservative lines in order to achieve any degree of success. These observations are not offered as criticisms. Surely, the Uniform Probate Code project could not have succeeded without the earlier effort. UPC originated with a proposal to update the MODEL PROBATE CODE and the careful statutory research and analysis of the '40's relieved the participants in UPC from the awesome obligation of combing the current codes of fifty states to achieve legitimacy. In this connection, it should be noted that Professor Simes has served on the ABA committee which has guided the current project. Also, during the summer of 1966, as a special consultant to the project, he reviewed the first tentative draft. Professor Basye, a major participant in the earlier project, had much to do with origination of the UPC project, and served as a Reporter.

52. *See* Fratcher, *supra* note 37.

way. The failure of the New York Commission on Estates to recommend common form probate as a part of its sweeping revision of New York laws and procedures was disappointing, evidently even to some of those involved.[53] In the absence of better explanation, it must be attributed to the fact that surrogates and former surrogates controlled the effort.[54]

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53. The following paragraph opens a report entitled, "Simplification of New York Probate", prepared by staff assistants of the New York Commission on Estates which is published in the Second Report of the Commission (1963) at 60: "Many of the advisory committees suggested to the Commission that it recommend to the Legislature the adoption in New York of one of the variants of probate in the common form. The Commission studied the proposal, heard extensive argument, and voted not to approve probate in the common form. Undoubtedly those advisory committees and individual lawyers who recommended the adoption in this State of the so-called simple probate, were motivated by a desire to simplify our probate procedure and to reduce delay and expense. Many other lawyers and legal groups that were unwilling to go so far as probate in the common form, have also suggested that present procedures be simplified, made less expensive and more expeditious. They have also suggested that provision be made to reduce the large number of probate contests that have no real merit and are prosecuted solely for their nuisance value. At the request of Chairman Bennett, your Committee on Simplification of New York Probate was organized. We accept the decision of the Commission which disapproved probate in the common form (although some members of your Committee favor it), and we take that decision as our starting point."

54. Eight of fourteen of the original Commission were surrogates or former surrogates. (First Report (1962), at 9). The more than 3,700 pages of printed reports of the Special Commission contain rather extended reports about various matters of narrow importance, such as the 35 page report about nuncupative and holographic wills. The subject of common form probate was not overlooked. Indeed, it was identified by a paragraph in the first Report which concluded: "The study of simple probate, or probate in common form, is therefore of high priority". (First Report, (1962) at 25). Other notations in the voluminous reports indicate only that the matter was "tabled" at a Commission meeting on June 22, 1962, after a single meeting on May 31, 1962, between a former surrogate who represented the Commission and members of the New Jersey and Connecticut bars who were invited to explain their state's version of simplified probate (Second Report (1963) at 3). Surely, in view of the extensive staff reports on other rather esoteric matters, the Commission did *not* accord the topic "high priority" in any sense other than the speed with which it was dropped as a study topic.

The disappointing performance of the Special Commission in the area of probate simplification surely reflects the fact that surrogates dominated the Commission. Indeed, it may be more than coincidental that the legislation authorizing the special commission was enacted by the same 1961 session which produced two bills permitting proof of wills by affidavit. The bills passed both houses but were vetoed by Governor Rockerfeller who appears to have accepted arguments by the Surrogates Association which urged that proposals for probate procedure changes be deferred for study by the Special Commission then being recommended. *See* N.Y. Legislative Annual, 1961, at 589; Report 3.3A, Second Report (1963); Com-

C. Public Office Responsibility for Acts of Personal Representatives

Perhaps the most awkward heritage of the American tradition of permitting probate courts to grow just as probate judges and compliant lawyers have thought best is the concept of supervised administration. The notion is accepted in most states that the personal representative handles the business of administration as if he were a receiver in a closely watched proceeding to wind up the affairs of an insolvent debtor. Necessary administrative steps are the occasion for required orders, such as orders regarding appraisals, support payments to dependents, payment of claims and distributions. The responsibility of the personal representative is not ended until he submits his final account to the appointing authority and receives its order of discharge.[55]

In some states which have made maximum use of the logic that an estates court should have power to handle all estate matters formerly handled by the law court or chancery in England, the land of the decedent is included among assets for which the personal representative is responsible in routine cases.[56] In these states, full administration and settlement of estates involving land becomes a necessity from the standpoint of the land title examination specialists as well as from that of probate bondsmen, and probate court officials.

Most of the aspects of probate which the public has learned to identify and dislike in recent years are facets of supervised administration. Statutory time schedules, designed to give appraisers, personal representatives and creditors decent opportunity to attend to necessary steps or file claims, become impediments to quick settlement in uncontested cases. Since these schedules serve principally to

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mission on Estates, at 60, 62. Surely the power of the Surrogates Association was responsible for the fact that the 1961 enabling legislation specified that at least five of the Commission had to be surrogates designated by the governor.

The recommendations of the Special Commission in regard to small estates, proof of wills by affidavit, and holographic wills also appear to fall short of standards one might identify as critical to probate simplification. These recommendations deserve more attention than can be given here.

55. Though the degree of supervision varies among states which require personal representatives to obtain a closing order, the description of the modern Massachusetts system in Atkinson's article is useful. Atkinson, *supra* note 32. A recent survey of lawyers in 23 states provides useful insights concerning the variety of procedural detail which frame probate procedures in several states. *See*, *Estate Administration: Current Practices and Proposed Uniform Probate Code*, *supra* note 18.

56. *See* Simes and Basye, *supra* note 8, 43 MICH. L. REV. 113, 121, (1944).

separate orders by which the court adds its blessing to what dutiful fiduciaries and attorneys report to it, they have a greater potential for embarrassing the legal community with "unclosed" estates than for safeguarding private interests. Time consuming notice requirements for interim orders have proliferated under pressure of the *Mullane* decision.[57] At the same time, older requirements for wasteful publication of probate notices remain on the books as a reminder of a simpler day and the power of the legal news press.[58]

Overall, the time schedules and notice requirements are usually pointless, institutionalize delay, and add enormously to the work burden which is assumed by every personal representative and estate attorney. The routine which the statutory notice requirements create also tends to defeat the purpose of notice by making every warning paper ordinary.

Other troublesome details relate in a more indirect way to the notion that the appointing authority has some responsibility for personal representatives. Judges select appraisers, approve bonds, appoint special guardians to represent minors, absent or unborn persons and enjoy wide discretion in regard to these and other procedural points. Much of the popular literature about probate has emphasized abuses which have grown around these perquisites of local judges.[59]

Perhaps the most insidious aspect of supervised administration in many areas is that its promise of protection for survivors is almost totally deceptive. Real responsibility for enforcing fiduciary responsibility falls neatly between the court, the attorney for the estate and the survivors. Bar association pressure in most states, plus institutional doubt as to whether the probate official is a real judge or is more like a policeman, have made probate judges in many areas reluctant to serve the public except in response to a written complaint prepared by a lawyer. Sometimes, survivors who are forced to employ legal assistance to get the court to exercise its control over the estate by issuing letters, discover they must hire additional counsel to get

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57. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, (1949). Changes in Michigan procedures since the Mullane case illlustrate the point.

58. Current Michigan procedures involve mailed or delivered notice to all interested persons when an estate is commenced, and at the time of closing. In addition, two and usually three series of legal publications must be run in order to comply with accumulated statutory and practice requirements. *See* MICH. LAWS ANN., §§ 701.32, 702.29, 702.56, 708.2, Probate Rule 18.

59. *See supra* note 4.

relief from sub-standard performance by the original representative.[60] It is only in cases in which there is no controversy that the supervising court gets credit for protecting survivors via the costly machinery it superintends. Sadly, when the inherent deficiencies of this protective system are identified, the typical correction is to add more requirements and cost.[61]

Other problems of probate are traceable to supervised administration. The dependence of personal representatives on court orders has inhibited the development of useful inherent or implied powers for personal representatives.[62] The non-recognition of personal representatives in courts of states other than that of appointment is tied to their status as functionaries of the appointing office.[63]

The assumption that courts should be responsible to see that public authority over estates is not misused also has led to some grotesque situations in sparsely settled political subdivisions of some of our states and to widespread variance in practice in different areas of the same state. Law-makers have used the argument that probate offices should be located conveniently to all people to justify allocation of probate power to counties. But, many areas cannot or will not support lawyer-manned courts. Thus, lay judges are given the job of interpreting and following state-wide requirements concerning no-

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60. Michigan's recently revised Probate Rule 5a, *see supra* note 61, purports to require probate courts to appoint special fiduciaries when a prior appointee has failed to file an inventory within 30 days after appointment, render an account in accordance with the statutory schedule or otherwise failed to conform to statutory requirements designed to assure prompt settlement of estates. The rule says nothing about who is to pay attorneys' fees for the deposed representative or the special administrator. Further, Michigan statutes so limit the power of a special administrator that in many cases, a third appointment would be required in order to get someone with the necessary authority. See MCLA § 702.61. Rule 5a and its probable meaning in practice provide a vivid illustration of the inadequacies of so-called supervised administration.

61. In the wake of recent adverse publicty regarding unclosed estates, the Michigan Supreme Court recently adopted an amendment to the Probate Court Rules which requires the probate judge acting on his own motion to review files, and appoint special administrators "in the event the fiduciary or his attorney shall fail to perform the duties required of them within the time so limited." Rule 5a. One of the new requirements is that inventories be filed within 30 days of appointment. Since the work involved in identifying and appraising an estate frequently requires more than 30 days, the new rule is producing a flood of "temporary" inventories of little value to anyone.

62. *See* the survey cited in note 55, *supra*, for a summary of the powers now granted to personal representatives by law.

63. H. GOODRICH & E. SCOLES CONFLICTS (4th ed. 1964) § 190 and authorities cited.

tice, appearance, pleadings and conflict of interest. Even in states where most probate judges are lawyers, the relationship between court and attorney is such that the judge's view of state rules controls. Consequently, in some states there are almost as many ways of probating estates as there are counties. Neither of these conditions is conducive to public understanding of the institution.

The procedures in several states offer alternatives to supervised administration. The appointee of Pennsylvania's register of wills is under no obligation to return to the register or the Orphans' Court after appointment, though he assumes liabilities like those borne by a trustee.[64] New Jersey procedures offer generous opportunity for independent administration in testate and intestate estates. New York's recent probate legislation eliminated older provisions concerning appraisers and inventories which had been generally disregarded in practice.[65] Georgia recently added an important provision giving testators authority to insert will provisions which prevent probate court involvement in their estates after appointment of the personal representative.[66] Similar authority, sometimes little used, exists in other states.[67] Texas and Washington institutions involving "independent executors" and "non-intervention wills" have been widely recognized and discussed.[68] Finally, it seems likely that independent administration is achieved as a practical matter in many estates which are administered under supposed supervision of relatively weak or non-aggressive courts which do not attempt to compel court approval of final accounts.[69] Surely, it is difficult to force survivors or counsel

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64. *See supra* note 40.

65. *See* N.Y. STATE LEGISLATIVE ANNUAL, 45 (1964).

66. *See* GA. CODE ANN. §§ 113-1401.1, 113-2307, as amended, Acts, 1964, p. 269.

67. The statutes of South Carolina and Arizona provide examples. ARIZ. REV. STAT. (Rev. 1956) § 14-502; S.C. CODE (Rev. 1962) § 19-532.

68. *See* Fletcher, *Washington's Non-Intervention Executor — Starting Point for Probate Simplification,* 41 WASH. L. REV. 33 (1966); Marschall, *Independent Administration of Decedents' Estates,* 33 TEXAS L. REV. 95 (1954); Woodward, *Independent Administration under the New Texas Code,* 34 TEXAS L. REV. 687 (1956); Woodward, *Some Developments in the Law of Independent Administrations,* 37 TEXAS L. REV. 828 (1959).

69. At a recent meeting of the West Virginia State Bar Association, the author heard lawyers from various parts of the state describe a practice, apparently well established in the more populous areas, of ignoring statutory requirements for audit of accounts by so-called "commissioners of accounts" designated by the county courts.

back to court for approval of accounts and closing order when all monies have been distributed and everyone involved is satisfied.

D. Other Problems of the Probate Bureaucracy

Many by-products of the historic probate bureaucracy can be identified. Provincialism in probate, born of local public office control of each estate and nurtured by different state and local history as it has impacted on the stature and power of the office, has discouraged law school study of probate administration.[70] Among practicing lawyers, the relatively low prestige of trusts and estates work is indicated by the fact that though women have been systematically discouraged from engaging in many areas of law, women lawyers are relatively more heavily involved in trusts and estates work than men.[71] Not surprisingly, probate officials, trustmen and lawyers from relatively small communities[72] have dominated occasional efforts to revise probate law.[73] Consequently, though probate codes seem to be frequently amended, changes cutting anywhere close to the heart of the probate problem almost never occur.[74]

The stagnation attributable to the probate bureaucracy is manifest in almost every aspect of probate law. Intestate succession patterns in

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70. Only 36 teachers are listed under the subject "Fiduciary Administration" in the recent AALS Directory of Law Teachers (1968-70). By contrast, about 340 are listed under "Trusts and Estates" and about 200 under "Estate Planning". Many so-called Trusts and Estates courses involve very little on the subject of probate administration.

71. *See* White, *Women in the Law*, 65 MICH. L. REV. 1051 (1967).

72. The reference to small town lawyers is not derogatory. In the author's experience, lawyers from smaller communities are likely to be more concerned about probate law deficiencies than big-city lawyers of comparable prominence. For one reason, they are more familiar with the costs and problems relating to handling small estates than their counterparts in big firms.

73. The structure of N.Y.'s Commission on Estates is described in note 53, *supra*. The recently approved Wisconsin probate code was prepared by two committees appointed by the State Bar of Wisconsin. Each committee was chaired by a county judge. In all, five state probate officials, four trust officers, one "insurance counsel" and six practicing lawyers only one of whom was from Milwaukee, constituted the group which controlled two law professors who served as research reporters for the project. *See Proposed Wisconsin Probate Code* (West pamphlet). The thirteen member Governor's Commission in Maryland which made recommendations leading to adoption of the Maryland probate laws of 1968, included six persons listed as "Hon." The abbreviation "Esq." follows the names of the other seven. *See Second Report of Governor's Commission To Review and Revise the Testamentary Law of Maryland.* (State pamphlet, Dec. 5, 1968).

every state defy the intention of the average married person[75] by dividing even very small estates between surviving spouse and issue, and ancient distinctions between real and personal property still cause variations in inheritance patterns. Rights of inheritance from blood relatives frequently stand as glaring contradictions to the generally accepted idea that adopted children fare best if spared all knowledge of the identity of their family of origin.[76] Execution requirements for wills perpetuate ancient and demeaning ceremonies in a society which is generally accustomed to transacting business by mere signature. Inheritance rights for children are vigorously asserted, only to be more zealously guarded by cumbersome guardianship procedures which make no sense at all from the standpoint of the family.[77] The old game of protecting imaginary local creditors, combines with that of protecting local land titles from the tamperings of "foreign" courts of adjacent and other sister states, to force multiple probates on the survivors of persons with assets in two or more states.

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74. The proposed Wisconsin probate code makes estate administration a truly ponderous proceeding before a court of record. Prior notice to interested persons is required in regard to orders of probate and appointment, and strict time schedules plus appropriate enforcement mechanisms surround requirements which culminate in a court order closing each estate. *See Proposed Wisconsin Probate Code, supra,* note 73. The author has been informed that most of the draft code has been enacted with a postponed effective date. The recently approved Oregon Probate Code continues the state's tradition of *ex parte* probate, followed by supervised administration. Chap. 591 Oregon Laws, 1969 (effective July 1, 1970). Suggestions emanating from the second draft of the Uniform Probate Code regarding independent administration of estates were not accepted by the revision commission. The recently enacted code in Maryland was also drafted after the second tentative draft of UPC became available in the summer of 1967. In the introduction to the Second Report of the Governor's Commission, it is stated: "When there were major differences between Maryland practice and the Boulder draft, (the second draft, UPC) the Commission, in most instances, followed the existing Maryland practice." However, an important provision in the Commission's draft would have enabled estates to be administered independently of probate court supervision when a will so provided, or all heirs consented. *See* § 7-402 of the draft code, Second Report of the Governor's Commission (Maryland pamphlet, Dec. 5, 1968). This section was dropped by the legislature. The author has learned from reliable sources that protests by elected probate officials caused the deletion.

75. *See* Dunham, *The Method, Process and Frequency of Wealth Transmission.* 30 U. CHI. L. REV. 241 (1962).

76. The Laws of Michigan provide an illustration. *See* MICH. LAWS ANN. § 710.09.

77. A question and answer period followed presentation of papers on the Uniform Probate Code at the annual meeting of the Real Property, Probate and Trust Law Section, ABA, in Philadelphia in August, 1968. As has occurred many

Worse, these and many other examples of probate nonsense are jammed down the throats of the unhappy public as wave after wave of idealistic new probate officials assume their jobs with fresh dedication to see that the estates coming before them are handled with meticulous respect for law. It's a small wonder that community respect for this area of our legal system has all but disappeared in some areas of the country.

E. Collateral Responsibilities of Probate Courts

One other important aspect of the matter should be noted. Though the relationship of public offices to estates is at the heart of our probate problem, one cannot ignore other responsibilities of local probate officials. Probate offices, particularly those called courts but having less power within their area of subject-matter jurisdiction than regular courts, have received responsibility for an interesting array of odd jobs from state legislatures.[78] Varying degrees of jurisdiction over the person and affairs of orphans and other minors is frequently given to the office having control of estates. In recent times, this authority has broadened in many areas into jurisdiction over neglected and delinquent juveniles and their parents.[79] Authority over sanity proceedings involving adults who are alleged to be incompetent, or who need treatment involving curtailment of personal rights may be included. Guardians whose authority is limited to property matters sometimes may be appointed by order of the probate office. Sterilization proceedings relating to mentally defective persons, change of name proceedings, jurisdiction over trustees named by will, and authority to determine and possibly collect inheritance taxes sometimes are handled by probate courts.

II. The Uniform Probate Code

A. An Overview

The briefest description of existing probate problems suggests com-

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times, a probate judge raised questions concerning the protection under the code, then in its third draft, for minor children who share an inheritance with one parent upon the death of the other. The judge observed that he had found surviving parents to constitute the biggest class of probate cheats. *See Questions and Answers on Uniform Probate Code*, 3 Real Property, Probate & Trust L. J. 388 (1968).

78. *See* Simes and Bayse, *supra* note 8, part VI.

79. Michigan laws are an example. *See* Mich. Laws Ann. § 701.19.

plexity beyond the reach of simple remedies. The Uniform Probate Code is neither simple nor easy to describe.

In the preamble, it is stated that the Code relates to "affairs of decedents, missing persons, protected persons, minors, incapacitated persons and certain others". The open-ended reference to "certain others" does not mean that the Code deals with all subject areas presently associated with probate courts in some states. The important area of juvenile law is not covered and nothing is included regarding miscellaneous matters like inheritance taxes, sterilization proceedings, condemnation proceedings and various responsibilities regarding county government. On the other hand, the focus on "affairs of decedents" carries the Code into certain aspects of death benefit contracts,[80] and its coverage of procedures relating to testamentary trusts leads to treatment of procedures regarding inter-vivos trusts.[81] Functions for public offices in the areas covered include jurisdiction of optional proceedings involving decedents' estates, trusts, guardianships and protective arrangements for disabled persons for a full-power court,[82] and limited, non-judicial functions for a local public official, who should not be thought of as a judge.[83] Existing probate offices which do not meet either description may be upgraded or restricted as necessary, or left as now constituted to handle matters not dealt with by the Code.

The Code reflects the view that both substantive and procedural rules relating to affairs of decedents have been overly influenced by our historical preoccupation with safety of estates. As a corrective, substantive rules have been liberalized by more generous use of assumptions regarding the wishes of most owners, and by identifying as desirable rules for uniform adoption, those versions of existing

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80. UPC, Article VI.

81. UPC, Article VII.

82. Under Articles III and VII, the court has jurisdiction to handle all matters involving trusts and decedents' estates which are brought before it by petition. However, the CODE does not compel persons interested in trusts or estates to use court proceedings and offers alternative routes to accomplish normal objectives without judicial proceedings. However, orders of the court are required in regard to certain protective proceedings for disabled persons. *See* UPC, Article V.

83. *See* §§ 1-307, 5-105. UPC references are to the official version which will be published soon by West Publishing Company. The system for numbering subsections used by West varies from that appearing in Prentice-Hall's edition of UPC.

rules which expand opportunities for considering evidence of intention in particular cases. In regard to procedures, the object of the Code is to open opportunities now denied to survivors and their counsel in many states to select from among several available settlement procedures with an eye to finding the desirable balance of safety and efficiency. Procedural provisions have been designed around very limited and specific requirements for every estate which can be handled by non-judicial local probate officials under restrictions designed to curtail power and discourage development of new requirements and powers. Also, the Code offers decedents and survivors simple alternatives to use in case probate procedures remain or become undesirably cumbersome. Thus, prospective decedents will find that UPC significantly strengthens various non-probate methods for effecting transfers at death. For survivors who claim probate assets, the Code offers many alternative methods of perfecting title, some of which include a choice of the public official who will be involved. Finally, problems deriving from variety in state laws concerning succession should be eased by generous use of sections directing local courts to recognize and respect the relationship of the decedent to his domicile.

Because probate law is to be measured more in the way it is implemented in practice than in its formal statement, it is distinctly possible that adoption of the Code may not be followed by probate improvements which the public will perceive and appreciate. On the other hand, the Code certainly permits and encourages very significant improvement in practice in an area of law which has very obvious political overtones as well as a dollar and cents meaning for most families. If it can gain enactment, its potential as an instrument of law reform seems very great.

The package is too big to handle in useful detail in a single article. The approach here is to identify the major topics covered by the Code and the principal purpose of the draftsmen relating to each. Then, some of the more complex and important areas will be analyzed in depth.

B. "Court" Organization and Jurisdiction

The Code describes an office calling simply "Court" to which it assigns functions and proceedings relating to decedents' estates, guardianships, conservatorships and trusts.[84] As indicated by official

84. §§ 1-201(5), 3-105.

notes and comments, UPC's "Court" is more a product of the effort to write coherently of functions to be performed by public officials in any enacting state than an effort to describe an ideal organization.[85] Properly understood, the functions can be sorted in various ways between existing courts and offices in states receiving the Code. However, the Code makes it clear that the tribunal which handles binding adjudications relating to decedents' estates, trusts, guardians or conservators should be empowered to handle any civil litigation to which a fiduciary may be a party, with appeals going to courts handling appeals from courts of general jurisdiction.[86] Ideally, a division of the general trial court will receive this kind of subject matter jurisdiction. The Code is written as if a specialty court having power in limited subject areas equivalent to the general trial court were involved. However, this style merely reflects the need of the draftsmen to find an organizational form which offered the smallest invitation for endless discussions about the desirability of mixing estate dockets and general trial dockets.

The Code also includes a notice system for binding many and widely separated persons interested in judicial proceedings involving estates and fiduciaries.[87] This portion of the Code may be kept as part of a statute describing special procedures of a new, or continued special court, used in a statute describing estate proceedings before a court of general jurisdiction, or sorted into statute and court rule for either species of court.

The assumption of the Code is that a mailed notice affording interested persons warning of each *adjudicative* proceeding, and an opportunity to be heard, is required and desirable.[88]

UPC's "court" includes a "registrar" who is identified as the person designated by the judge to handle non-adjudicative proceedings contemplated by the Code.[89] Legislatures in states where non-lawyers are now permitted to serve as principal, local probate officials could, and parhaps should, assign the registrar functions under the Code to

85. *See* particularly the Comment following § 3-105.
86. §§ 1-302, 1-308, 3-105, 5-204, 5-304, 5-402, 7-204.
87. *See* Art. I, Part 4.
88. *See* §§ 3-403, 7-206. The informal proceedings described in Art. III, Part 3, are deemed non-adjudicative. See §§ 3-302 (effect of informal probate), 3-307(b) (effect of informal appointment), and 3-108 (time limit on testacy and appointment proceedings).
89. §§ 1-307, 3-105, and Art. III, Part 3.

these officials. Under the Code, the registrar handles "informal" proceedings to establish wills or appoint personal representatives.[90] Also, the registrar may be responsible to preserve various documents, notices and demands which may be filed in his office under provisions of the Code.[91]

C. Substantive Rules of Heirship and Family Protection

The Code contains a series of provisions which identify the successors to intestate estates. These are high on the list of provisions which warrant uniform enactment. Designed to work with the administrative provisions offering identical opportunities for simplified administration to testate and intestate estates and augmented by new provisions relating to the handling of property of minors and other disabled persons, the sections on descent are the core of a modern statutory estate plan which is designed to relieve most persons of ordinary means of the need to take affirmative estate planning steps.[92]

The Code also includes three sets of sections designed to protect the spouse and children of decedents from loss of essential family assets to the decedent's creditors, and to protect the spouse from loss of expectancy where the decedent, by design or neglect, disinherits the spouse by will or will substitute. One,[93] which includes a $5,000 "homestead allowance," an exemption for chattels worth up to $3,500, and a family allowance for support of spouse and dependent children during administration, will serve to prefer the close family of a married decedent to all unsecured creditors and takers by will in the first $14,500[94] of probate assets. Another protects after-born children, children believed to be dead, and spouses acquired after execution of a will from disinheritance through oversight or mistake.[95] The third, creating an "elective share", is designed to protect spouses

90. §§ 3-105, 3-301.

91. §§ 1-305, 1-307. Sections contemplating filings, which do not involve response by judge or registrar include §§ 3-204, 3-706, 3-804, 3-1003, 5-202, 5-302, 7-102. § 3-604, relating to the filing of bonds, is somewhat different.

92. Art. II, Part 1. *See* 3 REAL PROPERTY, PROBATE & TRUST L. J. 199 (1968) for a discussion of the law's estate plan.

93. §§ 2-401, 2-402 and 2-403.

94. The figure assumes that the personal representative grants the spouse the full amount or support allowance which can be given without approval of the court. *See* § 2-404.

95. Article II, Part 3 (§§ 2-301 - 2-302).

from transfers by will or will substitute which would reduce the spouse's share of the estate controlled by such transfers below 1/3.[96]

The latter system is as much a part of the subject of intestate succession as it is of the subject of wills. Gifts made by the decedent to the spouse, however effected, are included in the computation so that an electing spouse must take credit for all values received from the decedent before obtaining rights against other transferees by will or certain will substitutes.[97] Apart from procedural provisions of the Code which will be upsetting to vested interests, this new approach to the old forced share problem probably will prove more troublesome for persons studying the Code than any other area. Surely controversy about these provisions characterized the Reporters' discussions of preliminary drafts.

D. Wills

The final substantive system for decedents' estates relates exclusively to the subject of wills. A principal objective of these sections is to provide a uniform base for interpretation of the nation's wills. Another is to aid inartfully drawn wills by reducing recurring problems of meaning through use of rebuttable presumptions regarding a testator's intention.

Also, in order to accommodate testators who may not have sought any legal advice, the Code expands the kind of writings which may be effective as wills. Thus, holographic wills are validated,[98] certain informal dispositive lists referred to in wills are approved[99] and a flexible rule keyed to testator's intent as proved by any evidence is stated to govern the revival problem.[100]

Finally, the draftsmen moved rather boldly to increase the power of testators to choose the law applicable to their estates.[101] Whether or not the Code is ever generally adopted as a uniform law, this provision should dent the concept that the rules of the place of land must control its devolution.[102]

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96. Article II, Part 2, (§§ 2-201 - 2-207).
97. §§ 2-202, 2-207.
98. § 2-503.
99. § 2-513.
100. § 2-509.
101. § 2-602. *See* § 2-506 for a provision relating to choice of law regarding rules of execution of wills.
102. § 3-408 is also relevant in this connection.

E. Coverage Outside Decedents' Estates

The Code reaches beyond traditional limits of the rules for decedents' estates to deal with some problem areas traditionally associated with probate court jurisdiction. Also, it covers some problems bearing a close functional relationship to the general subject of affairs of decedents which are generally regarded as parts of probate law. The Code's coverage of guardianship and the relationship of various kinds of trusts to the probate court are examples of the first category; the second is reflected by the treatment in Article VI of non-probate transfers at death.

1. *Guardianship and Conservatorship*

Article V of the Code is entitled "Protection of Persons Under Disability and Their Property". Covering the subjects of guardians and of conservators, the article describes four separate systems for meeting or reducing problems relating to persons who because of minority, affliction or other circumstances are unable to discharge personal responsibility for their well-being or the care of their estates. Separate systems of personal guardianship are described for minors and for those whose incapacity is unrelated to minority.[103] The separation, due in part to a desire to facilitate removal of either or both subjects from a probate code, also reflects somewhat different procedural safe-guards relating to appointment[104] and different problems of discharge for guardians in the two categories.[105] Each kind of guardian is given limited powers over the ward's estate, consisting principally of the power to expend sums received by him as guardian for support and maintenance of the ward, and to preserve unused balances.[106] The limitations were designed to encourage use of separate, so-called "protective proceedings", leading possibly to appointment of a conservator for the estates of persons with complex financial affairs.

The Code contemplates that guardianship proceedings will be handled by the same full power court which will handle other judi-

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103. Article V, Parts 2 and 3.
104. *Compare* §§ 5-207 and 5-303.
105. *Compare* §§ 5-212 and 5-307.
106. *See* §§ 5-209 and 5-312.

cial business arising under the Code.[107] However, guardians of the person of minors may be appointed by will of the surviving parent.[108] No court proceeding for confirmation is necessary if a testamentary guardian files an acceptance.[109] Indeed, unless a testamentary guardianship is blocked by objection,[110] or ended by removal, the parental rights over the ward conferred on the testamentary guardian by the Code[111] will prevent court appointment after a will designation has been accepted.[112] Essentially the same idea is extended to designations of personal guardians for adult incompetents made by will of an incompetent's spouse or parents.[113] These two methods of identifying guardians further the overall purpose of the Code to provide nonjudicial remedies for recurring needs which may not involve controversy.

Separation of procedures for use in cases where the principal objective is to secure estate management or application for the benefit of the owner or his dependents, from personal guardianship proceedings, serves several objectives.[114] Financial problems for missing, ill, incompetent or minor persons may be remedied on grounds bearing no necessary relationship to the subject's sanity, and without implication that his personal liberty or his ability to contract should be restrained or questioned.[115] Where an owner needs both personal and property protection, more sensitive selection of persons with real interest in his well-being may be expected as the distinction between the guardian's job and that of managing the ward's estate is furthered by the Code. Also, the separate proceeding which is designed simply

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107. Since Article V does not make use of "informal proceedings" as does Article III (decedents' estates), all references in Article V are to "Court" rather than "Registrar". Consequently, the "Court" may not delegate its authority regarding guardianship matters to the Registrar as provided for some matters by § 1-307.

108. § 5-202.

109. §§ 5-201, 5-202.

110. § 5-203.

111. § 5-209.

112. § 5-204.

113. § 5-301. It should be noted that the possibility of securing appointment by the court of a guardian for an incompetent adult is not related to whether another has obtained parental rights of custody via acceptance of a testamentary appointment. *See* §§ 5-303 and 5-304.

114. Article V, Part 4 covers regimes designed to protect property interests.

115. The grounds for a protective order appear in § 5-401. The definition of "incapacitated person" in § 5-101 keys to the procedures of Part 3 of Article V, and has no relevance to Part 4.

to meet property management problems caused by an owner's disability easily includes a proceeding for court approval of a single transaction, like ratification of a minor's contract, or renewal of a lease or mortgage, without appointment of a conservator.[116]

For a conservator who may be appointed to provide continuing management for a disabled person, the Code offers a statutory charter of powers and duties designed to enable him to accomplish the usual purposes of a protective trust for the sole benefit of a person and his dependents.[117] No requests to the appointing court for authority to do what a managing trustee should be able to do, or regular reports or accountings to the court, are required. At the same time, the package offers an array of safeguards and remedies which enable the protected person or anyone interested in his welfare to compel performance of all statutory duties.[118]

Article V includes two features which are designed to minimize the need for guardians of minors and conservators for incompetent adults. For minors, a statutory facility of payment clause protects persons owing up to $5,000 per year to a minor who discharge their obligation by voluntary payment to any adult having the care and custody of the minor.[119] The recipient, who may not be a guardian in a formal sense, is under a duty to apply the funds received to the support and education of the minor, and preserve any unneeded balance for payment when the minority terminates.

The other scheme, changing the usual law of agency,[120] protects persons acting in good faith and without actual knowledge of the principal's death or loss of capacity under a power of attorney given by one who has since died or become incompetent.[121] Also, statutory effectiveness is extended to a provision in a power of attorney that the authority conferred shall not be terminated by known disability of the principal.[122]

It should be noted that Article V changed more drastically during the drafting process than any other portion of the Code. The preli-

116. § 5-409.
117. *See* §§ 5-420, 5-423, 5-424 and 5-425.
118. *See* §§ 5-413 and 5-416.
119. § 5-103.
120. The statutes of Virginia provided precedent for the Code. Code Va. (1950), 11-9.1.
121. § 5-502.
122. § 5-501.

minary drafts show vacillation about whether any coverage of guardians of adult incompetents should be included,[123] uncertainty regarding the effect of a protective proceeding on the subject's capacity to contract[124] and an abandoned proposal to subject creditors of a disabled person to non-claim statutes like those working against creditors of decedents.[125] There were many other, somewhat less drastic changes in content and several fairly major reorganizations of the material. This history accurately suggests that Reporters and Special Committee had a great deal of difficulty with this Article. Much of the subject matter seemed more relevent to the larger problems of mental health and juvenile legislation than to the business of framing modern substantive and procedural rules for decedents' estates and trusts. It would not be surprising if legislatures in enacting states see fit to alter many portions of Article V in varying ways. On the other hand, there is less concern about this subject by various vested interests who will question some of the decedents' estates provisions. Hence, overburdened legislators may be inclined to accept Article V with few changes.

2. *Non-Probate Transfers*

Article VI offers two quite different statutory approaches to two problem areas selected from the world of non-probate transfers. Multiple-party accounts in financial institutions, including joint accounts, Totten trust accounts and accounts providing explicitly for payment on death to persons having no withdrawal right until the decedent's death, are covered in detail in Part One. Part Two consists of a single section dealing with provisions in effective written instruments purporting to shift or cancel rights by reason of the death of an owner.

For joint accounts, the Code abandons the joint tenancy analysis

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123. Part 3 of Article V entitled "Guardians of Incompetents" which appeared in the "Summer 1967 Draft" was dropped from the Third Working Draft which was published in November, 1967.

124. § 5-424 of both the Third Working Draft and Working Draft #5 (distributed in January, 1969) provided that a protected person was incapable of making gifts and most contracts. In the Code as finally approved, § 5-408(5) expressly negates the idea that an order determining disability involves a finding of incapacity.

125. *Compare* §§ 5-425 and 5-427 of the Third Working Draft, with § 5-425 of Working Draft No. 5.

in favor of the broader concept that a surviving party to a multiple-party account contract is entitled to balances attributable to a decedent without regard to whether he had any present, beneficial interest prior to his death.[126] Testamentary benefit for survivors exists unless the account form or other clear and convincing evidence of intention as of the time the account was created indicate otherwise.[127] The Code also declares that a bank account in the name of one as "trustee" for another or others may be a vehicle for a valid testamentary disposition by the trustee to the other or others.[128] Accounts by trustees under trusts evidenced otherwise than by the form of the account are excluded.[129] Finally, accounts for one payable on his death to another, called "P.O.D. accounts" by the Code, are also validated as informal wills.[130] A transfer at death effected by any of the three forms of account has the status of a special specific bequest which passes outside probate administration without abatement in regard to other gifts made by will.[131] However, survivors' benefits in such accounts are subject to certain claims by the decedent's creditors, spouse and children if traditional probate assets are insufficient.[132]

Six of the thirteen sections in the part dealing with multiple-party accounts relate entirely to the relationship between persons who are named on the accounts, on the one hand, and financial institutions, on the other.[133] Reflecting a determination to keep questions involving beneficial ownership between parties completely separated from questions of banker liability, these sections nonetheless support the ownership provisions by stating when it is safe for bankers to pay various categories of persons named in the several forms of account.

Section 6-201 deals with written instruments which can be classified as contracts, conveyances, gifts or trusts and declares provisions therein calling for transfers of values at death to be non-testamentary. The section might prove to be a very important provision of the Code. On the other hand, it could be viewed as adding nothing to existing case law. The draftsmen followed the lead of a few existing statutes which

126. §§ 6-103, 6-104 and 6-106.
127. §§ 6-101(4), 6-104.
128. §§ 6-101(14), 6-104(c), 6-106.
129. § 6-101(14).
130. §§ 6-101(10), 6-104(b), 6-106.
131. §§ 6-104(e), 6-107.
132. § 6-107.
133. §§ 6-108 through 6-113.

exempt death benefit provisions in rather narrowly described arrangements, such as "a pension, retirement, death benefit, stock bonus or profit sharing contract plan, system or trust,"[134] but abandoned efforts to limit the statutory declaration to special categories or arrangements. In effect, the Code applies to any written provision which, but for its death benefit aspects, would be capable of creating or altering rights between individuals. If courts will respect various intra-family agreements which the section may invite, the provision could have very significant impact.[135] By offering courts a broad alternative to the probate route for effectuating expressions calling for transfers at death, the draftsmen may have created a form of competition for wills which might serve to assure that probate procedures will be and remain as simple as possible.

3. *Jurisdiction Relating to Trusts*

Many existing probate codes subject testamentary trusts to continuing jurisdiction by the same court which probated the will creating the trust.[136] The irrelevance of attendant requirements of qualification, bond and periodic court accountings and the awkwardness of the continuing jurisdiction idea when applied to cases where trustee and assets are located in different states, are generally recognized by lawyers and trustmen. Widespread enactment of the Uniform Testamentary Additions to Trusts Act or its equivalent,[137] though attributable in part to the desirability of unifying management of inter vivos and testamentary increments to trusts, probably occurred because the legislation offers well counselled testators a way of keeping trusts arising at death away from continuing and expensive probate court control.

But, state procedural codes sometimes leave trustees and others interested in inter vivos trusts with no effecient means of obtaining adjudications which will bind all interested persons.[138] The principal

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134. The quoted language comes from Illinois legislation, S.H.A. ch. 3, § 601.

135. *Cf.* Halldin v. Usher, 49 Cal. 2d 749, 321 P.2d 746, (1958).

136. *See* Simes and Basye, *supra*, note 8, 43 Mich L. Rev. 113, 133.

137. 9c, U.L.A. (1967 Supp.). According to the *Handbook of the National Conference of Commissioners on Uniform State Laws* for 1968, 41 jurisdictions had enacted the Uniform Testamentary Additions to Trusts Act, or substantially similar legislation, as of December 1, 1968.

138. Michigan procedures, now codified in its modern and comprehensive Revised Judicature Act, provide an example. Under RJA, jurisdiction over non-

difficulty, related to the traditional view that the relationship between a trustee and beneficiaries is *en personam,* lies in subjecting non-residents to the authority of the court. Legislation authorizing mailed notice to trust beneficiaries is clearly valid,[139] but not all legislatures have accepted the fact that there are many inter vivos trusts other than those creating common trust funds or involving local land which need legislative assistance.

One of the objectives of Article VII is to offer procedures for obtaining adjudications concerning trusts which apply equally to testamentary and inter vivos trusts.[140] Probate critic Norman Dacey has interpreted reports about the Code to mean that inter vivos trusts are subjected to the same kind of relationship to the probate court as is required now by typical probate code provisions dealing with testamentary trusts.[141] The Code is plainly to the contrary. It identifies what may be called a home base court for each trust by requiring trustees to register trusts with the court at the trust's principal "place of administration".[142] The court of registration is empowered to enter orders in proceedings initiated by interested parties which bind persons to whom prior notice has been given in accordance with the Code's basic system for notice of estate proceedings.[143] But, there is no duty on trustees or beneficiaries to initiate proceedings in the court of registration, and "neither registraton of a trust nor proceedings . . . result in continuing supervisory proceedings."[144] In effect, therefore, the Code offers both inter vivos trusts and testamentary trusts flexibility in regard to court proceedings like that currently available to inter vivos trusts and convenience in regard to extending proceedings to non-residents like that now available to what Professor

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resident beneficiaries of a trust cannot be obtained except through service of process in the state, or waiver, unless the litigation can be maintained under MICH. STAT. ANN. § 27A.705 which authorizes mailed notice in cases involving "ownership, use or possession of any real or tangible personal property within the state."

139. Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306 (1949).

140. *See* Introduction to Article VII.

141. *See* newspaper article bearing Mr. Dacey's by-line and "Copyright, 1969, by North American Newspaper Alliance, Inc.," which appeared in several of the nation's newspapers in early 1969, including the Connecticut Sunday Herald edition of April 20, 1969.

142. § 7-101.

143. § 7-103.

144. § 7-201.

Casner has called "court trusts".[145] At the same time, it completely avoids requirements of court qualification, bond and mandatory accountings.

Article VII has another important objective. It is to strengthen the ability of an owner to devise property of any location to a trustee of his choice. Under the Code, a testamentary trustee derives his title and power from the will rather than from court appointment. The Code provides "unless otherwise doing business in this state, local qualification by a foreign trustee, corporate or individual, is not required in order for the trustee to receive distribution from a local estate or to hold, invest in, manage or acquire property located in this state, or maintain litigation."[146] It also provides, "A foreign corporate trustee is required to qualify as a foreign corporation doing business in this state if it maintains the principal place of administration of any trust within the state."[147] These provisions should go far to free corporate trustees of restrictions which have probably served more to discourage realization of the full potential of existing leads to new trust business, than to protect them from unwanted competition by out-of-state organizations.

The foregoing general description of the Uniform Probate Code only scratches the surface. Detailed analysis of many areas and sections will be needed before an accurate assessment of the Code can be made. For example, careful study of the Code's treatment of inheritance rights of illegitimate and adopted children should be related to existing habits of draftsmen dealing with class gifts.[148] Form book clauses for wills should be reviewed with careful attention to the Code's rules of construction.[149] Conflict of Laws scholars and proce-

145. ABA film, "The Revocable Trust".
146. § 7-105.
147. § 7-105.
148. The important sections are §§ 1-201(3), 1-201(17), 1-201(21), 1-201(29), 2-109 and 2-611. In regard to the last section, users of the Prentice-Hall edition of the Code published in August, 1969 should know that the publishers failed to notice a re-draft of the section which was accomplished during the proceedings of the Commissioners on Uniform State Laws at Dallas. The correct version of the section which is one of several dealing with construction of wills, is as follows: "Halfbloods, adopted persons and persons born out of wedlock are included in class gift terminology and terms of relationship in accordance with rules for determining relationships for purposes of intestate succession, except that a person born out of wedlock is not treated as the child of the father unless the person is openly and notoriously so treated by the father."
149. Article II, Part 6, is of particular relevance.

durists should give the provisions having closest relation to their area of interest close scrutiny. Old prejudices against guardians and conservators should be reconsidered in light of Article V. Bankers and others offering demand or time account contracts need to explore the wide new world of multiple-party accounts which is opened by Article VI. Estate planning specialists will find new uses for testamentary trusts and many other ideas made safe or efficient by the Code. The list could be extended.

F. Probate Procedures

1. *Introduction*

The heart of the UPC is its package of procedures, restrictions and limitations relating to decedents' estates. Consisting of 16 parts and 140 sections of Articles III and IV, and occupying about 46% of the pages of the entire work, the procedural and administrative core of the Code seeks to establish new rationality in probate through reduction of the necessity and importance of contacts between survivors and the Court or any public office. If enacted and used, these provisions implement purposes of the draftsmen to (i) take the critical question of how much procedure must attend each administration away from the probate office and to move this important power to persons interested in particular estates; (ii) provide methods of administering estates which will enable efficiency in succession equivalent to that associated with transfers at death via revocable trusts; (iii) eliminate the need for or advantage of separate administration for portions of a decedent's estate which happen to be located in various states.

If organization of the offices and courts dealing with estates is adjusted to make optimum use of the new procedures for decedents' affairs, the Code may reverse the historic tendency of minor probate officials to work themselves toward the postition of powerful members of the regular judiciary. In states where probate officials already have stature like that of trial court judges, the courts should be combined. In addition to the savings of public and estate funds which should follow if estates may be settled with fewer contacts with less important officials than at present, the new look promises new vitality for the nation's fiduciary industry and all associated with it.

The working relationship between the several parts and sections of Article III must be understood if the bright promise of the package is to be realized. Also, comprehension of the details of the system will be needed to answer criticisms which can be anticipated from some probate officials and two well organized and well financed commercial groups. The American Insurance Association, representing companies selling probate bonds and the National Newspaper Association representing county newspapers and metropolitan publications specializing in legal news and advertising, made it clear during the drafting stage that they are unhappy with the Code's provisions regarding probate bonds and published notices. Whatever else may be said of their respective positions, it is certain that their complaints will put pressure on advocates of the Code to demonstrate that its safeguards are adequate and that its system in regard to notices is fair and constitutional. The anticipated opposition from these groups and the importance of Article III to the cause of probate simplification warrant a more detailed analysis of this portion of the Code than can now be made of other important areas.

2. *Probate Procedure: Detail*

The first few sections of Article III describe the relationship between a public office and the complex of interests in a decedent's assets represented by his creditors and successors. Under Section 3-101, all the estate of a decedent, without distinction between real and personal assets, "devolves to the persons to whom it is devised by his last will . . . or in the absence of testamentary disposition, to his heirs . . . subject to [certain allowances] rights of creditors, . . . and to administration." Subject to exceptions which will be mentioned later, Section 3-102 requires that wills "be declared to be valid by an order of informal probate by the Registrar, or an adjudication of probate by the Court" if they are to be effective to prove a devise.[150] Section 3-103 then provides that one must be appointed by the court or rgeistrar to become an executor or administrator. Section 3-104 provides that claims of a decedent's creditors may not be enforced against his successors except through a personal representative or after property has been distributed by a personal representative.

150. The term "devise" is defined by § 1-201(17) to include any disposition by will of any kind of property.

Finally, Section 3-105 confers exclusive jurisdiction on the Code's court and registrar to grant orders on matters like probate of wills and grant of administration. Section 3-108, with appropriate exceptions for wills previously proved in the decedent's domicile and appointments necessary to complete unfinished administrations, bars either probate or appointment proceedings commenced more than three years from death. Section 3-803 bars unsecured claims against a decedent which are not presented to a personal representative within three years of death. The section applies whether or not a personal representative is appointed.

From these provisions, it can be seen that the Code continues the traditions of post-mortem probate of wills and creditor protection via a publicly appointed personal representative. But the limitations and other features of the sections offer new opportunities for survivors to avoid all contact with the probate court.[151]

When contact with the probate office is necessary or desirable, "informal proceedings" before the registrar, consisting largely of examination to determine whether sworn applications are complete and consistent with the Code's guidelines and involving no notice or delay (other than a mandatory period of five days after death) are available to handle the critical steps of probate and appointment.[152] By contrast "formal testacy proceedings" before the judge of the Code's court are offered to provide adjudications concerning testacy which may be original, corroborative of previous informal proceedings or motivated by someone's desire to contradict an informal order.[153] Also, formal appointment proceedings are available to aid

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151. The Code does not compel probate or appointment. If three years from death elapses before a decedent's survivors take any action involving the probate office, any wills of the decedent are barred from probate and unsecured claims against his estate are eliminated. The heirs to whom the estate devolves upon the decedent's death hold the estate free of claim or encumbrance except any resulting from tax legislation or existing against the decedent before his death. Of course, it may be necessary to determine who the heirs are, and § 3-102 leaves small possibilities that a later discovered will may be used to prove another succession. Also, certain rights to homestead and exempt property may be asserted without the necessity of administration. Still in many situations, the most significant compulsion for securing administration of a decedent's estate will be to gain the protection for purchasers and persons transferring a decedent's assets which are keyed to an appointment. See §§ 3-703, 3-714, 3-910.

152. Article III, Part 3.

153. Article III, Part 4.

resolution of disputes relating to priority or qualifications of an applicant for appointment.[154]

Another point should be noted. The Code permits a will to be probated, either informally by the registrar or in formal proceedings before the judge, with no attendant requirement that the executor named therein be appointed or otherwise empowered to settle the estate.[155] If the decedent is believed to have died intestate, a formal proceeding for an order finding this fact and determining heirs is available without appointment of an administrator. Thus, the Code avoids a problem of the *Model Probate Code* which swept the question of will or no will into a single proceeding involving administration.[156]

If no will is offered for probate and no steps are taken to administer an estate as intestate within three years of a decedent's death, the heirs are secure in their claim to the estate. Exceptions to 3-102 permit a later offered will to be admitted in evidence without having been probated, but only if there have been no estate proceedings of any kind *and* to confirm a possession enjoyed during the three year period by the devisee, or to prove succession to an asset which was unknown to successors of the decedent during the three year period for administration. Heirs will not be able to offer assurance to purchasers or transfer agents until the three years has elapsed, but unless and until someone proves a will or secures appointment of an administrator, their possession of an estate following the decedent's death is lawful and may be enforced against third persons who cannot show interest in the estate. Hence, a decent opportunity to avoid probate court contact is afforded heirs who possess a decedent's assets and satisfy his creditors. Predictably, prospective purchasers and transfer agents dealing with heirs who follow this route will require assurance concerning the identity of the heirs, the date of the owner's death and some proof relating to possession of the assets during the three year period.[157]

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154. § 3-414. The question of priority to serve as personal representative may be resolved by decision that the decedent died testate, or that he left no will. If so, the testacy proceeding described by § 3-401 would be appropriate.

155. §§ 3-301, 3-401.

156. The MODEL PROBATE CODE has been criticized for its failure to permit probate without administration. *See* Rheinstein *The Model Probate Code: A Critique*, 48 COLUM. L. REV. 534 (1948).

157. *See supra* note 151.

One who claims under a will and is also interested in minimum contact with the probate court, may obtain probate of the will in informal or formal proceedings and then await passage of time. If his probate proceeding was informal and therefore non-adjudicative, the running of three years from death will perfect his title as well as bar all claims of possible unpaid creditors. If the probate was formal, the title probably will have been perfected before three years bars any possible creditor who has not been paid.[158] The devisee who avoids administration will need releases from any spouse or children who have statutory rights to take ahead of the will.[159] Also, he will have the full burden of any interpretive problems concerning the will. Still, many cases can be imagined in which neither kind of difficulty will arise.

Having noted that administration of both intestate and testate estates can be avoided, it is appropriate to take a closer look at what administration under the Code entails. It's fair to say at the outset that administration should offer more advantages than problems for most categories of survivors.

Section 3-103 states that administration is commenced by appointment of a personal representative by the Court or by the Registrar. As noted above, either probate of a will, appointment of a personal representative, or both may be obtained in a non-adjudicative "informal proceeding". However, petitioners have the option of getting binding determinations by the Court regarding will or no will, or settling questions of priority and qualification regarding persons who seek to administer estates.

After securing letters, a personal representative whether acting as executor under a probated will, or as an administrator in intestacy, becomes in effect a statutory trustee. The Code gives him the duty and the necessary powers and protections to permit him to accomplish

158. § 3-412 permits vacation of an order in a formal testacy proceeding for certain reasons if the petition for vacation is filed prior to the earlier to occur of closing of an administration, one year from entry of the order, or three years from the date of death.

159. Certain family rights described by Parts 3 and 4 of Article II may be implemented without administration. The right to an elective share which a surviving spouse may assert under Part 2 of Article III is barred if not properly asserted within six months after the appointment of a personal representative. Although the Code is not explicit on the point, it would seem that the elective share is barred by the failure to commence an administration within three years after death. *See* §§ 2-205, 3-108.

the entire job of collecting assets, paying debts, and selling land or intangibles as needed to raise necessary cash and distributing the estate to the successor.[160] If desired, all of these steps can be handled without further court orders.[161] Again, however, isolated adjudications to answer particular questions or general orders settling accounts are available as needed.[162]

Creditor's claims are presented by simple statement to the representative, and barred by statutes of limitation if not presented.[163] Purchasers and transter agents are protected if they deal with a representative, even though he may be violating the will or otherwise breaching a duty.[164] Distributions will be on risk of liability by distributees for repayment unless suitable adjudications to eliminate risk occur.[165] Because the representative is not an officer of the court, and because the draftsmen sought to make intestacy resemble the will which an average person would want, no bond is required unless requested. Also, no reports or accounts need be filed with the Registrar or court unless a proceeding is commenced.[166]

The status of a personal representative, including all statutory powers and abilities to protect third persons, is the same whether his appointment is obtained in formal or informal proceedings.[167] Also, unless a special proceeding called "supervised administration" is ordered at the petition of an interested party,[168] the authority of either court or registrar over a personal representative ends with the appointment.[169] Later proceedings may bring the personal representative before the court for any appropriate order, but a petition by the

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160. Article III, Part 7, describes the duty and power of a personal representative. Article III, Part 8, describes methods by which a personal representative may secure protection against creditors of the decedent and the estate, and Parts 9 and 10 are relevant to the personal representative's liability regarding distributions. § 3-703(b) which protects a personal representative who proceeds without protection of a formal order regarding testacy is especially important.

161. §§ 3-107, 3-704.

162. § 3-105.

163. §§ 3-801 through 3-804.

164. § 3-714.

165. §3-909. But, purchasers from distributees are protected by § 3-910 and § 3-703 protects the personal representative unless the distribution was unauthorized by the terms of a probated will or involved a mistake as to the identity of devisees or heirs.

166. § 3-107; *See supra* note 82.

167. §§ 3-107, 3-307(b), 3-601, 3-602, 3-703.

168. Article III, Part 5, describes supervised administration.

169. § 3-107. *Cf.* § 3-602.

representative or other interested person is necessary to institute a later proceeding.[170] In this fashion, the Code offers the option of independent administration for both intestate and testate estates.

The meaning of all this is that unless someone demands notice as is possible under Section 3-204, the heirs of a decedent who is believed to have died intestate may obtain an appointment of a personal representative five days after the decedent's death.[171] After obtaining letters, the person or persons appointed assume a role very much like that of trustees of a well drawn revocable inter vivos trust who are directed to distribute trust estate remaining after the settlor's death after first satisfying all of his creditors. However, differing from such a trustee, the basis for the authority of the personal representative will be a matter of record in the registrar's office. Also, by accepting letters, a personal representative consents to personal jurisdiction of the Court in any proceedings which may relate to the estate.[172]

If a will is involved, its probate must be obtained prior to appointment of the named executor.[173] However, probate in informal proceedings will suffice. Even if the security of a binding order on the question of will or no will is desired, the Code encourages use of an informal probate to establish the will so that the executor may be appointed, after which a corroborative formal probate proceeding may be initiated without impugning the authority of the earlier appointee in any way.[174]

3. *Protective Features*

Before assessing the overall desirability or fairness of the administrative system, the Code's protective devices must be considered. Many relate to the fact that persons who seek to acquire useful control of a decedent's assets via a personal representative must make application to a public office for proof or authority. It is true that heirs acquire title to a decedent's assets upon his death and without prior contact with any public office, but their authority will not enable them to give a marketable title, at least for some considerable period.[175] Devisees are entitled to immediate possession pending ap-

170. § 3-105.
171. The five day waiting period is described by § 3-307.
172. § 3-602.
173. § 3-102.
174. § 3-401.
175. The devolution at death described by § 3-101 is "subject . . . to administration."

pointment of a personal representative, but only if they can prove their right and they may not use a will for the purpose unless it has been probated.

Several features of the public office contact required of survivors who seek to control a decedent's assets involve meaningful safeguards. The Code prescribes the content of applications for informal orders and forces applicants to divulge a good deal of information about the decedent, his survivors and his status in regard to known wills.[176] Misstatement may involve perjury.[177] Also, Section 1-106 specifies that one guilty of fraud in connection with any proceeding or statement filed with the Court remains personally liable to persons injured thereby until two years after discovery of the fraud. No order in an informal proceeding may be entered until five days from death has passed.[178] Any person with an interest in an estate may block the possibility that a future informal order may be made without notice to him by filing a demand for notice at any time after the decedent's death.[179] Also, a formal proceeding to probate a will or to declare that the decedent died intestate, or to secure appointment of a personal representative, or both, may be initiated at any time within three years after death by any interested person.[180] If initiated before an informal order has been made, this proceeding prevents issuance of an order without notice.[181] Notices required by the Code must be by personal service or mail.[182] Mere publication is not enough, except as it serves to start a limitation period which will bar creditors who fail to present claims.[183]

Further, anyone seeking appointment as a personal representative must satisfy the Registrar that he has priority ofr appointment under Section 3-203.[184] Unless there is a will, Section 3-203 assures priority for the spouse of the decedent, and if there is no spouse, gives a joint priority to all heirs. If there are several, each must concur before one or a nominee of the group may be appointed. If concurrence is not

176. § 3-301.
177. § 1-310.
178. §§ 3-302, 3-307.
179. §§ 3-204, 3-303, 3-308.
180. §§ 3-108, 3-401, 3-414.
181. § 3-401.
182. § 1-401.
183. §§ 3-801 — 3-803.
184. § 3-308(7). *Cf.* § 3-309.

demonstrated to the Registrar, the proceedings must be recast as formal proceedings.[185] Here, the judge may select a personal representative, but only after notice to all interested persons and an opportunity for hearing.

Finally, one having priority must qualify by posting any bond required by will, or required because another interested person has filed a demand for bond with the registrar before the appointment letters may issue.[186]

If an interested person fails to take steps to protect himself in advance against appointment of one he deems undesirable, and the inherent protection of being a beneficiary of a statutory trust is not sufficiently reassuring, there are several other remedies. The worried successor or creditor may impose a requirement of bond by demand,[187] institute proceedings to enjoin or limit the power of the appointee,[188] institute a formal testacy or appointment proceeding to test the basis of the appointment and thereby limit the broad power otherwise available to the appointee,[189] or obtain removal of the appointee if any misstatement appears in his application for appointment.[190] Also, he may initiate a special proceeding seeking supervised administration.[191] If his request for supervised administration is granted, the letters of the personal representative may be endorsed to indicate any special restrictions on power.[192] Also, a supervised personal representative may not distribute without order of the court.[193] As may seem from Appendix A, these precautions combine with other considerations to support omission from the Code of any blanket statutory requirement of bond.

4. *Notices*

Is the Code defensible in regard to notices? The approved version imposes a duty on every personal representative to mail notice to every interested person, including heirs apparently disinherited by

185. § 3-203(e).
186. § 3-601.
187. § 3-605.
188. § 3-607.
189. § 3-401.
190. § 3-611(b).
191. Article III, Part 5.
192. § 3-504.
193. § 3-504.

the will which provided the basis for his appointment.[194] Further, each personal representative is under a statutory duty to publish notice for creditors once each week for three weeks following his appointment.[195] Failure to advertise makes the personal representative personally liable to creditors who may prefer to reach him than to pursue distributed estates. No other notices are required unless some interested person seeks an adjudication in formal proceedings. Then, only those given notice in accordance with the Code's scheme for notice are bound.[196] If an adjudication of a decedent's testacy is sought, the Code requires mailed or delivered notices to all known persons having interests and a published notice for the benefit of possible unknown successors.[197] As previously noted,[198] if property is distributed to devisees under an informally probated will which is later contested successfully in proceedings started before the three year limitation period runs, the personal representative is exonerated, but the persons who received the estate remain personally liable to restore what they have received or its value. Purchasers from the personal representative, or from distributees following an unadjudicated distribution, are protected from liability to the heirs in the case supposed.[199] The same pattern of relationships apply to an estate which is distributed prior to discovery and probate of a will in a case where there was no prior adjudication of intestacy.

Lawyers in states which presently require some form of notice to interested persons before issuance of letters tend to recoil from the idea that the wide power over estate assets given by the Code to a personal representative may be obtained without some form of advance notice to interested persons. There are, however, several justifications for the Code's position on this point. The most important is that the proposed system, featuring issuance of letters without notice and non-supervised administration, has been proved satisfactory by generations of use in Pennsylvania.[200] Many other states also permit

194. § 3-705. In Working Draft Number 5, this section only required notice to heirs of a testate decedent when it appeared that the will related to less than all of the estate.

195. § 3-801.

196. § 3-106.

197. § 3-403.

198. *See* text *supra* at nn. 158 and 165.

199. §§ 3-174, 3-190.

200. *See* HASKINS, SMITH & GROSSMAN, PENNSYLVANIA FIDUCIARY GUIDE, *supra* note 49.

letters of administration to be obtained without advance notice,[201] and it is widely recognized that one with letters has full practical control of the decedent's liquid assets notwithstanding the degree of "supervision" exerted by the court following appointment. Thus, accumulated experience affirms that survivors do not avail themselves of the possible opportunity afforded by ability to get letters quickly and without notice to take advantage of fellow heirs.

Also, one urging that notice should be required before a personal representative can gain control of assets must assume the burden of explaining why the probate route to control of assets must be more awkward than non-probate alternatives which are freely available. Thus, joint accounts and revocable trusts, and the acknowledged ability of persons who are close to an owner before and immediately after death to cause his liquid assets to appear to belong to survivors, will continue to provide working alternatives to the probate route which will permit some survivors to gain control of assets without advance notice to other heirs. Family pressures and basic honesty must provide satisfactory controls for this power. Otherwise, our law of probate alternatives surely would not be as it is. Also, it is sensible to match probate rules functionally similar to those applicable to probate alternatives. Owners should be encouraged to allow their estates to flow through probate where some record of assumption of responsibility for control of assets is created.

Another reason for permitting letters to issue before notice is that many of the Code's safeguards tend to reduce any associated risk. Letters may not issue without notice to anyone having a better or equal right to letters. Letters may not issue without notice to anyone who has demanded notice.

Finally, a requirement of notice before probate has implications which tend over time to run against the objective of keeping succession procedures simple. An order after notice appears to be a judicial act which adjudicates rights. Traditional considerations relating to

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201. In a recent ABA survey, respondents from eleven of twenty-three states contacted indicated that no notice, other than possibly by publication, is required in regard to an application for appointment of an administrator. The states so indicated as supporting the proposition that letters are available without notice are: Colorado, Florida, Illinois, Iowa, Maryland, Minnesota, North Carolina, Ohio, Pennsylvania, Texas and Vermont. *See Estate Administration: Current Practices and Proposed Uniform Probate Code*, 3 REAL PROPERTY, PROBATE AND TRUST L. J. 2 (1968).

procedural due process suddenly become important though most would concede that a state does not have to dispense control of decedents' estates through judicial proceedings. A magistrate who has authority to make an order only after notice to interested persons may shrink his effective responsibility to that of checking notices. Such a dispersal of responsibility causes inefficiency. Worse, the magistrate may decide that he should require extrinsic proof of heirship to assist in determining whether a requirement customarily associated with jurisdiction has been met. Also, a requirement of advance notice creates a necessity for guardians for minor heirs who may receive or waive notice. After thinking the matter through, one who starts with the idea that a notice requirement would provide a simple way of providing safety for survivors, may well get to the conclusion that a requirement of advance notice almost guarantees that a supposedly simple system will become complicated.

The gist of the argument in support of the Code's provisions regarding notice, or the lack thereof, may be seen in an excerpt from a memorandum adopted by the co-chairmen of the Special Committee which controlled the drafting effort.[202] This responded to contentions by representatives of the legal advertising industry that due process considerations supported their request that published notice be required for every estate before issuance of letters, at the beginning of administration, and at closing.[203]

The position of the newspapers' representatives reflects a misapprehension about the system of administration described by the Code, and a dubious judgment about the effectiveness of legal publication as notice. Thus, the opening statement of their memorandum asserts: "When the state assumes a role in the marshalling and distribution of assets of an estate, it also assumes an obligation to afford due process to all interested parties."

But, the informal proceedings described by the Code are not proceedings leading to binding adjudications affecting rights. Rather, informal probate or informal appointment are events which individuals may cause because the statute sanctions them. No judicial

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202. Memorandum of July 17, 1969. Copies of this document may be obtained by request to the author. *See also* the law review comments cited *supra* at note 50.

203. Memorandum of National Newspaper Association dated July 15, 1968. According to the memorandum, additional copies may be obtained by request to Mr. Paul Conrad, 491 National Press Building, Washington, D. C., 20004.

order is involved. Also, the status and power of a personal representative are conferred by statute under described statutory conditions. Rights of possible successors of a decedent are not finally determined by the statutory proceedings unless and until the basic statute of limitations of three years elapses. Claims of possible successors cannot be cut off earlier except through the process of litigation. If this occurs, the Code makes it quite clear that the best possible notice must be given to persons whose interests may be affected by the questions involved.

Statutes create the power in owners to control their estates by will and define who takes in intestacy. We assume the newspapers recognize that statutes creating successors' rights may define those rights. This makes published notice unnecessary. If the newspapers are correct that notice is necessary, the no notice probate systems followed presently in several states are invalid. It would also follow that a state is powerless to provide an efficient system of succession to property owned at death. This lack of authority would be most unfortunate in view of the clear evidence that a simple system based on confidence in the basic honesty of people is desired by thousands. The committee believes that this authority exists.

5. *Bonds*

The surety bond industry sent a copy of a letter attacking the Code's provisions regarding probate bonds to every member of the National Conference of Commissioners on Uniform State Laws in advance of the 1969 meeting.[204] The gist of the industry's position was that there is no precedent for the Code's basic position that no bond is required of any personal representative except as specified by will, demanded by interested persons or required by the Court in formal proceedings.[205] The concluding paragraph of the letter con-

204. Communication of David Q. Cohen, Counsel, American Insurance Association, 85 John Street, New York, New York 10038, dated July 1, 1969, addressed to "The Commissioners on Uniform State Laws, The Special Committee and the Reporters on the Uniform Probate Code, the American Bar Association Committee to Review the Model Probate Code, The American Bar Association Advisory Committee to the Special Committee on UPC, and The American Bankers Association Liaison Committee."

205. A recent article about the Code erroneously reports that bond is required of personal representatives only when it is determined to be necessary by the court. *See* Lawrance, *Uniform Probate Code — Some Current Comments,* 108

tains the following sentence: "We believe the Code goes overboard in its treatment of the bonding of administrators and its fantastic reliance on naked legal rights as an effective substitute for security." In addition to the letter, several representatives of the industry met with members of the National Conference at a hearing in Dallas held on Sunday, August 3, 1969, to press the objection to the Code's bond provisions.

In response, the Special Committee prepared two documents which were on the desk of each commissioner at the beginning of the Dallas meetings. One of these, reflecting statistical data collected in an important research project concerning probate conducted in Cleveland, Ohio, illustrated that most probate estates are quite small and only a few involve controversy. The second was a detailed brief in support of the Code's position on bonds.

These documents are an important part of the legislative history of the Code. For this reason and in the interests of assisting state legislators who are certain to be bombarded with contentions that the Code does not provide adequate protection for inheritors of intestate estates, these documents are reproduced in the Appendix.

Conclusion

The American probate institution reflects more than two centuries of experience with an unfortunate legal premise. The accumulation of courts and procedures which now surround the simple matter of succession to property of a decedent is a sad monument to the predilections of the legal and political communities to serve their specialized interests when public ignorance or indifference permit. Though public interest in probate has come alive, it remains to be seen whether lawmakers will make the correct response. If they do not, the old institution will simply wither away as the public and responsive counsellors perfect private corrections for bad probate law. The Uniform Probate Code offers a way by which states can find a more constructive approach.

Trusts & Estates 1133 (1969). The Code requires that an executor must post bond before receiving letters if bond is required by the terms of the will (§§ 3-601, 3-603). In other cases, bond is required if demanded by any interested person (§ 3-605). Bond requirements so generated may be negated by the court upon finding that no bond is required, but the requirement remains until countermanded in formal proceedings.

In all probability, the Uniform Probate Code probably will not be adopted by any state in exactly the form approved at Dallas. Its substantive provisions invite changes in rules which are so old as to be confused with the natural order of family expectations. The tougher sledding will be against the vested interests which will seek to protect themselves by a few small and well camouflaged changes in the sections dealing with bonds, published notice and court control of estates. The complexity of the procedural provisions makes the Code vulnerable to this kind of attack and compromise.

But, the Code also places dozens of important and heretofore obscure details of probate procedure in a rational setting which may make it easier for proponents to show how each contributes to an important effort at law reform. Hence, it should be a valuable format for local studies. In the final analysis, however, the future of the Code is closely linked to the larger question of whether modern lawmakers are able to chart a course toward some reduction of a local political institution which has prescribed its own needs for function and growth for a very long period.

APPENDIX

The two documents which are reproduced here were distributed to members of the National Conference of Commissioners on Uniform State Laws at the beginning of the 1969 meeting in Dallas. The "Probate Fact Sheet" summarizes some data abstracted from the manuscript, *The Family and Inheritance, op. cit.*, note 33. The memorandum concerning bonds is described in the text at note 197.

PROBATE FACT SHEET

(From a survey of decedents' estates, Cuyahoga County, Ohio, closed or released from administration between Nov. 9, 1964 and Aug. 8, 1965, as revealed by a sample of one out of every 20 estates docketed.)

Frequency of Probates	*County population*	2 million
	# of estates per month	1,464
Testacy	% of testate estates	69%
	% of intestate estates	31%
Size of Gross Probate Estate	*Mean* gross value, all estates	$ 31,097
	Mean gross value, testate estates	41,218
	Mean gross value, intestate estates	8,599
	Median gross value, testate estates	15,000
	Median gross value, intestate estates	6,000
Frequency of large ($60,000) and small ($2000) estates	48 estates, or 7.3% of those sampled, grossed over $60,000. Only 2 of these were intestate. 85 estates, or 13% of those sampled, grossed under $2,000, and the remaining 526 grossed between $2,000 and $60,000.	

		#	%
Time in Probate	*up to 9 months*	210	or 31.9%
	9 to 15 months	290	or 44%
	over 15 months	159	or 24.1%
Survivor Patterns	Spouse only	60	9.1%
	Spouse and lineal heirs	321	48.7%
	Lineal heirs and no spouse	191	29.0%
	Collateral kin	75	11.4%
	No known kin	12	1.8%
			100.0%

Frequency of Disputes	Will contests were instituted in 6 or 1.3% of the testate cases. All 6 cases were settled. Claims for or against estates for debts alleged to be due, or assets alleged to belong in probate, occurred in 6 estates.
Creditors' Claims	Aside from funeral expenses, no debts of any sort appeared in probate records in *41% of all estates grossing between $6,500 and $15,500*. For smaller estates, the "no debt" category accounted for from 46% to 90% of all estates. The report concludes "In general, we do not find that debts constitute a significant problem in the settlement of an estate. First, the

debts usually constitute a small proportion of the gross estate. Second, the survivors of the decedent usually make provision for payment without the necessity of court proceedings."

MEMO

July 8, 1969

TO: The Special Committee, Uniform Probate Code

FROM: R. V. Wellman, Chief Reporter, Uniform Probate Code

RE: Probate Bonds and the Uniform Probate Code

The attached statement of the Chief Reporter responds to the memorandum concerning probate bonds by Mr. Cohen of the American Insurance Association. We concur with Professor Wellman in this response, and urge every Commissioner to give this document their careful attention.

You have received Mr. Cohen's memorandum of July 1, 1969 on behalf of the American Insurance Association, which presents the case against the draft Code's proposals relating to probate bonds. The purpose of this memorandum is to enable members of the National Conference to see both sides of the matter.

Provisions of Draft Code on Bonds

The draft code which the National Conference will consider at Dallas is not silent on the subject of bonds for fiduciaries who are subject to probate court jurisdiction. Sections 3-603 through 3-606 cover the subject as it relates to personal representatives of decedents; e.g. executors and administrators. Sections 5-411 and 5-412 cover bonds for conservators and Section 7-304 deals with bonds for trustees. It may be inferred that the American Insurance Association is content with the provisions concerning bonds for conservators and trustees, for Mr. Cohen's memorandum deals only with bonds for personal representatives. In any event, this memorandum is limited to a discussion of bonds for personal representatives of decedents.

The code uses the term "personal representative" to include executors under wills and administrators in intestacy. It proceeds from the assumption that there is no fundamental difference between these offices.

Section 3-603 provides that bond for a personal representative is required if:

(a) it is so ordered by the court in formal proceedings;

(b) any person having or claiming an interest in the estate worth in excess of $1,000, demands bond by writing filed with the probate court registrar with a copy mailed to the personal representative; or

(c) bond is required by the terms of the decedent's will.

The Section also states that bond is not required in other cases.

Elsewhere in Article III, the code specifies that a personal representative's appointment may result from adjudication after notice to interested persons by the judge of the probate court (formal appointment), or it may occur without notice or delay following application to the registrar (informal appointment). In either event, an appointment creates a statutory fiduciary who, unless appointed

in formal proceedings as a "supervised" personal representative, is beholden only to the creditors and successors of the decedent to carry out the purposes of administration as expressed by the code. The public office making the appointment has no further responsibility in the matter, unless and until its jurisdiction as a court is invoked in extraordinary estate proceedings by or against the personal representative. (3-107).

Some other details of the Code are relevant to bond. Except for a special representative, no informal appointment may be made after a petition seeking a court order concerning an appointment been filed (3-401; 3-414) and bond may be required for a special representative, however appointed. (3-603) This means that any interested person can be assured that the judge will have an opportunity to pass on the need for bond before any appointment is made. All he needs to do is to file a petition in a formal probate or appointment proceeding before an informal appointment has been made. In this connection, it is important to note that no informal appointment may be made until five days from death have elapsed. (3-307(a)) As to appointments in informal proceedings, an obligation to post bond arising from the provisions of a probated will must be met before the personal representative may receive any evidence of his authority. (3-601) An obligation to post bond arising from demand of an interested person made after a representative has been appointed is enforced by (a) the personal representative's statutory powers are suspended until the bond requirement has been met (3-605); (b) on petition, the personal representative may be restrained in any manner (3-607) and (c) if a demand for bond is not complied with within 30 days, on petition the personal representative can be removed. (3-605)

From the foregoing, it may be seen that the risk that someone can gain powers as a personal representative before a judge has had an opportunity to pass on the desirability of bond is narrower than the possibility that a personal representative may be appointed informally. The difference is measured by cases where a will's terms require bond. To the extent the probate office has authority to deny an informal application for appointment, thus forcing applicants to seek a judicial order after notice if they desire appointment of a personal representative, the risk is further reduced. It should be noted in this connection that Section 3-309 recognizes that the registrar may deny an application in informal proceedings for unspecified reasons. In a sense, therefore, the code provides public officials with an opportunity for discretion in regard to bond in advance of every appointment which may be requested.

Focus of the Insurance Industry's Criticism

It is important to see the exact thrust of Mr. Cohen's criticism of the code. He does not complain of the discretion re bond which the code grants to a judge who may be making an appointment in a formal proceeding. He says nothing about the provision, modelled after existing law in about 40 states, which gives testators some control over whether bond requirements should be visited on their executors. He seems to accept the blanket excuse from any bond requirement for fiduciaries who have complied with state statutes contemplating deposit of cash or collateral by professional fiduciaries. His sole complaint seems to lie in the possibility that an unbonded personal representative may be appointed informally in a case where the testator has said nothing about bond.

In passing, it is to be noted that either the decedent or his survivors can prevent the case which Mr. Cohen is concerned about from occurring. The decedent may require a bond by his will. If the will is probated, its provisions concerning the personal representative have priority over other mechanisms for identifying who should be the fiduciary (3-203), and if the decedent requires the person he

selects to post a bond, bond must be filed before the appointment can become effective. (3-601) In any event, any interested person can prevent an informal appointment by filing a demand for notice and initiating a formal proceeding for probate or appointment. (3-204; 3-401) Interested persons are further protected against surprise by the requirement that five days delay after death precede any appointment. Thus, in a significant sense, the decedent, his creditors and survivors have important control of whether a bond requirement should be imposed at the time of appointment. To cover cases where it may appear from the detailed recitals required of every petition that interested persons may not know what is occurring, the registrar may deny an informal appointment, thus guaranteeing notice and judicial discretion concerning a possible bond requirement before any appointment

We seem to be left with a large controversy over a relatively small category of cases involving intestate decedents whose survivors either know or care too little to avail themselves of the opportunities given them by the Code for preventing appointment of an unbonded individual.

Here, we must face the questions of who these appointees are likely to be and whether the position of the Code that no bond is required unless desired by someone from the court office or with an interest in the estate is sound. Once the risk area is identified, we must ask whether a bond requirement for every individual personal representative is the appropriate remedy, as compared with the Code's flexible system of remedies, including personal liability of any defaulting fiduciary, liability of persons who receive erroneous distributions, and an on-going opportunity for any person to demand bond, or initiate supervised administration.

Perhaps, however, we should assume that Mr. Cohen also objects to the approach of the Code in testate cases which is that a testator may alter the basic rule of no bond by a provision in his will. In many states, the matter is the reverse of this with testators having power by will to alter the law's basic requirement of bond. In this posture, the response to Mr. Cohen's criticism should lead us to an inquiry about the usual habits of professional will draftsmen in regard to bonds and to an analysis of the proper role of legislation relating to a subject commonly covered by wills.

Summary of Position in Support of Code

The argument in support of the Code's position regarding bonds in intestate estates is relatively simple. It rests on the fact that the heavy majority of cases falling within the category in question will involve very small estates being administered by a close family member for himself and other members of the family, or by an attorney or other outsider who is agreed to by the survivors after the decedent's death. The Code accepts the proposition that succession to small, unplanned estates should not be made relatively more expensive or complicated than succession to larger estates. Thus, bond requirements which are routinely avoided by persons planning large estates, should not be imposed on successors to modest estates. It also reflects the belief that the value of probate bonds is sufficiently unclear to make it unwise for state law to require bonds for any category of cases.

Finally, the Code proceeds from the assumption that existing probate statutes relating to administration of intestate estates must be improved rather than perpetuated if the nation's probate problems are to be corrected. Too much existing law regarding estates reflects the interests and attitudes of estate planners and others whose professional interests have made them acutely aware of problems which have nothing to do with the vast majority of estates in probate. Too little thought has been given to the concern about probate of most citizens.

Sources of Data: The Cleveland Project and the ABA Survey

A book will be published soon called *The Family and Inheritance*. Its authors are Marvin Sussman, Judith Cates and David Smith. Drs. Sussman and Cates are sociologists; Prof. Smith teaches law. The book is the report of a research project financed by a grant by Russell Sage Foundation and conducted by the authors under Dr. Sussman's direction at Case-Western Reserve University in Cleveland, Ohio, during the period from 1965 to 1969. The project involved a detailed analysis of a random sample of one out of every twenty estates closed in Cuyahoga County, Ohio, during a one year period extending from a date in 1964 to a date in 1965. The sample, reflecting 13,180 estates, consisted of 659 estates. Data from probate records was collected and survivors of the decedents involved were systematically interviewed by trained persons.

The survey and the report were planned and accomplished by professional social scientists who sought only to produce solid data for use by lawmakers. The results should be of enormous utility to everyone who is concerned with the problems of probate law. For convenience, data appearing in the manuscript of the report book is referred to as resulting from the "Cleveland project".

During the year 1967-68, the Committee on Administration and Distribution of Decedents' Estates of the Real Property, ABA Probate and Trust Law Section, distributed a questionnaire about probate procedures to its 28 members. Returns were received from lawyers in 23 different states. A report of their answers appears in Vol. 3, No. 2, Real Property, Probate and Trust Journal (Summer 1968) at p. 142. References in this memorandum to the ABA survey are to the answers as tabulated from the returned questionnaires rather than as summarized in the published report.

Relevant Data

a) Size of Estates

Most estates in probate are relatively small estates. According to the Cleveland project, 68.7% of estates are testate and 31.3% are intestate. The *median* testate estate grossed $15,000; the median intestate estate grossed only $6,000. The average or mean worth of all intestate estates was only $8,599. None of the thirty-two decedents in the sample whose estates were taxed under the federal estate tax law were intestate. It is safe to conclude, therefore, that more than half of all estates in probate gross less than $15,000, and that most intestate estates having some contact with probate court are significantly smaller than $15,000 in gross value.

These same figures demonstrate that there is a positive correlation between the size of estates and the likelihood that the decedent left a will.

b) Typical Survivor Patterns

Of the 659 estates involved in the Cleveland project sample, the surviving heirs consisted of spouse and descendants, spouse only, or descendants only, in all but 87 or 13% of the cases. In 12 of the 87, or about 2% of the total, the decedent appeared to have left no relatives, and in 75 cases, or about 11% of the total, collateral kin were the survivors.

c) Likelihood of Inheritance by Minors

Though the Cleveland project did not focus on the age of inheritors, some of its data is relevant to the probability of inheritance by minors. First, as suggested by a) above, inheritance by collateral heirs, including minors, is relatively rare. Second, the age of the decedents identified in the sample averaged 67.9 years. It is unlikely that many persons of this age have minor children. Third, the com-

monest instance of wills altering the intestate pattern occurs where the decedent had a wife and children. The draft of the Cleveland report states: "Testators who are survived by spouse and lineal kin most often deviate from the statutes to bequeath the entire estate to the spouse. Decedents survived by spouse and lineal kin had a high rate of testacy (72.8%) despite the fact that they are six to ten years younger than the other groups." (Chapter IV)

d) Protection of Creditors

Confirming beliefs which many have held for a long time, the Cleveland project demonstrates that probate procedures have little real meaning for creditors of decedents. 38.5% of all estates list no debts other than funeral expenses. The report states "This does not necessarily mean that the decedent had no debts at the time of his decease. It is likely that his spouse or another survivor paid the lawful debts and did not bother to render an accounting. It will be remembered that the vast majority of our estates were small and no tax advantage would accrue to the heirs from careful bookkeeping and reporting. [The following table] indicates the smaller the estate size, the higher the percent of estates with no debts." The report then indicates no debts were listed in 90% of estates under $2,500, 45% of estates between $2,500 and $6,500, and 41% of estates between $6,500 and $10,500. The section on debts is concluded with the following observation: "In general, we do not find that debts constitute a significant problem in the settlement of an estate. First, the debts usually constitute a small proportion of the gross estate. Second, the survivors of the decedent usually make provision for payment without the necessity for court proceedings."

e) Cost of Probate Bonds

The cost of probate bonds varies markedly from state to state. Respondents to the ABA questionnaire answered as follows to the question "What is the usual cost of a fiduciary bond for each $10,000 of estate assets?":

Vermont	$10.00
Florida	$20.00
Ohio	$25.00
N. Hampshire	$30.00
Iowa	$40.00
Colorado	$40.00
N. Dakota	$40.00
Wisconsin	$40.00
Illinois	$50.00
Minnesota	$50.00
Mississippi	$50.00
N. Carolina	$50.00
Rhode Island	$55.00
Texas	$55.00
Maryland	$60.00
Washington	$60.00
Michigan	$60.00
Oregon	$60.00
Kansas	$72.50
Oklahoma	$100.00

Another fact about the price of probate bonds which has been conceded by industry representatives is that current price scales for probate bonds have been in effect since 1929 in many areas of the country.

One can only surmise that these curious features of probate bond prices are related to the fact that bonds have been required by statute for generations. Local history in each state rather than the law of supply and demand, has controlled prices.

f) Frequency of Claims on Probate Bonds

It is difficult to estimate how many estates must have been within the experience of the lawyers who responded to the ABA questionnaire. It is commonly assumed that practitioners identifying themselves as probate lawyers tend to have more years of experience than other categories of practitioners. Nonetheless, only 5 of 22 respondents answered affirmatively to the following question: "Have you or has any member of your firm ever been involved in a suit to recover on a fiduciary bond?" One respondent from Illinois wrote as follows: "Prior to engaging in probate work with my employer, I practiced privately a number of years and never observed a suit to recover on a fiduciary bond. I inquired recently of the largest law firm in Chicago and they reported they could not recall such a suit, and, indeed, was so rare they could only cite an instance which hit the newspapers a few years ago."

Argument and Conclusions

Testate Cases

Testate cases arising under the code normally will involve fiduciaries selected by the decedent. The code invites testators who believe that the person chosen should be bonded to require bond. No prospect of exercise of fiduciary power before the bond requirement is met exists where the decedent imposes the bond requirement.

No blanket bond requirement should relate to testate cases where the will is silent on the question of bond. The fiduciary usually will be selected by the testator. Provisions excusing executors from bond requirements are boiler plate in the forty-two states where testators now can control bond. The practice of draftsmen suggests what the law should infer to be the wish of the occasional testator who says nothing about bond.

Further, the option of formal or informal probate offered by the code should serve to bring the most tension-ridden situations before the judge in a formal proceeding. To the extent this occurs, it is also quite probable that appointment of the personal representative will be by the judge who will thus have an opportunity to impose a requirement of bond if it seems desirable under the circumstances.

Intestate Cases

If we pay any attention at all to the facts developed by the Cleveland project, we must conclude that the typical intestate estate is quite small and so, under the Code's scheme of intestate distribution likely to pass entirely to the surviving spouse if any, or to children where there is no spouse. The insurance industry's representative concedes that bond is inappropriate where the personal representatives takes the whole estate. Either he agrees that the possibility of claims against the decedent does not warrant a bond, or his concession is meaningless for the *possibility* of debts will exist in every estate. The Code's system of priorities for selection of administrators in intestacy is set forth in Section 3-203. The spouse has priority over other heirs. As among heirs having equal priority, each is entitled to notice of even an informal application of any other and each must concur in identifying some one or more of their group or some outsider who may be selected. (3-310) If an application is falsified to prevent the registrar from identi-

fying persons with prior or equal right to appointment, the applicant may be charged with fraud, removed if appointed, or subjected to other appropriate remedies.

The argument recurs that bond must be imposed in every intestate estate in order to protect possible minor heirs, and persons who though presently unknown may turn up later and establish some right to the estate. These points need to be separately considered.

As to minors, we must remember that the average age of decedents is such as to make it unlikely that minors will be included in the usual circle of survivors. Secondly, unless there were children by a prior marriage, only relatively large (over $50,000) estates will devolve on children of the decedent if there is a surviving spouse. Third, the effect of Part 4 of Article II of the Code is to give a surviving spouse the first $14,000 or so of a gross estate ahead of the claims of creditors and any children by a prior marriage. Finally, under 5-103, the code approves of the idea that a parent or other adult with whom a minor resides may receive up to $5,000 per year from any person owing money to the minor. This section reflects the view that elaborate protective relationships can and should be avoided where relatively small property interests of minors are involved. It is a purpose of the Code to extend to small property interests the same flexibility and freedom from expensive and overly-elaborate protective arrangements which typical trust provisions and gifts to minors legislation indicate to be desired by wealthy persons.

Finally, we must not overlook the pressures built into the code which will tend to produce formal proceedings whenever significant values appear to be owned by minor or incompetent persons. As noted earlier, once formal proceedings occur, the court has discretionary power to require any appointee to post bond. Also, the court may appoint a guardian ad litem for any such person who appears to be interested in any formal proceeding and to be inadequately represented by parent, conservator or guardian. Remember, too, that the registrar has residual authority to decline informal applications and thus force formal proceedings. In this connection, it should be noted that applications are required to state the age of any minor heirs or devisees. There is a significant probability that any individual who undertakes to serve as personal representative where minors or incompetents are involved will want the protection of formal orders particularly if values of any consequence are involved. The Code encourages these persons to use formal proceedings by providing clear and flexible procedures and a competent, and possibly specialized, court.

A blanket requirement of bond cannot be justified as necessary to the protection of unknown heirs and devisees. Under the Code, a personal representative owes no duty to persons who might show up within the limitation period for probate or contest of wills and demonstrate that they are the true successors, unless they initiate proceedings before distribution is made. (3-703) Such persons have protected rights against those who received the estate but not against a fiduciary who acted in good faith. Thus, a bond insuring fidelity of the personal representative would not help them. The Code's position in this regard is defensible because it is keyed to the usual, rather than to the extraordinary case and is necessary to permit fiduciaries to distribute without court order.

Unknown persons who may appear as additional heirs or devisees entitled to share an estate as it is being administered have rights against the personal representative which are not cut off unless and until they are adjudicated to be nonexistent in formal proceedings. This will tend to move fiduciaries to the court for orders in formal proceedings in cases where there are important values or reasonable doubts. A bond requirement would add nothing to the absent person's ability to prevent a court order which cuts him off.

Doubts as to the Value of Probate Bonds

The National Conference should not accede to the demands of the insurance industry that their time-honored, legislatively guaranteed market be perpetuated without asking some obvious questions about the effectiveness of bonds in preventing disappointments in regard to inheritances and the relative cost of whatever salutory effect bonds may have.

Evidently, estate planning experts across the country think little of fidelity bonds as protection. Provisions in trusts requiring bonds of fiduciaries are quite uncommon. Will draftsmen routinely excuse bond requirements for testators whenever they can.

Receiverships and other extraordinary proceedings involving court-appointed business managers or liquidators bear little resemblance to succession of decedents' estates which is as natural as death itself and well accommodated by family traditions and community mores. The analogy the insurance industry attempts to draw between administration of decedents' estates and liquidation proceedings involving living debtors, though warranted in a superficial sense by our history of probate court supervision of decedents' estates, is inaccurate from a functional point of view.

The value of bonds as measured by their deterrent effect and cost is quite questionable. Some insurance industry spokesmen have indicated that there are no figures to indicate the relationship of bond premium income to losses covered by bonds. They also urge that figures as to dollars paid in claims are unimportant because they would not demonstrate the value of bonds in coercing proper discharge of fiduciary duties. Of course, it can be argued with equal force that since probate bonds have been routinely required by statute in intestate estates, we have no basis whatever for connecting the bond requirement to the behavior of individual fiduciaries. It could just as well be argued that the typical close relationship between individuals who serve as administrators, and the beneficiaries of intestate estates, totally explains the tendency for intestate estate settlements to be very routine and peaceful affairs so far as can be determined from the outside.

Surely, it is difficult to explain the variation in cost of bonds in the several states, other than as a phenomenon of forcing a market by statute.

Conclusion

Putting reasons for doubts about the value of probate bonds to one side, a blanket requirement of bond for every intestate estate being administered by any individual would be a clear instance of statutory overkill. It is submitted that statutory rules can and should be so cast that the routine requirements which apply to every estate will be relevant to facts usually to be anticipated in ordinary cases. Unusual situations should be the occasion for extraordinary procedures, rather than new routines for every estate. Present drafts of the proposed Code seek to achieve this ideal by making bond requirements fully responsive to the needs of a particular case as identified by interested persons and probate court personnel.

Finally, a statutory requirement of probate bonds in testate or intestate estates is inconsistent with the basic philosophy of the Uniform Probate Code that estates belong to survivors who are expected to look out for their own interests. The ancient idea that a probate court is a public agency through which all estates must pass in order that accuracy and honesty in regard to inheritances will be achieved has become intolerable to a vast majority of our people. It has outlived its usefulness and now deserves an honorable burial. Indeed, if it is not soon eliminated by forward looking legislation, the day when the overwhelming ma-

jority of dollars passing at death will be controlled by will and probate substitutes will be on us much sooner than might be imagined. As this day approaches, the estates left in probate to bear the expense of bond and other costs which better planned estates avoid, will come more and more to consist almost entirely of the little accumulations of the relatively poor and ignorant elements of our population. The Code must have the support of the average man and his organizations if it is to withstand the ordeal of battle in our legislatures. It should not be weakened by what is really an unnecessary concession.

SUGGESTIONS AND COMMENTS
ON THE
UNIFORM PROBATE CODE (SB 248)

(1) Suggestion

In sec. 13.11.125 et seq. the use of a description such as "Homestead Allowance" for the widow of decedent and for minor and dependent children might well be confused with the "Homestead Exemption" provided under AS 09.35.090, and the exemption provided in sec. 13.11.130 may be confused with the exemption provided by AS 09.35.080. We read the probate allowances and exemptions to be in addition to the homestead exemption and other exemptions as now provided under AS 09.35.080 and AS 09.35.090. We recommend that the probate code eliminate the description "Homestead Allowance". Likewise, we recommend the description "Exempt Property" be changed to "Personal Property Allowance".
(Alaska Bar Association)

Comment

I believe that the use of similar terms in two totally different and unrelated titles would not cause any confusion. Sections 13.11.125 et seq. relate to certain rights and values to which a surviving spouse and certain children of a deceased are entitled in preference over unsecured creditors of the estate and persons to whom the estate may be devised by will. AS 09.35.080 - 09.35.-090, on the other hand, specify what personal and real property cannot be taken from a judgment debtor by means of execution.

(2) Suggestion

Sec. 13.16.450 in conformance with the uniform code allows four months for presentation of claims by creditors. We recommend this be changed to 90 days to conform to our present probate code. Ninety days is considered sufficient, and will shorten the length of the probate proceedings.
(Alaska Bar Association)

Comment

While at first glance it may appear that this suggestion to retain the existing 90-day period for creditors to present claims would seem to go ahead of the UPC to shorten the length of the probate proceedings this is not the case. Presently the law (AS 13.30.250) states that "The notice shall require all persons having claims against the estate to present them, with proper vouchers, within three months...." (Emphasis added.) However, AS 13.30.260 provides that "A claim not presented within three months after the first publication of notice is not barred, but it cannot be paid until the claims presented within that period have been satisfied...." (Emphasis added.) The result of these two existing sections is that creditors' claims can be presented as long as assets remain in the estate. This procedure would not shorten the probate proceeding.

On the other hand, two sections in SB 248 go far to reduce the time it would take to probate an estate. These two provisions read:

"Sec. 13.16.450. NOTICE TO CREDITORS. Unless notice has already been given under this section, a personal representative upon his appointment shall publish a notice once a week for three successive weeks in a newspaper of general circulation in the judicial district announcing his appointment and address and notifying creditors of the estate to present their claims within four months after the date of the first publication of the notice or be forever barred."

and

"Sec. 13.16.460. LIMITATIONS ON PRESENTATION OF CLAIMS. (a) All claims against a decedent's estate which arose before the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort or other legal basis, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(1) within four months after the date of the first publication of notice to creditors if notice is given in compliance with sec. 450 of this chapter; provided, claims barred by the non-claim statute at the decedent's domicile before the first publication for claims in this state are also barred in this state;

(2) within three years after the decedent's death, if notice to creditors has not been published.

(b) All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the state and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, are barred against the estate, the personal representative, and the heirs and devisees of the decedent, unless presented as follows:

(1) a claim based on a contract with the personal representative, within four months after performance by the personal representative is due;

(2) any other claim, within four months after it arises.

(c) Nothing in this section affects or prevents:

(1) any proceeding to enforce any mortgage, pledge, or lien upon property of the estate; or

(2) to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance."

(Emphasis added.)

These sections make it mandatory that a creditor must submit his claim within four months after he has received notice or be forever

barred. Thus the possibilities of closing an estate more quickly under SB 248 are much greater than under present probate procedures.

When this same issue was raised by the Legislative Council while it was preparing the bill for introduction, Professor Richard V. Wellman of the University of Michigan Law School and the prime drafter of the UPC made some very meaningful remarks on why these provisions should be retained. (See Appendix A.)

(3) Suggestion

P. 130

We disagree with the power given a foreign personal representative under sec. 13.21.015, which requires only that the nonresident fiduciary may secure removal of assets of a nonresident decedent from Alaska upon furnishing a copy of his appointment and an affidavit as to death, Alaska administration, and entitlement to payment. Nothing is said or provided concerning Alaska debts of the nonresident decedent, except that should a creditor in Alaska know of the death and the whereabouts of assets in Alaska, that creditor may object. This is considered inadequate and likely to result in no recovery in most cases. Suit against the foreign representative in the foreign jurisdiction is not a good remedy. We recommend that sec. 13.21.015 be expanded to require some notice to Alaska creditors before removal of the assets from Alaska. We would add the following additional requirement to sec. 13.21.015.

> In addition to the foregoing requirements the domiciliary foreign representative shall furnish to any person having possession or control of personal property, or other asset sought to be removed from Alaska, proof that notice has been published in a newspaper of general circulation in the borough or city where such assets are located, at least once a week for three weeks, that such property or other asset will be removed unless objections are made. The notice shall specify the personal property or asset and its location in Alaska.

(Alaska Bar Association)

Comment

While this suggestion in regard to sec. 13.21.015 would be of considerable merit if we were dealing with traditional concepts of administering multi-state estates, I would not think it is particularly necessary under the approach taken by the UPC.

Traditionally there has always been a reluctancy on the part of one state which has assets and creditors of a person who dies domiciled in another state to turn over those assets to the decedent's domiciliary estate without first paying off local creditors.

> "Whenever more than one state is involved, administration at the present time is complex and difficult. Assembling assets from several states is not easy. While jurisdictions increase arithmetically, difficulties seem to increase geometrically. Just as troublesome is the possibility that the personal representative or the assets of the estate may be the subject of litigation in several states." (Multiple-State Estates Under The Uniform Probate Code, 27 Wash. & Lee L. Rev. 74 (Spring 1970))

To avoid these problems and complexities which have plagued the several states since their existence, the UPC in ch. 21 has provided a system whereby a personal representative in the state of the decedent's domicile has the same power over the title to property of the estate as an absolute owner would have and thus an entire estate, wherever located, can be administered in one proceeding. At first it may seem that creditors in a foreign state are left to the mercy of another state for their payment. This, however, is not the true case because the property is held in trust for the benefit of the creditors and other individuals having an interest in the estate (sec. 13.16.390). The code treats all creditors alike whether they are in the domiciliary state or another state. Besides having the same protection offered all creditors by the code, local creditors who are apprehensive that the domiciliary personal representative will withdraw assets from the local state may notify persons owing the decedent or having possession of state property not to pay or turn over property on affidavit (sec. 13.21.025). The creditor could also petition for local administration ("interested person" for all code purposes includes creditors) in order to prevent the domiciliary foreign personal representative from proceeding without local appointment (sec. 13.-21.040). Finally, sec. 13.16.520 provides equal treatment of all creditors in an insolvent estate.

(4) Suggestion

P. 42

Sec. 13.11.315 provides for deposit of a will with any court. This should be restricted to the superior courts inasmuch as the inferior courts, particularly in sparsely settled areas will not have the personnel or facilities to administer this provision. Basically we feel that secs. 13.11.315 and 13.11.320 might well be eliminated since they will burden the courts with additional duties, although it is assumed that the rules of court would require a charge to be made. The commentary to the UPC suggests that a central filing system be established soon and a statute be enacted requiring the registrar of the will to notify the central bureau so that any inquiries could be directed to the central bureau. All this seems unnecessary, and will require no end of additional court rules, record keeping, etc.
(Alaska Bar Association)

Comment

At the present time, of course, there is no way of knowing how many people would avail themselves of this provision and the resulting cost to the state, but if the idea seems feasible, the recommendation that only superior courts be used would seem a very good one.

(5) Suggestion

P. 11

Sec. 13.06.110, regarding notices under paragraphs (1) and (2), it is suggested "10 days" rather than "14 days".
(Keifer L. Gray, Standing Master in Probate)

Comment

I cannot see any particular need for the change.

(6) Suggestion

Sec. 13.11.045(1), add "provided the Native rights through blood of any person so adopted may be retained if provided for in the decree of adoption".
(Keifer L. Gray, Standing Master in Probate)

p. 17

Comment

In regard to this suggestion, the question has been raised as to how adoption affects the rights of inheritance from the natural parents.

After researching this question I have come to the conclusion that neither under existing law (AS 20.10.120, see Appendix B) nor under sec. 13.11.045(1) of SB 248 would an adopted child be precluded from inheriting from both his natural as well as his adopting parents.

The general law on this matter is quite clear:

> "Consanguinity is fundamental in statutes of descent and distribution, and the right of a child to inherit from his natural parents or to share in the intestate personalty of their estates is affected by the legal adoption of the child by another only to the extent that such rights are taken away or limited by the terms of the applicable statutes of adoption and descent and distribution, or by necessary implication therefrom. To state the rule another way, an adopted child is, in a legal sense, the child both of its natural and of its adopting parents, and is not, because of the adoption, deprived of its right of inheritance from its natural parents, unless the statute expressly so provides. In any event, the adoption of a child after the death of its parents does not affect its status as the heir of such parents.
>
> "The adoption of a child does not destroy his status as one of the 'issue' of his natural ancestors. The fact that by the terms of the adoption statutes the natural parents lose all rights over a child when it is adopted by another does not necessarily imply that the child may not inherit from such parents, nor is that implication to be drawn from the fact that the child becomes the legal child of its adopting parent and sustains all the rights and is subject to all of the duties of that relationship. A statute which includes as its dominant and principal feature the establishing of the adopted child as the heir of the adopting parent, without reference to inheritance from natural parents, is not likely to be construed as depriving the child of that inheritance." (Emphasis added.) (2 Am Jur 2d, Adoption, sec. 103)

To deal with this question a specific provision must be adopted and this has been done in a number of states.

> "Some statutes expressly save the rights of an adopted child to inherit from its natural parents; others by their express terms bar adopted children of the right to inherit from their natural parents and natural kin. Rights of dual inheritance from the natural parent as well as from the adoptive parent are denied by a statutory declaration that all rights and duties between the adopted child and his natural parent shall cease and determine and that the child

shall thereafter be deemed and held to be for every purpose the child of his adoptive parents. Such statutes are not open to attack on the ground of discrimination between minors whose natural parents died before the effective date of the statute and those whose natural parents died thereafter, but such a statute does not prohibit a natural parent from bequeathing property by will to a child whom he has permitted to be adopted by another." (Id)

As can be seen from a reading of AS 20.10.120 (see Appendix B) and sec. 13.11.045(1) of SB 248 neither the existing nor proposed provision specifically provide that an adopted child cannot inherit from his natural parents. In view of the state of the law as cited above, I believe that whichever approach the legislature takes should be specially stated in the bill. The House Judiciary Committee has already expressed its support for allowing an adopted child, at least to some degree, to inherit from his natural parents by the introduction of HB 722 (see Appendix C).

For a more extensive consideration of the entire question of how adoption affects the rights of inheritance through or from natural parents or other natural kin, please see annotations and cases in Appendix D.

(7) Suggestion

P. 25

Sec. 13.11.125, the homestead allowance should be a minimum of "$6,000" instead of "$5,000".
(Keifer L. Gray, Standing Master in Probate)

Comment

The Legislative Council changed this to $8,000 to correspond with present day needs in Alaska as reflected in existing law.

(8) Suggestion

Sec. 13.11.155, add a paragraph (a) which states:

P. 28 Relocated to 1/30

(a) Wills other than self-proving wills under sec. 165 of this chapter may be proven by the affidavits of the two witnesses to the will or, if one witness is deceased or cannot be located, by the testimony of one subscribing witness and other proof satisfactory to the court.

(Keifer L. Gray, Standing Master in Probate)

Comment

This seems like a very practical suggestion.

(9) Suggestion

P. 42

Add a new sec. 13.11.325 to read:

Sec. 13.11.325. PROCEDURE FOR NONINTERVENTION WILLS. If the last will and testament of a decedent provides that the estate shall be settled without the intervention of any

court, title of the decedent passes to the devisee or heirs on death. It is necessary only that the executor, or person or corporation nominated in his place if he fails to serve, submit the will to the court, prove it, secure letters testamentary, file an inventory, and submit proof of solvency. Thereafter, the estate shall be managed and settled without the intervention of any court. However, notice to creditors requiring them to submit their claims within three months shall be published once each week for four weeks in a newspaper of general circulation in the judicial district where the will is probated. The party probating the will may file a final account with the court if he desires and he shall make a report of any inheritance tax due the state or the United States and pay the same from estate funds. Nothing contained in this section shall be construed to prevent the court from ordering the filing of a final account if a petition demanding a final account is filed by an heir, devisee, legatee, creditor, the state or federal government or a person showing he is adversely affected by the failure to file the account. However, a full and complete report must be submitted to the court within one year from the date of filing such will for probate and proof of final distribution should be filed simultaneously. Extensions beyond this period of time may be granted only on the specific order by the court for good cause shown and then not to exceed six months.

(Keifer L. Gray, Standing Master in Probate)

Comment

In view of the fact that the UPC is based on the premise that a court should not intervene unless requested by an interested person, this suggested provision would seem unnecessary. Also, sec. 13.11.230 provides that "... the intention of the testator as expressed in his will controls...." The proposed amendment is drafted along the lines of existing law (AS 13.30.111) which reflects the traditional probate concepts.

(10) Suggestion

p. 49

Sec. 13.16.065, paragraph (1), substitute the figure "19" for the figure "21".
(Keifer L. Gray, Standing Master in Probate)

Comment

SB 248 has substitued "19" for "21".

(11) Suggestion

p. 82

Sec. 13.16.365, the last paragraph after the comma, instead of "he may file the original of the inventory with the court" it should read "he shall file the original of the inventory with the court", substituting the word "shall" for the word "may".
(Keifer L. Gray, Standing Master in Probate)

Comment

In regard to making the filing of an inventory permissive instead of mandatory, the drafters of the UPC seem to indicate that the

worth of an estate should be the concern of only interested persons and not of the general public (Uniform Probate Code, sec. 3-706).

(12) Suggestion

Sec. 13.16.680(1), change the value from "$5,000" to "$6,000". (Keifer L. Gray, Standing Master in Probate)

p. 118

Comment

This suggestion would correspond with present day needs in Alaska as reflected in existing law.

(13) Suggestion

p. 119

Sec. 13.16.695, add paragraph (d) to read:

> (d) The superior court may authorize the disposal in a manner it prescribes of personal property which has not been disposed of under this section by the end of six months if no heirs or claimants have been located.

(Keifer L. Gray, Standing Master in Probate and Superior Court Judge James M. Fitzgerald)

Comment

Because SB 248 is silent on this point and the necessity seems obvious, this suggestion should be added.

(14) Suggestion

Add a new sec. 13.16.700 to read:

p. 119

> Sec. 13.16.700. SETTLEMENT DIRECTED BY COURT. When a judge receives information that a person has died in his judicial district leaving an estate of $6,000 or less and no qualified person has appeared to take charge of the assets, the judge may immediately appoint some person, corporation, or attorney to settle the estate in the manner provided for in secs. 680 - 695 of this chapter or the appointee may administer the estate in the manner provided for in the administration of small estates.

(Keifer L. Gray, Standing Master in Probate)

Comment

This suggestion seems appropriate on the same basis as (13) above. However, because secs. 680 - 695 are the provisions for administering small estates, I would recommend deleting "or the appointee may administer the estate in the manner provided for in the administration of small estates".

(15) Suggestion

p. 125

Sec. 13.26.015(1), the age should be "19" and not "18". (Keifer L. Gray, Standing Master in Probate)

Comment

It should be changed to "19".

(16) Suggestion

Sec. 13.26.020, the time should be "not exceeding one year unless sooner revoked".
(Keifer L. Gray, Standing Master in Probate)

p. 126

Comment

Considering the purpose underlying sec. 13.26.020, this suggestion would seem appropriate because of the cost and distance involved in Alaska travel. The drafters of the UPC have stated on this point:

> "This section permits a temporary delegation of parental powers. For example, parents (or guardian) of a minor plan to be out of the country for several months. They wish to empower a close relative (an uncle, e.g.) to take any necessary action regarding the child while they are away. Using this section, they could execute an appropriate power of attorney giving the uncle custody and power to consent. Then if an emergency operation were required, the uncle could consent on behalf of the child; as a practical matter he would of course attempt to communicate with the parents before acting. The section is designed to reduce problems relating to consents for emergency treatment." (Uniform Probate Code, sec. 5-104, Comment)

(17) Suggestion

Sec. 13.26.045, add "or has failed to properly exercise his duties as such".
(Keifer L. Gray, Standing Master in Probate)

p. 127

Comment

This provision does not seem necessary in view of sec. 13.26.085 which provides specifically for the removal of guardians.

(18) Suggestion

Sec. 13.26.060, add an (e) to read:

> (e) A bond in the amount to be fixed by the court may be required of the guardian as the circumstances require.

p. 127

(Keifer L. Gray, Standing Master in Probate)

Comment

Under the provisions of the UPC guardians are appointed to protect only the person of the minor and not his property or other assets. If problems of property management arise, then a conservator would be appointed and a bond may be required under sec. 13.26.215.

(19) Suggestion

Sec. 13.26.070(4), add "at least once every year unless ordered sooner".
(Keifer L. Gray, Standing Master in Probate)

p. 129

Comment

I cannot see any harm in this suggestion but the benefit is also a little doubtful.

(20) Suggestion

p. 151

Sec. 13.26.280(a), change the age from "18" to "19".
(Keifer L. Gray, Standing Master in Probate)

Comment

This should be changed to "19".

(21) Suggestion

p. 2-3

Sec. 13.06.035, add a paragraph (3) to read:

> (3) a person who is absent for a continous period of five years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead; his death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

(F.E. Kester, State Registrar of Vital Statistics)

Comment

This suggestion is very important and should definitely be incorporated into SB 248.

(22) Suggestion

Adopted

Either Title 9 or 13 should contain provisions for wrongful death and survival of actions.
(Herbert A. Ross, Attorney at Law)

Comment

This is a very good suggestion and should definitely be made a part of the bill. Because the provisions relate to causes of action and not probate, I suggest they be made a part of Title 9 (Civil Procedure).

(23) Suggestion

Various age requirements in the bill should be made uniform.
(R. G. Laube, Vice President and Trust Officer, National Bank of Alaska and Chairman, Legislative Committee, Anchorage Estate Planning Council)

Comment

The age of 19 either has been or will be substituted for 18 where appropriate.

Appendix A

Excerpt from letter dated December 13, 1971, addressed to Frederick O. Eastaugh from Professor Richard V. Wellman of the University of Michigan Law School:

Let me move to another point on the list of deviations from U.P.C. that are indicated in Russell E. Mulder's letter of October 4, 1971, to Members of the Alaskan Bar Association. I am somewhat concerned about point 5 dealing with bar on unsecured creditors claims.

First, let me focus on the proposal to extend the non-claim period on unsecured claims following first advertisement for claims from four months to one year. Statutory notes to the Model Probate Code (1946) indicate that in the early 1940's when research on the project was accomplished, twenty-six states had fixed time limits in non-claim provisions. In twelve states, the basic time period was six months; in four the basic period was three or four months; in four the period was eight, nine or eleven months; in six the period was one year. Section 142 of the Model Probate Code set the non-claim period at 4 months. The recently enacted Surrogates Court Procedure Act in New York established a three month period and Wisconsin's new probate code permits the court to fix a non-claim period as short as three months. The non-claim period in the new codes in Maryland and Oregon is set at four months. Idaho's version of U.P.C. preserved the four month limitation period, as does the Law Revision Commission's recommendation in Arizona.

The pattern across the states, influenced I am sure, by the criticism that probate is too long, is distinctly toward a period that is much shorter than the year that is mentioned in Mr. Mulder's letter.

It may be pertinent, also, to note that during the several years of drafting of U.P.C., the project did not receive a contact, much less a protest, from any group representing creditors. This significant silence corroborates the careful study of attitudes about probate reported in Sussman, Cates and Smith's book, The Family and Inheritance (Russell Sage, 1970) which reported that problems with creditors were a very unimportant aspect of the typical probate proceeding.

During the drafting process, the Reporters were informed by researchers who had probed Chicago merchants about protection through probate for unsecured creditors claims. The second-hand reports back indicated that merchants gave very little attention to problems of collection from deceased debtors. On some kinds of accounts, like fuel oil contracts, credit life insurance is used. In other situations, joint obligations bind husband and wife so that the death of either is of little concern to creditors. Statistically death is not a serious risk for age levels where borrowing or credit purchasing is most common. Finally, creditors appear to believe that survivors will pay valid small debts of family members, if for no other reason than to maintain their own reputation for honesty and good credit.

In point of fact, therefore, there is much to support the proposition that the usual concern about creditors in probate proceedings comes only from the minds of lawyers who for generations, have been taught that the principal purpose of probate is to protect creditors.

Finally, lawyers have a good deal to gain from moves that may serve to shorten the time for routine probates. The length of non-claim periods will have a direct bearing on the standard time during which estates probably will remain undistributed. With the optional valuation date and the filing deadline for federal estate tax purposes now moved closer to date of death, it would be paradoxical if long non-claim provisions continued to impede prompt closing of estates. Surely, Alaskans will not want to be out of line with national trends on this point.

Second, I am concerned about the proposal to change the code so that a creditor who had good cause for not presenting a claim in time might escape the bar of non-claim. I think that such a provision may do more harm than good. First, it should be noted that the four months claim period does not apply to unsecured tort claimants who seek to reach the decedents insurance. See 3-803(c) (2). When one thinks of contract debts, who are the creditors who will not know of the decedents death within four months? All a creditor needs to do to prevent non-claim from running is to mail his bill to the personal representative or to the court.

Appendix B

Sec. 20.10.120. ADOPTION TERMINATES RELATIONSHIP OF PARENT AND CHILD. (a) By a decree of adoption, the natural parents, other than a spouse of an adopter, are divested of all legal rights and obligations in respect to the child, and the child shall be free from all legal obligations of obedience and maintenance in respect to them, and is, as to all legal incidents, the child, legal heir, and lawful issue of his adopter, entitled to all rights and privileges, including the right of inheritance and the right to take testamentary disposition, and subject to all the obligations of a child of the adopter.

(b) An adopter and the spouse of an adopted child, and their respective kin, have the rights of inheritance from the child as prescribed by the statutes of descent and distribution for natural parents, spouse and their respective kin to the exclusion of the adopted child's natural parents and kin, and any prior adopter and his kin. Where a natural parent is the spouse of an adopter, the natural and adopted parent and kin inherit the same as natural parents and their kin.

Introduced: 3/7/72
Referred: Judiciary

IN THE HOUSE BY THE JUDICIARY COMMITTEE

HOUSE BILL NO. 722

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act clarifying inheritance rights of adopted children; and providing for an effective date."

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

* Section 1. AS 20.10.120 is amended by adding a new subsection to read:

(c) An adopted child and his issue have the rights of inheritance from the natural parents and their respective kin as prescribed by the statutes of descent and distribution unless the decree of adoption specifically provides for termination of those rights of inheritance.

* Sec. 2. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.

In Villier v. Watson's Adm'x, 168 Ky 631, 182 SW 869, LRA1918A, 820, the statute of adoption under which the case was decided is much unlike ours and we deem the case not in point. The same may be said of the cases of Dreyer v. Schrick, 105 Kan 495, 185 P 30, and Coonradt v. Sailors, 186 Tenn 294, 209 SW2d 859, 2 ALR2d 880. In the case of In re Roderick's Estate, 158 Wash 377, 291 P 325, 80 ALR 1398, the court considered a statute of adoption and held an adopted child could inherit from both adoptive and natural parents. However, note that the statute of Washington and also the statutes of Minnesota, California, and South Dakota, cited on page 1401 of 80 ALR, do not contain the emphatic language as does our adoption statute, particularly Section 453.090, supra.

We find no fault with the result reached in the cases of St. Louis Union Trust Co. v. Kaltenbach and Mississippi Valley Trust Co. v. Palms, supra. We limit our disapproval to the expressions and language which we deem obiter dictum contained in the opinions which lend support to the theory that persons legally adopted under the provisions of Chapter 453, supra, may inherit from their natural parents. After a full consideration of the case, we are convinced that the case of Shepherd v. Murphy, supra, was correctly decided and we find no sound reason that the same rule should not apply in this case.

The judgment of the trial court is reversed and the cause remanded with directions to enter a decree in conformity with this opinion. It is so ordered.

Dohling and Barrett, CC., concur.

Per Curiam.

The foregoing opinion by Westhues, C., is adopted as the opinion of the court.

All concur.

The Divisional opinion has been adopted as the opinion of the court en banc.

All the Judges concur, except Hyde, J., who dissents.

ANNOTATION

Adoption as affecting right of inheritance through or from natural parent or other natural kin

[See ALR Digests, Descent and Distribution § 28.]

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§ 1. In general.

This annotation supersedes 80 ALR 1403, and the supplement thereto in 123 ALR 1038, being division III of the latter annotation, at pp 1042 et seq.

The following annotations related to the present one may be noted:

Conflict of laws as to adoption as affecting descent and distribution of decedent's estate, 73 ALR 964, supplemented in 154 ALR 1179.

Status of child under contract to adopt not fully performed, 27 ALR 1325, supplemented in 142 ALR 84 and 171 ALR 1315.

Descent and distribution of property of adopted child, 170 ALR 742.

✦

The question whether an adopted child inherits from his natural parents is "one of statutory construction." Roberts v. Roberts (1924) 160 Minn 140, 199 NW 581.

"Since adoption is wholly statutory, all its incidents must be." Young v. Bridges (1933) 86 NH 135, 165 A 272.

So, except as the statutes otherwise provide, the adoption of a child does not deprive him of the right subsequently to inherit from his natural parents or to share in intestate personalty of their estates.

Arkansas.—Shaver v. Nash (1930) 181 Ark 1112, 29 SW2d 298, 73 ALR 961 (involving Texas law); Hawkins v. Hawkins (1951) 218 Ark 423, 236 SW2d 733.

California.—Re Darling (1916) 173 Cal 221, 159 P 606.

Colorado.—Re Wilson (1934) 95 Colo 159, 33 P2d 969.

Connecticut.—Slattery v. Hartford-Connecticut Trust Co. (1932) 115 Conn 163, 161 A 79.

Delaware.—Glanding v. Industrial Trust Co. (1946) 29 Del Ch 517, 46 A2d 881 (saying right to inherit not lost unless by "clear intent" of statute).

District of Columbia.—Re Penfield's Estate (1949, DC Dist Col) 81 F Supp 622.

Illinois.—Re Tilliski's Estate (1945) 390 Ill 273, 61 NE2d 24.

Indiana. — Humphries v. Davis (1885) 100 Ind 274, 50 Am Rep 788; Head v. Leak (1916) 61 Ind App 253, 111 NE 952.

Iowa.—Wagner v. Varner (1879) 50 Iowa 532.

Kansas.—Dreyer v. Schrick (1919) 105 Kan 495, 185 P 30; Re Yates's Estate (1921) 108 Kan 721, 196 P 1077 (arguendo); Bertram v. Holcomb (1921) 109 Kan 87, 198 P 192.

Kentucky.—Villier v. Watson (1916) 168 Ky 631, 182 SW 869, LRA1918A 820.

Michigan. — Re Klapp's Estate (1917) 197 Mich 615, 164 NW 381, LRA 1918A 818.

Minnesota. — Roberts v. Roberts (1924) 160 Minn 140, 199 NW 581.

Mississippi.—Sledge v. Floyd (1925) 139 Miss 398, 104 So 163.

Missouri. — Clarkson v. Hatton (1898) 143 Mo 47, 44 SW 761, 39 LRA 748, 65 Am St Rep 635 (saying that the child was not deprived of the right to inherit from natural parents "unless expressly so provided by stat-

ute"); St. Louis Union Trust Co. v. Kaltenbach (1945) 353 Mo 1114, 186 SW2d 578 (repeating the language of the Clarkson Case, supra).

South Dakota.—Sorenson v. Churchill (1927) 51 SD 113, 212 NW 488.

Tennessee. — Coonradt v. Sailors (1948) 186 Tenn 294, 209 SW2d 859, 2 ALR2d 880 (obiter).

Texas.—Shaver v. Nash (1930) 181 Ark 1112, 29 SW2d 298, 73 ALR 961 (involving Texas law).

Utah.—Re Benner (1946) 109 Utah 172, 166 P2d 257.

Washington.—Re Roderick (1930) 158 Wash 377, 291 P 325, 80 ALR 1398.

Wisconsin.—Re Sauer (1934) 216 Wis 289, 257 NW 28.

The right of a natural child to inherit from its blood parents "should not be taken from an adopted child unless clearly required by statute." Re Tilliski's Estate (1945) 390 Ill 273, 61 NE2d 24.

Similarly, unless the statutes otherwise provide, the adopted child does not lose his right to inherit from natural kin or to share in intestate personalty of their estates.

California.—Re Darling (1916) 173 Cal 221, 159 P 606.

Colorado.—Re Wilson (1934) 95 Colo 159, 33 P2d 969.

District of Columbia.—Re Penfield's Estate (1949, DC Dist Col) 81 F Supp 622.

Iowa.—Wagner v. Varner (1879) 50 Iowa 532.

New York.—Re Landers (1917) 100 Misc 635, 166 NYS 1036; Re Monroe (1928) 132 Misc 279, 229 NYS 476; Re Gourlay's Estate (1940) 173 Misc 930, 19 NYS2d 122.

North Carolina.—Grimes v. Grimes (1935) 207 NC 778, 178 SE 573.

The child's right to inherit from blood relatives having been once given by statute "can be taken away only by statute," except, of course, as the act of the individual or individuals involved may end it. Re Landers (1917) 100 Misc 635, 166 NYS 1036. This seems to be the generally prevailing view.

In Re Darling (1916) 173 Cal 221, 159 P 606, the court stated that it appeared to be well settled in all jurisdictions in which the common law constitutes the rule of decision, that the right of inheritance of a child is affected by its adoption "only to the extent that the statutes bearing on the matter in terms or by implication provide." (But that adoption was unknown to the common law, see infra.)

In Sorenson v. Churchill (1927) 51 SD 113, 212 NW 488, the court quoted with approval the language of Hockaday v. Lynn (1906) 200 Mo 456, 98 SW 585, 8 LRA NS 117, 118 Am St Rep 672, 9 Ann Cas 775, to the effect that consanguinity is so fundamental in statutes of descent and distribution "that it may only be ignored by construction when courts are forced so to do, either by the terms of express statute or by inexorable implication."

As late as the year 1917, a New York judge declared that his attention had been called to no authority in that or any other state, nor had he been able to find any, "which even hints at the possibility of an adopted child losing his rights of inheritance from natural kindred by reason of adoption." Re Lander's Estate (1917) 100 Misc 635, 166 NYS 1036. But see certain of the cases infra, §§ 2 and 3.

According to Young v. Bridges (1933) 86 NH 135, 165 A 272, the statutes regulating inheritance and the adoption statutes touching the same matter are in pari materia and should be construed together as if they were one law. In that case, which did not on its facts involve any question of the right of an adopted child to take two portions from a single estate (one as an adopted person and one as blood kin), the court nevertheless made use of the possibility of such a dilemma as arguing that the whole idea of dual heirship should be rejected and the child confined to the adopted inheritance. The court was of the opinion that any supposition of a legislative purpose to reserve the right to inherit from blood relatives was "negatived

[§§ 1, 2]

by the predominant policy of the inheritance statute against dual heirship." The court noted that the adoption statute provided that an adoption should make the child "the child of the petitioner to all legal intents and purposes," and concluded therefrom that, giving language its ordinary meaning and giving weight to the policy the statute disclosed, the result which followed was that an adoption establishes "a change of status by which in general the relatives become strangers in legal aspect and others take their place." Further as to the statute there in question, see the same case, infra, § 3.

✦

Since the right of adoption was unknown to the common law and exists in this country, in those states having that law as the basis of their jurisprudence only by virtue of statute (1 Am Jur, Adoption of Children § 3), but since it did exist under the civil law, the cases sometimes make reference to the civil law on the subject.[1]

In Humphries v. Davis (1885) 100 Ind 274, 50 Am Rep 788, where the question decided was not within the present subject, the court noted that the rule there followed did not cut off the child from inheriting from its natural relatives, and said that "it may inherit from them and from its adoptive parents. This was the rule of the civil law," citing Sandars' Justinian, 105. The opinion explained that the common law made no provision for the adoption of children and consequently no light could be obtained from that source, but that the Roman law did make provisions for adoption and that, as revised and changed by Justinian, formed a complete system whereby the adopted child was declared "assimilated, in many points, to a son born in lawful matrimony," and that at the same time "that law preserved to the child all the family rights resulting from his birth."

However, it has been said that the civil law's reservation of inheritance from the adopted child's natural relatives "does not shed much light to show the reservation in a statutory adoption," and that if the civil-law system of adoption may be of aid in determining the incidents of a statutory adoption, because of the absence of any common law on the subject, it can be so only on the theory that the statute was enacted with the design of incorporating in some measure the system. Young v. Bridges (1933) 86 NH 135, 165 A 272.

✦

This annotation is of course concerned only with the rights which an adopted person may possess as an heir or distributee by reason of the death of an intestate occurring subsequently to the adoption.

In Re Pillsbury (1917) 175 Cal 454, 166 P 11, 3 ALR 1396, the court declared that "unquestionably" since the adoption of the three minors followed the death of their father it did not affect their status as his heirs and that whatever rights had thus descended to them they retained.

§ 2. Inheritance from immediate parents.

The child will be entitled to take as heir or distributee of his natural parent dying intestate subsequently to the adoption save only as the statutes have in some form otherwise provided —see general citations touching this point, supra, § 1.

In the following cases the right to inherit from the natural parent was upheld.

United States. — For federal cases involving state law, see state headings infra.

Arkansas. — Hawkins v. Hawkins (1951) 218 Ark 423, 236 SW2d 733 (express statutory provision).

Delaware. — Glanding v. Industrial

1. The English Adoption of Children Act, of 1926 (16 & 17 Geo V, ch 29) was the first English statute to provide for the adoption of children. 17 Halsbury's L of Eng p 679, ¶1407. The effect of an adoption order thereunder is not to deprive the child of any right to or interest in property to which he would have been entitled without the adoption. Id. pp 687, 688, ¶1422.

Trust Co. (1946) 29 Del Ch 517, 46 A2d 881.

Florida. — Re Hewett's Estate (1943) 153 Fla 137, 13 So2d 904 (express statutory provision).

Georgia. — Macon, D. & S. R. Co. v. Porter (1942) 193 Ga 40, 22 SE2d 818, followed in Macon, D. & S. R. Co. v. Porter (1942) 68 Ga App 462, 23 SE2d 280 (per plain intent of statute).

Illinois.—Re Tilliski's Estate (1945) 390 Ill 273, 61 NE2d 24.

Indiana. — Humphries v. Davis (1885) 100 Ind 274, 50 Am Rep 788; Patterson v. Browning (1896) 146 Ind 160, 44 NE 993.

Kansas. — Dreyer v. Schrick (1919) 105 Kan 495, 185 P 30; Bartram v. Holcomb (1921) 109 Kan 87, 198 P 192.

Kentucky.—Villier v. Watson (1916) 168 Ky 631, 182 SW 869, LRA1918A 820.

Michigan. — Re Klapp's Estate (1917) 197 Mich 615, 164 NW 381, LRA1918A 818; Re Carpenter's Estate (1950) 327 Mich 195, 41 NW2d 349; Slattery v. Hartford-Connecticut Trust Co. (1932) 115 Conn 163, 161 A 79 (so held under Michigan law).

Minnesota. — Roberts v. Roberts (1924) 160 Minn 140, 199 NW 581.

Mississippi.—Sledge v. Floyd (1925) 139 Miss 398, 104 So 163.

Missouri. — Clarkson v. Hatton (1898) 143 Mo 47, 44 SW 761, 39 LRA 748, 65 Am St Rep 635 (so stating); Leeper v. Leeper (1941) 347 Mo 442, 147 SW2d 660, 133 ALR 536 (obiter); Rumans v. Lighthizer (1952) 363 Mo 125, 249 SW2d 397 (obiter); Burnes v. Burnes (1904, CC Mo) 132 F 485, affd (CA8th) 137 F 781, cert den 199 US 605, 50 L ed 330, 26 S Ct 746. But, contra, see Wailes v. Curators of Central College (1953) 363 Mo 932, 254 SW2d 645, 37 ALR2d 326, infra, § 3 (involving the later Missouri statute).

Montana. — Re Kay's Estate (1953) — Mont —, 260 P2d 391.

South Dakota.—Sorenson v. Churchill (1927) 51 SD 113, 212 NW 188.

Tennessee. — Coonradt v. Sailors (1948) 186 Tenn 294, 209 SW2d 859, 2 ALR2d 880.

Utah. — Re Benner (1946) 109 Utah 172, 166 P2d 257; Hendrich v. Anderson (1951, CA10th Utah) 191 F2d 242.

Washington. — Re Roderick (1930) 158 Wash 377, 291 P 325, 80 ALR 1398.

Wisconsin. — Re Sauer (1934) 216 Wis 289, 257 NW 23.

As indicated, the problem is ordinarily merely one of the construction of the adoption statute.

In Roberts v. Roberts (1924) 160 Minn 140, 199 NW 581, it was held that the right to inherit from the natural father was retained notwithstanding the adoption statute provided that an adopted child should become the legal child of the persons adopting him and they should become his legal parents, with all the rights and duties between them of natural parents and legitimate child, and that the child should inherit from the adopting parents or their relatives as though he were the legitimate child of such parents, and should not owe his natural parents or their relatives any legal duty, and that in case of his death intestate the adopting parents and their relatives should inherit his estate, as if they had been his parents and relatives in fact. From the opinion in that case it appears that at the time of the adoption, in the year 1898, the adoption statute contained a provision that no person by being adopted should lose his right to inherit from his natural parents or kindred, but that that saving provision had not been carried over into the revision of the statutes in 1905 and did not appear in the later statute; from which matters, viewed in connection with the explicit provisions of the adoption statute in force at the death of the decedent, which went so far as to disinherit the natural parents and relatives of the child, it would seem that a strong argument might have been constructed to the effect that by the later statutes the legislature intended to displace the natural parent-and-child relationship with the adopted one and not to save rights of inheritance from natural parents or kindred. In that case the adopted person claimed nothing under the express res-

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ervation of rights of inheritance contained in the statute as it existed at the time of the adoption proceeding.

In Re Sauer (1934) 216 Wis 289, 257 NW 28, where the pertinent section of the adoption statute provided, *in the first sentence*, that the adopted child should be deemed, "for the purposes of inheritance and succession and for all other legal consequences and incidents of the natural relation of parents and children," the same to all intents and purposes as if he had been born in lawful wedlock of the adoptive parents, but should not be capable of taking property expressly limited to the heirs of the body of an adoptive parent, and provided, *in the second sentence*, that the adoptive parents and their heirs and next of kin should be deemed for purposes of inheritance and succession by such parents, their heirs and next of kin, the same to all intents and purposes as if the child had been born in lawful wedlock of such adoptive parents, and should take in accordance with the general statutory provisions regulating inheritance and succession as between a parent and a child dying without issue, with the proviso that if no heirs or next of kin are found in the line of the adoptive parents the property of the deceased should go to the natural parents, and in case they shall have died, then "in their line of descent," and provided, *in the third sentence*, that the natural parents by the order of adoption should be deprived of such legal rights, if any, of whatsoever nature they may have had respecting the child and its property, and provided, *in the fourth sentence*, that the child should be free from all legal obligations of maintenance and obedience to the natural parents, subject to a further proviso clearly not of significance in the present inquiry—the court was of the opinion that the legislature did not by those provisions intend to deny to an adopted child the right to inherit from his natural parents. The court conceded that there would have been considerable force in the opposing contention if the section had contained no more than the first sentence, since had the legislature by that sentence intended the meaning argued for by the appellant it would have been unnecessary to have enacted much of the remainder of the section. It should be noted, however, that that ruling was made in view of a prior decision (Re Estate of Bradley (1924) 185 Wis 393, 201 NW 973, 38 ALR 1) which was stated to be to the effect that a statute which interferes with the descent of property to blood kindred or interrupts the natural course of descent should be strictly construed, especially since the established doctrine in Wisconsin is "that the right to inherit property is a natural right which the legislature cannot destroy." The court, in the Sauer Case, pointed out that in the adoption statute there was certainly no explicit and unmistakable language compelling a conclusion contrary to the one reached, and the court considered that under the Wisconsin decisions a child could not be deprived of the natural right of inheritance without the use of explicit and unmistakable language. But see Re Ries's Estate (1951) 259 Wis 453, 49 NW2d 483, 50 NW2d 397, infra, § 3.

In Re Tilliski's Estate (1945) 390 Ill 273, 61 NE2d 24, the court was of the opinion that in regard to the right of an adopted child to inherit from its natural mother the changes which had been made in the adoption and descent statutes effected no change in result, and in particular that the descent provision declaring that when a decedent leaves a surviving spouse and also a descendant, two-thirds of the property shall go "to the decedent's descendants per stirpes" was to be construed as including a child of decedent who had been adopted by a stranger, notwithstanding, as to adoptions, the statutes declared that a child lawfully adopted "is deemed a descendant of the adopting parent for purposes of inheritance." The court applied the principle that an adopted child is not deprived of the right to inherit from blood parents "unless clearly required by statute," and stressed that neither the prior statute of adoption, nor the

probate act involving the adoption language in question, nor the descent provisions, contained any language to the effect that a child should be incapable of inheriting from its natural parents.

In Re Kay's Estate (1953) — Mont —, 260 P2d 391, it was held that inasmuch as the statutes of descent provided that if a decedent left no surviving husband or wife but left issue, the whole estate should go to such issue "unless otherwise expressly provided by the laws of Montana," and there was in fact nothing to be found in the constitution or statutes expressly providing that because of their adoption by another the bodily issue of a natural parent should lose the right to inherit, the adopted child in question was entitled to take equally with his brother the entire estate of the natural father where the same passed as in case of intestacy.

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Some of the statutory language in question has seemingly been concerned with the personal and family relationships rather than with any matter implying a cessation of the child's rights of inheritance.

In Glanding v. Industrial Trust Co. (1946) 29 Del Ch 517, 46 A2d 881, the court said that the language of the Delaware adoption statute (providing that by the final order of adoption the natural parents should be divested of all legal rights and obligations in respect to the child and the child should be free from all legal obligations of obedience and maintenance respecting them) dealt with nothing more than the usual rights and obligations of parent and child while the latter remains a member of the family, and that thereby the natural status was not changed, the child continuing to be a child and heir at law and next of kin of his natural parents and the latter continuing to be the parents of the child with the same rights of inheritance as theretofore, save only for the proviso of the statute covering the case of an adopted child surviving the adoptive parent and dying without issue, when the property which came from the adopting parent and remains undisposed of shall pass to his or her next of kin and not to the next of kin of the adopted child. The court expressed the opinion that an adoption statute taken in connection with an inheritance statute should not be construed to change the devolution of intestate property "unless it shows a clear intent on the part of the legislature to do so."

In Sledge v. Floyd (1925) 139 Miss 398, 104 So 163, where the report does not set out the language of the adoption statute but the court stated that the act did not provide "in terms" that the adopted child should cease to be regarded as the child of his natural parents but divested the natural parents of the custody and control without in terms relieving them from the legal obligations imposed on them by law and without in terms providing that the child should cease to be regarded as their child, the court said that the adoption proceeding conferred on the child "such rights" as were therein "mentioned," and it was held that since neither the statute nor the proceeding purported to deprive the child of her right to inherit from her blood relatives such right was retained, and in particular that she was entitled to inherit from her natural father notwithstanding the adoption. The court remarked that it did not think that the adoption statute intended to deprive children of their rights to inherit from their blood parents and blood relatives, since to do so "would raise grave questions where a child having expectations should be adopted against its consent or without its power to consent during the tender years of minority."

In Sorenson v. Churchill (1927) 51 SD 113, 212 NW 488, the court said that the pertinent sections of the South Dakota adoption statutes were similar to those in question in Re Darling (1916) 173 Cal 221, 159 P 606, infra, yet the South Dakota court declined to follow the Darling Case. The court observed that the adoption statute fixed the status of the adopting person and of the adopted child and defined the rights and obligations of each to the other, without making any mention of the interests either might

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have in the estate of the other, and concluded, therefore, that notwithstanding the adoption the child was entitled to take the entire estate of his natural mother to the exclusion of the latter's brothers and sisters.

In Re Benner (1946) 109 Utah 172, 166 P2d 257, wherein the court said that the adoption statute in question was similar to the statute of South Dakota dealt with in Sorenson v. Churchill (1927) 51 SD 113, 212 NW 483, supra, the court quoted with approval language of the latter opinion to the effect that the adoption statute did not so limit that part of the succession statute in question as to cause an adopted child to lose the right to inherit from his natural parents, and that that conclusion was fortified by the consideration that under the law of adoption the consent of both natural and adopting parent is essential, and by his consent each is bound, whereas, "no one consents for the innocent and helpless subject of the transfer that he shall lose the right to inherit from his natural parent."

In Re Roderick (1930) 158 Wash 377, 291 P 325, 80 ALR 1398, where the court stated that Washington adoption statutes were substantially the same as those of California, Minnesota, and South Dakota, and the Washington provisions were that by the adoption the natural parents should be divested of "all legal rights and obligations" in respect of the child and the child should be free from all legal obligations of maintenance and obedience respecting them, and should be to all intents and purposes the child and legal heir of his or her adopter or adopters, and be entitled to all the rights and privileges and subject to all the obligations of a child of such person or persons begotten in lawful wedlock, with the proviso that in case of the decease of persons who have adopted a child and the subsequent decease of the child without issue, property coming from the adopting parents should descend to their next of kin and not to the next of kin of the child, it was held that a child of the decedent who had been adopted by a stranger remained entitled to inherit from the decedent and that the consequence was that since he had made no provision for her in his will and did not mention her therein, he in law died intestate as to her and she became entitled to share in the estate in the same manner as though he had died intestate. The latter consequence followed from the statute providing that if a person shall make his last will and die leaving a child, not named or provided for therein, who was born after the making of the will or the death of the testator, the testator as to such child shall be deemed to have died intestate, etc.

In Hale v. Department of Labor & Industries (1944) 20 Wash2d 14, 145 P2d 285 (where it was held that a child who had been receiving compensation from the department of labor and industries on account of the death of her father did not lose the right to further monthly amounts because of having been adopted by another) the court stated it was committed to the rule that an adoption does not effect a dissolution of the natural relationship between kindred, and that an adopted child is not deprived of the benefits arising therefrom, citing the Roderick Case (Wash) supra.

But compare the California cases, infra.

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A statute which includes as a principal or dominant feature the establishing of the child as an heir of the adopting parent, without making reference to the inheritance from natural parents, is not likely to be construed as depriving the child of that inheritance.

In Shaver v. Nash (1930) 181 Ark 1112, 29 SW2d 298, 73 ALR 961, the court declared, arguendo, that under the Texas statute (providing that any person wishing to adopt another "as his legal heir" should file in a designated office a written statement of a character described and that when made and recorded the statement should entitle the adopted child to all the rights and privileges of "a legal heir" of the adoptive parent) an adopted child retains all his rights to the

protection "and to the estate of, his natural parent."

In Burnes v. Burnes (1904, CC Mo) 132 F 485, affd (CA8th) 137 F 781, cert den 199 US 605, 50 L ed 330, 26 S Ct 746, the court stated that under the Missouri statutes then applying, no judicial proceeding was needed for the adoption of children and that all the statutes seemed to require was a signing by the adopting parent of a specified instrument, its due acknowledgment, and its recording, and that the effect of it was that the child could inherit from its foster parent, even though adopted without his knowledge or consent; in fact could inherit "both from his natural father and the adopting father. Such is and has been the law of Missouri." But see Wailes v. Curators of Central College (1953) 363 Mo 932, 254 SW2d 645, 37 ALR2d 326, infra, § 3, involving a very different statute.

In Slattery v. Hartford-Connecticut Trust Co. (1932) 115 Conn 163, 161 A 79, involving an adoption in Michigan under a statute declaring that the person adopting a child shall stand in the place of a parent to the child and be liable to all the duties and entitled to all the rights of a parent, and that the child shall thereupon become an heir at law of the person adopting him the same as if he were in fact the child of the adopting person, the court said that, under that statute as construed in Michigan, the person adopted would inherit from both natural and adopting parents even though the statute did not specify that the child should retain the inheritance from his natural parents. The ruling made was that the child was entitled to inherit as a child of his natural parent in Connecticut notwithstanding, the court stated, it had seemed wise to the Connecticut legislature to debar a child adopted under the Connecticut statutes from inheriting from his natural parents.

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Various cases disclose statements or intimations to the effect that the child retains the right of inheritance from his natural parents notwithstanding the adoption.

In Villier v. Watson (1916) 168 Ky 631, 182 SW 869, LRA1918A 820, the court stated that "all the authorities agree, that the fact of adoption does not lose the adopted child's right of inheritance from his parents," and the court reasoned therefrom that it was "difficult to see why a child could not inherit from two or more persons who might by adoption bestow that right upon him."

In Clarkson v. Hatton (1898) 143 Mo 47, 44 SW 761, 39 LRA 748, 65 Am St Rep 635, the court went so far as to say that by the adoption the child becomes, in a legal sense, the child of the adopting parents, and at the same time remains the child of his natural parents, and is not deprived of his rights of inheritance from them "unless expressly so provided by statute." That language, however, was doubtless used obiter. Compare the ruling in Wailes v. Curators of Central College (1953) 363 Mo 932, 254 SW2d 645, 37 ALR2d 326, infra, § 3.

In Rumans v. Lighthizer (1952) 363 Mo 125, 249 SW2d 397, a contest between the blood kin of the adopted child on the one side and the blood kin of the adoptive parent on the other, both child and parent having died intestate (and therefore not involving the right of an adopted child to inherit from its natural parents or kin), the court cited the Clarkson Case (1898) 143 Mo 47, 44 SW 761, 39 LRA 748, 65 Am St Rep 635, supra, as authority for the proposition that the adopted child inherits "from its adoptive parents and from its natural parents." Yet at the same time the court observed that the Missouri adoption statute of 1917 differed materially from the prior law, and the court quoted language of the 1917 Act, including the provision that when a child is adopted under and in accordance with the act "all legal relationship, and all rights and duties, between such child and its natural parents shall cease and determine," and moreover, the court quoted the language of St. Louis Union Trust Co. v. Hill (1934) 336 Mo 17, 25, 76 SW2d 685, 689, to the effect that under the later law an adopted child's relations with its natural parents cease and by

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law it becomes the child of its adopting parents "for every purpose as fully as though born to the adopting parents in lawful wedlock," and that the adopted child "is taken out of the blood stream of its natural parents" and placed, by operation of law, in the blood stream of its adopting parents.

In Re Klapp's Estate (1917) 197 Mich 615, 164 NW 381, LRA1918A 818, the court conceded, with reference to an adoption statute declaring that upon the adoption taking effect the child should become an heir at law of the adoptive parent or parents, the same as if he or she were in fact the child of such person or persons, that it was "pretty well settled by the adjudicated cases that an adopted child may inherit from both his natural and adoptive parents." However, the matter there to be decided was whether the adopted child lost the right to inherit from the adoptive parent when he was thereafter adopted by another.

In Re Carpenter's Estate (1950) 327 Mich 195, 41 NW2d 349, where the matter to be decided was whether the child remained an heir at law of the first adoptive parents notwithstanding a second adoption (the ruling being in the negative), the court incidentally stated that "there is no question but that the child will always remain an heir at law of her natural parents."

In Patterson v. Browning (1896) 146 Ind 160, 44 NE 993, the court, in holding that the right of an adopted child to inherit from the adoptive parent was not destroyed by a second adoption occurring after the death of the first adoptive parent, relied, arguendo, upon the fact that an adopted child may inherit from both the natural and the adoptive parents.

In Dreyer v. Schrick (1919) 105 Kan 495, 185 P 30, the court, in holding that the fact that a child is the subject of a second adoption does not cut off the capacity to inherit under the former one, asserted that an adopted child may inherit from both the natural and the adoptive parents.

Re Anderson's Estate (1935) 23 Pa D & C 332, involved the construction of a will rather than of statutes of descent or adoption. It was there held that the child was entitled to share in the corpus of a testamentary trust established for the benefit of the natural parent for life, to be paid at his decease "to his child or children living," notwithstanding during the lifetime of his natural parent the child was adopted by a stranger. It is true that at one point the auditing judge said that the question involved the determination of the status of an adopted person "as respects inheritance" from or through a natural parent, but in his ruling he in effect departed from that language. The opinion in confirmation placed no reliance on the mere inheritance laws.

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The adoption statutes of certain states have expressly saved the child's right to inherit from his natural parents.

Arkansas. — Hawkins v. Hawkins (1951) 218 Ark 423, 236 SW2d 733.

Florida.—Re Hewett's Estate (1943) 153 Fla 137, 13 So2d 904.

Massachusetts. — Delano v. Bruerton (1889) 148 Mass 619, 20 NE 308, 2 LRA 698.

New York. — Re Landers (1917) 100 Misc 635, 166 NYS 1036; Re Monroe (1928) 132 Misc 279, 229 NYS 476; Re Gourlay's Estate (1940) 173 Misc 930, 19 NYS2d 122; Re Ferris' Estate (1948, Sur) 79 NYS2d 12; Re Fodor (1952) 202 Misc 1100, 117 NYS2d 331.

Ohio. — National Bank of Lima v. Hancock (1948) 85 Ohio App 1, 88 NE 2d 67 ("nothing in this act shall be construed as debarring a legally adopted child from inheriting property of its natural parents or other kin"); Re Crossley (1939) 135 Pa Super 524, 7 A2d 539 (involving Ohio statute).

Pennsylvania. — Re Crossley (1939) 135 Pa Super 524, 7 A2d 539 (involving express provision of Ohio statute).

Wisconsin.—Re Ries's Estate (1951) 259 Wis 453, 49 NW2d 483, 50 NW2d 397.

In Re Hewitt's Estate (1943) 153 Fla 137, 13 So2d 904, a case involving the right of an adopted child to inherit from kindred of the adoptive parent or parents, and therefore not on its

facts within this annotation, the Florida statute of 1933 in question provided that an adopted child "shall inherit the estate of its blood parents, but such blood parents shall not inherit from such adopted child."

In Hawkins v. Hawkins (1951) 218 Ark 423, 236 SW2d 733, the court said it was the settled law of Arkansas that an adopted child "can inherit from its natural parents," and moreover, that by the adoption statute of 1947 it had been expressly provided that "the adopted child should inherit from its natural parents."

In Macon, D. & S. R. Co. v. Porter (1942) 195 Ga 40, 22 SE2d 818, followed in Macon, D. & S. R. Co. v. Porter (1942) 68 Ga App 462, 23 SE2d 280, not involving rights of inheritance but a question whether the adopted child remained the child of his natural father so as to be able to recover for the latter's wrongful death, the adoption statute provided that the adoption decree should declare the child to be the adopted child of the adoptive parent and capable of inheriting his estate, and that as between them the relation of parent and child should exist "except that the adoptive father shall never inherit from the child. To all other persons the adopted child shall stand as if no such act of adoption had been taken."

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Notwithstanding the general judicial tendency to uphold the child's right to inherit from his natural parents where the adoption statute may be construed as establishing a personal and family status without intent to affect existing rights of inheritance (see generally the cases supra, especially Sorenson v. Churchill (1927) 51 SD 113, 212 NW 488), the California courts have proceeded to an opposite conclusion.

In Re Darling (1916) 173 Cal 221, 159 P 606, the court declared that the adoption statute specifying that the parents of an adopted child are from the time of the adoption "relieved of all parental duties" toward and "all responsibility" for the child and have "no right over it" had the effect of providing that the adopted child could no longer inherit from his parents because so far as they were concerned "he is no longer their child." The question presented, however, was whether the adopted child could inherit from his grandfather, representatively in the place of his father deceased, and it was held that he could.

In Re Tilliski's Estate (1945) 390 Ill 273, 51 NE2d 24, the court commented that in the Darling Case (Cal) supra, "The somewhat illogical result was reached that an adopted child could not inherit from its natural parents, but could inherit from its natural grandparents." And notice in this connection Sorenson v. Churchill (1927) 51 SD 113, 212 NW 488, supra.

In Re Hunsicker (1923) 65 Cal App 114, 223 P 411, where the adoption occurred in Pennsylvania under statutes merely providing that it should be lawful for any person desirous of adopting any child "as his or her heir" to present a petition declaring such desire and that he or she would perform the duties of a parent to the child, etc., and that the court, if satisfied that the welfare of the child would be promoted by the adoption, might with the consent of the parents of the child decree that the child assume the name of the adopting parent and have all the rights of a child and heir of such adopting parent and be subject to the duties of such a child, and further, that if the adopting parent shall have other children the adopted one shall share the inheritance only as one of them, and that he, she, or they shall respectively inherit from and through each other "as if all had been the lawful children of the same parent," it was held that a natural daughter of the decedent, the will not mentioning her or her children, nor containing any language to indicate that the omission was intentional, could not claim the estate as a pretermitted child (by virtue of the California statute declaring that when any testator omits to provide in his will for any of his children or for the issue of any deceased child, unless it appears that such omission was intentional, such child, or the issue of such child, shall take the same share in the

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estate of the testator as if he had died intestate), for the court was of the opinion that the daughter of the decedent was not one of his children under that statute, the relation of parent and child existing between her and her father having, in the view of the court, been supplanted by a new relation created by the adoption. It seems that the principal contention of the daughter was that upon the death of the adoptive parent the natural relation of parent and child between herself and father had been restored. One might have supposed that the import of the Pennsylvania adoption statute was simply to establish the relation of parent and child between the child and the adopting parent and entitle the child to share by inheritance with the natural children of the adoptive parent in case of intestacy, and that it disclosed no intent to destroy any right to inherit from other persons.

In Re Martin's Estate (1948) 86 Cal App2d 474, 195 P2d 839, where the theory of appellant was that respondent was not entitled to inherit as a daughter of the decedent because she had been adopted out of the family in the year 1910 by a Minnesota adoption decree, the court seemed to assume that had the adoption been valid the result contended for would have followed, but held that the adoption decree was without effect for want of proper notice.

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A few statutes very plainly deprive the child of the right to inherit from the natural parents.

In Slattery v. Hartford-Connecticut Trust Co. (1932) 115 Conn 163, 161 A 79, where the court quoted with evident approval the language of Re Darling (1916) 173 Cal 221, 159 P 606, to the effect that it is well settled in all jurisdictions in which the common law constitutes the rule of decision that "the right of inheritance of a child is affected by its adoption only to the extent that the statutes bearing on the matter in terms or by implication provide," the court, without quoting or paraphrasing the Connecticut adoption statute, remarked that it had "seemed wise to our legislature to debar a child adopted under our statute from the right of inheritance from his natural parents, and it has to this extent established our public policy."

In Re Tilliski's Estate (1945) 390 Ill 273, 61 NE2d 24, the court noted that Connecticut had "an express statute precluding inheritance from the natural parent."

And notice the District of Columbia statute in question in Re Penfield's Estate (1949, DC Dist Col) 81 F Supp 622, infra, § 3.

Apparently by a recent Minnesota statute (Laws 1951, ch 508, MSA §§ 259.21 et seq) it is expressly provided that an adopted child (perhaps simply that an adopted illegitimate child) shall not inherit from his natural father, since in O'Dell v. Hingeveld (1951) 235 Minn 223, 50 NW2d 476, the opinion states that prior to that statute, an illegitimate child, adopted by a stranger inherited from its natural father just as did a legitimate child—the court citing Roberts v. Roberts (1924) 160 Minn 140, 199 NW 581, supra.

The Missouri statute, which contains strong language touching the point, has been construed as cutting off the natural inheritance—see Wailes v. Curators of Central College (1953) 363 Mo 932, 254 SW2d 645, 37 ALR2d 326, infra, § 3.

In Re Hampton's Estate (1942) 55 Cal App2d 543, 131 P2d 565, it was conceded that the daughter of the testatrix would have no standing to contest the will if her adoption by another in Kansas was valid, the court stating in reference to that point that the California Probate Code provided that "an adopted child does not succeed to the estate of a natural parent when the relationship between them has been severed by the adoption," citing Re Darling's Estate (1916) 173 Cal 221, 159 P 606, supra. But in the Darling Case the court distinctly stated: "There is no provision in any of our statutes of succession or those relating to adoption that in terms refers to the matter of inheritance."

§ 3. Inheritance from grandparents or other natural kin.

The right of the child to inherit from his grandparents or other natural kin, or to share in the distribution of personalty of intestate persons so related, is not affected by the adoption except as the statutes otherwise provide—see the general citation of cases touching this point, supra, § 1.

In the following cases, such right was upheld:

California.—Re Darling (1916) 173 Cal 221, 159 P 606.

Colorado.—Re Wilson (1934) 95 Colo 159, 33 P2d 969.

District of Columbia.—Re Penfield's Estate (1949, DC Dist Col) 81 F Supp 622.

Georgia.—Macon, D. & S. R. Co. v. Porter (1942) 195 Ga 40, 22 SE2d 818, followed in Macon, D. & S. R. Co. v. Porter (1942) 68 Ga App 462, 23 SE2d 280.

Indiana. — Humphries v. Davis (1885) 100 Ind 274, 50 Am Rep 788; Billings v. Head (1916) 184 Ind 361, 111 NE 177; Head v. Leak (1916) 61 Ind App 253, 111 NE 952.

Iowa.—Wagner v. Varner (1879) 50 Iowa 532.

Kansas. — Bartram v. Holcomb (1921) 109 Kan 87, 198 P 192.

Missouri.—St. Louis Union Trust Co. v. Kaltenbach (1945) 353 Mo 1114, 186 SW2d 578. But see Wailes v. Curators of Central College (1953) 363 Mo 932, 254 SW2d 645, 37 ALR2d 326, infra, this section.

New York.—Re Landers (1917) 100 Misc 635, 166 NYS 1036; Re Gourlay's Estate (1940) 173 Misc 930, 19 NYS2d 122.

Utah. — Re Benner (1946) 109 Utah 172, 166 P2d 257.

In Re Landers (1917) 100 Misc 635, 166 NYS 1036, the right of the child, a half sister of the decedent, to share equally in the distribution of personalty with a sister of the whole blood was held unaffected by the adoption statutes (which, as first enacted, declared that the adopted child and the adoptive parent should sustain toward each other the legal relation of parent and child and have all the rights and be subject to all the duties of that relation, "excepting the right of inheritance," but which as amended, left out the words "excepting the right of inheritance," and substituted the words "including the right of inheritance," and further declared that the heirs and next of kin of the adopted child should be the same as they would be were he the legitimate child of the adopting parent, and also that "his rights of inheritance and succession from his natural parents remain unaffected by such adoption"), for although the statutes made no reference to other kin of the adopted child the court concluded that this simply indicated that "there is no altered relation created by statute."

The grandchildren of an intestate have frequently been allowed to share as heirs or distributees notwithstanding adoption by a stranger.

In Re Darling (1916) 173 Cal 221, 159 P 606, the view taken was that the California adoption statute (providing simply for an order of adoption declaring that the child "shall thenceforth be regarded and treated in all respects as the child of the person adopting," and that the child and the person adopting shall sustain toward each other the legal relation of parent and child and have all the rights and be subject to all the duties of that relation, and further, that the parents of an adopted child shall from the time of adoption be "relieved of all parental duties" toward and all responsibility for the child and have "no right over it") did not have the effect of providing in any manner, either expressly or by implication, that an adopted child should not inherit from blood relatives, and accordingly it was held that the child was entitled to share in the estate of his grandfather, representatively through his deceased father, under that provision of the code declaring that if a decedent leaves no surviving husband or wife but leaves issue, the whole estate shall go to such issue and that if such issue consists of more than one child living, "or one child living and the lawful issue of one or more deceased children," then the estate should go in equal shares to the children living, "or to the child living

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and the issue of the deceased child or children by right of representation." In short, the adopted child in that case remained the "issue" of his grandfather under the law of succession notwithstanding the adoption.

In St. Louis Union Trust Co. v. Kaltenbach (1945) 353 Mo 1114, 186 SW2d 578, the court, in holding that the child remained capable of inheriting from his grandfather, that is, the court said, "through his own father," notwithstanding the California adoption proceeding, noted that the Missouri statute did not expressly provide that an adopted child should not inherit from his natural parents, and in that connection the court referred to the language of Clarkson v. Hatton (1898) 143 Mo 47, 44 SW 761, 39 LRA 748, 65 Am St Rep 635, to the effect that an adopted child remains the child of its natural parents "and is not deprived of its rights of inheritance from them unless expressly so provided by statute." However, in the Kaltenbach Case the specific ruling was simply that the minor child did not lose his rights of inheritance through his own father by a proceeding of which the father had been given no notice and in which no guardian ad litem had been appointed to represent and protect the child's interests.

In Re Gourlay's Estate (1940) 173 Misc 930, 19 NYS2d 122, it was held, upon the authority of Re Landers (1917) 100 Misc 635, 166 NYS 1036, supra, and seemingly under the same or similar statutory provisions, that a child adopted in New Jersey was entitled to share in New York in the distribution of New York assets of which the child's natural grandfather had died possessed.

And, in general, see the cases infra, § 4.

It may be noted that in Re Esposito's Estate (1943) 57 Cal App2d 859, 135 P2d 167, it was held that a granddaughter of the testator, notwithstanding her adoption by a stranger, could claim under the will, substitutionally, an interest in the estate left to her father, the father having predeceased the testator, for notwithstanding her adoption the granddaughter was a "lineal descendant" of her grandfather within the meaning of the statute providing that if a devisee or legatee dies during the lifetime of the testator the testamentary disposition to him fails unless an intention appears to substitute another, except that when any estate is devised or bequeathed "to any kindred" of the testator and the devisee or legatee dies before the testator "leaving lineal descendants," such descendants shall take the estate in the same manner as the devisee or legatee would have done had he survived the testator. The argument to the contrary was largely based on a further statute which dealt with the rights of illegitimate children, but which the court held did not apply and did not control the plain language of the statute first above referred to. The court noted that the granddaughter's claim was not founded upon the succession laws but arose under the laws relating to wills.

It may be noted that in Taylor's Estate (1946) 57 Pa D & C 311, it was held that the child, an illegitimate son of a daughter of one William McDaniels, could take under the provision of a will directing distribution "to the issue of William McDaniels"; this notwithstanding the child had been adopted by a stranger and the adoption statute provided that adopted persons should not be entitled "to inherit or take from or through their natural parents, grandparents, or collateral relatives."

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But in Re Ries's Estate (1951) 259 Wis 453, 49 NW2d 483, 50 NW2d 397, where it appeared that in the year 1947 the Wisconsin legislature had rephrased and condensed the language of the adoption statute which was in question in Re Sauer (1931) 216 Wis 289, 257 NW 289, supra, § 2, although generally it seems without intent to change the meaning, but there was added the distinct provision: "The adopted person does not lose the right to inherit from his natural parent," it was held that the addition of that provision, which had been included to

codify the ruling made in the Sauer Case, had the effect of preventing any extension of the doctrine of inheritance from natural relatives additional to parents, and that consequently the child in question by reason of her adoption was prevented from inheriting from her father's aunt. The court conceded that but for the added provision of the statute the Sauer Case might have become a precedent for decisions allowing adopted children to inherit from their natural relatives generally, but, the court said, "now the amendment has intervened," so as to set as a limit the point of decision in the Sauer Case. The language of the first sentence of that section of the adoption statute in question, as altered by the legislative condensation and rephrasing, contained the words that the effect of the order of adoption should be to "completely change the legal status" of the adopted person, language which seems to readily lend itself to the construction that the adopted relationship was to be substituted for the former one.

In Wailes v. Curators of Central College (1953) 363 Mo 932, 254 SW2d 645, 37 ALR2d 326, the first Missouri case to require a decision of the question whether an adopted child may inherit from or through its natural parents, the question was answered in the negative, this on the strength of the language of the Missouri adoption statute of 1917 providing that when a child is adopted in accordance with the provisions thereof all legal relationships "and all rights and duties between such child and his natural parents . . . shall cease and determine" and such child shall thereafter be deemed and held to be "for every purpose" the child of his parent or parents by adoption as fully as though born to him or them in lawful wedlock. The court stressed that it required "some ingenuity to reason that 'all rights' means all except one." There the precise question was whether the adopted children were the heirs of their grandparents, and therefore could be pretermitted heirs entitled to take notwithstanding the joint will of the grandparents, made no mention of them and they were the only children of the only child of such persons and such child had predeceased the decedents. The conclusion reached was that the children, having been validly adopted by strangers, were not heirs of their grandparents, and, therefore, could not be pretermitted heirs of such persons. The court cited Clarkson v. Hatton (1898) 143 Mo 47, 44 SW 761, 39 LRA 748, 65 Am St Rep 635, as indicating that prior to the 1917 change in the adoption law of Missouri an adopted child might inherit from both adoptive and natural parents.

In Young v. Bridges (1933) 86 NH 135, 165 A 272, the child, who was born in wedlock, had unquestionably inherited her mother's interest in the real estate in question, since that interest had come to the mother upon the death of the grandmother and had passed to the child upon the mother's death and was clearly unaffected by the subsequent adoption proceeding. The adoption then occurred, after which the maternal grandfather, who owned an interest in the same real estate, died. The ruling made under those circumstances was that the child could not share in the real estate as an heir of the grandfather, notwithstanding the statutes as amended made illegitimates "heirs of the mother and her kindred," for the court was of the opinion that the adoption statute in making the adopted child "the child of the petitioner to all legal intents and purposes," fairly disclosed an intention that the adoption should establish a "change of status by which in general the relatives become strangers in legal aspect and others take their place." The court took the view that the general purpose of the statute was to free the child from his status arising from his relationships by blood and to give him a new status and that he was to be regarded as "taken in legal contemplation from his natural family and made a member of a new family." As supporting that conclusion the court examined the dilemmas which can arise when the dual inheritance is preserved, by which striking

[§ 2]

inequalities can result, and the court said that when no dual inheritance has been explicitly enacted "the argument against its implication is reinforced by the unnatural and abnormal possibilities to which it leads." It is to be noted that the adoption statute there in question contained no terms peculiarly decisive of the problem, for it merely provided in not unusual terms that the child should bear the same relationship to the adopting parents and their kindred in respect to the inheritance of property, and all other incidents pertaining to the relation of parent and child, that he would bear were he the natural child of such parents, except that he should not take property expressly limited to the heirs of the body or bodies of the adopting parents, and should he die under age or intestate, leaving property received by gift "or inheritance from his natural kindred," such property should be distributed as if there had been no decree of adoption. As to the language last quoted from the statute, the court was of the opinion that any supposed implication thereof contrary to the conclusion reached could be explained by the possibility that at the time of adoption a child might have become the owner of property received by inheritance from natural kindred.

In Re Hunsicker (1923) 65 Cal App 114, 223 P 411, where the Pennsylvania adoption statute (declaring it to be lawful for any person desirous of adopting any child as his or her heir to present a petition, etc., and stipulating that the decree of adoption should provide that the child should assume the name of the adopting parent and have all the rights of a child and heir of such parent and be subject to the duties of a child and that in case the adoptive parent has other children, he, she, or they should respectively inherit from and through each other "as if all had been the lawful children of the same parent") was held not to entitle the daughter of the decedent to take as a pretermitted child by virtue of the California statute providing that when any testator omits to provide in his will for any of his children, or for "the issue of any deceased child," unless it appears that such omission was intentional, such child, or the issue of such child, shall have the same share in the estate of the testator as if he had died intestate, since the daughter had been adopted by a stranger, the further conclusion reached was that the children of the daughter were not entitled to share since they could not be described as "the issue of any deceased child" within the language of the California pretermission statute.

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Some of the statutes expressly save the right of the child to inherit from his natural kin.

Georgia.—See Macon, D. & S. R. Co. v. Porter (1942) 195 Ga 40, 22 SE2d 818, followed in Macon, D. & S. R. Co. v. Porter (1942) 68 Ga App 462, 23 SE 2d 280, supra, § 2.

Massachusetts.—Delano v. Bruerton (1889) 148 Mass 619, 20 NE 308, 2 LRA 698.

Ohio.—National Bank of Lima v. Hancock (1949) 85 Ohio App 1, 88 NE 2d 67 ("nothing in this act shall be construed as debarring a legally adopted child from inheriting property of its natural parents or other kin"); Re Crossley (1939) 135 Pa Super 524, 7 A2d 539 (involving Ohio statute).

Pennsylvania.—Re Crossley (1939) 135 Pa Super 524, 7 A2d 539 (involving Ohio statute).

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Pennsylvania and District of Columbia statutes have expressly cut off the child's right of inheritance from natural kin. Re Penfield's Estate (1949, DC Dist Col) 81 F Supp 622; Re Zoell's Estate (1942) 345 Pa 413, 29 A2d 31, cert den 318 US 778, 87 L ed 1146, 63 S Ct 855; Re Crossley (1939) 135 Pa Super 524, 7 A2d 539; Re Fisher (1942, Pa) 58 Montg Co LR 134; Re Wessman (1944, Pa) 29 North Co R 242; Re Kallenberger's Estate (1946, Pa) 36 Del Co 389.

The Pennsylvania statute of 1917, in question in Re Zoell's Estate (1942) 345 Pa 413, 29 A2d 31, cert den 318

US 773, 87 L ed 1146, 63 S Ct 855, contained the express provision that adopted persons "shall not be entitled to inherit or take from or through their natural parents, grandparents, or collateral relatives." Thereunder it was held that appellant, a niece of the intestate, who had been adopted by another in New Jersey, was not entitled to share in the estate even though the New Jersey decree purported to save to the child rights of natural inheritance.

In Re Penfield's Estate (1949, DC Dist Col) 81 F Supp 622, it was held that a Nevada adoption decree of March, 1922, did not exclude the adoptee from receiving as next of kin of a decedent personal property in the District of Columbia, notwithstanding the code of the District, becoming effective August 25, 1937, declared that all rights and duties "including those of inheritance and succession between the adoptee, his or her natural parents, their issue, collateral relatives, etc., shall be cut off," for the statute also provided that it should have no retroactive effect and should not be construed as affecting in any way the rights and relations obtained "by any decree of adoption entered prior to August 25, 1937."

The ruling in Stamford Trust Co. v. Lockwood (1922) 98 Conn 337, 119 A 218, did not involve the question whether an adopted child may take by inheritance from his natural parent or kin, but whether the testamentary words "the lawful issue," as applied to children of a son of the testator, included one who was born after testator's death and was adopted by a stranger. It was held that, by force of the adoption statute, the grandchild ceased to be the child of her father and became the child of her parents by adoption and could not take as "lawful issue." The report does not set out or paraphrase the statutory language construed to have had that effect, but seemingly it was language explicitly cutting off the right of inheritance—see Slattery v. Hartford-Connecticut Trust Co. (1932) 115 Conn 163, 161 A 79, supra, § 2.

§ 4. Inheritance in two capacities from one estate.

Decisions from Colorado, Iowa, Kansas, and Utah have allowed a child adopted by his grandparent to take as a "child" of the grandparent and also to take as a grandchild representing the stock of the immediate parent deceased, the latter recovery (except in Utah) having been allowed under statutes of descent and distribution manifestly designed to avoid the inequality which would result from an entire exclusion of the stock of the immediate parent, where a brother or sister of the latter survives, and seemingly not with any intent to produce a double inheritance.

In Wagner v. Varner (1879) 50 Iowa 532, where the intestate had adopted the two children of a deceased daughter, and was survived by them and also by certain children, it was held that the adoptees were entitled to share in the estate as children and also as grandchildren, taking in the latter capacity the share their mother would have taken had she outlived the decedent—this because the adoption statute declared that the rights, duties, and relations between parent and child by adoption should in all respects, including the right of inheritance, "be the same that exist by law between parent and child by lawful birth," and the descent statute provided that in case a child of the decedent be dead the heirs of such child shall inherit the share such child would have taken had he outlived his parent. The court said that there was no escape from the conclusion announced unless it could be said that a child by the adoption becomes disinherited by its natural parent, and the court noted that in certain contingencies adoption could be had without the consent of the natural parents, so that, in the view of the court, under the contention made an adopted child might be "disinherited by the natural parent without the consent of the latter." The further argument of the opinion was that by the adoption the child acquires certain additional rights and there was nothing in the act of adoption which in and of

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itself took away existing rights or any which might subsequently accrue, except as by statute provided, that the grandchildren in question remained the children of their natural parents, and the act of adoption did not deprive them of the statutory right of inheriting from their natural parents; in fact the court said: "We think the contrary is expressly provided." It may be noted, however, that in such a situation as that presented, no right to inherit from the natural parent is involved, the latter having predeceased the intestate; the question arising is simply whether the adopted child may share twice in the one estate.

In Bartram v. Holcomb (1921) 109 Kan 87, 198 P 192, where the intestate had had two children, one of whom died in his lifetime leaving an only child, and such child was then adopted by the intestate and survived him and eventually claimed one share in the estate as the representative of his mother and another as adopted son, the court in allowing the double sharing regarded it as the logical result of the rule that an adopted child may inherit from both the natural and the adopted parents, the court in that connection stating that the only question presented was whether the grandson could inherit from his grandfather as an adopted child "and at the same time as the sole surviving heir of his mother." The court did not set out or paraphrase the language of the descent statute, but evidently it was one in the familiar form dividing the estate of an intestate into as many shares as there are children surviving and children deceased who have left issue surviving.

In Re Wilson (1934) 95 Colo 159, 33 P2d 969, where, following the decease of both natural parents, the child was adopted by his grandfather, it was held that upon the latter's death the child was entitled to inherit from his grandfather both as an adopted child and as a grandchild, since the statutes of descent and distribution provided that intestate property should go to the decedent's children surviving and to the descendants of his children who were dead, while the adoption statute simply provided that to all intents and purposes legally adopted children should be children and legal heirs of the persons adopting them and was to be construed as depriving an adopted child of nothing but as conferring on him certain additional rights of inheritance.

In Re Benner (1946) 109 Utah 172, 166 P2d 257, the only surviving heirs of the intestate were three grandchildren, the issue of a deceased daughter, and the intestate had adopted one of those grandchildren. It was held that the child did not thereby lose the right to inherit from and through his mother, for in its bearing on that question the adoption statute merely provided that the adopted person and the adoptive parent should sustain the legal relation of parent and child and have all the rights and be subject to all the duties of that relation and that the natural parents should be relieved of all parental duties toward and all responsibility for the child and should have "no further rights over it," and the court was of the opinion that the reasonable construction of that language was that it did not touch the matter of inheritance but had reference rather to custody and control. Moreover, the conclusion which was held to follow (one judge dissenting) was that since the statute of descent and distribution provided that if a decedent leaves no husband or wife but leaves issue, the whole estate should go to such issue, the child was entitled to take a one-third share as "issue," besides the greater share he was entitled to as adopted child.

But in Billings v. Head (1916) 184 Ind 361, 111 NE 177, where the decedent left as his heirs a widow, four children, and a grandchild (the latter being the daughter of a deceased son who had been adopted by the grandfather), it was held with reference to the statutes of descent providing that an intestate's land should descend one-third to his widow and the remainder to his children equally, and that if a child be dead leaving a child surviving the latter should take the share which

the parent would have inherited if living, and also with reference to the adoption statute providing that an adopted child should be entitled to all the rights in the estate of the adopting father or mother, by descent or otherwise, that the child would be entitled to if a natural heir of the adopting father or mother, that the grandchild in question was entitled to take either two-fifteenths of the estate as the representative of her father or two-fifteenths as the adopted daughter of the intestate but was not entitled to take a double share. The court conceded that the statutes contained no language dealing with the situation presented, placing the decision upon the broad ground that it was "not the legislative purpose" that an adopted grandchild should ever inherit more of the adopting parent's estate than would one of his natural children. It was not decided in that case whether the grandchild took as adopted child or on the contrary through her father, although the court pointed out that in the future it might be important to know under which statute, the adoption statute or the descent statute the interest was taken, for by an express provision of the adoption statute if an adopted child should die the owner of property acquired through the adoption, rather than as a blood descendant, the same should descend to the heirs of the adopting father or mother and not otherwise. Later in Head v. Leak (1916) 61 Ind App 253, 111 NE 952, involving a distribution of the surplus of personal estate of the deceased adoptive parent, the grandfather of the adopted child, it was held that the principle to be followed in determining in which capacity the child took from her grandfather was that she should be held to take in that capacity which would give her the greatest interest and that since there was no proviso attaching to the further descent of property taken as a natural heir and it would descend according to the general laws of descent, and the child's rights in the property would consequently be greater as a natural heir than as an adopted child, the conclusion indicated was that she took as a natural heir through her deceased father.

In Morgan v. Reel (1905) 213 Pa 81, 62 A 253, it was held that the adoption statute, providing that the adopted child should have the rights of a child and heir of the adopting parent, although if the latter should have other children the adopted child could share only as one of them, and that in case of intestacy, he, she, or they, should respectively inherit from and through each other as if all were the lawful children of the same parent, certainly did not expressly provide for the case of a grandparent adopting his grandchild, yet that nevertheless the intent was plain that the status of the adopted child should be equal but not superior to that of the others and that such intent was enough to indicate that the child could share in the grandfather's estate only as his child by adoption and could not also share as a representative of her deceased mother. The result was that the estate was held to descend in four stocks: one to each of the two actual daughters, another to the adopted daughter, and the remaining one to the son of the deceased daughter. Said the court: "Thus, and thus only, can the equality intended by the statute be maintained." In Reel's Estate (1902) 12 Pa Dist 608, involving the same estate and adopted child and right of inheritance as were in question in Morgan v. Reel (Pa) supra, it had been held (contrary to the later ruling in the Morgan Case) that the grandchild of decedent having been adopted by him was entitled to take a fourth share of the estate as his child and also an eighth as a natural grandchild, the latter by virtue of the statute of inheritance entitling issue of a deceased child to take the share of the parent, representatively.

In Delano v. Bruerton (1889) 148 Mass 619, 20 NE 308, 2 LRA 698, where the intestate, who left as his heirs at law and distributees five daughters and also a grandson, the latter the only child of a deceased son, and he

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had adopted the grandson, and the adoptee claimed a share in the personal estate as an adopted son and also a further like amount as a grandson representing his deceased father, relying upon a provision of the adoption statute that "no person shall, by being adopted, lose his right to inherit from his natural parents or kindred," the court was of the opinion that in making the latter provision the legislature was not to be understood as intending that the word "kindred" should include the adopting parent, the intent having been rather to save the right of inheritance "from other parties," after having provided for the right of inheritance from the adopting parent. The court stressed that it was not dealing with the question whether the grandson could inherit as a son by adoption and at the same time inherit as a son of his own father, but the sole question was as to the right to inherit from the grandfather in two capacities. The court did not cite the statutes of descent, which evidently provided for the division of personalty of an intestate into as many shares as he leaves children surviving and children deceased who have left issue surviving.

In Burnes v. Burnes (1904, CC Mo) 132 F 485, aff'd (CA8th) 137 F 781, cert den 199 US 605, 50 L ed 330, 26 S Ct 746, the court, although conceding that under the then Missouri statute (which seemed to require no judicial proceeding but simply the signing by the adopting parent of acertain instrument, and its due acknowledgment and recording) the effect of an adoption was that the child could inherit both from the natural father and the adoptive one, said that the child could not inherit "from one person's estate in the dual capacity of a blood relation and as an adopted child."

In Grimes v. Grimes (1935) 207 NC 778, 178 SE 573, involving the rights of an adopted child in the estate of his grandfather who had died intestate, it was apparently not disputed that the child was entitled to share in the interest which his mother, a daughter of the intestate, would have taken had she not predeceased him, but the child's additional claim that since he had been adopted by his uncle, a son of the intestate, and the uncle, too, had predeceased the intestate, claimant was entitled to take a further share, representatively, through the uncle, was disallowed, this upon the ground that the effect of the adoption was simply to create in the child a right to inherit from the adoptive parent and not to inherit through him from the latter's kin. The fact that a blood relationship existed between the child and the adoptive parent and the latter's father was held not to alter the result.

It may be noted that in Einstein v. Michaelson (1919) 107 Misc 661, 177 NYS 474, the ruling made was simply that the only child of the testator's deceased son, which child had been adopted by the testator, could not take under the will both as a child and as a grandchild.

And in Mississippi Valley Trust Co. v. Palms (1950) 360 Mo 610, 229 SW2d 675, involving the right of grandchildren of the testator to take under his will as "heirs at law," so designated by the instrument, and consequently not in strictness within the scope of this annotation, the conclusion reached was that since the will manifested throughout its provisions the testator's intention to provide equally for his children, and also for his grandchildren per stirpes, the two grandchildren in question could not take as such, and also as adopted children of their mother's sister, although the court seemed to concede that despite their adoption the children remained heirs of their natural mother and, had their grandfather died intestate, might have been entitled to share in his estate through her.

W. W. Allen.

No. 7

SB-296

Motor Vehicles

DRIVERS' LICENSES—

Nebraska motor vehicle statute that provides for summary suspension, after accumulation by traffic convictions of 12 or more point violations, of driver's license does not violate Due Process Clause.

A revocation for traffic violations under the point system of our statute involves a substantially different situation than revocation under Financial Responsibility Acts. Those acts are founded upon the premise that the motorist involved in an accident may be at fault. In Bell v. Burson, 402 U.S. 535, 39 LW 4607 (1971), the U.S. Supreme Court held that before the driver's license and registration of the motorist could be revoked there must be a determination made at a hearing "appropriate to the nature of the case" that there is a reasonable possibility he is in fact at fault. In those situations the danger that the Court wishes to guard against is an unreasonable possibility of wrongfully depriving the motorist of a valuable entitlement. Under the point system of revocation as established by our statutes, the possibility of error is unlikely and the procedural safeguards that are inherent in the system afford an opportunity to correct before irreparable damage occurs such as might happen.

The challenged statute prescribes the number of points to be assessed against the licensee for each conviction under the various categories of violations. It provides for revocation of the license if there is an accumulation of 12 or more points within a two-year period. The statute specifies the duty of tribunals in which the traffic conviction takes place with reference to entry of judgment in such case and requires the forwarding of an abstract of the convictions to the director of the Department of Motor Vehicles. The abstracts set forth the date of the violation; the date of hearing; the name and address of the motorist; the date of his birth; his operator's license number; the vehicle number; and docket and page number of the proceedings in the court; the judgment of conviction including fine and costs; the plea; a description of the offense; the name of the enforcing agency and the officer's name; the date of any appeal from the judgment or the date the appeal was dismissed if that is the case; and a formal certificate for a judge, clerk, or magistrate to sign.

Every motorist is charged with notice of the contents of the statute specifying the points assessed for the various violations. For every offense he has or is afforded an opportunity for hearing. He therefore is charged by law with knowledge that his license is in jeopardy and at all times is charged by law with notice of the state of his record as it pertains to points charged against him.

The information required to be set forth in the abstracts of conviction is entirely adequate to readily determine if mechanical or identification errors have occurred.

If errors do occur, or if there should be fraud, or an absolutely void judgment, the statute affords a remedy. The statute provides for an appeal from an order of revocation to the district court and authorizes the judge to stay the order of revocation pending the appeal. There is a full evidentiary hearing and no fact finding of the director is binding on the courts.

In a very real sense, the essential facts have been determined in judicial proceedings in connection with each conviction. In a very real sense the director acts only ministerially. The result — the revocation — flows from the operation of the statute upon the already judicially determined facts, that is, the series of convictions of traffic offenses. These circumstances do, in our opinion, make the procedures applicable to revocation of the driver's license for an accumulation of points for traffic offense convictions clearly distinguishable from revocation under a financial responsibility law as in Bell v. Burson. The financial responsibility statutes create without a hearing a presumption of fault. This is their constitutional deficiency. Such a situation does not exist in the case here involved. Under the statutory scheme of Nebraska, no notice and hearing were required before the issuance of the order of revocation. — Clinton, J.

—Neb. SupCt; Stauffer v. Weedlun, 3/10/72.

The United States
LAW WEEK
Mar.28,1972

SB-296 ETB

Nebraska Motor Vehicle Point System Is Upheld

Although the U.S. Supreme Court has recently cast doubts on the constitutionality of motor vehicle financial responsibility acts that deprive a driver of his license without a presuspension hearing, Bell v. Burson, 402 U.S. 535, 39 LW 4607 (1971), the Nebraska Supreme Court finds a way to sustain Nebraska's ex parte point system. Due process does not invalidate a system that automatically deprives a driver of his license after he accumulates a predetermined number of traffic violation points. (Stauffer v. Weedlun, 3/10/72)

Revocation under the state point system "involves a substantially different situation" than revocation under financial responsibility acts. Those acts are founded upon a premise that the motorist involved in an accident may be at fault. In those situations, the danger the court wishes to guard against is the possibility of wrongfully depriving the motorist of a valuable entitlement.

Every motorist is charged with notice of the contents of the statute specifying the points assessed for the various violations and, since for every offense the motorist has or is afforded an opportunity for a hearing, he is charged by law with knowledge that his license is in jeopardy.

In a very real sense, the essential facts leading up to the revocation have been determined in judicial proceedings in connection with each conviction. The Director of Motor Vehicles acts only ministerially and the result — revocation — flows from the operation of the statute upon the already judicially determined facts. (Page 2633)

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plaint and, on appeal, the union members assert that since individual liability for concerted action in violation of their contract is precluded under Section 301, a state cannot impose that liability.

It must be concluded that the federal preemption doctrine has withdrawn the diversity remedy stated in count 3. See San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959); Street, Electric Ry. and Motor Coach Employees v. Lockridge, 403 U.S. 274, 39 LW 4741 (1971). Although Section 301 does not grant federal courts exclusive jurisdiction over controversies within the Act's purview, a state court—or a federal diversity court—is not free to apply individualized local rules when called upon to resolve union-employer disputes. Section 301(a) is peculiarly one that calls for uniform law. Teamsters v. Lucas Flour Co., 369 U.S. 95 (1962). In light of federal labor policy, legislative history, and congressional intentions, it must be concluded that Section 301 was enacted in part to prevent the assessment of damages against individual union members for the alleged misconduct stated in count 2. Any conflicting state rule must give way to the federal principle.—Kuley, J.

—CA 7; Sinclair Oil Corp. v. Oil—Chemical Workers, 10/0/71.

STRIKES—

Union adherents' mere participation in sit-down strike, absent established grievance procedures and unaccompanied by violence, threats of violence, or damage to employers' property, does not deprive them of Taft Act Section 7 protection.

The employees here were discharged after they engaged in a sit-down strike to protest six other employees' discharge. The six employees had been dissatisfied with the progress of bargaining and engaged in a work slowdown.

The company relies on NLRB v. Fansteel Metallurgical Corp., 306 U.S. 240 (1939), and argues that the sit-down strike did not constitute concerted activity protected under Section 7 of the Taft Act. The discharges would therefore be for cause and would not violate Sections 8(a)(3) and (1). In Fansteel, 95 employees, in response to their employer's unfair labor practices, took over and held two of the employer's key buildings thereby causing the remainder of the plant to cease operation. After the employees' shift had ended, the plant's superintendent demanded that the employees leave. After they refused, they were discharged. They continued to hold the buildings for nine days, during which time a pitched battle occurred between workers and police officials upon efforts of the police to evict the strikers. The Supreme Court held that when the employees resorted to "that sort of compulsion" they took a position outside the protection of the statute.

The company contends that all sit-down strikes are thus unprotected by Section 7 and are not a legitimate weapon to be used in the field of labor relations. Since Fansteel however, the cases are clearly contrary to this contention.

For example, NLRB v. American Mfg. Co., 106 F.2d 61 (CA2 1939), involved a temporary work stoppage induced by an employer's unfair labor practice. The court refused to consider such activities an illegal sit-down strike, noting that the employees did not claim to hold the premises in defiance of the owner's right of possession. A similar result was reached in Olin Ind., Inc. v. NLRB, 191 F.2d 613 (CA5 1951).

Analogous activity was, however, found to be unprotected by the Fourth Circuit. In Cone Mills Corp. v. NLRB, 413 F.2d 445 (CA4 1969), employees engaged in a work stoppage to protest the discharge of a fellow employee. The union steward, despite established grievance procedures to the contrary, demanded that immediate reinstatement of the discharged employee before beginning discussions. Several of the employees stated that they would refuse to work until the discharged employee was rehired. The court relied heavily on the regular grievance procedures in effect, found that the employees had already made their point about their feelings concerning the previously discharged employees, and found no violation of Section 8(a)(1). However, NLRB v. Serv-Air, Inc., 401 F.2d 363 (CA 10 1968), held that, absent established grievance procedures, a spontaneous work stoppage to present a grievance was a protected activity.

There are no facts in this case showing that the employees were claiming to hold the premises in defiance of the owner's right of possession. The sit-down did not threaten to carry over into the next shift, and the employees left immediately when requested to do so by the police.

[*Text*] The mere act of sitting down on the job in order to further discussions with an employer, as was done in the instant case, can alone furnish no basis for a finding that the acts constituted a forcible seizure of the employer's property. Fansteel does not so hold, and we know of no case that does. * * * Without more than the mere act of sitting down during a labor dispute, there is no more incitement or probability of violence than is necessarily incidental to any other act. * * *

An employer cannot convert a protected in-plant work stoppage into an unprotected trespass by the simple expedient of ordering his employees from the plant where, as here, such an order served no immediate employer interest and unduly restricts the employees right to present grievances to their employer. The employer interest in maintaining an established grievance procedure and the absence of restriction on employees in the face of such procedures, such as that found in Cone Mills, is not present in the instant case. At the time of the sit-down strike, negotiations between the company and the union had just begun pursuant to the union's certification only two months prior. There is no evidence of any established, regular procedure by which employees were to present their grievances. Under such circumstances, we cannot find that the employees had no interest in presenting their grievance in the manner chosen in the instance case. [*End Text*]—Thornberry, J.

—CA 5; NLRB v. Pepsi-Cola Bottling Co. of Miami, Inc, 10/13/71.

Motor Vehicles

DRIVERS' LICENSES—

Due process bars suspension of driver's license under Pennsylvania "point system" without prior notice to driver and opportunity for hearing.

The Pennsylvania point system provides a means of assessing "points" by the Secretary of the Department of Transportation upon receipt of notification of conviction of certain specified violations of the Motor Vehicle Code. Notice is given to the driver of the imposition of the points on each occasion and when a total of 11 points is accumulated, the Secretary is directed to suspend the operator's license for a specified period. No administrative hearing is provided either upon each assessment of the points or before suspension, but after the penalty has been imposed an appeal may be taken to the commonwealth court.

The operator challenging the statute is a truck driver whose livelihood depends on his ability to operate a motor vehicle. His driving record over a two-year period resulted in his accumulation of a total of 11 points, the result of which was that his license was suspended by the secretary for a period of 60 days. He took an appeal to the court of common pleas, contending that he was not guilty of the violations for which points had been assessed and that there was a fatal variance between the information and the conviction for which five

points had been assigned. His appeal was dismissed, the court relying upon the case of Commonwealth v. Virnelson, 243 A.2d 464 (Pa. 1968), which held that there could be no review of the facts behind the conviction giving rise to the assessment of points and that the only matter which might be shown was improper calculation of the points. Under Pennsylvania law a payment of fines and costs, as this driver did, is equivalent to a plea of guilty and in the context of this case would be an admission of a conviction.

[*Text*] There can be no quarrel with the commonwealth's position that in order to regulate the use of its highways, the state does have power to enact the Point System Plan into law and that it may use infractions of the Vehicle Code as a basis for license suspension. We may say further that the legislation is an intelligent and commendable effort to diminish the carnage on our highways by focusing attention on the most common cause of accidents, the careless and code-violating driver. However, it is not enough that the substantive provisions of a statute pass constitutional muster because it is also necessary that the methods of administration meet appropriate standards of due process.

Bell v. Burson, 402 U.S. 535, 39 LW 4607 (1971), makes it clear that even if denominated a privilege, as the Pennsylvania court did in Commonwealth v. Funk, 186 A. 65 (Pa. 1936), nevertheless an operator's license is not to be taken away by state action which fails to comply with procedures required by the Fourteenth Amendment.

The commonwealth in its brief concedes, and our independent examination confirms, that the Point System Act makes no provision for departmental administrative hearing at any time before suspension. Section 618(h) of the Vehicle Code provides that after notice of suspension, any person may request a departmental hearing but it is not the practice to notify the licensee of the availability of this opportunity. See In re Hamsher Motor Vehicle Operator License Case, 175 A.2d 303 (Pa. 1961). Similarly, judicial review under section 620 of the Code is provided only after suspension.

We find that this falls short of what the Constitution requires. As was said in the Bell case: "* * * it is fundamental that except in emergency situations (and this is not one) due process requires that when a state seeks to terminate an interest such as that here involved, it must afford 'notice and opportunity for hearing appropriate to the nature of the case' before the termination becomes effective." 402 U.S., at 542.

Here the state furnished neither notice nor opportunity for Reese to be heard either at an administrative hearing or de novo before a court before the termination. * * *

[E]ven if the convictions cannot be contested, there still remain the possibilities, among others, that the convictions were those of another person with the same name; that the fines and costs were paid on an information at variance with that for which the minor judiciary entered a conviction as plaintiff contends occurred in this case; that the points were improperly calculated; that credits were wrongfully withheld; or that there were errors on the report of conviction form. In none of these instances is there a provision for a hearing before suspension even though notice of the assessment of points is given. Notice without opportunity to rectify error obviously is not sufficient. [*End Text*]—Weis, J.

Concurrence. [*Text*] Those licensed by a state to operate motor vehicles on its highways are charged with the knowledge that a violation of the Code will result in liability for the payment of a fine and the assignment of a specified number of points to that individual's record, and that on the accumulation of 11 points automatic license suspension will result. Accordingly, it seems to me that the licensed public is charged with knowledge of the provision of the Pennsylvania Motor Code; that all motor vehicle operator licensees must abide by the rules of the road, and that upon failure to do so to stand liable and submit to the penalty of a fine and points, and such suspension and revocation as are set forth in the Act.

I find it difficult to separate the penalty into two separate parts so as to indicate that the payment of a fine is one thing, and the imposition of points is another. In reality the paying of the fine and the imposition of the points are one and the same, since by legislative mandate the latter accompany the former. * * *

In the present situation, the repeated nature of the offenses, and the non-discretionary duty of the secretary compel the conclusion that in all probability the petitioner is the type of individual which the commonwealth sought to exclude from its highways in the interests of public safety. In almost every case of this sort, a hearing prior to the suspension would serve no valid purpose other than putting the commonwealth to the added burden of providing a hearing which would disclose that the assignment of 11 points to the individual's driving record was properly made. However, as the majority indicates, there does exist the extremely remote possibility that compounded errors could result in the suspension of the license of an innocent individual. Under these circumstances, which I feel are highly improbable, a miscarriage of justice would result in an individual being deprived of his operator's license without due process of law. * * *

Thus, while I firmly believe that Sec. 619.1 of the Pennsylvania Motor Vehicle Code is a valid exercise of police power, I am bound to support the ultimate conclusion reached by the majority only on the remote possibility that a summary suspension might inadvertently deprive an innocent person of his operator's license without due process of law. For the limited purpose of inquiring into the propriety of the secretary's record, and not for the purpose of authorizing a review of each of the constituent cases of their respective penalties whether fines or points, or both, I join in the result reached by the majority. [*End Text*]—Rosenberg, J.

—USDC WPa (three-judge court); Reese v. Kassab, 10/26/71.

Municipal Corporations

BUSINESS REGULATIONS—

District of Columbia City Council lacks authority under its general police power to enact "geographic discrimination" insurance regulations which, like Congress' D.C. Insurance Placement Act, seek to regulate availability of high risk coverage.

The insurance challenged here bars insurers from declining to insure or renew contracts of insurance "because of the geographic area within the District of Columbia wherein is located the subject of the risk or the applicant's or insured's address." Further, the regulations specifically list the permissible reasons for cancellation. These regulations were issued pursuant to the general police power granted to the Commissioners of the District of Columbia by Congress.

Although the ultimate legislative power over the District of Columbia resides in Congress, Congress has established a relationship with the District comparable to that existing between municipalities and their parent states.

Since the authority to make reasonable and usual police regulations was delegated to the District in 1892, that power has never been used to regulate the insurance field. With the exception of Chicago v. Phoenix Ins. Co., 126 Ill. 276, 18 N.E. 668 (1888), no cases considering the application of municipal police power to the regulation of insurance have been found. That case struck down a municipal insurance tax on the ground that the state

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NATIONAL COMMITTEE
ON
UNIFORM TRAFFIC LAWS AND ORDINANCES

955 NORTH L'ENFANT PLAZA, S. W. • WASHINGTON, D. C. 20024 • TELEPHONE 484-3120

YULE FISHER, National Chairman
EDWARD F. KEARNEY, Executive Director

March 6, 1972

Mr. Stuart C. Hall
Legislative Affairs Agency
Pouch Y
State Capitol
Juneau, Alaska 99801

Dear Mr. Hall:

Regarding your letter of March 1, 1972, you seem to already have satisfactory answers to your questions 4 and 5; here are some observations on the first three:

1. Six states and the Uniform Vehicle Code follow the approach of the Governor's bill. Another 16 jurisdictions have point systems which are administratively established. Thirteen states, on the other hand, follow the approach of the Ray bill, setting out the point values in the law itself.

2. Under Bell v. Burson and other recent Supreme Court cases it is clear that a driver's license cannot be taken away without affording the licensee due process, most essentially, a hearing. Whether that hearing must preceed delicensing action or can be offered subsequent to that action (as now authorized under the UVC) is a debatable question. Proposals have been submitted to amend the UVC in this respect. Probably your safest course of action would be to recommend that the Alaska law should require a hearing prior to any discretionary licensing action. Although I have not yet read the case myself, I am advised that a recent Federal District Court decision, Reese v. Kassab, 334 F. Supp. 744 (1971) requires a hearing prior to a sus ension based on a point system.

3. Better yet there should be a general provision to this effect applicable to your whole driver licensing law. See UVC § 6-204(c), for example. We believe it is constitutional. Alaska already has a comparable provision but it does not clearly apply to the whole driver licensing law. See AS § 28.15.190(c).

In terms of a general observation, we note that discretionary suspension and revocation in Alaska is in the hands of the courts rather than the department of motor vehicles. See AS § 28.15.220. This is very uncommon but we assume you have some good reason for doing it this way. Both the Governor's bill and the Ray bill, however, place the discretion to suspend in the department of motor vehicles. Passage of either of these bills would mean that both the courts and the department have authority to suspend, often upon the same grounds. This would be unnecessarily confusing and might make it much more difficult to keep accurate records of suspensions.

The Randolph-Warwick bill is very different. It provides for mandatory license action on the basis of the accumulated point level. The UVC, the Ray bill and the Governor's bill, on the other hand, all provide for discretionary action against a driver who is identified by the point system. See my observations on this distinction in my February 25th letter. It is where the Randolph-Warwick type effect is given to a point system that an administrative determination of point values might very well be an unreasonable delegation of authority. Thus proponents of this bill will quite justifiably urge that the point values should be set out in the law. Where, as under the UVC, however, the point system is merely used to identify "habitually reckless or negligent" drivers, and the law clearly authorizes the department to suspend such habitually reckless or negligent drivers, there should be no problem in allowing the department to determine point values.

Unfortunately, while both the Governor's bill and the Ray bill specify the purpose of the point system as "identifying habitually reckless or negligent drivers . . .," neither clearly gives the department authority to suspend such drivers. That authority now rests with the courts under AS § 28.15.220(b)(4). Both bills would be made stronger by inclusion of a provision such as UVC § 6-206(a)(3), or by completely revising AS § 28.15.220 to conform with UVC § 6-206 in its entirety.

Sincerely,

John W. English
Staff Attorney

Section III

Statutory Point Systems

SB-296

(Table 7)

In addition to the authority granted by law to suspend or revoke a driver's license on a mandatory or discretionary basis (Tables 1-6), at least 19 states have established statutory point systems governing license suspension and revocation.* In six of these states (Idaho, Iowa, Nevada, South Dakota, Utah, Wisconsin) the department is authorized to develop a point system by rule in accordance with the general mandate laid down by the legislature. The UVC, by a 1968 revision, now incorporates similar authority.

Under this authority, points are assessed for specified offenses and the accumulation of a given number of points within a prescribed period of time results in license withdrawal.

Digests of the several statutory point systems are covered on the following pages. Included also are the New Jersey and District of Columbia Point Systems established by regulation. One thing that may be considered common to all such point systems is their dissimilarity in many basic features.

For example, Michigan, Nebraska and Ohio provide that the accumulation of 12 or more points within two years subjects a person to license withdrawal. In addition to variations in the procedures to be followed, Michigan provides for maximum suspension of one year. In Ohio, suspension shall be for six months if the offender had not been previously suspended under the point system; but suspension shall be for one year if such person had no more than one such previous suspension, three years if not more than two such suspensions, and five years if three or more previous such suspensions. Nebraska requires mandatory revocation of license for one year, unless the court specifies a longer period.

In another state (N. C.) where 12 or more points within a three-year period also results in license suspension, the maximum periods are as follows: on first suspension, 60 days, on the second, six months, and on a third, one year; a licensee is also subject to suspension upon accumulating eight points within a three-year period following reinstatement after license has been withdrawn because of conviction for one or more traffic offenses.

In other jurisdictions suspension action is taken according to a graduated point accumulation over a period of years. Thus, in Colorado a maximum of one year's suspension may be imposed when a driver has accumulated 12 points within 12 consecutive months or 24 points within 24 months. (It might be noted that the Colorado law which included grounds for discretionary suspension of license similar to those covered in Tables 4-6, repealed this authority in 1959 and substituted a statutory point system.)

The assessment of eight points within two years in Maryland results in the initial suspension of license from two days to 30 days; on the second suspension, the period of license withdrawal would be from 15 to 90 days; a license is revoked for three months upon the accumulation of 12 points within a two-year period.

Florida is somewhat similar but fixes the period of maximum suspension for point demerits within the periods prescribed: 12 points within 12 months calls for suspension for a maximum of 30 days; for 18 points within 18 months, the maximum suspension is three months; and the accumulation of 24 points within 36 months results in suspension for a maximum of one year. Points used as the basis for suspension are used in determining point accumulation leading to subsequent suspension, since points maintain full value for 36 months.

Florida has also modified its point values for all the offenses listed by changing from a fixed point total to a point range. Thus, reckless driving, previously resulting in an assessment of four points, now has a point spread of from two to six points; passing a stopped school bus, formerly a four point violation, now has a range of from two to four points. Courts are required to assess points against violators from the minimum to the maximum point values specified; if court fails to do so, department shall assign the median points.

Hawaii, which adopted a court administered statutory point system in recent years, also provides for a point spread in the violations listed. In fact, in some violations listed, point assessment may be from zero to two or three points. For example, for unlawful passing, the point range is from zero to three; improper turning, from zero to two points.

Missouri, which enacted a point system law within the past few years, also has a special feature with regard to point values covering all offenses enumerated. For example, driving while under the influence of intoxicating liquor or narcotic drugs results in the assessment of 12 points if the violation is under state law, but only six points if a violation of a county or municipal ordinance. Moreover, practically all author-

**The following states are reported to have administrative point systems: Alabama, Arizona, Connecticut, District of Columbia, Illinois, Indiana, Kentucky, Louisiana, Maine, Montana, New Jersey, New York, Oklahoma, Oregon, Rhode Island and Washington.*

ity for license suspension or revocation, is now covered in the Missouri point system.

There is also considerable variation among the states with regard to the type of violations included under the point systems and the value of points assigned for comparable offenses. The offense of passing a stopped school bus might be cited as an example of this situation.

In North Carolina conviction for such violation requires the assignment of five points against the offender's record; in South Carolina six points are assessed. In Colorado, four points are assigned upon conviction for failing to stop for a stopped school bus, whereas in Florida, as noted above, two to four points are assessed. No specific reference is made to such violation in the schedule of offenses in the point system laws of Michigan, Nebraska or Ohio, for example, but all moving violations other than those listed are assigned two points; thus such an offense would presumably have a two point value. These differences in points assessed for the same offense would have to be correlated with the total point accumulation and the time periods at which action against a person's license may be initiated in the several states in order to draw an accurate comparison.

Moreover, some states include offenses which would require mandatory revocation of license under other law, such as convictions for driving while under the influence of intoxicating liquor or drugs. In some of these, the number of points assessed are equal to the action level required under the point system and this raises a question concerning which law is applicable. One state (Colo.), makes this clear by providing that other statutory authority governing mandatory license revocation takes precedence over the point system law.

In Michigan, whose point system also includes "mandatory" revocation offenses covered under other law, a license would be revoked under such other law, but a licensee would also be given six points, which is half the point total required (12 points within two years) for action under the point system. Thus a person would be subject to revocation under the basic law but would also be assigned points under the point system for the same offense.

Many differences also exist with regard to other matters concerning the application of the law.

For example, in some states points retain full value for the period within which they are effective; in others, they diminish in value as time progresses and until they are expunged. As noted, points are cumulative in some states for the period of time specified and can be used again for subsequent suspension or revocation of license. In others, (e.g. Nebraska, North Carolina, Ohio, South Carolina) the law specifically provides that points once used in suspending a driver's license cannot be considered again as the basis for further action. (See Appendix 2, McAnerney v. State, Dept. of Public Safety, Drivers License Division, 341.P (2d) 212, 9 Utah (2d) 191, 1959).

States also differ with regard to the holding of hearings. In some, the department is authorized to suspend and then notify the licensee of the action taken and of his right to a hearing. In some jurisdictions, the suspension takes effect only after the period for hearing has expired and if a hearing is requested, suspension is delayed until the hearing is held. In others, a hearing must precede an order of suspension. In one state at least, the department may suspend with or without a hearing.

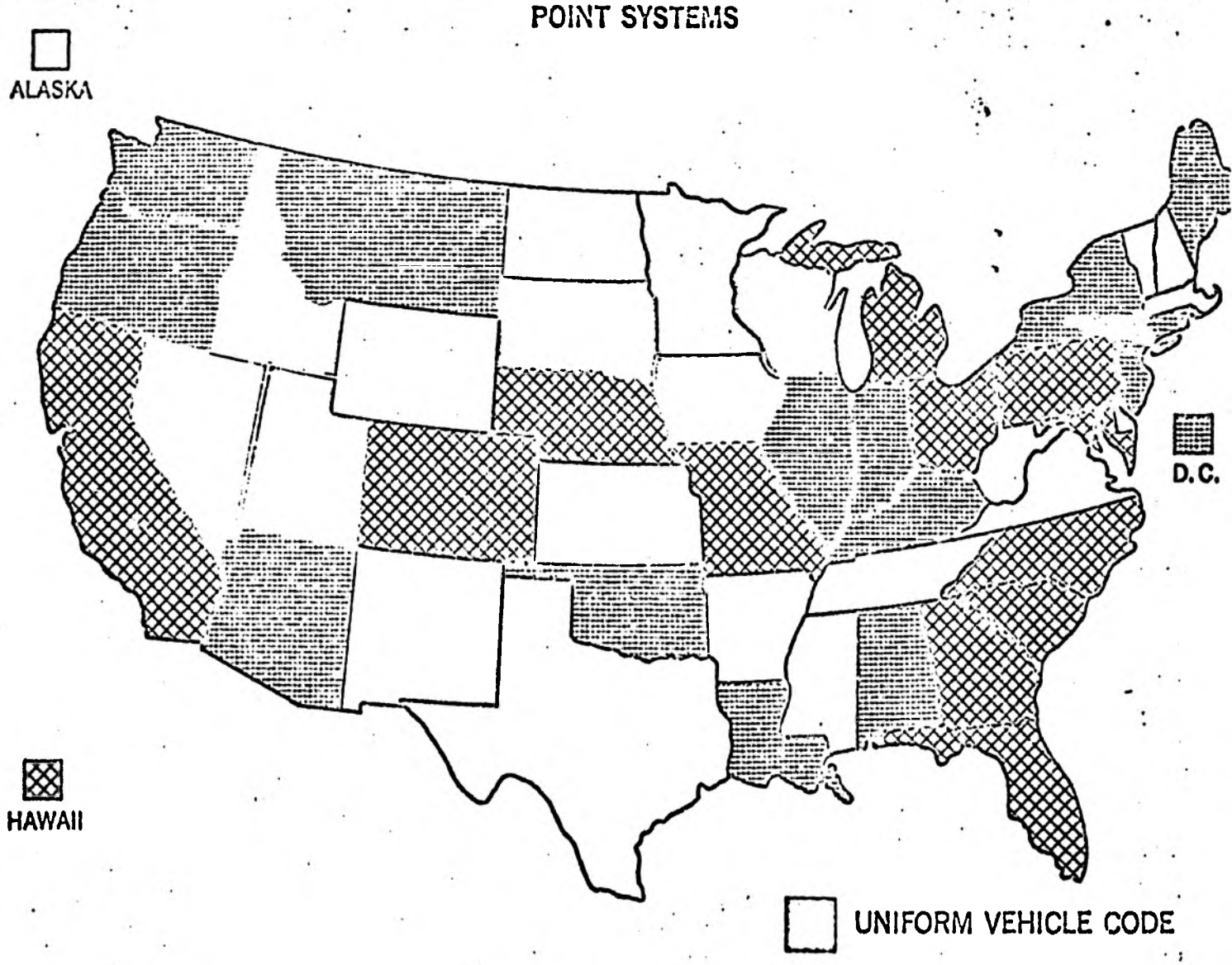
In most states, after the accumulation of a certain number of points below the action level, the department as a matter of law or under administrative procedures, sends out a warning letter or requests the licensee to submit to an interview, or both, but the point levels at which such steps are taken vary.

Out-of-state conviction of resident drivers for comparable in-state offenses are treated differently under the point systems of the several states. In New Jersey, for example, points are assessed against a resident driver who is convicted in another state of an offense covered by the point system. In Florida, except for those offenses requiring mandatory revocation of license, "point system" values for out-of-state convictions may be assessed at half the value that normally would be assigned if the convictions had been had in Florida. In Maryland and North Carolina, points are assigned against residents only upon conviction within the state and do not apply to such offenses committed in a foreign jurisdiction. In Hawaii and South Carolina, out-of-state convictions of residents apply if reciprocal agreements have been entered into with such jurisdictions.

A few states also give special consideration to licensees subject to action under the point system. For example, in North Carolina, when a person accumulates seven points he may be afforded an opportunity to attend a driver improvement clinic, and if he successfully completes such course, three points are deducted from his record. In Maryland, if a person needs a license for purpose of employment, additional points beyond the normal action level are permitted before a license is suspended or revoked. In Colorado, Iowa and Missouri for example, a special restricted license may be issued for occupational purposes to a licensee otherwise subject to suspension. (See also Occupational Licenses under Table 13.) In Utah, the number of points assessed for a violation may be increased or decreased by 10%, depending upon the severity of the offense as determined by the court.

Iowa, Hawaii and Utah also have features not covered in any other point system laws. In Iowa, a person is permitted to accumulate credit points, one for each year of violation-free driving, until he receives a total of five points. These credits may then be used

POINT SYSTEMS



- Statutory point system *(13 states)*
- Law sets standards and authorizes licensing agency to establish point system *(6 states)*
- Administrative point system established by licensing agency under general authority *(15 states and D.C.)**
- No formal, publicized point system *(16 states)*

*See Footnote, Section III, summary.

STATUTORY POINT SYSTEM*

Table 7

U. V. C.	X	U. V. C.	X
Alabama	—	Nebraska	X
Alaska	—	Nevada	X
Arizona	—	New Hampshire	—
Arkansas	—	New Jersey	#
California	X	New Mexico	—
Colorado	X	New York	—
Connecticut	—	N. Carolina	X
Delaware	—	N. Dakota	—
Florida	X	Ohio	X
Georgia	X	Oklahoma	—
Hawaii	X	Oregon	—
Idaho	X	Pennsylvania	X
Illinois	—	Rhode Island	—
Indiana	—	S. Carolina	X
Iowa	X	S. Dakota	X
Kansas	—	Tennessee	—
Kentucky	#	Texas	—
Louisiana	—	Utah	X
Maine	—	Vermont	—
Maryland	X	Virginia	—
Massachusetts	**	Washington	—
Michigan	X	W. Virginia	—
Minnesota	—	Wisconsin	X
Mississippi	—	Wyoming	—
Missouri	X	Dist. of Columbia	#
Montana	—		

* *See digest of state laws on following pages.*

** *1953 law under which registrar established and administered a point system was repealed in 1960.*

\# *In Sturgill v. Beard, see Appendix, Section III, Table 7, Point System—court held that department has authority under the law (covered in Tables 4-6) to establish an administrative point system.*

to offset the assessment of points for future offenses committed. Hawaii, similarly, provides that if no violation is charged against a person during a 24-month period, a total of six favorable points will be credited to his account which may be used to offset points charged for violations. In Utah, the department is authorized to delete points for violation-free driving for such period of time as it may prescribe.

And in Pennsylvania, a point is credited, or demerit points are assessed, depending upon whether or not a person assigned to a driver improvement school successfully completes the course and meets other related requirements.

DIGESTS OF STATUTORY POINT SYSTEMS

UNIFORM VEHICLE CODE

Basic authority for establishing a point system was incorporated in the 1968 revision of the UVC. The provision leaves to administrative determination point values to be assigned to offenses and the number of points and time period within which they are accumulated before suspension may be authorized. Footnotes, however, suggest certain criteria for the consideration of the responsible administrative agency. Following is a brief digest of the substantive elements of the provision and footnotes:

1. *Authority to Establish:*
   To identify habitually reckless or negligent drivers and habitual or frequent violators of the traffic regulations, requires department to adopt regulations for a uniform system of demerit points to be assigned for convictions of violation of the rules of the road (Chapter 11) and local ordinances regulating the operation of motor vehicles.

2. *Non-Assignment of Points:*
   No points shall be assessed for violations governing standing, parking, equipment or size or weight. (Footnote suggests also that no points be assigned for violations by pedestrians, passengers or bicycle riders, or for violations of provisions relating to the preservation of the condition of traffic control devices on the highway.)

3. *Out-of-State Convictions:*
   Department is authorized to assess points for conviction in other States of offenses which, if committed in home state, would be grounds for such assessment.

4. *Interim Action:*
   Notice of assessment of points may be given to driver, but notice shall be given when point ac-

cumulation reaches a certain percent of the number of points at which suspension is authorized (footnote suggests 50 percent as appropriate).

5. *Two or More Offenses Arising Out of Single Incident:*

In the event of conviction for two or more traffic violations committed on a single occasion, points to be assessed for one offense, and if point values differ, points to be assessed for offense having greater point values.

6. *Suspension — Hearings:*

Department authorized to suspend license of driver, with or without a hearing (but see Table 4 re suspension without a preliminary hearing) when his driving record identifies him as an habitually reckless or negligent driver or as an habitual or frequent violator under the point system.

7. *Action Level — Point Values:*

As a guide to the administrator and in the interest of interstate uniformity, a footnote suggests the following action level and point values for offenses:

An accumulation of 12 or more points during any consecutive 12-month period, or 18 or more points during any 24-month period as the basis for suspension.

Six points for conviction of reckless driving (willful and wanton disregard for safety of persons or property) speeding at least 20 mph over the lawful limit; four points for conviction of relatively serious offenses; and three points for less serious offenses.

CALIFORNIA

1. *Number of points which authorizes action:*

When the department determines that a person is a negligent operator, it may refuse to issue or renew a driver's license. (However, under administrative policy, when a person's driving record shows the following violation point count the department may suspend, revoke or place such person on probation based upon the circumstances involved.)

In applying the authority granted, the department is required to give due consideration to the amount of use or mileage traveled in the operation of a motor vehicle.

A person is presumed to be a negligent operator if he has accumulated a violation point count of:

4 or more points in 12 months
6 or more points in 24 months
8 or more points in 36 months

2. *Violations and schedule of point values based upon convictions:*

	Points
(1) Failing to comply with requirements, in accident resulting in property damage, including vehicle; parking vehicle which becomes runaway and causes such damage.....	2
(2) Driving under the influence of intoxicating liquor or combined influence of liquor and any drug.....	2
(3) Reckless driving	2
(4) Reckless driving — bodily injury.....	2
(5) Any other traffic conviction involving safe operation of a motor vehicle....	1
(6) When licensee involved in accident is deemed responsible by department..	1

3. *Interim Action:*

Not specified in law but under administrative procedure warning letters are sent in the discretion of the department when person accumulates three points in one year; five points in two years and seven points in three years.

4. *Two or more offenses arising out of a single incident:*

When more than one violation arises out of a single incident only one violation is counted under the point system.

COLORADO

1. *Number of Points which authorizes suspension:*

12 points within any 12 consecutive months or 18 points within any 24 consecutive months.

Time periods shall be based on date of violation but points shall not be assessed until after conviction; accumulation of points shall not be affected by the issuance or renewal of license. (See Table 8 for maximum period of suspension).

Other statutory provisions covering cancellation and mandatory revocation take precedence over the point system law. (See Tables 1-3).

2. *Application to certain licensees:*

In case of provisional licensees (18-21 years of age) license subject to suspension for accumulation of eight points within 12 consecutive months or 12 points within 24 consecutive months, or 14 points within period for which license was issued; in case of minor operator (16-18 years of age) license subject to suspension for four points within 12 consecutive months or more than six points within time period for which license issued. Whenever a minor operator receives a summons for a traffic violation, his parent or legal guardian shall be notified by the court.

If any applicant for license has illegally operated motor vehicle prior to issuance of valid license or permit within 36 months prior to application, department may deny issuance for not more than 12 months.

Points accumulated by minor operator under a temporary instruction permit shall apply to license subsequently issued.

Authority to suspend under point system not to prevent issuance of restricted license under other law (13-4-14: among other restrictions, license may be issued limiting operation to driving to and from place of employment or performance of duties in course of employment; on satisfactory evidence of violation of such restrictions, department may cancel or suspend restricted license but offender entitled to hearing as otherwise provided.)

3. *Violations and schedule of point values based upon convictions:*

	Points
(1) Leaving scene of accident	12
(2) Driving while intoxicated (.10% or more) or under the influence of drugs	12
(3) Driving while impaired by consumption of alcohol (more than .05% and less than .10%)	8
(4) Speed contests	12
(5) Eluding or attempting to elude a police officer	12
(6) Reckless driving	8
(7) Careless driving ...4	4
(8) Speeding — one to nine miles per hour over the posted speed limit	3
(9) Speeding — 10 to 19 miles per hour over the posted speed limit	4
(10) Speeding — 20 miles or more per hour over the posted speed limit	6
(11) Failure to stop for school signals	6
(12) Driving on wrong side of road	4
(13) Improper passing	4
(14) Failure to stop for school bus	4
(15) Following too closely	4
(16) Failure to observe traffic sign or signal	4
(17) Failure to yield to emergency vehicle	4
(18) Failure to yield right-of-way	3
(19) Improper turn	3
(20) Driving in wrong lane or direction of one-way street	3
(21) Driving through safety zone	3
(22) Conviction of violations not herein stated while driving a moving vehicle, which are violations of a state law or municipal ordinance	3
(23) Failure to signal or improper signal	2
(24) Improper backing	2
(25) Failure to dim or turn on lights	2
(26) Operating an unsafe vehicle	2
(27) Improper, dangerous parking	1

4. *Hearings:*

Suspension imposed only after a hearing; hearing held 10 days after notice to licensee; hearing delays are granted only upon good cause and then no later than 30 days following date of original hearing; if person fails to appear for hearing, when delay or continuance not requested, department shall immediately suspend license without further notice. However, such suspension or revocation not to be effective until 20 days after notification of such action has been mailed to licensee; such notice to inform licensee that he may apply for hearing within 20 days after mailing of notice, and if hearing is requested, effective date of action will be extended until hearing; hearing to be held within 30 days of request.

If after hearing, record of licensee does not sustain suspension, department shall not suspend and shall adjust point total accordingly. (See also under item 5 —Interim Action.)

5. *Interim Action:*

Upon accumulation of half as many points as are required for suspension, department may send licensee a warning letter or order a preliminary hearing; failure to send such warning letter or hold such hearing not to be grounds for invalidating subsequent suspension action resulting from accumulation of additional points. Failure to report for preliminary hearing when ordered, unless good cause shown, may result in license suspension.

6. *Duration of Points:*

Points to accumulate throughout period for which license issued (birthday renewal of licenses every three years).

7. *Probationary Licenses:*

If license is suspended, department may issue probationary license for period not exceeding period of suspension; (conditions for issuance of such license not stated); license may contain such restrictions as department may deem reasonable and necessary and

is subject to cancellation for violation of restrictions; department may also order any person whose license is suspended to take a complete driving reexamination.

8. *Appeal to Court:*

After hearing, licensee may appeal department's decision to district court. See Note in Table 11.

FLORIDA

1. *Number of points which authorizes suspension:*

12 points within 12 months — maximum 30 days.

18 points, including points upon which suspension action is taken above, within 18 months — maximum 5 months.

24 points, including points upon which suspension action is taken above, within 36 months — maximum 1 year.

2. *Violations and schedule of point values based upon convictions:*

	Points
(1) Reckless driving willful and wanton.	2-6
(2) Leaving scene of accident resulting in property damage of more than $50,.	3-7
(3) Passing stopped school bus.....	2-4
(4) Unlawful speed	2-4
(5) Improper equipment (brakes, lights, steering)	1-3
(6) All other moving violations (including parking on highways outside municipal limits)	1-3
(7) Any moving violation covered above resulting in accident	2-4

3. *Point Assessment:*

Courts shall assess points against violators from the minimum to the maximum shown above; if court fails to specify number of points on conviction report at the time of conviction, department shall assign the median points provided for the violation committed.

4. *Hearings:*

Suspension before hearing, but licensee entitled to hearing.

5. *Interim Action:*

Warning letter sent when driver's record reaches "danger zone."

6. *Duration of Points:*

Points have full value for period of 36 months; after 36 months points are erased.

7. *Out-of-State Convictions:*

Resident drivers may be assessed half the point values for comparable out-of-state convictions; exception is made for offenses requiring mandatory revocation. (Tables 1-3).

GEORGIA

1. *Authority:*

Department (Director of Department of Public Safety) to establish point system for assessment of points for moving traffic violations committed by resident licensees within or without state.

Note: With regard to plea of nolo contendere, points to be assessed upon a second or subsequent such plea.

2. *Number of points which require suspension:*

Department shall suspend license for a period of not more than one year upon accumulation of 15 or more points in any consecutive 18-month period.

3. *Violations and schedule of point values based on convictions:* (See Note, Item 1, above)

	Points
(1) Exceeding speed limit by 25 mph or more	6
(2) Exceeding speed limit by more than 10 mph but less than 25 mph.....	3
• (3) Exceeding speed limit by not more than 10 mph: except school zone .....no points in school zone	2
(4) Unlawful passing of school bus.....	6
(5) Any moving violation resulting in accident	4
(6) Improper passing on hill or curve...	4
(7) Disobedience of any traffic control device	3
(8) Disobedience of any traffic officer....	3
(9) All other moving traffic violations...	2

4. *Reinstatement — Hearings:*

Department may after 30 days of suspension (60 days on second or subsequent conviction) reinstate licensee if he qualifies as a self-insurer or produces evidence of a policy of liability insurance (in accordance with 92A-608).

Any person suspended under point system is entitled to a hearing (as provided in 92A-602).

•*Note: Under other law (63-2113), no speeding violation of less than 10 mph above speed limit in a county or municipality in which person is given a speed ticket shall be used by the department for purposes of revoking a driver's license. No speed violation reported by counties or municipalities which fails to specify the speed shall be used by the department to revoke license of violator.*

5. *Point count following reinstatement:*

Upon reinstatement of licensee, point count reduced to six. If no additional violation points accumulated within 12 months subsequent to reinstatement, point count reduced to zero.

6. *Interim Action:*

Department to notify licensee when point count equals or exceeds one-half the number of points requiring suspension of license. Notice to be in form determined by department, but shall give ample warning that continued violations might result in license suspension. Sending or receipt of such notice not a condition precedent to license suspension.

7. *Records:*

Courts, except juvenile courts, to maintain records of violations and action taken and forward abstract of conviction to department within 30 days of last day of month in which conviction occurred. (department to pay 25 cents for each such report)

8. *Provisions of law cumulative, supplemental:*

Authority to suspend under point system law is cumulative and supplemental to other powers, duties and responsibilities of the director in relation thereto.

9. *Removal of points — special circumstances:*

In cases where Governor issues an executive order (pursuant to 68-1628) suspending the power of a county or municipality from enforcing speed limits within their jurisdiction, any points assessed during period of such suspension shall be removed from licensee's record; not applicable, however, when points assessed as a result of arrest by any member of the Department of Public Safety or person enforcing the law under the department's supervision.

HAWAII

1. *Authority:*

Points imposed by district magistrates for conviction of state traffic laws or county traffic ordinances with such frequency as to indicate a disrespect for such laws and ordinances and a disregard for the safety of other persons on the highway.

A total of 12 points indicates such disrespect and disregard. Magistrates not precluded from imposing greater sentence as may be provided by law.

2. *Number of points which authorize action:*

District magistrates shall suspend license for a period of one to six months upon accumulation of 12 points. Upon a showing of good cause, magistrate may suspend the license suspension.

In computing points, those accrued during the 12-month period including and immediately preceding the last violation shall be counted at full value; those accrued from 12 to 24 months preceding the last violation shall be counted at one-half their value; points resulting from violations more than 24 months prior to last violation shall not be counted.

If no violation has been charged against a person during a 24-month period, a total of six favorable points will be credited to his account which may be used to offset points charged for violations.

In the event a district magistrate subsequent to bail forfeiture does hear the case, he may set aside the points resulting from the bail forfeiture and designate the points he deems necessary, provided that no licensee shall twice be assigned points for the same traffic violation.

3. *Violations and schedule of point values based upon convictions:*

	Points
(1) Heedless and careless driving	3 to 6
(2) Driving while license suspended or revoked (includes court conviction as well as safety responsibility violations)	3 to 6
(3) Fraudulent use of license	3 to 6
(4) Excessive speeding (15 miles or more over established limit)	3 to 6
(5) Leaving scene of accident	3 to 6
(6) Speeding (10 miles or more over established speed limit)	1 to 4
(7) Failure to report accident immediately	1 to 4
(8) Driving on left side of roadway	0 to 4
(9) Inattention to driving; negligent driving	1 to 4
(10) Permitting unlicensed driver to drive	1 to 4
(11) Following too closely	1 to 3
(12) Disregarding stop signs	1 to 3
(13) Right of way violations	0 to 3
(14) Disregarding traffic control signals	1 to 3
(15) Unlawful passing	0 to 3
(16) Unsafe changing of lanes	0 to 3
(17) Crossing solid or double lines	0 to 3
(18) Impeding traffic	0 to 2
(19) Improper turning	0 to 2
(20) Unsafe emergence from parked position	0 to 2
(21) Disregarding pavement markings	0 to 2
(22) Unsafe movements	0 to 2

	Points
(23) Stopping at medial openings	1 to 2
(24) Improper emergence from private driveway	1 to 2
(25) Unattended motor vehicle (if motor running)	1 to 2
(26) Violations of pedestrian's right of way	1 to 2
(27) Unsafe equipment on vehicle	0 to 2
(28) Faulty brakes	0 to 2
(29) Driving with improper lights	0 to 2
(30) Operating or carrying a passenger on a motor scooter or motorcycle without a safety helmet or, in absence of a windscreen, without eye and face protective devices or other protective devices required by state highway safety coordinator	0 to 2
(31) Driving after failure to renew license	0 to 2

Whenever an employee is cited for driving a vehicle with unsafe, faulty or improper equipment, brakes or lights and the responsibility for such condition is that of the employer, no points shall be assessed against the driver.

With regard to items (8) and (13), and (15) through (22), no points shall be assessed by court where the violations are due to the size or nature of the vehicle, or the necessity of the driver's following a specific route or schedule in the course of his employment and not to inattention or fault on the part of the driver.

Where bail forfeiture is allowed, the court shall assess the driver the minimum points set forth above, but in no case less than one point.

4. *Duration of Points:*

See under 2, above.

5. *Notice of Suspension — return of license:*

Upon accumulation of sufficient points to warrant suspension by the district magistrate, licensee required to surrender license to court, if present in court; if licensee not present when license suspended, clerk of court to notify licensee in writing by certified mail of license suspension and the return of license within 15 days of receipt of notice; willful failure to return license shall, on conviction, result in fine of not more than $100 or imprisonment for not more than 30 days or both.

6. *Nonresidents:*

Nonresident's driving privilege subject to suspension by district magistrates in like manner and for like cause.

7. *Outside convictions:*

District magistrates of each county shall enter into reciprocal agreements with other counties, and the Governor of the state may enter into such agreements with any state or territory, for the purpose of reporting convictions or bail forfeitures in such jurisdictions by persons holding a license from such jurisdictions.

Such convictions or bail forfeitures for violations which if committed in Hawaii would be a violation of the state traffic laws or the ordinances of the several counties shall be recorded against the licensee as if committed in Hawaii.

8. *Appeals:*

In event of appeal from decision of district magistrate to circuit or supreme courts, or a trial in circuit court, such courts shall be governed by provisions of the point system and shall direct the district magistrate and the clerk of the magistrate to carry out their orders.

9. *Conviction reports —courts martial:*

Convictions by courts martial of any branch of armed services of the U. S., or by a U. S. Commissioner of a violation either on or off government property, which would be a violation of the state traffic laws or ordinances of the several counties, may be recorded against the licensee as if the convictions had been had in the courts of the state.

10. *Prima facie evidence of conviction:*

Photostatic or other copies of reports filed with district magistrates shall be deemed prima facie evidence of conviction or bail forfeiture when such copies are duly certified by issuing agencies as true copies of originals on file.

IDAHO

1. *Authority to Establish:*

Commissioner of lawenforcement directed to establish a violation point count system covering licensed resident drivers to apply to various moving traffic violations occurring within or outside the state.

2. *Point Values:*

Range of point values shall be one point on conviction for less serious violations to four points for more serious violations; conviction for only one violation arising from one arrest or citation shall be counted in determining violation point count.

3. *Action Level:*

Driver's license suspended when person has 12 or more points in any consecutive 12-month period or is a habitual violator of the traffic laws of the state. Habitual violator means a person who has a driving record showing a violation point count of 18 or more points in any consecutive 24-month period, or 24 or more points in any consecutive 36-month period.

4. *Hearings:*

Person suspended under point system (or for grounds covered in Tables 4-6) entitled to hearing.

IOWA

1. *Establishment of Point System:*

Commissioner is authorized to establish a point system for weighting traffic convictions or offenses by their seriousness and may change such weight scale from time to time as experience and accident frequency dictate.

Purpose of point system is to determine when the commissioner may suspend a license based on department records and other sufficient evidence, under his discretionary authority. (See Tables 4-6.)

2. *Credit points:*

After point system goes into effect under this authority, licensee shall receive a credit of one point for each year in which he had a valid license and during which no points were assessed against his license; such credit points shall not exceed five at any one time.

Credit points shall be subtracted from total points assessed against a licensee in determining when to suspend a license.

3. *Notice of Suspension — Appeals:*

Prior to suspension taking effect on the following grounds, licensee shall have 20 days advance notice of effective date of suspension and an appeal to the court shall stay suspension pending determination by the district court that licensee:

(1) Is a habitually reckless and negligent driver

(2) Is a habitual violator of the traffic laws

(3) Is incompetent to drive

(4) Has permitted an unlawful or fraudulent use of his license

(5) Has committed a serious violation of the state motor vehicle laws

4. *Notice of Point Assessment:*

Department must notify licensee when points are assessed and reasons therefor.

5. *Hearings:*

No license shall be suspended under the point system without notice of proposed suspension and without a preliminary hearing before members of the department "who shall have authority in meritorious cases to revoke the suspension." (Note: suspension before hearing under other law—see Table 4.)

6. *Equipment — Points not to be assessed:*

Warnings, summons, conviction or forfeiture of bail not vacated for a violation of the state law or municipal ordinance pertaining to vehicle equipment standards, except Sections 321.430 and 321.431 and local ordinances relating to brake requirements, shall not be considered in determining suspension or length of suspension. Nor does suspension action apply for violation of brake requirements if equipment is repaired within 72 hours of warning, summons, etc., and evidence of such repair has been sent to department.

7. *Occupational License:*

On application the commissioner may issue a temporary restrictive license to any person convicted, whose regular employment requires operation of a motor vehicle or who cannot perform his regular occupation without the use of a motor vehicle; such restrictive license does not entitle person to drive a vehicle for pleasure. Issuance of such license not applicable to person whose license is revoked for conviction requiring mandatory revocation of license. (See Tables 1-3.)

MARYLAND

1. *Number of points which authorizes suspension:*

Eight points within two years—initial suspension not less than two days and not more than 30 days; subsequent suspension not less than 15 days nor more than 90 days.

12 points within two years—license revoked (three months—under other law).*

If above action adversely effects employment or opportunity of employment of licensee, hearing officer authorized not to order suspension or revocation, or to cancel or modify suspension or revocation. In addition, if licensee is required to drive a motor vehicle in the course of his regular employment, suspension level shall be 15 points and revocation 18 points.

2. *Violations and schedule of point values based upon convictions:*

	Points
(1) Any moving violation not listed below and not contributing to an accident	1
(2) Violations contributing to an accident	3
(3) Exceeding posted speed limit by 10 mph or more	3
(4) Reckless driving	3
(5) Failure to report an accident	5
(6) Permitting unlicensed operator to operate a motor vehicle	4

**Period of revocation not specified but under other law (Section 106, Article 66 1/2) first revocation is three months; second or subsequent revocation is one year. (Sec. N1, Table 8) Point System law specifies that it shall not affect or apply to section 104 relating to mandatory suspension or revocation*

of license (see Tables 1-3) or to provisions of the motor vehicle financial responsibility law.

	Points
(7) Leaving after colliding:	
(a) No personal injury.....	8
(b) With personal injury.....	12
(8) Operating after suspension or revocation	12
(9) Obtaining or attempting to obtain permit by misrepresentation.....	12
(10) Loaning or altering a permit.....	12
(11) Conviction for any homicide or assault committed by motor vehicle..	12
(12) Driving under the influence of intoxicating liquor or narcotic drugs.	12
(13) Any felony involving use of motor vehicle	12

Note: Point system law specifies that it is in addition to, and not in substitution of, other law.

With regard to items (7b), (8), (11), (12) and (13) above, revocation upon conviction for such offenses is specified under other law, which also covers out-of-state convictions; provisions of the point system do not affect or apply to such out-of-state convictions.

3. *Interim Action:*

Warning letter to be sent upon accumulation of three points; licensee called in for conference upon accumulation of five points.

4. *Hearings:*

Licensee may request hearing within 10 days of notice of suspension (after eight points) or notice of revocation (after 12 points); suspension or revocation to be invoked at end of 10-day period unless licensee requests hearing. (Note: under other provisions of law, suspension is imposed only after a hearing is held—See Table 4.)

5. *Duration of Points:*

Points retained for two years and not counted thereafter.

6. *Out-of-state convictions:*

Applies only to convictions within the state.

7. *Two or more offenses arising out of single incident:*

Where multiple charges arise out of same incident, only the charge which has the highest point value is assessed upon conviction.

8. *Military Personnel:*

Points are assessed against service personnel for moving traffic violations, if after traffic case is turned over to military authority, commissioner is notified that such authority has taken disciplinary action.

9. *Appeals:*

Licensee has right of appeal as provided for under other provisions of law.

10. *Reinstatement following suspension, revocation:*

A licensee suspended or revoked under the point system shall not be reinstated unless he passes a reexamination which covers the tests given to all driver applicants (eyesight, ability to read and understand highway signs, knowledge of traffic laws and safe driving practices, driving test and such further physical or mental examinations as department finds necessary to determine fitness to operate a motor vehicle safely.)

11. *General Authority:*

Commissioner given authority to issue warning letters, conduct conferences, issue or modify orders of suspension and revocation, and hold hearings; a Driver Improvement section is established in the department to administer the point system.

MICHIGAN

1. *Number of points which authorizes suspension:*

12 points within two years—maximum suspension one year. (See Note, Table 4.)

2. *Violations and schedule of point values based upon convictions or probate court findings:*

	Points
(1) Manslaughter, negligent homicide or other felony resulting from operation of motor vehicle.....	6
(2) Operating under influence of intoxicating liquor or narcotic drug.....	6*
(3) Failure to stop and disclose identity at scene of accident.....	6
(4) Reckless operation in violation of Sec. 626 or similar state or municipal law within or without the state	6
(5) Exceeding speed limit by more than 15 mph or careless driving (state law or ordinance)	4
(6) Exceeding speed limit by more than	

*Under other law, four points are assessed upon conviction f operating a motor vehicle when due to consumption of i toxicating liquor or drugs, a person's driving ability is visib impaired. (Person charged with driving while under the i fluence of intoxicating liquor or drugs (Table 1) may found guilty under this provision).

(Note: Person convicted of driving while under influence intoxicating liquor or drugs (Table 1) has license suspend in addition to which six points are assessed under point s tem; 0.15% or more by weight of alcohol in blood constitu presumption that person was under influence of intoxicati liquor, whereas 0.10% or more by weight of alcohol in blo constitutes presumption that person's driving ability visibly impaired.)

	Points
10 but not more than 15 mph (state law or ordinance)	3
(7) Exceeding speed limit by 10 mph or less (state law or ordinance)	2
(8) Disobeying traffic signal, stop sign or improper passing	3
(9) All other moving violations	2
(10) Failure to answer a citation or notice to appear in court for any violation of Act or comparable ordinance	1*

No points shall be assessed for defective equipment when such defect consists of overweighted loads.

3. *Hearings:*

Department may conduct investigation and may require examination before action is taken; for failure to appear for reexamination, after proper notice, license revoked.

4. *Interim Action:*

Licensee may be called in for interview upon accumulation of nine points; for failure to appear after notice, three additional points are assessed.

5. *Appeals:*

Person aggrieved by action of department suspending or revoking license under point system may petition circuit court for order staying such action; court authorized to enter ex parte order staying suspension or revocation, subject to such terms and conditions as it may prescribe and for such time as it deems proper or until determination of any appeal to license appeal board or circuit court. (Also see Note under Table 11.)

6. *Duration of Points:*

Points retained for a two-year period. Every subsequent conviction date establishes new two-year period. Points accumulated are not erased until lapse of two years from latest conviction date. (However, driver's record maintained for seven years, and indefinitely for point convictions covering violations (1), (2), (3), and (4) in Item 2, above.)

7. *Out-of-State Convictions:*

No point values are assessed for bond forfeitures outside of state.

8. *Assessment of points when licensee subject to suspension under other law:*

Points are assessed against the driver's record for offenses under the point system even though offender is suspended or revoked for the same offense under other provisions of law.

9. *Multiple Convictions:*

If more than one conviction results from same incident, points assessed for more serious offense only.

Other law states that such failure shall constitute a misdemeanor but "shall not be considered a violation for any purpose under Sec. 320a" (point system) and provides that 30 days following failure to respond, court shall send notice to offender and upon his failure to appear within 14 days, department shall suspend offender's license and so notify him; suspension to remain in effect until matter adjudicated; on return of license, a reinstatement fee of $2.00 is imposed; such offender not subject to reexamination, as is required before reinstatement of licensees suspended or revoked.

MISSOURI

1. *Establishment of Point System:*

Director of revenue required to put into effect a point system for suspension and revocation of licenses (chauffeurs and operators). Points to be assessed only after a conviction or forfeiture of collateral.

2. *Number of Points Requiring Suspension — Revocation:*

Director shall:

Suspend operating privilege when driver has accumulated eight points within 18 months. Time of suspension shall be not less than 30 days nor more than 90 days. (Note: See Table 8)

Revoke operating privilege one year when driver has accumulated:

12 points in 12 months
18 points in 24 months
24 points in 36 months

3. *Violations and Schedule of Point Values:*

	Points
(1) Any moving violation of a state law or county or municipal traffic ordinance not listed herein, other than a violation of equipment provisions...	2
(Except any violation of a municipal stop sign ordinance where no accident is involved — 1 point)	
Note: Under definition of moving violation, excluded are driving a motor vehicle without a valid motor vehicle registration license and violations relating to sizes and weights of vehicles.	
(2) Speeding:	
In violation of state law	3
In violation of county or municipal ordinance	2
(3) Leaving scene of accident	
In violation of Sec. 564.450 RSMo..	12
In violation of county or municipal ordinance	6

	Points
(4) Careless and imprudent driving	
In violation of Sec. 304.016, sub-section 4, RSMo. (driving on left side of roadway under certain conditions)	4
In violation of county or municipal ordinance	2
(5) Operating without a license after suspension or revocation and prior to restoration of operating privileges	12
(6) Obtaining a license by misrepresentation	12
(7) Driving under the influence of intoxicating liquor or narcotic drugs	
In violation of state law	12
In violation of county or municipal ordinance	6
(8) Any felony involving use of a motor vehicle	12
(9) Knowingly permitting unlicensed person to operate a motor vehicle	4

An additional two points assessed when personal injury or property damage results from above violations and if found to be warranted and certified by the reporting court.

When any of the acts listed in subdivisions (2), (3), (4) or (7) above constitute both a violation of a state law and a violation of a county or municipal ordinance "points may be assessed for either violation but not for both."

4. *Interim Action:*

Director shall notify licensee of points charged against his record when record shows four or more points accumulated in 12-month period.

5. *Reduction of point values — Period of Safe Driving:*

For operation without conviction for a moving violation, point values reduced as follows:

For first full year	— reduced by one-third
For second consecutive full year	— reduced by one-half
For third consecutive full year	— points withdrawn

6. *Reinstatement — Suspension — Revocation:*

Suspended license returned to licensee upon termination of suspension and compliance with Safety Responsibility Law.

Upon termination of revocation, person shall apply for license in manner provided by law. (No new license granted until expiration of one year after revocation, See Note, Table S.)

Upon issuing a reinstated license accumulated point values are reduced to six points.

7. *Out-of-State Convictions:*

On notice of conviction in another state, which if committed in this state, would result in assessment of 12 points, director is authorized to assess points and revoke operating privilege.

8. *Hardship Cases — Livelihood:*

All circuit and magistrate courts located in counties which are part of multi-county judicial circuit have jurisdiction to hear applications for hardship driving privileges.

When court finds that operator or chauffeur suspended or revoked is required to operate a motor vehicle in connection with his business, occupation or employment, it may grant such limited driving privileges as circumstances warrant and if court finds undue hardship on such person to earn a livelihood; person so operating within the restrictions and limitation of such order shall not be guilty of operating a motor vehicle without a valid license.

Operators and chauffeurs may make application to court for hardship driving privilege, which shall be accompanied by copy of applicant's driving record for next preceding five years, as certified by department, and by proof of financial responsibility as required under the financial responsibility law; however, with respect to a chauffeur who fails to file such proof, court may grant hardship driving privilege solely for operating a commercial vehicle whose owner has complied with financial responsibility law; court's order to state such restriction and chauffeur must carry proof of owner's compliance.

Court order granting privilege shall indicate termination date, which shall not be later than end of suspension or revocation; copy of order sent to department, with copy to driver to carry on person when driving; a conviction resulting in assessment of points, other than a violation of a municipal stop sign ordinance where no accident involved, terminate order granting privilege; court in which such conviction occurs to immediately notify driver, the department and court which granted order.

Hardship driving privilege not to be extended to person whose license has been suspended or revoked for following reasons: convicted of any felony in commission of which motor vehicle was used or convicted for second time of driving while under the influence of intoxicating liquor (564.440); person ineligible for license issuance (under Sec. 302.060—grounds for license denial); operating a motor vehicle under influence of narcotic drugs, drugs (as defined in Sec. 195.220) or having left the scene of an accident (564.450); has been granted hardship driving pri

lege within a period of five years preceding application for such privilege, or who has refused to submit to a chemical test for intoxication (561.444) within a five-year period.

NEBRASKA

1. *Number of points requiring mandatory revocation:*

Twelve or more points within two years—mandatory revocation of license or driving privilege of nonresident for one year by department, unless longer period specified by court; period to commence from date of order of revocation or release from jail or penitentiary, whichever is later.

2. *Violations and schedule of point values based on files of department:*

	Points
(1) Felony resulting from operation of motor vehicle	12
(2) Third offense of drunk driving in violation of state, city or village law, whether or not court found same to be third offense	12
(3) Third offense of reckless driving or willful reckless driving or any combination of the two, in violation of state, city or village law whether or not court found same to be third offense	12
(4) "Hit and run" in accident resulting in death or injury of another	12
in death or injury of another	12
in property damage— if accident report within 12 hours	4
if not so reported (telephone call or other notification to appropriate peace officer deemed to be a report)	8
(5) "Hit and Run" in accident resulting alcoholic liquor or any drug in violation of state, city or village law	6
(6) Driving while under the influence of of state, city or village law	6
(7) Willful reckless driving in violation	
(8) Careless driving in violation of city or village law	4
(9) Negligent driving in violation of city or village law	3
(10) Reckless driving in violation of state, city or village law	5
(11) Speeding in violation of state, city or village law:	Points
a. Not more than five miles over speed limit	1
b. More than five miles but not more than 10 miles over speed limit	2
c. More than 10 miles over speed limit	3
(12) All other traffic violations for which reports to the department are required (not including parking violations, muffler violations or overloading of trucks)	2

In all cases the forfeiture of bail not vacated shall be regarded as equivalent to the conviction of the offense with which the licensee was charged. Points assessed as of date of violation for which conviction was had.

3. *Hearings:*

No department hearing; aggrieved person may appeal to court; appeal does not stay revocation unless permitted by court, pending review.

4. *Interim Action:*

Not specified in law. (based on available information, warning letter sent upon accumulation of eight points, under administrative procedure).

5. *Notice of Revocation:*

Within 24 hours after revocation, department to notify person in writing; notice to contain list and date of convictions, courts in which convictions rendered, points charged, length of revocation and demand for return of license. Upon failure to return license, peace officer shall secure possession; refusal to surrender license on demand subjects offender, on conviction, to fine, imprisonment or both.

6. *Duration of Points:*

Points have full value for two-year period and are erased thereafter. Points which are used to suspend the driver are not considered as the basis for further action against the driver.

7. *Non-residents:*

Point system similarily applies to non-residents.

8. *Reinstatement:*

Person revoked under point system must give and maintain proof of financial responsibility for three years, as required under financial responsibility law.

9. *Driving while under Suspension — Revocation:*

Persons driving while under revocation or suspension and before reinstatement shall be subject to following penalties upon conviction under state law or local ordinance:

first offense—imprisonment in county jail for 30 days; court orders person not to drive for one year from date of discharge from jail

each subsequent offense—imprisonment for six months; court orders person not to drive for two years from date of discharge

In addition, person operating motor vehicle who tries to flee in order to avoid arrest for operating while under suspension or revocation and before reinstatement is subject to the following penalties upon conviction—

fine not exceeding $500, or imprisonment in county jail for not more than six months, or in Nebraska Penal and Correctional Complex for not less than one year nor more than three years, or by both such fine and imprisonment. Court also orders person not to drive motor vehicle for one year from date of release, or in case of fine only, from date of satisfaction of fine. (See also Tables 16 and 17).

NEVADA

1. *Authority to Establish:*

Provides that department shall establish a uniform system of demerit points for various traffic violations occurring in state to be assessed against holders of licenses issued by the department.

System to be a running system of demerits covering a period of 12 months next preceding any date on which licensee may be called by department to show cause why license should not be suspended.

Traffic violation defined as conviction on charge involving a moving traffic violation in any municipal, justice's or district court in state.

2. *Point Values:*

Department charged with responsibility of establishing points depending on gravity of offense, with one demerit point to be assessed for a minor traffic violation to eight points for an extremely serious one.

3. *Action Level:*

Details of violation to be submitted to department by court. Department may provide for a graduated system of demerits within each category of violations.

When licensee has accumulated 12 demerit points, the department shall suspend his license until the total demerits have dropped below 12 demerit points in the next preceding 12 months.

NEW JERSEY

Note: The point system has been established under general authority as a regulation by the Director of the Division of Motor Vehicles, Department of Law and Public Safety. It is summarized herein because of its inclusion in the state's pamphlet laws covering motor vehicles and traffic regulations, but more important, because it contains certain grounds for suspension or revocation not otherwise specifically covered in the law but which are the basis for such action in the UVC and laws of other states.

1. *Number of points which authorize action:*

Twelve points within a three-year period may subject driver to hearing before department to show cause why his driver's license should not be suspended, or driver may elect to attend department's Driver Improvement School.

Director may permit driver, subject to suspension under point system, to attend such school in lieu of all or part of period of suspension. The maximum period of suspension that may be credited is two months. If suspension period is longer than two months, driver to surrender license for such excess period; license returned at expiration of period in excess of two months if driver, in signed statement, agrees to attend school on following conditions:

(a) will attend designated school and each session to which he's assigned

(b) comply with rules governing attendance, conduct, instruction and examination

(c) will be subject to suspension of driver license privilege if he fails to attend sessions, fails to comply with rules or fails to successfully complete course.

2. *Violations and schedule of point values:*

	Points
(1) Leaving scene of an accident	8
(2) Reckless driving	6
(3) Racing on highways	6
(4) Speeding—20 mph or more over legal limit, providing speed is less than 60 mph	6
(5) Speeding — other	4
(6) Passing on curve or hill or otherwise unsafely	5
(7) Passing stopped school bus	5
(8) Following too closely	5
(9) Other moving violations	3

3. *Driver Improvement School — Suspended Drivers:*

Driver who accumulates 12 or more points and whose driver license privilege is suspended may be requested to attend and successfully complete course as a condition to restoration of license.

4. *Conditions following restoration of license:*

Restoration after suspension or official warning, or warning after successfully completing Driver Improvement School course following accumulation of 12 points, shall be made on express condition and under-

standing that conviction of any violator of motor vehicle laws of New Jersey or other states within one year thereof, may result in summary suspension of driving privilege, without a hearing for the following period:

when violation occurred within date of action as follows:

within six months — three months
after six months but
within nine months — two months
after nine months but
within one year — one month

5. *Out-of-state violations:*

Violations in other states or Canadian Provinces charged against a person's driving record and points assessed, as if the violation had occurred within State.

6. *Proof of Financial Responsibility:*

On suspension under point system, proof of financial responsibility for the future will be required if one or more violations for which points are assessed resulted in an accident.

7. *Affect on other Suspensions:*

Provision of point system regulations shall not be affected by any revocation or suspension imposed by the judge of a municipal court, except that no lesser period of revocation or suspension will be imposed than that directed by the court.

NORTH CAROLINA *

1. *Number of points which authorizes suspension:*

12 or more points within three-year period, or eight or more points within three-year period immediately following reinstatement of license suspended or revoked because of conviction for one or more traffic offenses.

1st suspension—maximum 60 days

2nd suspension—maximum 6 months

Subsequent suspension—maximum one year

2. *Violation and schedule of point values based upon convictions:*

	Points
(1) Passing stopped school bus.....	5
(2) Reckless driving	4
(3) Hit and run, property damage only.	4
(4) Following too closely.....	4
(5) Illegal passing	4
(6) Driving on wrong side of road.....	4
(7) Running through stop signs.....	3
(8) Speeding in excess of 55 mph.....	3
(9) Failing to yield right of way.....	3
(10) Running through red light.....	3
(11) No operator's license or license expired for more than one year.....	3
(12) Failure to stop for siren.....	3
(13) Driving through safety zone.....	3
(14) No liability insurance.....	3
(15) Failure to report accident where such report is required.....	3
(16) All other moving violations.....	2

No points shall be assessed for convictions of following offenses:

Over loads	Carrying concealed weapon
Over length	Improper plates
Over width	Improper registration
Over height	Improper muffler
Illegal parking	Public drunk within a vehicle

Possession of liquor

Improper display of license plates or dealer tags

Unlawful display of emblems and insignia

Failure to display current inspection certificate

3. *Hearings:*

With or without a hearing.

4. *Interim Action:*

Warning letter sent upon accumulation of four points; department may request licensee to attend conference upon accumulation of seven points, and may afford him an opportunity to attend the Driver Improvement Clinic; upon successful completion of course, three points are deducted from licensee's record; only one such deduction permitted for any one licensee.

5. *Appeals — Stay of Suspension:*

License not to be suspended pending appeal from conviction.

6. *Duration of Points:*

Points retain their full value for three-year period and are erased thereafter. Upon restoration of license suspended or revoked for conviction of a traffic offense, any accumulated points in a driver's record are erased.

7. *Out-of-State Convictions:*

Point system applies to violations and convictions within state only.

8. *Assessment of Points when licensee subject to suspension under other law:*

Points are not assessed for convictions resulting from suspension or revocation under other provisions of

*See Note, Table 12 on habitual offender.

law. Any points heretofore charged for violation of the motor vehicle inspection laws shall not be considered as the basis for suspension or revocation of license. When person subject to suspension under point system and to suspension or revocation at the same time under other provisions of law, period of suspension or revocation to run concurrently.

9. *Two or more offenses arising out of single incident:*

Where multiple offenses occur on a single occasion, points assessed for one offense only; if offenses have different values, the highest point value is assessed.

10. *Probation:*

Department may substitute a period of probation for all or any unexpired period of suspension under the point system for period not exceeding one year; violation of probation results in suspension for original period ordered, or remainder of unexpired term; accumulation of three or more points during probation constitutes violation of probation.

OHIO

1. *Number of points which authorizes suspension:*

Twelve or more points within a two-year period.

2. *Procedure:*

Department notifies offender who has accumulated 12 points within two years from date of first conviction that his license will be suspended within 20 days of notice unless he files petition in court (juvenile court, if under 18 years of age) agreeing to pay cost of proceedings and alleging he can show cause why his driving privilege should not be suspended as follows: (Upon written request of petitioner department shall furnish him with copy of record of convictions; existence of such record showing 12 or more points shall be prima facie evidence that person is an habitual traffic law violator.)

a. Six months, if person not previously suspended under the point system

b. One year, if person had no more than one such previous suspension

c. Three years, if person had no more than two such previous suspensions

d. Five years, if person had three or more such previous suspensions.

At hearing court determines if person's license shall be suspended, based on record and other competent evidence. If court finds that person has failed to show cause why his license should not be suspended, court shall suspend as noted above, withhold such suspension or part thereof, or provide such conditions or probation as it deems proper; in such case, cost of proceedings to be paid of person; if person does show cause, cost to be paid out of county treasury.

3. *Violations and schedule of point values based on convictions.* (See item 7 below):

Courts of record or mayors' courts shall assess and transcribe to abstract of conviction report, furnished by and forwarded to the department, the points charged, according to following schedule:

	Points
(1) Violation of provisions (secs. 4507.38, 4507.39, or ordinance) prohibiting operation of motor vehicle while under suspension or revocation. (4507.38 prohibiting while license is suspended or revoked under driver license law; 4507.39 prohibits any "nonresident or other person" whose license or right of privilege to operate in the state has been suspended or revoked from operating with a license issued by another jurisdiction during period of suspension or within one year of date of such revocation)	6
(Also provides, with reference to above enumerated sections, for fine of not more than $500 and imprisonment for not less than two days nor more than six months; however, under point system (sec. 4507.40) penalty for driving while license suspended or revoked shall be a fine of not more than $500 and imprisonment for not less than three days nor more than six months; no court shall suspend the first three days of any sentence provided under the section.)	
(2) Violation of 4549.04 or ordinance prohibiting operation of a motor vehicle without consent of owner...	6
(3) Homicide by vehicle.....	6
(4) Violation of 4511.19 or ordinance prohibiting operation of a motor vehicle while under the influence of alcohol or drugs.....	6
(5) Failure to stop and disclose identity at scene of accident.....	6
(6) Violation of 4511.02 or any ordinance prohibiting the willful fleeing or eluding of a police officer.....	6
(7) Any crime punishable as a felony under the motor vehicle laws or any other felony in which motor vehicle is used	6
(8) Driving in violation of license restrictions	2
(9) Violation of 4511.251 or ordinance prohibiting reckless operation.....	4

	Points
(10) Violation of 4511.20 or ordinance prohibiting reckless operation.....	4
(11) Violation of speed regulations.....	2
(12) All other moving traffic violations, except 5577.01 through 5577.99 (size and weight of vehicles)	2

4. *Interim Action:*

Warning letter by regular mail sent when points assessed exceed five; letter to list reported violations, points charged for each, and to include outline of suspension provision. On accumulation of more than seven points person required to submit to license or physical examination, or both; such examination to determine if person is to be suspended or revoked, retain license or is issued restricted license. Failure or neglect to submit to exam is grounds for suspension or revocation.

5. *Duration of Points:*

Points retain their full value for two years; points used to suspend driver shall not be considered as the basis for any subsequent suspension under point system.

On notification from court, department shall delete points entered for bond forfeiture if person is acquitted of offense.

6. *Out-of-State Convictions:*

Not included under point system.

7. *Assessment of points when licensee subject to suspension under other law:*

When person's driving privilege is suspended by the court for specified offenses covered in Tables 1-3 and points are charged under the point system for such offenses, "that period of suspension shall be credited against the time of any subsequent suspension under this section for which such points were considered in making such subsequent suspension."

8. *Two or more offenses arising out of single incident:*

Where multiple offenses occur on a single occasion, points are assessed for one offense only; if offenses have different point values, the highest point value is assigned.

9. *Nonresidents:*

Nonresidents' driving privilege subject to suspension by department (registrar). (Note: See Item 2 above, covering court's authority.)

10. *Reinstatement:*

Person whose license is suspended, put "on probation, or granted limited or occupational driving" under the point system, is not reinstated until he has qualified by taking the required driver's examination and gives and maintains proof of financial responsibility in accordance with the provisions of the financial responsibility law.

PENNSYLVANIA

1. *Number of points which require suspension:*

Eleven points or more (Also see Interim Action, Item 3, below).

First suspension	— 60 days
Second suspension	— 90 days
Subsequent suspension	— 120 days to one year, at discretion of department

2. *Violations and schedule of point values based upon convictions:*

Section of Code		Points
1001 (1)	Reckless driving	5
1002 (a)	Driving too fast for conditions	5
1002 (b) (1)	Exceeding speed limit of 10 mph in passing any interurban or street car taking on or discharging passengers; at intersection where safety zone established; where traffic controlled by officer or traffic signal	4
1002 (b) (1.1)	Exceeding 15 or 20 mph limit in residence district	4
1002 (b) (2)	Exceeding speed limit of 15 mph in school zone	5
1002 (b) (3)	Exceeding speed limit 20 mph within 200 feet of RR grade crossing..	3
1002 (b) (4-7, 9)	Speed over legal limit:	
1002 (c)	6 to 10.....	3
	11 to 15.....	6
	16 to 20 (and 15 days suspension) ...	6
	21 to 29 (and 30 days suspension) ...	6

Section of Code		Points
	30 and over (and 60 days suspension) ...	6
1004	Driving to left of center of highway.....	3
1005	Passing at intersection of railroad crossing...	3
1006	Failure to drive on right half of highway..	3
1007	Improper overtaking .	3
1008 (a) (c) (d) (e)	Improper passing	3
1008 (b)	Improper passing on curve or crest of hill..	6
1009 (a)	Failure to yield to overtaking vehicle ...	3
1010 (a)	Following too closely..	5
1010 (b)	Following too closely (comm. vehicle)	5
1011 (a) (b) (d)	Improper turning	3
1012	Failure to give proper signals	3
1013 (a) (b) (d)	Right of way (two vehicles at intersection at same time)	3
1014 (a) (b) (c)	Exceptions to right of way	3
1016 (a) (b)	Driving through stop sign	5
1016.1	Failure to yield right of way	5
1018 (a-e)	Passing school bus loading or unloading..	6
1020 (a)	Stopping on highway.	3
1026	Coasting (passenger or commercial vehicle) ..	3
1028 (a)	Driving through traffic light	5
1036	Moving violations on Pennsylvania turnpike, other than speed.....	3
1113.1	Restricted zones for certain commercial vehicles	4

3. *Interim Action:*

When person's record shows as many as three points (note: no offense has lower point value) department shall notify offender by letter of nature and effect of point system; failure to receive notice shall not prevent suspension of license or learner's permit; where operator is a minor, a similar letter may also be sent to his parent or guardian.

When person's record for first time shows as many as six points, department shall require that he undergo a special examination (as provided in Sec. 608 (g)) attend an approved driver improvement school, or clinic, or any combination of foregoing. On successful completion of school, driver's record shall be credited with one point. On failure to attend and satisfactorily complete requirements of examination, school or clinic, an additional five points shall be assigned and license or learner's permit shall be suspended.

When person's record has been reduced below six points and for the second time shows as many as six points, action taken as above, except for reference to crediting driver's record with one point.

When person's record has been reduced below six points and for a third or subsequent time shows as many as six points, department shall require him to attend an interview, at which time the record is reviewed and department shall take such action as is deemed proper.

4. *Duration of Points:*

Points removed from record from date of last conviction at the rate of two points for each year person is not convicted of any violation of vehicle or tractor laws of Commonwealth. However, on restoration of driving privilege following suspension under point system, person's record shall show five points, which shall be removed as noted above.

5. *Credit Points:*

See Interim Action, Item 3 above.

6. *Two or More Offenses Arising out of Single Incident:*

On conviction of two or more offenses under point system committed on single occasion, points assessed only for offense with highest point value.

7. *Out-of-state convictions:*

Points may be assessed when such offense, if committed in Commonwealth, would result in poin assignment.

8. *Notice of Suspension:*

Upon suspension, department shall notify perso in writing to surrender license or learner's permit.

9. *Hearings:*

After a hearing which indicates person was at faul or partly at fault, in causing an accident, departme may require person to undergo special examinatic or attend driver improvement school or clinic. (S. under Interim Action, Item 3 above).

SOUTH CAROLINA

1. *Number of points which authorizes suspension:*

Twelve points within 12 months (which presumes to indicate a disrespect for law and disregard for safety of others)—maximum suspension six months.

2. *Violations and schedule of point values based upon convictions:*

	Points
(1) Reckless driving	6
(2) Passing stopped school bus	6
(3) Hit and run (property damage only)	6
(4) Driving too fast for conditions, or speeding	4
(5) Disobedience of official traffic control signals	4
(6) Disobedience of officer directing traffic	4
(7) Failing to yield right of way	4
(8) Driving on wrong side of road	4
(9) Passing unlawfully	4
(10) Turning unlawfully	4
(11) Driving through or within safety zone	4
(12) Failing to give signal (or giving improper signal) for stopping, turning or suddenly decreasing speed	4
(13) Shifting lanes without safety precaution	2
(14) Improper dangerous parking	2
(15) Following too closely	4
(16) Failing to dim lights	2
(17) Operating with improper lights	2
(18) Operating with improper brakes	4
(19) Operating vehicle in unsafe condition	2
(20) Driving in improper lane	2

3. *Hearings:*

Suspension before hearing; but licensee entitled to hearing.

4. *Interim Action:*

Not specified in law. (Note: under administrative procedures warning letter is sent upon accumulation of six points).

5. *Warning Tickets:*

Warning tickets not to be assigned a point value.

6. *Courts:*

Courts to report convictions to department as required under other law; action of department subject to judicial review.

7. *Other law not affected:*

Point system authority shall not affect action taken by department in suspending or revoking license when such action is mandatory under other law.

8. *Duration of Points:*

Points retain full value for 12 months; half value between 12-24 months; points not counted thereafter. Points which are used to suspend driver are not considered as basis for further action, under the point system or other law covering reckless driving (which provides for mandatory license suspension for three months on second or subsequent conviction for such offense within 5 years).

9. *Out-of-State Convictions:*

Applies to out-of-state convictions of resident drivers for offenses covered under the point system provided that reciprocal agreements are entered into with other states.

10. *Nonresidents:*

Nonresident subject to suspension in same manner as resident driver.

11. *Military Personnel:*

Conviction by court martial of any branch of armed services of U. S. or by a U. S. Commissioner of a violation either on or off government property which if committed in South Carolina would be a violation of the laws of the state may, in discretion of department, be recorded against a driver the same as if conviction had been had in courts of South Carolina.

SOUTH DAKOTA

Department authorized to adopt a point system. See Note in Table 5.

UTAH

1. *Authority to Establish:*

Department authorized to assign point values to moving traffic violations, based on relationship between such violations and motor vehicle accidents. (See also Note in Table 5).

2. *Point Assessment:*

Persons convicted of such violations shall have assessed against their driving records the number of points assigned; but the number of such points assessed shall be decreased by 10% if on abstract of court record of conviction court has graded severity of violation as "minimum" and increased by 10% if court grades violation as "maximum." (See Note in Table 10.)

3. *Duration of Points:*

Points shall be valid for period of time determined by department, which time limit shall not exceed three years.

4. *Point Deletion — Violation-free Driving:*

Department authorized to delete points to reward violation-free driving for such period of time as it may determine.

5. *Public Notice:*

Notice of points assigned for violations, time limit for deletion of points, and point level at which department takes suspension action shall be published in two newspapers with general circulation throughout state; notice of changes made in point system shall be given in similar manner.

6. *Hearings:*

Upon suspending license under point system, department shall notify licensee and upon his request afford him an opportunity for a hearing, within 20 days after receipt of such request. After hearing, department shall either rescind suspension, or on good cause, may extend suspension or revoke license.

WISCONSIN

Department authorized to adopt a point system. (See Note 2 in Table 5.)

DISTRICT OF COLUMBIA

1. *Authority to establish point system:*

By order, Director of Motor Vehicles is required to put into effect a point system for suspension and revocation of operator's permits.

Points assessed only after conviction. With respect to persons under 18 years of age, points assessed only after adjudication by juvenile court or other court having jurisdiction or where such person has not denied charge to Juvenile Bureau of Metropolitan Police Department.

In his discretion, director may, after notice and opportunity for a hearing, suspend permit or driving privilege of any person without assessment of points for traffic charges pending in court, subject to final determination; on finding of guilt, points assessed. In cases where director proposes to revoke or continue an existing suspension following court proceeding, he shall afford operator opportunity for a hearing.

2. *Number of points authorizing suspension, revocation:*

Eight points for license suspension and 12 points for revocation, accumulated within a three-year period. Initial suspension period from two to 30 days with subsequent suspension from 15 to 90 days based on seriousness of case. Revocation period not specified, but under basic law is six months. When revocation action can be modified (in opinion of Hearing Officer or Director) to a suspension, suspension not limited to periods above; when limited permit is allowed as modification of suspension or revocation, effectiveness of permit also not limited to time periods noted above.

Suspension effective five days after notice, unless hearing requested; mandatory revocation effective immediately.

3. *Violations and schedule of point values:*

	Points
Any moving violation not listed below and not contributing to an accdent	2
Violations contributing to an accident	3
Speeding	4
Motor running unattended	4
Failure to lock ignition	4
Failure to report an accident	5
Failure to give the right of way to pedestrian	5
Leaving after colliding:	
No personal injury	8
With personal injury	12
Reckless driving	12
Operating without a District of Columbia permit prior to restoration of operating privileges which have been suspended	12
Operating in violation of restriction	12
Using permit of another	12
Operating after suspension or revocation.	12
Obtaining or attempting to obtain a permit by misrepresentation	12
Loaning or altering a permit	12
Conviction for any homicide or assault committed by means of an automobile	12
Driving under the influence of intoxicating liquor or narcotic drugs	12
Any felony involving use of an automobile	12

4. *Suspension under other conditions:*

Director, in his discretion, and after notice and op portunity for a hearing, may suspend or revoke perm or operating privilege of person who, in his opinio is not physically, mentally or morally qualified operate safely or has driven in manner which shows flagrant disregard for safety of persons or property.

In addition, when person is arrested for any of t following traffic violations, he shall be interviewed an official of the Metropolitan Police Department a served notice of possible suspension unless he appe for a hearing with department (motor vehicle) witl five days (10 days for nonresident) to show cause w permit should not be suspended or revoked. (cent driver file notified by phone to place "stop" in driv record). On failure to appear, permit or privilege

pended or revoked until restored by director. (special procedures set forth for persons, who because of physical or mental condition, cannot be served notice):

(1) Operation of a motor vehicle involved in an accident resulting in the death of another.

(2) Operation of a motor vehicle at a speed in excess of 30 miles per hour above the authorized speed limit.

(3) Operation of a motor vehicle involved in an accident as the result of a traffic violation for which, by order of the Municipal Court, collateral of $50 or more, or a bond in any amount, is required.

(4) Operation of a motor vehicle in disregard of any restriction which may have been imposed on the use of the permit of the operator of such vehicle, whether such permit be issued by the District of Columbia or by another jurisdiction.

(5) Operation of a motor vehicle while apparently under the influence of intoxicating liquor or a drug, or while apparently physically or mentally unqualified to operate a motor vehicle by reason of diabetic coma, or epileptic or other seizure.

(6) Leaving the scene of an accident, in which the motor vehicle driven by him was involved and in which there is bodily injury, without giving assistance or making known his identity and address and the identity and address of the owner of the vehicle.

(7) Reckless driving involving bodily injury.

(8) Engaging in the commission of a felony in which a motor vehicle is involved.

Director also has authority, when justified, to require person to show cause why his license should not be revoked, when action has already been taken towards the suspension of the permit or privilege of such person.

5. *Interim Action:*

On first moving violation, warning letter sent unless points assessed are five or more; at five points, person to attend conference.

6. *Duration of Points:*

Points shall be erased only by a lapse of three years; upon issuance of a permit, following revocation, there may be additional periods of suspension or revocation for additional points obtained. In his discretion, director may cancel points assessed against traffic violator who elects to stand trial and where court finds such person not guilty or dismisses case.

7. *Out-of-state convictions — military personnel:*

For convictions, forfeitures and pleas of guilty certified to the District by other jurisdictions, points comparable to the District schedule will be assigned in the discretion of the Director.

In traffic cases turned over to military authorities, points will be assessed immediately upon notification to the Director that such military authorities have taken disciplinary action as the result of arrests of service personnel for moving traffic violations.

8. *Failure to respond to traffic citation:*

After notice and opportunity for a hearing, director may suspend resident arrested for traffic violation in another jurisdiction, which under agreement with D. C., permits violators to receive a traffic citation instead of posting bail or collateral to secure appearance for trial, and who fails to comply; suspension to remain in effect until person shows evidence of compliance with terms of citation. Also applicable with respect to moving traffic violations committed in D. C. by D. C. residents.

SB-296

PAUL J. BELL, JR., Petitioner,

v

R. H. BURSON, Director, Georgia Department of Public Safety

402 US 535, 29 L Ed 2d 90, 91 S Ct 1586

[No. 5586]

Argued March 23, 1971. Decided May 24, 1971.

SUMMARY

Under Georgia's motor vehicle safety responsibility statute, an uninsured motorist's motor vehicle registration and driver's license are subject to suspension if he is involved in an accident and he fails to post security to cover the amount of damages claimed by aggrieved parties. The petitioner, an uninsured motorist, was involved in an accident when a girl rode her bicycle into the side of his automobile. He did not post security for the damages claimed to have been suffered by the girl. At an administrative hearing, his offer to prove that he was not liable for the accident was rejected, and he was given 30 days to post security or to have his license and registration suspended. The administrative decision was upheld by the Georgia Court of Appeals (121 Ga App 418, 174 SE2d 235), and the Georgia Supreme Court denied review.

On certiorari, the United States Supreme Court reversed and remanded the case. In an opinion by BRENNAN, J., expressing the view of six members of the court, it was held that before the state could suspend the petitioner's license and registration, procedural due process required a determination whether there was a reasonable possibility of a judgment being rendered against him as a result of the accident, since liability, in the sense of an ultimate judicial determination of responsibility, played a crucial role under the state's statutory scheme for motor vehicle safety responsibility.

BURGER, Ch. J., and BLACK and BLACKMUN, JJ., concurred in the result.

HEADNOTES

Classified to U. S. Supreme Court Digest, Annotated

Constitutional Law § 695 — motor vehicle licenses

1. The Fourteenth Amendment is not violated by a statute which bars the issuance of licenses to all motorists who do not carry liability insurance or who do not post security.

Constitutional Law § 695 — due process — motor vehicle license

2. A license issued to a motorist is not to be taken away by state action without that procedural due process required by the Fourteenth Amendment.

States § 18 — constitutional restraints

3. Relevant constitutional restraints limit state action to terminate an entitlement, whether the entitlement is denominated a "right" or a "privilege."

Constitutional Law § 695 — due process — motor vehicle license — suspension

4. In connection with the suspension of a license of an uninsured motorist who was involved in an accident, the inquiry into fault or liability requisite to afford the licensee due process need not take the form of a full adjudication of the question of liability.

Constitutional Law § 695 — due process — motor vehicle license — suspension

5. Before a state may suspend the license and registration of an uninsured motorist who was involved in an accident and who did not post security to cover the amount of damages claimed by another party involved in the accident, procedural due process requires a determination whether there is a reasonable possibility of a judgment being rendered against the motorist as a result of the accident, where liability, in the sense of an ultimate judicial determination of responsibility, plays a crucial role under the state's statutory scheme for motor vehicle safety responsibility.

Constitutional Law § 695 — due process — motor vehicle license — suspension

6. A state's interest in protecting a

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7 AM JUR 2d, Automobiles and Highway Traffic § 138

3 AM JUR PL & PR FORMS, Automobiles and Highway Traffic, Forms 51–54

US L ED DIGEST, Constitutional Law §§ 695, 787, 803.5

ALR DIGESTS, Automobiles and Highway Traffic §§ 47, 48

L ED INDEX TO ANNO, Constitutional Law; Motor Vehicles and Carriers

ALR QUICK INDEX, Automobile Insurance; Due Process of Law

FEDERAL QUICK INDEX, Automobile Insurance; Due Process of Law

ANNOTATION REFERENCE

Validity of Motor Vehicle Financial Responsibility Act. 85 ALR2d 1011.

claimant from the possibility of an unrecoverable judgment is not, within the context of the state's fault-oriented scheme of motor vehicle safety responsibility, a justification for denying procedural due process by suspending the license and registration of an uninsured motorist who has failed to post security, where there is no reasonable possibility of a judgment being rendered against him in connection with an accident in which he has been involved.

Constitutional Law § 787 — due process — sufficiency of hearing

7. The fact that additional expense will be occasioned by an expanded hearing does not justify denying a hearing which meets the standards of procedural due process.

Constitutional Law § 695 — motor vehicle license — suspension

8. In reviewing state action in the area of suspension of motorists' licenses, the United States Supreme Court will look to substance, not to bare form, to determine whether constitutional minimums have been honored.

Constitutional Law § 803.5 — due process — hearing — suspension of license

9. Under a statutory scheme which makes liability an important factor in the state's determination to deprive an individual of his motor vehicle license, the state may not, consistently with due process, eliminate consideration of that factor in its hearing prior to the suspension of an uninsured motorist's license because he has been involved in an accident and has not posted security.

Constitutional Law § 787 — due process — sufficiency of hearing

10. The hearing required by the due process clause of the Fourteenth Amendment must be meaningful and appropriate to the nature of the case.

Constitutional Law § 803.5 — due process — notice — hearing

11. Due process requires that when a state seeks to suspend a motorist's license, it must afford, before the suspension becomes effective, notice and opportunity for hearing appropriate to the nature of the case.

APPEARANCES OF COUNSEL

Elizabeth R. Rindskopf argued the cause for the petitioner, pro hac vice, by special leave of Court.

Dorothy T. Beasley argued the cause for the respondent.

OPINION OF THE COURT

Mr. Justice Brennan delivered the opinion of the Court.

Georgia's Motor Vehicle Safety Responsibility Act provides that the motor vehicle registration and driver's license of an uninsured motorist involved in an accident shall be suspended unless he posts security to cover the amount of damages claimed by aggrieved parties in reports of the accident.[1] The administrative hearing conducted prior to the suspension excludes consideration of the motorist's fault or liability for the accident. The Georgia Court of Appeals rejected petitioner's contention that the State's statutory scheme, in failing before suspending the licenses to afford him a hearing on the question of his fault or liability, denied him due process in violation of the Fourteenth Amendment: the court held that " 'Fault' or 'innocence' are completely irrelevant factors." 121 Ga App 418, 420, 174 SE2d 235, 236 (1970). The Georgia Supreme Court denied review. App, at 27. We granted certiorari. 400 US 963, 27 L Ed 2d 383, 91 S Ct 376 (1970). We reverse.

Petitioner is a clergyman whose ministry requires him to travel by car to cover three rural Georgian communities. On Sunday afternoon, November 24, 1968, petitioner was involved in an accident when five-year-old Sherry Capes rode her bicycle into the side of his automobile. The child's parents filed an accident report with the Director of the Georgia Department of Public Safety indicating that their daughter had suffered substantial injuries for which they claimed damages of $5,000. Petitioner was thereafter informed by the Director that unless he was covered by a liability insurance policy in effect at the time of the accident he must file a bond or cash security deposit of $5,000 or present a notorized release from liability, plus proof of future financial responsibility,[2] or suffer the suspension of his driver's license and vehicle registration. App, at 9. Petitioner requested an administrative hearing before the Director asserting that he was not liable as the accident was unavoidable, and stating also that he would be severely handicapped in the performance of his ministerial duties by a suspension of his licenses. A hearing was scheduled but the Director informed petitioner that "[t]he only evidence that the Department can accept and consider is: (a) was the petitioner or his vehicle involved in the accident; (b) has petitioner complied with the provisions of the Law as provided; or (c) does petitioner come within any of the exceptions of the Law." App, at 11.[3] At the

1. Motor Vehicle Safety Responsibility Act, Ga. Code Ann. §§ 92A-601 et seq. (1958). In pertinent part the Act provides that anyone involved in an accident must submit a report to the Director of Public Safety. Ga Code Ann § 92A-604 (Supp 1970). Within 30 days of the receipt of the report the Director "shall suspend the license and all registration certificates and all registration plates of the operator and owner of any motor vehicle in any manner involved in the accident unless or until the operator or owner has previously furnished or immediately furnishes security, sufficient . . . to satisfy any judgments for damages or injuries resulting . . . and unless such operator or owner shall give proof of financial responsibility for the future as is required in section 92A-615.1. . . ." Ga Code Ann § 92A-605(a) (Supp 1970). Section 92A-615.1 (Supp 1970) requires that "such proof must be maintained for a one year period." Section 92A-605 (a) works no suspension, however, (1) if the owner or operator had in effect at the time of the accident a liability insurance policy or other bond, Ga Code Ann § 92A-605(c) (Supp 1970); (2) if the owner or operator qualifies as a self-insurer, ibid; (3) if only the owner or operator was injured, Ga Code Ann § 92A-606 (1958); (4) if the automobile was legally parked at the time of the accident, ibid.; (5) if as to an owner, the automobile was being operated without permission, ibid.; or (6) "[i]f, prior to the date that the Director would otherwise suspend license and registration . . . there shall be filed with the Director evidence satisfactory to him that the person who would otherwise have to file security has been released from liability or been finally adjudicated not to be liable or has executed a duly acknowledged written agreement providing for the payment of an agreed amount in installments . . . ." Ibid.

2. Questions concerning the requirement of proof of future financial responsibility are not before us. The State's brief, at 4, states: "The one year period for proof of financial responsibility has now expired so [petitioner] would not be required to file such proof, even if the Court of Appeals decision were affirmed."

3. Ga Code Ann § 92A-602 (1968) provides:

"The Director shall administer and enforce the provisions of this Chapter and may make rules and regulations necessary for its administration and shall provide for hearings upon request of persons aggrieved by orders or acts of the Director under the provisions of this Chapter. Such

ministrative hearing the Director jected petitioner's proffer of evi- nce on liability, ascertained that titioner was not within any of the tutory exceptions, and gave pe- ioner 30 days to comply with the curity requirements or suffer sus- nsion. Petitioner then exercised statutory right to an appeal de ve in the Superior Court. Ga Code n § 92A-602 (1958). At that aring, the court permitted peti- ner to present his evidence on li- ility, and, although the claimants re neither parties nor witnesses, nd petitioner free from fault. As esult, the Superior Court ordered at the petitioner's driver's license be suspended . . . [until] it is filed against petitioner for e purpose of recovering damages the injuries sustained by the ld . . . ." App, at 15. This der was reversed by the Georgia urt of Appeals in overruling pe- ioner's constitutional contention.

1-3] If the statute barred the is- nce of licenses to all motorists o did not carry liability insurance who did not post security, the tute would not, under our cases, late the Fourteenth Amendment. parte Poresky, 290 US 30, 78 L 152, 54 S Ct 3 (1933); Conti- tal Baking Co. v Woodring, 286 352, 76 L Ed 1155, 52 S Ct 595, ALR 1402 (1932); Hess v Paw- ki, 274 US 352, 71 L Ed 1091, 47 Ct 632 (1927). It does not follow, wever, that the Amendment also mits the Georgia statutory eme merely because not all mo- ists, but rather only motorists olved in accidents, are required to post security under penalty of loss of the licenses. See Shapiro v Thompson, 394 US 618, 22 L Ed 2d 600, 89 S Ct 1322 (1969); Frost & Frost Trucking Co. v Railroad Commission, 271 US 583, 70 L Ed 1101, 46 S Ct 605, 47 ALR 457 (1926). Once licenses are issued, as in petitioner's case, their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment. Sniadach v Family Finance Corp. 395 US 337, 23 L Ed 2d 349, 89 S Ct 1820 (1969); Goldberg v Kelly, 397 US 254, 25 L Ed 2d 287, 90 S Ct 1011 (1970). This is but an application of the general proposition that relevant constitutional restraints limit state power to terminate an entitlement whether the entitlement is denominated a "right" or a "privilege." Sherbert v Verner, 374 US 398, 10 L Ed 2d 965, 83 S Ct 1790 (1963) (disqualification for unemployment compensation); Slochower v Board of Higher Education, 350 US 551, 100 L Ed 692, 76 S Ct 637 (1956) (discharge from public employment); Speiser v Randall, 357 US 513, 2 L Ed 2d 1460, 78 S Ct 1332 (1958) (denial of a tax exemption); Goldberg v Kelly, supra (withdrawal of welfare benefits). See also Londoner v Denver, 210 US 373, 385-386, 52 L Ed 1103, 1112, 28 S Ct 708 (1908); Goldsmith v Board of Tax Appeals, 270 US 117, 70 L Ed 494, 46 S Ct 215 (1926); Opp Cotton Mills v Administrator, 312 US 126, 85 L Ed 624, 61 S Ct 524 (1941).

4, 5] We turn then to the nature of the procedural due process which must be afforded the licensee on the question of his fault or liability for the accident.[4] A procedural rule that may satisfy due process in one context may not necessarily satisfy procedural due process in every case. Thus, procedures adequate to determine a welfare claim may not suffice to try a felony charge. Compare Goldberg v Kelly, 397 US, at 270-271, 25 L Ed 2d at 300, with Gideon v Wainwright, 372 US 335, 9 L Ed 2d 799, 83 S Ct 792, 93 ALR2d 733 (1963). Clearly, however, the inquiry into fault or liability requisite to afford the licensee due process need not take the form of a full adjudication of the question of liability. That adjudication can only be made in litigation between the parties involved in the accident. Since the only purpose of the provisions before us is to obtain security from which to pay any judgments against the licensee resulting from the accident, we hold that procedural due process will be satisfied by an inquiry limited to the determination whether there is a reasonable possibility of judgments in the amounts claimed being rendered against the licensee.

6, 7] The State argues that the licensee's interest in avoiding the suspension of his licenses is outweighed by countervailing governmental interests and therefore that this procedural due process need not be afforded him. We disagree. In cases where there is no reasonable possibility of a judgment being rendered against a licensee, Georgia's interest in protecting a claimant from the possibility of an unrecoverable judgment is not, within the context of the State's fault-oriented scheme, a justification for denying the process due its citizens. Nor is additional expense occasioned by the expanded hearing sufficient to withstand the constitutional requirement. " 'While the problem of additional expense must be kept in mind, it does not justify denying a hearing meeting the ordinary standards of due process.' " Goldberg v Kelly, 397 US, at 261, 25 L Ed 2d at 295, quoting Kelly v Wyman, 294 F Supp 893, 901 (SDNY 1968).

8, 9] The main thrust of Georgia's argument is that it need not provide a hearing on liability because fault and liability are irrelevant to the statutory scheme. We may assume that were this so, the prior administrative hearing presently provided by the State would be "appropriate to the nature of the case." Mullane v Central Hanover Bank & Trust Co. 339 US 306, 313, 94 L Ed 865, 872, 70 S Ct 652 (1950). But "[i]n reviewing state action in this area . . . we look to substance, not to bare form, to determine whether constitutional minimums have been honored." Willner v Committee on Character, 373 US 96, 106-107, 10 L Ed 2d 224, 231, 83 S Ct 1175, 2 ALR3d 1254 (1963)

ring need not be a matter of record the decision as rendered by the ctor shall be final unless the aggrieved son shall desire an appeal, in which he shall have the right to enter an ap- l to the superior court of the county of his residence, by notice to the Director, in the same manner as appeals are entered from the court of ordinary, except that the appellant shall not be required to post any bond nor pay the costs in advance. If the aggrieved person desires, the appeal may be heard by the judge at term or in chambers or before a jury at the first term. The hearing on the appeal shall be de novo, however, such appeal shall not act as a supersedeas of any orders or acts of the Director, nor shall the appellant be allowed to operate or permit a motor vehicle to be operated in violation of any suspension or revocation by the Director, while such appeal is pending. A notice sent by registered mail shall be sufficient service on the Director that such appeal has been entered."

4. Petitioners stated at oral argument that while "it would be possible to raise [an equal protection argument] . . . we don't raise this point here." Tr. of Oral Arg., at 14.

(concurring opinion). And looking to the operation of the State's statutory scheme, it is clear that liability, in the sense of an ultimate judicial determination of responsibility, plays a crucial role in the Safety Responsibility Act. If prior to suspension there is a release from liability executed by the injured party, no suspension is worked by the Act. Ga Code Ann § 92A-606 (1958). The same is true if prior to suspension there is an adjudication of nonliability. Ibid. Even after suspension has been declared, a release from liability or an adjudication of nonliability will lift the suspension. Ga Code Ann § 92A-607 (Supp 1970). Moreover, other of the Act's exceptions are developed around liability related concepts. Thus, we are not dealing here with a no-fault scheme. Since the statutory scheme makes liability an important factor in the State's determination to deprive an individual of his licenses, the State may not, consistently with due process, eliminate consideration of that factor in a prior hearing.

[10] The hearing required by the Due Process Clause must be "meaningful," Armstrong v Manzo, 380 US 545, 552, 14 L Ed 2d 62, 66, 85 S Ct 1187 (1965), and "appropriate to the nature of the case." Mullane v Central Hanover Bank & Trust Co., supra. It is a proposition which hardly seems to need explication that a hearing which excludes consideration of an element essential to the decision whether licenses of the nature here involved shall be suspended does not meet this standard.

[11] Finally, we reject Georgia's argument that it must afford the licensee an inquiry into the question of liability, that determination, unlike the determination of the matters presently considered at the administrative hearing, need not be made prior to the suspension of the licenses. While "many controversies have raged about . . . the Due Process Clause," Mullane v Central Hanover Bank & Trust Co. 339 US, at 313, 94 L Ed at 872, it is fundamental that except in emergency situations (and this is not one)[5] due process requires that when a State seeks to terminate an interest such as that here involved, it must afford "notice and opportunity for hearing appropriate to the nature of the case" *before* the termination becomes effective. Ibid. Opp Cotton Mills, Inc. v Administrator, 312 US, at 152-156, 85 L Ed at 639-641 (1941); Sniadach v Family Finance Corp., supra; Goldberg v Kelly, supra; Wisconsin v Constantineau, 400 US 433, 27 L Ed 2d 515, 91 S Ct 507 (1971).

[12] We hold, then, that under Georgia's present statutory scheme, before the State may deprive petitioner of his driver's license and vehicle registration it must provide a forum for the determination of the question whether there is a reasonable possibility of a judgment being rendered against him as a result of the accident. We deem it inappropriate in this case to do more than lay down this requirement. The alternative methods of compliance are several. Georgia may decide merely to include consideration of the question at the administrative hearing now provided, or it may elect to postpone such a consideration to the de novo judicial proceedings in the Superior Court. Georgia may decide to withhold suspension until adjudication of an action for damages brought by the injured party. Indeed, Georgia may elect to abandon its present scheme completely and pursue one of the various alternatives in force in other States.[6] Finally, Georgia may reject all of the above and devise an entirely new regulatory scheme. The area of choice is wide: we hold only that the failure of the present Georgia scheme to afford the petitioner a prior hearing on liability of the nature we have defined denied him procedural due process in violation of the Fourteenth Amendment.

The judgment is reversed and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

The Chief Justice, Mr. Justice Black, and Mr. Justice Blackmun concur in the result.

5. See, e. g., Fahey v Mallonee, 332 US [illegible]; Ewing v Mytinger & Casselberry, Inc., 339 US [illegible]

6. The various alternatives include compulsory insurance plans, public or joint public-private unsatisfied judgment funds, and assigned claims plans. See R. Keeton & J. O'Connell, After Cars Crash (1967).

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be given, but notice is required when the point accumulation reaches ..... percent of the number at which suspension is authorized.[16] No points shall be assessed for violating a provision of this act or municipal ordinance regulating standing, parking, equipment, size or weight.[17] In case of the conviction of a licensee of two or more traffic violations committed on a single occasion, such licensee shall be assessed points for one offense only and if the offenses involved have different point values, such licensee shall be assessed for the offense having the greater point value. The department is authorized to suspend the license of a driver, with or without preliminary hearing, when his driving record identifies him as an habitually reckless or negligent driver or as an habitual or frequent violator under this subsection. (NEW, 1968.)

(c) Upon suspending the license of any person as hereinbefore in this section authorized, the department shall immediately notify the licensee in writing and upon his request shall afford him an opportunity for a hearing as early as practicable within not to exceed 20 days after receipt of such request in the county wherein the licensee resides unless the department and the licensee agree that such hearing may be held in some other county. Upon such hearing the commissioner or his duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a re-examination of the licensee. Upon such hearing the department shall either rescind its order of suspension or, good cause appearing therefor, may continue, modify or extend the suspension of such license or revoke such license. (REVISED, 1968.)

§ 6-207—Department may require re-examination

The department, having good cause to believe that a licensed driver is incompetent or otherwise not qualified to be licensed, may upon written notice of at least five days to the licensee re-

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[16] It is suggested that a percentage low enough to give the driver opportunity to protest any erroneous entry and to improve his driving habits prior to any suspension be specified. *Fifty* percent might be appropriate.

[17] In addition, it is suggested that no points be assessed for violations by pedestrians, passengers or bicycle riders, or for violations of provisions relating to the preservation of the condition of traffic-control devices or the highway.

cense of a driver without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

1. Has committed an offense for which mandatory revocation of license is required upon conviction;

2. Has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;

3. Is an habitually reckless or negligent driver of a motor vehicle, such fact being established by the point system in subsection (b), by a record of accidents, or by other evidence;

4. Is incompetent to drive a motor vehicle;

5. Has permitted an unlawful or fraudulent use of such license;

6. Has committed an offense in another state which if committed in this State would be grounds for suspension or revocation;

7. Has been convicted of fleeing or attempting to elude a police officer; or

8. Has been convicted of racing on the highways. (REVISED, 1968.)

(b) For the purpose of identifying habitually reckless or negligent drivers and habitual or frequent violators of traffic regulations governing the movement of vehicles, the department shall adopt regulations establishing a uniform system assigning demerit points for convictions of violations of chapter 11 of this act or of ordinances adopted by local authorities regulating the operation of motor vehicles. The regulations shall include a designated level of point accumulation which so identifies drivers.[15] The department may assess points for convictions in other states of offenses which, if committed in this State, would be grounds for such assessment. Notice of each assessment of points may

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[15] In formulating the administrative point system authorized by this section, each department is urged to consider, in the interest of interstate uniformity, authorizing suspension for an accumulation of 12 or more points as a result of offenses committed during any consecutive 12-month period or 13 or more points as a result of offenses committed during any 24-month period; assigning six points for convictions of reckless driving (willful and wanton disregard for the safety of persons or property, as in § 11-901) and for convictions of speeding when the licensee drove at least 20 miles per hour over the lawful limit; four points for convictions of relatively serious offenses; and three points for less serious offenses.

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Law Review Cites Rulings on Point Systems

This month Dr. Joseph P. Hennessee, AAMVA Counsel and Director, Uniform Laws Program, comments on the various court decisions and opinions affecting administrators' handling of cases involving "habitual violators" and their administration of the point system.

AAMVA members are invited to send Dr. Hennessee significant court decisions affecting all aspects of DMV administration for discussion in future issues of the BULLETIN.

Driver License Suspensions—Habitual Violators—Point Systems

Section 6-206 (a) (3) of the Uniform Vehicle Code provides that a department may suspend the license of any operator or chauffeur without preliminary hearing upon a showing by its records or other satisfactory evidence that the licensee: "has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways."

On page 236 of *Driver Improvement—The Point System*, The American Association of Motor Vehicle Administrators, Chapel Hill, 1958, this writer suggested that this language would be sufficient to support the establishment of an administrative point system, and, *ergo*, by extension of this reasoning, suspensions under this authority.

A recent memorandum decision from the First Judicial District of North Dakota, *State of North Dakota v. Rheault*, December 31, 1963, casts a shadow of doubt on this conclusion. This court held that Section 39-06-32 (2) NDCC was void as uncertain. This statute, which is in the language of the Uniform Code provision, cited above, the court said, makes no itemization of what constitutes "serious offense" nor does it furnish any standards in determining the definition of "with such frequency." Further, the court said, it is left in the dark as to whether there has been such serious offenses or such frequency of violations as would "indicate" a disrespect for traffic laws. To follow this law each judge would be left to his own standards of what constitutes "serious offenses," what may be termed "such frequency," and what is indicative of "indicate."

To support its position the court cited 14 Am. Jur., Criminal Law, sec. 19, page 771, and *Connally v. General Construction Co.*, 269 U.S. 385, 46 S.Ct. 126, 70 L.Ed. 222 (1926), to the effect that a statute must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties.

On March 5, 1961, the Supreme Court of Arizona handed down a decision, *Arizona v. Birmingham and Bradley* (not yet reported), upholding A.R.S. 28-446 (A) (3), which provides: "(A) The department is authorized to suspend the license of an operator or chauffeur without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee: (3) has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways," and the administrative point system established to implement this law.

This court agreed that standards for administrative action must be spelled out in the legislative enactment and that if they are negligible or nonexistent, there is an unconstitutional delegation of legislative powers. But when examined in this light, the court said, this statute "evidences five criteria or guides by which the responsible administrative officers are to determine when a driver's license shall be suspended. It requires (1) that the suspension be upon *conviction* of offenses against traffic regulations; (2) that there be *frequent* convictions; (3) that the offenses of which the operator has been convicted be *serious* offenses against traffic regulations; (4) that the offenses be against traffic regulations governing the *movement* of vehicles; and (5) that the convictions must be such as to show a disrespect for traffic laws and a disregard for the safety of other persons on the highway." "We think," the court said, "the criteria established by the legislature for the suspension of an operator's license is reasonably definite and certain involving a minimum of discretion, particularly where it is obviously impractical, as here, to lay down an exact comprehensive rule."

In upholding A.R.S. 28-446 (A) (3) and the point system established under it the court refused to follow *South Carolina State Highway Department v. Harbin*, 226 S.C. 585, 86 S.E. 2d 436 (1955), and *Harrell v. Scheidt*, 249 N.C. 690, 107 S.E. 2d 549 (1959), which held point systems unconstitutional because authority was granted without sufficient standards, and cited with approval *Stargill v. Beard*, 303 S.W. 2d 908 (Ky. 1957), which upheld Kentucky's point system and its supporting statute. None of these three statutes was four-square with the Arizona statute, however, and the difference in results may be distinguished on a difference in statutory language. A divergence in viewpoints expressed in these two lines of cases warrants a brief review of similar case holdings.

Statutes are coming in for increasing attack on the grounds that they are too vague and indefinite to constitute a sufficient definition of prohibited conduct or that they attempt to make an unconstitutional delegation of legislative authority to an administrative body. In *Brown v. Kelly*, 169 NYS 2d 203 (1957), the court ruled that a provision prohibiting operation of a motor vehicle "at such speed as to endanger life, limb or property of any person or at a rate of speed greater than will permit bringing vehicles to a stop without injury to another or his property" was too vague and indefinite and did not contain sufficient standards by which a driver's conduct could be tested, and therefore the statute was ineffective as a basis for revocation of a driver's license. By way of contrast, the Oklahoma court had no difficulty in upholding a statute which prohibited operation of a motor vehicle at a speed "in excess of maximum safe and prudent speed as determined and posted by the state highway department." *Ludwig v. Yancey*, 318 P. 2d 450 (Okla. 1957).

What constitutes an habitual violator has come in for some review by the courts. In *Lamb v. Rubin*, 198 Va. 628, 96 S.E. 2d 80 (1957), the court upheld a determination that a driver was habitually reckless and negligent where the record showed nine convictions in approximately six years. *Lambe v. Clark*, 199 Va. 371, 99 S.E. 2d 597, decided in the same year, held that five convictions from July 19, 1952, to May 6, 1955, plus three convictions from February 27, 1956, to June 1, 1956, to be sufficient

to support a finding by the commissioner that the licensee was habitually reckless and negligent. A New York court in *Ross v. McDuff*, 7 N.Y. 56, 127 N.E. 2d 836 (1955), upheld a statute permitting the commissioner to suspend a license for "habitual" or "persistent" violation of traffic laws against a charge that it was an unconstitutional grant of legislative authority to an administrative agency without providing criteria or standards defining the words "habitual" or "persistent." The North Carolina court on the other hand, voided its habitual violator statute because it did not contain any fixed standards or guides to which the department must conform in order to determine whether or not a driver is an habitual violator of the traffic laws, and because left to the sole discretion of the department to determine when a driver is an habitual violator of such laws. This, the court held, to be an unconstitutional grant of legislative powers. *Harvell v. Scheidt, supra*. This being true, the North Carolina court, like the South Carolina court, did not have to look at the system of points being used or at the record of the driver.

By way of a summary we can now report that administrative point systems have been upheld in two jurisdictions against attacks that their foundation statutes were void as an unconstitutional delegation of legislative authority, and in two jurisdictions they have been voided. Only one of these foundation statutes, however, in Arizona, was substantially similar to the language of Section 6-205 (a) (3) of the Uniform Vehicle Code. What other courts may do when presented with a similar question is open to conjecture. If the statute is in the language of the Uniform Code, Section 6-206 (a) (3), the Arizona decision stands alone in providing an interpretation. Divergent language may find support in the Beard decision. Opponents will cite the Harbin and Harvell decisions.

Perhaps the leading case on the delegation of legislative authority as it affects suspensions of the drivers' licenses is *Thompson v. Smith*, 155 Va. 367, 154 S.E. 579, 581 A.L.R. 601 (1930). This court voided a city ordinance which permitted the chief of police to revoke the permit of any driver, who, in his opinion, became unfit to drive an automobile on the streets of the city. The court said that "the rights of men are to be determined by the law itself, and not by the lot or leave of administrative officers or bureaus. This principle ought not to be surrendered for convenience or in effect nullified for the sake of expediency. It is the prerogative and function of the legislative branch of the government, whether state or municipal, to determine and declare what the law shall be, and the legislative branch of the government may not divest itself of this function, or delegate it to executive officers."

Where does this leave an administrator who is charged with the duty and responsibility of administering habitual violator type and other general suspension authority statutes? The question, to a degree, suggests its own answer. A statute is presumed to be valid and enforceable unless and until it has been voided by a competent court. Until a statute has been voided, one charged with its administration and enforcement is entitled to rely upon it and to administer and enforce it.

By way of a caveat, however, it should be mentioned that the existence of a statute for a long period of years gives rise to no presumption as to its validity. *People v. Mendacqua*, 170 N.Y.S. 2d 423 (1958). Also, repassage of a statute may not act to approve or validate rules and regulations promulgated under it prior to its repassage. *Los Angeles County v. State Board of Health*, 322 P. 2d 968 (Calif. 1958).

What should be done if a foundation statute or a point system based upon it should be invalidated by the courts? The answer supplied by both South Carolina and North Carolina was the enactment of a statutory point system to replace the voided statutes. Other states have obviated this question by enactment of either a specific statutory authority to establish a system of points or a statutory point system.

Finally, how can an administrator predict how a court will hold when a habitual violator type statute or a point system established under its authority has been challenged? No definitive answer can be given. It may be helpful to know how the court has held as to similar questions. It is always helpful to know how courts of other jurisdictions have held. The results may hinge upon the skill and diligence with which a test case is prosecuted and defended. If the statute in question is in the language of Section 6-205 (a) (3) of the Uniform Code, the Arizona case stands alone as authority for its validity. No ruling case, interpreting the same language, exists to the contrary.

Georgia Financial Responsibility Law In Effect

A new law passed in 1963 dealing with financial responsibility of motorists went into effect this month, but only after the 1964 general assembly made various changes in the act.

The measure calls for stringent penalties against motorists convicted of any of seven major traffic violations. Changes in the law made by the present assembly modified some of the penalties. The bill's sponsors followed several recommendations of Colonel H. Lowell Conner, director of the Georgia Department of Public Safety.

Revisions in the original law before it became effective were made to avoid imposition of tremendous record-keeping burdens on the department, which would have required increased personnel.

Nova Scotia Eliminates Double Fee For Extra-Provincial Carriers

The Board of Commissioners of Public Utilities in the Canadian province of Nova Scotia has authorized motor carriers licensed in the province to plate any or all vehicles for extra-provincial use as well, for a fee of $2 per vehicle annually.

Previously a separate extra-provincial license had to be purchased at full price of from $10 to $28 per vehicle. The action followed collective discussion among Hon. Stephen Pyke, Minister of Highways, the Board of Commissioners of Public Utilities and representatives of the Maritime Motor Transport Association.

Traffic fatalities in Mississippi for the first two months of 1964 were 14 percent below the same period for 1963, according to Al Richburg, assistant director of the accident records division.

Motor Vehicle Law Review

In this issue of the BULLETIN, Dr. Joseph P. Hennessee, AAMVA Counsel and Director, Uniform Laws Program, reviews another "habitual violator" case, as well as the reasonable and prudent speed rule, safety glass and rulings of the attorney general of South Dakota.

AAMVA members are invited to send Dr. Hennessee significant court decisions affecting all aspects of DMV administration for discussion in future issues.

Habitual Violators

Since the March issue of the BULLETIN went to press another "habitual violator" case has come to our attention. In this case, *Anderson* v. *Commissioner of Highways* (not yet reported), handed down February 14, 1964, the Minnesota Court upheld the provisions of Minn. St. 171.18(4) which gives the commissioner authority to suspend the license of any person, without a preliminary hearing, upon a showing that such driver is an "habitual violator," against a contention that it was unconstitutional as vague in failing to provide a clear and precise standard for action by the commissioner.

This court recognized the general rule that a statute which vests discretion in a public official must prescribe precise rules of action but noted that this rule is subject to exceptions and qualifications. The modern tendency is to be more liberal in permitting grants of discretion to administrative officers in order to facilitate the administration of laws (Annotation, 92 A.L.R. 410). The rule which requires an expressed standard to guide the exercise of discretion is subject to the exception that where it is impracticable to lay down a definite comprehensive rule—such as, where the administration turns upon questions of qualifications of personal fitness, or where the act relates to the administration of a police regulation which is necessary to protect the general health, welfare and safety of the public—it is not essential that a specific standard be expressly stated on the legislation. (Annotations, 12 A.L.R. 1417; 54 A.L.R. 1119; 92 A.L.R. 410.) This, the court said, is in accord with its previous decisions.

In reaching its decision, however, the court noted that there is a division among the courts of the several states as to the validity of traffic and license laws using the term "habitual violator," as evidence by *Harrell* v. *Scheidt*, 249 N.C. 699, 706, 107, S.E. 2d 549, 554 (1959) interpreting an identical provision, and *State Highway Department* v. *Harbin*, 226 S.C. 585, 86 S.E. 2d 446 (1955). The court also noted that legislatures in other states have, by statute, enacted a more specific rule. Texas, Missouri and Florida have, for example, by statute defined an habitual violator in terms of the number of his offenses. North and South Carolina (as noted also in the March issue of the BULLETIN), following adverse court rulings, have established legislative point systems for guidance in determining the status of a licensee as an habitual violator.

This court also upheld the use of driver license provision convictions in determining when a driver is in fact an habitual violator. This holding was based in part on the wording of Minn. St. 171.16 which requires courts to forward reports of convictions of "any law of this state regulating the operation of motor vehicles on streets or highways,"—except parking violations. This is in line with a recent decision of the Supreme Court of Washington, *State ex rel. Ralston* v. *Department of Licenses*, 60 Wash. 2d 535, 374 P. 2d 575, which permitted the director there to consider reports of convictions of municipal ordinances and use them as a basis for ordering suspension.

Information for the above case was provided by G. A. Hatfield, Drivers License Director, Minnesota Department of Highways.

Safety Glass

A declaratory judgment action decision, April 30, 1963, in the Law and Equity Court of the City of Richmond, Virginia, although not a ruling case, may be of interest to administrators. This case, instituted by Windshield Glass Distributors, Inc., against the Virginia Superintendent of State Police, presented two questions: (1) does tempered glass qualify as a safety glass under Virginia Code Section 46.1-293 prior to its amendment in 1960; and (2) is the 1960 amendment an unconstitutional delegation of legislative authority to nongovernmental organizations, in this case, the American Standards Association.

After discussing at length the statutory authority involved and the qualities of both tempered glass and laminated glass the court concluded that tempered glass meets the statutory requirement of Sec. 46.1-293, both before and after the 1960 amendment thereto, and that the 1960 amendment to such section is not unconstitutional. In reaching this decision as to the constitutional question, in the absence of Virginia law on the subject, the court relied upon *Union Bridge Co.* v. *U. S.*, 204 U. S. 364, 51 L.Ed. 523, a landmark case. See also, *St. Louis, etc., Ry.* v. *Taylor*, 210 U. S. 251, 52 L.Ed. 1061.

In reference to the American Standards Safety Code, the court said the following:

> In December, 1935, a tentative draft of a safety code purporting to set forth the specifications and methods of testing for safety glass as used for all purposes, including windshields and windows of all types of motor vehicles, motorboats and aircraft was prepared by a subcommittee of the American Standards Association. This work was sponsored by the National Bureau of Standards and the National Bureau of Casualty and Surety Underwriters and was approved by the American Standards Association. The latter group was at that time and is at present composed of representatives from all of the interested organizations concerned with safety development over the country at large, including various testing laboratories as well as governmental agencies. This safety code was formally approved in 1938 and as revised in 1950 has substantially the same specifications and testing standards as when originally adopted. This code contains the "standards and specifications" of American Standards Association, which are referred to in the 1960 Amendment to 46.1-293. This code differentiates between windshields and other windows in motor vehicles and approves only laminated glass for the former, but tempered glass for all others. With this single exception it accepts tempered glass as safety glass for all other motor vehicle glazing purposes. This separation of functions

MOTOR VEHICLE LAW REVIEW

In this issue of the Bulletin, Joseph P. Hennessee, Association Counsel, comments adversely on a "point system" decision from Kentucky and contrasts early land-mark decisions which upheld Kentucky's administrative Point System and voided a comparable point system in South Carolina.

Point System Suspension Voided

Kentucky's Administrative Point System for Driver Improvement, based upon KRS 186.570, was upheld by the Kentucky Court of Appeals in a landmark case in 1957. *Sturgill, Acting Commissioner of Public Safety* v. *Beard*, 303 S.W. 2d 908.

Doubts as to the validity of driver license suspensions—under Kentucky's point system, have been raised by the Kentucky Court of Appeals in another case, *Kentucky Department of Public Safety* v. *Glasscock*, decided on October 28, 1966, which affirmed a decision of the Jefferson Quarterly Court that voided a suspension under this self-same point system.

Under facts of the case, as reported by the Court, on May 20, 1965, the Department of Public Safety suspended Glasscock's license on the basis of his having accumulated twelve "points" within three years (KRS 186.570 (d) and PSfty regulations DI-5-1, DI-9, and DI-10). On June 14, 1965, Appellee Glasscock advised the Department pursuant to KRS 186.580 (2), Kentucky's Appeal statute, that he was "aggravated" by the suspension but did not advise as to the grounds for his grievance. On June 16 he petitioned for relief in the Jefferson Quarterly Court from the suspension and this relief was granted and the Department's order of suspension was set aside on grounds unspecified in this opinion.

The Department appealed, first, ostensibly to the Jefferson Circuit Court, which apparently affirmed the Quarterly Court order setting the suspension order aside. Upon appeal to the Court of Appeals the Department argued (1) that the judgment setting aside the suspension was void because the court lacked jurisdiction, (2) the proceedings were a void collateral attack upon another court's judgment, and (3) the scope of judicial review was exceeded.

The Department's first contention was that the Jefferson Quarterly Court acquired no jurisdiction because the Appellee was untimely in prosecuting his appeal there. This contention was based on the language of KRS 186.580 (2), which directs that the appeal to the Quarterly Court be filed "(i)n not less than fifteen nor more than thirty days . . ." The difficulty is that the statute is vague as in fixing the event from which the computation of time is to be made. The Department's position is that the computation is to be made not less than fifteen nor more than thirty days after the licensee reports his grievance to the Department; Glasscock's, that it means not less than fifteen nor more than thirty days after the Department's order of suspension. This Court agreed that the appeal was timely in that the "not less than fifteen, nor more than thirty days" dated from the date of the suspension, and held that failure of appellee to state his grounds for grievance was not fatal since this requirement is merely directive and not mandatory.

As to the second position advanced by the Department, a point relied upon by appellee (and apparently accepted by the Quarterly Court), was that the third violation for which points were assessed was not based upon a conviction by any court (although a fine was paid) although he availed himself of provisions of a city ordinance which permitted remittance of a prescribed fine and appointment of an attorney-in-fact to enter appellee's appearance and plea of guilty.

Appellee's position was based on language in *Sturgill* v. *Beard*, 303 S.W. 2d 908 (Ky. 1957) supra to the effect that a license may not be suspended (under the point system) except for "points" assessed pursuant to *convictions* of certain named moving traffic violations.

On this point the Court said it could concede, without deciding, that for purposes of this opinion, there was no "conviction" of appellee incident to his payment of a fine at the Louisville traffic bureau, but this concession would not be dispositive as, in the opinion of the Court, a "conviction" is not required as a condition precedent to the assessment of points. This is based on the Department's regulation PSfty-DI-4, which specifically provides that use of the "convenience" fine-paying procedure, as used here, was to be regarded as a "conviction" insofar as it relates to whether the operator may be considered to be a "reckless" one; and because the relevant statute (KRS 186.570) does not make the operator's "conviction" a condition precedent to Departmental action, but does specifically provided that the license may be suspended" . . . with or without a hearing, *and with or without receiving a record of conviction of that person of a crime*, whenever the Department had reason to believe: . . . (d) That person is an habitually reckless or negligent driver of a motor vehicle or has committed a serious violation of the motor vehicle laws (emphasis supplied)". In the view of this Court, the use in *Beard* of the term "conviction" was an inadvertence and a dictum, and a "conviction" is not required. This apparently upheld the Department's contention that the proceedings below constituted an indirect attack on the police court judgment under which appellee waived appearance and paid a fine.

Up to this point the Court, while liberally construing the appeals provisions (KRS 186.580 (2), had done no violence to the Department's position. Through the second point, the Court seemed headed toward a reversal of the lower court and a confirmation of the Department's suspension order. Then without other explanation the Court said that the judgments of the Quarterly Court and of the Circuit Court recite that evidence was heard. "The evidence is not in the record before us. We must assume, therefore, that the evidence heard was sufficient to sustain the judgments of the Courts."

In affirming the judgments setting aside the suspension order the Court said "What we have said disposes of appellant's contention that the proceedings constituted an indirect attack on the police court judgment . . . , as well as the claim that the scope of judicial review was misconceived. The basic scope of the judicial review is concerned with the question of arbitrariness . . ."

If the basic scope of judicial review of departmental suspension orders comes down to a question of arbitrariness, as it may do, and as it does in the instant

decision, it is difficult to see how this Court could decide that the Department's suspension order was arbirary from a record of two judgments which contained no evidence and no apparent allegation of evidence or arbitrariness. The apparent effect of this decision is to require that a departmental hearing be afforded before suspension under the point system in order to avoid reversal on the grounds of arbitrary action by the Department.

Kentucky's point system was created on December 20, 1956, by a series of three administrative regulations, PSfty DI-1, DI-2, and DI-3, which (1) established a point system for driver improvement, (2) set out a schedule of points, and (3) provided a mandatory suspension upon an accumulation of 12 points within a three year period.

Suspension under this point system was first upheld in *Sturgill, Acting Commissioner of Public Safety* v. *Beard*, 303 S.W. 2d 908 (Ky. 1957). A review of that decision follows.

Beard's license was suspended under the point system. In seeking a return of his license Beard contended that (1) KRS 186.570 upon which the point system regulations were based, was an unconstitutional delegation of legislative power without any criteria or standards for an administrative agency to follow; (2) the point system, as applied to him in the suspension of his license violated the due process provisions of the Fourteenth Amendment to the Constitution of the United States; and (3) action in suspending his license based upon violations occurring prior to the effective date of the regulations establishing the point system was void as an *ex post facto* application of the law.

In upholding this suspension and the point system on which it was based the Kentucky Court of Appeals rejected the contention that KRS. 186.570 was unconsitutional as a delegation of legislative powers without providing any criteria or standards. In holding that there was no violation of due process in the suspension of Beard's license under the point system the court said it was too late to contend, as was done here, that one had a natural right to operate a motor vehicle because it is a privilege granted by a license of the state, subject to reasonable regulation by the state in the exercise of its police powers, and when the conditions imposed by the license are violated (as here), the suspension of the license is not a denial of "due process".

Beard's claim that the regulation had been used retroactively against him was given short shrift. This claim evaporates, the Court said, when the provisions of KRS 186.570, enacted in 1936, are applied to the facts. It is obvious that there was no ex post facto application of the law and the mere fact that the Department used the point system in making its determination to suspend did not make the application of the regulation retroactive. The Court did imply, however, that application of the regulations so as to assign points to violations occurring prior to the 1936 enactment of KRS 186.570 might constitute a retroactive or *ex post facto* application of this statute.

By way of contrast, the opinion of the South Carolina Court in *South Carolina State Highway Department* v. *Harbin*, 226 S.C. 585, 86 S.E. 2d 466 (1955), should be noted.

This case, like the *Beard* case in Kentucky, turned initially on whether the Department had any legal authority to promulgate a point system.

On November 24, 1953, the South Carolina State Highway Department, relying upon the authority contained in Section 46-172 of the 1952 Code, established a point system by administrative rule. This section provided that "For cause satisfactory to the Department it may suspend, cancel or revoke the driver's license of any person for a period of not more than one year."

Following issuance of this order Harbin accumulated a total of 12 points. After a personal interview (hearing), as provided in the point system order, Harbin's license was suspended for five months. Upon his petition for a court review of this suspension the trial court held that the Department was without authority to put a point system into effect and revoked its action in suspending Harbin's license.

Upon appeal to the South Carolina Supreme Court the Department conceded that it was not "expressly" empowered to adopt a point system but contended that the power to do so was contained in the broad powers to refuse, suspend or revoke a license contained in Section 46-172. This, the Department said, gave it authority to set up a point system which embodied reasonable criteria to be used in the exercise of its discretionary power, and that a point system is in accord with the legislative policy expressed in that section.

Harbin, on the other hand, contended among other things that 46-172 fixed no standards and laid down no intelligible guides to which the Department must conform but left the right to revoke or suspend in the unrestricted and uncontrolled discretion of the Department, and that this rendered the section void as an unconstitutional delegation of legislative authority.

In reaching a decision the Court noted that it was unnecessary to go beyond the basic issue of whether the power granted in 46-172 was unconstitutional on the grounds that suspensions are left to the absolute, unregulated and undefined discretion of the Department.

It is accepted, the Court said, that although a legislature cannot delegate its legislative power it can authorize an administrative agency to fill in details by prescribing rules and regulations. "It is necessary, however, that the law declare a legislative policy, establish primary standards for carrying it out, or lay down an intelligible principle to which the administrative body must conform, with a proper regard for the public interest."

When the authority of the State Highway Department to suspend or revoke a license for cause which it deems satisfactory is considered in the light of the principles enunciated above, the Court said, such provisions must be held invalid as an unconstitutional delegation of legislative powers. Thus, having held that the statute relied on to support the point system was unconsitutional it followed, and the Court so held, that the Department was "without authority" to establish a point system and such a system was without force or effect.

Left unsettled were the questions as to "reasonableness" of the South Carolina system, and whether suspensions under such system would be violative of due process.

1967 Program

Continued from Page 7

In addition to the specific programs outlined, much staff time and effort will be devoted to intensified work in keeping informed of international, federal and jurisdiction developments, and increased service to members through visits by regional representatives and staff specialists, development of legislative guidelines, participation in in-service training, and correspondence.

CHAPTER EIGHT

A LEGAL STUDY OF POINT SYSTEMS

By JOSEPH P. HENNESSEE
Assistant Director, Institute of Government

INTRODUCTION

As was to be expected of any new system, especially a system which affects upwards of half the driving populations of the United States and Canada, public reaction to point systems has been widespread and varied. In general it may be said that the reaction of the public has been favorable; the reaction of those whose licenses have been affected by a point system, something less than favorable.[1] There is nothing to indicate, however, that this reaction is essentially different from the reaction to license sanctions applied under any other system.

Significant of the public and legal acceptance of the theory and application of point systems is the paucity of cases reaching the appellate courts in which point systems have been challenged on legal grounds. This is not to say that there is no case law applicable to point systems other than that found in cases in which point systems have been challenged. That would be an implication that point systems are to be gauged and judged by a body of law peculiar to point systems. That is not the case. In fact, point systems are subject to the same legal rules and principles that govern other systems of license suspensions and revocations. This fact is borne out in a study of the two available point system cases.[2] We can go further and say that there exists no separate body of legal precepts and principles applicable peculiarly to drivers license suspensions. Rather, all systems of license suspensions are governed by general principles of constitutional law and statutory construction. It is the purpose of this study to examine these general principles of law, compare their application in

1. *See* Kneipp, *The Traffic Point System as used in the District of Columbia*. 8 Traffic Quarterly 235 (1954).

2. *South Carolina State Highway Department v. Harbin*, 226 S.C. 585, 86 S.E. 2d 466 (1955); *Sturgill, Acting Commissioner of Public Safety v. Beard*, 303 S.W. 2d 908 (Ky. 1957).

applicable cases, and measure existing point systems against them.

BASIS FOR REGULATION

It no longer permits of doubt that the legislature in the exercise of its police powers may regulate and control drivers through licensing procedures. This premise has been upheld in the courts so many times that it no longer requires citation of legal authority.

POLICE POWERS

What do we mean by "police powers"? It is generally recognized that it is impossible to give an exact definition of the term. Many attempts at definition, however, have been made. Blackstone defined it as "the due regulation and domestic order of the kingdom, whereby the individual of the states, like members of a well governed family, are bound to conform their general behavior to the rules of propriety, good neighborhood, good manners, and to be decent, industrious and inoffensive in their respective stations."[3]

It has been said that the police power is merely another name for the authority which every sovereignty possesses to pass all laws for the internal regulation and government of the state, and that it embraces and comprises all that portion of the sovereignty of the states not surrendered by the terms of the Federal Constitution to the Federal Government.[5] Others have said that it is the inherent and plenary power in a state over persons and property which enables the people to prohibit all things thought to be harmful to the comfort, safety, health and welfare of society.[6] It has been broadly defined by the United States Supreme Court as "that power, inherent in the state, whereby it may enact and enforce all laws for the protection, maintenance or advancement of the health, safety, morals, comfort, quiet, convenience, welfare, and prosperity of the people."[7]

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3. 11 Am. Jur. 971-972

4. *Mutual Loan Company v. Martell*, 222 U.S. 225, 32 S. Ct. 74, 56 L. Ed. 175, Ann. Cas. 1913B, 520 (1915).

5. *Slaughter House Cases*, 16 Wall. (U. S.) 36, 21 L. Ed. 394 (1873).

6. *Drysdale v. Prudden*, 195 N. C. 722, 143 S. E. 530 (1928).

7. *C. B. & Q. R. R. v. State of Illinois*, 200 U. S. 561, 26 S. Ct. 341, 50 L. Ed. 596 (1906).

It is not to be supposed from the foregoing that the police power is unlimited. Speaking of this power, the United States Supreme Court has said that it can be used to interfere with the conduct of individuals and the use of their property only, in-so-far as may be required to effect the peace, good order, morals and health of the community.[8] Expressed another way, the Supreme Court has said that before the power may be invoked it must be made to appear that the interest of the public in general as distinguished from a particular class or group requires such interference, and that the means chosen must be reasonably necessary to accomplish the desired purpose, and not be unduly oppressive upon individuals.[9] These are affirmations of the guarantees contained in the Fourteenth Amendment that no state may make or enforce any laws which will "deny to any person within its jurisdiction the equal protection of the laws" nor shall any state "deprive any person of life, liberty or property without due process of law." For example, the Court has pointed out that the Fourteenth Amendment requires that governmental regulations be accomplished by methods consistent with due process and that the due process clause is a limitation upon an improper exercise of the police power by the states in that it prevents an arbitrary or unreasonable exercise of the power either through laws or regulations.[10] In considering the relationship between the equal protection clause of the Fourteenth Amendment and the police power of the states, it is well settled that the police power is subordinate to the constitutional guarantee of equal privilege and that any attempted exercise of the police power which results in a denial of the equal protection of the law is invalid.[11]

Another limitation upon the exercise of the police power is the prohibition, contained in Section 10 (1), Article I, of the Constitution of the United States, against the passage of any *ex post facto* laws.

Summarizing, we can say that the legislature, in the exercise of its police powers, may properly regulate the conduct of individuals and the use of their property but that the methods chosen must have some reasonable relationship to the object sought to

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8. *Munn v. Illinois*, 94 U. S. 113, (1877).

9. *Lawton v. Steele*, 152 U. S. 133, 14 S. Ct. 499, 38 L. Ed. 385 (1893).

10. *Nebbia v. New York*, 291 U. S. 502, 54 S. Ct. 505, 78 L. Ed. 940, 89 A. L. R. 1469 (1934).

11. *Smith v. Cahoon*, 283 U. S. 553, 51 S. Ct. 582, 75 L. Ed. 1264 (1931).

be obtained, be consistent with due process, apply in a like manner to all persons similarly situated, and be prospective rather than retroactive in their application and effect.

DUE PROCESS

Writers on the subject state almost without exception that a license to operate a motor vehicle is a "privilege" and not a "property right" and that being a "privilege" it is subject to regulation under the police powers of the states. This has been accepted as the weight of authority in the American court jurisdictions. This distinction was meaningful because it assumed that the due process clause of the federal constitution did not apply unless a license to drive was a "property right." This distinction has lost much of its meaningfulness in view of a holding in the federal courts that whether you call it a "privilege" or a "property right," the freedom to make use of one's property, in this instance a motor vehicle, as a means of getting about from place to place, whether in pursuit of business or pleasure, is a "liberty," which, under the Fourteenth Amendment cannot be curtailed or denied by a state without due process of law.[12]

This line of thought is being adopted by state courts as well. The question of whether a license to operate a motor vehicle was a property right within the meaning of the Fourteenth Amendment was thought to have been put to rest, in Rhode Island, at least, in the classic case of *La Plante v. State Board of Public Roads*, decided in 1926.[13] At that time the court held that a "license" to operate an automobile, being a permit to do that which would otherwise be unlawful, was merely a "privilege" and not a "property right" within the meaning of the "due process" clauses of the United States and Rhode Island Constitutions, and that provisions for revocation of such license by the State Board of Public Roads without a hearing did not operate so as to deprive the driver of his property without due process

12. *Wall v. King*, 206 F. 2d 878 (First Circuit, 1953); *certiorari* denied Dec. 14, 1953.

13. 47 R. I. 258, 131 A. 641 (1926).

of law. In *Berberian v. Lussier*,[14] decided this year, the Rhode Island Court has retreated from this position with these words:[15]

> We have, however, come to the conclusion that we can no longer completely subscribe to the proposition for which the *La Plante* case stands. The use of the automobile as a necessary adjunct to the earning of a livinghood in modern life requires us in the interest of realism to conclude that the right to use an automobile on the public highways partakes of the nature of a *liberty* (emphasis supplied) within the meaning of the constitutional guarantees of which the citizen may not be deprived without due process of law. In *State v. Dalton*, 22 R. I. 77, at page 86, 46 A. 234, at page 237, 47 L. R. A. 775, this court pointed out that the liberty which is guaranteed to every person by both our state and federal constitution includes the right to be free from unreasonable interference in the pursuit of a livelihood. In the *Dalton* case at page 86, of 22 R. I., at page 237 of 46 A., quoting from *People v. Gillison*, 109 N.Y. 389, at 399, 17 N.E. 343, at page 345, we stated: "Liberty, in its broad sense, as understood in this country, means the right, not only of freedom from servitude, imprisonment, or restraint, but the right to use his faculties in all lawful ways, to live and work where he will, to earn his livelihood in any lawful calling, and to pursue any lawful trade or avocation." The Court of Appeals of Louisiana in the case of *Hughes v. Department of Public Safety*, 79 So. 2d 129, recognized that although an operator's license was not a property right it was a right which was protected by the due process clause. In that case the court stated at page 130: "A license to operate a vehicle upon the highways of the state is a privilege and not a property right, although a state may not deny this privilege to any of its citizens arbitrarily or capriciously." The proposition that a license to operate motor vehicles and to use them on the public highways is something more than a mere privilege was also recognized in *Thompson v. Smith*, 155 Va. 367, 154 S. E. 539, 71 A. L. R. 604, and in *Escobedo v. State Department of Motor Vehicles*, 35 Cal. 2d 870, 222 P. 2d 1.

But, whatever may be its nature, the court concluded, the right to use the public highways for travel by motor vehicles is one which properly can be regulated by the legislature in the valid exercise of the police powers of the state.

North Carolina, in 1948, joined the list of states in which it is

14. — R. I. —, 139 A. 2d 869 (1958).

15. Because of the implications contained in this decision, and in the cases cited therein, it was thought advisable to quote applicable parts of the decision verbatim.

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16. *In re Wrig*
17. *Winnett*
18. 12 Am. J.
19. *Dartmouth*
629 (1819).
20. *King v. Pa*
L. Ed. 227; (189

recognized that a license is something more than a mere privilege, with a holding by the Supreme Court that "a license to operate a motor vehicle is a privilege in the nature of a right of which the license may not be deprived save in the manner and upon the conditions prescribed by statute."[16] This view was expanded in 1954 when the court said "the right to operate a motor vehicle on the highways by a licensed operator is granted by the state, and one should not be deprived of this right except as authorized by statute, in accordance with prescribed procedure, and in accord with the established rules of law."[17]

Implicit in these holdings is a warning that while operation of a motor vehicle upon the public highways and the licensing of drivers may properly be regulated by the legislatures under the police powers, the manner in which the use of the highways may be restrained or licenses refused or withdrawn must be consistent with the principles of due process.

What is meant by "due process"? As a practical matter due process is a protection against arbitrary and capricious actions affecting an individual's life, liberty and property. In a legal sense the essential ingredients of due process of law are notice and an opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case.[18] Daniel Webster said that by due process of law is meant "a law that hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial."[19] It generally implies and includes regular allegations and opportunity for one to answer to the charges, to be confronted by the witnesses against him, to be able to offer testimony in his own behalf, and a trial according to some settled course of judicial proceedings.[20]

What may constitute due process in one situation may not constitute due process in another. For example, in the field of privileges, such as driver licenses, the legislature may provide a mandatory revocation upon conviction for specified offenses without making any provision for a hearing. In such a case, however,

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16. *In re Wright*, 228 N. C. 584, 46 S. E. 2d 696 (1948).

17. *Winesett v. Scheidt*, 239 N. C. 190, 79 S. E. 2d 501 (1954).

18. 12 Am. Jur. 267-268 and cases cited therein.

19. *Dartmouth College v. Woodward*, 4 Wheat. (U. S.) 518, 4 L. Ed. 629 (1819).

20. *King v. Panther Lumber Company*, 171 U. S. 437, 18 S. Ct. 573, 43 L. Ed. 227; (1898) *and see* Annotations, 13 L. R. A. 305.

convictions must be consistent with due process. When, however, an administrative agency has been authorized to suspend a license for specified reasons, due process requires that a licensee be given an opportunity for an administrative hearing upon the matter together with the right to have a judicial review of any administrative determination. The concept of due process does not, however, require that a hearing be granted prior to the taking of official action in exercise of the police power.[21]

Thus far we have considered in a general manner only, what constitutes due process. Moving from the general to the specific, the Pennsylvania Court in construing applicable provisions of the Pennsylvania statutes for the enforcement of regulations governing the operation of motor vehicles through revocation and suspension said:

> (but) If the constitutional provisions of due process were here applicable, they would be fully satisfied by the procedural steps specified in §§ 615 and 616 of the Vehicle Code. As we have seen, they require a hearing before the Secretary of Revenue or his representative. Suspension of the licensee's operating privilege is authorized only when the secretary finds upon sufficient evidence that the offenses enumerated have been committed. Section 616 allows an appeal to the Court of Common Pleas wherein the licensee resides. The licensee is given an opportunity to be heard and to produce witnesses in his behalf. Here the Secretary of Revenue fulfilled the statutory mandate by holding the hearing and by finding that the appellee had violated the motor vehicle laws of this Commonwealth. The appellee then availed himself of his right to be heard anew by the Common Pleas Court. This system sets up every requirement of due process of law, and an operator whose license has been revoked or suspended cannot complain that he has been arbitrarily deprived of the enjoyment of the privilege.[22]

The Idaho Supreme Court, on the other hand, has held that a statute which attempted to authorize the Commissioner to suspend the license of an operator without preliminary hearing, if the operator had been involved in an accident resulting in death, personal injury or serious property damage, irrespective of negli-

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21. *Berberian v. Lussier*, — R. I. —, 138 A. 2d 869 (1958).
22. *Commissioner v. Funk*, 322 Pa. 390, 186 A. 65 (1936).

gence or responsibility, and without provision for review of the Commissioner's action in a court of competent jurisdiction, was unconstitutional as a taking of property without due process.[23]

Summarizing, it is still the numerical weight of authority in American jurisdictions that a license to drive is a privilege and not a property right, and therefore without the constitutional guarantees of due process. However, there is a discernible tendency among state courts to hold to the federal view that a license to drive is something more than a privilege, and that the due process provisions of the federal constitution do apply.

EX POST FACTO LAWS PROHIBITED

Section 10 (1), Article I, of the Constitution contains a prohibition against passage or enforcement of any *ex post facto* law by any state. Authorities differ as to whether the prohibition against *ex post facto* laws applies to license suspensions based on convictions antedating the statutory authority to suspend for specified violations. Illinois, for example, held that an act authorizing the Secretary of State to revoke the driver's license of anyone convicted of driving while intoxicated did not apply to offenses committed before the act became effective.[24] California, on the other hand, has held that Section 309 of the Vehicle Code, which provided that the probationer's prior convictions should be considered as convictions for the purposes of revocation and suspension, was not invalid as an *ex post facto* law as applied to a motorist who, before that section was enacted, was twice convicted of drunken driving.[25]

A slightly different question was presented in a recent Kentucky decision. There the question was whether a suspension under the Kentucky point system based in part on violations occurring prior to the effective date of the point system regulations was an *ex post facto* or retroactive application of the regulations. In reaching a decision the court said that the claim that there was an *ex post facto* application evaporated when the provisions of KRS 186.570 were applied to the case. This statute, enacted in 1936, upon which the point system regulations were grounded, authorized the Department to suspend summarily the

23. *State v. Kouni*, 58 Idaho 493, 76 P. 2d 919 (1938).

24. *Monczak v. Carpenter*, 3 Ill. 2d 556, 121 N. E. 2d 762 (1953).

25. *Ellis v. Department of Motor Vehicles*, 51 Cal. App. 2d 753, 125 P. 2d 521 (1942).

license of any person whenever the Department had reason to believe that a person is an habitually reckless or negligent driver or has committed a serious violation of the motor vehicle laws. The mere fact that the Department used a point system in making its determination that he was an habitually reckless driver did not make the application of the regulation retroactive.[26] The careful manner in which the Kentucky Court limited its answer suggests that had such violations occurred prior to the effective date of the foundation statute a different answer would have been forthcoming.

SEPARATION OF POWERS

Both the federal and the various state governments operate under a separation of powers doctrine. Under this system specific powers are delegated to the legislative, executive and judicial branches of the government. For example, the sole authority to declare what the law shall be, subject to constitutional limitations, is vested in the legislative branch of the government;[27] the power to administer and enforce the law, in the executive branch;[28] and the judicial powers in the courts.[29]

American courts universally agree that no part of the legislative power may be delegated to a non-legislative body. There is no universality of agreement, however, as to what constitutes a delegation of legislative authority. Generally speaking, a law which confers discretion on executive officers without establishing any standards for guidance is a delegation of legislative powers and therefore unconstitutional. Where the discretion, however, relates to a police regulation for the protection of public morals, welfare, and safety, and it is impossible or impracticable to provide such standards, and to do so would defeat the legislative object, legislation conferring such jurisdiction may be upheld without such restrictions or limitations.[30] The United States Supreme Court has laid down this rule. The legislature must declare the policy of the law and fix the legal principles which are to control in given cases; but an administrative body may be invested with the power to ascertain the facts and conditions to

26. *Sturgill, Acting Commissioner v. Beard*, 303 S.W. 2d 908 (Ky. 1957).
27. Article I, Constitution of the United States.
28. Article II, Constitution of the United States.
29. Article III, Constitution of the United States.
30. *Benjamin v. City of Columbus*, 148 N.E. 2d 695 (Ohio, 1958).

which the policy and conditions apply."[31] In the final analysis, what constitutes an unconstitutional delegation of legislative powers must depend upon the individual facts in each situation.

Thompson v. Smith,[32] decided in Virginia in 1930, is perhaps the leading state case relative to an unconstitutional delegation of legislative authority in the drivers license field. A Virginia ordinance provided that the chief of police was authorized and directed to revoke the permit of any driver, who, in his opinion, became unfit to drive an automobile on the streets of the city. After Thompson was convicted of two speeding charges within one year, Smith, the police chief, purported to suspend Thompson's license under the authority above. In an action for the return of his license, Thompson alleged that the chief was without authority to revoke his permit because "(2) The provisions authorizing the chief of police to revoke the permit of any driver, *who, in his opinion*, becomes unfit to drive an automobile on the streets of the city is void because it is a delegation of legislative powers to an administrative agency in that it authorizes the chief of police to revoke a permit whenever *in his opinion* the holder thereof has done or omitted to do something the doing or the omission of which the chief thinks renders the holder unfit to drive an automobile on the streets, without prescribing any uniform rule, applicable to all persons alike, as to what constitutes unfitness to drive an automobile on the streets of the city, or laying down any rule for the guidance and control of the chief of police in determining what constitutes unfitness to drive an automobile on the streets of the city."

In holding that the lower court was in error in dismissing Thompson's action for the return of his license, the Supreme Court of Virginia said that it was a fundamental principle of our system of government that "the rights of men are to be determined by the law itself, and not by the lot or leave of administrative officers or bureaus. This principle," the court stated, "ought not to be surrendered for convenience or in effect nullified for the sake of expediency. It is the prerogative and function of the legislative branch of the government, whether state or municipal, to determine and declare what the law shall be, and the legis-

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31. *Mutual Film Corp. v. Ohio Industrial Comm.*, 236 U.S. 230, 35 S. Ct. 387, 59 L. Ed. 552, Ann. Cas. 1916C, 296 (1915).

32. 155 Va. 367, 154 S.E. 579 (1930).

lative branch of the government may not divest itself of this function, or delegate it to executive officers."

This does not mean, the court explained, that no discretion can be left to administrative officers in administering the law.

> Government could not be efficiently carried on if something could not be left to the judgment and discretion of administrative officers to accomplish in detail what is required by law in general terms. Without this power legislation would become either oppressive or inefficient. There would be confusion in the laws, and, in an effort to detail and particularize the law would miss sufficiency both in provisions and detail. This is particularly true where the discretion to be exercised by administrative officers relates to police regulations designed to protect the public morals, health, safety, and general welfare. A city may, in the execution of its police powers invest its administrative and executive officers with a reasonable discretion in the performance of duties devolved upon them to the end, whenever it is necessary for the safety and welfare of the public. *But, it should be added, the reasonable discretion which may be vested in its administrative officers is limited to a discretion in its essence ministerial and not legislative though it may be such as may be exercised by the legislature.*
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> In principle, legislation and administration are quite distinct powers; but in practical application the line which separates their exercise is not clearly marked or easily defined. However, in their definition in practical application, lies the difference between government by legislation and government by bureaucracy. . . .
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> The decisions of the various courts and sometimes of the same court, are in conflict as to what constitutes a delegation of legislative powers. The majority of cases lay down the rule that statutes or ordinances vesting discretion in administrative officers and bureaus must lay down rules and tests to guide and control them in the exercise of the discretion granted in order to be valid; but several courts apply the rule with varying degrees of strictness. Other cases go so far in sustaining, especially in cases involving police regulations, grants of discretionary powers to administrative officers and bureaus without prescribing any definite rule or specified condition to which the officers must conform, as, in effect, to substitute for government by legislation government by administrative officers and bureaus. For a collection of cases on this subject, see note in 12 *A.L.R.*, page 1435 and *seq.*
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> Where a statute or ordinance assumes to regulate the exercise of a common right, such as here involved, by requiring a permit for the exercise thereof, which is to be

granted or refused, and may be revoked, by an administrative officer in his discretion, the correct principles for determining whether it is void because it delegates legislative powers to the administrative officers are stated by the court in *Mutual Film Corporation v. Ohio Industrial Comm.*, 236 U.S. 239, 35 S.Ct. 387, 392, 59 L.Ed. 552, Ann. Cas. 1916C, 296,[33] in the following language: 'The legislature must declare the policy of the law and fix the legal principles which are to control in given cases; but an administrative body may be invested with the power to ascertain the facts and conditions to which the policy and principles apply.'

The Court then looked to the terms of the ordinance, and measured them against the foregoing principles and stated:

> . . . but when we come to examine the provisions with reference to revocation of permits by the chief of police, the policy of the law and the legal principles which are to control the action of the chief of police are not determined or determinable from the terms of the ordinance. . . It fails to state to what standard of conduct the holder of a permit must conform to be immune from the official ax.

In 1956[34], the Wyoming Courts had occasion to pass upon a statute which provided: "Upon the termination of such investigation, the person or persons holding such investigation shall prepare findings based upon the evidence received and considered. The Department upon review of such findings may dismiss the proceedings or it may suspend or revoke the license of such person . . . ." Plaintiff contended that this provided for revocation or suspension of license upon grounds other than the wrongdoing, fault, negligence, crime, misdemeanor, incompetence, mental or physical infirmities or disabilities of the driver, or stated another way, that the statute provided no standards for the licensee, the violation of which would be cause for revocation.

The court stated that since this statute was unique among the 48 states that there was no value in reviewing decisions or statutes from other states. Then after citation of cases, it quoted with approval the language of *State v. Grimshaw*, 49 Wyo. 192, 53 P.2d 13, 16, that "if the legislature leaves to administrative officers the determination of what the law shall be; or to determine what acts are necessary to effectuate the law, such delegation of authority is void." The court held this to be the law in the instant case and held that the statute was an unconstitutional delegation of legislative power.

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33. See note 31, supra.

34. *Eastwood v. Highway Department*,—Wyo.—, 301 P. 2d 318 (1956).

Statutes are often attacked on the grounds that they are too vague and indefinite to constitute a sufficient definition of criminal conduct. In a case decided this year[35] the New York courts held that a provision relating to operating motor vehicles "at such speed as to endanger life, limb or property of any person or at a rate of speed greater than will permit bringing vehicle to a stop without injury to another or his property" was too vague and indefinite and did not contain sufficient standards by which a driver's conduct could be tested and therefore the statute was ineffective as basis for revocation of a driver's license. By way of contrast, the Oklahoma court had no difficulty in upholding a statute which prohibited operation of a motor vehicle at a speed "in excess of maximum safe and prudent speed as determined and posted by the State Highway Department."[36]

What constitutes an habitual violator has come in for some review by the courts. In *Lamb v. Rubin*,[37] decided in 1957, the Virginia court upheld a determination that a driver was an habitually reckless and negligent driver where the record showed nine convictions in approximately six years. In another Virginia case,[38] a record of five convictions from July 19, 1950, to May 6, 1955, plus three convictions from February 27, 1956 to June 1, 1956, was held to be sufficient to support a finding by the Commissioner that licensee was habitually reckless and negligent. New York courts have upheld a statute permitting the Commissioner to suspend a license for "habitual" or "persistent" violation of traffic laws and ordinances against a contention that the statute was unconstitutional on the grounds that legislative functions had been delegated to an administrative body without providing any criteria or standards defining the words "habitual" or "persistent."[39]

A Virginia statute[40] provided "Upon any reasonable ground appearing in the records of the division, the Commissioner may, when he deems it necessary for the safety of the public on the highways of this state, and after notice and hearing as herein-

35. *Brown v. Kelly*, 169 NYS 2d 20[illegible] (1958).
36. *Ludwig v. Yancey*, 318 P. 2d 450 (Okla. 1957).
37. 198 Va. 628, 96 S.E. 2d 80 (1957).
38. *Lambe v. Clarke*, 199 Va. 274, 99 S.E. 2d 597 (1957).
39. *Ross v. McDaff*, 309 N. Y. 56, 127 N.E. 2d 806 (1955).
40 *Michie* 1942 Code Supplement, Sec. 2154 (a 19).

before provided, [illegible] years, . . . the . . . provisions of the [illegible] against an attack [illegible] unconstitutional [illegible] viding any stand[illegible] Commissioner, t[illegible] contained the f[illegible] missioner's actio[illegible]

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41. *Butler* [illegible]
42. See note

before provided, suspend or revoke for a period not to exceed five years, . . . the . . . license of any person who is a violator of the provisions of the Motor Vehicle Code." In upholding this section against an attack on the grounds that the section constituted an unconstitutional delegation of legislative power without providing any standards or controls to guide the actions of the Commissioner, the Virginia court pointed out that the section contained the following controls and limitations of the Commissioner's actions:[41]

(1) The Commissioner must deem the suspension or revocation "necessary for the safety of the public on the highways of this state."

(2) The ground upon which the conclusion of the Commissioner is based—that the safety of the public will be jeopardized unless the license is suspended—must appear "In the records of the Division" of Motor Vehicles.

(3) The grounds for the suspension must be "reasonable" both as to necessity therefor and duration thereof.

(4) The Commissioner must grant a hearing and give notice of the time and place. The right of review by a circuit court is provided for any person deeming himself aggrieved thereby.

(5) An appeal to the Supreme Court from the final judgment of the reviewing court is granted as a matter of right.

Here, the court said, "Under the general terms employed in the statute, it is clear that the cardinal principle or standard by which the exercise of the power conferred on the Commissioner must be guided and controlled is that the revocation of the operator's license . . . must be necessary for the safety of the public on the highways of this state."

Summarizing, we can say that under the doctrine of separation of powers the legislature may not divest itself of its duty to say what the law shall be, although it may, within prescribed limits, permit a non-legislative body to promulgate rules and regulations for the enforcement of the law. This rule, stated in the *Mutual Film* case[42] is clear enough, but the degree of strictness with which the rule will be applied by the various courts,

41. *Butler v. Commonwealth*, 189 Va. 411, 53 S.E. 2d 152 (1949).

42. See notes 31 and 33, *supra*.

and within a particular court, is subject to conjecture.

STATUTORY CONSTRUCTION

It is a general rule of statutory construction that a statute is presumed to be valid and will not be overthrown as unconstitutional if it can be sustained on any reasonable basis, and the burden is on the party attacking the constitutionality of a statute to establish the invalidating facts and its invalidity must be clearly shown.[43] This rule is limited, however, by another general rule that those sections of the constitution which provide for separation of the powers of the government, which constitute the keystone of our form of government, must be strictly construed. In this line, the Indiana Court has declared that "reasonable standards" must be imposed whenever the legislature delegates discretionary powers to an administrative officer or body.[44]

The Ohio Court states the rule to be that statutes must be read and interpreted in the light of those fundamental principles which protect a citizen in his private rights and guard him against arbitrary action of government.[45]

Generally speaking, the constitutional validity of a law is to be tested, not by what has been done under it, but by what may, by its authority be done.[46] But, like all legislation, statutes authorizing suspension and revocation of drivers must be interpreted in the light of their general purpose.[47]

Until a statute has been declared by a competent court to be unconstitutional, however, an administrative agency charged with the administration of the law is entitled to rely and act upon the statute as written and interpreted by the courts. In fact, in individual instances the statute may require that certain

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43. *In re Village of Lich Harbor*, — N. J. —, 135 A. 2d 869 (1957); *Book v. State Office Building Commission*, — Ind. —, 143 N.E. 2d 273 (1958); *In re Bloomer's Estate*, — Wisc. —, 87 N.W. 2d 781 (1958).

44. *Book v. State Office Building Commission*, — Ind. —, 143 N.E. 2d 273 (1958).

45. *In re Appropriation for Highway Purposes*, — Ohio —, 142 N.E. 2d 242 (1958).

46. *Cluett, Peabody & Co. v. Mays Inc.*, 170 N.Y.S. 2d 271 (1958). This view was also expressed in *South Carolina State Highway Department v. Harbin*, 226 S. C. 585, 86 S.E. 2d 466 (1955) and in the dissenting opinion in *Sturgill, Acting Commissioner v. Beard*, 303 S.W. 2d 82 (Ky. 1957).

47. *Commonwealth v. Bristow*, — Pa. —, 138 A. 2d 439 (1958).

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action be taken under given circumstances. Thus, where the statutes provide for a mandatory revocation it is the duty of the administrative agency to perform the purely ministerial function of imposing the revocation. Likewise, when the statutes give the administrative agency discretionary authority to take specified action upon receipt of notice of conviction, for example, for specified offenses, it is authorized to give full faith and credit both to the statute and to the conviction report.[48]

It is a well recognized principle of statutory construction that a court will not pass on the constitutionality of a law unless the constitutional issues are clearly presented and not even then if the decision can be made to turn upon some other factor. Thus, in *Winch v. Register of Motor Vehicles*, 135 N.E. 2d 17 (Mass. 1956), the court refused to pass on the constitutionality of a statute which imposed penalties for points upon failure of appellant to show imminent danger of harm from the statute or that he had a substantial controversy with the administrator and without his first having exhausted his administrative remedies.

The existence of a statute over a long period of years gives no certain assurance of its validity[49] and repassage of a statute may not act to approve or validate rules and regulations promulgated under it prior to its re-passage.[50]

In conclusion, we can say that statutes will be construed in the light of their stated purposes and that they are presumed to be valid. This conclusion is limited by the general rule that the constitutional provisions calling for separation of powers will be strictly construed.

COURT DECISIONS

A careful study of reported cases discloses only two instances in which point systems have been considered by ruling appellate courts in the American jurisdictions.[51] A study of the Dominion

48. See *In re Wright*, 228 N. C. 301, 45 S.E. 2d 370 (1947) and *In re Wright* 228 N. C. 584, 46 S.E. 2d 696 (1948).

49. *People v. Mamlacqua*, 170 N.Y.S. 2d 423 (1958).

50. *Los Angeles County v. State Board of Public Health*, 322 P. 2d 968 (Cal. App. 1958).

51. *South Carolina State Highway Department v. Harbin*, 226 S.C. 585, 86 S.E. 2d 466, (1955). *Sturgill, Acting Commissioner of Public Safety v. Beard*, 303 S.W. 2d 903 (1957).

Reports discloses no Canadian point system cases.

Of the two American cases, both concerned point systems created by administrative regulation without express legislative authority. No ruling cases have been found wherein the legality of statutory or permissive point systems have been considered. In the first of these, from South Carolina, the statute relied upon as authority for setting up the system was voided as an unconstitutional delegation of legislative powers. In the second, from Kentucky, the Kentucky Court of Appeals upheld the constitutionality of the statutory authority relied upon and the reasonableness of the system. Although reaching opposite conclusions, the cases are distinguishable on the basis of differences in the language of the statutory authority relied upon. Considering this difference in statutory phraseology, it is submitted that the decisions are not in conflict.

On November 24, 1953, the South Carolina State Highway Department, relying upon the authority contained in Section 46-172 of the 1952 Code,[52] established a point system by administrative rule.[53] This rule, among other things, recited that the

52 §46-172.—For cause satisfactory to the Department it may suspend, cancel or revoke the driver's license of any person for a period of not more than one year.

53. In order to do everything within reason to reduce traffic accidents the Department will commence immediately to charge each violation committed and reported to the Department against the record of each offending driver. Each violation will be graded as to seriousness in accordance with the following table which is based on violations involved in accidents during 1952.

Moving Violation	*Violation Points*
Disregarding sign or signal	3½
Driving under influence	10
Entering highway without stopping	3½
Following too closely	2
No right-of-way	3½
Improper passing	2
Passing stopped school bus	3½
Reckless Driving	5
Driving too fast for conditions	3½
Improper turning	2
Driving on wrong side of road	2
Failure to dim lights	2
Improper lights	2
No signal or improper signal	2

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point system was created for the purpose of reducing traffic accidents, set forth a detailed schedule of points for violations and warnings, and provided that upon an accumulation of 10 points a driver was to be brought in for a personal interview by the highway patrol to determine if his license should be taken. A further violation, where a driver was permitted to keep his license, was deemed sufficient grounds for immediate suspension.

Following the issuance of this order Harbin accumulated a total of 12 points, 10 for speeding violations and 2 for a warning. Following notice to appear for an interview, as provided in the order, an interview, and a recommendation that a suspension issue, Harbin's license was suspended for a period of five months. Upon Harbin's petition for a court review of the Department's action in suspending his license the lower court held that the

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Improper parking 2
Responsibility for accident involving personal injury and/or property damage in excess of $100 5
If while driving under the influence 10
Responsibility for accident involving no personal injury and property damage of $100 or less (or point violation value, whichever is higher) 2
All warnings and minor violations 2

When the total of violation points charged against a driver reaches a minimum of 10 the driver will be personally interviewed by a member of the Highway Patrol for the purposes of determining whether the offender's license to drive should be suspended or whether it appears from the circumstances that he should be allowed another chance. In cases where the driver is permitted to retain his license after the interview any additional violation committed by him will be deemed sufficient grounds for an immediate suspension of his license. The Department, of course, has no discretion where cases involve driving under the influence of intoxicants or narcotic drugs, reckless homicide, and two convictions for reckless driving. The suspension of drivers' licenses under these circumstances is required by law.

Highway Patrol personnel conducting the personal interview will approach the work in a spirit of helpfulness and with utmost courtesy. The primary purpose of the program is to make better and safer drivers, and not to suspend licenses except where other efforts in this direction have failed.

In order to give this program maximum effectiveness members of the highway patrol should exert every effort to encourage local enforcement officers to send to the Department copies of all violation warnings and summonses issued by them, and copies of reports of all accidents they investigate.

Department was without authority to put a point system into effect and revoked its action in suspending Harbin's license.

Upon appeal to the South Carolina Supreme Court the Department conceded that it was not "expressly" empowered to adopt a point system but contended that the power to do this was contained in the broad powers to refuse, suspend or revoke a license contained in Act number 603, April 4, 1930, 36 St. at Large, 1057, then codified in Chapter 2 of Title 46 of the 1952 Code as Section 46-172. This section read as follows:

> §46-172.—For cause satisfactory to the Department it may suspend, cancel or revoke the driver's license of any person for a period of not more than one year . . . .

This, the Department contended, gave it the authority to set up a point system which it said embodied reasonable criteria to be used in the exercise of its discretionary power, and that all of the violations mentioned therein have a direct bearing on highway safety, and that a point system is in accordance with the legislative policy expressed in the above section.

Harbin contended that Section 46-172 fixed no standards and laid down no intelligible guide to which the Department must conform but left the right to revoke or suspend in the unrestricted and uncontrolled discretion of the Department, and that this rendered the section void as an unconstitutional delegation of the legislative power. In addition he questioned the reasonableness of some of the points, asserting that some were contrary to legislative enactments, and pointed out that the system permitted a suspension solely upon warnings issued.

In reaching a decision the court said that it was unnecessary to go beyond the constitutional issue of whether the power granted in Section 46-172 was unconstitutional on the grounds that suspensions and revocations are left to the absolute, unregulated, and undefined discretion of the Department.

"It is accepted," the Court stated, "that while the legislature cannot delegate its legislative authority it can authorize an administrative body to fill in the details by prescribing rules and regulations for the complete operation and enforcement of a law within its expressed general purpose. It is necessary, however, that the law declare a legislative policy, establish primary standards for carrying it out, or lay down an intelligible principle to which the administrative body must conform, with a proper regard for the public interest."

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Thus, the court held, when the authority of the State Highway Department to suspend or revoke a license for cause which it deems satisfactory is considered in the light of the above principle, such provisions must be held invalid as an unconstitutional delegation of legislative powers. It sets up no standards to guide the Department and contains no limitations. It is that which an act permits that determines the issue, not what action an administrative official may or may not take, and delegation of unrestricted discretion cannot be saved by any presumption that an officer will exercise sound judgment and good faith.[54]

Having concluded that Section 46-172 of the 1952 Code, the foundation stone for the establishment of the point system, was void as an unconstitutional delegation of legislative powers, it followed that the Department was "without authority" to establish a point system, and that such a system, therefore, was without force and effect. Left unsettled were the questions as to the "reasonableness" of the South Carolina system, and the question of whether suspensions based on "warnings" wholly or in part would be violative of the "due process" requirements of the federal constitution.

A point system was created in Kentucky on December 20, 1956, by a series of three administrative regulations.[55] In order,

54. The court, by way of dicta, acknowledged that a license to drive is a privilege and not a property right but stated that such privilege could not be taken away arbitrarily or capriciously.

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PUBLIC SAFETY
DRIVER IMPROVEMENT

PSfty-DI-1
Establishment of Point System for Driver Improvement
Relates to KRS 186.570 (d)
Pursuant to the Authority of KRS 186.400.

To assist the Department of Public Safety in making a determination that a person is an habitually reckless or negligent driver of a motor vehicle for the purpose of denying, suspending, or revoking that person's license in accordance with KRS 186.570, a schedule of penalty points established by administrative regulations shall govern. Such schedule shall assign point value points for the different classifications of traffic violations and shall be assessed according to such schedule for all drivers. Information concerning convictions of traffic violations may be secured from any official source or records available to public or departmental inspection. Complete records of point system assessments shall be maintained in the Department of Public Safety.

these regulations (1) established a point system for driver improvement, (2) set out a schedule of points, and (3) provided that upon an accumulation of from 6 to 9 points within any three year period, a motorist was to be given a warning; for an accumulation of 12 points within a three year period, a mandatory six months suspension. Under this system one Beard's license was suspended for a period of six months. In reaching a decision as to the suspension of Beard's license the Department considered only one violation occurring following the adoption

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Filed, 20 Dec. 1956
Effective, (Emergency) 20 Dec. 1956.

PSfty-DI-2
Schedule of Points for Driver Improvement
Relates to KRS 186.570 (d)
Pursuant to Authority of KRS 186.400

The schedule by which points will be assessed for convictions of traffic violations is as follows:

Misrepresenting or falsifying application	12
Racing	6
Reckless Driving	4
Passing on curve or on hill (no passing zone) or passing school bus loading or unloading children	4
Violation contributing to accident	4
Exceeding speed limits	3
Other hazardous moving violations	3

Filed 20 Dec. 1956
Effective, (Emergency) 20 Dec. 1956.

PSfty-DI-3
Enforcement of the Point System For Convictions of Traffic Violations
Relates to KRS 186.570 (d)
Pursuant to Authority of KRS 186.400

(1) On the accumulation of six to nine points against any one driver within a three year period, the driver shall be apvised and cautioned regarding his point status and such other matters as the Commissioner of Public Safety deems necessary.

(2) On the accumulation of twelve scheduled points against any one driver within a three year period, it is mandatory that the Commissioner of Public Safety suspend the operator's license for a period of six months.

(3) Periods of suspension resulting from additional accumulation of points shall be governed by provisions of KRS 186.560.

Filed, 20 Dec. 1956
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f the point system. The other violations, for which points were ssigned, occurred prior to the adoption of a point system, but all within a three year period.

In seeking a return of his license Beard contended (1) that KRS 186.570[56] upon which the point system regulations were based, was an unconstitutional delegation of legislative power without any criteria or standards for an administrative agency to follow; (2) that the point system, as applied to him in the suspension of his license violated the due process provisions of the Fourteenth Amendment of the Constitution of the United States; and (3) that the action in suspending his license based on violations occurring prior to the effective date of the administrative regulations establishing the point system contravened Article I, Section 10, of the Constitution of the United States, Section 19 of the Constitution of the State of Kentucky, and KRS 446.080, which prohibit *ex post facto* laws and retroactive application of statutes.

In upholding the Kentucky point system, the Kentucky Court of Appeals rejected the contention that KRS 186.570 was unconstitutional as a delegation of legislative powers without providing any criteria or standards and held that the point system was constitutionally sound because it believed that the administration of traffic rules could be lawfully delegated to administrative officials.

In holding that there was no violation of due process in the suspension of Beard's license under the point system the court said that it was too late to contend that one had a natural right to operate a motor vehicle because it is now a privilege granted by a license of the state, subject to reasonable regulation by the

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56. KRS 186.570.—Discretionary suspension or denial of license; surrender of certificates. (1) The Department or its agents designated in writing for that purpose may deny any person a license or may suspend the license of any person, or, in the case of a non-resident, withdraw the privilege of operating a motor vehicle in this state, with or without a hearing, and with or without receiving a record of conviction of that person, whenever the department has reason to believe that:

(d) that person is an habitually reckless or negligent driver of a motor vehicle or has committed a serious violation of the motor vehicle laws.

KRS 186.400.—Duties of Departments of Revenues and Public Saf administration of laws. (1) . . . The Department of Public Safety may prescribe regulations for the enforcement of KRS 186.400 to 186.640, . . .

state in the exercise of its police powers, and when the conditions imposed by the license are violated, the suspension of the privilege to operate a motor vehicle is not a denial of "due process."

Likewise the court gave short shrift to Beard's claim that the regulation had been applied retroactively by the Department in suspending his license. This claim, the court said, evaporates when the provisions of KRS 186.570 are applied to the case. the statute enacted in 1936, authorized the Department to suspend summarily the license of any person whenever the Department has "reason to believe" the person in question "is an habitually reckless or negligent driver of a motor vehicle or has committed a serious violation of the motor vehicle laws." Beard's license was suspended under this statute upon a determination by the Department that he was "an habitually reckless driver." The mere fact that the Department used the point system in making this determination did not make the application of the regulation retroactive as to Beard.

It is important to note that in both the South Carolina and the Kentucky cases the initial question confronting the court was "did the Department or Agency have any legal authority to promulgate a point system?" In the South Carolina case this was answered in the negative and the court did not progress to a consideration of any further questions. In the Kentucky case the Court held that there was sufficient statutory authority to support the establishment of a point system and proceeded to uphold the reasonableness of the point system and to rule that under the fact situation presented, there was no *ex post facto* application of the law.

CONCLUSIONS

In the field of legal precedents there is a danger in attempting to draw specific conclusions from generalities in the law and no attempt is here made to do so. Rather, some broad generalizations will be attempted from the application of specific principles of law. Such generalizations may or may not be applicable in a given jurisdiction. In fact, their application may hinge upon subtle fact variations and upon the skill or lack of skill with which a test case is prosecuted and defended. Almost certainly their application will depend upon the judicial climate. Whether or not such generalities may be valid may depend in some meas-

ure on the community of thought within a jurisdiction. In the final analysis, legal questions arising out of the establishment and application of a point system, like other legal questions, can only be answered by a competent court, and then the answer may not be final, for, powerful as the doctrine of *Stare Decisis*[57] may be, a change in personnel on the court, militant public thought, or changed conditions may result in a reversal of a prior decision by the same court. Thus the best that can be done is to draw from available decisions and conjecture as to what the courts of a given state, using accepted measuring standards and principles, will conclude when presented with a given factual situation. It is quite impossible to gauge adequately the imponderable intangibles such as factual differences, skill and persistence of an advocate, judicial climate, and force of community thought. Such generalities should, however, prove efficacious in acquainting Motor Vehicle Administrators with possible pitfalls in establishing a point system and in providing a measuring rod whereby existing systems may be gauged.

Specific principles of law against which our generalizations are drawn include:

(1) Operation of a motor vehicle upon the highways, including the licensing of drivers, is a proper subject for regulation and control by the legislature in the exercise of its police powers.

(2) Regulations under the police power must have some "reasonable" relationship to the object sought to be accomplished.

(3) The legislature, in the exercise of its police powers is limited by both the "equal protection of the laws" and the "due process" clauses of the federal constitution and by similar provisions of state constitutions.

(4) The federal constitution prohibits a state from passing any *ex post facto* laws.

(5) The legislative power is vested in the legislature and any attempt to delegate legislative power without standards for

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57. Policy of courts to stand by precedent and not to disturb a settled point. *Neff v. George*, 364 Ill. 306, 4 N.E. 2d 388 (1936); Doctrine that when a court has once laid down a principle of law as applicable to a certain state of facts it will adhere to it and apply it to all future cases where facts are substantially identical, *Moore v. City of Albany*, 98 N. Y. 396 (1885).

guidance to a non-legislative body is void as an unconstitutional delegation of legislative power.

(6) There is a presumption that statutes are valid.

Measuring now, the factual situations presented in both the South Carolina and the Kentucky cases against the specific principles of law outlined above, the following generalities may be expressed:

(1) A legislature, in the exercise of its police powers, may regulate the operation of motor vehicles through licensing procedures and prescribe through statute the manner in which a license to drive may be granted, refused, or taken away. This being true, no serious legal obstacles stand in the way of the creation of a point system by statute. Such a system would be subject to the same legal rules and regulations as other statutory license regulations.

(2) Subject to the rule that the legislature must declare what the law shall be, although it may delegate to a non-legislative body the authority to promulgate rules and regulations for the administration of the law, a legislature may properly authorize an administrative agency to promulgate a point system for license suspensions together with a schedule of points.

(3) Discretionary point systems will stand or fail depending upon the foundation statutes upon which they are grounded. Thus a point system which is in itself reasonable and provides full protection under the "due process" and "equal protection" provisions of the Fourteenth Amendment may be voided because of the invalidity of its foundation statutes.

(4) Where the foundation statutes provide no standards or guides they will probably be voided as an unconstitutional delegation of legislative powers to a non-legislative body. Where, however, there are any standards or guides, however rudimentary, the probabilities are that they will be sustained.

(5) Once the validity of a foundation statute has been determined, the validity of a point system is subject to the same criteria as to reasonableness, et cetera, as statutory point systems and other license regulatory legislation.

(6) Application of a point system to violations committed prior to the adoption of the system will not be held to be an *ex post facto* application of the law unless the violations occurred prior to the adoption of the statute or statutes on which a point system is founded.

(7) Whenever a Department has authority to suspend, as for "habitually reckless and negligent driving," it probably has the authority to use a system of points in reaching a determination as to whether a particular driver was in fact "habitually reckless and negligent." Perhaps the most significant language contained in either the South Carolina or the Kentucky cases was the language of the Kentucky court to the effect that the foundation statute being valid, it made no difference that the Department used a system of points in reaching its determination that Beard was an habitually reckless driver.

RECOMMENDATIONS

It is not within the province of the legal study of point systems to recommend one method of establishing a point system over any other method, since, in the opinion of this writer, that constitutes a question of policy only. Assuming however, *arguendo*, that it is desired to establish a point system, and that such a system can be established in the manner in which the appropriate administrative agency may choose, certain legal factors should be re-iterated. Namely:

(1) A point system, including schedule of points, written into the statutes through legislative enactments, presents fewer legal questions than systems authorized by statute or permitted by statute. Such a system, however, results in a loss of flexibility.

(2) From a legal standpoint, statutory authority for establishment of a point system, presents fewer legal difficulties than establishment of such a system based upon "broad discretionary" powers. Such authority is subject, however, to the general rule of law that the legislature must provide sufficient standards to govern and limit the department in its establishment of such system.

(3) Point systems based upon broad discretionary powers must meet a twofold test in addition to the other questions raised by such point systems. First, are the foundation statutes themselves valid, and second, do they in fact authorize the establishment of a point system?

Whenever a decision has been made that it is desirable to establish a point system based upon the broad discretionary powers of the appropriate administrative agency, it is recommended that the statutes that are to be relied upon to support the establishment of such a system be measured against the

general rules of law herein presented, and if there is reasonable doubt that such statutes will support the establishment of such a system, that such supporting statutes first be strengthened.

While no attempt can be made to specify all the possible statutory words that will presumably withstand an attack on constitutional grounds, it has been demonstrated that the usual "habitual violator" and "habitually reckless and negligent operator" statutes will probably withstand an attack on the grounds that they are invalid as an unconstitutional delegation of legislative powers. It is suggested that a statute which authorizes the department to suspend the license of any person who "has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highway,"[58] would be sufficient in any jurisdiction to support the establishment of a point system.

58. *Driver Improvement Through Licensing Procedures*, American Association of Motor Vehicle Administrators (1956) p. 22.

SB-310

TO: House Judiciary

SUBJECT: CSSB 310
Venue Bill

HISTORY

In December 1970 a number of legislators, native leaders, members of the judiciary, State Police, Health, Education and Welfare officials, and officials of the Division of Corrections met at Mt. Alyeska near Anchorage, Alaska, to discuss criminal justice in the rural areas of Alaska. This became commonly known as the "Bush Justice Conference." One of the results of this conference was a recommendation that criminal trials in Alaska be held in areas other than the three or four major urban cities.

The First Session of the Seventh Alaska Legislature amended AS 22.10.030 and in effect decreed a change in the Criminal Rules, in that the place of trial for any crime committed in the state was to be in the Election District. Shortly thereafter the supreme court handed down a decision in Cloyd Alvarado v. State of Alaska (Exhibit A) in which they indicated that the law of Alaska required that a man accused of a crime in the State of Alaska should be tried by a jury of his peers, and should be tried in an area that would reasonably insure that the same ethnic group to which the accused belong would be represented in the jury selection.

As time passed it became readily apparent that as a practical matter this statute created many hardships because in vast areas of this great state there are absolutely no facilities available for holding criminal trials. In order to relieve this problem to a certain extent, the supreme court issued Supreme Court Order No. 136 (Exhibit B). Among other things in the Supreme Court Order, they directed the Administrative Director of Courts to investigate and report to the presiding superior or district court judge in the judicial district in which the trial was to be held, the availability of appropriate facilities in the area. It is to be pointed

~~only~~ OUT that the order could not and did not supersede the statute and that if a crime was committed in a rural district and there was no facility available, then the court was required to move to that area and attempt to set up some type of temporary quarters in which to hold the trial. This not only was a hardship on the court and jurors, but became a tremendous expense to the taxpayers of this state. Fortunately no lengthy trial has been required in a remote area as yet. However, the potential is always there.

CSSB 310

CSSB 310 would amend the present statute in two major areas. The present statute states that trials must be held in "election districts," this being the House Election Districts. The present bill would change this to a senate district, which would encompass a much larger area (see attached map). In addition to expanding this geographical area it states that if a crime is committed within the boundaries of a borough, then the location shall be at a place within the borough that will best serve as a place for trial. This will also take into consideration some problem areas such as the city of Anchorage, where there are four senate districts, and in areas adjacent to Fairbanks which is a separate senate district. The second point is that the Administrative Director of Courts may move a trial to the next closest senate district if he feels that there are absolutely no reasonably suitable facilities within a senate district.

The Senate Judiciary Committee has had under consideration CSSB 310 since the beginning of the session and has contacted members of the judiciary, the Administrative Director of Courts, members of this body representing the rural areas of our state, and the committee feels that this bill will preserve the spirit of the Bush Justice Conference, the decision of Alvarado v. State, and the feelings and desires of the citizens of rural Alaska, but yet be flexible enough to take away the financial burden imposed by the former statute.

SB. 310

JAN 19 1972

Superior Court

State of Alaska

SECOND JUDICIAL DISTRICT

FEDERAL BUILDING

NOME, ALASKA

99762

WILLIAM H. SANDERS, PRESIDING JUDGE

January 17, 1972

The Honorable Robert C. Erwin
Associate Justice of the Supreme Court
Alaska Court System
941 Fourth Avenue
Anchorage, Alaska 99501

Re: Reapportionment and Judicial Districts

Dear Bob:

It is my understanding that you are the court system's liaison with the legislature and for that reason am sending you this request to have the legislature straighten out our judicial district. We have criminal law problems in this area with present boundaries.

Please note that AS 22.10.010 is in part as follows:

> "There shall be one superior court for the state. The court shall consist of four districts bounded as follows: . . . Second District: the area within election district numbered 21 to 24, both inclusive, as said districts are described in art. XIV of the state constitution on March 19, 1959."

Would suggest that if the present proposed reapportionment is approved that this particular portion of the statute be amended as follows:

> "There shall be one superior court for the state. The court shall consist of four districts bounded as follows: . . . Second District: the area within the election districts numbered 18, 19 and 20."

You will note that the statute was passed setting up these districts March 19, 1959. No amendment was made to this statute

after reapportionment in 1962.

The legislature in 1959 followed election district in establishing judicial districts. There are sound reasons for following this procedure. At the present time a Superior Court Judge or District Judge running for re-election would have to follow the old election district boundaries set in 1959. This would create problems with the election supervisors in distributing the judicial ballots and tallying the judicial vote.

The constitutional provision that allows the legislature to establish judicial districts is as follows: (Art. IV, §1)

> "The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law."

It may be that you will want to amend AS 22.10.010 to cover all four judicial districts.

Sincerely,

Bill

William H. Sanders

WHS:dj
cc: Honorable Jay A. Rabinowitz
Associate Justice

Robert N. Reeves
Administrative Director of Courts

SB-377

whether such purchaser is an underwriter or dealer in securities, and, if not, whether the purchase of such a block of securities for investment is consistent with its general operations; and (3) the length of time elapsing between the acquisition of the securities by the initial purchaser and the date of their proposed resale.

Of course, if the securities in question were in fact purchased by the initial purchaser for investment rather than for resale, dealers' sales thereof to the public would not necessitate registration under the Securities Act.

In conclusion, I feel that I should point out that even though a dealer is satisfied that a particular block of unregistered securities was bought by an initial purchaser for investment, he nevertheless takes the risk that, if his determination is incorrect, sales by him of such securities will be in violation of the registration requirements of the Act.

[Release No. 33-603, December 16, 1935, 11 F. R. 10955.]

[¶ 2755] Public Offerings of Investment Contracts Providing for the Acquisition, Sale or Servicing of Mortgages or Deeds of Trust

This release refers to the Act as in effect prior to the 1964 amendments. CCH.

Release Nos. 33-3892 and 34-5633. January 31, 1958, 23 F. R. 840.

Reg. § 231.3892 (§ 241.5633). Statement of the Commission regarding public offerings of investment contracts providing for the acquisition, sale or servicing of mortgages or deeds of trust.

Questions are presented to the Securities and Exchange Commission from time to time as to the application of the federal securities laws to offerings of whole or fractional interest in mortgages or deeds of trust under arrangements which provide for a variety of services to the investor. In the opinion of the Commission such an arrangement frequently constitutes an "investment contract", which is a "security" within the meaning of the federal securities laws. The public offering and sale of these investment contracts may invoke the registration provisions of the Securities Act of 1933 and other provisions of the federal securities laws. It should be emphasized, in this connection, that exemptions from registration provided by section 4 (1) of the Securities Act of 1933 and Regulation A-R* thereunder, usually relied upon for the underlying mortgage and deed of trust notes, would not be available for a public offering of the investment contracts. Recently the Commission has obtained injunctions against sellers who failed to register such investment contracts offered through nationwide advertising.[1]

[¶ 2756] [Services and Other Attributes of Arrangement]

Among the more common services and other attributes of the arrangements, offered in relation to the mortgages or deeds of trust, which have come to the attention of the Commission and which in the opinion of the Commission may give rise to the creation of "investment contracts" within the meaning of the securities laws are:

(a) Complete investigation and placing service.

(b) Servicing collection, payments, foreclosure, etc.

[1] See *SEC v. Mortgage Clubs, Inc.*, D. Mass. Civ. Act. No. 57-385-N, Litigation Release No. 1106 and *SEC v. Backers Discount and Finance, Inc.*, D. N. J. C. A. No. 14-58, Litigation Release No. 1200.

* [Regulation A-R was rescinded December 8, 1960 (¶ 70,732). CCH.]

In *In re Natural Resources Corporation*, 8 S. E. C. 635, 637, the Commission stated that "* * * transactions which in form appear to involve nothing more than the sale of real estate, chattels, or services have been held to be investment contracts where in substance they involve the laying out of money by the investor on the assumption and expectation that the investment will return a profit without any active effort on his part, but rather as the result of the efforts of someone else."

It should also be noted that persons engaged in the business of buying and selling mortgage or trust notes would ordinarily be brokers or dealers, or both, within the meaning of the Securities Exchange Act of 1934, and absent an exemption would be required to be registered as such with the Commission under the provisions of section 15 of the Act. Rule 15a-1 would not provide an exemption for such a broker or dealer who is offering investment contracts of the type referred to above. Moreover, such a broker or dealer usually would be subject to the Commission's Rule 15c3-1 whether or not he is registered. A broker or dealer subject to this rule could not use the mails or federal instrumentalities to effect a transaction in a non-exempt security otherwise than on a national securities exchange if his "aggregate indebtedness" exceeds 20 times his "net capital" as those terms are defined in the rule.

In addition to all of the foregoing, it should be emphasized that the antifraud provisions of the Acts and regulations administered by the Commission (including specifically section 17 (a) of the Securities Act of 1933 and Rules 10b-5 and 15c1-2 under the Securities Exchange Act of 1934) would apply to advertisements, literature, and any other statements and representations made in connection with the offer or sale of any of the securities referred to herein.

Persons engaging in this type of business should consult with the nearest regional office of the Commission or with the headquarters office in Washington, D. C.

NOTE: The text of § 241.5633 is identical with that appearing in § 231.3892.

This release becomes effective January 31, 1958.

[Release No. 33-3892, January 31, 1958, 23 F. R. 840.]

[¶ 2765] Real Estate Investment Trust

This release refers to the Act as in effect prior to the 1964 amendments. CCH.

Release Nos. 33-4298, 34-6419, and IC-3140. November 18, 1960, 25 F. R. 12177.

Reg. § 231.4298 (§§ 241.6419 and 271.3140). Statement of the Commission as to the applicability of the Federal securities laws to real estate investment trusts.

The Securities and Exchange Commission has received a number of inquiries as to the applicability of the Federal securities laws to real estate investment trusts as defined in a recent amendment to the Internal Revenue Code (Public Law 86-779, September 14, 1960). This amendment provides substantially the same tax treatment for qualified trusts which are substantially limited to investments in real estate and real estate mortgages as is provided for "regulated investment companies", but it does not amend any of the statutes administered by this Commission. A real estate investment trust may be subject to the provisions of the Federal securities laws, depending upon the circumstances involved in offering its securities for sale, the nature of such securities, and the character of the trust's investments.

The amendment, among other things, requires that, in order to qualify for the special tax treatment provided, the trust's securities must be bene-

MISCELLANOUS

Supreme Court
State of Alaska

CHIEF JUSTICE
GEORGE F. BONEY

ASSOCIATE JUSTICES
JOHN H. DIMOND
JAY A. RABINOWITZ
ROGER G. CONNOR
ROBERT C. ERWIN

941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

B U L L E T I N

March 24, 1971

TO: Members, Alaska Supreme Court
Members, Alaska Superior and District Courts
Members, Alaska State Legislature
Members, Alaska Judicial Council
Members, Alaska Court Administration Staff
President, Alaska Bar Association
President, Anchorage Bar Association

FROM: George F. Boney, Chief Justice
Alaska Supreme Court

RE: National Conference on the Judiciary

For your information I am enclosing copies of the classic addresses made by President Nixon and Chief Justice Burger at the National Conference on the Judiciary at Williamsburg, Virginia on March 11 and 12, 1971.

George F. Boney

Enclosures

FOR RELEASE ON DELIVERY
THURSDAY, MARCH 11, 1971

MARCH 11, 1971

Office of the White House Press Secretary
(Williamsburg, Virginia)

THE WHITE HOUSE

TEXT OF AN ADDRESS BY THE PRESIDENT
NATIONAL CONFERENCE ON THE JUDICIARY
WILLIAMSBURG, VIRGINIA

As one who has practiced law; as one who deeply believes in the rule of law; and as one who now holds the responsibility for faithful execution of the laws of the United States, I am honored to give the opening address to this National Conference on the Judiciary.

It is fitting that you come together here in Williamsburg. Like this place, your meeting is historic. Never in the history of this Nation has there been such a gathering of distinguished men of the judicial systems of our States. I salute you all for your willingness to come to grips with the need for court reform and modernization. And I would like to salute especially the man who has been the driving force for court reform; a man whose zeal for reshaping the judicial system to the need of the times carries on the great tradition begun by Chief Justice John Marshall -- the Chief Justice of the United States, Warren Burger.

I recall that when I took my bar examination in New York City a few years ago, I dwelt at some length on the wisdom of the separation of powers. My presence here today indicates in no way an erosion of that concept; as a matter of fact, I have come under precedents established by George Washington and John Adams who both spoke out for the need for judicial reform. And President Lincoln, in his first annual message to the Congress, made an observation that is strikingly current -- that, in his words, "the country generally has outgrown our present judiciary system."

There is also a Lincoln story -- an authentic one -- that illustrates the relationship of the judicial and executive branches. When Confederate forces were advancing on Washington, President Lincoln went to observe the battle at Fort Stevens. It was his only exposure to actual gunfire during the Civil War -- and he climbed up on a parapet, against the advice of the military commander, to see what was going on. When, not five feet from the President, a man was felled by a bullet, a young Union captain shouted at the President: "Get down, you fool!" Lincoln climbed down and said gratefully to the captain: "I'm glad you know how to talk to a civilian."

The name of the young man who shouted "Get down, you fool!" was Oliver Wendell Holmes, who went on to make history in the law. From that day to this, there has never been a more honest and heartfelt remark made to the head of the executive branch by a member of the judicial branch -- though a lot of judges over the years must have felt the same way.

Let me address you today in more temperate words, but in the same spirit of candor.

The purpose of this conference is "to improve the process of justice." We all know how urgent the need is for that improvement at both the State

(MORE)

and Federal level. Interminable delays in civil cases; unconscionable delays in criminal cases; inconsistent and unfair bail impositions; a steadily growing backlog of work that threatens to make the delays worse tomorrow than they are today -- all this concerns everyone who wants to see justice done.

Overcrowded penal institutions; unremitting pressure on judges and prosecutors to process cases by plea bargaining, without the safeguards recently set forth by the American Bar Association; the clogging of court calendars with inappropriate or relatively unimportant matters -- all this sends everyone in the system of justice home at night feeling as if they have been trying to brush back a flood with a broom.

Many hardworking, dedicated judges, lawyers, penologists and law enforcement officials are coming to this conclusion: A system of criminal justice that can guarantee neither a speedy trial nor a safe community cannot excuse its failure by pointing to an elaborate system of safeguards for the accused. Justice dictates not only that the innocent man go free, but that the guilty be punished for his crimes.

When the average citizen comes into court as a party or a witness, and he sees that court bogged down and unable to function effectively, he wonders how this was permitted to happen. Who is to blame? Members of the bench and the bar are not alone responsible for the congestion of justice.

The Nation has turned increasingly to the courts to cure deep-seated ills of our society -- and the courts have responded; as a result, they have burdens unknown to the legal system a generation ago. In addition, the courts had to bear the brunt of the rise in crime -- almost 150% higher in one decade, an explosion unparalleled in our history.

And now we see the courts being turned to, as they should be, to enter still more fields -- from offenses against the environment to new facets of consumer protection and a fresh concern for small claimants. We know, too, that the court system has added to its own workload by enlarging the rights of the accused, providing more counsel in order to protect basic liberties.

Our courts are overloaded for the best of reasons: because our society found the courts willing -- and partially able -- to assume the burden of its gravest problems. Throughout a tumultuous generation, our system of justice has helped America improve herself; there is an urgent need now for America to help the courts improve our system of justice.

But if we limit ourselves to calling for more judges, more police, more lawyers operating in the same system, we will produce more backlogs, more delays, more litigation, more jails and more criminals. "More of the same" is not the answer. What is needed now is genuine reform -- the kind of change that requires imagination and daring, that demands a focus on ultimate goals.

The ultimate goal of changing the process of justice is not to put more people in jail or merely to provide a faster flow of litigation -- it is to resolve conflict speedily but fairly, to reverse the trend toward crime and violence, to reinstill a respect for law in all our people.

(MORE)

The watchword of my own administration has been reform. As we have undertaken it in many fields, this is what we have found. "Reform" as an abstraction is something that everybody is for, but reform as a specific is something that a lot of people are against.

A good example of this can be found in the law: Everyone is for a "speedy trial" as a constitutional principle, but there is a good deal of resistance to a speedy trial in practice.

The founders of this nation wrote these words into the Bill of Rights: "the accused shall enjoy the right to a speedy and public trial." The word "speedy" was nowhere modified or watered down. We have to assume they meant exactly what they said -- a speedy trial.

It is not an impossible goal. In criminal cases in Great Britain today, most accused persons are brought to trial within 60 days after arrest. Most appeals are decided within three months after they are filed.

But here in the United States, this is what we see: In case after case, the delay between arrest and trial is far too long. In New York and Philadelphia the delay is over five months; in the State of Ohio, over six months; in Chicago, an accused man waits six to nine months before his case comes up.

In case after case, the appeal process is misused -- to obstruct rather than advance the cause of justice. Throughout the State systems, the average time it takes to process an appeal is estimated to be as long as 18 months. The greater the delay in commencing a trial, or retrial resulting from an appeal, the greater the likelihood that witnesses will be unavailable and other evidence difficult to preserve and present. This means the failure of the process of justice.

The law's delay creates bail problems, as well as overcrowded jails; it forces judges to accept pleas of guilty to lesser offenses just to process the caseload -- to "give away the courthouse for the sake of the calendar." Without proper safeguards, this can turn a court of justice into a mill of injustice.

In his perceptive message on "The State of the Federal Judiciary," Chief Justice Burger makes the point that speedier trials would be a deterrent to crime. I am certain that this holds true in the courts of all jurisdictions.

Justice delayed is not only justice denied -- it is also justice circumvented, justice mocked, and the system of justice undermined.

What can be done to break the logjam of justice today, to ensure the right to a speedy trial -- and to enhance respect for law? We have to find ways to clear the courts of the endless stream of "victimless crimes" that get in the way of serious consideration of serious crimes. There are more important matters for highly skilled judges and prosecutors than minor traffic offenses, loitering and drunkeness.

We should open our eyes -- as the medical profession is doing -- to the use of paraprofessionals in the law. Working under the supervision of trained attorneys, "parajudges" could deal with many of the essentially administrative matters of the law, freeing the judge to do what only he can do: to judge. The development of the new office of magistrates in the Federal System is a step in the right direction. In addition, we should take advantage of many technical advances, such as electronic information retrieval, to expedite the result in both new and traditional areas of the law.

But new efficiencies alone, important as they are, are not enough to reinstill respect in our system of justice. A courtroom must be a place where a fair balance must be struck between the rights of society and the rights of the individual.

We all know how the drama of a courtroom often lends itself to exploitation, and, whether it is deliberate or inadvertent, such exploitation is something we must all be alert to prevent. All too often, the right of the accused to a fair trial is eroded by prejudicial publicity. We must never forget that a primary purpose underlying the defendant's right to a speedy and public trial is to prevent star-chamber proceedings, and not to put on an exciting show or to satisfy public curiosity at the expense of the defendant.

In this regard, I strongly agree with the Chief Justice's view that the filming of judicial proceedings, or the introduction of live television to the courtroom, would be a mistake. The solemn business of justice cannot be subject to the command of "lights, camera, action."

The white light of publicity can be a cruel glare, often damaging to the innocent bystander thrust into it, and doubly damaging to the innocent victims of violence. Here again a balance must be struck: The right of a free press must be weighed carefully against an individual's right to privacy.

Sometimes, however, the shoe is on the other foot: Society must be protected from the exploitation of the courts by publicity-seekers. Neither the rights of society nor the rights of the individual are being protected when a court tolerates anyone's abuse of the judicial process. When a court becomes a stage, or the center ring of a circus, it ceases to be a court. The vast majority of Americans are grateful to those judges who insist on order in their courts and who will not be bullied or stampeded by those who hold in contempt all this nation's judicial system stands for.

The reasons for safeguarding the dignity of the courtroom and clearing away the underbrush that delays the process of justice go far beyond questions of taste and tradition. They go to the central issue confronting American justice today.

How can we answer the need for more, and more effective, access to the courts for the resolution of large and small controversies, and the protection of individual and community interests? The right to representation by counsel and the prompt disposition of cases -- advocacy and adjudication -- are fundamental rights that must be assured to all our citizens.

In a society that cherishes change; in a society that enshrines diversity in its constitution; in a system of justice that pits one adversary against another to find the truth -- there will always be conflict. Taken to the street, conflict is a destructive force; taken to the courts, conflict can be a creative force.

What can be done to make certain that civil conflict is resolved in the peaceful arena of the courtroom, and criminal charges lead to justice for both the accused and the community? The charge to all of us is clear.

We must make it possible for judges to spend more time judging, by giving them professional help for administrative tasks. We must change the criminal court system, and provide the manpower -- in terms of court staffs, prosecutors, and defense counsel -- to bring about speedier trials and appeals.

(MORE)

We must ensure the fundamental civil right of every American -- the right to be secure in his home and on the streets. We must make it possible for the civil litigant to get a hearing on his case in the same year he files it.

We must make it possible for each community to train its police to carry out their duties, using the most modern methods of detection and crime prevention. We must make it possible for the convicted criminal to receive constructive training while in confinement, instead of what he receives now -- an advanced course in crime.

The time has come to repudiate once and for all the idea that prisons are warehouses for human rubbish; our correctional systems must be changed to make them places that will correct and educate. And, of special concern to this conference, we must strengthen the State court systems to enable them to fulfill their historic role as the tribunals of justice nearest and most responsive to the people.

The Federal Government has been treating the process of justice as a matter of the highest priority. In the budget for the coming year, the Law Enforcement Assistance Administration will be enabled to vigorously expand its aid to State and local governments. Close to one half billion dollars a year will now go to strengthen local efforts to reform court procedures, police methods and correctional action and other related needs. In my new special revenue sharing proposal, law enforcement is an area that receives increased attention and greater funding -- in a way that permits States and localities to determine their own priorities.

The District of Columbia, the only American city under direct Federal supervision, now has legislation and funding which reorganizes its court system, provides enough judges to bring accused persons to trial promptly, and protects the public against habitual offenders. We hope that this new reform legislation may serve as an example to other communities throughout the Nation.

And today I am endorsing the concept of a suggestion that I understand Chief Justice Burger will make to you tomorrow: the establishment of a National Center for State Courts.

This will make it possible for State courts to conduct research into problems of procedure, administration and training for State and local judges and their administrative personnel; it could serve as a clearinghouse for the exchange of information about State court problems and reforms. A Federal Judicial Center along these lines already exists for the Federal court system and has proven its worth; the time is overdue for State courts to have such a facility available. I will look to the conferees here in Williamsburg to assist in making recommendations as to how best to create such a center, and what will be needed for its initial funding.

The executive branch will continue to help in every way, but the primary impetus for reforming and improving the judicial process should come from within the system itself. Your presence here is evidence of your deep concern; my presence here bears witness to the concern of all the American people regardless of party, occupation, race or economic condition, for the overhaul of a system of justice that has been neglected too long.

I began my remarks by referring to an episode involving Justice Oliver Wendell Holmes. There is another remark of Holmes not very well known, that reveals an insight it would be well for us to have today.

(MORE)

Judge Learned Hand told of the day that he drove Justice Holmes to a Supreme Court session in a horsedrawn carriage. As he dropped the Justice off in front of the Capitol, Learned Hand said, "Well, sir, goodbye. Do justice!" Mr. Justice Holmes turned and said, most severely, "That is not my job. My job is to play the game according to the rules."

The point of that remark, and the reason that Learned Hand repeated it after he had reached the pinnacle of respect in our profession, was this: Every judge, every attorney, every policeman wants to "do justice." But the only way that can be accomplished, the only way justice can truly be done in any society, is for each member of that society to subject himself to the rule of law -- neither to set himself above the law in the name of justice, nor to set himself outside the law in the name of justice.

We shall become a genuinely just society only by "playing the game according to the rules," and when the rules become outdated or are shown to be unfair, by lawfully and peaceably changing those rules.

The genius of our system, the life force of the American Way, is our ability to hold fast to the rules that we know to be right and to change the rules that we see to be wrong. In that regard, we would all do well to remember our constitutional roles: for the legislatures, to set forth the rules; for the judiciary, to interpret them; for the executive, to carry them out.

The American Revolution did not end two centuries ago; it is a living process. It must constantly be reexamined and reformed. At one and the same time, it is as unchanging as the spirit of laws and as changing as the needs of our people.

We live in a time when headlines are made by those few who want to tear down our institutions, by those who say they defy the law. But we also live in a time when history is made by those who are willing to reform and rebuild our institutions -- and that can only be accomplished by those who respect the law.

# # #

Remarks of Warren E. Burger
Chief Justice of the United States
National Conference on the Judiciary
Williamsburg, Virginia
March 12, 1971 - 9:00 a.m.

FOR RELEASE
ON DELIVERY

DEFERRED MAINTENANCE

This Conference is unique in one respect that we should recognize at the outset for it brings together a cross-section of state and federal judges and of state and federal law enforcement authorities, and others seeking to avert an impending crises in the courts. The only counterpart to this Conference in the past century was the Attorney General's Conference on Court Congestion and Delay convened by Attorney General Herbert Brownell more than fifteen years ago. Fifty years before Attorney General Brownell called his Conference, Roscoe Pound had warned the legal profession in the strongest terms that we were on the threshold of a crisis. Periodically we respond and experience some relief but we are soon overwhelmed by a new tide of problems.

Today the American system of criminal justice in every phase -- the police function, the prosecution and defense, the courts and the correctional machinery -- is suffering from a severe case of deferred maintenance. By and large, this is true at the state, local and federal levels. The failure of our machinery is now a matter of common knowledge, fully documented by innumerable studies and surveys.

As a consequence of this deferred maintenance we see

First, that the perpetrators of most criminal acts are not detected, arrested and brought to trial;

Second, those who are apprehended, arrested and charged are not tried promptly because we allow unconscionable delays that pervert both the right of the defendant and the public to a speedy trial of every criminal charge; and

Third, the convicted persons are not punished promptly after conviction because of delay in the appellate process. Finally, even after the end of litigation, those who are sentenced to confinement are not corrected or rehabilitated, and the majority of them return to commit new crimes. The primary responsibility of judges, of course, is for the operation of the judicial

machinery but this does not mean we can ignore the police function or the shortcomings of the correctional systems.

At each of these three stages -- the enforcement, the trial, the correction -- the deferred maintenance became apparent when the machinery was forced to carry too heavy a load. This is the thing that happens to any machinery whether it is an industrial plant, an automobile or a dishwasher. It can be no comfort to us that this deferred maintenance crisis is shared by others; by cities and in housing, in the field of medical care, in environmental protection, and many other fields. All of these problems are important, but the administration of justice is the adhesive -- the very glue -- that keeps the parts of an organized society from flying apart. Man can tolerate many shortcomings of his existence, but history teaches us that great societies have foundered for want of an adequate system of justice, any by that I mean justice in its broadest sense.

I have said nothing of civil justice -- that is the resolution of cases between private citizens or between citizens and government. This unhappily is becoming the stepchild of the law as criminal justice once was. Most people with civil claims, including those in the middle economic echelons, who cannot afford the heavy costs of litigation and who cannot qualify for public or government-subsidized legal assistance, are forced to stand by in frustration, and often in want, while they watch the passage of time eat up the value of their case. The public has been quiet and patient, sensing on the one hand the need to improve the quality of criminal justice but also experiencing frustration at the inability to vindicate private claims and rights.

We are rapidly approaching the point where this quiet and patient segment of Americans will totally lose patience with the cumbersome system that makes people wait two, three, four or more years to dispose of an ordinary civil claim while they witness flagrant defiance of law by a growing number of law-breakers who jeopardize cities and towns and life and property of law-abiding people, and monopolize the courts in the process. The

courts must be enabled to take care of both civil and criminal litigants without prejudice or neglect of either.

THIS IS WHY WE ARE HERE TODAY.

The question is -- what will happen as a result of our being here? What will each of us do when we return to the daily tasks we have temporarily laid aside to gather at this Conference? Let me suggest some of the problem areas and then let me venture some thoughts on what we might try to do about them.

There are many areas which we should study and consider, and indeed, that we must consider, but if we try too much at once we may fail in all our endeavors. I am thinking, for example, of substantive problems which cry out for re-examination, including the handling of personal injury claims, which especially clog the state courts; the need to ask questions about other areas of jurisdiction, such as receivorships of insolvent debtors, the adoption of children, land-title registration in some states, and possibly even such things as divorce jurisdiction and child-custody matters. We need a comprehensive re-examination of the whole basis of jurisdiction in order to eliminate whenever possible all matters which may be better administered by others so as to restore the courts to their basic function of dealing with cases and controversies.

We can see in the development of common law institutions many examples of changing jurisdiction and evolution of new remedies. I suggest no specific changes but I trust it will not be regarded as subversive to suggest the need for study and thought on these problems, remembering that subjects once committed to the courts are not the province of the other governmental bodies. The common law tradition teaches that rights and remedies are never fixed or static but a continuing process of change. For example, working men once had either no rights at all or common law rights based on negligence when they were injured in their work. The deficiencies of the common law remedies inspired lawyers to find other and better ways of dealing with the claims of injured workmen and I think no one would seriously consider turning the clock back to the old ways. A large area of

regulatory activity was once imposed on courts but for the larger part of this century that has been vested in a wide array of administrative and regulatory bodies with limited judicial review.

All of us attending this Conference share and are the beneficiaries of the great common law tradition that undergirds American jurisprudence and virtually all aspects of our procedure, both state and federal. As lawyers and judges we can be proud of the great tradition of the common law and even have a pardonable pride in the improvements and developments that American lawyers and judges have added to it. We do not disparage or undermine the common law when we consider change. Indeed, change is the very essence -- the very heart -- of the common law concept that springs from England and has been followed in all English-speaking countries the world over.

PRIORITIES

The challenges to our systems of justice are colossal and immediate and we must assign priorities. I would begin by giving priority to methods and machinery, to procedure and techniques, to management and administration of judicial resources even over the much-needed reexamination of substantive legal institutions that are out of date. That reexamination is importan', but 't is inevitably a long range undertaking and it can wait.

I have said before, but I hope it will bear repeating, that with reference to methods and procedure we may be carrying continuity and tradition too far when we see that John Adams, Hamilton or Burr, Jefferson or Marshall, reincarnated, could step into any court today and after a minimal briefing on procedure and up-dating in certain areas of law, try a case with the best of today's lawyers. Those great eighteenth century lawyers would need no more than a hurried briefing and a Brooks' Bros. suit. They would not even need a hair cut, given the styles of our day.

This is not necessarily bad, and I propose nothing specific on how we should dhange our methods of resolving conflicts in the courtroom, but I do know this -- and so does anyone who has read legal history and read the newspapers in recent years - that John Adams, and his reincarnated col-

leagues at the bar, would be shocked and bewildered at some of the antics and spectacles witnessed today in the courtrooms of America. They would be as shocked and baffled as are a vast number of contemporary Americans and friends of America all over the world. They would not be able to understand why so many cases take weeks or months to try. No one could explain why the jury selection process, for example, should itself become a major piece of litigation consuming days or weeks. Few people can understand it and the public is beginning to ask some searching questions on the subject.

STATE-FEDERAL COOPERATION

I need not burden this well-informed audience on the subject of the tension and the strains existing between the state and federal courts in recent years. Because of the existence of those problems and the reasons underlying them I urged last August, at the ABA Convention in St. Louis, that the Chief Justice of each state take the initiative to create an informal ad hoc state-federal judicial council in each state. The purpose, of course, was to have these judges meet together informally to develop cooperation to reduce the tensions that have existed in recent years. I was pleasantly surprised, even astonished, at the speed with which the Chief Justices responded, for I am now informed that such Councils are in actual operation in 32 of the states. Many of these Councils have been created by formal order of the State Supreme Court. I am also informed that once the channels of communication were opened these state and federal judges found other areas of fruitful cooperation and exchange of ideas. I regard this development of such importance that I wish to express my appreciation to the Conference of State Chief Justices and to Chief Justice Calvert of Texas, its Chairman.

In urging the cooperation between the state and federal judges, and in urging the state judges to call upon the state bar associations and on the American Bar Association, I have no thought whatever that all state court systems or all judges be cast in one mold. Far from this, I have an abiding conviction that the strength of our entire system in this country and the

essence of true Federalism lies in diversity among the states. It will not impair this diversity, however, to work together to develop effective post-conviction remedies for example, or common standards of judicial administration, common standards of professional conduct for lawyers, and, indeed, for judges, or the improvement in the method of selection, the tenure, and compensation of judges.

The diversity that has existed in our system and the innovativeness of state judges accounts for many of the great improvements that the federal system has adopted from the states. One of the most crucial is in the developing area of using trained court administrators or executives in the administration of the courts. The states have been a whole generation ahead of the federal system in this matter. When we sought to create the Institute of Court Management in 1969 the first step was to call on state court administrators for guidance and advice.

We should never forget that under our federal system, the basic structure of the courts of this country contemplated that state courts would deal with local matters while federal courts would serve a limited and narrow function. I hope we will never become so bigoted as to think that state judges are any less devoted to the principles of the federal Constitution than other judges and lawyers.

STANDARDS OF ADMINISTRATION

I do not especially like pharases like "management of judicial resources," or "maximum utilization of judge power." They seem stilted to me as they do to most lawyers and judges. But these phrases are simply "shorthand" and if we accept them as such they become tolerable. The important thing is the concept underlying these "shorthand" terms. Every profession and every area of human activity has had to grapple with the hard realities behind the shorthand. The difference is judges and lawyers have lagged far behind the rest. I do not suggest that justice can ever become automated or that production line processes are adaptable to courts.

But we must acknowledge that the practice of the healing arts, for example, is surely a sensitive and delicate matter, perhaps as much so as the administration of justice. Yet the medical profession has responded and necessity has forced innovative changes that make it possible today for one physician or surgeon, depending on the individual, to do from three to ten or fifteen times what his counterpart could do even as recently as twenty or thirty years ago. And with this enormous increase in productivity, by and large we have in this country a better quality of medical care today than at any time in the history of mankind.

In terms of methods, machinery and equipment, the flow of papers -- and we know the business of courts depends on the flow of papers -- most courts have changed very little fundamentally in a hundred years or more. I know of no comprehensive surveys, but spot checks have shown that the ancient ledger type of record books, sixteen or eighteen inches wide, twenty-four or twenty-six inches high, and four inches thick are still used in a very large number of courts and these cumbersome books, hazardous to handle, still call for longhand entries concerning cases. I mention this only as one symptom of our tendency to cling to old ways. We know that banks, factories, department stores, hospitals and many government agencies have cast off anachronisms of this kind.

With relatively few exceptions, we still call jurors as in the past. We still herd them into a common room in numbers often double the real need because of obsolete concepts of arranging and managing their use. This is often complicated by the unregulated arbitrariness of a handful of judges, for example, who demand more jurors than they can possibly use to be allocated each day for their exclusive use. There is almost a total absence of even the most primitive techniques in predicting the need for jurors just as there is a large vacuum in the standards and procedures to coordinate the steps of bringing a case and all of its components -- the lawyers, witnesses, experts, jurors and court staff -- to the same place at the same time.

Happily, a very distinguished committee of the American Bar Association under the chairmanship of Judge Freedman of the United States Court of Appeals of the Third Circuit is now launching a comprehensive program of bringing up to date the minimum standards of judicial administration.

Independent of what we do in the courtroom itself, we need careful study to make sure that every case which reaches the courtroom stage is there only after every possibility of settlement has been exhausted. Those parties who impose upon the judicial process and clog its functioning by carrying the cases through jury selection before making a settlement which could have been made earlier should be subject to the risk of a very substantial discretionary cost assessment at the hands of the trial judge who can evaluate these abuses of the system. Someone must remind the bar and the public of the enormous cost of a trial. Reliable estimates have been made indicating that the cost is in the meighborhood of $250 per working hour in some courts, not including plant and equipment cost -- or lawyers.

COURT EXECUTIVE OFFICERS

As litigation has grown and multiple-judge courts have steadily enlarged, the continued use of the old equipment and old methods has brought about a virtual breakdown in many places and a slowdown everywhere in the efficiency and functioning of courts. The judicial system and all its components have been subjected to the same stresses and strains as hospitals and other enterprises. The difference is that, thirty or forty years ago, doctors and nurses recognized the importance of system and management in order to deliver to the patients adequate medical care. This resulted, as I have pointed out on other occasions, in the development of hospital administrators and today there is no hospital of any size in this country without a trained hospital administrator who is the chief executive officer dealing with the management and efficient utilization of all of the resources of the institution. Courts and judges have, with few exceptions, not responded in this way. To some extent, imaginative and resourceful judges and court clerks have moved partially into the vacuum, but the function of a clerk and the function of a court executive are very different, and a

court clerk cannot be expected to perform both functions.

From the day I took office, twenty-one months ago, this seemed to me the most pressing need of the courts of this country, and particularly so in my area of responsibility, the federal courts. The first step I took was to lay the foundations for a facility to train executives and I requested the American Bar Association to take the leadership in accomplishing this. That Association did so with the American Judicature Society and the Institute of Judicial Administration as co-sponsors, creating the Institute of Court Management at the University of Denver Law School. That Institute has now graduated the first group of trainees with an intensive full-time course over a period of six months including actual field training in the various courts. It will train two additional classes this year. This is not a federal facility -- I expect most of its output will go to state court systems.

In the meantime, the Congress has taken one of the most important steps in a generation in the administration of justice by providing for a Court Executive in each of the eleven Federal Circuits. The Court Executive will work under the direction of the Judicial Council of each Circuit. I need not say, surely, to an audience including many Chief Judges and administrative judges, that this will not only relieve Chief Judges to perform their basic judicial functions, but it will provide a person who will, in time, be able to develop a new methods and new processes which busy judges could not do in the past.

The function of a Court Executive is something non of us really knows very much about. There are only a handful of court administrators or executives in this country and up to now they are all self-taught. The few who were in being were, for the most part, called upon to be members of the teaching faculty for the new Court Management Institute. The concept of Court Executive or Court Administrator will have its detractors but I predict they will not be heard for very long. The history books tell us how the Admirals reacted when General William Mitchell insisted that an airplane could sink a battleship.

This desperate need for court executive officers does not alter the fact that it will require great patience and industrious homework on the part of judges and chief judges to learn to utilize these officers for their courts.

RULEMAKING POWER

A great many of the infirmities in our procedures could be cured if judges had broad rulemaking power and exercised that power. The best example of this was given a generation ago in the Federal Rules of Civil Procedure and later in the Criminal and Appellate Procedure Rules.

For the past 30 years or more state legislatures, like the Congress, have been overwhelmed by a multitude of new problems and it is increasingly difficult to get their attention on mundane subjects like rules or procedure and other internal matters of the courts. In addition, judges, by and large, have been under increasing pressure of their own daily work and have not brought these matters to the legislators.

The rulemaking process as developed in this country beginning 35 years ago is the best solution yet developed for sound procedural change. Since it is a cooperative process involving not only the legislative and judicial branches officially, but lawyers, judges and law professors, it can synthesize the best thinking at every level.

If your state does not provide for rulemaking power comparable to that vested in the Supreme Court of the United States in conjunction with Congress, I urge you to study closely the potential of this mechanism. In federal habeas corpus review of state cases it could have saved a great deal of confusion in recent years. Flexible rulemaking processes could have promptly developed post-conviction remedy procedures to blunt the impact of the imposition of federal standards on the states.

SELECTION, TENURE AND COMPENSATION OF JUDGES

The combined experience of this country for nearly two hundred years now, with elective judges in most of the states holding office for limited

terms and federal judges who are appointed with tenure, affords a basis for a careful reexamination of the whole method of the selection of judges. This is part of the long range problem, but it deserves some mention. The aggregate of two centuries of experience should be sufficient to affort a basis for a comprehensive reexamination of the methods of selection and the tenure of state judges. In saying this, I, of course, intend no reflection whatever on those state systems of limited terms and the many splendid judges in those states.

It may be that the fine quality of judicial work of state judges is in spite of, not because of, the method of selection.

The election of judges for limited terms is a subject on which reasonable men can reasonable have different views. Nevertheless the very nature of the judicial function calls for some comprehensive studies directed to the alternative methods developed in the last generation in some states. These alternatives tend to preserve the virtues of popular choice of judges and at the same time develop a high degree of professionalism, offering an inducement for competent lawyers to make a career of the bench.

We know that while there are certain patterns common in the fifty states as to the selection and tenure of judges, that there is at the same time a wide disparity in the compensation. In such states as New York, California and Illinois, to mention but three of the large states, the compensation of judges of the highest courts is as much as three times the compensation of their counterparts in some other states of the Union.

As lawyers and judges we know that the function of the courts in a small state is essentially the same as the function of the courts in the larger state. The size of the state has no relationship to the nature of the function, the degree of the responsibility, and the degree of the professional competence called for. It is, therefore, an anomaly for a wide disparity to continue. At the same time I do not suggest, by any means, that there need be a rigid, uniform standard of compensation or tenure for all the states. All I suggest is that the judges in the small states are performing

essentially the same function as that of their brothers in a large state, and the conditions of their service should not vary excessively. It is not a wholesome or a healthy thing for the administration of justice to have the highest court of a geographically large and economically powerful state receive two or three times as much as his counterpart a few hundred miles away.

A NATIONAL CENTER FOR STATE COURTS

As I range over this rather wide variety of subjects you are bound to take notice that in many instances I have been obliged to refer to matters of common or general knowledge or the result of spot checks, or other sources that are not wholly trustworthy. This suggests strongly the need for some facility that will accumulate and make available all information necessary for comprehensive examination of the problems of the judiciary in the fifty states. Recently a judicial conference developed an accumulation of 500 or more specific problems of courts.

Each of the points I have raised in the list of what seem to me the urgent priorities can be more readily treated and with better solutions if there is a pooling of ideas and efforts of the states.

For a long time we have talked of the need for a closer exchange and closer cooperation among the states and between the states and the federal courts on judicial problems. No state is without grave problems in the administration of justice. The problems vary chiefly in degree from those states with grave troubles to those on the threshold of disaster in their courts. The valuable work of the National College of Trial Judges is just one example of the value of cooperative enterprise.

We now have in this country a great ferment for court improvement which has been gaining momentum slowly over a long period of time. More recently, this has taken on a new thrust and force under the leadership of the American Bar Association. The time has come, and I submit that it is here and not at this Conference, to make the initial decision and bring into being some kind of national clearinghouse or center to serve all the states and to cooperate with all the agencies seeking to improve justice at every

level. The need is great, and the time is now, and I hope this Conference will consider creating a working committee to this end before you adjourn. I know that you will do many important things while you are here to the benefit of our common problems, but if you do no more than launch this much-needed service agency for the state courts, your time and attendance here would be justified.

I hope that in raising this subject of a need for a facility to serve as a clearing house and service agency for the states you will not think me unduly presumptuous if I make some specific suggestions for your consideration.

It seems to me obvious that the states should make the final choices and the final decisions. In offering these thoughts, I draw particularly on my experience in the twenty-one months I have been in my present office. I now see the legal profession's strongest voice, the American Bar Association, from a point of view which I never fully appreciated in my years of private practice or even in the period when I was a member of the Court of Appeals.

The American Bar Association is a force for enormous, almost unlimited, good with respect to every problem in the administration of justice. It is a force that cannot be directed or controlled by any particular group or any selfish interest because it includes approximately 150,000 lawyers and judges and law professors representing 1,700 state and local bar associations and other legal groups. Its governing body, the House of Delegates, represents 90% of all the practicing lawyers in this country. I mention these factors because the American Bar Association is essentially a grass-roots institution whose components spring from the 50 states. The facilities and power, the influence and prestige of this association are literally on the door step of every state capital through the State Bar Association, and that power and influence can be put to work in terms of achieving the objectives I have suggested to you.

My suggestion, therefore, is that in shaping the national organization or center to serve all the states, that you consider calling primarily on this great association and its 50 component state associations, along with other

groups that specialized in judicial administration. There area additional existing structures representative of all the states and a cross section of the legal profession. I refer now to the American Judicature Society, the Institute of Judicial Administration, the Conference of State Trial Judges, the Appellate Judges Conference, the Council of State Governments, and the Conference of Chief Justices. I am confident there will be widespread interest in the formation of such a group as this but it will take time to marshal all of the large resources necessary to its accomplishment. To build soundly, you must build carefully. You must have plans and time. This is not a matter than can be adequately dealt with hastily in a few hours in a busy Conference such as you are now beginning. A Steering Committee can select five to ten representative leaders empowered to convene a larger group to perfect an organization.

The first step will be the decision to create a national center for state courts of the kind I outlined. It is desperately needed and long overdue.

In emphasizing the problems of administration, management and efficiency we must always remember that efficient administration is the tool, not the goal, of justice. Therefore it is as a means to an end that we should place high priority on changes in our methods and our machinery. The noblest legal principles will be sterile and meaningless if they cannot be made to work.

In closing, I offer the full cooperation of my own office and the facilities of the Federal Judicial Center and The Administrative Office of the United States Courts. But bearing in mind my own concepts of federalism I will participate only when you ask me to do so.

THE FOLLOWING PAGES WERE TREATED AS
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February 2, 1971

Executive Director
Legislative Council
Pouch V
Juneau, Alaska 99801

Dear Sir:

Re: Alaska nonprofit corporations and trusts - Tax Reform Act of 1969

Enclosed is a self-explanatory letter sent to Mary LaFollette of the Alaska Bar Association on January 20, 1971, pertaining to proposed non-controversial legislation.

I am also enclosing drafts of proposed legislation to which I have not assigned any Alaska statute numbers, pending review by your office.

Will appreciate your reviewing this proposed legislation and recommending its passage to the Judiciary Committees of both houses of the Legislature.

Very truly yours,

Stanley H. Reitman

SHR/mm

cc: Senator Robert Ziegler, Chairman
Senate Judiciary Committee

Honorable William Moran, Chairman
House Judiciary Committee

Ms. Mary F. LaFollette
Box 279, Anchorage

Enclosures to each

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January 20, 1971

RECEIVED
JAN 22 1971
ALASKA BAR ASSOCIATION

Ms. Mary F. LaFollette
Executive Director and Bar Counsel
Alaska Bar Association
Box 279
Anchorage, Alaska 99501

Dear Mary:

Re: Work of the Committee on Corporation, Banking, Business Law and Taxation

At the present time the Committee is working on a review of the Uniform Commercial Credit Code. We had been meeting every two weeks, with a minor interruption over the holidays. Presently we are meeting once a week. This review more than likely will not be completed before a minimum of sixty days. Accordingly, any legislative recommendations for this session are not contemplated.

As to our Model Business Corporation Act, as you may recall, I had indicated to our Board of Governors the Committee was going to draft legislation intended to update this uniform Act. In discussing this objective, the Committee members' concensus was that we defer making any suggestions regarding the existing Model Act pending a review and analysis of some of the more modern corporation acts recently enacted by the States of Delaware and New York. Rather than amend the Act piecemeal, it was felt a more comprehensive review should be made of the latest thinking in the field of corporate statutory law. The Committee now has set a goal of undertaking such review after the UCCC study is behind us.

The only legislation the Committee currently recommends are two rather technical changes in the area of non-profit corporations and administration of trusts, grounded upon the Federal 1969 Tax Reform Act. In the latter area we do

not have any statutory law. Enclosed is a self-explanatory letter dated October 30, 1970 from the Chairman of the Section on Real Property, Probate and Trust Law of the American Bar Association. Mary, you will recall this letter initially flowed through your hands before it reached my desk.

The enactment of these suggested provisions will obviate or eliminate the need for amendments of non-profit corporations and trusts which operate in the private foundation area. Admittedly, in Alaska there may not be more than a handful of such organizations. Personally, I am aware of at least four or five. To amend a non-profit corporation is not a significant technical problem, as our non-profit statute provides a procedure for doing so. However, with respect to trusts, and particularly testamentary trusts, a court proceeding will be necessary. In our view, the suggested ABA language pertaining to non-profit corporations can be readily added to the statute in 10.20. As to the trust language, it is admittedly a little more troublesome to find a home or area of the Alaska statutes to tie into. Apparently Title 13 may be the most logical title.

This probably should be cleared with personnel of the Alaska Legislative Council.

Best regards,

Stanley H. Reitman

Stanley H. Reitman

SHR/mm

Enclosure

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Baltimore, Md. 21202

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Rochester, N.Y. 14614

Clear with - Campbell

Section of Real Property, Probate and Trust Law

AMERICAN BAR ASSOCIATION

1155 East 60th, Chicago, Illinois 60637 Telephone (312) 493-0533

October 30, 1970

NOV 17 1970

Dear Sir: ALASKA BAR ASSOCIATION,

A serious and urgent problem has been presented to all Private Foundations by the Tax Reform Act of 1969. That Act requires all existing Private Foundations, in order to maintain exemption from Federal Income taxation, to change their governing instruments to comply with the Act or to bring suit to reform their instruments. This must be done before January 1, 1972. [Internal Revenue Code Sec. 508 (e)].

The Section of Real Property Probate and Trust Law of the American Bar Association has been disturbed by the possible crowding of court dockets and confusion caused by such suits and by the damage which might be done to those Private Foundations which for any reason failed to take action before the deadline. The Internal Revenue Service has indicated that the requirements of the Act can be met by statutes passed by the several states. To be most useful any such statute should be adopted in the 1971 Legislative session.

Accordingly, as a matter of information and to furnish a vehicle for study and consideration, a subcommittee of this Section's Committee on Charitable Trusts has prepared two draft acts - one for corporations and one for trusts.

Copies of these two draft acts are enclosed. The shortness of time has so far made it impossible to have these drafts considered by other appropriate bodies of the American Bar Association or other organizations to whom we are also sending copies. We hope you will find these drafts helpful. If you wish additional copies or further information, please get in touch with John E. Rogerson, One Boston Place, Boston. Massachusetts 02108, Telephone 617-723-7020, the Chairman of the Committee which prepared these drafts.

Sincerely yours,

G. Van Velsor Wolf

Chairman

THESE DRAFTS HAVE BEEN PREPARED BY A SUBCOMMITTEE OF THE COMMITTEE ON CHARITABLE TRUSTS OF THE SECTION OF REAL PROPERTY PROBATE AND TRUST LAW OF THE AMERICAN BAR ASSOCIATION AND ARE SUBMITTED FOR INFORMATION, CONSIDERATION AND DISCUSSION ONLY. THEY HAVE NOT YET BEEN CONSIDERED OR RECOMMENDED FOR ADOPTION BY THE AMERICAN BAR ASSOCIATION OR ANY OF ITS SECTIONS.

(1) No corporation which is a "private foundation" as defined in §509(a) of the Internal Revenue Code of 1954, shall

(a) engage in any act of "self-dealing" (as defined in §4941(d) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by §4941(a) of the Internal Revenue Code of 1954;

(b) retain any "excess business holdings" (as defined in §4943(c) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by §4943(a) of the Internal Revenue Code of 1954;

(c) make any investment which would jeopardize the carrying out of any of its exempt purposes, within the meaning of §4944 of the Internal Revenue Code of 1954, so as to give rise to any liability for the tax imposed by §4944(a) of the Internal Revenue Code of 1954; and

(d) make any "taxable expenditures" (as defined in §4945(d) of the Internal Revenue Code of 1954) which would give rise to any liability for the tax imposed by §4945(a) of the Internal Revenue Code of 1954.

(2) Each corporation which is a "private foundation" as defined in §509 of the Internal Revenue Code of 1954 shall distribute, for the purposes specified in its articles of organization, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by §4942(a) of the Internal Revenue Code of 1954.

(3) The provisions of §§1 and 2 shall not apply to any corporation to the extent that a court of competent jurisdiction shall determine that such application would be contrary to the terms of the articles of organization or other instrument governing such corporation or governing the administration of charitable funds held by it and that the same may not properly be changed to conform to such sections.

(4) Nothing in this act shall impair the rights and powers of the courts or the attorney general of this state with respect to any corporation.

(5) All references to sections of the Internal Revenue Code of 1954 shall include future amendments to such sections and corresponding provisions of future Internal Revenue laws.

THESE DRAFTS HAVE BEEN PREPARED BY A SUBCOMMITTEE OF THE COMMITTEE ON CHARITABLE TRUSTS OF THE SECTION OF REAL PROPERTY, PROBATE AND TRUST LAW OF THE AMERICAN BAR ASSOCIATION AND ARE SUBMITTED FOR INFORMATION, CONSIDERATION AND DISCUSSION ONLY. THEY HAVE NOT YET BEEN CONSIDERED OR RECOMMENDED FOR ADOPTION BY THE AMERICAN BAR ASSOCIATION OR ANY OF ITS SECTIONS.

(1) In the administration of any trust which is a "private foundation", as defined in §509 of the Internal Revenue Code of 1954, a "charitable trust", as defined in §4947 (a) (1) of the Internal Revenue Code of 1954, or a "split-interest trust" as defined in §4947 (a) (2) of the Internal Revenue Code of 1954, the following acts shall be prohibited:

(a) engaging in any act of "self-dealing" (as defined in §4941 (d) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by §4941 (a) of the Internal Revenue Code of 1954;

(b) retaining any "excess business holdings" (as defined in §4943 (c) of the Internal Revenue Code of 1954) which would give rise to any liability for the tax imposed by §4943 (a) of the Internal Revenue Code of 1954;

(c) making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of §4944 of the Internal Revenue Code of 1954, so as to give rise to any liability for the tax imposed by §4944 (a) of the Internal Revenue Code of 1954; and

(d) making any "taxable expenditures" (as defined in §4945 (d) of the Internal Revenue Code of 1954) which would give rise to any liability for the tax imposed by §4945 (a) of the Internal Revenue Code of 1954;

provided, however, that this section shall not apply either to those split-interest trusts or to amounts thereof which are not subject to the prohibitions applicable to private foundations by reason of the provisions of §4947 of the Internal Revenue Code of 1954.

(2) In the administration of any trust which is a "private foundation" as defined in §509 of the Internal Revenue Code of 1954, or which is a "charitable trust" as defined in §4947 (a) (1) of the Internal Revenue Code of 1954, there shall be distributed, for the purposes specified in the trust instrument, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by §4942 (a) of the Internal Revenue Code of 1954.

(3) The provisions of §§1 and 2 shall not apply to any trust to the extent that a court of competent jurisdiction shall determine that such application would be contrary to the terms of the instrument governing such trust and that the same may not properly be changed to conform to such sections.

(4) Nothing in this act shall impair the rights and powers of the courts or the attorney general of this state with respect to any trust.

(5) All references to sections of the Internal Revenue Code of 1954 shall include future amendments to such sections and corresponding provisions of future Internal Revenue laws.

THESE DRAFTS HAVE BEEN PREPARED BY A SUBCOMMITTEE OF THE COMMITTEE ON CHARITABLE TRUSTS OF THE SECTION OF REAL PROPERTY, PROBATE AND TRUST LAW OF THE AMERICAN BAR ASSOCIATION AND ARE SUBMITTED FOR INFORMATION, CONSIDERATION AND DISCUSSION ONLY. THEY HAVE NOT YET BEEN CONSIDERED OR RECOMMENDED FOR ADOPTION BY THE AMERICAN BAR ASSOCIATION OR ANY OF ITS SECTIONS.

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

Alaska Judicial Council
941 FOURTH AVENUE
ANCHORAGE, ALASKA

February 26, 1971

The Honorable Governor William A. Egan
Pouch A
State Capitol
Juneau, Alaska

Re: Juneau Court Facilities

Dear Governor Egan:

At present the Alaska Court System facilities in Juneau are located in the State Capitol building. These facilities are inadequate for present needs not only from the standpoint of inadequate space but also by way of the nature of the facilities and their physical layout. Plans for the new state office building in Juneau do not include space for the Alaska Court System. For this reason, there is an urgent need that a separate court facility be constructed in Juneau.

At my request, the Juneau Bar Association formed a committee to inquire into the needs and requirements of a State courthouse in Juneau. Recommendations were received by that committee from those agencies having a potential requirement for space in a new court facility. The following is a summary of those recommendations:

(a) Supreme Court - Justice John H. Dimond, of the Supreme Court residing in Juneau, provided an estimate in the amount of 8,239 square feet for the Supreme Court. This estimate includes a courtroom, offices for five justices, secretaries' office and reception area, offices for two law clerks, clerk's office, chief deputy and deputy clerk's office, workroom area, supply and storage area, restrooms and library facility. It is anticipated to be adequate for the Supreme Court needs in the foreseeable future.

(b) Superior Court - Presiding Judge Thomas B. Stewart has provided an estimate of total space requirements of the Superior Court of a minimum of 25,000 to 30,000 square feet of floor space. This area would be sufficient for the following facilities: two courtrooms, two jury rooms, one judges' robing room, one conference room, two judge's chambers with reception rooms and secretarial space, one office for visiting judge, one office for two law clerks, one jury assembly room, one witness assembly room, two attorney-witness conference rooms, one judges' lounge, one attorneys' lounge, one judges' library, one pressroom, one office for Clerk of Court, one office for Court Trustee functions, one office for marriage counselor functions, one office for clerk's counter and general filing space, one office for transcribing functions, and one public law library for a capacity of 50,000 volumes.

(c) District Court - Presiding District Judge Bruce Monroe estimates a 25,000 to 30,000 square feet requirement to include three courtrooms, two of which are suitable for jury trials. This space would also accommodate court personnel for the District Court including: a coroner-public administrator and clerical personnel, office spaces and counter area to accommodate five clerks, one secretarial space and a reception room for the judges' chambers, witness lounges, jury lounges, and attorneys' conference rooms.

(d) Recording Office - Judge Monroe states that if land records are kept on microfilm, the above estimate for District Court space should be adequate for a recording office.

(e) Administrative Office - The office of the Administrative Director, Alaska Court System, recommends that 2,000 square feet be available for administrative personnel to include a 600 square foot conference room which would provide space for executive meetings and work space for visiting Anchorage personnel.

(f) State Police Service Section - Mr. Personnet, former Commissioner of the Department of Public Safety, estimated that Juneau judicial services functions would require space of approximately 1,000 square feet.

(g) Press facilities - 300 square feet estimated.

(h) Health and Welfare - Mr. Keith Stell, Regional Administrator of Probation and Parole, estimates that 1,540 square feet of office space are needed for six probation officers, a regional administrator and secretarial staff. Also needed are adequate separate holding facilities for adult and juvenile prisoners brought to court for arraignment or trial. Two cells of a total of 300 square feet should be adequate. Mr. Stell believes that juvenile short-term detention facilities should be in another building near the court.

The Alaska Judicial Council recommends that monies be appropriated during the current legislature for preconstruction planning and site acquisition for the Juneau Court facility to satisfy the requirements set forth above. We are attaching copies of correspondence describing in detail the needs of the agencies listed above.

Very truly yours,

George F. Boney

George F. Boney
Chairman
Alaska Judicial Council

cc: Justice Dimond
Judge Stewart
Judge Monroe
Commissioner Chapple
Robert Reeves
Keith Stell
William Ruddy
All Members, Alaska Judicial Council

P.O. Box 1224

February 26, 1971

Mr. Russell Dunn
Staff Executive
Alaska Judicial Counsel
429 "D" Street, Suit 201
Anchorage, Alaska 9[illegible]1

Dear Mr. Dunn:

In response to our telephone conversation of this date, let me reconfirm the information I discussed with you.

I believe that Mr. Cain has adequately summarized our space needs in terms of the Probation Office in the new court building. Hopefully this space will be in a close proximity to the Superior Court (like on the same floor). I do want to clarify, too, the difference between a holding cell and a detention facility. First of all, the detention facility should be in a more informal setting and not in the Court building itself. In terms of planning then, for this particular structure I do not think that you should consider the space needs of a detention facility. The holding cell is another matter entirely, however, and I believe that it should be considered.

Alaska Statutes indicate that you cannot hold juvenile inmates in the presence of adult inmates. It often happens that secure cell-like holding facilities are needed at the same time in the Court House. Therefore, plans should be made for separate holding facilities for both juveniles and adults. These facilities should be designed to hold individuals for no longer than one hour at most. They need not be large but they do need to be secure. I believe that 150 square feet for each holding facility would be adequate. That would be a total of 300 square feet for both adults and juveniles.

Thank you for your patience in this matter and I am sorry to say that the letter John sent to you was apparently sent to the wrong address and returned to us. It is in the mail now and for that matter you should have received it again by this time. If we can be of any further assistance, please let us know as we are as anxious as anyone to see that the new Court facility has adequate space for our program needs.

Sincerely,

Keith Stoll
Southeastern Regional Administrator
Probation-Parole

KS:cp

P. O. Box 1224
Juneau, Alaska 99801

February 22, 1971

Mr. Russell Dunn
Staff Executive, Judicial Counsel
201429 "D" Street
Anchorage, Alaska 99501

Dear Mr. Dunn:

This will confirm our telephone conversation of 2/19/71, concerning space needs for the Probation Office in the proposed Juneau Court Facility. It is our understanding that you are now in the process of preparing plans for this.

The Probation Office would need approximately 1540 square foot. This breaks down as follows:

6 Probation Officers @ 120 sq. ft. each =	720 sq. ft.
Regional Administrator's Office	200 sq. ft.
Space for 3 Secretaries	240 sq. ft.
Conference Room	180 sq. ft.
Reception Area	200 sq. ft.
Total	1,540 sq. ft.

To the best of my knowledge, this would be the extent of our space need in the court facility. We are assuming that Mr. Stoll, in his letter to you of October 21, 1970, did not intend to convey the thought that a detention facility should be built into the court building itself, but rather be located elsewhere. We think 150 square foot would be adequate for a juvenile holding cell for the court.

We would be pleased to hear from you as plans for the court facility progress. We are presently in dire need of space. We have two staff vacancies which we are unable to fill for lack of working area.

Sincerely,

John L. Cain
Probation-Parole Officer

JLC/mjr

Alaska Court System

State of Alaska

...IVE DIRECTOR
...BOTT

OFFICE OF ADMINISTRATIVE DIRECTOR

941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

March 1, 1971

Theodore R. Dunn, Esq.
Secretary to the Judicial Council
429 "D" Street
Anchorage, Alaska 99501

Dear Mr. Dunn:

The Office of the Administrative Director for the Court System will require at least 2,000 square feet of space in the new court building which is being planned for Juneau. This office intends to maintain a full time Assistant Court Administrative Director in the Juneau area with offices for backup as well as a full conference room.

This space will be needed immediately upon completion of the new court building.

Sincerely,

John W. Abbott

John W. Abbott

/cg

RECEIVED
OCT 12 1970
ROBERTSON, MONAGLE
EASTAUGH, ANNIS & BRADLEY

Supreme Court
State of Alaska

CHIEF JUSTICE
GEORGE F. BONEY

ASSOCIATE JUSTICES
JOHN H. DIMOND
JAY A. RABINOWITZ
ROGER G. CONNOR

October 9, 1970

POUCH U
CAPITOL BUILDING
JUNEAU, ALASKA
99801

William G. Ruddy, Esq.
President, Juneau Bar Association
Box 1211
Juneau, Alaska 99801

Dear Bill:

This is in reference to Chief Justice Boney's letter to you of September 29, 1970 regarding the court building at Juneau. On page 3 Chief Justice Boney suggests that you consult with me as to the requirements of the supreme court and that your committee come up with the recommended square foot estimate of the supreme court needs in the new building.

Attached is a document entitled "Projected Space Requirements for Supreme Court". The total area which we shall require, 8,239 square feet, will take care of the needs of the supreme court in the foreseeable future.

It is my understanding that Mr. Eastaugh is Chairman of the Committee you appointed to investigate the needs and requirements for a state courthouse in Juneau. I am sending a copy of this letter and the enclosure to Mr. Eastaugh, as well as to Chief Justice Boney.

As I told you on the telephone the other day, it is most important that Chief Justice Boney have a report on the complete requirements for a state courthouse in Juneau in time for the Judicial Council meeting in Anchorage on October 23, 1970.

Sincerely,

John H. Dimond

John H. Dimond

cc: Chief Justice Boney
F. O. Eastaugh

Projected Space Requirements for Supreme Court

Courtroom	1,552	Square Feet
Offices for 5 Justices	1,800	" "
Secretary's Office & Reception	484	" "
Offices for 2 Law Clerk's	800	" "
Library	1,332	" "
Clerks Office	306	" "
Chief Deputy & Deputy Clerks Office	500	" "
Workroom Area	675	" "
Supply Room & Storage	500	" "
Rest Rooms:		
Mens	100	" "
Ladies Lounge & Restroom	190	" "
Total	8,239	" "

Superior Court
State of Alaska
FIRST JUDICIAL DISTRICT
STATE CAPITOL BUILDING
POUCH U
JUNEAU, ALASKA
99801

THOMAS B. STEWART
PRESIDING JUDGE

At Ketchikan
October 21, 1970

Honorable George F. Boney
Chairman, Alaska Judicial Council
941 - 4th Avenue
Anchorage, Alaska 99501

Dear Chief Justice Boney:

Your recent letter concerning a proposed new court building at Juneau coincided with a like request from the Juneau Bar Association for initial recommendations as to space needs of the superior court in such a structure. THis response is intended to answer both letters, as well as to provide information directly to the Alaska Judicial Council, which, I understand, will consider the subject at its next meeting.

In the brief time since these requests were received, my trial calendar has virtually no time to prepare adequately considered recommendations. The following statement of needs is therefore offered as only preliminary and subject to substantial revision upon opportunity for a complete review.

The structure should include at least the following facilities:

2 courtrooms
2 jury deliberation rooms (adjacent to the courts and with attendant bailiff space, with one room large enough for grand jury use)
1 judge's robing room
1 conference room (appropriate for children's proceedings, pre-trial conference, etc.)
2 judge's chambers, with an attendant reception room for secretaries to two judges
1 office for a visiting judge
1 office for two law clerks
1 jury assembly room
1 witness assembly room
2 attorney-witness conference rooms
1 judges' lounge
1 attorneys' lounge
1 judges' library
1 press room

1 office for the clerk of court
1 office for court trustee functions
1 office for marriage counselor functions
1 office for clerk's counter and general filing space
1 office for transcribing functions
1 public law library, with associated "stack" space for 50,000 volumes

The above space would serve only operations of the superior court, apart from related legal and staff services, and it would require a minimum of 25,000-30,000 square feet of floor space. This estimate would include circulation space, public toilets, mechanical services and stairways.

Consideration must of course be given to court-related functions such as those of the district attorney, public defender, probation and parole, process services of the State Police, holding cells for prisoner-defendants, etc. Particular concern must be taken (in early planning stages) for unique acoustical requirements for court recording, court furnishings, and other special needs of court operations. All courtrooms should be interior space without window exposures to outside traffic noise and other distractions. Attention must be given to private access to and private circulation within working areas for judges. Air conditioning apparatus without attendant background noise is essential in the courtrooms.

Some general considerations of major importance include ample off-street parking, substantial setback of the structure to permit dignified landscaping of the surrounding grounds, and exterior design and location fitted within the long-range state capital complex plans.

I will look forward to the opportunity to participate in more detailed and systematic planning for this significant capital improvement program for better judicial administration at Juneau.

Very truly yours,

Thomas B. Stewart

Thomas B. Stewart

cc: Juneau Bar Association

District Magistrate Court
State of Alaska
FIRST JUDICIAL DISTRICT
BOX 2344
JUNEAU, ALASKA
99801

November 6, 1970

Frank Doogan
Attorney At Law
311 Franklin Street
Juneau, Alaska 99801

RE: Juneau District
Court Facilities.

Dear Frank;

You have asked that I be more specific, in terms of square footage, about the anticipated requirements of the District Court at Juneau. I have included a copy of a letter to William G. Ruddy, President of the Juneau Bar Association, for your reference. In this letter I outline this Court's anticipated needs simply by describing the number of rooms and uses for those rooms. The comments in this letter should be read in light of my earlier letter to Mr. Ruddy.

It is my present belief that the needs of the District Court can be fulfilled with a minimum of 25,000 to 30,000 square feet of floor space. This footage would include three courtrooms. Two of the courtrooms should be capable of handling jury trials while the other should be designed as an arraignment room and a court-room for trials without jury. The latter courtroom would also be used for coroner's hearings, motions and hearings of that general nature. The footage should accommodate support personnel for the District Court which would include:

1. Coroner-Public Administrator and one clerical personnel for his office.

2. Office space and counter area to accommodate five clerks.

3. One secretarial position and reception room for the judges chambers.

4. Attendant rooms for witness lounges, jury lounges and attorneys conference rooms.

It should be noted that all courtrooms should be in accordance with established American Bar Association standards for newly constructed courtrooms. The same standards should also be applied to attendant rooms such as jury chambers, witness lounges and attorneys conference rooms.

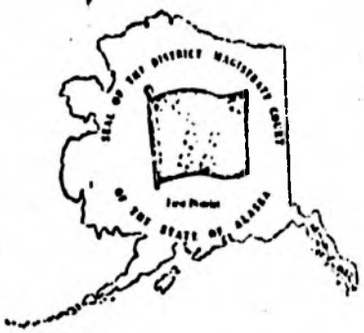
With approximately 25,000 to 30,000 square feet it is my belief anticipated growth of this area could be accommodated. I would anticipate a maximum of four judges could work out of the three courtrooms should our case load ever require additional judges. Prior to that time excess court space could be utilized, on an as needed basis, by Superior Court overages. I would also predict that a minimum of 25,000 to 30,000 square feet would allow additional attendant personnel such as law clerks to serve the District Judges.

If you have any further questions I will be happy to give you my opinion. Please do not hesitate to call on me.

Very truly yours,

Bruce

Bruce Monroe,
Presiding District Judge



District Magistrate Court

State of Alaska

FIRST JUDICIAL DISTRICT

BOX 2344

JUNEAU, ALASKA

99801

October 14, 1970

William G. Ruddy, Esq.
Juneau Bar Association
P. O. Box 1211
Juneau, Alaska 99801

Dear Bill:

Thank you for providing me with your correspondence with Chief Justice Boney. With very little changes, perhaps only in terminology, I would subscribe to his basic proposal for District Court facilities.

With anticipated growth I predict the District Court will need at least two courtrooms capable of handling jury trials and one courtroom for trials without jury. We will need an office for the Coroner-Public Administrator and one clerical personnel for his office. We will need one office space and counter area to accommodate five clerks. As many as three of these clerks might be in court at one time while others attend to clerical chores and serve the public. There should be one room devoted to secretarial help and a reception room for the judges chambers. We would also need attendant rooms for a witness lounge and jury lounge.

With two courtrooms capable of conducting jury trials and one courtroom which could be used for trials without a jury, arraignments, motions and coroners deliberations we would have the necessary flexibility to accommodate as many as four District Judges should the caseload ever justify this number.

I have not taken into account library facilities or recording office for the District Court. It is my understanding long term planning includes removing the recording function from the offices of the District Court. Should the District Court retain the recording function space would depend upon whether or not micro-filming would be used. This decision rests with the Chief Justice and I'm not familiar with his feelings in this matter.

Very truly yours,

Bruce

Bruce Monroe,
Presiding District Judge

Chief Justice Boney
The Honorable Thomas B. Stewart
Mr. Douglas Gregg

STATE OF ALASKA

KEITH H. MILLER, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

POUCH N, CAPITOL BUILDING
JUNEAU 99801

October 16, 1970

Mr. Allan A. Engstrom
Attorney at Law
217 Second Street
Juneau, Alaska 99801

Dear Mr. Engstrom:

As per your request, office space requirements for the Juneau Judicial Services functions at the present time and in the foreseeable future should not exceed 1,000 square feet.

Very truly yours,

Mel J. Personett
Commissioner

STATE OF ALASKA

KEITH H. MILLER, GOVERNOR

DEPARTMENT OF HEALTH & WELFARE

DIVISION OF CORRECTIONS

P. O. Box 1224
~~DIVISION~~ JUNEAU 99801

October 21, 1970

RECEIVED
OCT 22 1970

Mr. F. O. Eastaugh
Juneau Bar Association
Chairman, Committee on
Proposed Juneau Courthouse
P. O. Box 1211
Juneau, Alaska 99801

Dear Mr. Eastaugh:

With reference to our telephone conversation of yesterday, let me offer the following information concerning the proposed Juneau Court facility. Speaking specifically to the needs of probation for the future, keeping in mind an increased emphasis on the community service type programming I see that probation services are becoming involved in three basic spheres which in turn will have their impact upon the office space, location and function. In my brief analysis of the problem and projected needs, I am keeping in mind the statistics you referred to me concerning population growth in the Juneau area by 1975 and 1980 as set out by the State Department of Labor; these figures being 25,000 and 27,000 respectively.

The three program areas which I made reference to earlier are the relationship with the Superior Court-Children's Court, the relationship with the community and the working relationship the Probation Office should have with the detention facility located in a close proximity with the Children's Court. So when we speak of office space for probation, we are really talking about program service space and our programs are in these three basic areas. I believe they are all best utilized in a close proximity to the Superior Court, however, not all in the same building. For example, at the present time, we are establishing a Neighborhood Probation Center in downtown Juneau which is funded largely by Law Enforcement Assistance Act funds, Model City funds and State funds. This Center calls for a staff of four which includes three probation officers. At the same time, we have our offices in the Capitol Building which are in very close proximity to Superior Court. This is very helpful and is to be desired. Communication with the Superior Court is a necessity for the best possible programming. (As an aside, I would like to state that I think it is very difficult

for the Anchorage Probation Office to complete a satisfactory job for the Superior Court in Anchorage when there are many blocks across town, a fact in itself which creates barriers to communication, breakdown in communication and distorted communication, all of which work to the detriment of the program trying to be established.)

I would like then to project briefly our needs in these three categorical spheres as follows:

1) Office space immediately accessible to the Superior Court (in the same building). Space should be available here for not less than six probation officers, one office for Regional Administrator and secretarial staff of three. At this time, we have positions as follows: One Regional Administrator, five Probation Officers and a secretarial staff of two.

2) The second area under discussion will be the Neighborhood Probation Center which is a "store front" type facility which should be located in downtown Juneau close to the movie theaters and restaurants, also within a short distance of the Superior Court facility. This office should be staffed with at least four, hopefully, five probation officers, plus a clerical staff of two. Work at this level is primarily that of prevention of delinquency and work with the young child, the first offender, as well as school dropouts and large amounts of time devoted to community program participation.

3) The third basic area I have mentioned is the short term detention facility for juveniles (this is not to be confused with the very short time holding cell for adult prisoners being brought to Court on arraignment or some other purpose). The detention facility could be placed in a close proximity with the Court to aid in communication as mentioned previously and it should be under the direction of the Regional Administrator of Probation and Parole. The Children's Court Rules indicate clearly that the Superior Court Judge or his designee have the power to detain or release children based on protection to themselves, society, or to insure their presence at further court hearings. The primary reason for the location of the facility, however, is that re-

should not be severed upon the child being placed in a detention facility. Attempts should be made repeatedly to resolve the problems that are causing the child to behave in an unacceptable manner. These problem-solving attempts are only hampered by the inability of a parent or relative to be able to converse with their child because the facility is located several miles out of town and they have not taxi fare or transportation to and from the detention unit. These problems can be solved if a detention unit is placed in close proximity to the Superior Court in the more populated area of the City of Juneau.

As to the location of the Court itself, I personally believe that the Court should be located within the city limits of Juneau within reasonable walking distance of the Federal Building and the new Capitol Office Building and provided with adequate parking.

To summarize briefly then, we need three basic offices, one unit works very close with the Superior Court, the second unit concentrates larger amounts of time to prevention and community activities and the third unit is a d tention type facility staffed appropriately for twenty-fou hour service and under the direction of the Regional Administrator, Probation and Parole of the Division of Corrections.

All of the above units must be close to the courthouse. The first unit and the last unit should be incorporated in the design of the structure.

Sincerely,

Keith Stell
Regional Administrator
Probation-Parole

KS/mjr
cc: Hon. Thomas B. Stewart, Superior Court Judge
Mr. Charles Adams, Director
Division of Corrections

ROBERTSON, MONAGLE, EASTAUGH, ANNIS & BRADLEY
ATTORNEYS AT LAW
P. O. BOX 1211
JUNEAU, ALASKA 99801

P. F. ROBERTSON (1885-1960)
W. I. MONAGLE
F. O. EASTAUGH
R. J. ANNIS
J. D. BRADLEY
W. G. RUDDY
T. P. BLANTON
L. R. JACOBSON
R. B. BAKER

200 NATIONAL BANK OF ALASKA BLDG.
PHONE 586-[illegible]
CABLE ADDRESS: [illegible]HEA

October 22, 1970

COPY

W. G. Ruddy, President
Juneau Bar Association
Juneau, Alaska

Re: State Courthouse Committee

Dear Bill:

The committee you appointed met October 12th and divided the assignments between themselves, the results of which are as follows:

1. Supreme Court Requirements - letter from Justice Dimond. Area requirement estimated as 8,239 square feet.

2. Superior Court Requirements - letter from Judge Stewart through Robert Boochever. Area requirement estimated as between 20,000-30,000 square feet without related facilities allowance.

3. District Court - letter from Judge Monroe. Functional needs described but no estimated area requirements included.

4. Public Safety - letter from Commissioner Personett. Area needs estimated at 1,000 square feet.

5. Press - no letters yet received, but orally I have been informed an area approximately 300 square feet would be sufficient.

6. Division of Corrections - letter from Keith Stell describing the needed functions but not providing area requirements.

Due to the delay in getting the foregoing from some of the sources, I am sending a copy of this letter, with copies of all of the mentioned letters, directly to Frank Doogan to carry to the meeting of the Judicial Council.

I cannot add anything more at this time, except to request Frank to convey to the Council the recommendation from the Juneau Bar Association that there is a great need for the project. The Committee will meet again soon and further consider these matters and this preliminary report.

Very truly yours,

F. O. Eastaugh

FOE:ab

cc: Frank Doogan w/encl.

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

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

PROPOSED ACT DEALING WITH THE
ADMINISTRATION OF TRUSTS IN THE STATE OF ALASKA
WITH REFERENCE TO THE FEDERAL TAX REFORM ACT OF
1969

1. In the administration of any trust which is a "private foundation" as defined in Section 509 of the Internal Revenue Code of 1954, "charitable trust" as described in Section 4947(a)(1) of the Internal Revenue Code of 1954, or "split-interest trust" as described in Section 4947(a)(2) of the Internal Revenue Code of 1954, the acts described in Section 2 shall be prohibited.

2. The trust instrument of any trust described in Section 1 above shall be deemed to contain provisions prohibiting the trustee from:

(a) engaging in any act of "self-dealing" as defined in §4941(d) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by §4941(a) of the Internal Revenue Code of 1954;

(b) retaining any "excess business holdings" (as defined in §4943(c) of the Internal Revenue Code of 1954) which would give rise to any liability for the tax imposed by §4943(a) of the Internal Revenue Code of 1954;

(c) making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of §4944 of the Internal Revenue Code of 1954, so as to give rise to any liability for the tax imposed by §4944(a) of the Internal Revenue Code of 1954; and

(d) making any "taxable expenditures" (as defined in §4945(d) of the Internal Revenue Code of 1954) which would give rise to any liability for the tax imposed by §4945(a) of the the Internal Revenue Code of 1954;

provided, however, that this section shall not apply either to those split-interest trusts or to amounts thereof which are not subject to the prohibitions applicable to private foundations by reason of the provisions of §4947 of the Internal Revenue Code of 1954.

3. The trust instrument of each trust described in Section 2 above, except "split-interest" trusts, shall be deemed to contain a provision requiring the Trustee to distribute, for the purposes specified in the trust instrument, for each taxable year of the trust, amounts at least sufficient to avoid liability for the tax imposed by Section 4942(a) of the Internal Revenue Code of 1954.

4. Nothing in this Act shall impair the rights and powers of the courts or the attorney general of this state with respect to any trust.

5. All references to sections of the Internal Revenue Code of 1954 shall include future amendments to such sections and corresponding provisions of future Internal Revenue laws.

6. Nothing in this Act shall limit the power of a person who creates a trust after the effective date of this Act or the power of a person who has retained or has been granted the right to amend a trust created before the effective date of this Act, to include a specific provision in the trust instrument or an amendment thereto, as the case may be, which provides that some or all of the provisions of Sections 2 and 3 of this Act shall have no application to such trust.

7. If any provision of this Act or the application thereof to any trust is held invalid, such invalidity shall not affect the other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

PROPOSED ACT DEALING WITH
ALASKA NONPROFIT CORPORATION ACT
WITH REFERENCE TO THE TAX REFORM ACT OF
1969

1. This Act shall apply to every Alaska nonprofit corporation to which A.S. 10.20 applies, and which is a "private foundation" as defined in §509 of the Internal Revenue Code of 1954, and which has been or shall be incorporated under the laws of the State of Alaska.

2. The articles of incorporation of every corporation to which this Act applies shall be deemed to contain provisions prohibiting the corporation from:

(a) engaging in any act of "self-dealing" (as defined in §4941(d) of the Internal Revenue code of 1954), which would give rise to any liability for the tax imposed by §4941(a) of the Internal Revenue Code of 1954;

(b) retaining any "excess business holdings" (as defined in §4943(c) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by §4943(a) of the Internal Revenue Code of 1954;

(c) making any investment which would jeopardize the carrying out of any of its exempt purposes, within the meaning of §4944 of the Internal Revenue Code of 1954, so as to give rise to any liability for the tax imposed by §4944(a) of the Internal Revenue Code of 1954; and

(d) making any "taxable expenditures" (as defined in §4945(d) of the Internal Revenue Code of 1954) which would give rise to any liability for the tax imposed by

§4945(a) of the Internal Revenue Code of 1954.

3. The articles of incorporation of every corporation to which this Act applies shall be deemed to contain a provision requiring such corporation to distribute, for the purposes specified in its articles of incorporation, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by §4942(a) of the Internal Revenue Code of 1954.

4. Nothing in this Act shall impair the rights and powers of the courts or the attorney general of this state with respect to any corporation.

5. All references to sections of the Internal Revenue Code of 1954 shall include future amendments to such sections and corresponding provisions of future Internal Revenue Laws.

6. Nothing in this Act shall limit the power of any nonprofit corporation now or hereafter incorporated under the laws of the State of Alaska:

(a) to at any time amend its articles of incorporation or other instrument governing such corporation by any amendment process open to such corporation under the laws of the State of Alaska to provide that some or all provisions of sections 2 and 3 of this Act shall have no application to such corporation, or

(b) in the case of any such corporation formed after the effective date of this Act, to provide in its articles of incorporation that some or all provisions of sections 2 and 3 of this Act shall have no application to such corporation.

7. If any provision of this Act or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

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

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

February 10, 1971

The Honorable William A. Egan
Governor, State of Alaska
Pouch A
Juneau, Alaska 99801

Dear Bill:

Re: Anchorage Judicial Complex

As I agreed to during our conversation in Juneau on February 5, I am enclosing for your consideration the report concerning the adequacies of the proposed additions of the judicial complex in Anchorage.

In order to meet the needs through 1975, the courts must have a building addition of 128,350 square feet. This building would be adequate to house all the courts in the Anchorage area, along with the offices of other state agencies which participate in the administration of justice. Adequate space would be provided for the attorney general, district attorney, public defender, and the Division of Corrections. This facility would provide adequate holding cells and feeding facilities for prisoners who would be transported from the new state jail at Eagle River to the state courthouse. At the present time we have $3,782,000 to construct an addition to our present courthouse. Present construction estimates supplied to us by the architect average $50 per square foot. This means that our total costs would be $6,417,500. It is my opinion that it is imperative that we obtain authorization for the issuance of additional ASHA bonds in the amount of $2,645,500.

As I mentioned to you in our conversation, the court has no way to expand except to the four lots to the east. Three of these lots are vacant and one has a building which is approximately 35 years old. From the best information obtainable, I believe that the maximum value of these four lots including the building should not exceed $500,000.

It would be deeply appreciated if you would consider recommending these capital improvements and submitting a bill to the legislature during this session. If the enabling legislation is passed this session, construction could begin during this construction season. In order to expedite this matter, I am sending Robert N. Reeves, administrative director, to meet with you and your designated commissioners.

If you have any further questions concerning this matter, please do not hesitate to call upon me.

With very good wishes, I remain,

Most sincerely,

George F. Boney
Chief Justice

GFB:ch

Supreme Court

State of Alaska

CHIEF JUSTICE
GEORGE F. BONEY

ASSOCIATE JUSTICES
JOHN H. DIMOND
JAY A. RABINOWITZ
ROGER G. CONNOR
ROBERT C. ERWIN

941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

February 10, 1971

Mr. Robert N. Reeves
Administrative Director
Alaska Court System
941 Fourth Avenue
Anchorage, Alaska 99501

Dear Mr. Reeves:

As chairman of the committee on space requirements for the new courthouse, I am including herewith a copy of the report and recommendations of the committee concerning space requirements for the new courthouse. These recommendations were agreed to by the members of the committee herein, and constitute the considered opinion of the people involved. It is further the very strong recommendation of the committee that it would be far better to await construction on an adequate building than it would be to start construction on a building with inadequate space at the present time. The committee specifically recommends the following steps be taken:

1. That the remaining four lots in the courtroom block be immediately acquired for long-term expansion plans of the court system.

2. That the present building be primarily occupied by the District Court and offices and that a minimum of modification of the building take place until a comprehensive plan can be worked out taking into account borough-city unification, area-wide police services and assumption of city court facilities in the present building.

3. That the new building to be built include as large a square footage on each floor as possible, but in the minimum from 18,000 to 20,000 square feet, in order to permit the grouping of the various services as closely as possible for reasons of both efficiency and public convenience.

4. That in long-range planning the new court building be primarily a superior court building with the law library on the first floor and in the basement, with the upper floors being occupied by the supreme court and the court administrative office. It is ultimately considered that the supreme court and the administrative office in future expansion would be removed from the building the the superior court ultimately to be expanded throughout the entire structure.

5. That at the present time the public defender's office, the attorney general's office, the district attorney's office, the state police judicial services section, the division of corrections, and if at all possible, the borough attorney's prosecuting office be incorporated into the office space in the existing structure, and on one full floor of the new building to be built. In the ultimate long-range plan, these offices would be moved to the third phase of the project, along with the supreme court, and the ultimate need for parking which would be incorporated into a third building.

6. That as presently conceived the building of approximately five stories and a full basement with 12,000 square feet per floor is simply not sufficient to permit reasonable operation for any of the member agencies which might occupy the building and does not provide sufficient net working space to permit efficiency of operation. This can readily be seen by the listing of space requirements which follows for the various courts and agencies:

Superior Court -	67,000 sq. feet
District Court -	40,000 sq. feet
Attorney General -	6,000 sq. feet
District Attorney -	5,000 sq. feet
Public Defender -	3,100 sq. feet
Division of Corrections - (Probation & Jail holding facilities)	7,000 sq. feet
Borough Attorney -	750 sq. feet

Supreme Court Administrative Office -	16,600 sq. feet
Law Library -	18,000 sq. feet
Administrative office supply facility -	7,000 sq. feet
Supreme Court -	18,000 sq. feet
TOTAL SPACE REQUIREMENTS FOR THREE TO FIVE YEAR PROJECTIONS:	186,350 sq. feet

When you subtract from this total the usable square footage in the present building of 58,000 square feet, we are left with an immediate space requirement for a three-year projection which would be the approximate time for completion of the building, of 128,350 square feet. Thus, in any building which would only have five floors and a full basement, including 70,000 usable square feet, of which one-third must be reduced for the public spaces necessary in high-rise buildings, we have a building not capable of efficient use by anyone.

7. We urge that immediate steps be taken to authorize additional AHA Bonds in the approximate amount of $2,500,000 to $3,000,000 to complete the erection of an adequate courthouse and supporting services building necessary in Anchorage at the present time, and which would not take into account the possible building of the pipeline or the Native Land Claims settlement, both of which could substantially increase the need referred to herein.

Sincerely yours,

Robert C. Erwin
Associate Justice

James M. Fitzgerald
Presiding Superior Court Judge

Paul Jones
Presiding District Court Judge

Seaborn J. Buckalew
District Attorney

Herbert D. Soll
Public Defender

Robert Hartig
Assistant Attorney General

Edward B. Coleman
Regional Administrator
for Division of Corrections

March 1, 1971

Mr. William J. Moran
Chairman, House Judiciary Committee
Pouch 5
Juneau, Alaska 99801

Mr. Robert Ziegler
Chairman, Senate Judiciary Committee
Pouch 5
Juneau, Alaska 99801

Gentlemen:

This letter is simply to inform you of certain problems which are presently facing the court system at Anchorage, Alaska, with regard to the new addition to be constructed behind the present courthouse, and with certain additional statewide problems which call for immediate action on the supplemental appropriation.

At the present time, I am enclosing a letter which indicates the space requirements for the various agencies who wish office facilities in the new building. As you are aware, ASHA bond financing had been arranged by the last legislature, and the sum of $4,500,000 was available for the construction of this new courthouse facility. The construction budget is approximately $3,750,000 at the present time, with the other costs going to design, etc. We have preliminary estimates from the architect, Mr. Don Coolidge, which indicate that for the construction budget as presently noted, that a building of approximately 70,000 gross square feet can be built and that

amount must be reduced by approximately 15% for public space, etc., available to the court system.

The immediate problem is the fact that the superior court alone at Anchorage, Alaska, needs space of 67,000 square feet in order to take care of the present expansion of superior court judges in Anchorage and to have available facilities at the time that the new courthouse opens approximately two years hence.

The superior court in Anchorage has experienced unprecedented growth at the present time and well in advance of any possible anticipated growth which is a result of the pipeline or native land claims settlement. Judge Fitzgerald has indicated that the superior court has seven resident superior court judges and has the use of one full-time extra superior court judge by virtue of reassignment of either Judge Hanson of Kenai or Judge Burke of Kodiak, with a total of eight superior court judges available at any one time. Additionally, Judge Sanders has been brought to Anchorage at various times in order to handle matters because of the large workload in this area. In the present structure at 941 Fourth Avenue, Anchorage, Alaska, there are only four superior court courtrooms, and a fifth superior court courtroom for family matters was constructed on the first floor, approximately a year ago. Additionally, there is no office space for the additional superior court judges and at the present time, Judge Hanson, Judge Burke and Judge Singleton are making do with makeshift offices with an absolute minimum of space to work.

In order to make the maximum possible use out of the courtroom space available, Judge Fitzgerald ordered double shifting of the courts with court starting in each courtroom at 8:00 a.m. and going through to 1:00 p.m., when the judge on the morning shift would vacate the bench, and the judge on the afternoon shift would take up with a totally new trial from 1:00 p.m. to 6:30 to 7:00 p.m. While this has given us a maximum utilization of the courtroom facilities, it has not been possible to satisfy many of the complaints of the supporting staff who understandably are reluctant to

come to work at 7:30 in the morning and continue through to 6:30 at night. This necessitates a shifting of the personnel so far as hours of employment are concerned, and, of course, gives us quite a problem with the paperwork attendant with the filing and trial of all cases. The supporting staff is almost always required to do certain work in the clerk's office to make certain that we have no problems in that regard.

The shifting has caused serious burdens on them, but so far they have gone along because of the necessity to clear trials.

The double shifting has created another problem, and that is with the calendaring of a large number of cases. A trial court administrator was obtained after aid was given by the legislature for this position, and at the present time, he has taken over the very difficult chore of calendaring all of the cases in the superior court with the exception of family court division, in order to free Judge Fitzgerald of a great number of administrative burdens which were growing impossible. This aid has been quite successful, and at the present time a calendar study by the accounting firm of Ernst & Ernst has prepared a preliminary draft of the calendar system which we hope will work in this district. It goes without saying that if there is no space for the judges to operate, a calendar study would seem to be somewhat useless under the circumstances.

In the district court, Judge Paul Jones has noted at least a 50% increase in cases from last year, due primarily to the new contract between the city and the Spenard Service Area of Anchorage. Police services are now available on a full-time basis in the Spenard area, which in the past was served by the State Police when they could get there. They did a fine job for the personnel that they had, but the State Police are not equipped to provide urban police services and in heavily populated areas. As a result of a comprehensive police activity in this area, 3,000 additional misdemeanor cases a month are coming into the district court at the courthouse at 941 Fourth Avenue. Previously, these cases were simply not filed,

and it is now taking almost the full time of two district court judges to handle what was not in existence four or five months ago. An attendant problem with this is the fact that the district court courtrooms at Anchorage are of very small size and will not accommodate more than 50 to 60 people at one time. Arraignments on traffic matters in the past few months bring in as many as 200 to 250 people, and there is not a courtroom to accommodate them.

An additional problem is created by the fact that the new courtrooms constructed on the first floor by the superior court have taken all of the district court jury facilities, etc., and at the present time the jurors mingle in the halls with those charged with traffic violations, and defendants in the cases they are about to sit on. This problem co-exists in the superior court where the use of every available square foot of space by both administrative and supporting functions and the judges themselves has taken away all jury assembly rooms, etc., and the jurors must stand in the hallway without chairs. The public, of course, is very upset about this situation, as are the jurors who must co-mingle with everyone, including lawyers, defendants and witnesses which appear in the trials.

Judge Jones indicates that an additional problem will be created because of the inability to get agreement with the Anchorage City Council for funding of court activities in the municipal court, which is presently carried on at 6th and C Street in Anchorage. The city has refused to enter into a new contract for judicial services, and to pay its share of expenses, and therefore it appears it will become necessary for us to vacate those facilities and to bring the city cases down to the 941 Fourth Avenue location. Since the city hears approximately 3,000 cases a month, the additional burden on the district court is not difficult to realize. An additional problem, however, will be created by the lack of jail holding facilities in the courthouse which is magnified by the problem that normally in city court there is arraignment of 40 to 50 prisoners every morning. These prisoners are misdemanant defendants who have

been arrested by the city police in downtown areas during the preceding evening. If they must be transferred to the present courthouse, then we have a definite security problem, both transporting and holding them. While a great deal can be done about arraigning them in the jail, etc., there is still the additional problem created by the sheer numbers of people involved in this particular transaction.

Judge Jones further anticipates substantial growth if there is a full unification of the City of Anchorage and the Greater Anchorage Area Borough, and he can predict an immediate one-third increase very similar to the increase which happened when the Spenard Service Area obtained extensive police services. Since the population in that area would be roughly equivalent to what happens in Spenard, the prediction would appear to be accurate, and will call for some rather fancy footwork so far as handling of traffic and misdemeanor matters is concerned.

Again, these requirements have been placed upon us in the absence of both a pipeline and a native land claims settlement, and we are almost unable to judge at the present time how great a growth will be necessary in the district court except that it appears that the growth will be very substantial. It is our present plan that as soon as the present courthouse has more space available, that the district court will expand into the area vacated by the superior court to take advantage of the necessary courtroom space, etc.

The aforementioned problems afford a very critical analysis of the problem facing the court system with regard to its supplemental appropriation, and the need for additional jury monies and construction costs for remodeling the courthouse in Anchorage. The tremendous increase of caseload in the district court, the double shifting in the superior court, and the increase by the Supreme Court of jury fees paid to each individual from $9 to $21 have seriously overtaxed the budget of the court system. In fact, at the present time, the jury fee account

has been overspent to approximately $75,000 and this matter increases by geometric proportions each month as we continue to double up on use of the facilities.

The Supreme Court is faced with the alternative of continuing to have jury trials to dispose of the cases in the time requirement set by the United States Constitution, or to in fact cut out jury trials because of the lack of money and the possibility of foundering our own budget in an attempt to keep the trials going. Unless the legislature provides some relief immediately, the Supreme Court will be forced to make a decision to stop all jury trials with the attendant disruption of calendars which are normally set six to seven months in advance, and with the attendant problem of figuring out methods of release for those prisoners who cannot be tried but who are available for trial because they have been incarcerated. It would not be permissible under prevailing constitutional law to deny a person a jury trial because of lack of money for such service and to keep him incarcerated during this period of time.

An additional part of the supplemental appropriation is the actual construction of two additional courtrooms in the present space in Anchorage, Alaska, which was made possible by moving out the probate department of the superior court which has been placed in a house trailer directly behind the courthouse, and the recorder's office which will be moved to the Voyager Hotel. While neither of these arrangements is satisfactory, it will at least give the present judges more space to hear cases and enable us to ease up on the double shifting problem which has overtaxed the administrative staff to a great degree.

These problems, of course, point out the urgent need for a building at Anchorage, Alaska, with sufficient space to accommodate the various purposes. The attached letter points out a need for approximately 128,000 square feet of usable space, and, of course, that is far in excess of the ability to pay at the present time. It is therefore the suggestion of the committee that all of the funds that are available be used immediately to

construct a superior court court building behind the present structure of four floors, with the top two floors being left entirely vacant and the other floors finished to take care of immeidate needs. Without question, before the building is moved into, there will be a requirement for a finishing of the third floor in order to accommodate even the available judges as well as a certain increase in the number of judges necessary to handle judicial duties in the superior court at Anchorage. We are anticipating a need for a minimum of 11 to 12 courtrooms, and, of course, the finishing only of the basement and the two floors on the present construction budget would not permit that many courtrooms to be constructed.

Because of the need for additional construction on the top two floors of the new courthouse, a need for a courthouse in Juneau, a need for a courthouse in Sitka, and requests from the federal government to purchase the courthouse in Nome, we would ask for authorization through ASHA bond financing or such other method as the legislature deems feasible, to provide monies for these various projects.

Particularly in Anchorage the funding would be such to permit the finishing of the superior court court building, the acquisition of the additional four lots in the courthouse block here in Anchorage at a cost of approximately $600,000, and the construction of a court-related office building which would house the Supreme Court of Alaska, the attorney general's office, the district attorney's office, the public defender's office, the highway section of the attorney general's office, the borough prosecution office, the Alaska court administrative office, and parking facilities. In this manner we could develop a plan for the orderly transition in the various buildings and provide service to the public which would be appropriate. We are not talking about judicial frills; we are talking about the basic minimum service that is required by the Constitution of the United States and of the State of Alaska.

While this letter is somewhat rambling in content, it is meant simply to set down on paper the problems which we are immediately faced with and the urgent need of seeking some sort of solutions to them. It is fairly obvious that if we have these problems without the building of a pipeline, or a native land claims settlement, their impact on this problem area may very well completely break down the machinery of justice which is necessary for a vitally functioning state.

Sincerely,

Robert C. Erwin

RCE:kf

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

Bush Justice

RICHARD WHITTAKER
ATTORNEY AT LAW
BOX 13 KETCHIKAN, ALASKA 99901
107 STEDMAN STREET CA 5-5333

April 24, 1971

The Honorable Chief Justice George Boney
Alaska Supreme Court
941 - Fourth Avenue
Anchorage, Alaska 99501

Dear Chief Justice Boney:

Your visit to Juneau and attendance at the meeting of the House of Representatives bush league meeting and a recent conversation I had with Justice Dimond have brought to mind a couple of matters which I wanted to mention to you, and I am taking the liberty of addressing myself to the problems by mail, in order to get them to your attention as quickly as possible.

The Supreme Court should be aware that in the early part of January of next session, the House Local Government Committee intends to work over the various bills which aim toward setting up a Department of Community and Regional Affairs, including the Rural Alaska Development Group bill, which would set up regional government and use it as a means of compelling service from State government. The committee and others are looking at several different ways of bringing State government closer to the people of the bush. Indeed, the House Local Government Committee in passing out the Governor's regional service area bill, did so on the theory that if nothing else, it would give people in the unorganized borough a chance to experiment with area government as a concept. What this is all leading up to is that in reading through the bush justice conference report, which I have at hand, it occurs to me that one of the basic concepts is completely incorrect. I refer of course to the fact that the State agency which so often has the most contact with villages on a regular basis is the Department of Public Safety. I simply do not believe that the State of Alaska puts its best foot forward when Troopers are sent to the villages. What should be sent is a governmental officer of relatively high rank, who is trained in all the departmental needs, and acts as an ombudsman of sorts, and who can do some investigatory work if necessary and transport prisoners if necessary, but who is a person who is able to develop action for areas which are lacking action and who serves perhaps as some

quasi-judicial authority. In short, a completely different concept. What we require now is a State Trooper who functions in this fashion, but of course it's impossible because of lack of training and a different direction. In the old days of Tammany Hall, the smiling Irish cop on the beat had many of the attributes I have set forth because he related to a political machine which was able to bring about answers outside of the police and legal machinery.

I think additionally that the Court should give considerable consideration to revising the Rules of Court which relate to the magistrate's court and indeed the District Court unless the District Court has become such a magnificent forum that no one except he who is represented by counsel may attend. I think that we need to completely review the need of a District Court in the bush, and even as it applies to larger communities, and provide rules and laws in its jurisdiction which are relatively easier of administration. Perhaps I am still in legislative shock. It occurs to me that a manual could be written and adopted setting forth both the criminal and civil jurisdiction and the rules of court which would solve 90% of the problems brought to court and which would allow two intelligent men without the need of counsel with a judge who is disposed to seek truth and justice, whatever they are, to accomplish the ends of justice. At least this must needs be done before the magistrate's court. Perhaps this is how that court functions now in any one given community, but I think that the lawyers amongst us can go a long way in helping to clarify some of the legal ideas which are involved in the use of the magistrate's court.

Thirdly, I should like to recommend most strongly that the Supreme Court review the situation of the small claims court. I know that as a general rule lawyers don't go there, but when I opened up my practice in Ketchikan before the advent of Legal Services, Inc., I did go to that court to defend persons who had been harrassed by collection agencies, and I found that there were no rules, and what rules there were were incomprehensible. The problem in the small claims court is that it is not a people's court as it was intended, but rather a court for the few, i.e., the collection agencies. I have discussed with other attorneys in Ketchikan the possibility of trying to work out a plan of attack on the need for rules in the small claims court as a project of the Ketchikan Bar Association, but none of us have had time to

do this, and I do not foresee in the near future any particular amount of time that I will have, the Legislature having done such damage to my law practice.

In conclusion, I want to applaud the court system for attending to the needs of the bush as it has, particularly in a time of crisis, where the court system is being accused of all kinds of strange things, including "crime in the streets", whatever that is. I have taken a view on the floor of the House of Representatives which is defensive of the court system. The court has come under attack whenever we talk about loaded dockets and criminal problems as if it were the court which had created these problems. I disagree that the court has, and have urged on my colleagues that it has been the State Police and the Department of Fish and Game and certain other agencies which have caused more problems than they seek to solve. I particularly like to refer to the "celebrated dingo" case at Fairbanks, which unfortunately is typical of the kind of thing the Department of Fish and Game likes to foist on the court system during the winter months when they have nothing better to do. I would further point out to the court that much time is utilized in the lesser courts of the State handling speeding matters, which is rather strange to me because I have been told by the Department of Highways that speed limits are set by following radar study and an averaging of speeds. If this is true, then it's ridiculous that the State Police waste the time of the court by bringing in anybody who has done any less than 20 miles over the speed limit, unless it truly can be said that he is driving in an unsafe fashion.

I do not seek an answer to this letter, as I know you are very busy, but did want to call these matters to your attention, and perhaps some time we could discuss them further.

Sincerely yours,

RICHARD WHITTAKER

RW:ca

cc: Associate Justice John H. Dimond
Alaska Legal Services, Inc.
Juneau
Ketchikan
Anchorage

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

Alaska Judicial Council

941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

BUSH JUSTICE CONFERENCE

MT. ALYESKA

GIRDWOOD, ALASKA

DECEMBER 8 - DECEMBER 11

JUDICIAL COUNCIL MEMBERS

Chief Justice George F. Boney, Chairman
Lester W. Miller, Law Member, Anchorage
V. Paul Gavora, Lay Member, Fairbanks
Ken Brady, Lay Member, Anchorage
Frank M. Doogan, Law Member, Juneau
Peter D. Meland, Lay Member, Sitka
Michael A. Stepovich, Law Member, Fairbanks

CONFERENCE RESOLUTIONS

WHEREAS: THE QUALITY OF JUSTICE IN THE ALASKAN BUSH AREAS SHOULD BE IMPROVED:

BE IT RESOLVED THAT:

1. THE LOCUS OF DECISION-MAKING IN THE ADMINISTRATION OF JUSTICE IN VILLAGE ALASKA MUST MOVE CLOSER TO THE VILLAGE. TO ACHIEVE THIS RESULT THERE MUST BE GREATER NATIVE PARTICIPATION AT ALL LEVELS IN THE ADMINISTRATION OF JUSTICE.

a. There should be greater direct participation by Native citizens in the administration of justice at all levels, including their employment in policy-making positions in all agencies involved. Every agency should examine its qualifications requirements in order to revise them wherever they may arbitrarily exclude otherwise qualified Alaskan Natives. Examples include the height requirements for Alaska State Troopers, minor criminal records, formal education, etc..

b. Appointment of an Alaskan Native to membership on the Judicial Council and the Judicial Disqualification Commission is recommended.

c. The selection and removal of magistrates should be made more responsive to the desires of the communities served. Continuing critical evaluation of performance of duties by magistrates should be made. Consideration should be given to assigning principal responsibility for appointment and removal of magistrates to presiding district court judges.

d. The strengthening of village councils is central to the administration of justice in remote Alaska.

e. The Local Affairs Agency must be strengthened and upgraded to department level and its technical assistance functions fostered if there is to be successful administration of justice in the villages.

Representatives of the Local Affairs Agency should visit villages to work with local officials. They should help the villages draft and revise ordinances, facilitate participation of villages in revenue-sharing programs, and improve law enforcement techniques.

2. THERE MUST BE A GREATER ACCESS TO LEGAL SERVICES AND THE PROCESS OF JUSTICE IN VILLAGE ALASKA.

a. The ordinary method of travel in the bush is by air. To meet the basic requirements of regular travel and to enable emergency service, State Troopers should be authorized to operate leased or state owned aircraft for their official duties and to aid officers of the court and associated agencies in the performance of their duties.

b. The Alaska Legislature should fund a program creating village constables in village Alaska to be chosen by village governing bodies to serve at their pleasure and to act as village law enforcement officers with the support of the Alaska State Troopers.

c. The travel budgets of the superior and district courts should be increased so that they may hold trials where the parties and witnesses live. When trials are elsewhere, but witnesses live in the bush, the courts should use special masters to take evidence in the witnesses' villages. When actions are filed in places not accessible to defendants or their witnesses, changes of venue to the defendants' homes should be liberally allowed. These changes would facilitate more accurate factual determinations, avoid unfair default judgments, and provide education in judicial processes and substantive law in the bush.

d. The Supreme Court is encouraged to order at least an annual circuit court session of the superior court in the major community

in each House election district.

e. The State Legislature should fund staff offices in Bethel and Nome for Alaska Legal Services Corporation and a Public Defender Agency office in Bethel as a step toward creation and support of rural principal judicial centers.

f. Techniques should be explored to encourage the private bar associations to provide better services in Alaska villages. As an example, group legal services experiments in other states should be studied. Public interest law firm efforts might also be encouraged.

g. Every village should have a detention facility and a juvenile detention facility separate from the detention facility and standards should be established for such facilities. These are needed to protect villages from dangerous persons without delay and without unduly long incarceration because of transportation time.

h. Special emphasis must be given to the development of manpower capable of dealing effectively with the administration of justice in village Alaska, and to appropriate education for the affected public.

(1) The colleges and universities within the state should establish programs for the training and continuing education of magistrates, constables, paralegal and other associated personnel. Such programs should be developed and operated in cooperation with the Judicial Council, the Department of Public Safety, the Alaska Federation of Natives, and other appropriate agencies and organizations. Major emphasis should be placed on on-the-job training.

(2) The University of Alaska should establish an institute to train legal personnel in both rural and urban areas in Native culture and languages. Incentives should be provided for attendance at this institute.

(3) The Department of Education should develop curriculum

concerning legal concepts, processes, rights and remedies for junior high school students throughout Alaska.

(4) The colleges and universities within the state should establish adult education programs concerning legal concepts, processes, rights and remedies for Alaskan villages. This program should include dissemination of printed materials in attractive format which explain the rights of individuals under the statutes and decisions.

(5) A program should be established for recruiting bi-lingual lawyers fluent in English and another recognized language common to a region of Alaska to serve in Alaskan public programs which relate to the administration of justice. Such a program would work through law school scholarships and financial grants equivalent to what bi-lingual college graduates might otherwise earn if they chose to work in other Alaskan community leadership or service positions.

(6) The colleges and universities within the state should be encouraged to establish a training and continuing education program for the development of paralegal personnel. Persons participating in and successfully completing such a program should be considered for certification to counsel persons within the limits of their training and expertise.

i. Greater understanding of and more information about all direct and related aspects of judicial administration are needed to provide a basis for policy making, for establishing appropriate administrative arrangements, for training and education, and for improving other aspects of providing justice in rural areas. In particular, the cultural context and impact of judicial administration must be thoroughly understood by all involved in the system of bush justice. Toward these ends, the Judicial Council, the State Administration, the University of Alaska, and other appropriate organizations should initiate, sponsor

and undertake programs of research concerning such areas as the character and processes of village law-making, judicial administration, and law enforcement.

3. SOME MODIFICATIONS IN SUBSTANTIVE LAW ARE NECESSARY TO CORRECT INEQUITIES IN VILLAGE ALASKA. SUCH MODIFICATIONS RELATE TO THE ADMINISTRATION OF JUSTICE IN URBAN ALASKA AS WELL.

a. There should be a study of the program effectiveness of present correctional and dispositional alternatives in village Alaska. If particular techniques are inefficacious, they should no longer be employed.

b. Dispositional process alternatives prior to invocation of the criminal and juvenile process should be legitimated and encouraged. In the process, there should be guidance on what dispositional alternatives prior to invocation of the criminal process are appropriate.

c. Local alternatives for the control and rehabilitation of juveniles should be developed.

d. Review and changing of the laws concerning alcohol-related offenses should be continued to provide non-criminal alternatives. This conference recommends that detoxification facilities be established as an alternative to incarceration for alcoholic and alcohol-related offenders throughout all areas of the state. This conference further recommends that training be given to all officers of the criminal justice system to recognize alchoholism as an illness and that this be done in conjunction with broad community education.

e. Waivers of rights to counsel, silence, trial by jury, trial by the district court, and other related rights, should be accepted by magistrates only after the most careful scrutiny for voluntariness

and understanding. Advice as to rights should be thorough and discursive and in the language primarily spoken by the defendant. Where an attorney or appropriate paraprofessional is available, his presence on behalf of the defendant should ordinarily be obtained.

f. It shall be a mitigating factor in sentencing, but not in the determination of guilt, that an act, violative of law, was committed pursuant to custom.

g. The courts and legislature should recognize customary adoptions common among Alaska Native people. Recognition of customary adoptions should not involve lengthy court procedures but rather summary procedures.

h. Court arraignment procedures must include the advising of constitutional rights in a language understandable to the defendant. Boards of qualified interpreters should be established and funded and their services made available throughout the state for this purpose.

i. It is recommended that the boundaries and number of judicial districts be examined and changed where necessary to facilitate access to judicial services. The social and transportation patterns of the individuals to be served should be given prime consideration in the establishment of judicial districts. Example: Barrow should be part of the fourth judicial district and Bethel should be either part of the third judicial district or a new special Superior Court District should be created for Bethel.

j. The Alaska Administrative Procedures Act and the Alaska Administrative Code should be amended to:

(1) Require that hearings on administrative licenses, rules, and orders be held in the organized community or communities affected by the issuance of the license, rule or order.

(2) Extend the time allowed for administrative appeals from

30 days to 60 days.

(3) Require the posting of notice at the situs, the publication of notice in the newspaper published nearest the situs and public hearing be held at the situs or community nearest the situs prior to the granting of the application, the license or any interest in tidelands or property, in order to adequately protect rights or interests in these tidelands or property.

k. Civil Rule 53 should be interpreted and implemented to allow for the liberal appointment of special masters to take factual evidence in areas not frequently served by the superior court and where required for the ends of justice.

l. Changes in venue requirements should be as follows:

(1) For criminal actions, venue should be originally set in the election district in which the alleged crime was committed; for civil actions venue shall originally be set in the election district which has the most significant contacts with the transaction which is the subject of the action.

(2) AS 22.10.040 should be amended by deleting subsection (2) and enacting a new statute in the place of subsection (2) which reads:

A motion for change of venue <u>shall</u> be granted when required for the convenience of the witnesses and the ends of justice.

(This amendment will change the existing law which places a venue change for witness convenience and justice in the discretion of the superior court judge to a mandatory change requirement in this one instance.)

BE IT FURTHER RESOLVED THAT:

4. THE STATE SHOULD ENCOURAGE AND PROVIDE PLANNING ASSISTANCE IN THE ESTABLISHMENT OF COMMUNITY MENTAL HEALTH CENTERS IN THE REGIONAL

SERVICE CENTERS OF THE STATE, SUCH AS BETHEL, NOME, KOTZEBUE, BARROW, FORT YUKON AND OTHERS. ALSO, THE COMMISSIONER OF THE DEPARTMENT OF HEALTH AND WELFARE SHOULD CONSULT WITH THE DIRECTOR OF MENTAL HEALTH AND THE SUPERINTENDENT OF THE ALASKA PSYCHIATRIC INSTITUTE TO PROVIDE RESIDENT QUARTERS FOR PERSONS REFERRED BY THE COURTS FROM RURAL AREAS FOR EVALUATION AND REFERRAL UNTIL SUCH TIME AS MENTAL HEALTH FACILITIES ARE AVAILABLE.

5. THE STATE DIRECTOR OF COMMUNICATIONS SHOULD COORDINATE PRESENT EXISTING RADIO COMMUNICATIONS NETS AND ESTABLISH OTHERS AS REQUIRED, WHEREBY ALL AREAS NOT HAVING ACCESS TO COMMUNICATIONS MAY BE SERVED. THE CENTER OF EACH NET SHOULD BE LOCATED IN THE AREA OF EACH PRESIDING DISTRICT COURT JUDGE OF EACH JUDICIAL DISTRICT AND BE MADE AVAILABLE TO ALL AGENCIES AND PERSONS ASSOCIATED WITH THE JUSTICE SYSTEM ON A 24 HOUR PER DAY BASIS. IN CONJUNCTION WITH THE ABOVE, THE JUDICIAL COUNCIL OR OTHER APPROPRIATE AGENCIES SHOULD INTERVENE IN THE FCC DOCKET ON DOMESTIC SATELLITES TO URGE THE NEED IN VILLAGE ALASKA FOR IMPROVED COMMUNICATIONS IN THE ADMINISTRATION OF JUSTICE.

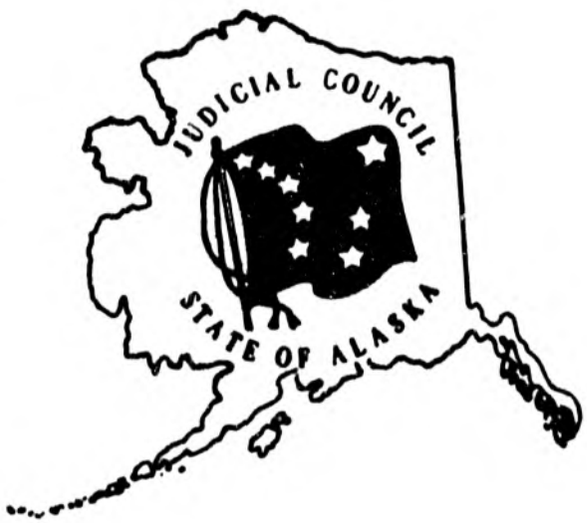
6. AS EACH COMMUNITY SHOULD HAVE BETTER CONTROL OF ITS AFFAIRS, LEGISLATION SHOULD BE ENACTED TO AUTHORIZE THE ISSUANCE OF PACKAGE AND BY-THE-DRINK LIQUOR LICENSES TO CORPORATIONS WHOLLY OWNED BY MUNICIPAL CORPORATIONS OR ORGANIZED COMMUNITIES.

7. THIS CONFERENCE RECOMMENDS THAT ANOTHER JUSTICE IN THE BUSH CONFERENCE BE HELD SOMEWHERE IN A RURAL COMMUNITY.

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

ALASKA JUDICIAL COUNCIL

SIXTH REPORT
1969 - 1970



SECRETARY TO THE JUDICIAL COUNCIL
941 Fourth Avenue Anchorage, Alaska

ALASKA JUDICIAL COUNCIL

SIXTH REPORT

1969-1970

Prepared by Theodore R. Dunn
Secretary to the Judicial Council
941 Fourth Avenue
Anchorage, Alaska

ALASKA JUDICIAL COUNCIL

941 Fourth Avenue
Anchorage, Alaska

February 1971

TO: GOVERNOR WILLIAM EGAN
SUPREME COURT OF ALASKA
PRESIDENT OF THE SENATE
SPEAKER OF THE HOUSE OF REPRESENTATIVES

In accordance with the provisions of Section 9 of Article IV, Constitution of the State of Alaska, there is respectfully submitted herewith the report of the Alaska Judicial Council for the period from January 1, 1969, through December 31, 1970. It is intended to provide a review of the work of the Council during this period and to offer current recommendations for improvement of the administration of justice.

Sincerely,

George F. Boney

George F. Boney, Chairman
Alaska Judicial Council

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I.

INTRODUCTION

The Alaska Judicial Council is established by Article IV, Section 9 of the Constitution of the State of Alaska. The Council is composed of seven members including the Chief Justice of the Alaska Supreme Court who serves as Chairman. Three of its members are appointed by the Board of Governors of the Alaska Bar Association. Three members are non-lawyers appointed by the Governor, and confirmed by the legislature. The Council has two functions. First, it makes nominations to the Governor for the appointment of persons to vacant positions in the Judiciary or to the post of Alaska Public Defender. The Council also conducts studies and makes recommendations for improvements in the administration of justice throughout the State. It is required by the Constitution to submit a report and recommendations to the Supreme Court and to the legislature at intervals of not more than two years.

The judicial nomination process engaged in by the Council begins with the solicitation by the Secretary of the Council for applicants for specific judgeships. Notice is given to all active members of the Alaska Bar Association. All applicants are then brought to a meeting of the Judicial Council, at the expense of the Council, for personal interviews. At this time the Council also considers the results of a qualifications poll which has been conducted with respect to each candidate by the Alaska Bar Association. The Council then votes to nominate applicants to the Governor for specific

judgeships. The Governor then appoints from the list of nominees.

To arrive at its recommendations for improvement of the administration of justice in Alaska the Council engages in various activities. First, of course, are the regular Council meetings wherein various problems are brought to the attention of the Council either by its members or by persons who have requested to appear. Also, the Council conducts public hearings throughout the State on the subject of the administration of justice. The Council also sponsors and conducts seminars and studies relating to specific problem areas. Ultimately drawing upon all of these sources, the Council makes its recommendations to the legislature, the Court System or the Governor for action to be taken for the improvement of justice.

This report covers the activities of the Council in carrying out its Constitutional mandate during the years 1969 and 1970 and contains the current recommendations of the Council for improvements in the administration of justice in the State of Alaska. This report is not meant to be repetitive of prior reports and because of this will refer to material contained in those reports without fully reproducing it.

II.

SUMMARY OF MEETINGS

February 20, 1969 - Juneau, Alaska

The first meeting of 1969 was held in Juneau on February 20th. Present were Chief Justice Buell A. Nesbett, Chairman; Mr. Jack Werner, lay member of Seward; Mr. Frank Doogan, law member of Juneau; Mr. Peter Meland, lay member of Sitka; and Mr. V. Paul Gavora, lay member of Fairbanks. Mr. Michael Stepovich, law member of Fairbanks was absent outside the state and Mr. Lester W. Miller, law member of Anchorage, was present for the afternoon session. The Chairman opened the meeting by reviewing the Council's recommendations in its Fifth Report. These were: establishment of a public defender agency, increase of judicial salaries, relieving District Judges of coroner-public administrator duties, and micro-filming of public records. It was agreed that no priorities be given to these items. The Council then generally discussed each of these items in turn. The proposed bill for handling the coroner-public administrator problem was presented and reviewed by the Council and the Council voted to go on record favoring the concept of the transfer of the duties of coroner and public administrator to the Commissioner of Public Safety.

After reviewing the legislature program, the Council considered a report by the Statewide Committee on Sentencing and Appellate Review of Sentences which included a recommendation to amend AS 22.05.010 to give the Supreme

Court jurisdiction to hear appeals from sentences imposed by the Superior Court on the grounds that the sentence was either excessive or too lenient and to modify the sentence accordingly. The report also proposed that for this purpose that the Supreme Court be permitted to sit in divisions. It contained an additional provision providing for appeal from the District Court to Superior Court in some cases. The recommendation included other proposals for reform of the appellate system. The Council voted to approve the committee report, following lengthy discussion, and to recommend to the legislature that it be implemented.

The Chairman also presented the report prepared by the Subcommittee on Probation and Parole which had been approved by the Statewide Committee. The report related to several subjects including: (1) increasing the probation personnel of the Division of Corrections; (2) changing the personnel requirements so as to reduce turnover within the Division of Corrections; (3) the placing of more persons under probation-parole supervision; (4) giving more supervision to offenders; (5) protecting the society at large by virtue of adequate supervision and evaluation of persons placed on probation and (6) salvaging of more criminal offenders as a result of adequate probation. The report also questioned whether the Division of Corrections should be in the Department of Health and Welfare. The Council then voted to go on record urging the legislature to implement the present

probation staff in order that it become more effective; the Council further determined to make a study regarding the desirability of the probation function being moved from the Department of Health and Welfare and placed in the court system.

In the afternoon the Council met with Governor Miller and discussed its recommendations as contained in the Fifth Report. The need for a public defender agency was stated and Council member Lester Miller advised the Governor that the Bar Association wholeheartedly supported such a program. The Chairman then advised the Governor that the need for a salary increase for judges was urgent and that Governor Hickel had previously agreed with the Council's recommendation that state judicial salaries should be equated with those paid the federal judiciary. The Governor assured the Council that a salary bill would be forthcoming. The Council also advised the Governor of its recommendations with respect to appellate review of sentences, probation, micro-filming of public records and the proposed coroner-public administrator legislation. The Governor concluded the meeting by thanking the members of the Council for their attendance and assuring the Council that he would do everything possible on behalf of the salary recommendation.

The Council then met with members of the House and Senate Joint Judiciary and Finance Committees. Legislators present were Senator Vance Phillips, Representatives Ray,

Banfield, Croft and Metcalf. Each of the Council's recommendations which had been discussed with the Governor was discussed with the legislators. Also, at the request of Senator Phillips, the Chairman reviewed with the legislators the manner in which judicial applicants are nominated by the Council.

Following meeting with the legislators the Council reconvened briefly. Mr. Werner advised the Council that as his term was expiring this would probably be his last meeting. He commended the Chief Justice for his contributions as Chairman and stated in the ten years he had been a part of the Council he felt it operated well without political considerations and in a progressive forthright manner. The Chairman responded commending Mr. Werner on his service and contributions to the Council and to the State of Alaska.

June 20, 1969 - Anchorage, Alaska

The primary purpose of the June 20th meeting was to nominate to the Governor candidates for the office of Public Defender for the State of Alaska. All members of the Council were present including newly-appointed member Mr. Ken Brady, lay member from Anchorage, who succeeded to the position previously held by Mr. Jack Werner of Seward. The Chairman reported on the results of the Council's legislative program for the 1969 legislature. The recommendations on appellate review passed the legislature. The coroner's legislation was opposed and did not pass. The Public Defender bill had passed

substantially as hoped for by the Council, but the Chairman believed the appropriation to be inadequate. The Chairman reported that the principal office of the Public Defender would be located in Anchorage with field offices in Fairbanks and Juneau. The Judicial Qualifications Commission had been organized with Associate Justice John Dimond as chairman. However, the finance committee had not passed on the supplementary budget and the Judicial Qualifications Commission was without funds. The chairman stated that the Commission would be treated as an independent budget by the administrative office of the Court System which would process claims and vouchers at the request of the chairman.

The Chairman reported that there were vacancies in the District Court, but in view of the fact the salaries of District Court judges had been raised by only $1,500 he recommended that the Council not solicit applicants for the vacancies until the salary was increased; the judgeships would be held on an interim basis pending that time. In this regard, Chief Justice reported that the resistance to District Court salary increases was intense in the recently concluded legislature. Several of the members indicated they would personally make appeals to legislators to increase the salaries.

The Council then next considered the applicants for Public Defender and nominated three candidates to the Governor. The Council further discussed the urgent need for improve-

ment of judicial salaries and voted to establish a committee for the purpose of presenting a salary plan for the upgrading of judicial salaries. The Chairman also reported on the status of the Anchorage court facility expansion plan. He stated that the legislature had authorized a bond issue sufficient to cover the construction project, but that the interest ceiling on the bond issue would preclude sale of the bonds. Therefore, the legislature might have to take steps to improve the saleability of the bond issue by increasing the interest ceiling during the next session. Mr. Stepovich requested that the matter of additional Superior Court judges for the Alaska Court System be placed on a future agenda and in view of the general feeling that there was a growing need for additional judges the Chairman directed that this be done.

November 6 & 7, 1969 - Anchorage, Alaska

The principal purpose of the November meeting was to consider the Council's 1970 legislative program. Present were Michael Stepovich, law member of Fairbanks; Frank Doogan, law member of Juneau; Lester W. Miller, law member of Anchorage; Kenneth Brady, lay member of Anchorage; and Paul Gavora, lay member of Fairbanks. Chief Justice Nesbett, the Chairman, was undergoing treatment in San Diego for injuries sustained in an aircraft accident and Mr. Meland of Sitka was required to be absent for business reasons. Associate Justice John H. Dimond was also in attendance. In view of

the Chief Justice's absence Vice Chairman Michael A. Stepovich presided. The first agenda item considered was that of judicial salaries. Justice Dimond stated to the Council that there was an urgent need for increase in judicial salaries, noting that increases by the previous session of the legislature were inadequate. He reported that the Alaska Bar Association was completely behind the Court System and the Council with respect to judicial salaries and stated that young, capable lawyers were not interested in judicial positions because they could not afford it. Mr. Peter LaBate, president of the Anchorage Bar Association, appeared to state the Anchorage Bar Association's position with repsect to judicial salaries. He pointed out that existing salaries were inadequate to attract experienced lawyers into the judiciary and stated his opinion that the Superior Court judges should be paid at least $40,000 and the District Court judges at least $25,000. Presiding District Court Judge Paul B. Jones of the Third Judicial District also appeared. He pointed out that for many people their contact with the Court System occurred in the District Court and it was imperative that salaries at that court be attractive to encourage applicants for judgeships. Also appearing was former District Court Judge James Hanson who stated that he had recently resigned from the court because promised salary increases were not forthcoming. It was determined that the Council invite Senator Vance Phillips to discuss the matter of salaries with the Council at the next Council meeting

Mr. James Fisher, an attorney from Kenai, Alaska, appeared before the Council to state the need for a Superior Court judge for Kenai and Kodiak. Mr. Roy Madson of Kodiak also appeared urging that a Superior Court judge be made available for these two communities.

The next agenda item to be considered by the Council was that of additional Superior Court judgeships. Mr. Doogan discussed the need for an additional Superior Court judge in Southeastern Alaska pointing out that the one judge available did not have time to take care of all his business. He did not make a specific recommendation as to where the judge should be located. The Council voted to recommend the creation of an additional Superior Court judgeship in the First Judicial District.

Mr. Stepovich then discussed the need for an additional judge in the Fairbanks area in view of the increase of population and increased activity on the Arctic North Slope. The Council unanimously voted to recommend an additional Superior Court judge for the Fourth Judicial District.

Judge James M. Fitzgerald of the Third Judicial District appeared and concurred with the need for higher salaries, pointing out the judicial salaries in Alaska have consistently dropped behind salaries paid to other officials. For example, he recalled when there was $3,000 difference in the salaries between the federal district judges and Alaska

Superior Court judges and noted that the difference had grown to over $13,000. He recommended establishment of an independent salary commission to recommend salaries to the legislature. Judge Fitzgerald also reported on the need for additional judges in the Third Judicial District. He believed two additional judges were needed. Judge Fitzgerald also urged the creation of a court administrator in the Third Judicial District for the Superior Court to free the presiding judge from many administrative duties. The Council then resolved that it be recommended to the legislature that the Third Judicial District be provided with two additional Superior Court judges and that the Superior Court be permitted to hire a trial court administrator.

Judge Fitzgerald also reported that he felt that judges should be reimbursed for their actual expenses when traveling on court business as is done in the federal system. However, on the recommendation of Justice Dimond the Council moved to recommend to the legislature that Court System personnel traveling on court business be granted $35 per day.

The Council also considered the question of how the peremptory challenge law was operating. Judge Fitzgerald stated that he did not believe most attorneys were abusing the law although peremptory challenges cause some problems in calendaring cases. The Council determined to make no recommendation with respect to the peremptory challenge law.

The Council received a report from Mr. Victor Carlson, Public Defender, who appeared at the meeting. He also presented the Council with his 1970-71 budget. Following his report the Council voted to recommend to the legislature that the Public Defender Agency's budget be adequately funded.

Again the Council considered the question of judicial salaries. Mr. Reynolds, secretary to the Council, reported that the Chief Justice had expressed by telephone his wish that judicial salaries be equated with those paid in the federal court system. Mr. Reynolds reported that in 1969 the Council had recommended that the existing federal scale be applied. However, in the interim there had been a salary increase in the federal judiciary. It was noted by Justice Dimond that although the legislature and other state employees had received salary increases in the past legislature of from 12 to 14 percent the judiciary received an average increase of about 4 percent. The Council voted to recommend to the legislature that the salaries of Supreme Court and Superior Court judges be equated with the Federal Circuit Court of Appeals and U. S. District Courts respectively, and that State District Court judge salaries be raised a commensurate percentage. The Council also discussed the need for a permanent salary commission to make studies and recommendations for salary increases in proportion to the cost of living and other factors. The Council, following the discussion of District Court vacancies in Sitka, Wrangell, Kodiak and Anchorage, voted to circularize

to fill these positions. The Council discussed improvements in the method of polling the Bar Association on judicial applicants.

The question of the need for expansion of the Anchorage Court facility was considered together with the action taken by the legislature in this regard during the 1969 session. Although bonds had been provided, they apparently were not saleable at the six percent interest rate. In view of the seriousness of the situation, Justice Dimond proposed, and the Council passed, a resolution to the Governor to appraise him of the situation and urge him to take all necessary action to expedite the Anchorage expansion. In the resolution the Council pointed out that if the new facility was not available in eighteen months, minimum necessary standards for the administration of justice could not be met.

The Council determined that public hearings should be conducted in Fairbanks, Anchorage and Juneau prior to the 1970 legislative session. The topics stated in the notice of hearing would include, adequacy of court facilities and services, use and selection of judges, delays in the judicial process, and other areas affecting the administration of justice. Hearings were scheduled for Fairbanks January 5, 1970, Anchorage January 6, 1970, and Juneau January 8, 1970.

The Council voted to recommend to the legislature that coroner-public administrator positions in the Court System budget be approved. The Council also voted to endorse

micro-filming program contained in the fiscal 1969-70 budget. The Council then discussed the serious difficulties that the Court System had in obtaining appropriate classification for its personnel by Department of Administration. Justice Dimond reported that there were apparent inequities in the classifications existing in the judicial branch and the Council voted to authorize the administrative director to expend up to $5,000 of the Council's funds to obtain an independent study of Court System personnel classifications and salaries. The Council discussed the fiscal year 1970-71 Alaska Court System budget emphasizing the need for adequate budgeting for the judicial system. It also considered the Judicial Council's budget and voted that the consideration of that budget was a matter within the sole authority of the Council although the mechancis of preparation and accounting procedures would remain within the Court System. The Council then voted to approve its budget in the amount of $8,000 for travel and per diem and $20,000 for studies during the fiscal year 1970-71. A committee was appointed to meet with the Governor prior to the coming legislature to discuss matters pertaining to the recommendations of the Judicial Council.

January 5, 6 & 8, 1970 - Fairbanks, Anchorage & Juneau

The January 5, 6 & 8th meetings were held respectively in Fairbanks, Anchorage and Juneau. These meetings were for the purpose of holding public hearings regarding the

administration of justice in the State of Alaska. In attendance at the Fairbanks meeting as members of the Council were Michael Stepovich, law member of Fairbanks; Frank Doogan, law member of Juneau; Lester W. Miller, law member of Anchorage; V. Paul Gavora, lay member of Fairbanks; and Peter Meland, lay member of Sitka. Testimony was taken regarding a wide range of matters relating to the administration of justice and the testimony was recorded and a transcript subsequently prepared. The Anchorage meeting was held on January 6, 1970 and all members were present except Chief Justice Nesbett who was still recuperating from injuries suffered in an aircraft accident. The Council then met on January 8, 1970 in Juneau with all members in attendance except Chief Justice Nesbett and Lester Miller, law member of Anchorage. The entire proceedings were transcribed.

While in Juneau the Council held a business meeting at which it determined to recommend to the legislature that the office of the Chief Justice of the Supreme Court be rotated among the five justices once every three years.

The Council also discussed the presentation of its legislative program to the legislature and the individual Council members were assigned to present each aspect of the program.

January 29, 1970 - Juneau, Alaska

The January 29th meeting was held in Juneau for

the purpose of presenting the Judicial Council's 1970 legislative program to the Senate and House Finance and Judiciary Committees. All members of the Council were in attendance except Mr. Ken Brady, lay member of Anchorage, who was outside the State and Chief Justice Nesbett who was undergoing medical treatment in California. Justice John H. Dimond of the Alaska Supreme Court also attended. The Council met with the Senate and House Finance and Judiciary Committees. Senators Vance Phillips, Lewis, Blodgett, Rader, Miller, Koslosky, Bradshaw, Haggland and Merdes were present as were House members E. Miller, Metcalf, Fink, Croft, Cornelius, Banfield, Ray and Kay. Members of the Council presented each topic in the legislative program. At this meeting Senator Vance Phillips stated his disapproval of the request for increased judicial salaries. Following the meeting with the legislators the Council held a regular business meeting in which it endorsed in principle raising the monetary jurisdiction of the District Court from $3,000 to $7,500, providing that the jurisdiction should be concurrent with that the Superior Court.

The Secretary to the Council reported that the personnel study had not yet been undertaken as authorized because the Division of Personnel was conducting a study which should be completed first.

April 30, 1970 - Anchorage, Alaska

The principal purpose of the April 30th meeting was

to nominate to the Governor candidates to fill the positions of Chief Justice of the Supreme Court of the State of Alaska. All members of the Council were present. On April 1, 1970 Chief Justice Buell A. Nesbett had retired and the chairmanship of the Council was vacant.

Mr. Robert Erwin, of Anchorage and Chairman of the Alaska Bar Association's legislative liaison committee reported on the progress of the Judicial Council's legislative program. He reported that most of the program had been considered by the legislature with the main problem occurring with respect to the increase in salaries and Salary Commission bill. He reported that the House had passed a bill providing for increased judicial salaries and hoped that it would pass the legislature. He reported that there were two bills for consideration relating to rotation of the office of Chief Justice. The bond bill had passed both Houses raising the ASHA bond interest rate to seven percent which would hopefully assure additional Anchorage court facilities. He reported that the Bar Association was supporting an increase in the District Court salary to $25,000. A general discussion ensued wherein Mr. Erwin answered specific questions regarding the progress of the Council's legislative program.

The Council was advised that there had been favorable comment within the legislature regarding the public hearings held in January. Also, at least one change in the Court System had evolved as a result of the hearings with respect to

the holding of arraignments in District Court in Fairbanks. It was determined that a representative body of the Judicial Council have public hearings in Sitka, Juneau, Kenai and Kodiak prior to recommending locations for new Superior Court judgeships. The Council discussed at length the general subject of public hearings. The Secretary reported that the Council had expended all of its travel and per diem funds. Funds were available, however, from the study funds in the Council budget.

The Council then considered the applicants for the position of Chief Justice. Each of the applicants appeared before the Council and the Council made two nominations to the Governor.

June 18, 1970 - Anchorage, Alaska

The June 18th meeting was attended by all members of the Council and presided over by Chief Justice George F. Boney, the new Chairman. Chief Justice Boney advised the Council that judicial salaries had been raised to $36,000 for Supreme Court Justices, $33,000 for Superior Court Judges and $25,000 for District Court Judges. He also advised that the trial court administrator had been funded. He stated that he would propose a central filing system for public records to be placed on micro-film.

Mr. Harold Toby, District Attorney for Anchorage appeared and commented upon Grand Jury reports recently hand-

ed down which were critical of the administration of criminal justice. He reported that the Grand Jury generally wished to express displeasure regarding sentencing and bail in criminal cases. He responded to questions from the Council regarding these matters. Mr. Tobey stated that the Grand Jury was concerned about cases where persons found guilty of aggravated crimes receive suspended sentences. The Council also heard Judge James M. Fitzgerald, presiding judge, Third Judicial District, with repsect to the Grand Jury reports. He stated that a great number of sentences imposed by the Superior Court were imposed upon the recommendation of the District Attorney's office following a plea negotiation. With respect to bail Judge Fitzgerald pointed out that in 1969 out of 435 cases filed in the Superior Court a bail forfeiture occurred in only eight. He stated that it appeared to him that if the purpose of the bail system was to guarantee appearance at trial, it was working. He said that he felt that the answer to the bail problem was not preventive detention, but rather bringing defendants quickly to trial. He responded to questions from the Council on these matters. The Council discussed at length the questions raised by the Grand Jury report and by the presentations of Judge Fitzgerald and Mr. Tobey. Council then determined to call the foreman in the Grand Jury and permit him to appear to discuss these questions. Mr. Johnson appeared from the Grand Jury. He reported that one matter, among others, that had concerned the Grand Jury was the number

of persons whose names came before the Grand Jury who had prior records. The Council then interviewed applicants for the position of Associate Justice of the Supreme Court, which had been vacated upon the appointment of Justice Boney as Chief Justice, and made nominations to the Governor.

June 19 and 20, 1970 - Kodiak, Kenai, Alaska

On June 19, 1970 the Council held public hearings at Kodiak, Alaska. Present were Chief Justice George Boney, Chairman; Frank Doogan, Juneau law member; Michael Stepovich, Fairbanks law member; Paul Gavora, Fairbanks lay member; Peter Meland, Sitka lay member; and Lester W. Miller, Anchorage law member. On June 20th, the hearings were continued in Kenai. A number of residents and local lawyers appeared to advise the Council of the need for a Superior Court judge in those communities. The residents also pointed out the scarcity in State Troopers for local law enforcement. Following the hearing in Kenai the Council held a brief business meeting at which it voted to solicit candidates for vacant District and Superior Court judgeships. It also determined its itinerary for public hearings to be held in Southeastern Alaska in July.

July 14, 15 & 16, 1970 - Southeastern Alaska

On July 14th, 15th and 16th the Council met in Sitka, Juneau and Ketchikan for the purpose of conducting public

hearings. Present on the Council were Chief Justice George Boney, Chairman; Frank M. Doogan, Juneau law member; Peter Meland, Sitka lay member; Lester W. Miller, Anchorage law member; and Ken Brady, Anchorage lay member. Mr. Gavora of Fairbanks joined the hearings later that day and Mr. Stepovich, law member of Fairbanks, was involved in a trial and unable to attend. The purpose of the hearing was to gather facts helpful to the administration of justice and improvement of the Court System.

September 16 - 19, 1970 - Anchorage, Fairbanks and Nome, Alaska

At the Council meeting in Anchorage on September 16, 1970 the Council interviewed applicants for Superior Court judgeships. All members were present. The Council moved to Fairbanks on September 17, and continued the interviews. On September 19, the Council conducted public hearings in Nome and concluded the interviews of Superior Court applicants. While in Nome, the Council voted to recommend that the new Superior Court judgeships be located as follows: Third Judicial District, one each in Kenai, Kodiak and Anchorage; First Judicial District, Sitka. The Council also elected Theodore R. Dunn as executive secretary to the Council.

October 23, 1970 - Anchorage, Alaska

All members were present at the October 23rd meeting except Mr. Meland, lay member of Sitka. The Council

discussed its proposed budget in a total amount of $55,220 and voted to approve it as to amount. The fiscal year 1971-72 budget contained allowances for an executive secretary and a part-time clerk-stenographer. These additions were necessary in order to insure the independence of the Council and continuity in its activities as well as to give the public a day-to-day point of contact with the Council. The Council also considered the problems that would occur in Valdez relating to the administration of justice when population increased as a result of pipeline work. It then voted to recommend that a District judgeship be created in Valdez when needed.

The Council also made plans for a seminar on bush justice to be held at Alyeska on December 8, 9 and 10, 1970. Several nation-wide organizations were to participate and the Council voted to sponsor the program as a preliminary program on bush justice.

The Council then determined to conduct personal interviews of applicants for District Court appointments. It was also determined that Superior Court candidates who had been interviewed at the last meeting and who were unsuccessful could be considered for a District Court appointment if they so wished. The executive secretary was directed to notify the unsuccessful Superior Court candidates as soon as appointments were made for those positions.

The Council then discussed those conditions which it had observed in Nome for the detention of juvenile offenders. These facilities were deemed woefully inadequate and the Council directed that a letter be written to the Department of Health and Welfare advising that agency of the problem.

November 9, 1970 - Anchorage, Alaska

The November 9th meeting was called principally to interview and nominate candidates for District Court judgeships in Kodiak, Sitka, Wrangell, Anchorage and Barrow. All members of the Council were present. The applicants appeared and were interviewed. Following the discussion of the qualifications of these applicants nominations were made to the Governor.

Judge Thomas Stewart, presiding judge of the Superior Court, First Judicial District, appeared before the Council and advised it of the desperate need for a new court facility in Juneau and the Council discussed this matter with him..

November 28, 1970 - Anchorage, Alaska

All members of the Council were present at the November 28, 1970 meeting except Mr. Stepovich who had been called out of the State on an emergency matter. The Council interviewed candidates for the position of Public Defender which had been vacated following the appointment of Victor Carlson as Superior Court Judge in the First Judicial District.

The Council nominated to the Governor for appointment two of the applicants.

The Council then considered at length the need for a separate courthouse facility in Juneau. The Chief Justice reported that approximately 55,000 square feet of space was needed. The Council then voted to recommend to the legislature that monies be authorized and appropriated for site acquisition and pre-construction planning for a separate court facility in Juneau. The Council also voted to recommend to the legislature that salaries of Alaska judges be equated with those paid the federal judiciary and that a salary commission be established to maintain equality of salaries.

Also, the Council considered the advisability of increasing the jurisdiction of District Judges. The Chief Justice pointed out the need of making the courts available to more people and expanding the quality of judicial services throughout the State. It was also believed that the increased jurisdiction would relieve the Superior Court calendar. The Council then voted to recommend to the legislature that jurisdiction of the District Courts be increased to $10,000 to include equity jurisdiction in lien foreclosure matters involving up to $10,000.

The Council then discussed problems of criminal law enforcement. Some members expressed concern that the relationship between the State Troopers and the Attorney General's office was not as it should be. It was hoped that new per-

sonnel with the incoming administration would help resolve the problem.

The Council then took note that this was the last meeting to be attended by Mr. Meland, lay member of Sitka, and unanimously voted to commend him for outstanding service as a member of the Council since his appointment in 1966.

III.

SELECTION OF JUDGES

I. Supreme Court Justices

On April 1, 1970 Chief Justice Buell A. Nesbett retired following a lengthy convalescence from injuries suffered in an aircraft accident the previous year. Notice of the vacancy was given to members of the Alaska Bar Association and applicants were received by the Council for nominations to fill the vacancy. At its April 30, 1970 meeting the Council interviewed those persons who had applied for Chief Justice of the Alaska Supreme Court. These applicants were: Justices George F. Boney and John H. Dimond of the Supreme Court and Superior Court Judge C. J. Occhipinti. The Council nominated Justices Dimond and Boney for the position of Chief Justice. Governor Keith Miller subsequently appointed Justice George F. Boney as Chief Justice.

Shortly thereafter notice was given that applications would be accepted for the Associate Justice position vacated by Justice Boney. A Bar poll was conducted and on June 18, 1970 the Council interview applicants. Those applicants were: Superior Court Judge William H. Sanders of Nome, Superior Court Judge C. J. Occhipinti of Anchorage, Superior Court Judge Eben H. Lewis of Anchorage, Robert C. Erwin of Anchorage, L. S. Kurtz, Jr. of Anchorage, and Robert A. Parrish of Fairbanks. At the conclusion of its meeting the Council nominated Robert C. Erwin, L. S. Kurtz, Jr., Superior Court Judge Eben

H. Lewis, and Robert A. Parrish for the position of Associate Justice. The Governor subsequently appointed to that position Robert C. Erwin.

II. Superior Court Judges

The 1970 legislature voted to add one Superior Court Judge in the First Judicial District, three Superior Court Judges in the Third Judicial District and one Superior Court Judge in the Fourth Judicial District.

The Judicial Council solicited applications for these new judgeships and the Bar Association conducted a poll of its membership. On September 16, 1970 the Judicial Council interviewed the applicants. Prior to conducting its interviews the Council determined that the new First Judicial District judge would be assigned to Sitka and in the Third Judicial District one judge would be assigned to Anchorage, one to Kodiak and one to Kenai. The new Fourth Judicial District judge would be in Fairbanks. The applicants in the Third Judicial District were asked to state the locations within that District for which they wished to apply. The following applicants were interviewed for the position and the location stated.

S. J. Buckalew, Jr.	Anchorage, Kenai, Fairbanks
Edmond Burke	Sitka, Anchorage, Kenai, Kodiak
Victor Carlson	Sitka, Anchorage, Kenai, Kodiak Fairbanks
Warren Christianson	Sitka
Hugh Connelly	Fairbanks
M. Ashley Dickerson	Sitka, Anchorage, Kenai, Kodiak, Fairbanks
Wm. Erwin	Anchorage, Kenai
Marvin Frankel	Anchorage
Dorothy Hawes Haaland	Anchorage

Robert E. Hammond	Anchorage, Kenai
James Hanson	Sitka, Kenai, Anchorage
Peter J. Kalamarides	Anchorage
Henry Keene, Jr.	Sitka
Denis Lazarus	Anchorage, Kenai, Kodiak
Roy Madsen	Kodiak
James Merbs	Anchorage
Mary Alice Miller	Fairbanks
James Nordale	Sitka, Anchorage, Kenai, Kodiak Fairbanks
Robert Opland	Anchorage
David Pree	Anchorage, Kenai, Kodiak
Ernest Rehbock	Anchorage
Wm. Sanders	Anchorage, Kenai, Kodiak, Fairbanks
Thomas Schultz	Sitka, Anchorage, Kenai, Kodiak, Fairbanks
Sylvia Short	Anchorage, Kenai, Kodiak
J. H. Shortell	Sitka, Anchorage, Kenai, Kodiak, Fairbanks
James Singleton	Sitka, Anchorage, Kenai, Kodiak, Fairbanks
Gerald Van Hoomissen	Fairbanks
Benjamin Walters	Sitka, Anchorage, Kenai, Kodiak

Following the interviews the Council nominated the following persons:

Sitka	James Hanson, Thomas Schultz James Singleton, Edmond Burke, Victor Carlson
Anchorage	S. J. Buckalew, Edmond Burke, Wm. Erwin, Peter J. Kalamarides, Ropert Opland, James Hanson, Victor Carlson, James Singleton, Thomas Schultz
Kenai	S. J. Buckalew, Edmond Burke, William Erwin, James Singleton, James Hanson, Victor Carlson, William Sanders, Thomas Schultz
Kodiak	Edmond Burke, Roy Madsen, James Singleton, J. H. Shortell, Victor Carlson, Wm. Sanders, Thomas Schultz

Fairbanks — Victor Carlson, Gerald Van Hoomissen, Mary Allice Miller, S. J. Buckalew, James Singleton

Governor Miller made the following appointments: First Judicial District at Sitka, Victor Carlson; Third Judicial District at Anchorage, James Singleton; at Kodiak, Edmond Burke; at Kenai, James Hanson; Fourth Judicial District at Fairbanks, Gerald Van Hoomissen.

III. District Court Judges

During the years 1969 and 1970 several of the positions of District Court judges were being held on an interim basis and others became vacant. As a result, the Judicial Council gave notice of accepting applications for a District Court judgeship in each of the following locations: Kodiak, Sitka, Wrangell, Anchorage and Barrow. At its meeting on November 9, 1970 the Council interviewed applicants for those positions. These applicants were Hal Horton of Fairbanks (Kodiak, Sitka, Wrangell, Anchorage); Roger DuBrock of Sitka (Sitka, Kodiak and Wrangell); Harris Bullerwell of Wrangell (Wrangell, Sitka); Edith Glennon of Kodiak (Kodiak, Wrangell, Sitka, Anchorage and Barrow); Louis Agi of Anchorage, (Anchorage, Kodiak); John Mason of Anchorage, (Anchorage, Kodiak, Sitka, Wrangell); Thomas Payne of Anchorage (Anchorage, Kodiak, Sitka, Wrangell, Barrow); William Tull of Anchorage (Anchorage); Virgil Vochoska of Anchorage (Anchorage); L. Eugene Williams of Anchorage (Anchorage). Following the

interviews and consideration of the Bar poll which had been taken on these applicants the following nominations were made to the Governor:

First Judicial District - Sitka	Harris R. Bullerwell Roger W. DuBrock Hal R. Horton Thomas B. Payne
First Judicial District - Wrangell	Harris R. Bullerwell Roger W. DuBrock Hal R. Horton
Third Judicial District - Kodiak	Roger W. DuBrock Hal R. Horton Thomas B. Payne
Third Judicial District - Anchorage	Hal R. Horton John D. Mason Virgil D. Vochoska L. Eugene Williams

Governor Miller subsequently made the following appointments:

Roger W. DuBrock	First Judicial District - Sitka
Harris R. Bullerwell	First Judicial District - Wrangell
Hal R. Horton	Third Judicial District - Kodiak
John D. Mason	Third Judicial District - Anchorage

It had been determined following the interviews of all candidates by the Council that it would not submit nominations to fill the post at Barrow.

IV. Public Defender

The 1969 legislature established the Public Defender Agency. SLA 1969, Chapter 109. The legislation provided that the Governor appoint the Public Defender from among two or more persons nominated for that position from the Judicial Council. On June 20, 1969 the Council interviewed applicants for the position of Public Defender. The Bar Association had previously conducted a poll of the qualifications of the

applicants which was made available to the Judicial Council. Those applicants were: Victor D. Carlson of Anchorage; Charles K. Cranston of Juneau; Stanley Ditus, formerly of Anchorage; Marvin S. Frankel of Anchorage; Johnston Jeffries of Soldotna; Irvin Raven of Fairbanks; Warren A. Taylor of Fairbanks; Harold W. Tobey of Anchorage; and Benjamin O. Walters, Jr. of Anchorage. Following the interviews the Council nominated to the Governor Victor D. Carlson, Marvin S. Frankel and Harold W. Tobey. Subsequently, the Governor appointed Victor D. Carlson.

In November of 1970, Victor Carlson was appointed Superior Court Judge, First Judicial District. Applications were solicited by the Judicial Council to fill the vacancy in the office of Public Defender and a poll of the applicants' qualifications was conducted by the Bar Association. On November 28th the Judicial Council interviewed the candidates for Public Defender, who were: Herbert Soll of Anchorage, Richard Madsen of Fairbanks, and Stanley Ditus, presently residing outside the State of Alaska. The Council nominated to the Governor for appointment Herbert Soll and Richard Madsen. Governor Egan appointed Herbert Soll as Public Defender following his assumption of the office of Governor in December, 1970.

IV.

STUDIES, HEARINGS AND PROGRAMS

In order to determine what recommendations it should make to the legislature and the Supreme Court the Judicial Council is required to conduct studies for the purpose of determining the problems which exist in the administration of justice and arriving at solutions to these problems. Not all of the studies conducted result in specific proposals to the various branches of government, however, each broadens the knowledge of the Council and its ability to deal with related problems.

A. Public Hearings and Conferences 1969-70

February 19, 1969 - Juneau, Alaska — Alaska Judicial Council Statewide Committee on Sentencing and Appellate Review of Sentences

In December, 1968 at Sitka, a committee appointed by the Chief Justice under the auspices of the Judicial Council met to consider sentencing and appellate review of sentences. The committee was reconvened in February, 1969 at Juneau, The committee was composed of more than fifty persons from various backgrounds and interests, most of whom, of course, were not members of the Council. At the Juneau meeting reports of subcommittees were presented. The Statewide Committee then adopted the subcommittee report on appellate review of sentences and recommended it to the Alaska Judicial Council which in turn recommended that the proposals contained in that

report be adopted by the legislature. As a result, the 1969 legislature enacted SLA 1969, Chapter 117 which provided for appellate review of criminal sentences along the lines recommended.

January 5, 6, 8, 1970 - Fairbanks, Anchorage, Juneau

Public Hearings on Improvement of the Administration of Justice

In early January, 1970 the Council held public meetings in Fairbanks, Anchorage and Juneau wherein testimony was heard from all interested persons relating to recommendations for the improvement in the administration of justice in the State of Alaska. The first in this series of public hearings was held in Fairbanks. The two Superior Court Judges from Fairbanks testified regarding judicial salaries and retirement and the need for an additional Superior Court Judge. Also testifying were persons from the Alaska State Troopers and the general public. The testimony covered a wide range of subjects. The Council then moved to Anchorage where testimony was taken from over twenty-five persons including Superior Court Judges, District Court Judges, attorneys, public officials (including representatives of law enforcement agencies) and other interested individuals. Judge Butcher of the Family Court, Third Judicial District, presented testimony relating to problems in Family Court matters, particularly in the handling of juvenile offenders. Judge Fitzgerald, the Presiding Judge

of the Superior Court, Third Judicial District, presented a report of the case load of the Superior Court in that District. He recommended increasing the jurisdiction of the District Court in order to relieve this case load. He also stated that the Superior Court was encountering a space problem in its existing facility. Testimony was also presented on the case load of the District Court. Attorneys and judges presented testimony regarding the need for increased judicial salaries and more liberal per diem allowances for officers of the judiciary when traveling. The Council then moved on to Juneau. In Juneau the presiding Superior Court and District judges testified in the morning followed by six members of the public in the afternoon. Testimony covered a broad range including judicial salaries and the inadequacy of the Juneau court facilities.

June 19 and 20, 1970 - Kodiak, Kenai — Public Hearings on Improvement of the Administration of Justice

These hearings were held to inquire into specific problems in the administration of justice in Kenai and Kodiak. Much of the testimony in both locations related to the need for a Superior Court Judge to serve these communities. Additionally, in Kodiak there was extensive testimony relating to the need for improved criminal law enforcement both by providing additional State Police officers and improving enforcement facilities. Similar testimony was presented in Kenai. In both

communities local members of the Bar testified as well as public officals and other persons. Persons of both communities expressed concern over the delay in obtaining judicial services and testimony was presented to the effect that a more readily available Superior Court judge would increase the lawyer population and provide better judicial services for the residents.

July 14 - 16, 1970 - Southeastern Alaska — Public Hearings on Improvements of the Administration of Justice

On July 14, 15 and 16, 1970 the Council held hearings in Sitka, Juneau and Ketchikan respectively. In each community testimony was given by members of the general public, public officials and members of the Bar including judges. In Sitka considerable testimony was presented relating to the need for a Superior Court judge. Residents testified with regard to the problems involved in litigating matters within the jurisdiction of the Superior Court when no judge was available in the community. In Juneau testimony was similarly presented on the need for an additional Superior Court judge. Also considerable concern was expressed regarding the inadequacy of Court facilities in Juneau.

The Ketchikan hearings also related to the inadequacy of Court facilities in that community. Superior Court Judge Hubert Gilbert presented a statement expressing his concern

for the need for more adequate facilities for the detention of juvenile offenders and their rehabilitation.

September 19, 1970 - Nome, Alaska — Public Hearings on Improvement of the Administration of Justice

The public hearings in Nome, while of a general nature, focused upon the problems of administration of justice in bush areas. Local Superior Court and District Court judges testified, as well as attorneys and law enforcement officials, on these problems. Also it was pointed out that judicial facilities in Nome were not adequate. While in Nome the Council personally inspected the Beltz School and juvenile detention facilities. The detention facilities were found to be woefully inadequate by the Council.

December 8-11, 1970 - Mt. Alyeska, Alaska — Alaska Bush Justice Conference

On December 8 to December 11, 1970, the Alaska Judicial Council sponsored a Bush Justice Conference which was held at Mt. Alyeska, Girdwood, Alaska. The purpose of this conference was to assemble in one place a number of individuals who possess different talents and experiences in an endeavor to formulate specific problems with recommended solutions. Distinguished members of the bench and bar, members of State agencies, university professors, recognized native leaders, law enforcement officials and a number of individuals in related

fields used both their knowledge and experience to narrowly define the problems that presently exist in the bush areas of Alaska. Having pinpointed the problem areas, specific recommendations were forthcoming for action by the judiciary, the legislature and the executive branch of Government.

The Chief Justice gave the opening conference address. This first day of the conference was construed as a problems day. Emphasis was placed upon pinpointing problem areas in the Alaskan villages rather than making specific recommendations for change. Various speakers presented their views as to what problems existed in the bush areas. These speakers included such persons as Nora Guinn, District Court Judge for Bethel, Alaska; Arthur Hippler, Professor at the University of Alaska; Captain William Nix of the Alaska State Troopers; Sadie Neakok, Magistrate for Barrow, Alaska; Elias Joseph, President of the Village Council for Alakanuk, Alaska; and Professor Douglas Schmeiser from the University of Saskatchewan, Saskatoon.

The second day of the conference focused on formal presentations by selected individuals heading speaker groups. Four groups of keynote speakers and team members presented to four different groups of conferees a one and a half hour presentation on four different general topics. In this manner, all of the conferees were able to hear all of the general topic areas presented to them on the second day. These topics included such areas as the sociological, cultural and political

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video taping of the program included the first day of speakers and a full day of coverage which included four different presentations by the speaker teams. All of the formal presentations by the speaker teams were recorded on the soundscriber. Also, on the last afternoon the general conference meeting which voted on the final resolutions was recorded on video tape. In addition to the formal presentations which were made to all of the conferees, each individual conferee was presented with a booklet which gave the agenda for the conference and also included selected writings which focused upon problems in the bush areas. Such writings included a work by Professor Douglas Schmeiser on "Indians, Eskimos and the Law", which gave a detailed analysis of the legal experience with the natives in Canada, particularly in the Yukon territory. Other articles included, "The Public Offender in Alaska, a Survey of Inmates Incarcerated under Alaskan Statutes", which was prepared by the Statewide Planning Project for Vocational Rehabilitation Services. Other miscellaneous articles which dealt in one way or another with problems in the bush areas and problems with the natives were included with this booklet for the edification of the conferees.

Funding for the Bush Justice Conference came from three sources; members of the State agencies participating in the planning and presentation of the conference provided matching funds by way of their salary costs and transportation costs which were matched by Federal funds from the Law Enforce-

ment Assistance Administration, and Alaska Legal Services contributed $500. A special action grant from the Criminal Planning Agency in Juneau in the amount of some $13,000 was made available to defray the expenses of the conference, including transportation, meals and lodging.

After the final resolutions were voted on by the conferees, they were submitted to the Office of the Administrative Director of the Alaska Court System for final stylistic changes. When the changes were affected, the resolutions were formally presented to the Chief Justice as Chairman of the Alaska Judicial Council. These resolutions are found in Appendix A.

B. Judicial Council Programs - 1971-72

In the next two years the Judicial Council plans to conduct studies with regard to the following subjects. These studies will include public hearings, seminars and studies to be conducted by the staff of the Judicial Council and other agencies.

1. Magistrate Training and Bush Justice in Practical Application

The December, 1970 Seminar on Bush Justice concerned these subjects. This Seminar, however, was preliminary only and served the purpose of defining specific problem areas. Future studies in depth are needed.

2. Correlation of Crime, Punishment, Rehabilitation and Protection of the Public

Throughout its hearings in 1969 and 1970, comment

was received by the Council regarding problems in criminal law enforcement particularly with regard to rehabilitation and punishment following conviction. A Grand Jury report in Anchorage in 1970 was critical of the judiciary in these respects. In view of public concern, and the very real need for improvement in these matters, the Council feels it is urgent that studies be conducted.

3. Law Enforcement Assistance Administration and Ford Foundation Funds through Grants for Alaska

In the summer of 1970 the Chief Justice and Mr. Lester Miller, law member of Anchorage, together with the Administrative Director of the Alaska Court System consulted in Washington, D. C. with various agencies and private foundations which have funds available for improvement in the administration of justice by the State. Two such agencies are the Law Enforcement Assistance Administration and the Ford Foundation. The Council is studying how these funds can be obtained and the uses to which such funds can best be put.

4. Problems Relating to Crime in the Bush

Crime in the bush in Alaska presents unique problems due to the lack of law enforcement officers, the remoteness of courts, and the nature of the crimes which generally occur. These questions were considered at the Alaska Bush Justice Seminar and further study is required. Considerable comment on problems in this regard was received by the Council at its Nome hearings.

5. Management and Custody of Juveniles Prior to Hearing and Custody Designation after Hearing

During its Nome hearings the Council visited juvenile detention facilities in Nome and found them completely inadequate. During its Southeastern hearings in the summer of 1970 the Council heard testimony regarding the need for improved facilities in that area. Because of the need to insure that juvenile offenders are treated fairly and rehabilitated at the earliest possible time the Council believes this to be a particularly urgent study area.

6. Study of Improved Methods of Recording Land Transactions and Care of Land Records

The State of Alaska has no central office for the maintenance of land records. Some of the outlying areas have extremely poor recording facilities. The Council believes that orderly population and industrial growth in Alaska is reliant upon safe and adequate land records. Improvements in this area are needed.

7. Security of Courtrooms, Judicial Officers and Witnesses

Although this problem is not as acute in Alaska as in other states, the Council believes it to be important that adequate measures be taken to insure the safety of Judicial officers and witnesses in order that the Judicial System be free from improper influence or disruption.

8. Improvement in Service of Process

Delay in service of process has been a continuing problem in the Alaska Court System. This is particularly true when process must be served in the outlying area and when an Injunction, Attachment or Writ of Execution is to be served.

9. Improvement in Court Calendaring

Problems in court calendaring result in delay and inefficiency in the judicial process. As the case load of the judges has increased the calendaring problem has become more complex. Improved calendaring is required to reduce delays in litigation.

V.

RECOMMENDATIONS FOR THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE DURING 1969 and 1970

A. Recommendations of the last Judicial Council Fifth Report 1967-68

1. Establishment of a Statewide Public Defender Program

This recommendation was acted upon by the legislature in 1969, which established the Public Defender Agency for the State of Alaska. SLA 1969, Chapter 109.

2. Establishment of a Coroner-Public Administrator

In its last report the Council urged that District judges be relieved of statutory duties as coroners and administrators of the property of deceased persons because these non-judicial duties were interfering with the judge's performance of his judicial duties. In 1970 the legislature enacted a Public Administrator Act authorizing the presiding judge of the District Court in each Judicial District, when authorized by the Supreme Court, to appoint a person to act as Public Administrator and as Coroner. SLA 1970, Chapter 216. This statute was substantially along the lines recommended by the Council.

3. Judicial Salaries

In its Fifth Report the Council recommended that salaries for Justices and Judges of the Supreme and Superior Courts be equated with those paid to judges of the Circuit Court of Appeals and United States District Courts respec-

tively and that Alaska District judges' salaries be set at a rate comparable to that of U. S. Magistrates. This recommendation was not followed by the legislature. However, the 1969 and 1970 legislatures made progressive increases in the salaries to the point that Supreme Court justices are now paid $36,000 annually, Superior Court judges $33,000 and District Court judges $25,000. SLA 1969, Chapter 101 and SLA 1970, Chapter 193. These salaries are still not comparable to those paid in the Federal Court System and the Council believes them inadequate. The Council, in this report, makes additional recommendations regarding judicial salaries.

4. Micro-filming of Public Records

The Alaska Court System budgeted funds in its 1970-71 budget for micro-filming of public records generally along the lines recommended in the Fifth Report of the Judicial Council. This budget was approved and the program is being implemented.

B. Additional Recommendations made during 1969-70

1. Appellate Review of Sentences

The Council recommended that the 1969 legislature adopt the proposals of the Statewide Committee on Sentencing and Appellate Review relating to Appellate Review of Criminal Sentences. In SLA 1969, Chapter 117 these recommendations were substantially enacted by the legislature.

2. Establishment of Judicial Salary Commission

In its 1970 legislative program the Judicial Council recommended in addition to an increase in judicial salaries that a salary commission to activated for continuing review of judicial salaries. This legislation was not enacted, but is contained in the current recommendations.

3. Rotation of the Office of Chief Justice

The Council also recommended to the 1970 legislature that the office of Chief Justice of the Supreme Court be rotated among the five Justices once each three years. The legislature voted that a Constitutional amendment providing for rotation of the office of Chief Justice be placed on the ballot at the next general election. In the August, 1970 elections this matter was voted favorably upon by the electorate and the Constitutional amendment adopted.

4. Increased District Court Jurisdiction

In its January 29, 1970 meeting the Council endorsed in principle pending legislation which would have increased the monetary jurisdiction of the State District Court to $7,500 to run concurrently with that of the Superior Court. This legislation was not enacted and a comparable recommendation is made with the current recommendations of the Council.

VI

CURRENT RECOMMENDATIONS

Pursuant to its constitutional directive, the Council makes the following recommendations for improvements in the administration of justice in the State of Alaska:

1. Increase in Civil Jurisdiction of District Courts.

The Council recommends that the legislature increase the monetary limitation on the jurisdiction of the District Courts of the State of Alaska from $3,000 to $10,000. The Council also recommends that the District Court jurisdiction be expanded to include equity jurisdiction in lien foreclosure matters where the amount in controversy is less than $10,000.

The Council believes that recent salary increases and changes in the qualifications required for a district judge have upgraded the quality of the court to the point where $10,000 jurisdiction is appropriate. It is believed that by so increasing the District Court jurisdiction, the case load of the Superior Court can be relieved. Also, an increase in District Court jurisdiction provides a more complete range of legal services in bush areas where Superior Courts are not readily available. Finally, such an increase in jurisdiction will make the court more attractive for future applicants for judgeship positions.

2. Juneau Court Facility. The Council recommends that monies be appropriated by the legislature for a preconstruction planning and site acquisition of a separate court facility in Juneau totaling not less than 75,000 square feet of office space.

The existing court facilities in Juneau are inadequate. Plans for the new State Office Building do not include space for the court facility. Therefore, the Judicial Council, working with the Juneau Bar Association, the court system and all interested state agencies, has conducted an inquiry to determine the total space requirements for a new court building. These requirements include those of the Supreme Court, Superior Court, District Court and Recording Office, Department of Health and Welfare, Department of Public Safety, Alaska Court System Administrative Offices and the news media.

Based upon the information received, the Council has made the foregoing recommendation. The Council believes that requirements for a new court facility in Juneau are urgent.

3. Judicial Salaries. The Council recommends that the salaries of judges in the Alaska Court System be equated to those paid the Federal Judiciary. The Council also recommends that a permanent salary commission be established to insure that judicial salaries in Alaska remain adequate.

The Judicial Council believes it to be of utmost importance that judicial salaries be such as to be attractive to experienced and well qualified lawyers so that the best available persons can serve as judges. To this end, the Council recommends that salaries of Justices of the Alaska Supreme Court be equated with those paid to the Judges of the

Unites States Court of Appeals, $42,500, and that Superior Court salaries be equated to those paid to United States District Judges, $40,000. Alaska District Judges should receive $30,000, as do Federal Magistrates. Moreover, because of continuing increases in the cost of living, it is important that these salaries be periodically reviewed. Therefore, the Council proposes a permanent salary commission to adjust judicial salaries subject to legislative veto.

4. Anchorage Court Facility. The Judicial Council is opposed to continuation of present plans for expansion of the existing Anchorage Court Building and recommends immediate appointment of a commission to explore the feasibility of constructing a judicial complex in Anchorage based upon a full consideration of long range needs.

The Council recognizes that there are present urgent space requirements for the Court System in Anchorage. However, the Council believes that the current, authorized expenditure of less than four million dollars is inadequate to properly provide for the long range needs of the Court System. These needs will be better and more efficiently served by an adequate appropriation based upon a thorough study of present and future requirements. The Council believes that to proceed with inadequate funds at present is to engage in a piecemeal approach to the immediate needs without fully considering the needs of the future.

APPENDIX A

BE IT RESOLVED THAT:

1. THE LOCUS OF DECISION-MAKING IN THE ADMINISTRATION OF JUSTICE IN VILLAGE ALASKA MUST MOVE CLOSER TO THE VILLAGE. TO ACHIEVE THIS RESULT THERE MUST BE GREATER NATIVE PARTICIPATION AT ALL LEVELS IN THE ADMINISTRATION OF JUSTICE.

a. There should be greater direct participation by Native citizens in the administration of justice at all levels, including their employment in policy-making positions in all agencies involved. Every agency should examine its qualifications requirements in order to revise them wherever they may arbitrarily exclude otherwise qualified Alaskan Natives. Examples include the height requirements for Alaska State Troopers, minor criminal records, formal education, etc.

b. Appointment of an Alaskan Native to membership on the Judicial Council and the Judicial Disqualification Commission is recommended.

c. The selection and removal of magistrates should be made more responsive to the desires of the communities served. Continuing critical evaluation of performance of duties by magistrates should be made. Consideration should be given to assigning principal responsibility for appointment and removal of magistrates to presiding district court judges.

d. The strengthening of village councils is central to the administration of justice in remote Alaska.

e. The Local Affairs Agency must be strengthened and upgraded to department level and its technical assistance functions fostered if there is to be successful administration of justice in the villages. Representatives of the Local Affairs Agency should visit villages to work with local officials. They should help the villages draft and revise ordinances, facilitate participation of villages in revenue-sharing programs, and improve law enforcement techniques.

2. THERE MUST BE A GREATER ACCESS TO LEGAL SERVICES AND THE PROCESS OF JUSTICE IN VILLAGE ALASKA.

a. The ordinary method of travel in the bush is by air. To meet the basic requirements of regular travel and to enable emergency service, State Troopers should be authorized to operate leased or state owned aircraft for their official duties and to aid officers of the court and associated agencies in the performance of their duties.

b. The Alaska Legislature should fund a program creating village constables in village Alaska to be chosen by village governing bodies to serve at their pleasure and to act as village law enforcement officers with the support of the Alaska State Troopers.

c. The travel budgets of the superior and district courts should be increased so that they may hold trials where the parties and witnesses live. When trials are elsewhere, but

witnesses live in the bush, the courts should use special masters to take evidence in the witnesses' villages. When actions are filed in places not accessible to defendants or their witnesses, changes of venue to the defendants' homes should be liberally allowed. These changes would facilitate more accurate factual determinations, avoid unfair default judgments, and provide education in judicial processes and substantive law in the bush.

d. The Supreme Court is encouraged to order at least an annual circuit court session of the superior court in the major community in each House election district.

e. The State Legislature should fund staff offices in Bethel and Nome for Alaska Legal Services Corporation and a Public Defender Agency office in Bethel as a step toward creation and support of rural principal judicial centers.

f. Techniques should be explored to encourage the private bar associations to provide better services in Alaska villages. As an example, group legal services experiments in other states should be studied. Public interest law firm efforts might also be encouraged.

g. Every village should have a detention facility and a juvenile detention facility separate from the detention facility and standards should be established for such facilities. These are needed to protect villages from dangerous persons without delay and without unduly long incar-

ceration because of transportation time.

h. Special emphasis must be given to the development of manpower capable of dealing effectively with the administration of justice in village Alaska, and to appropriate education for the affected public.

(1) The colleges and universities within the state should establish programs for the training and continuing education of magistrates, constables, paralegal and other associated personnel. Such programs should be developed and operated in cooperation with the Judicial Council, the Department of Public Safety, the Alaska Federation of Natives, and other appropriate agencies and organizations. Major emphasis should be placed on on-the-job training.

(2) The University of Alaska should establish an institute to train legal personnel in both rural and urban areas in Native culture and languages. Incentives should be provided for attendance at this institute.

(3) The Department of Education should develop curriculum concerning legal concepts, processes, rights and remedies for junior high school students throughout Alaska.

(4) The colleges and universities within the state should establish adult education programs concerning legal concepts, processes, rights and remedies for Alaskan villages. This program should include dissemination of printed materials in attractive format which explain the rights of individuals under the statutes and decisions.

(5) A program should be established for recruiting bi-lingual lawyers fluent in English and another recognized language common to a region of Alaska to serve in Alaskan public programs which relate to the administration of justice. Such a program would work through law school scholarships and financial grants equivalent to what bi-lingual college graduates might otherwise earn if they chose to work in other Alaskan community leadership or service positions.

(6) The colleges and universities within the state should be encouraged to establish a training and continuing education program for the development of paralegal personnel. Persons participating in and successfully completing such a program should be considered for certification to counsel persons within the limits of their training and expertise.

i. Greater understanding of and more information about all direct and related aspects of judicial administration are needed to provide a basis for policy making, for establishing appropriate administrative arrangements for training and education, and for improving other aspects of providing justice in rural areas. In particular, the cultural context and impact of judicial administration must be thoroughly understood by all involved in the system of bush justice. Toward these ends, the Judicial Council, the State Administration, the University of Alaska, and other appropriate organizations should initiate, sponsor and undertake programs of research concerning such areas as the character and processes of village law-making, judicial

administration, and law enforcement.

3. SOME MODIFICATIONS IN SUBSTANTIVE LAW ARE NECESSARY TO CORRECT INEQUITIES IN VILLAGE ALASKA. SUCH MODIFICATIONS RELATE TO THE ADMINISTRATION OF JUSTICE IN URBAN ALASKA AS WELL.

a. There should be a study of the program effectiveness of present correctional and dispositional alternatives in village Alaska. If particular techniques are inefficacious, they should no longer be employed.

b. Dispositional process alternatives prior to invocation of the criminal and juvenile process should be legitimated and encouraged. In the process, there should be guidance on what dispositional alternatives prior to invocation of the criminal process are appropriate.

c. Local alternatives for the control and rehabilitation of juveniles should be developed.

d. Review and changing of the laws concerning alcohol-related offenders throughout all areas of the state. This conference further recommends that training be given to all officers of the criminal justice system to recognize alcoholism as an illness and that this be done in conjunction with broad community education.

e. Waivers of rights to counsel, silence, trial by jury, trial by the district court, and other related rights, should be accepted by magistrates only after the most careful scrutiny

for voluntariness and understanding. Advice as to rights should be thorough and discursive and in the language primarily spoken by the defendant. Where an attorney or appropriate paraprofessional is available, his presence on behalf of the defendant should ordinarily be obtained.

f. It shall be a mitigating factor in sentencing, but not in the determination of guilt, that an act, violative of law, was committed pursuant to custom.

g. The courts and legislature should recognize customary adoptions should not involve lengthy court procedures but rather summary procedures.

h. Court arraignment procedures must include the advising of constitutional rights in a language understandable to the defendant. Boards of qualified interpretors should be established and funded and their services made available throughout the state for this purpose.

i. It is recommended that the boundaries and number of judicial districts be examined and changed where necessary to facilitate access to judicial services. The social and transportation patterns of the individuals to be served should be given prime consideration in the establishment of judicial districts. Example: Barrow should be part of the fourth judicial district and Bethel should be either part of the third judicial district or a new special Superior Court District should be created for Bethel.

j. The Alaska Administrative Procedures Act and the Alaska Administrative Code should be amended to:

(1) Require that hearings on administrative licenses, rules, and orders be held in the organized community or communities affected by the issuance of the license, rule or order.

(2) Extend the time allowed for administrative appeals from 30 days to 60 days.

(3) Require the posting of notice at the situs, the publication of notice in the newspaper published nearest the situs and public hearing be held at the situs or community nearest the situs prior to the granting of the application, the license or any interest in tidelands or property, in order to adequately protect rights or interests in these tidelands or property.

k. Civil Rule 53 should be interpreted and implemented to allow for the liberal appointment of special masters to take factual evidence in areas not frequently served by the superior court and where required for the ends of justice.

l. Changes in venue requirements should be as follows:

(1) For criminal actions, venue should be originally set in the election district in which the alleged crime was committed; for civil actions venue shall originally be set in the election district which has the most significant contacts with the transaction which is the subject of the action.

(2) AS 22.10.040 should be amended by deleting subsection (2) and enacting a new statute in the place of subsection (2) which reads:

A motion for change of venue shall be granted when required for the convenience of the witnesses and the ends of justice.

(This amendment will change the existing law which places a venue change for witness convenience and justice in the discretion of the superior court judge to a mandatory change requirement in this one instance.)

BE IT FURTHER RESOLVED THAT:

4. THE STATE SHOULD ENCOURAGE AND PROVIDE PLANNING ASSISTANCE IN THE ESTABLISHMENT OF COMMUNITY MENTAL HEALTH CENTERS IN THE REGIONAL SERVICE CENTERS OF THE STATE, SUCH AS BETHEL, NOME, KOTZEBUE, BARROW, FORT YUKON AND OTHERS. ALSO, THE COMMISSIONER OF THE DEPARTMENT OF HEALTH AND WELFARE SHOULD CONSULT WITH THE DIRECTOR OF MENTAL HEALTH AND THE SUPERINTENDENT OF THE ALASKA PSYCHIATRIC INSTITUTE TO PROVIDE RESIDENT QUARTERS FOR PERSONS REFERRED BY THE COURTS FROM RURAL AREAS FOR EVALUATION AND REFERRAL UNTIL SUCH TIME AS MENTAL HEALTH FACILITIES ARE AVAILABLE.

5. THE STATE DIRECTOR OF COMMUNICATIONS SHOULD COORDINATE PRESENT EXISTING RADIO COMMUNICATIONS NETS AND ESTABLISH OTHERS AS REQUIRED, WHEREBY ALL AREAS NOT HAVING ACCESS TO COMMUNICA-

TIONS MAY BE SERVED. THE CENTER OF EACH NET SHOULD BE LOCATED IN THE AREA OF EACH PRESIDING DISTRICT COURT JUDGE OF EACH JUDICIAL DISTRICT AND BE MADE AVAILABLE TO ALL AGENCIES AND PERSONS ASSOCIATED WITH THE JUSTICE SYSTEM ON A 24 HOUR PER DAY BASIS. IN CONJUNCTION WITH THE ABOVE, THE JUDICIAL COUNCIL OR OTHER APPROPRIATE AGENCIES SHOULD INTERVENE IN THE FCC DOCKET ON DOMESTIC SATELLITES TO URGE THE NEED IN VILLAGE ALASKA FOR IMPROVED COMMUNICATIONS IN THE ADMINISTRATION OF JUSTICE.

6. AS EACH COMMUNITY SHOULD HAVE BETTER CONTROL OF ITS AFFAIRS, LEGISLATION SHOULD BE ENACTED TO AUTHORIZE THE ISSUANCE OF PACKAGE AND BY-THE-DRINK LIQUOR LICENSES TO CORPORATIONS WHOLLY OWNED BY MUNICIPAL CORPORATIONS OR ORGANIZED COMMUNITIES.

7. THIS CONFERENCE RECOMMENDS THAT ANOTHER JUSTICE IN THE BUSH CONFERENCE BE HELD SOMEWHERE IN A RURAL COMMUNITY.

APPENDIX B

ALASKA JUDICIAL COUNCIL CURRENT MEMBERS

		Term of Office Expiration Date
V. Paul Gavora	Fairbanks	5/18/73
Michael A. Stepovich (attorney)	Fairbanks	2/4/76
Kenneth Brady	Anchorage	5/18/75
Lester W. Miller (attorney)	Anchorage	2/4/72
Frank M. Doogan (attorney)	Juneau	2/4/74
Chief Justice George F. Boney	Anchorage	5/8/73

FORMER MEMBERS:

William M. Whitehead, M.D.
Roy Walker
Raymond E. Plummer
Robert A. Parrish
Harold Butcher
Charles W. Kidd
H. Douglas Gray
William V. Boggess
John Cross
Ernest E. Bailey
Al Phelps
Thomas K. Downes
Jack Werner
Pete D. Meland
Former Chief Justice Buell A. Nesbett

ALASKA JUDICIAL COUNCIL
SIXTH REPORT
SUPPLEMENT

In response to inquiries and suggestions received from the Joint Senate and House Judiciary and Finance Committees, and to other matters which have come to the Council's attention during its Juneau session held on March 2 and 3, 1971, the Council submits the following supplementary report to be incorporated as a part of its Sixth Report.

1. Increase in Civil Jurisdiction of District Courts. In addition to the recommendations contained on page 47 of the Sixth Report relating to increased District Court jurisdiction, the Council recommends that such jurisdiction be concurrent with that of the Superior Court. Appeal from the District Court shall be to the Superior Court which may in its discretion augment the record on appeal, in whole or in part, or hold a hearing de novo.

2. Limitation on Penalties for Petty Offenses. As a result of the Supreme Court decision in Baker v. City of Fairbanks, 471 P. 2d 386 (Alaska 1970), persons accused of crimes which carry as a penalty the possibility of incarceration are entitled to a trial by jury. The result has been a tremendous increase in the number of jury trials in prosecutions for minor or petty violations, with a corresponding increase in cost both in jury fees and court time. Therefore, the Council recommends that the legisla-

ture act to limit the penalty imposed for all petty offenses, such as, but not restricted to, minor traffic violations, in all State statutes and municipal ordinances so that the element of criminality and the possibility of incarceration is deleted.

3. Jury Service. In a further effort to reduce the costs of jury trials, while at the same time limiting the burden of jury service on participating citizens, the Council reommends to the Supreme Court and the Legislature that, unless otherwise directed by the Supreme Court, citizens selected for jury service should not be required to serve for a period longer than 30 consecutive days; except that jurors who commence sitting in a trial within the 30 day period shall continue to sit in that matter until discharged by the trial court. The Council further recommends that fees for jury service be reduced to $15 per day for service of more than one-half day, or $7.50 per day for one-half day or less, such fees to be paid only upon receipt of an affidavit from the juror stating that he is not being compensated for his time by a source other than the Alaska Court System.

4. Alaska Court System Autonomy. The Council recommends to the legislature that it act to make the Alaska Court System autonomous in all fiscal planning and personnel classification matters.

5. Six-man Juries. In line with the interest

expressed by the Senate and House Joint Committees, the Council is undertaking a study to determine the desirability of recommending a constitutional amendment reducing the size of juries from twelve to six persons.

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

Judges' Salaries

Alaska Judicial Council
941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

April 23, 1971

Representative William J. Moran
Alaska State House
Pouch V
Juneau, Alaska 99801

Dear Representative Moran:

As you know, the Alaska Judicial Council this year recommended increases in judicial salaries. The Council also recommended the establishment of a Judicial Salary Commission to provide periodic review of judicial salaries. A bill was introduced this session providing for such a commission to include review of legislative and executive salaries. Although it appears that salary increases will not be voted this session, the Council again urges that a salary commission be established at this time. This is particularly important because recent and anticipated pay increases to classified employees will create a situation where judges in some cases are compensated less than some classified employees of the state. Appropriate balance in compensations between classified employees and executive, legislative and judicial officials can only be maintained by periodic review of all salaries.

Very truly yours,

Theodore Russ Dunn
Executive Secretary to the Council

TRD:lb

Mental Competency

THE SUPREME COURT OF THE STATE OF ALASKA

ARLIE ROY POPE,

Appellant,

v.

STATE OF ALASKA,

Appellee.

File No. 1127

O P I N I O N

[No. 660 - December 21, 1970]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Ralph E. Moody, Judge.

Appearances: James R. Clouse, Jr., Anchorage, for Appellant. G. Kent Edwards, Attorney General, Juneau, Harold W. Tobey, District Attorney, and Richard R. Felton, Assistant District Attorney, Anchorage, for Appellee.

Before: Boney, Chief Justice, Dimond, Rabinowitz, Connor and Erwin, Justices.

ERWIN, Justice.
CONNOR, Justice, concurring in part and dissenting in part.

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 hou· 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 Pavlovich 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, 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.

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[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 the 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.

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

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2 [Contd.]

> 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, 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."
>
> * * *
>
> "(c) 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).

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).

But appellant has not shown that any harm resulted to him from the denia. 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, 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, 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, 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-finding process is not affected by our holding. It is an act of responsible citizenship for individuals to give whatever information they may have to aid in law enforcement. In such situations the compelling

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[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.

> atmosphere inherent in the process of in-custody interrogation is not necessarily present. 384 U.S. at 477-78, 16 L.Ed.2d at 725-26.

In interpreting Miranda various courts have had to draw lines between what are permissible investigative interviews and custodial interrogations. The United States Supreme Court itself has made it plain that custodial interrogation could take place outside the station-house where one was "not free to go where he pleased but was 'under arrest.'" Orozco v. Texas, 394 U.S. 324, 325, 22 L.Ed.2d 311, 314 (1969). The courts must determine, therefore, in each case whether the atmosphere and setting of an interrogation are of such coercive effect or indicate such significant restraint as to trigger the need for a Miranda warning. There is not always agreement about the criteria for such a determination.

But the case at bar is a strong one for applying the "on-the-scene questioning" exception to the Miranda warning requirement. The officer here was presented with a situation of great emergency. A crime of violence had occurred, the victim was lying on the ground dead. There was more than one person present. Both to protect his own safety and that of others, the officer had to elicit information about what had happened, and about the gun which had obviously been used in the killing. For the same reason the officer also had the right to conduct a strictly limited search ("frisk") of Pope's person for weapons under the rule of Terry v. Ohio, 392 U.S. 1, 20 L.Ed.2d 889 (1968),

which he did.[5] To hold 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.

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

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[5] See Maze v. State, 425 P.2d 235, 238 (Alaska 1967).

[6] Harris v. United States, 390 U.S. 234, 236, 19 L.Ed.2d 1067, 1069 (1968); Creighton v. United States, 406 F.2d 651 (D.C. Cir. 1968); Klockenbrink v. State, 472 P.2d 958, 961 (Alaska 1970). See Stevens v. State, 443 P.2d 600, 602 (Alaska 1968).

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.

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.

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]

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

[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 146 (1968).

[9] For a similar action by a federal court, see Ramer v. United States, 390 F.2d 564 (9th Cir. 1968).

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

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[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, 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, 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, 456 P.2d 797 (Idaho 1969).
FOR M'NAGHTEN: State v. Malumphy, 461 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, 410 P.2d 240 (Ore. 1966); Commonwealth v. Rightnour, 253 A.2d 644 (Pa. 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, 214 F.2d 862 (D.C. Cir. 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).

complete presentation on the issue in the trial court and ultimately in this court.[13]

The judgment of the Superior Court is hereby affirmed.

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[13] Once before this court has refused to review the test for insanity for Alaska based on an inadequate record. See Dimmick v. State, 449 P.2d 774, 776 (Alaska 1969).

CONNOR, J., 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 those 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 these cases. He is properly entitled to a decision on those questions.

The majority of my colleagues feel that the burden of proof question and the substantive test of insanity are interrelated. I agree. But for that very reason I believe that both topics logically can, and properly should, be determined by the court.[1/]

The lack of an adversary presentation of the legal arguments bearing upon the proper test of insanity in criminal cases should not be an impediment to decision in this particular instance. Ultimately one must read a large body of legal and

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1/ For a case in which a distinguished court took a relaxed view of the manner in which counsel raised the question of the proper test of insanity in the trial court, see United States v. Freeman, 357 F.2d 606 (2d Cir. 1966). The failure of trial counsel in that case to object to the insanity test itself was not deemed critical.

psychiatric material even to become conversant with these subjects. Appellate briefs are of much less value here than in the resolution of more usual questions.[2] Surely this would not be the first time that this court decided a case on grounds or under a doctrine not fully presented in the briefs.[3]

There is another reason why we should decide these questio.. now, not later. In my opinion the test currently obtaining under Chase v. State, supra, is so inherently unfair as to dissuade either defendants or their counsel from raising the defense of insanity, or adducing evidence in support of it. Thus it is difficult to get the insanity question before us on appeal.

The insanity defense is much like a confession and avoidance. One virtually admits all factual elements of the crime but claims insanity as a special ground of exoneration. One claiming that he did not commit the offense, but who alternatively claims that he was insane when he did commit it, has little hope of success. While such an approach is procedurally permissible, as a practical matter it is a foolhardy strategy.

2/ The question of the test of insanity as a criminal defense has already been briefed in Chase v. State, 369 P.2d 997 (Alaska 1962). There the state urged that if the M'Naghten test was not employed, the American Law Institute test (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.

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/] At the trial the medical witnesses and the court had been influenced by the writings and

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

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

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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.

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

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

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.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

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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. 4,161 (1955).

9/ Matheson v. United States, 227 U.S. 540 (1913); Davis v. United States, 165 U.S. 373 (1897); Sauer v. United States, 241 F.2d 640 (1957), cert. denied 354 U.S. 940: 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, 110 N.E. 945 (N.Y. 1915), per Cardozo, J.

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 Okla. 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

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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.

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'Naghten 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

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12/ "But 'glory' doesn't mean 'a nice knockdown 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.
14/ 10 Okla. at 717, 63 P. at 961.
15/ Rex v. Arnold, 16 How. St. Tr. 695, 764 (1724).

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

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.

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 psyciatry. 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.

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.

One great developmental breakthrough occurred with the famous decision in Durham v. United States, 214 F.2d 862 (D.C. Cir. 1954). There Judge Bazelon laid down a test under which a defendant was to be held not responsible "if his unlawful act was the product of mental disease or mental defect." 214 F.2d at 874. This was an adaptation of a rule which had previously existed solely in New Hampshire, and which had developed under the influential work of Dr. Ray. State v. Pike, 49 N.H. 399 (1870). While Durham represents a courageous attempt to state a modern standard of responsibility, certain deficiencies were encountered in its administration. For example, the use of the term "product" created difficult problems of causation.[20/] And as Judge (now Chief Justice) Burger complained, concurring in Blocker v. United States, 288 F.2d 853, 860 (D.C. Cir. 1960), the test in many cases put the legal determination in the hands of psychiatric witnesses rather than judge and jury. Finally, in Washington v. United States, 390 F.2d 444 (D.C. Cir. 1967), Judge Bazelon noted certain shortcomings of the Durham test, in that it allowed the psychiatrist to make too many legal and moral judgments which should be within the province of the jury. In substance, he appears to have acceded at least partially to the view of Judge Burger that psychiatrists should no longer be permitted to render an opinion on whether the act was a "product" of mental disease. A lengthy form of instruction was adopted to clarify the respective functions of expert

20/ Weihofen, "The Flowering of New Hampshire," 22 U. of Chi. L. Rev. 356, 360 (1955).

witness and jury.

Shortly after the Durham rule was announced, the American Law Institute promulgated 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. March, 1970)(en banc). The M'Naghten test has now been overthrown in all but the First Circuit.[21/] These

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21/ In addition to the above cited cases, see United States v. Currens, 290 F.2d 751 (3rd Cir. 1961); Blake v. United States, 407 F.2d 908 (5th Cir. 1969) (en banc); United States v. Smith, 404 F.2d 720 (6th Cir. 1968); United States v. Shapiro, 393 F.2d 680 (7th Cir. 1967) (en banc); Pope v. United States, 372 F.2d 710 (8th Cir. 1967) (en banc), vacated on other grounds, 392 U.S. 651 (1968); Wion v. United States, 325 F.2d 420 (10th Cir. 1963) (en banc), cert. denied, 377 U.S. 946 (1964). While not all of these cases embrace the A.L.I. test totally, they reject the

cases contain excellent disquisitions on the M'Naghten rule, its deficiencies, and the legal and psychiatric framework underlying 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, 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 in current thinking on this subject. It is the standard

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21/ [cont'd] M'Naghten rule and include a test whereby the effect of mental illness on one's capacity to conform his conduct to law is stressed. Judge (now Chief Justice) Burger, in his separate concurring opinion in Blocker v. United States, 288 F.2d 853 (D.C. Cir. 1960), laid great emphasis on a test which would focus on the relationship between mental illness and one's capacity to refrain from wrongdoing.

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

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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, 390 F.2d 444 (D.C. Cir. 1967). 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, 142 So.2d 899 (Ala. 1962); Alaska, Chase v. State, 369 P.2d 997 (Alas. 1962); Arkansas, Kelley v. State, 242 S.W. 572 (Ark. 1922); California, People v. Monk, 363 P.2d 865 (Calif. 1961); Delaware, Longoria v. State, 168 A.2d 695 (Del. 1961); Georgia, Ross v. State, 124 S.E.2d 280 (Ga. 1962); Iowa, State v. Drosos, 114 N.W. 2d 526 (Iowa 1962); Kentucky, Tungent v. Commonwealth, 198 S.W.2d 785 (Ky. 1947); Maine, State v. Park, 193 A.2d 1 (Me. 1963); Minnesota, State v. Finn, 100 N.W.2d 508 (Minn. 1960); Missouri, State v. King, 375 S.W.2d 34 (Mo. 1964); Montana, State v. DeHann, 292 P. 1109 (Mont. 1930); Nevada, State v. Behiter, 29 P.2d 1000 (Nev. 1934); New Jersey, State v. Kudzinowski, 147 A. 453 (N.J. 1929); North Carolina, State v. Swink, 47 S.E.2d 852 (N.C. 1948); Ohio, State v. Stewart, 198 N.E.2d 439 (Ohio 1964); Oregon, 14 Ore. Rev. Stat. 136.390 (1960); Pennsylvania, Commonwealth v. Updegrove, 198 A.2d 534 (Pa. 1964); Rhode Island, State v. Gunnites, 161 A.2d 818 (R.I. 1960); South Carolina, State v. Tidwell, 84 S.E. 778 (S.C. 1915); Texas, Carrell v. State, 283 S.W.2d 793 (Tex. 1951); Virginia, Christian v. Commonwealth, 117 S.E.2d 72 (Va. 1960); Washington, State v. Mays, 395 P.2d 758 (Wash. 1965); West Virginia, State v. McCauley, 43 S.E.2d 454 (W. Va. 1947). See 17 A.L.R.3d 146 (1968).

courts, the accused need only show some evidence of insanity. The prosecution must then prove his sanity beyond a reasonable doubt.[24/]

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

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24/ Those states following the federal rule are: Arizona, State v. Schantz, 403 P.2d 521 (Ariz. 1965); Colorado, Castro v. People, 346 P.2d 1020 (Colo. 1959); Connecticut, State v. Joseph, 115 A. 85 (Conn. 1921); Florida, Farrell v. State, 101 So.2d 130 (Fla. 1958); Hawaii, State v. Moeller, 433 P.2d 1[illegible] (Hawaii 1967); Idaho, State v. Clokey, 364 P.2d 159 (Idaho 1961); Illinois, People v. Robinson, 174 N.E.2d 820 (Ill. 1961); Indiana, Whitaker v. State, 168 N.E.2d 212 (Ind. 1960); Kansas, State v. Penry, 368 P.2d 60 (Kan. 1962); Maryland, Jenkins v. State, 209 P.2d 616 (Md. 1965); Massachusetts, Commonwealth v. McHoul, 226 N.E.2d 556 (Mass. 1967); Michigan, People v. Eggleston, 152 N.W. 944 (Mich. 1915); Mississippi, McGarrh v. State, 148 So.2d 494 (Miss. 1963); Nebraska, Thompson v. State, 68 N.W.2d 267 (Nebr. 1955); North Dakota, State v. Barry, 92 N.W. 809 (N.D. 1902); New Hampshire, State v. Bartlett, 43 N.H. 224 (N.H. 1861); New Mexico, State v. Roy, 60 P.2d 646 (N.M. 1936); New York, People v. Kelley, 99 N.E. 2d 552 (N.Y. 1951); Oklahoma, Whisenhunt v. State, 279 P.2d 366 (Okla. 1954); South Dakota, State v. Waugh, 127 N.W.2d 429 (S.D. 1964); Tennessee, Jordan v. State, 135 S.W. 327 (Tenn. 1911); Utah, State v. Green, 40 P.2d 961 (Utah 1935); Wisconsin, State v. Esser, 115 N.W.2d 505 (Wis. 1962); Wyoming, State v. Pressler, 92 P. 806 (Wyo. 1907). The District of Columbia also follows this rule: Jones v. United States, 284 F.2d 245 (D.C. Cir. 1960). See 17 A.L.R.3d 146 (1968).

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, 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 (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.

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

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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.

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 (1952):

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

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.

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.

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Pipeline

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Pipeline

STATEMENT OF COMMISSIONER FREDERICK McGINNIS
DEPARTMENT OF HEALTH AND WELFARE, STATE OF ALASKA

DEPARTMENT OF INTERIOR HEARING, 2/24/71
ON THE
TRANS-ALASKA PIPELINE

MY NAME IS FREDERICK McGINNIS. I AM THE COMMISSIONER OF THE ALASKA DEPARTMENT OF HEALTH AND WELFARE, AN ALASKAN DEPARTMENT WITH BROAD POWERS, DUTIES AND RESPONSIBILITIES FOR THE PROTECTION OF ALASKA'S ENVIRONMENT. AT THE SAME TIME, OUR DEPARTMENT IS MOST DEEPLY INVOLVED IN RESPONSIBILITIES IN HEALTH AND WELFARE NEEDS OF OUR PEOPLE.

THIS DEPARTMENT HAS REVIEWED IN CONSIDERABLE DEPTH THE ENVIRONMENTAL IMPACT STATEMENT AND CONSIDERS IT TO BE A REASONABLE EVALUATION OF PROBABLE EFFECTS OF THE PIPELINE ON THE RELATED ENVIRONMENT. THE STIPULATIONS WHICH ACCOMPANY THE IMPACT STATEMENT HAVE BEEN DEVELOPED WITH THE ACTIVE PARTICIPATION OF MEMBERS OF OUR STAFF.

I BELIEVE THAT THEY PROVIDE ADEQUATELY FOR MAXIMUM CONTROL OF POSSIBLE ENVIRONMENTAL INSULTS, BOTH DURING CONSTRUCTION AND IN OPERATION OF THE PIPELINE. THE ALASKA STATUTES AND THE ALASKA ADMINISTRATIVE CODE SPELL OUT THE AUTHORITY OF THE DEPARTMENT OF HEALTH AND WELFARE IN ENVIRONMENTAL MATTERS. COMPLIANCE WITH ALL STATE LAWS AND REGULATIONS IS REQUIRED BY GENERAL STIPULATION #9 ON PAGE 15 OF THE STIPULATIONS DOCUMENT. IT SHOULD BE UNDERSTOOD THAT THE DEPARTMENT WILL ENFORCE OUR LAWS AND REGULATIONS, NOT ONLY ON THE 120 MILES OF THE PIPELINE WHICH CROSS STATE CONTROLLED LAND BUT, THROUGHOUT THE LENGTH OF THE PROJECT.

THE RESPONSIBILITY AND RIGHT OF THE STATE OF ALASKA TO ABATE AND TO PREVENT WATER POLLUTION IS SET FORTH IN THE FEDERAL WATER POLLUTION CONTROL ACT OF 1956. ALTHOUGH THIS STATUTE HAS BEEN AMENDED MANY TIMES

SINCE ITS ORIGINAL PASSAGE, THE LEGISLATION DEFINES IN CLEAR TERMS CONGRESSIONAL INTENT TO MAKE THIS ACTIVITY A STATE RESPONSIBILITY.

OUR SERIOUS CONCERN FOR PROTECTING THE VALUABLE FISHERY IN THE VALDEZ ARM HAS RESULTED IN ONE OF THE MOST STRINGENT OIL REMOVAL REQUIREMENTS IN THE WORLD. ALTHOUGH OUR WATER QUALITY STANDARDS IMPLY A MAXIMUM OF ABOUT 15 PARTS PER MILLION OF OIL (A VISIBLE SHEEN OCCURS AT ABOUT THIS LEVEL) OUR ENGINEERS HAVE REQUIRED THE ALYESKA PIPELINE SYSTEM STAFF TO DEVELOP EQUIPMENT TO REDUCE OIL IN THE EFFLUENT FROM THE BALLAST WATER TREATMENT PLANT TO A MAXIMUM OF 10 PARTS PER MILLION. SINCE THE 1970 LEGISLATURE HAS ENACTED A LAW TO PROVIDE THAT TANKERS BRING ALL BALLAST ASHORE FOR TREATMENT, THE ALYESKA VALDEZ TERMINAL TREATMENT PLANT WILL ACTUALLY BE PROTECTING NOT ONLY THE VALDEZ ARM, BUT AREAS OFF

PRINCE WILLIAM SOUND WHERE TANKERS MIGHT HAVE BEEN EXPECTED TO DISCHARGE SURPLUS BALLAST PRIOR TO COMING INTO PORT.

THE STATE OF ALASKA IS PREPARED BY PRESENT AND PROPOSED ARRANGEMENTS TO MONITOR A PROJECT OF THIS MAGNITUDE. BOTH FROM THE STANDPOINT OF ADEQUATE LAWS AND REGULATIONS AND FROM THE STANDPOINT OF COOPERATIVE EFFORT WITH OTHER STATE AND FEDERAL AGENCIES WE HAVE DEVELOPED A STRONG PROGRAM WHICH EXHIBITS OUR COMMON CONCERN FOR ENVIRONMENTAL PROTECTION.

THROUGH A PROGRAM OF PLAN REVIEW AND PERMIT ISSUANCE, THE DEPARTMENT EXERCISES JURISDICTION OVER ALL NEW INDUSTRIAL AND MUNICIPAL SOURCES OF POLLUTION. PRELIMINARY PLANS USUALLY ARE DISCUSSED WITH OUR STAFF ENGINEERS, FINAL PLANS AND SPECIFICATIONS ARE REVIEWED FOR COMPLIANCE WITH OUR STATUTE AND CODES, AND THE COMPLETED

PROJECT IS MONITORED FOR ADHERENCE TO REQUIREMENTS SET FORTH IN A WASTE DISCHARGE PERMIT.

PRIOR TO THE GREATLY ENHANCED FEDERAL OIL POLLUTION LEGISLATION OF 1970, THE ALASKA OIL POLLUTION TASK FORCE, CONSISTING OF REPRESENTATIVES OF STATE AND FEDERAL GOVERNMENTS AS WELL AS OF INDUSTRY, PROVIDED A MECHANISM FOR DEVELOPMENT OF A CONTINGENCY PLAN, A COMMUNICATIONS NETWORK, AND FOR EVALUATION OF PLANS FOR PREVENTING AND CONTROLLING OIL POLLUTION. PARTICULAR STRESS WAS PLACED ON THE NEED FOR ALL EMPLOYEES ON DRILL RIGS AND PIPELINES TO UNDERSTAND THE ABSOLUTE NECESSITY FOR PREVENTING THE LOSS OF OIL FROM ANY SYSTEM.

AS SPILLS ARE REPORTED ANYWHERE IN ALASKA TODAY, STATE AND FEDERAL ENGINEERS AND BIOLOGISTS INVESTIGATE PROMPTLY TO ASSURE ABSOLUTE MINIMUM RESIDUAL EFFECT ON THE ENVIRONMENT. THE INDUSTRY OR AGENCY RESPONSIBLE IS

ADVISED REGARDING CLEAN-UP, AND THE INVESTIGATING OFFICER MAY ASSIST IN LOCATING ADSORBENTS AND EQUIPMENT FOR CLEAN-UP. THE ALYESKA PIPELINE CORPORATION WILL BE REQUIRED TO SHOW IN ITS PLAN SUBMITTED FOR DEPARTMENT APPROVAL THAT ADEQUATE STOCKPILES OF CLEAN-UP MATERIALS WILL BE PROVIDED ALONG THE PIPELINE AND THAT ITS EMPLOYEES HAVE BEEN TRAINED TO MAKE USE OF THESE MATERIALS AS NEEDED.

AN IMPORTANT PART OF THE DEPARTMENT EDUCATIONAL AND CONTROL PROGRAM HAS BEEN DIRECTED BY A SENIOR STAFF ENGINEER LOCATED IN FAIRBANKS. HERE, A PROGRAM IS DIRECTED TO ACQUAINT ALL OPERATORS ON THE NORTH SLOPE WITH STATUTORY AND REGULATORY REQUIREMENTS DEALING WITH WATER SUPPLY, SEWAGE DISPOSAL, FOOD SERVICE, HOUSING HYGIENE, OCCUPATIONAL HEALTH, SOLID WASTE MANAGEMENT, PEST CONTROL, AND AIR POLLUTION CONTROL. SUCCINCT PORTIONS OF

THE ADMINISTRATIVE CODE HAVE BEEN CONDENSED TO A BROCHURE OF REQUIREMENTS ENTITLED "COLD REGION ENVIRONMENTAL HEALTH PRACTICES" WHICH HAS BEEN DISTRIBUTED WIDELY. A COPY OF THIS DOCUMENT HAS BEEN SUBMITTED PREVIOUSLY FOR YOUR HEARING RECORD.

CONSIDERABLE DISCUSSION HAS ARISEN FROM OUR REQUIREMENT PROHIBITING THE BURIAL OF ORGANIC REFUSE IN PERMAFROST AREAS IN SUCH A WAY AS TO ASSURE PRESERVATION RATHER THAN BIO-DEGRADATION. SAFE DISPOSAL OF SOLID WASTES MEANS SAFETY FOR OUR CITIZENS OF 1995 WHO MIGHT BE AFFECTED BY DISEASE ORGANISMS BURIED IN 1970, AS WELL AS SAFETY FOR OUR CITIZENS OF TODAY.

THE ALASKA DEPARTMENT OF HEALTH AND WELFARE HAS LONG HAD A PROGRAM FOR CONTROLLING ENVIRONMENTAL IMPACT OF ALL ACTIVITIES, OF WHICH THE TRANS-ALASKA PIPELINE IS SIMPLY ONE EXAMPLE. THE TABLE OF CONTENTS PAGE OF

THE SANITATION AND ENGINEERING CHAPTER OF THE ALASKA ADMINISTRATIVE CODE CLOSELY RESEMBLES THE TABLE OF CONTENTS PAGE OF THE STIPULATIONS FOR THE PROPOSED TRANS-ALASKA PIPELINE. OUR ENVIRONMENTAL ENGINEERING PERSONNEL, HAVING BEEN FULLY INVOLVED IN THE DEVELOPMENT OF THE STIPULATIONS FROM THE START, ARE PREPARED TO PROVIDE THE KIND OF ENFORCEMENT OF FEDERAL AND STATE STATUTES AND REGULATIONS WHICH ALASKANS AND THE CITIZENS OF THE OTHER STATES WANT IN THIS DEVELOPMENT IN OUR STATE.

FURTHER EMPHASIS OF THE COMPREHENSIVE ENVIRONMENTAL PROGRAM I HAVE CITED HERE IS EXPECTED TO BE PROVIDED BY GOVERNOR WILLIAM EGAN'S PROPOSAL FOR A NEW DEPARTMENT OF ENVIRONMENTAL CONSERVATION. THIS NEW AND EVEN STRONGER ENFORCEMENT AGENCY WILL DEAL WITH ANY PROBLEMS RELATED TO ALASKA'S CLEAN AIR, WATER AND LAND ENVIRONMENT AT THE CABINET LEVEL WHERE FULL VISIBILITY AND

RESPONSIBILITY FOR ENVIRONMENTAL MONITORING WILL BE FIRMLY ESTABLISHED. WE IN ALASKA HAVE EVERY EXPECTATION OF CONTINUING THE TEAM APPROACH AS WE WORK TO BUILD A SELF SUFFICIENT ECONOMY WHERE INDUSTRY AND CONSERVATION ARE COMPATIBLE AND FULLY COMPLEMENTARY.

STATEMENTS BY SEVERAL SPEAKERS IN WASHINGTON, D.C. LAST WEEK INDICATED THAT A NEED FOR THE PIPELINE PROJECT HAD NOT BEEN DEMONSTRATED.

WITHOUT ATTEMPTING TO CONSIDER THE ACTUAL UNITED STATES AND WORLD NEED FOR OIL, I SHOULD LIKE TO POINT OUT SOME OF THE PUBLIC HEALTH AND SOCIO-ECONOMIC NEEDS OF THE PEOPLE OF ALASKA. WHILE THE STATE WILL NEED PIPELINE REVENUES TO HELP MEET THESE HUMAN NEEDS, I HASTEN TO REMIND YOU THAT ADEQUATE PRECAUTIONS HAVE BEEN, AND ARE BEING, TAKEN TO REVIEW PLANS FOR ENVIRONMENTAL PROTECTION AND TO MONITOR PIPELINE CONSTRUCTION AND

OPERATION. THE IMPLICATION BY SOME INDIVIDUALS THAT ALASKA IS RUSHING PELL-MELL INTO ENVIRONMENTAL DESTRUCTION IN ENCOURAGING THE PIPELINE IS NOT CONSISTENT WITH THE VAST AMOUNT OF ENVIRONMENTAL ENGINEERING PRESENTLY BEING CARRIED OUT BY THE DEPARTMENT OF HEALTH AND WELFARE WITH THE ASSISTANCE OF ENGINEERS AND SCIENTISTS OF OTHER STATE AND FEDERAL AGENCIES. OUR OWN STAFF IN THE DEPARTMENT PROBABLY HAS MORE MAN-YEARS OF ARCTIC AND SUB-ARCTIC EXPERIENCE IN THE ENVIRONMENTAL FIELD THAN ANY COMPARABLE GROUP IN THE WORLD.

THE EFFECTS OF THE PIPELINE DEVELOPMENT ON THE HEALTH NEEDS OF THE PEOPLE OF ALASKA ARE TREMENDOUS. MANY ARE DISPOSSESSED ECONOMICALLY, SOCIALLY AND HEALTHWISE. LARGE SEGMENTS OF ALASKANS REQUIRE PROTECTIVE HEALTH SERVICES AND TREATMENT SERVICES WITHOUT PRACTICAL POSSIBILITIES OF SECURING SUCH HEALTH CARE DUE TO TREMENDOUS

GAPS THAT EXIST BETWEEN HEALTH NEEDS AND HEALTH RESOURCES. HISTORICALLY, THE STATES HAVE MET HUMAN NEEDS LARGELY THROUGH RESOURCE DEVELOPMENT. ALASKA HAS NO VIABLE ALTERNATIVE TO UTILIZATION OF ITS RESOURCES TO COPE WITH ITS GREAT HUMAN NEEDS.

THE FEDERAL BUDGET FOR THE ALASKA AREA NATIVE HEALTH SERVICE, WHICH HAS INCHED AHEAD NUMERICALLY IN RECENT YEARS, HAS ACTUALLY DROPPED BEHIND DUE TO THE INCREASED COSTS OF HEALTH CARE. THIS HEALTH BUDGET HAS NOT BEEN ABLE TO KEEP PACE WITH THESE RISING COSTS. THE RESULT IS OUR PEOPLE, NATIVES AND NON-NATIVES ALIKE, ARE SUFFERING FROM DEPRIVATION INCLUDING INSUFFICIENT HOSPITAL CARE, MEDICAL CARE, DENTAL CARE, CONTROL OF COMMUNICABLE DISEASES AND PRENATAL CARE. OUR INFANTS DIE AT FAR AND AWAY A HIGHER RATE THAN COMPARABLE POPULATION GROUPS IN THE LOWER 48. THESE SHORTAGES IN CARE REPRESENT HUMAN NEEDS

AND HUMAN SUFFERING.

AT PRESENT FUNDING LEVELS, PUBLIC HEALTH AND MENTAL HEALTH PROGRAMS CANNOT CATCH UP WITH THE DEMAND FOR MORE MEDICAL CARE THAT ENABLES FAMILIES TO REMAIN TOGETHER, CHILDREN TO GROW AND LEARN NORMALLY, HEARING LOSS TO BE DISCOVERED EARLY AND DEAFNESS IN CHILDREN TO BE PREVENTED. AT PRESENT, ALASKA SUFFERS THE HIGHEST INCIDENCE OF HEARING LOSS OF ANY STATE IN THE NATION. ESTIMATED HEALTH FACILITY NEEDS ALONE, AS REPRESENTED BY HOSPITALS, NURSING HOMES AND THE LIKE, ARE RUNNING $66,000,000 SHORT. OUR PLANS TO CATCH UP WITH NEEDED HEALTH FACILITIES, PUBLIC HEALTH NURSES, HEALTH CENTERS, MENTAL HEALTH CENTERS, CONTROL OF CONTAGIOUS DISEASES AND OTHER EQUALLY SERIOUS HEALTH PROBLEMS ARE AWAITING THE AVAILABILITY OF FURTHER INCOME AND REVENUES. WITHOUT THE AVAILABILITY OF THE FINANCIAL RESOURCES MADE POSSIBLE

BY THE CONSTRUCTION OF THE PIPELINE, THE PEOPLE OF THIS STATE WILL CONTINUE TO SUFFER ILL HEALTH AND SHOW THE HIGHEST INCIDENCE OF DISEASES LONG SINCE CONTROLLED IN OTHER STATES.

THE AIM OF OUR PUBLIC WELFARE DIVISION IS TO STRENGTHEN AND MAINTAIN FAMILY LIFE. IF BY THE END OF 1975 MONEY IS NOT AVAILABLE TO FUND ADEQUATELY THE WELFARE PROGRAMS, A WHOLE VARIETY OF NEW PROBLEMS WILL DEVELOP OR THE DEGREE OF EXISTING PROBLEMS WILL BE MAGNIFIED. THE IMMEDIATE RESULT WOULD BE A SEVERE DECREASE IN THE ABILITY OF THE RECIPIENT TO OBTAIN SHELTER AND FOOD. ACCOMPANYING THESE VARIOUS NEEDS WOULD BE A DETERIORATION IN HEALTH. COUPLED WITH THE LACK OF ADEQUATE FUNDS AND THE DECREASED HEALTH, THE WHOLE PROBLEM OF DEVELOPING ANOTHER GENERATION OF DEPRIVED CHILDREN FACES THE STATE.

THE PROGRAMS AS CURRENTLY FUNDED ARE BARELY MORE .

ADEQUATE THAN THEY WERE BY 1969-1970 STANDARDS. HOWEVER, IF FUNDS NEEDED ARE NOT RECEIVED THIS YEAR IT WILL BE DISASTROUS FOR 25,000 OF OUR POPULATION WHO ARE BASICALLY UNEMPLOYED, UNEMPLOYABLE BECAUSE OF AGE, BLINDNESS, MENTAL INCAPACITIES, OR AS CHILDREN DEPRIVED OF PRENATAL SUPPORT.

THE DEPARTMENT IS NOW MEETING ONLY A PORTION OF THE POVERTY PICTURE. IN VAST AREAS POVERTY IS CONSIDERABLY GREATER THAN THAT OF OTHER STATES. IF FUNDS ARE CURTAILED, THE POVERTY PICTURE IN ALASKA WILL BE EVEN MORE DISMAL. THERE IS SUCH A DOWN-TURN IN THE ECONOMICS OF THE STATE ALREADY THAT WE HAVE BEEN FORCED TO ASK FOR AN INCREASE IN RELIEF PROGRAMS FOR THE CURRENT YEAR (FROM $14,000,000 TO $20,000,000). FOR NEXT YEAR THE INCREASE IN NEED IS FROM $20,000,000 TO $31,900,000. THE COST OF LIVING CONTINUES TO RISE, AND THE REDUCED AVAILABLE DOLLARS TO CLIENTS WOULD

PERMIT THEM TO PURCHASE EVEN LESS THAN THE SAME DOLLAR WOULD PURCHASE FOR 69-70. POVERTY IS A PRINCIPAL CAUSE OF FAMILY BREAK-DOWN. AS THE ECONOMIC SITUATION BECOMES WORSE, THE NUMBER OF RECIPIENTS IN ALL OUR PROGRAMS INCREASES MORE RAPIDLY THAN NORMAL. IF THE MONEY IS NOT FORTHCOMING, EVEN TO KEEP THE PROGRAMS AT CURRENT LEVELS, WE CAN ANTICIPATE SERIOUS ADDITIONAL SOCIAL PROBLEMS THROUGHOUT THE ENTIRE STATE.

ALASKA FINDS ITSELF IN THE UNTENABLE POSITION OF BEING CAUGHT BETWEEN FEDERAL MANDATES TO INCREASE WELFARE WITH NO EQUIVALENT INCREASE IN FEDERAL PARTICIPATION IN FUNDING. THE CONSTRUCTION OF THE PIPELINE AND THE REVENUE THEREFROM WOULD PRODUCE THE REVENUE NECESSARY TO CONTINUE PROGRAMS OF HUMAN RESOURCE DEVELOPMENT. IF THE FEDERAL GOVERNMENT DOES NOT APPROVE THE PIPELINE CONSTRUCTION ON A TIMELY BASIS WITH APPROPRIATE SAFEGUARDS,

IT WILL CONTRIBUTE DIRECTLY TO THE HUMAN SUFFERING WHICH WILL RESULT.

IT IS PARADOXICAL TO NOTE THAT IN 1969-70 WHEN OUR TOTAL WELFARE BUDGET WAS $14,710,000, 41% OF THE BUDGET WAS FEDERALLY REIMBURSED WHEREAS IN THIS TIME OF DIRECT FEDERAL CONTROL OF THE PIPELINE DECISION, THE 1971-72 BUDGET NEEDS OF $31,904,900 WILL BE ONLY 26% FEDERALLY REIMBURSED. THE FEDERAL RESPONSIBILITIES IN THE ENVIRONMENTAL CONCERNS AND DECISIONS COMES AT A TIME OF CONTINUING DECREASE IN FEDERAL PARTICIPATION TO MEET THE SOCIAL CONCERNS.

IF COSTS AND CASE LOADS CONTINUE TO INCREASE AT THE PRESENT RATE TO 1976, THE WELFARE BUDGET WILL TOTAL 75 MILLION DOLLARS. IF, BECAUSE OF LACK OF STATE INCOME, WE HOLD AT THE 1969-70 BASE, OUR ASSISTANCE GRANTS WOULD HAVE TO BE REDUCED BY 5/6. FOR EXAMPLE, A PRESENT FAMILY

OF FOUR ON THE AID TO FAMILIES WITH DEPENDENT CHILDREN CATEGORY WOULD BE REDUCED FROM $350 PER MONTH TO APPROXIMATELY $60 PER MONTH. OUR OLD AGE ASSISTANCE CASES WOULD HAVE TO BE REDUCED FROM THE PRESENT MAXIMUM OF $250 PER MONTH TO APPROXIMATELY $41 PER MONTH. OUR GENERAL RELIEF AND GENERAL RELIEF MEDICAL PROGRAMS HAVE GONE UP AT EVEN A HIGHER RATE THAN GRANTS AND CASE LOADS. IT WOULD BE IMPOSSIBLE IN 1976 TO PAY 1/10 OF THE COSTS OF MEDICAL AND HOSPITAL CARE THAT ARE CURRENTLY PAID.

AS COMMISSIONER OF THE DEPARTMENT OF HEALTH AND WELFARE I AM DEDICATED TO AND CHARGED WITH THE PROTECTION OF ALASKA'S ENVIRONMENT THROUGH THE DEVELOPMENT AND ENFORCEMENT OF SOUND CONSTRUCTION PROCEDURES. AT THE SAME TIME, IT IS MY EQUAL DUTY TO BRING TO YOUR ATTENTION THE EXAMPLES OF HUMAN PROBLEMS OUTLINED ABOVE AND THE

EFFECT OF ANY UNREASONABLE DELAY IN ALASKA'S ABILITY TO DEVELOP ITS RESOURCES BOTH NATURAL AND HUMAN.

2606 SEWARD HIGHWAY
ANCHORAGE, ALASKA 99503
March 26, 1973

Pipeline

REP. HELEN FISCHER
HOUSE OF REPRESENTATIVES
STATE OF ALASKA

SUBJECT: TRANS-ALASKA PIPELINE

DEAR HELEN:

WHILE I'VE BEEN FOLLOWING THE PIPE LINE TESTIMONY HEARINGS AS MUCH AS POSSIBLE AND HAVE READ AS MUCH AS HAS COME TO HAND, THERE REMAINS ANOTHER THOUGHT THAT I HAVE NOT HEARD EXPRESSED TO DATE, THAT I FEEL SHOULD BE PRESENTED TO OUR BIOLOGISTS, ENGINEERS, ET AL FOR FEASABILITY AND CONSIDERATION.

MY THEORY IS AS FOLLOWS: CONSTRUCT A BUILDING/S OVER THE PIPELINE, USING THE PIPE AS A CENTER LINE. THE BUILDING/S TO BE 100 FEET OR SO WIDE AND AS LONG AS REQUIRED. BUILDINGS OF THIS TYPE WOULD BE HEATED BY THE 180 DEGREE OIL AND WOULD BE USED AS GREEN HOUSES, DAIRY FARMS, POULTRY FARMS AND PERHAPS HAY COULD BE RAISED IN THIS MANNER. DWELLINGS FOR HUNDREDS OF PEOPLE AND RAISING SOME OF THEIR FOOD COULD BE ACCOMPLISHED IN THIS MANNER. COULD NOT A NATURAL GAS LINE PARALLEL THE OIL LINE FOR FUEL AND CONVERSION TO ELECTRIC POWER WHERE NEEDED?

I FEEL THE GROWTH OF WILLOWS AND OTHER LEAFY PLANTS, EITHER NATURAL OR PLANTED, WOULD GROW ALONG THE ROUTE IN RECORD TIME, ENHANCED BY THE HEAT FROM THE LINE. ONE ONLY NEED TO LOOK TO THE HILLS BEHIND FT. RICHARDSON TO SEE THE BELTS OF HEAVY GROWTH WHICH APPEARS TO BE 15 TO 20 FEET HIGH MEANDERING OVER THE HILL-SIDES. THESE BELTS OF HEAVY UNDERGROWTH WERE CAUSED BY BULLDOZERS CLEARING FIRE BREAKS AROUND A MUSKEG FIRE IN THE EARLY AND MID 50's WHEN WE HAD SEVERAL FIRES TO FIGHT. NO CONSIDERATION WAS GIVEN AT THAT TIME FOR PROPER DRAINAGE, EROSION CONTROL OR ANY OTHER CONSIDERATION FOR THAT MATTER, EXCEPT TO SURROUND THE FIRE. IT WAS CULTIVATION IN A VERY CRUDE FORM. BUT IT STANDS AS AN EXAMPLE TO POINT OUT THE NEED FOR THE CULTIVATION OF OUR ENVIRONMENT IN SOME AREAS TO PROMOTE THE GROWTH OF PLANT LIFE WHICH IS A NECESSARY REQUIREMENT FOR THE SUSTENANCE AND INCREASE IN NUMBERS OF MANY SPECIES OF ANIMAL LIFE. WHAT IS WRONG WITH AN 800 MILE GREEN-BELT, -GAME REFUGE & ROADSIDE PARKS?

[illegible] VIRGIN [illegible] BIG LIES. [illegible]

WITH PROPER HANDLING OF THE [illegible], MOOSE [illegible] SHEEP AND BEAR BEGAN TO MULTIPLY AND NOW WE'RE IN BIG DIFFICULTIES.

IT THEREFORE SEEMS [illegible] THE SAME THING COULD occur ALONG THE PIPE LINE, CREATING A GAME BELT AS A HAVEN FOR WILDLIFE AND WOULD THEY NOT STAY CLOSE TO THE LINE [illegible] FOR [illegible]?

WE NEED ANSWERS FROM OUR BIOLOGISTS AND ENGINEERS TO THESE IDEAS AND QUESTIONS.

[illegible] A SECURITY STATION IS BEING THAT PLACE EVERY ALONG THE LINE AT INTERVALS [illegible] A SMALL TOWN.

I CALL UPON THE [illegible], AND OUR LEGISLATURE, TO REVIEW THIS NEGATIVE THINKING TRIED BY THE "EXPERTS" FROM OUTSIDE. LET US ALASKA HAS ALWAYS BEEN "DOING THE BEST YOU CAN WITH WHAT IS AVAILABLE AND TURNING ADVERSITY INTO SUCCESS BY WORK WELL AND THE [illegible] WAS TO BE SO THROUGH POSITIVE THINKING AND ACTION"! WE AS ALASKANS, HAVE HAD IT UP TO HERE, WITH HIGH BLOWN EXPERTS FROM OUTSIDE. THEY HAVE THIS THING BACKWARDS. SO FAR, EVERYONE IS TELLING US HOW MANY REASONS THERE ARE THAT IT WON'T WORK. ALL WE WANT ARE IDEAS HOW IT WILL WORK. IT IS UP TO THE GOVERNOR AND YOU AS OUR LEGISLATORS AND WE THE PEOPLE BACKING YOU TO THE HILT TO LET IT BE KNOWN TO ALL, THAT WE WILL DO THE TELLING AND THE ONLY THING WE WANT OUT OF THE EXPERTS, IS TO FIGURE OUT HOW BEST TO DO IT. IF THEY CAN'T DO IT, WE WILL GET SOMEONE WHO CAN.

WITH JUST REGARDS TO YOU ALL,

Omer Wade

OMER WADE

P.S. A RESOLUTION OF APPRECIATION MIGHT BE IN ORDER TO " MOTHER NATURE" FOR GETTING THE YUKON RIVER IN, BEFORE THE "EXPERTS FROM OUTSIDE" GOT WIND OF IT. CAN'T YOU JUST HEAR THE HOWL THEY WOULD SET UP AND POINT WITH OUTRAGE, AT THE GREAT SPRAWLING SCAR ACROSS THE FACE OF THE LAND, THE

UNTOLD NUMBERS OF BIRDS AND DELICATE MARINE MAMMALS THAT WILL ALL DIE NOW, BECAUSE THE OCEAN WILL BECOME MUCKY WATER, AND SO ALL THE FISH WILL DIE, AND WHEN ALL THE FISH DIE, ETC. ETC. AD INFINITUM!! HOSH.

HELEN, TELL THE LEGISLATORS THAT FROM ALL THOSE WHOM I HAVE TALKED TO, REGARDLESS OF PUBLICITY, I HAVE YET TO FIND AN ALASKAN THAT DOES NOT AGREE WITH THESE VIEWS. WE MUST BE IN THE MAJORITY. WE BACK YOU AND YOUR FELLOW LEGISLATORS 100% REGARDLESS OF PARTY IN THIS MATTER. GIVE 'EM HELL!!!!!!

Bert Cole

Pipeline

TRANS ALASKA PIPELINE HEARINGS

Anchorage, Alaska

LIST OF WITNESSES

in relative order of appearance

Witnesses should be seated in the witness reserved section. Witnesses are registered for 10 minutes testimony unless otherwise noted.

Name	Organization
Hon. William A. Egan (et al)	Governor of State of Alaska (Two hours)
Hon. Ted Stevens	United States Senate (15 minutes)
(Hon. Walter Hickel)	Former Secretary of the Interior (testify on Thursday a.m.)
Hon. Keith H. Miller	Former Governor of State of Alaska
(Hon. Marty Farrell)	Alaska State House Chairman, House Resources Committee. (testify on Thursday a.m.)
Hon. Ed Merdes	Alaska State Senate
Hon. Lowell Thomas	Alaska State Senate
Hon. C. R. Lewis	Alaska State Senate (testify Wed p.m.)
Hon. Andy Warwick	Alaska State House
Hon. Bob Dittman	Alaska State House
Hon. Jess Harris	Alaska State House
Hon. John Hubert	Alaska State House
Hon. Leslie Swanson	Alaska State House
Hon. Helen Fischer	Alaska State House
Hon. Tom Fink	Alaska State House
Hon. Dick Randolf	Alaska State House

	Name	Organization
1.	Mr. E. J. Patton	Alyeska Pipeline Service Company
2.	Representative	Anchorage Chamber of Commerce (20 min)
3.	Mr. John Kelsey	Alaska State Chamber of Commerce (40 min)
4.	Mr. Jack Werner	Seward Chamber of Commerce
5.	Mr. Byron T. "Bud" Brown	Bud Brown Enterprises
6.	Sam Johnson	Individual
7.	Representative	Citizens Committee
8.	Miss Celia M. Hunter	Individual
9.	Steve Talbot	Individual
10.	Representative	Alaska Native Student Organization
11.	Harold E. Pomeroy	Individual
12.	George Scrima	Publisher "Alaska Construction & Oil Rpt"
13.	Dr. Edward Wayburn	Sierra Club
14.	David Hickok	Individual
15.	Dr. Earl H. Beistline	Individual
16.	Representative	Fairbanks Chamber of Commerce
17.	Calvin Fair	Individual
18.	Representative	Alaska Chapter, Associated General Contractors of America, Inc.
19.	Jack Hesson	Individual
20.	Ivan Brudie	Individual
21.	H. Vern Flett	Individual
22.	Representative	Captain Cook Jaycees
23.	Marvin Parker	Anchorage Jaycees
24.	Joe Seale	Individual
25.	Steward Rothman	Arctic Oil Journal

Name	Organization
Bill Babcock	Individual
Earl Barnard	Individual
Sandra Bauenhauer	Individual
Frank X. Chapadax	H & S Warehouse, Inc.
Gene G. Dye	Muklux Freight Line, Inc.
Gerald I. Garland	Individual
John F. Grasse	Anchorage Refuge Inn
Neil G. Harper	Al Renk & Sons
Sharon Harris	Individual
William H. Jacobs	Individual
Robert C. McDonald	Consolidated Freightways
Jerry McKutcheon	Individual
Steve McKutcheon	Individual
William Mehon, Jr.	Weaver Bros, Inc.
Michael O'Meara	Individual
Edward R. Sanders	Alaska Carriers, Ass.
Les A. Schlatfeldt	Denali Transportation of Sourdough Express, Inc
Otto V. Sieber	Individual
C. W. Sneedem	Individual & North Committee
Ed Suddock	Individual
Carl Sullivan	Individual
Bill R. Vernon	Publisher magazine Alaska Construction & Oil Report
David Schimberg	Individual
James E. Fisher	Individual

	Name	Organization
47.	Howard Long	Individual
48.	Robert B. Weeden	Individual
49.	Ernie Wolf	Alaska Miners (Fairbanks)
50.	Dr. James Lethcoe	Individual
51.	Mrs. Larue Troyer	Individual
52.	John A. Carlson	Fairbanks North Star Borough
53.	Bob Halcro	Individual
54.	Harry Porter	Individual
55.	Frank Price	Individual
56.	Dr. Max Brewer	Arctic Naval Research Laboratory
57.	William Willoya	Individual
58.	Bernie J. Corcoran	Individual
59.	Edgar M. Walker	Individual
60.	Julian R. Maule	Individual
61.	Martin Palmer	Individual
62.	Professor Charles Konigsberg	Individual
63.	Tony Smith	Individual
64.	Myron Brisco	Anchorage Chapter, Izaak Walton League
65.	C. C. Hawley	Individual
66.	Ward James	Individual
67.	Iner J. Mining	Individual
68.	Ira J. Bailey	Individual
69.	Samuel Johnson	Individual

	Name	Organization
70.	David Wolf	Native Villages of Allakaket, Bettles, Minto, Rampart & Stevens (20 minutes)
71.	C. Ross Mullins	Fisheries Union
72.	Charles Simpler	Individual
73.	Ken Roenheldt	Pt. Challis Packers
74.	Russell Rossman	SAFE (Ecological Organization)
75.	Michael O'Meara	Individual
76.	Charles Behkle	Individual
77.	Douglas Sy Neely	Group of business people from Cooper River Basin
78.	Charles Lucier	Individual
79.	Jack Goddard	People of the Copper River Basin
80.	Daniel Earle	Individual
81.	Mrs. Darlene Brown	Cadwallader Trucking, Inc.
82.	George C. Silides	Individual
83.	Edward G. Burton	Individual
84.	Elmer Davis	Individual
85.	Bill Pinnell	Individual
86.	Drew Foss	Foss Tug and Barge
87.	Al White	Individual
88.	Nancy L. Simmerman	Individual
89.	Laura McCarly	Individual
90.	Paul Heller	Audobon Society
91.	Uhl Treat	Individual
92.	Dwayne Carlson	Alaska Federation of Labor

	Name	Organization
93.	Joseph Gerenough	Individual
94.	Mrs. Jackie Landinzhon	Individual
95.	Tom Hohnson	Individual
96.	Captain Bill Horned (Ret. Coast Guard)	Individual
97.	Ward Gay	Individual
98.	Slim Blood	Individual
99.	Stanley G. Cook	Individual
100.	Maxine Reed	Individual
101.	George Dickson	Individual
102.	Len Robinson	Individual
103.	Primula Babcock	Individual
104.	Aelenka Brice	Individual
105.	Selwyn Carol	Individual
106.	Mike Kelley	Individual
107.	Ernie Caston	Individual
108.	Sam Tito	Individual
109.	Laura Bergt	Individual
110.	Dick Roehl	Individual
111.	Bill English	Individual
112.	Mrs. Laura Wright	Individual
113.	William E. Bittner	Individual
114.	Vivian Mendenhall	Individual
115.	Harry R. Lee	Individual
116.	Helen Nienhueser	Individual

	Name	Organization
117.	Molly McVeigh	Individual
118.	Rusty Herleen	Individual
119.	Nancy Fenton	Individual
120.	Virginia Hill Wood	Individual
121.	Bob Scott or Norman E. Summer	Frontier Rock & Sand Inc.
122.	Harold H. Galliett, Jr., Reg.CE	Individual
123.	Bob Logan	Individual
124.	Lynn Schraeder	Individual
125.	Pete K. Martin	Independent ecologist (15 min)
126.	Steven Counsell	Individual
127.	Casey Bohne	Individual - student
128.	Robert McVeigh	Individual
129.	Robert Schraeder	Individual
130.	G. Curtis Mattson	Individual
131.	Jack Fowler	Individual
132.	John Watts	Individual
133.	David Sanders	Individual
134.	James Wellman	Individual
135.	Dr. Peter Morrison	Institute of Arctic Biology, U of A.
136.	Lee Atherton	Chamber of Commerce, Seattle
137.	Robert Willard,	Executive Director, Alaska State Commission for Human Rights and Chairman of the Alaska Plan Comm.
138.	Stan David	Individual
139.	James Lundgren	Individual

	Name	Organization
140.	Dr. Van Cleave	Tundra Studies, U of A
141.	Richard Montague	Alaska Conservation Society (Anch) (30 minutes)
142.	Doreen Huffer	Individual
144.	Mr. Howard Bayliss	Bayliss & Robe s, Inc.
145.	Charles LaPage	Individual
146.	Hugh Tatio	Individual
147.	Glenn Heatherly	Heatherly & Sons, Inc.
148.	Monte Kimball	Individual
149.	Robert Garland	Individual
150.	Robert Butt	Individual
151.	John Simmons	Plumbers, Steamfitter & Pipeliners
152.	Mike Kelley	Golden Valley Electric
153.	Matthew Dick	Individual
154.	Patrick Webb	Individual
155.	Ray Peterson	esident, Wein Consolidated Airways
156.	Frank Irick	Individual
157.	Robert Harrison	Individual
158.	Clinton E. Woodard	Individual
159.	James Lane	Individual
160.	Phil Flemming	Individual
161.	David Williams	Individual
162.	Gordon Tyree	Individual

	Name	Organization
163.	Mark Hoffman	Individual
164.	Peter McRoy	Individual
165.	Professor Thomas Schaefer	Individual
166.	Don Bruce	Individual (Alaska National Bank)
167.	Jim O. Sullivan	Taku
168.	Richard Webb	Taku
169.	Mrs. Paul E. Puckett	Individual
170.	Representative	Alaska Alpine Canoeing Club
171.	James G. Dye	Individual
172.	William T. James	Smythe Overseas Van
173.	Leo Collor	Puget Sound Tug and Barge
174.	Dr. Edward Brag	Individual
175.	Dale Bondurant	Individual
176.	Bob Parson	Individual
177.	James Bruce	Fairbanks North Star Borough
178.	Warren Mathews	Individual
179.	Don Gilmer	Individual
180.	Harold Dinkens	Individual
181.	John Helenthal	Individual
182.	Janis Rodes	Individual
183.	Rondal Latimore	Alaska Visitor's Association
184.	Bill Sheffield	Individual
185.	Robert B. Atwood	President and Editor of Anchorage Times
186.	James E. Hemming	Individual
187.	Ron Hinn	Individual

	Name	Organization
188.	Jim Hendershot	Individual
189.	James Pippin	Individual
190.	Charles D Olmstedd and David J. Otness	CARE-Concerned Alaskans for the Replenishment of the Earth (15 min)
191.	Sid Swerman	Material Technology Department, Community College
192.	J. Siddle	Anchorage Borough Assembly
193.	Henry S. Pratt	Individual
194.	Jerry Willets	Individual
195.	Jeff Richardson	Individual
196.	Ed Bellringer	Alaska Sportsman Council
197.	Walter S. Keith	Individual
198.	Lewis Dickinson	Professional Engineers
199.	Philip Rahoi	Individual
200.	Ken Carson	Individual
201.	Elmer Davis	Individual
202.	Ray Bowman	Individual
203.	Erwin Rayho	Individual
204.	Jim Messer	Individual
205.	Jim Dalton	Individual
206.	M. Spencer	Individual
207.	C. Geraghty	Individual
208.	A. Geraghty	Individual
209.	G. Rodes	Individual
210.	S. Mosher	Individual
211.	C. Rees	Individual

	Name	Organization
212.	K. Rees	Individual
213.	D. Gilbert	Individual
214.	A. Lomen	Individual
215.	N. Richardson	Individual
216.	R. Wein	Individual
217.	W. Burnett	Individual
218.	A. Scondozitch	Individual
219.	J. Wright	Individual
220.	J. Clark	Individual
221.	H. Kerslake	Individual
222.	C. Coal	Individual
223.	C. Erickson	Individual
224.	B. Carlo	Individual
225.	Mr. Sexauer	Individual
226.	P. Aiken	Individual
227.	J. Courtney	Individual
228.	K. Virgin	Individual
229.	K. Dalton	Individual
230.	J. Wilson	Individual
231.	E. Martin	Individual
232.	C. E. Schockey	Individual
233.	C. Hughes	Individual
234.	W. Kathcort	Individual
235.	J. Allbright	Individual
236.	Dr. Daggland	Individual

	Name	Organization
237.	E. Patton	Individual
238.	R. Migliaccio	Individual
239.	J. Watts	Individual
240.	L. Schroder	Individual
241.	J. Fowler	Individual
242.	J. Wellman	Individual
243.	D. Sandes	Individual
244.	K. Madson	Individual
245.	DiGange	Individual
246.	C. Swanson	Individual
247.	T. Dunkin	Individual
248.	N. Bergh	Individual
249.	L. Bergh	Individual
250.	Earl Beistine	Individual
251.	Stan Oslund	Individual
252.	Ken Hinchey	Individual
253.	Ward James	Individual

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

AtlanticRichfieldCompany
Public Relations Division
Post Office Box 360
Anchorage, Alaska 99501
Telephone 907 277 5637

Joseph H. FitzGerald
Manager of Community Affairs
Alaska Area

March 10, 1971

The Honorable William J. Moran
Alaska State House of Representatives
Pouch "V" State Capitol Bldg.
Juneau, AK 99801

Dear Bill:

During the past two years Angus Gavin, who has spent nearly 45 years in the Arctic as an ecologist, has been studying the various forms of wildlife and their habitat in the Prudhoe Bay area of northern Alaska. His report, part of a series of environmental studies undertaken by Atlantic Richfield Company and covering work performed during the past two years, has recently been published by the company for public distribution.

Mr. Gavin writes about his subject with great insight, and we hope that you will find the enclosed copy of his report both interesting reading and informative on many of the wildlife questions of northern Alaska.

If you would like to have additional copies of Mr. Gavin's report, please let me know.

Sincerely,

J. H. FitzGerald

Enclosure

Ecological Survey of Alaska's North Slope
Summer 1969 and 1970

AtlanticRichfieldCompany

The author, Angus Gavin is ecologist for the Alaskan operations of the Atlantic Richfield Company. Since 1969, he has been studying the effects of oil development on Alaska's North Slope and making recommendations to insure maximum protection of the wildlife and the Arctic environment.

Emigrating to Canada from Scotland, Mr. Gavin has spent over 40 years studying the wildlife and its environment in the northernmost reaches of the western hemisphere. Formerly senior vice-president of Ducks Unlimited (Canada), he is regarded as one of the foremost ecological naturalists with particular expertise in the arctic and subarctic areas of North America.

This report contains the results of ecological studies conducted by Mr. Gavin for Atlantic Richfield Company during 1969 and 1970.

Ecological Survey of Alaska's North Slope
Summer 1969 and 1970

Over the past two years we have had the opportunity to study and evaluate the effects of petroleum development and other related activities on the North Slope on the wildlife of the area and its environment.

Our sphere of operations has included that part of the North Slope lying between the Canning and Colville Rivers and between the Brooks Range and the Beaufort Sea. Within this area oil development activity is taking place, although most activity is confined to a relatively small zone between the Kuparuk and the Sagavanirktok Rivers and covers an area of approximately 30 square miles of coastal plain. While our studies have been primarily slanted toward collecting data on caribou, waterfowl and fish, all other animals and birds observed were recorded and as much information as possible collected. A constant check has also been kept on oil field activities and their relation to the total environment.

Our headquarters has been the Atlantic Richfield operations center at Prudhoe Bay and we have used a Bell Jet Ranger helicopter as transportation.

Description of the Study Area

The portion of the Alaskan North Slope under study consists of approximately 16,000 square miles of Coastal Plain. The major part of this is comparatively smooth, rising imperceptibly from the Arctic Ocean to a maximum altitude of 500 to 600 feet. Pingos break the flat monotony and produce an undulating skyline. Generally, the shore is quite flat—broken only by sand dunes near some of the river deltas—and much of it is only a few feet above the ocean level.

The whole area is very poorly drained and consequently quite marshy. Much of this part of the coastal plain is covered by elongated thaw lakes ranging in size from only a few yards to over a mile in length. All are quite shallow, varying from a foot to a maximum of ten feet in depth. The entire area is underlain by permafrost which reaches a depth of over 1000 feet. Ice wedge polygons cover the entire plains. Several rivers and streams intersect our study area, the major ones being the Colville, Canning and Sagavanirktok. All are heavily braided and contain large quantities of gravel.

Surface vegetation throughout the coastal plains is typical tundra type, with mosses, lichens, grasses and sedges being the most dominant. Throughout the numerous valleys and river courses intensive stands of willow and dwarf birch prevail. Since the entire area is poorly drained, sedge grass marshes are numerous. Vegetative components of these marshes vary greatly, but the dominant plants are various species of carex and grass interspersed with sedge-spagnum moss and bog type plants.

Weather throughout the summer of 1970 was quite good. Temperatures ranged from a low of +20°F on May 20 to a high of +65°F on August 27, dropping to freezing temperatures again by September when +20°F was recorded. Many of the smaller lakes and ponds froze over at this time, and some snow flurries were encountered. Thawing temperatures hit the area again on September 9 when a high of +45°F was reached. Most of the lakes and ponds thawed out, and there was a feeling of Indian Summer in the air. This, however, did not last too long as freeze-up took over the week of September 20.

General Outline of Wildlife in Study Area

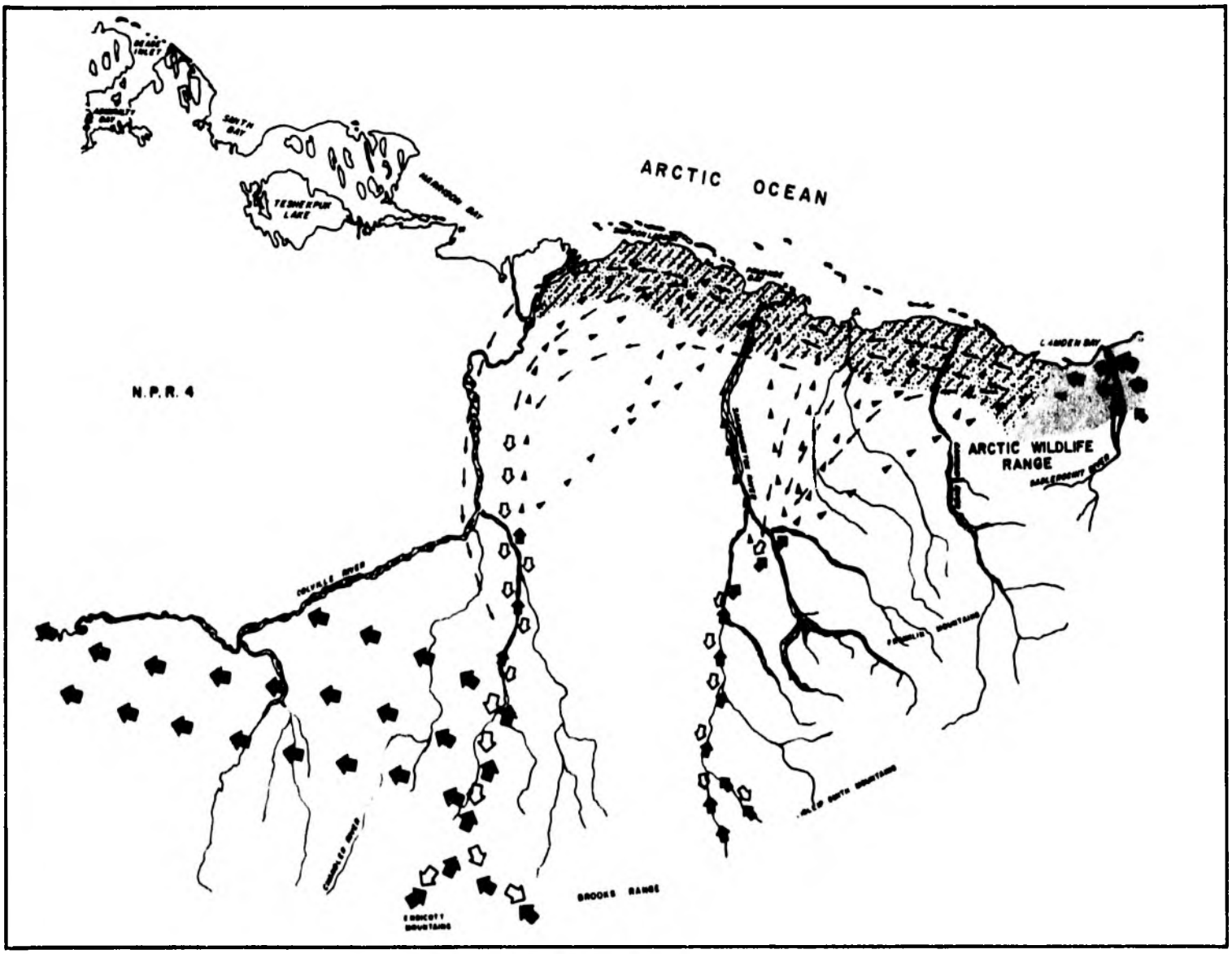
Within our study area there are many species of wildlife, all of which play an important part in the overall make-up of the ecological and biological systems. Mammals include barren ground grizzly bears, moose, caribou, wolves, wolverines, foxes, ground squirrels, lemming and Arctic shrew. Bird life is plentiful with several different varieties of geese, many species of ducks, numerous different shorebirds, whistling swan, loons, gulls, terns, jaegers, hawks, eagles, snowy owls, plovers, ptarmigan and a variety of tundra-nesting small birds.

As noted, streams within the area are heavily braided and generally quite swift, with rocky gravel or silt bottoms and relatively few really deep pools. These streams can become quite turbid in a short period from rains or melting snow in the Brooks Range where all the major ones have their headwaters. Most rivers carry char, grayling and whitefish on spawning runs, and some of the deeper ones may serve as a wintering area for Arctic char. Headwater lakes and tributaries are the major spawning areas.

Caribou—Rangifer Arcticus Arcticus

The area north of the Brooks Range commonly called the North Slope is inhabited by what is generally accepted as two distinct herds of caribou, the Westerly or Arctic, and the Easterly or Porcupine, herd. Estimates on the populations of these herds vary; however, the most recent figures, according to data and maps issued by the State Department of Fish and Game, place the population of the Arctic herd at 300,000 animals and of the Porcupine herd at around 140,000.

Figure 1



Caribou Migration Patterns

Major spring migration routes
Minor spring migration routes
Major fall migration routes
Minor fall migration routes
Major calving grounds
Minor calving grounds
Summer range

The summer ranges of these animals extend over a wide area of the North Slope and, from survey data collected over the past two years, there are indications of some overlapping, particularly during the calving season. Generally, the summer range of the Arctic herd extends from Cape Lisbourne on the west to the Colville River on the east, with some animals occasionally reaching as far north as Point Barrow. Calving grounds for the main part of the Arctic herd lie along the upper reaches of the Colville and Utukok Rivers. The summer range of the Porcupine herd extends from the upper Porcupine River north to the Arctic Ocean and west to the Canning River. Their main calving grounds extend from Camden Bay southeastward to the foothills of the Romanzof and British Mountains. Although geographically there is a wide gap between the summer ranges of these two herds, our observations indicate that, while the major portions of the herds are widely separated, offshoots of both intermingle in that portion of the range lying east of the Sagavanirktok River and west of the Canning River. During the spring of 1970, a herd of approximately 20,000 animals used the Atigun and Sagavanirktok Valleys in migration, breaking to the northeast south of Sagwon and spreading out over the plains near the coast on both sides of the Canning River. Whether this herd came from the Porcupine herd or the Arctic herd is problematical—more than likely the Arctic herd. From this migration it is evident that in some years the Sagavanirktok Valley plays host to a fairly large movement of animals.

Although patterns and migrations may vary with the weather during the fall, spring movements to the calving grounds are on a fairly tight schedule. Generally, the movement of animals from the Brooks Range and the Porcupine Valley to the North Slope begins around the first of May and reaches a peak during the latter part of May and first few days of June. Peak of the calving period is reached by about June 6. Bulls are considerably later in reaching the Slope in any numbers. They stay in the foothills area until after calving season, then gradually move north until they join up with the cows a few weeks before the start of their slow migration back to the wintering grounds. General summer movements within the slope area under study are from east to west, although there are offshoots from this pattern (see Figure 1). For the first three or four weeks after the calving period there is no particular pattern evident, but by the first week of July there is a gradual slow movement to the west and south, with a gathering of cows and calves together into small scattered bunches. By the beginning of August, small herds have developed, and a scattering of bulls begin to appear with them.

Of the two herds which use the North Slope as their summer range, a maximum of 30,000 animals frequent the area between the Colville and Canning Rivers. These are the animals which form the base for our study, since their movements and habits are tied in very closely with the oil field development. This area of the slope had not been studied before the commencement of oil exploration and development work, so we have no way of knowing the pattern and movement of these animals within the study zone in earlier times.

Our 1969 studies began just after the calving season and continued on through the fall migration period. Studies in 1970 started on April 30 with the first movement of caribou out of the Brooks Range onto the Slope. On this date, in company with Brian Sage, biologist for British Petroleum, we intercepted a herd of several thousand animals at the five thousand foot level heading north on a pass just east of Anaktuvuk. These were part of the Arctic herd moving toward their calving grounds along the upper reaches of the Colville River. From May 1 until the fall our base of operations was Prudhoe Bay. From this point close observation of caribou movements within the study area have been kept, with particular emphasis on patterns and behavior within the oil activity zone.

While few caribou drop their calves within the major oil field area, their movements during the summer bring them well within the field and, during much of the summer and fall caribou can usually be seen from the ARCO-Humble operations base. On August 19,1969 a fall movement of some 6,000 animals, including cows, calves, yearlings and bulls, passed through the field in close proximity to the main base and for several days grazed within normal camera range of many of the rigs. On July 13 of this year a herd of 1,500-2,000 animals passed through the middle of the base camps and had to be herded off the main runway in order to allow planes to land.

Although air traffic in and around the field is comparatively heavy at times, this does not seem to interfere with the normal day-to-day movement of these animals. In fact, they seem rather blasé about the whole proceedings. Much of the time, they pay little attention to aircraft movements and only become disturbed if an attempt is made to harass them.

The composition of caribou populations within the study zone has not varied greatly during the past two years. Total populations have been slightly higher in 1970, partly due to a greater movement of animals up the Sagavanirktok Valley. Calving success has been quite high, roughly 60 percent during 1969 and 70 percent during 1970. Wolf predation has been extremely light, few kills having been noted. Since only an occasional wolf has been seen during the entire summer and fall after few sightings in early spring, the wolf population seems to be at a very low level.

While there are few ground obstructions such as pipelines or fences within the oil development area at present, there are sufficient obstacles to give us some indication of caribou behavior in response to foreign materials. In some areas fairly large waterlines have been laid on top of gravel pads and some temporary feeder lines installed above ground. Observations show that caribou encountering such obstacles in their path have no hesitation in stepping over them.

Fall migrations during 1970 have been slow and leisurely with no heavy movement at any one time. Small herds moved steadily west and south throughout August, leaving few animals along the coastal zone by the beginning of September. Routes followed were identical to those of 1969—the major population using the coastal route west toward the Colville River, with a minor movement south along the Sagavanirktok River (see Figure 1).

A survey flight east toward the Canning River on September 6 located a few small groups of about 200 animals moving southwest toward the Sag Valley. On September 7 a survey of the area west of Prudhoe Bay to the Colville River showed the majority of those animals left had migrated to the vicinity of Ugnu and were moving steadily southwest toward the foothills and eventually through the Brooks Range to their wintering grounds.

Waterfowl

The part of the North Slope comprising our study area has four distinct types of habitat. In the delta areas are wide alluvial flats and many gravel and silt islands covered with a sparse growth of stunted willow; a sedge grass, marsh type habitat is dominant along the coastal plains; the Tundra-Lacustrine water edge habitat exists in the low lying coastal areas; and the Tussock-Heath type of habitat is found in areas with better drained soils.

Observations of waterfowl and other birds began on May 10 when Canada geese were the first spring arrivals. From that date on through the nesting, brood season, and fall migration period close observations were made and records kept.

Counts of the waterfowl population within the study area were made from a helicopter, using total coverage for counts of the deltas and coast for approximately ten miles inland. For the remainder of the survey area, the strip method was used. Coverage began on June 9 and was completed on June 14.

Although the average of 2.8 pairs per square mile for the total area is not exceptionally high, there are pockets of comparatively high density on some of the deltas and Tundra-Lacustrine types of habitat in the low lying coastal regions. Areas such as the region from the Colville River to Ugnu, just south of Oliktok Point, averaged 5.8 pairs per square mile, and the area in the vicinity of the Kuparuk River averaged 5.6 pairs per square mile. Further to the east, populations around the Sag River delta, although lighter than those in the former two areas, still averaged 4.9 pairs per square mile (see Figure 2).

Composition of the species comprising these counts in the various survey areas are shown in Table 1.

Weather during the first two days of the survey was good, with temperatures during the day reaching 40°F. On June 8, however, conditions changed considerably, as temperatures dropped to 24°F with snow flurries. During the remainder of the survey, temperatures stayed quite low, with the maximum being reached on June 12, when the thermometer managed to climb to 32°F.

Considerable nesting activity was underway before our surveys started. The first nest was found on May 28— a whitefronted goose with 5 eggs. On May 29, a whistling swan was sighted sitting on a nest in the Mikkelson Bay area. While some birds started nesting activity soon after arriving, there were others that apparently held off until better weather arrived, as indicated by the considerable number of late broods seen during our fall caribou survey which commenced on August 17.

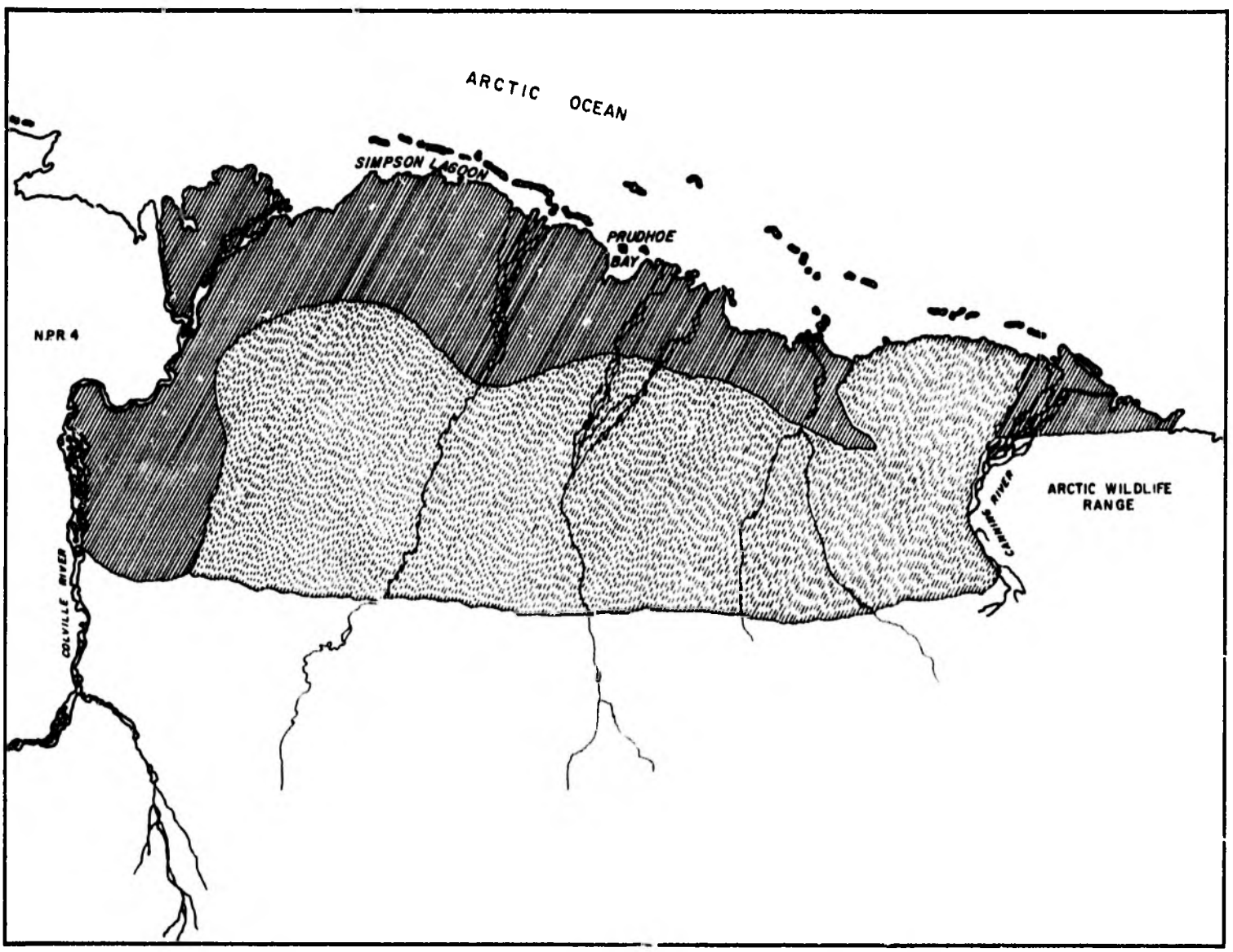
Brood count surveys were started on July 23 and were completed by August 1. Initially, these surveys showed a rather poor hatch, particularly among the whistling swans, loons, scaup and black brant. From a total of 37 pairs of swan within the survey area, only 18 were successful, and many of these had only one cygnet. Greater scaup were completely unsuccessful, as no broods were seen during the survey period. Loons, both Arctic and red throated, showed very poor results, although some late hatches were seen during the middle of August. Black brant, which showed a good overall percentage of breeding pairs during the spring count, had only a 22 percent successful hatch. Whitefronted geese, eiders, oldsquaw and pintails did considerably better and brought the overall hatching success figure up to 34 percent. Late broods which were evident during our fall caribou counts would add a percentage or two to this figure, but not enough to make significant difference. The reason for the poor hatching success of some of these birds is not known. However, it seems logical that since many, particularly the swans and some of the geese, were nesting during the latter part of May when temperatures went as low as 20°F., the eggs may have been touched by frost, unless the birds were incubating at the time. This is by no means an uncommon occurrence in the Arctic.

Since we were using a helicopter on skis for our survey work, we were unable to visit many of the offshore islands which are favorite nesting areas for eiders and oldsquaws. On August 6, however, an opportunity to visit one of the main islands arose when we accompanied Jim King and Jim Bartonek of the U. S. Fish and Wildlife Service and Dr. William Sladen of Johns Hopkins University in their float-equipped Beaver to Cross Island. This island is one of the chain lying approximately fifteen miles north of Prudhoe Bay. Its total length is about four miles, the width varying up to three-quarters of a mile. Situated on the highest point of this island, which is only about 15 feet above sea level, is an old broken-down cabin measuring about 8 foot square. In all probability, it was used during the time when the DEW line was being constructed, since there is a broken metal tower lying nearby. A survey of this island produced 97 eider nests, all of which appeared to have hatched successfully. One of the most interesting aspects of this survey was that inside the old cabin seven eiders had nested, and immediately around it some 25 others had built their nests. The majority of the remaining nests which we found were in the shelter of old drift logs or among very sparse vegetation. Terns and sabines gulls were also using this island as nesting sites. Several young sabines were seen in the water along the shore edge. Flocks of oldsquaws were in the shelter of the island, and it is assumed that they were using it as a moulting area.

TABLE 1

	Colville River/ Ugnu Area %	Kuparuk River Transect %	Sag River Delta %	Remainder of Survey Area %
Old Squaw	30	26	28	38
Whitefronted Geese	24	12	16	9
Eiders	17	23	22	31
Pintails	12	19	22	15
Lesser Canadas	8	9	11	1
Black Brant	6	11	6	2
Greater Scaup	2	–	–	1
Widgeon	1	–	–	1
Mallards	–	–	1	Trace
Greenwinged Teal	–	–	Trace	Trace
Scoters	–	–	–	2

Figure 2



Water Fowl Use Map

Breeding pair per square mile 2.5 to 5.8

Breeding pair per square mile 0 to 2.0

Area average 2.8 pairs per sq. mi.

First noticeable fall movement of birds into the study area was on August 21, when several large flocks of white-fronted geese and brant geese and some small flocks of snow geese were seen moving on to the delta flats at the mouth of the Sagavanirktok River. The build-up of birds during the next week to ten days was quite heavy. Large flocks of geese could be seen grazing on the river deltas and other marshy flat areas. While many birds were moving into the Prudhoe Bay area, there was also a fairly steady outward movement, and by the first few days of September a large part of the population had gone. Some pintails, oldsquaws, eiders and geese were still in the area on September 6, although temperatures had dropped to 22°F and many of the small ponds were frozen over. A survey of the area by helicopter on September 7 showed most of the small lakes frozen and many of the larger ones ringed with ice. Some Arctic and red throated loons with young were trying to keep holes open, but without a good long spell of warm weather, the majority of these young birds would undoubtedly perish. Three pairs of swans with a total of six young were also seen, but they were in larger waters which might stay open long enough for the young to get on the wing. Some scattered flocks of brant, whitefronted geese, oldsquaws and eiders were still in the area, but essentially the waterfowl season on the Slope was over for 1970.

(See Appendix A for an annotated list of birds.)

Fish

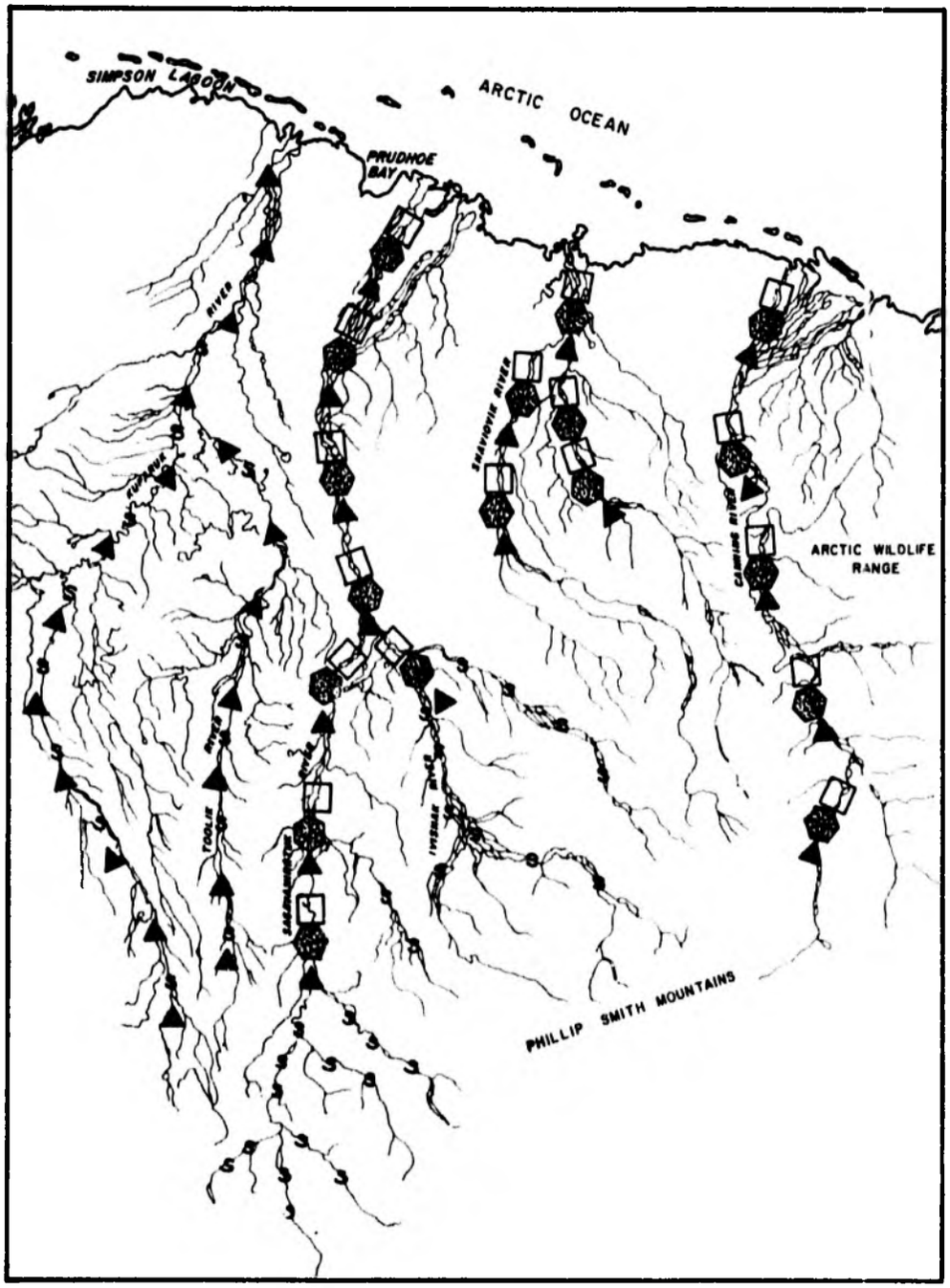
During the summer of 1970 test netting was carried out on the Sagavanirktok River in an effort to determine the status and type of fish using this stream and to evaluate the ecological impact oil development may have on its fish use. Large quantities of gravel from the alluvial flats on this river are being used for the building of roads, ramps and runways, and an assessment of the effects of this gravel removal on fish runs in the river was necessary. While complete data on age, growth and sexual maturity of fish caught this summer will not be available until laboratory test results are completed, we do have some information on time and potential volume of fish runs in the river.

The spring breakup occurred on May 28 this year. Immediately after breakup, there is a run of small Arctic char, averaging about three pounds in size. This is not a particularly heavy run, but it lasts until around the middle of June when it tapers off. Starting about the second week of July, potential spawning fish start moving up the river, and these continue well into August. These fish are of good size, reaching ten pounds and over although no exceptionally large ones were caught in our nets. After about August 15 there is a comparative lull for a short period, following which a heavy run of small two-to-three pound fish enter the river. This latter run of fish are on what is known as a cleaning run and will only stay in the river for a short period before going back out to sea. While all the data on fish caught this summer are not yet available, there is some very useful information on hand, which was gathered by the Alaska Fish and Game Department during the summer of 1969. This is contained in a report on testing done on the Sagavanirktok River and some of its tributaries. Figure 3 shows the types of fish found in the rivers on the North Slope.

The Sagavanirktok River is an important one from a fisheries standpoint and many of the tributaries and headwater lakes which feed this river are vital spawning areas that should not be disturbed by the extraction of gravel, should oil activities come within this vicinity.

While large amounts of gravel are still being removed from river beds near the coast where fish do not spawn—and more will be used during the next year or so—this has not affected the capabilities of these streams to handle fish runs.

Figure 3



Types of Fish Using Rivers

Arctic Char □
Whitefish ⬡
Grayling ▲
Potential spawning rivers S

Barren Ground Grizzly

Although no concerted effort was made to inventory and catalogue all grizzly bear on this area of the North Slope, a record was kept of all those seen during our various other surveys. These were plotted on our maps, giving numbers seen, location and date observed (see Figure 4). Since these animals hibernate in the Brooks Range during the winter, the Slope area is primarily their summer range, with few being seen at this latitude before the end of May. Generally, the first ones seen in the spring are in the valleys along the foothills, with a gradual movement northward along the river and valley bottoms with the peak number being reached on the Slope during July and August.

During 1969, a total of ten bears, including four cubs, were seen in this area. In 1970, thirty-one bears, including three cubs, were recorded. While there is no doubt that some of the bears seen were recorded on more than one occasion, it is quite evident that the grizzly bear population on this part of the Slope is in a good healthy condition. The oil development activities are probably attracting some of these bears. Having a tremendous sense of smell, they can be attracted from a long way off. Once they discover the availability of food, they are difficult to discourage and can be extremely dangerous if disturbed while eating; however, there is no indication that the oil activity is in any way endangering their livelihood or normal movements.

Wolves

The population of wolves in this area of the Slope is extremely low. Whether it is a natural condition for this part of the country or whether the population has been reduced through over-harvest is difficult to determine. While caribou populations are not as abundant as in some other parts of the Arctic Plains, there are sufficient animals to support several packs of wolves, each keeping within its own hunting territory. In all our surveys during 1969 only two wolves were sighted. In 1970 only two small packs were seen—one pack on May 5 in the Beechy Point area composed of two blacks and four grays, and the other pack on May 9 in the Kavik area consisting of three animals, one black and two grays. A female at a den site on a pingo northwest of Home-Bush and one at Franklin Bluffs were the only other wolves seen. The one at Franklin Bluffs was spotted on several different occasions and, although no den was located, presumably one was nearby.

Lemming

During 1969, these little mouse-like animals were extremely plentiful during the summer and early fall. When these small rodents reach the peak of their cycle, however, and food becomes scarce, they take off on what has often been referred to as a suicide march. While this is more fantasy than fact, they do migrate out of an area en masse, often moving long distances before they find another suitable location on the Arctic tundra and scatter out to begin the cycle once more. Many undoubtedly die during their forced marches, and thousands of others are eaten by foxes and wolves, but we doubt that they purposely commit suicide in order to reduce their population.

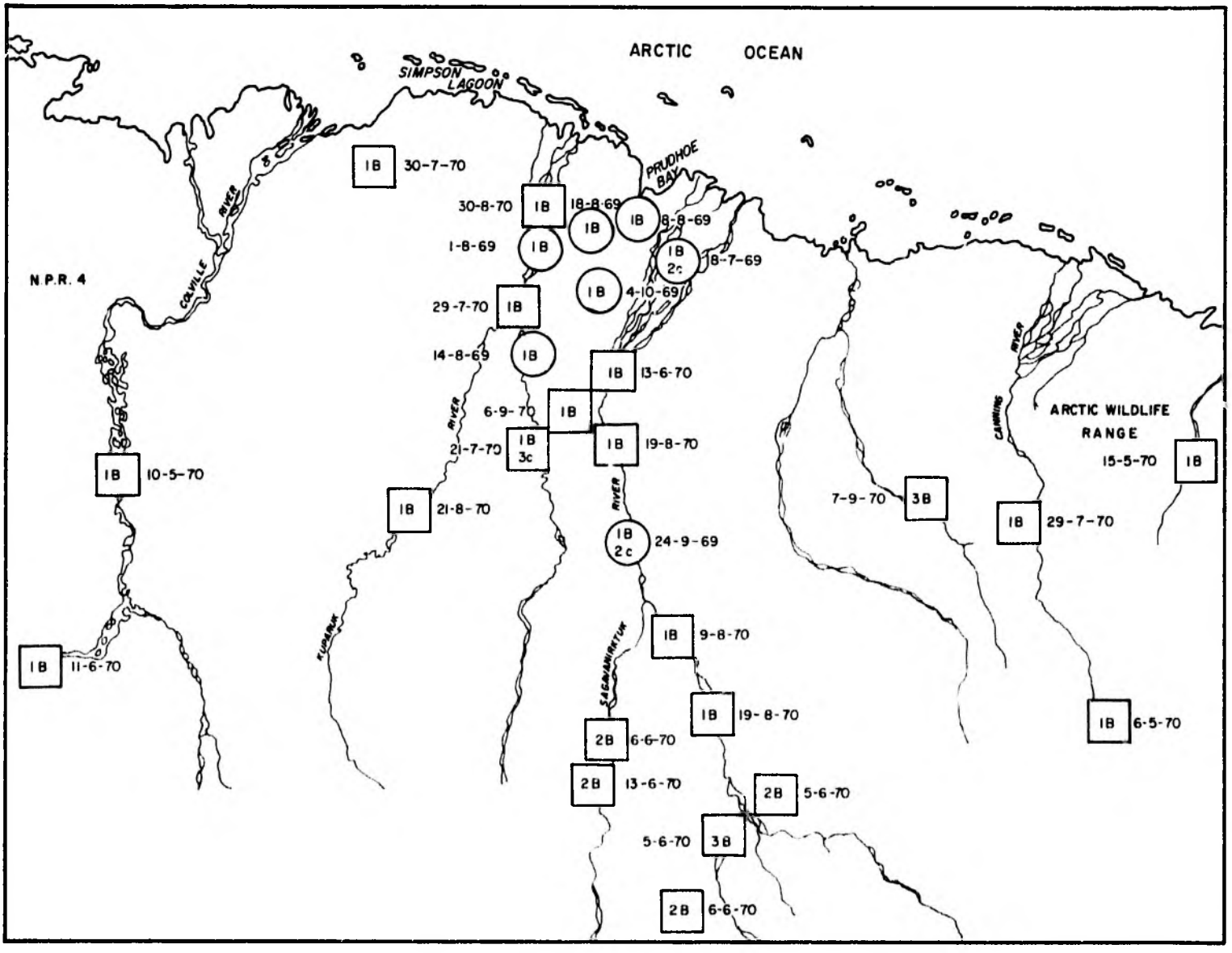
Foxes

From a very high population in 1969, the number of foxes in this area has dropped off to practically nothing. This, of course, is entirely due to the absence of lemming. During 1969, dens of the Arctic white fox could be seen on practically every pingo and suitable river bank. Few have been seen during our 1970 surveys and it is very unlikely that any large numbers will be seen around the camps as they were in 1969. More than likely, it will be several years before the population again reaches a high peak.

Moose

Although the coastal area of this part of the Slope is not inhabited by moose, the rivers and valleys leading toward the coastal plain hold quite a large population. These areas have a heavy growth of woody plants, primarily willow and stunted birch, which provides good food and cover. During the summer, they are frequently seen some distance away from these areas feeding on carex and other grass bordering the lakes. While these animals appear to be in excellent condition and reach the normal size for the moose family, we have yet to see any large sized spreads on any of the bulls, the largest being in the neighborhood of 50 inches, and the majority not much over forty inches.

Figure 4



Casual Sighting Barren Ground Grizzly

1970 sighting □

1969 sighting ○

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Appendix A

Annotated List of Birds

The following is a list of birds observed and recorded during our surveys over a two year period (1969-1970). Nests or broods of all species were not found, therefore some of those listed may be migrants through the Prudhoe Bay area. The majority, however, are known to nest within the district.

Olor Columbianus. (Whistling Swan)

Distribution: Widely scattered over much of the area. Generally frequenting the larger inland lakes. Thirty-seven pairs within the study area in 1970.

Migration: Among the first to arrive in the spring and waste little time in getting down to the business of nesting. The first nest in 1970 was recorded May 28 near Mikkelson Bay. Generally, among the last to leave in the fall. Often the young birds are barely able to fly when freeze-up occurs.

Branta Canadensis Taverneri. (Lesser Canada Goose)

Distribution: General over much of the area and, although the population appears quite high, the actual breeding population is limited. Many non-breeders summer on the Slope area. Nests were found and broods seen on the coastal plain and also inland near the foothills.

Migration: The first geese to arrive in the spring in the Prudhoe Bay area. They are also the first to leave in the fall.

Anser Albifrons. (Whitefronted Goose)

Distribution: Widely scattered from the foothills to the coastal plains. Many nests found and broods seen during surveys in both 1969 and 1970. Moulting flocks plentiful in the Ugnu area and along the Colville River.

Migration: Arrives in the Prudhoe Bay area early, often in company with Lesser Canada Geese. Starts nesting on arrival even though snow is still on the ground. Stays late in the fall and can be found in large flocks grazing on the river bottom flats and out on the tundra.

Branta Nigricans. (Black Brant)

Distribution: Widely scattered along the coast. Deltas and wide flats are their favorite nesting areas. Moulting flocks along with their young can be found on river deltas during the latter part of July.

Migration: While considerable numbers of Brant nest in the Prudhoe Bay area, there is also a migration of considerable magnitude which passes through along the coast during spring, heading east. Fall migrations into the Prudhoe Bay area are light, although fairly large numbers pass through without stopping.

Chen Hyperborea. (Snow Goose)

Distribution: Migrates through the area in good numbers in the spring and fall. Few nesting within the area.

Gavia Arctica. (Arctic Loon)

Distribution: Abundant nester in the Prudhoe Bay area. Carex and grass edged ponds and sloughs are their favorite nesting areas.

Migration: Arrives in the area in late May and first week of June. Migrates late in the fall, often being caught with their young unable to fly at freeze-up.

Gavia Stellata. (Red Throated Loon)

Distribution: Fairly abundant nester throughout the area. Prefers the same type of habitat as the Arctic Loon.

Migration: Arrives in late May and early June. Migrates late in fall often after small lakes and ponds are frozen over.

Gavia Adamsh. (Yellow-Billed Loon)

Distribution: Only a few pairs seen in the area during 1969 and 1970. Most were in the Ugnu area near the Colville River. No nests or broods seen.

Migration: Arrives early June. Fall migration unknown.

Anas Acuta. (Pintail)

Distribution: Fairly abundant nesting species along the coastal plain and around river deltas. The most prominent of the game ducks in this area.

Migration: One of the first to arrive in the spring and among the first to migrate in the fall.

Anas Platyrhynchos. (Mallard)

Distribution: A scarce bird in the Prudhoe Bay area. Only a few pairs having been recorded both in 1969 and 1970. One brood seen in 1970 near the company base camp.

Migration: Arrives first week of June and moves out early in the fall.

Anas Carolinensis. (Green Winged Teal)

Distribution: A few pairs seen in the area in both 1969 and 1970 but no nests or broods seen.

Aythya Marila (Greater Scaup)

Distribution: Widely scattered on both coastal and inland ponds, but not particularly heavy anywhere.

Migration: Fairly late arrival in spring and early migrant in the fall.

Mareca Americana. (American Widgeon)

Distribution: Very widely scattered light population. Most birds seen were in the Colville River vicinity.

Migration: Arrives around first week of June and moves out early in fall.

Somateria Mollisaima. (Common Eidor)

Distribution: One of the most common ducks in the area. Nests along coast and on islands lying off shore.

Migration: Arrives early in spring and stays quite late in fall.

Somateria Spectabilis. (King Elder)

Distribution: Fairly common along coastal areas. Not as plentiful as the common elder.

Migration: Arrives early in spring and stays fairly late in fall.

Lampronetta Fischeri. (Spectacled Elder)

Distribution: Found in fair numbers on coastal plain area.

Migration: Arrives quite early and leaves well before freeze-up in fall.

Polysticta Stelleri. (Stellers Elder)

Distribution: Widely scattered along coastal plain area but nowhere is the population heavy.

Migration: Arrives early in spring. Migrates quite early in fall.

Melanitta Deglandi. (White Winged Scoter)

Distribution: Widely scattered along coastal plain but nowhere is the population very heavy.

Migration. Late arrival in spring and fairly late migrant in fall.

Melanitta Perspicillata. (Surf Scoter)

Distribution: Very light population and widely scattered along coast.

Migration: Habits unknown.

Histrionicus Histrionicus (Harlequin Duck)

Distribution: One pair and a single male were seen on several different occasions on Sagavanirktok River.

Migration: Unknown.

Clangula Hyemalis. (Old Squaw)

Distribution: The most abundant duck in the Prudhoe Bay area. Nests on coastal ponds and on islands lying offshore.

Migration: Arrives early in the spring and is one of the last birds to leave in the fall.

Falco Peregrinus. (Peregrine Falcon)

Distribution: Widely scattered throughout the study area. Several pairs seen along the Colville River and south along the Sagavanirktok River. One nest located on Franklin Bluffs.

Buteo Lac Opus. (Rough-Legged Hawk)

Distribution: Fairly common and widely scattered throughout our study area.

Falco Rusticolus. (Gyrfalcon)

Distribution: Only pair seen was on the Colville River on July 27, 1970.

Aquila Chrysaetos. (Golden Eagle)

Distribution: Several seen in the upper reaches of the Sagavanirktok River. An immature one on the Colville River July 27, 1970 and one near Mikkelson Bay July 30, 1970, also an immature.

Lacopus Lacopus Alascensis. (Willow Ptarmigan)

Distribution: Widely distributed and very plentiful at times. Some flocks seen in the spring of 1970 were literally in the thousands.

Lacopus Mutus Nelsoni. (Rock Ptarmigan)

Distribution: Few Rock Ptarmigan were noted in the Prudhoe Bay area, but some flocks were seen farther south in the foothills.

Grus Canadensis. (Sandhill Crane)

Distribution: Several pairs seen along the Colville River. One on a nest about 30 miles north of Umiat.

Pluvialis Dominica. (American Golden Plover)

Distribution: Observed at widely scattered points throughout the study area. Nowhere very plentiful.

Squatarola Squatarola. (Black Bellied Plover)

Distribution: Observed at widely scattered points throughout the study area, but not plentiful.

Charadrius Semipalmatus. (Semipalmated Plover)

Distribution: Very common in area. The most abundant of the Plover family.

Arenaria Interpres. (Ruddy Turnstone)

Distribution: Widely scattered, but not plentiful in area.

Erolia Melantos. (Pectoral Sandpiper)

Distribution: Widely scattered and quite common throughout the area.

Erolia Bairdii. (Bairds Sandpiper)

Distribution: Very few seen on coastal area. More plentiful on upper reaches of Sagavanirktok River.

Erolia Minutilla. (Least Sandpiper)

Distribution: Only one seen in the Prudhoe Bay area during 1969 and 1970.

Ereunetes Pusillus. (Semipalmated Sandpiper)

Distribution: Seen on one or two occasions during spring migration. Not recorded during summer nesting season.

Numenius Phaeopus. (Whimbrel)
Distribution: Seen on migrations only along the Sagavanirktok River.

Erolia Alpina. (Dunlin)
Distribution: Widely distributed but nowhere very plentiful. One nest with three eggs found near Kuparuk River.

Phalaropus Fulicarius. (Red Phalarope)
Distribution: One of the most plentiful of the shorebirds seen in the area. Every little pond seems to contain a pair in the spring.

Lobipes Lobatus. (Northern Phalarope)
Distribution: Plentiful in the Prudhoe Bay area but not as abundant as the Red Phalarope.

Stercorarius Longicaudus. (Long Tailed Jaeger)
Distribution: Widely scattered and quite plentiful. Can be seen any day flying over tundra or sitting on small mounds on the tundra.

Stercorarius Pomarinus. (Pomarine Jaeger)
Distribution: Widely scattered but not as plentiful as the Long Tailed or Parasitic. Can be seen in flight and sitting on small mounds on the tundra.

Stercorarius Parasiticus. (Parasitic Jaeger)
Distribution: Fairly widely scattered throughout the study area. Seen in same areas as the Long Tailed and Pomarine.

Larus Hyperboreus Barrovianus. (Glaucous Gull)
Distribution: Widely scattered and quite plentiful in the area. Nests on islands and sandbars of braided streams.

Xema Sabini. (Sabines Gull)
Distribution: Widely scattered but not plentiful. Nests mostly on the offshore islands.

Sterna Paradisaea. (Arctic Tern)
Distribution: Fairly common along the coastal areas and on the offshore islands.

Nyctea Scandiaca (Snowy Owl)
Distribution: Very plentiful during 1969. Very scarce in 1970. Fluctuates with the lemming population which was high in 1969.

Asio Flammeus. (Short Eared Owl)
Distribution: Two recorded in 1970. These were seen flying over the tundra south of Franklin Bluffs.

Corvus Corax (Common Raven)
Distribution: Seen at widely scattered points. Mostly along rivers and on wolf or grizzly bear kills. Not particularly abundant.

Lanius Excubitor (Northern Shrike)
Distribution: One recorded on the Ivishak River on June 5, 1970.

Acanthis Hornemanni. (Redpoll)
Distribution: Recorded on several different occasions on the Colville River and on the upper reaches of the Sagavanirktok River. Not seen on the coastal areas.

Passerculus Sandwichensis Anthinus. (Savannah Sparrow)
Distribution: Recorded at several different points during 1969 and 1970 but nowhere did we find them in any numbers.

Calcarius Lapponicus. (Lapland Longspur)
Distribution: Very common throughout the region. Can be found practically everywhere on the tundra.

Plectrophenax Nivalis. (Snow Bunting)
Distribution: Common throughout the region. One of the first birds to arrive in the spring and lingers on in the fall well after freeze-up.

No. 1 A
(Misc. Bills)

Alaska State Legislature

REPRESENTATIVE JOHN H. HUBER
HOUSE DISTRICT 18

COMMITTEES
STATE AFFAIRS
NATURAL RESOURCES

POUCH V
JUNEAU, ALASKA
99801

1617 MARY ANNE ST.
P. O. BOX 2591
FAIRBANKS, ALASKA
99701

March 31, 1971

Rep. William J. Moran
Box 1891
Anchorage, Alaska 99501

HCR #21

Dear Bill:

I wrote to you on March 18 concerning HCR21 furnishing you with what information I had on the subject.

The response which I received from the legislature as a whole was most gratifying. I hoped that the ill-advised resolution would not survive nor gain publicity to feed upon , which the proponents of illicit drug usage so much desire and is the most necessary component of the big lie technique being used to secure legalization .

I did not in my last letter nor do I now impugn the motives of the sponsors. I did not make any press release,and no circulation of the letter which I wrote to you was made or authorized. I wish to add that no such action will now be considered by the undersigned. My sole reason for this letter is to bring you more information without publicity.

I am enclosing a copy of a newspaper article provided me by a member of our Senate. Primarily I ask that you read the enclosed letter from Sarkis Atamian ,Head of the Department of Phychology and Sociology of the University of Alaska. Professor Atamian is a recognized authority on the subject and writes in response to SSHCR21 at my request and much more knowledgeably than I ever could.

In closing I would offer to the sponsors of SSHCR21 or any other member of this Legislature , the enclosed draft resolution covering a serious need for action in this session if our drug education efforts are to be continued. I assure you that the story which I heard one sponsor of the resolution in collecting vote pledges; that I was only looking for publicity is not so and I ask that you judge me and my motives on acts rather than words, facts not fictions . I understand that SSHCR21 will now be on the House Calendar Friday April 2, 1971 I ask for your vote AGAINST this resolution.

Bill,may I count your vote on this important issue ? .

Sincerely,

John Huber

John Huber

COLLEGE OF BEHAVIORAL SCIENCES AND EDUCATION

UNIVERSITY OF ALASKA
COLLEGE, ALASKA 99701

March 29, 1971

Honorable John H. Huber
House of Representatives
Pouch B
Juneau, Alaska 99801

Dear John,

It would seem to me that one point only should be refuted in HCR 21 (since a point by point refutation would require a draft ten times longer than the resolution) and that is the "council's" role in all this. Feel free to use whatever you can of the following.

HCR 21 admits that the marijuana issue is enveloped in "violent controversy." It then proposes that a legislative council study the "scientific evidence" and, accordingly, propose legislation aimed mainly at ameliorating existing legislation which penalizes too harshly violators who are in possession or engaged in sale, or possessing for sale. It also intends to solve the taxonomic issue of whether marijuana is a stimulant, an hallucinogen, and what have you.

As the resolution admits, there is great scientific controversy regarding these issues. It then arrogates to itself the incredible decision that a legislative council of elected public servants has the expertise to solve some vital scientific issues which, admittedly, are already controversial. Having arrogantly reached armchair conclusions based on their "research" of scientific data, the council will now propose legislation, the biased, prejudiced, and unilateral nature of which is not only implied in the bill, but explicitly stated for how can this conclusion be avoided when the proposal indicates how unfair present legislation is on the subject? The best way the proposal could have prevented such a credibility gap would have been to explicitly state that it would delegate the "research" of complex scientific data to a sub-committee of established experts, to wit, scientists in the field representing both si 'es of the controversy. Only then could committee have a legitimate basis for legislation based on understanding. But on this vital issue, the proposal creates a judge, jury, and executioner, all in the same body. While legislators will not hesitate to appropriate vast sums of money to hire expert teams of specialists for "feasibility studies" of all sorts, here there is no mention of competent assistance in an area which one way or another involves the lives of youth, the fortunes of the tax payer, and the continuity or collapse of society.

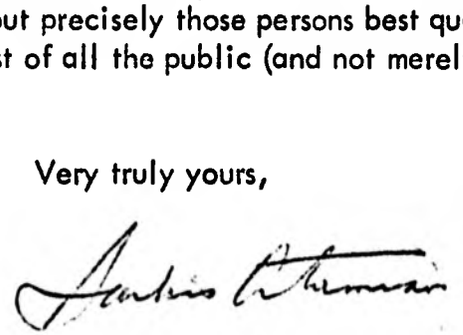
The proposal is guilty of the self-fulfilling prophecy. Many of its arguments, as in similar cases, rest on assumptions, which were clearly erroneous in the past; but which elicited responses as though the assumptions were true, and now there is a reality which need not have occurred except on the original error. For instance: ten years ago, marijuana abuse or use was not a middle class problem because it was not used extensively by the middle class. Radical ideology aimed against the so-called establishment argued, without any scientific basis that "pot" was not harmful or dangerous.

Its use increased and the original lie or undemonstrated thesis fed back into the system increasing rates of use until it did become a middle class phenomenon. Now the contention is that it is problematical, the laws are unenforceable and too many people want its legalization -- all of which could have been predicted in advance given the erroneous premises of the original arguments lacking in scientific integrity. Some of the very political interests who wanted to create political havoc ten years ago precisely in order to use it as a pretext for current legalistic maneuvers for the coup de grace, are predictably at it now. Only note the insidiousness: a lay committee of non-experts will collect scientific data, interpret it, resolve the controversies, and propose ameliorative legislation. That such a legislative council is not only not qualified to resolve differences, but is, in fact, not qualified to recognize differences can be quickly demonstrated.

Since the proposal speaks in the name of scientific evidence, can any of its members define the methodological differences between empirical evidence and statistical correlation? Can they distinguish between independent and controlled variables in scientific method? Can they relate testable hypothesis to untestable theory? Do they know how many laboratory controlled experiments there are since 1969 which is the date of the first such experimental finding? Did they know the fact referred to in the previous question?

As the house resolution points out, this area is so complex and controversial that if any integrity is intended, then the fact finding and analysis and recommendations must be made by qualified people whose thinking can only then constitute the basis for intelligent legislation. Every political representative of the legislative council would undoubtedly be the first to object if a microbiologist dared, on the basis of his expertise, to tell the body politic what is right or wrong about the legislative process and goodness or badness of democratic theory. And there is the rub. The current proposal is undemocratic because it leaves out precisely those persons best qualified to participate in the ground work on which the best interest of all the public (and not merely ranting pressure groups) rests.

Very truly yours,



SARKIS ATAMIAN, Head
Department of Psychology
and Sociology

Pro-Marijuana Campaign Dangerously Misleading; Researchers Are Baring Perils Of Use Of Pot

The World, Coos Bay, Ore., Saturday, Aug. 29, 1970

WASHINGTON — One of the cruelest campaigns ever conducted in this country has been directed at convincing Americans marijuana is no serious danger — "no worse than alcohol."

The idea that marijuana smoking tends to lead users on to even worse drugs has been denied as fantastic and without evidence.

The words of prominent medical men have been twisted out of context and their denials ignored.

As a matter of truth, a series of not-yet-published research studies sponsored by the U.S. National Institute of Mental Health give the most horrifying picture of what marijuana may do to chronic smokers.

When these NIMH reports are made public, probably within the next few weeks, they most certainly will startle thinking people.

Listed below are some glimpses of what that research shows:

● There are indications, in some cases, that marijuana-caused alterations in behavior "would be conducive to acts of violence." There is apparently a strong suggestion in some research that continued heavy use of marijuana may cause serious damage to the unborn children of users.

Behavioral Changes

● Dr. Constandinos Miras, visiting professor at UCLA working under NIMH support, used radioactive marijuana to track the drug through the human body on subjects who smoked at least two cigarettes daily for two years or more. His tests revealed "abnormal brain wave readings patterned to behavioral changes." In some cases, with long-time users, Miras noted chronic lethargy and loss of inhibitions for two years after their last usage, indicating, he felt, significant and lasting organic brain change.

● Dr. William McGlothlin, a research psychologist, and Dr. Jolyon West, of the Department of Psychiatry at Oklahoma University, working under a NIMH grant, found that present day marijuana use plays "a role in initiation to other potent drugs, particularly LSD."

● Regular use of marijuana, they also report, contributes to characteristic personality changes — "apathy, loss of effectiveness and diminished capacity or willingness to carry out complex long-term plans, endure frustration, concentrate for long periods, following routines or successfully master new material. Verbal facility is often impaired, both in speaking and writing." Some individuals show "a strong tendency toward regressive, childlike magical thinking . . ."

Washington News Scene

● Drs. Harris Isbell, D. J. Jasinski and C. W. Gorodetsky of NIMH, with associates in Germany, report that sufficiently high dosages of a substance extracted from the marijuana plant "can cause psychotic reactions in almost any individual."

Some NIMH studies center on marijuana from the standpoint of chromosomal breakage patterns. The objective is to determine the potential danger to future children of chronic smokers. The results of these studies (if there are any results thus far) are not known to this reporter. But the work of Dr. William F. Geber, associate professor of pharmacology at Georgia University, certainly suggests the possibility of serious harm to the unborn.

Damages The Unborn

Dr. Geber has injected pregnant rabbits and hamsters with large doses of resin from marijuana plants. The resultant fetuses contained malformed limbs, spines, livers and brains. They often suffered from edema, or excessive fluid, on the brain and spinal region.

There are also a considerable number of other independent studies (non-NIMH-supported) which bear out the extreme dangers inherent in smoking marijuana.

Dr. Herbert A. Raskin, psychiatrist at Wayne State University, reports cases "in which marijuana high comes on again spontaneously, weeks after the person has had a high . . . We've also had some young people with acute psychoses brought on by marijuana."

Drs. Martin H. J. Keeler, Clifford Reifler and Myron Liptzin, of the University of North Carolina School of Medicine's Department of Psychiatry, report that experience with marijuana users at the university's medical center suggests that this spontaneous recurrence of marijuana's effects may be relatively common and that it may often be accompanied by a degree of anxiety sufficient to constitute a psychiatric emergency.

Dr. James C. Munch, in his paper, "The Toxicity of Cannabis Sativa," states that (some) "humans smoking marijuana cigarettes . . . have developed . . . progressive brain damage and death from cardiac failure."

One of the most curious aspects of this whole miserable situation is that some who are most active in the fight against pollution and the use of some agricultural chemicals because of the potential harm to our bodies, are most strongly against restraints on the use of marijuana, where the danger is infinitely greater, at least for those who use this drug.

Proponents of marijuana continually harp that more proof of harm is needed.

Of course, continued research is necessary. But how much evidence do we need to stir us up to act more vigorously to find a solution before it is too late?

The World

Published by The World of Coos Bay, Inc., Daily Except Sunday, at Fourth St. and Bennett Ave., Coos Bay, Oregon

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"If tongue and pen alike are free,
Safe from all foes stands liberty."—Poor

THE FOLLOWING PAGES WERE TREATED AS
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The
ALASKA OPTOMETRIC ASSOCIATION

AFFILIATED WITH
AMERICAN OPTOMETRIC ASSOCIATION

HB 34

March 23, 1971

The Honorable Eugene V. Miller
Majority Leader
House of Representatives
Juneau, Alaska 99801

Dear Mr. Miller:

This will be a letter confirming our conversation on March 22, 1971 concerning the committee substitute for House bill 34. My profession is in the unhappy position of having to oppose this legislation for several reasons. I would first like to state that the optometrists of Alaska are not opposed to the idea of a physician having an assistant aiding him in his private practice. The Alaska Optometric Association is also not opposed to the training and use of health aids in the bush areas to provide various forms of rudimentary health care when no specialized person is available to provide this care. It is indeed unfortunate that a health aid needs to be trained in the bush areas of Alaska where the Public Health Service is vested with the responsibility for caring for these people and expends vast amounts of money each year supposedly to provide this care and yet in fact does not provide reasonable health care in Alaska.

The optometrists of Alaska are opposed to House Bill 34 for several reasons. The first being that a physician is basically not qualified to supervise an assistant in the vision care field. My researches of 61 medical school catalogues show that the average training a physician has in the eye or in eye care amounts to approximately two semester hours over his entire training period. Ten of the 61 catalogues that I had access to showed no eye or vision care training for the physicians these particular schools graduated. I am sure this same situation is true in the fields of dentistry, pharmacy and other health care professions that are not licensed under the Medical Practice Act. If we were to turn this situation around and offered the same amendment to the optometry law allowing an optometrist to have an assistant to assist him in any field of the practice of medicine the comparisons are much the same and I am sure the physician would be just as alarmed as the optometrist is now. The Alaska Optometric Association offered the enclosed amendment to House bill 34 and this amendment was not included by either the Health Education & Welfare Committee nor by the House Finance Committee, because it was felt this amendment would interfere with the operation of the health aid who will provide his services in the bush areas. I was unable to attend sessions held by these two committees concerning this legislation, because I just happened to be out of town both times when the bill was considered. Probably the main opposer to the optometry amendment was William De'ak, M.D., Project Director for the Yukon-Kuskokwim Health Corporation. I am enclosing a copy of a letter I wrote to him on March 12, 1971 stating

The
ALASKA OPTOMETRIC ASSOCIATION

AFFILIATED WITH
AMERICAN OPTOMETRIC ASSOCIATION

that the Alaska Optometric Association and the Alaska Board of Examiners In Optometry had no intention of interfering with his program and certainly recognized the need, and in fact offered the assistance of the optometrists in Alaska to help train these people. You will also find a March 18, 1971 letter from Dr. De'ak to me adamantly stating his position, but with no explanation concerning how a physician could be qualified to supervise assistance in areas of health care where he has no training himself. The absolute lack of vision care in the bush areas of Alaska has been of concern to me and I have a small stack of correspondence I would happily display with the Department of Health & Welfare and with the Public Health Service concerning this very problem. I have received no response from the Public Health Service and very little encouragement from the Federal Department of Health & Welfare and practically no encouragement from The State of Alaska Department of Health & Welfare. I have had some help from our delegation in Washington and have recently learned that there is an optometrist scheduled in the Public Health Service budget for the next fiscal year and have written to our delegation in Washinton urging their support of this position, and hopefully it will be funded.

I would be most happy to sit down with Representative Kerttula and Dr. De'ak and Representative Hohman or any other legislators or people in the health care field and help formulate legislation that would allow the physician to train and use assistants in his practice and also allow the Yukon-Kuskokwim Health Corporation or any other health corporation in the bush area to utilize village health aids where specialized care is not available. It is my opinion that the best way to solve this problem would be to convince Mr. Kerttula to withdraw his bill and start over in the House of Representatives. There would be several advantages in this procedure, because the Health & Welfare Committee has already held deliberations concerning this type of legislation and have some of the ramifications of it already in mind. He would also have the advantage of starting out with all parties in basic agreement and have a much better chance of passage through the entire legislative system without having to go back to a conference committee for additional study and expended time. I'll make every attempt to meet with anyone interested in this type of legislation and do what ever I can to help formulate the proper type of legislation to utilize physicians assistants to the best possible advantage for the health care consuming public. House Bill 34 does not begin to meet this criteria and in fact would allow a physician to call anyone he desired an assistant and give this assistant a free reign in any area of the health care field regardless of his qualifications. House Bill 34 as it is written now would also allow any physician to have an assistant in an office outside of his own office and even outside of his own community.

Thank you for your assistance in this extremely important matter and I stand ready to aid however, I can.

Yours truly,

Dr. Roy A. Box, President
Alaska Optometric Association

ALASKA OPTOMETRIC ASSOCIATION'S

PROPOSED AMENDMENT TO CS FOR HB 34

Line 14: After the word "chapter." add the following new language:

"No medical services may be performed under this section in any of the following areas:

(a) The measurement of the powers or range of human vision, or the determination of the accommodation and refractive states of the human eye or the scope of its functions in general, or the fitting or adaptation of lenses or frames for the aid thereof.

(b) The prescribing or directing the use of, or using any optical device in connection with ocular exercises, visual training, vision training or orthoptics.

(c) The prescribing of contact lenses for, or the fitting or adaptation of contact lenses to, the human eye."

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

THE FOLLOWING PAGES WERE TREATED AS
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HB 52

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
PUBLIC HEALTH SERVICE
HEALTH SERVICES AND MENTAL HEALTH ADMINISTRATION

March 25, 1971

The Honorable
Tom Fink
House of Representatives
Pouch V
Juneau, Alaska 99801

Sir.

It has come to my attention that you voted HB 52 authorizing state subsidy for Alaska Methodist University back into Committee.

While it is important to develop budget expenditures frugally, it would seem that $365,000 is a small amount for a large purpose especially in view of other proposals issuing from Juneau, i.e., the marine highway improvements.

In Alaska there is one overwhelming deficiency that permeates the modus vivendi in this "Great Land" and that is small thinking. From the style of journalism in local newspapers to the vituperative tenor in the recent elections, the note is a sour discordant one of ignorance; nowhere are universities of higher learning, especially private institutions free from political stress, more crucial to future development than in Alaska.

It is time that the sourdough image of the Alaskan be dissolved and the youth in this state be encouraged to grow brains instead of beards. It is time that the Seattle braintrust be dissolved and capable Alaskans run their own affairs.

"North to the Future" is not through the ignorance of today but the knowledge of tomorrow.

Sincerely,

J. David Williams, M.D.
Ass't Chief, Otolaryngology

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
PUBLIC HEALTH SERVICE

PHS ALASKA NATIVE MEDICAL CENTER
P. O. BOX 7-741
ANCHORAGE, ALASKA 99501

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PENALTY FOR PRIVATE USE $300

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The Honorable
Tom Fink
House of Representatives
Pouch V
Juneau, Alaska 99801

HB 52

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
PUBLIC HEALTH SERVICE
HEALTH SERVICES AND MENTAL HEALTH ADMINISTRATION

March 25, 1971

The Honorable
Tom Fink
House of Representatives
Pouch V
Juneau, Alaska 99801

Sir:

As a citizen with great respect for higher education I appeal to you to exert every possible effort to bring HB 52 out of Committee and assist in its passage.

The contribution of Alaska Methodist University has been significant and should be supported. As other states are finding the responsibility to support private institutions, I feel we can also meet this obligation in this case.

Sincerely,

David D. Beal

David D. Beal, M.D.
Chief, Otolaryngology

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
PUBLIC HEALTH SERVICE

ALASKA NATIVE MEDICAL CENTER
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The Honorable
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House of Representatives
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Juneau, Alaska 99801

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TELEGRAM

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JUNEAU, ALASKA 99801

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ANCHORAGE ALASKA 1 1240P AST

HB 149

BILL MORAN 0195

POUCH 5 JUN

THE PASSAGE OF HB149 WOULD BE A COMPLETE
DISASTER FOR THE WHOLE CONCEPT OF STATE CERTIFICATION
OF WELDERS AND FIELD WELD INSPECTION AS
OUTLINED AND ADOPTED BY THE STATE BOARD OF WELDING
EXAMINATORS BY A 6 TO 1 VOTE YOUR CAREFUL REVIEW
AND CONSIDERATION IS RECCOMMENDED

ROBERT E BREWER MEMBER STATE BOARD OF WELDING EXAMINERS

HB149 6 1

(41).

HB 158

NIGHTLETTER
MARCH 1, 1971

Charge to City of Anchorage - 272-5522

HONORABLE MIKE MILLER
HOUSE OF REPRESENTATIVES
ALASKA LEGISLATURE

JUNEAU, ALASKA

THIS IS IN RESPONSE TO YOUR INQUIRY CONCERNING HB NO. 158. THE CITY OF ANCHORAGE IS OPPOSED TO THIS BILL.

IN OUR VIEW THE ALASKA TRANSPORTATION COMMISSION IS NOT THE PROPER REGULATORY AGENCY TO CONTROL GARBAGE COLLECTION AND DISPOSAL. WE FEEL THE REGULATION OF THIS SERVICE SHOULD BE VESTED IN THE APPLICABLE LOCAL GOVERNMENT UNIT. CERTAINLY IF THE STATE IS TO REGULATE IN THIS FIELD, THE ALASKA PUBLIC UTILITY COMMISSION WOULD BE THE MORE APPROPRIATE REGULATORY AGENCY.

IF THE CITY AND/OR BOROUGH IN THIS AREA DID NOT OPERATE SANITARY LAND FILLS AND ALLOW USE BY SUCH PRIVATE GARBAGE COLLECTION FIRMS, I DOUBT VERY SERIOUSLY ANY OF THESE FIRMS WOULD BE IN BUSINESS.

THE CITY OF ANCHORAGE RECOGNIZES THAT WHERE A PRIVATE FIRM HAS A ROUTE IN A NEWLY ANNEXED AREA THAT A CITY SHOULD, BEFORE SERVING THE AREA, ACQUIRE THE EQUIPMENT AND FACILITIES EMPLOYED BY THE PRIVATE FIRM IN SERVING THE AREA. HOWEVER, WE FEEL STRONGLY THAT CITIES SHOULD NOT BE PROHIBITED FROM PROVIDING GARBAGE COLLECTION AND DISPOSAL SERVICE TO ANY OF ITS RESIDENTS.

I PLAN TO BE IN JUNEAU LATER THIS WEEK AND HOPE WE MAY FURTHER DISCUSS THIS BILL THEN.

ROBERT E. SHARP
CITY MANAGER
CITY OF ANCHORAGE

cc - (by mail)
Don Berry, AML, Juneau
Local Affairs Agency, Office of the Governor, Juneau
Anchorage Area Members of House of Representatives

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

Direct Selling Association
1730 M Street, N.W.
Washington, D.C. 20036
(202) 293-5760

1971 Membership Roster

Statement of Principles

Members of the Direct Selling Association subscribe to and support this statement of principles.

1. Salespersons, by creating demands for goods, help provide the American people with employment and the world's highest standard of living, and those who devote their lives to selling are making important contributions to the welfare of our nation.

2. Salespersons in all fields must observe the highest standards of integrity, frankness and responsibility in dealing with consumers and in all selling:

   (a) Descriptions of products must be truthful and terms of sale clearly stated;

   (b) Honesty is required in the approach to sale, and

   (c) Courtesy to a prospective customer, and consideration of his needs, are prime essentials of all selling.

3. The Direct Selling Association endorses and commends the efforts of all national, state and local organizations which promote the establishment and maintenance of high standards of practices and of truth in all selling of merchandise.

HOW TO USE THIS ROSTER

To give you a useful reference, this roster of the membership of the Direct Selling Association is divided into the following parts:

	Page
Part I Active Members	3
Part II Commodity Classifications– Active Members	10
Part III Associate Members	17
Part IV Commodity Classifications– Associate Members	23
Part V Geographical Listing	29

Parts I and III are alphabetical listings of active and associate member companies. The full address and telephone number of the main office is given for each, as well as the name of the company executive who is the representative to the association.

Parts II and IV show under alphabetically listed product categories the companies which manufacture or distribute that product.

Part V gives by state the names of both active and associate member companies *headquartered* in that state. Many members have branch offices. You should check your local telephone directory to see if a member company has an office or is represented in your community.

ACTIVE MEMBERS

According to the bylaws of the Direct Selling Association, those eligible for active membership are persons or firms manufacturing or dealing in merchandise intended ultimately to reach the consumer through an in-person sales contact, as distinguished from sales contacts made by mail or in stores of the seller. A member must also have a business location in the United States.

Part I

ACTIVE MEMBERS

AMERICAN FORESIGHT, INC.
3210 Cherry Street
Philadelphia, Pennsylvania 19104
Mr. Edward Satell
(215) 222-2340

AMWAY CORPORATION
Ada, Michigan 49301
Mr. William J. Halliday, Jr.
(616) 676-6305

ANNA ELIZABETH WADE
1000 Robins Road
Lynchburg, Virginia 24505
Mr. E. M. Gentry
(703) 845-7073

ARTEX HOBBY PRODUCTS, INC.
711 West Vine Street
Lima, Ohio 45804
Mr. Charles H. Crockett, III
(419) 228-2686

ATLANTIC INDUSTRIES, INC.
(d/b/a Atlantic Portrait Plan)
720 N.W. 27 Avenue
Suite 200
Miami, Florida 33125
Mr. L. M. Shwiller
(305) 642-6355

AVON PRODUCTS, INC.
30 Rockefeller Plaza
New York, New York 10020
Mr. H. Thomas McGrath
(212) 757-3780

BEAUTICONTROL, INC.
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Bensenville, Illinois 60106
Mr. Dayton Brown
(312) 766-2250

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Charlotte, North Carolina 28201
Mr. Newton A. Smith
(704) 333-6631

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Mr. C. P. Colborn
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Brockton, Massachusetts 04202
Mr. Jerome P. Denmark
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Mr. Kenneth R. Ogle
(513) 961-5729

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El Monte, California 91733
Mr. Mulford J. Nobbs
(213) 443-0231

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1089 Eastern Avenue
Chillicothe, Ohio 45601
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(614) 775-9100

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3816 Dahlia Street
P. O. Box 2038
Denver, Colorado 80201
Mr. Ronald C. Riepe
(303) 399-1590

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Knoxville, Tennessee 37902
Mr. W. C. Bryan
(615) 522-5131

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Elk Grove Village, Illinois 60007
Mr. Dean Hoppmann
(312) 437-7694

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Mr. Charles L. Benedict
(704) 287-4205

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Carol Stream
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Mr. J. C. Luhn
(312) 665-1660

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(Nutrilite Products, Inc.)
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Buena Park, California 90620
Mrs. Edith Rehnborg
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Mr. Stephen Sheridan
(212) 867-3400

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Cincinnati, Ohio 45225
Mr. Phil Meyers Jr.
(513) 542-5151

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1263 South Chillicothe Road
Aurora, Ohio 44202
Mr. Jay C. Standish
(216) 562-7147

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(Minnesota Woolen Company)
131 West First Street
Duluth, Minnesota 55802
Mr. Richard Polinsky
(218) 722-2656

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Chicago, Illinois 60654
Mr. Harold M. Ross, Jr.
(312) 341-2452

FIGURETTES, INC
8770 East McDowell
Scottsdale, Arizona 85252
Mr. Del Remme
(602) 947-4371 or 949-9622

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P. O. Box 900
Hartford, Connecticut 06115
Mr. Harold G. Johnson
(203) 289-6811

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Dept. 1, 118 Carlisle Street
Hanover, Pennsylvania 17331
Mr. Gordon P. King
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Mr. Frank Callahan
(312) 263-6500

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Denver, Colorado 80202
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(303) 266-1487

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Saddle Brook, New Jersey 07663
Mr. Vito A. Luppino
(201) 791-1575

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Milwaukee, Wisconsin 53202
Mr. Robert V. White
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10236 South Kedzie Avenue
Evergreen Park, Illinois 60642
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(312) 239-2900

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Mrs. Hazel Redman Keller
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Memphis, Tennessee 38102
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Chippewa Falls, Wisconsin 54729
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Passaic, New Jersey 07055
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Mr. Lawrence A. Westerberg
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Indianapolis, Indiana 46206
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Mr. Martin Lindquist
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Mr. Edward Mason
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Easthampton, Massachusetts 01027
Mr. Joseph H. Stone
(413) 527-1000

STARK BRO'S NURSERIES & ORCHARDS CO.
Louisiana, Missouri 63353
Mr. John Stark Logan
(314) 754-5511

C. H. STUART & CO., INC.
165 East Union Street
Newark, New York 14513
Mr. Richard W. Goodman
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C. W. STUART & CO.
165 East Union Street
Newark, New York 14513
Mr. M. E. DuRei
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Salem, Virginia 24153
Mr. E. Cabell Brand
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(312) 292-2323

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(312) 259-6054

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Belleville, New Jersey 07109
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P. O. Box 2353
Orlando, Florida 32803
Mr. Joseph Hara
(305) 847-3111

VANDA BEAUTY COUNSELOR
(Dart Industries Inc.)
P. O. Box 3433
Orlando, Florida 32802
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(305) 841-8110

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Overland Park, Kansas 66202
Mr. Dale Ashley
(913) 236-6850

WATKINS PRODUCTS, INC.
150 Liberty Street
Winona, Minnesota 55987
Mr. James N. Doyle
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WEAR-EVER ALUMINUM, INC.
1089 Eastern Avenue
Chillicothe, Ohio 45601
Mr. W. R. Trott
(614) 775-9100

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West Bend, Wisconsin 53095
Mr. E. P. Mantz
(414) 334-2311

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Tenth & G Streets
Millville, New Jersey 08332
Mr. Lawrence Straker
(609) 825-1750

ZYCLO CUTLERY
P. O. Box 913
Bellevue, Washington 98004
Mr. Martin Lindquist
(206) 454-3921

Part II

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McConnon & Company
Nutrilite Products, Inc.
The W. T. Rawleigh Company
Watkins Products, Inc.

Supplemental Concentrates for Animal Agriculture
Moorman Mfg. Co.

AUTOMOBILE ACCESSORIES
Cyclo Manufacturing Company

BIBLES
Amway Corporation
Bible House Catholic Guild
Catholic Publishers, Inc.
National Book, Inc.
National Photographers Album Co.
The Southwestern Company

BLANKETS
Amway Corporation
Fashion Wagon

BOOKS
Bible House Catholic Guild
Catholic Publishers, Inc.
Field Enterprises Educational Corporation
Highlights for Children, Inc.
National Book, Inc.
National Photographers Album Co.
The Southwestern Company

BRUSHES, BROOMS, MOPS, ETC.
Amway Corporation
The Fuller Brush Company
Stanley Home Products, Inc.

CENTERPIECES, PERMANENT FLOWERS, DECORATOR ITEMS
Wheatonware, Inc.

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Blair Quality Products
Con-Stan Industries, Inc.
The Fuller Brush Company
HomCare
McConnon & Company
Nutrilite Products, Inc.
The W. T. Rawleigh Company
Shaklee Products
Stanley Home Products, Inc.
Tupperware Home Parties
Watkins Products, Inc.

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Amway Corporation
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Fashion Frocks, Inc.
Fashion Wagon
Queen's-Way to Fashion
Realsilk, Inc.

CHINA
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Celebrity, Inc.
The Easterling Company, Inc.
International Hostess Enterprises, Inc.
Nobility-Prestige Co.
Society Corporation
Vita Craft Corporation
The West Bend Company

CLOTHING
The Stuart McGuire Company, Inc.

COOKWARE
Nobility-Prestige Co.
Society Corporation
Vita Craft Corporation

Aluminum
Wear-Ever Aluminum, Inc.
The West Bend Company

Stainless Steel
American Foresight, Inc.
Amway Corporation
Celebrity, Inc.
Century Metalcraft Corporation
The Easterling Company, Inc.
Homemakers Guild of America
International Hostess Enterprises, Inc.
Regal Ware, Inc.
Rena-Ware Distributors, Inc.
Vita Craft Corporation
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Beauticontrol, Inc.
Blair Quality Products
Con-Stan Industries, Inc.
Edith Rehnborg Cosmetics
Fashion Two Twenty, Inc.
The Fuller Brush Company
Isle of Aloe
Keller Cosmetics, Inc.
Luzier Incorporated
McConnon & Company
Mary Kay Cosmetics, Inc.
The W. T. Rawleigh Company
Shaklee Products
Stanley Home Products, Inc.
Studio Girl-Hollywood, Inc.
Vanda Beauty Counselor
Watkins Products, Inc.

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Amway Corporation
Caroline Emmons
Judy-Lee Jewels
Lisa Jewels Co.
Queen's-Way to Fashion
Sarah Coventry, Inc.
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C. H. Stuart & Co., Inc.

CRYSTAL
Celebrity, Inc.
Society Corporation
Vita Craft Corporation

CUTLERY
Amway Corporation
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Cutco Division, Wear-Ever Aluminum, Inc.
The Easterling Company, Inc.
International Hostess Enterprises, Inc.
Nobility-Prestige Co.
Society Corporation
Vita Craft Corporation
The West Bend Company
Zylco Cutlery

DECORATING ACCESSORIES
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DRESSES
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Con-Stan Industries, Inc.
Doncaster, Inc.
Fashion Frocks, Inc.
Fashion Wagon
Queen's-Way to Fashion
Realsilk, Inc.
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EDUCATIONAL MATERIALS
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Highlights for Children, Inc.

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Anna Elizabeth Wade
Blair Quality Products
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The Fuller Brush Company
The W. T. Rawleigh Company
Watkins Products, Inc.

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Blair Quality Products
Con-Stan Industries, Inc.
The Fuller Brush Company
McConnon & Company
Nutrilite Products, Inc.
Shaklee Products
Stanley Home Products, Inc.
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Con-Stan Industries, Inc.
Fashion Frocks, Inc.
Fashion Wagon
Figurettes, Inc.
Queen's-Way to Fashion
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Girdles & Bras
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FUND RAISING
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Tri-Chem, Inc.

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Fashion Frocks, Inc.
Fashion Wagon
Mason Shoe Mfg. Co.
Queen's-Way to Fashion
Realsilk, Inc.
The Stuart McGuire Company, Inc.

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Nutrilite Products, Inc.
The W. T. Rawleigh Company
Shaklee Products
Stanley Home Products, Inc.
Tupperware Home Parties
Watkins Products, Inc.

HOUSEWARES
Rubbermaid, Inc.

HYGIENIC PRODUCTS
Blair Quality Products

JACKETS
Beeline Fashions, Inc.
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Fashion Frocks, Inc.
Fashion Wagon
Mason Shoe Mfg. Co.
Queen's-Way to Fashion
Realsilk, Inc.
Spencer Incorporated
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Con-Stan Industries, Inc.
Fashion Frocks, Inc.
Fashion Wagon
Queen's-Way to Fashion
Realsilk, Inc.
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Family Record Plan, Incorporated
Heritage
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International Hostess Enterprises, Inc.

LINGERIE
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Con-Stan Industries, Inc.
Fashion Wagon
Figurettes, Inc.
Queen's-Way to Fashion
Realsilk, Inc.
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MAGAZINES
Highlights for Children, Inc.

MASSAGE EQUIPMENT
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Cyclo Manufacturing Company

MEDICINAL ARTICLES
Blair Quality Products
McConnon & Company
The W. T. Rawleigh Company
Watkins Products, Inc.

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Beeline Fashions, Inc.
Fashion Frocks, Inc.
Fashion Wagon
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NECKTIES
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Shaklee Products
Stanley Home Products, Inc.
Watkins Products, Inc.

Photofinishing Services
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PLASTIC DINNERWARE
Amway Corporation

PLASTIC HOUSEHOLD PRODUCTS
Amway Corporation
The Fuller Brush Company
Stanley Home Products, Inc.
Tupperware Home Parties

Premium Exhibitor
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Doncaster, Inc.
Fashion Frocks, Inc.
Fashion Wagon
Mason Shoe Mfg. Co.
Queen's-Way to Fashion
Realsilk, Inc.

RELIGIOUS NAPKINS
Anna Elizabeth Wade

RODENTICIDES
McConnon & Company

SHIRTS
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The Charles Chester Shoe Co.
Fashion Frocks, Inc.
Fashion Wagon
Queen's-Way to Fashion
Realsilk, Inc.
The Stuart McGuire Company, Inc.

SHOES
The Charles Chester Shoe Co.
The Hanover Shoe, Inc.
Mason Shoe Mfg. Co.
The Stuart McGuire Company, Inc.

SPORTSWEAR–CASUAL APPAREL
Beeline Fashions, Inc.
Con-Stan Industries, Inc.
Doncaster, Inc.
Fashion Frocks, Inc.
Fashion Wagon
Queen's-Way to Fashion
Realsilk, Inc.
Spencer Incorporated
The Stuart McGuire Company, Inc.

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Anna Elizabeth Wade
Blair Quality Products

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Catholic Publishers, Inc.
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Field Enterprises Educational Corporation
Time-Life Libraries, Inc.

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Celebrity, Inc.
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International Hostess Enterprises, Inc.
Vita Craft Corporation
Wheatonware, Inc.

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Amway Corporation
Nobility-Prestige Co.

Stainless Steel
Amway Corporation
The Easterling Company, Inc.
International Hostess Enterprises, Inc.
Vita Craft Corporation

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The Easterling Company, Inc.

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Tri-Chem, Inc.

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Fashion Wagon

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Health-Mor Inc.
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Doncaster, Inc.
Fashion Frocks, Inc.
Fashion Wagon
Queen's-Way to Fashion
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According to the bylaws of the Direct Selling Association, those eligible for associate membership are persons or firms engaged in supplying various services or merchandise to, or carrying on enterprises incidental to, business concerns which qualify for active membership.

Part III

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Wichita, Kansas 67201
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Brooklyn, New York 11232
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1201 East Bell Street
Bloomington, Illinois 61701
Mr. Harry G. McDavitt
(309) 828-2367

FAWCETT PRINTING CORP.
4545 Touhy Avenue
Chicago, Illinois 60646
Mr. Frederic D. Weeden
(312) 478-5500

THE M. H. GRAHAM CORPORATION
P. O. Drawer K
Biloxi, Mississippi 39533
Mr. Sidney Sundstrom
(601) 435-1486

GRANT, WRIGHT & BAKER, INC.
520 North Michigan Avenue
Chicago, Illinois 60611
Mr. Frank Baker
(312) 467-1033

Associate Members (Continued)

HELBROS WATCHES
(Elgin National Industries, Inc.)
2 Park Avenue
New York, New York 10016
Mr. Larry Prigozen
(212) 685-6300

THE HEWITT SOAP COMPANY, INC.
333 Linden Avenue
Dayton, Ohio 45403
Mr. Frazier M. Hancock
(513) 253-1151

INCOME OPPORTUNITIES
229 Park Avenue South
New York, New York 10003
Mr. Joel Davis
(212) 673-1300

INTERNATIONAL FLAVORS & FRAGRANCES, INC.
521 West 57 Street
New York, New York 10019
Mr. Lewis G. Lynch
(212) 765-5500

THE JEANNETTE GLASS COMPANY
Bullitt Avenue
Jeannette, Pennsylvania 15644
Mr. W. Frank Myers
(412) 523-6501

KAYSER-ROTH SPECIAL MARKETING DIVISION
200 Madison Avenue
New York, New York 10016
Mr. Robert Krasnow
(212) 679-4200

KNOX ASSOCIATES, INC.
205 Smith Building
2070 Main Street
Fort Myers, Florida 33901
Mr. C. Clair Knox
(813) 332-1617

KRANZTEN STUDIO, INC.
22 West Hubbard Street
Chicago, Illinois 60610
Mr. Benjamin A. Rawlins
(312) WH 4-7330

THE MANAGEMENT TEAM, INC.
1760 South Orange Avenue
Suite 403
Orlando, Florida 32806
Mr. Gary McDonald
(305) 241-9555

THE MCB COMPANY
Road Forks
Northampton, Massachusetts 01060
Mr. M. C. Bailey
(413) 584-7307

MORSE ELECTRO PRODUCTS CORP.
9200 Atlantic Avenue
Ozone Park, New York 11416
Mr. Ted Kushner
(212) 441-6600

MOTIVATORS, INCORPORATED
8111-B Troost Avenue
Kansas City, Missouri 64131
Mr. Lowery D. Bishop
(816) 361-8884

NIGHTINGALE-CONANT CORPORATION
6677 Lincoln Avenue
Chicago, Illinois 60645
Mr. Ronald I. Davis
(312) 478-0050

NORDA ESSENTIAL OIL & CHEMICAL CO., INC.
475 Tenth Avenue
New York, New York 10018
Mr. E. E. Benedict
(212) 594-3232

Associate Members (Continued)

NORPLAC, INC.
2415 Pilot Knob Road
St. Paul, Minnesota 55118
Mr. William J. Houston
(612) 452-1120

ONEIDA LTD.
(Direct Sales Division)
Oneida, New York 13423
Mr. Howard P. Corney
(315) 361-3347

OXZYN COMPANY
1301 New York Avenue
Trenton, New Jersey 08607
Mr. David M. Cohen
(609) 393-7114

THE PARKER PEN COMPANY
219 East Court Street
Janesville, Wisconsin 53545
Mr. Russell B. French
(608) 754-7711

RCA SALES CORPORATION
600 North Sherman Drive
Indianapolis, Indiana 46201
Mr. George Fearnaught
(317) 635-9000

REGAL WARE, INC.
Kewaskum, Wisconsin 53040
Mr. C. W. McClarran
(414) 626-2121

REVELATION PLASTICS, INC.
112 Fifth Avenue
New York, New York 10011
Mr. Joseph L. Dorf
(212) 924-1500

RICHARDS & SARGENT, INC.
756 Eddy Street
Providence, Rhode Island 02903
Mr. Ted Richards, Jr.
(401) 421-8137

SALESMAN'S OPPORTUNITY MAGAZINE
1460 John Hancock Center
Chicago, Illinois 60611
Mr. Jack Weissman
(312) 337-3350

SINGER FUR CO., INC.
190 North State Street
Chicago, Illinois 60601
Mr. Ronald J. Singer
(312) 782-5900

SPARE TIME MAGAZINE
5810 West Oklahoma Avenue
Milwaukee, Wisconsin 53219
Mr. Harvey R. Kipen
(414) 543-8110

SPATZ LABORATORIES
4131 Glencoe Avenue
Venice, California 90291
Mr. William J. Palmer
(213) 398-5768 or 870-5993

SPECIALTY SALESMAN AND FRANCHISE OPPORTUNITIES MAGAZINE, INC.
307 North Michigan Avenue
Chicago, Illinois 60601
Mr. R. C. Van Ness
(312) 726-0743

SPRINGS MILLS, INC.
104 West 40 Street
New York, New York 10018
Mr. Kenneth Warren
(212) 556-6163

STANDARD EDUCATIONAL CORPORATION
130 North Wells Street
Chicago, Illinois 60606
Mr. L. S. Ewing
(312) 346-7440

Associate Members (Continued)

WM. STROH, INC.
568-570 – 54 Street
West New York, New Jersey 07093
Mr. Wm. Stroh, III
(201) 864-4800

C. H. STUART & CO., INC.
165 East Union Street
Newark, New York 14513
Mr. John Joyce
(315) 331-1580

SUNBEAM APPLIANCE COMPANY
5400 West Roosevelt Road
Chicago, Illinois 60650
Mr. S. C. Schuppe
(312) 854-3500

SYROCO
1001 Carew Tower
Cincinnati, Ohio 45201
Mr. Lee Leonard
(513) 241-9661

O. C. TANNER CO.
1930 South State
Salt Lake City, Utah 84115
Mr. William J. Paul
(801) 484-4477

THURON INDUSTRIES, INC.
12200 Denton Drive
Dallas, Texas 75234
Mr. Kirk Craig
(214) 247-7141

TRAVELLERS PREMIUM COMPANY, INC.
110 Fifth Avenue
New York, New York 10011
Mr. Joseph L. Dorf
(212) 924-1500

UOP FRAGRANCES U.S.
43-23 – 37 Avenue
Long Island City, New York 11101
Mr. A. E. Eisenkraft
(212) 361-8100

UNITED METAL GOODS MFG. CO., INC.
379 Dekalb Avenue
Brooklyn, New York 11205
Mr. Benjamin G. Edelman
(212) 789-6200

VACATION PRIZES, INC.
2228 – 28 Street, North
St. Petersburg, Florida 33700
Mr. Samuel T. Stewart
(813) 896-4677

THE WEST BEND COMPANY
West Bend, Wisconsin 53095
Mr. R. L. Uebele
(414) 334-2311

Part IV

ASSOCIATE MEMBER COMMODITY CLASSIFICATIONS

ACHIEVEMENT AWARDS
American Optical Corporation
Richards & Sargent, Inc.
Syroco
United Metal Goods Mfg. Co., Inc.
The West Bend Company

ADVERTISING AGENCIES
Brand and Edmonds Associates
Clay Agency, Inc.
Dreher Advertising, Inc.
Grant, Wright & Baker, Inc.
Kranzten Studio, Inc.

ART & PHOTOGRAPHY
Kranzten Studio, Inc.

AUDIO-VISUAL SALES TOOLS
American Optical Corporation
DuKane Corporation
Motivators, Incorporated
Nightingale-Conant Corporation

BAGS & PACKAGING
American Optical Corporation

BEAUTY AIDS
Americana Products

BEDSPREADS
Springs Mills, Inc.

BIBLE PUBLISHERS
De Vore & Sons, Inc.
(Heirloom Bible Publishers, Inc.)

BLANKETS
Springs Mills, Inc.

BOOKS
De Vore & Sons, Inc.
(Heirloom Bible Publishers, Inc.)
Standard Educational Corporation

CALENDARS (Linen Towels)
The MCB Company

CATALOGS
Kranzten Studio, Inc.

CHINA
American Manor China by Shenango
Belora Fine China Products, Inc.

CLOCKS
Syroco
United Metal Goods Mfg. Co., Inc.

CONTAINERS OR PACKAGING
Syroco

Cosmetic Containers (Lipstick, Shadow & Blusher Cases, etc.)
Spatz Laboratories

Film Packaging (Creams, Lotion, Powders, etc.)
The MCB Company

COSMETICS & TOILETRIES MANUFACTURERS
Oxzyn Company

Associate Members (Continued)

CRYSTAL
American Manor Crystal by Tiffin

CUTLERY & STAINLESS TABLEWARE
The MCB Company

DECORATIVE WALL ACCESSORIES
Syroco
United Metal Goods Mfg. Co., Inc.

DIRECT-TO-CONSUMER SALES CONSULTANTS
Dill-Clitherow and Company
Knox Associates, Inc.
The Management Team, Inc.
Motivators, Incorporated
Nightingale-Conant Corporation
Salesman's Opportunity Magazine

ELECTRIC COFFEEMAKERS, GRILLS & NONELECTRIC TEA BREWER
The M. H. Graham Corporation

ELECTRICAL APPLIANCES
Americana Products

EMBLEMATIC JEWELRY
O. C. Tanner Co.

ESSENTIAL OILS, AROMATIC CHEMICALS, FLAVORS & FRAGRANCES
International Flavors & Fragrances, Inc.

FLOOR-CARE EQUIPMENT
Eureka Williams Company

FOUNDATION GARMENTS
Alba-Waldensian, Inc.

FRAGRANCES & FLAVORS
Norda Essential Oil & Chemical Co., Inc.

FURS
Singer Fur Co., Inc.

GIFT NOVELTIES
American Optical Corporation
Americana Products
The MCB Company
Singer Fur Company, Inc.
United Metal Goods Mfg. Co., Inc.

GIFT-TYPE SEWING, SCISSORS & DRESSMAKER
The MCB Company

HOUSEHOLD PRODUCTS (Private Label)
Blue Cross Laboratories
Thuron Industries, Inc.

HOUSEHOLD SPECIALTIES
The Jeannette Glass Company
Springs Mills, Inc.

HOUSEWARES
Anchor Hocking Corporation
Cory Corporation
The Jeannette Glass Company
The MCB Company
Norplac, Inc.
Oneida Ltd. Direct Sales Division
Regal Ware, Inc.
Springs Mills, Inc.
Sunbeam Appliance Company
Syroco
United Metal Goods Mfg. Co., Inc.
The West Bend Company

INCENTIVE MANUFACTURERS
Richards & Sargent, Inc.

Associate Members (Continued)

INSECT-CONTROL PRODUCTS
Thuron Industries, Inc.

INTIMATE APPAREL
Alba-Waldensian, Inc.

JEWELRY
Coro, Inc.
The MCB Company
Richards & Sargent, Inc.

Fashion Jewelry
Coro, Inc.

Pearls & Costume Jewelry
DuBarry-Fifth Avenue, Inc.
The MCB Company
Richards & Sargent, Inc.
C. H. Stuart & Co., Inc.

LADIES' & CHILDREN'S LINGERIE
Kayser-Roth Special Marketing Division

LADIES' DRESSES & SPORTSWEAR
American Optical Corporation

LADIES' HANDBAGS
The MCB Company

LADIES' HOSIERY & PANTY HOSE PRODUCTS
Alba-Waldensian, Inc.

LAMPS
The MCB Company

LINENS
Springs Mills, Inc.

LUGGAGE, SAMPLE CASES, LEATHER GOODS OR NOVELTIES
American Optical Corporation
Americana Products
Kayser-Roth Special Marketing Division
The MCB Company

MAGAZINES
Salesman's Opportunity Magazine
Spare Time Magazine
Specialty Salesman and Franchise Opportunities Magazine, Inc.

MAILING LIST BROKERS
Wm. Stroh, Inc.

MANAGEMENT CONSULTANTS
Consulting Associates, Inc.
Dill-Clithe, aw and Company
Knox Associate , Inc.
The Management Team, Inc.
Nightingale-Conant Corporation

MANICURE IMPLEMENTS
The MCB Company

MEN'S HOSIERY
Alba-Waldensian, Inc.

NURSERY STOCK
C. H. Stuart & Co., Inc.

PARTY-PLAN INCENTIVES
Travellers Premium Company, Inc.

PREMIUMS
Americana Products
American Optical Corporation
Channel Master Corp.
Cory Corporation
The Jeannette Glass Company
Kayser-Roth Special Marketing Division
The MCB Company
Motivators, Incorporated
Nightingale-Conant Corporation
Norplac, Inc.
Oneida Ltd. Direct Sales Division
Regal Ware, Inc.
Springs Mills, Inc.
C. H. Stuart & Co., Inc.
Syroco
Textile Mills Company
Travellers Premium Company, Inc.
United Metal Goods Mfg. Co., Inc.
Vacation Prizes, Inc.
The West Bend Company

PRINTERS
Alden Press, Inc.
Fawcett Printing Corp.

PROMOTION & SALES AIDS
Motivators, Incorporated
Nightingale-Conant Corporation
Revelation Plastics, Inc.

PROMOTIONAL CONSULTANTS
The Management Team, Inc.
Nightingale-Conant Corporation

RADIOS & TV
Channel Master Corp.

RAINCOATS
The MCB Company

RECORDED MOTIVATION & SALES-TRAINING MATERIALS
Motivators, Incorporated

RECRUITING
Salesman's Opportunity Magazine

Recruiting Contests
Travellers Premium Company, Inc.

REFRIGERATOR DEODORIZERS
Blue Cross Laboratories

ROOM DEODORIZERS
Thuron Industries, Inc.

SALES CONTESTS & INCENTIVE CAMPAIGNS
American Optical Corporation
Kayser-Roth Special Marketing Division
The Management Team, Inc.
Oneida Ltd. Direct Sales Division
Syroco
Travellers Premium Company, Inc.
United Metal Goods Mfg. Co., Inc.
The West Bend Company

SALES TRAINING & MOTIVATION
American Salesmasters, Ltd.

SAMPLE CASE DESIGNERS & MANUFACTURERS
Revelation Plastics, Inc.

SELLING AIDS
United Metal Goods Mfg. Co., Inc.

SHEETS & PILLOWCASES
Springs Mills, Inc.

SOAP, DRUG, PERFUME & TOILET SUPPLIES
Blue Cross Laboratories
Duveen Soap Corporation
The Hewitt Soap Company, Inc.
International Flavors & Fragrances, Inc.
C. H. Stuart & Co., Inc.
Thuron Industries, Inc.
UOP Fragrances U.S.

SPORTING GOODS
American Optical Corporation

STEREOPHONIC EQUIPMENT, SEWING MACHINES & TELEVISION SETS
Morse Electro Products Corporation

SUNGLASSES
American Optical Corporation

TABLE APPOINTMENTS
The MCB Company
Oneida Ltd. Direct Sales Division
Syroco

Place Mats
The MCB Company

Tablecloths
The MCB Company
Springs Mills, Inc.

Associate Members (Continued)

TABLEWARE
Americana Products

TIME & WORK SAVERS
The Parker Pen Company

TOILET BOWL CLEANER (AUTOMATIC)
Blue Cross Laboratories

TRANSISTORIZED RADIOS, TV, TAPE RECORDERS & ALLIED PRODUCTS
Channel Master Corp.
Motivators, Incorporated
RCA Sales Corporation

VACUUM CLEANERS
Eureka Williams Company

WATCHES
Coro, Inc.
Helbros Watches
The MCB Company

WOMEN'S SUITS & COATS
Singer Fur Co., Inc.

WRITING INSTRUMENTS
The Parker Pen Company

Pens & Pencils
The MCB Company

Part V

GEOGRAPHICAL LISTING OF MEMBERS

ARIZONA

Active
Figurettes, Inc.

CALIFORNIA

Active
Century Metalcraft Corporation
Con-Stan Industries, Inc.
Edith Rehnborg Cosmetics
Family Record Plan, Incorporated
Heritage
Nutrilite Products, Inc.
Shaklee Products

Associate
Belora Fine China Products, Inc.
Blue Cross Laboratories
Spatz Laboratories

COLORADO

Active
Cyclo Manufacturing Company
Homemakers Guild of America

Associate
American Salesmasters, Ltd.

CONNECTICUT

Active
The Fuller Brush Company
Spencer Incorporated

FLORIDA

Active
Atlantic Industries, Inc.
Tupperware Home Parties
Vanda Beauty Counselor

Associate
The Management Team, Inc.
Vacation Prizes, Inc.

ILLINOIS

Active
Beeline Fashions, Inc.
Deanne LaVé, Ltd.
The Easterling Company, Inc.
Field Enterprises Educational Corporation
Health-Mor Inc.
Judy-Lee Jewels
Moorman Mfg. Co.
Nightingale-Conant Corporation
The Process Corporation
Queen's-Way to Fashion, Inc.
The W. T. Rawleigh Company
Studio Girl-Hollywood, Inc
Time-Life Libraries, Inc.

Associate
Alden Press, Inc.
Clay Agency, Inc.
Consulting Associates, Inc.
Cory Corporation
Dill-Clitherow and Company
DuKane Corporation
Eureka Williams Company
Fawcett Printing Corp.
Grant, Wright & Baker, Inc.
Knox Associates, Inc.
Kranzten Studio, Inc.
Nightingale-Conant Corporation
Salesman's Opportunity Magazine
Singer Fur Co., Inc.
Specialty Salesman and Franchise Opportunities Magazine, Inc.
Standard Educational Corporation
Sunbeam Appliance Company

INDIANA

Active
Realsilk, Inc.
Society Corporation

Associate
Future Enterprises, Inc.
RCA Sales Corporation

IOWA

Active
Home Reference Library, Inc.

KANSAS

Active
Celebrity, Inc.
Vita Craft Corporation

Associate
DeVore & Sons, Inc.

MASSACHUSETTS

Active
The Charles Chester Shoe Co.
Stanley Home Products, Inc.

Associate
American Optical Corporation
The MCB Company

MICHIGAN

Active
Amway Corporation

MINNESOTA

Active
Fashion Wagon
McConnon and Company
Minnesota Woolen Company
The Playhouse Company, Inc.
Watkins Products, Inc.

Associate
Norplac, Inc.

MISSISSIPPI

Associate
The M. H. Graham Corporation

MISSOURI

Active
Luzier Incorporated
Stark Bro's Nurseries & Orchards Co.

Associate
Motivators, Incorporated

NEW JERSEY

Active
International Hostess Enterprises, Inc.
Lisa Jewels Co.
Mid-Atlantic Home Shopping Service Co., Inc.
Tri-Chem, Inc.
Wheatonware, Inc.

Associate
Oxzyn Company
Wm. Stroh, Inc.

NEW YORK

Active
Avon Products, Inc.
Caroline Emmons
Electrolux
Nobility-Prestige Co.
Sarah Coventry, Inc.
C. H. Stuart & Co., Inc.
C. W. Stuart & Co.

Associate
Alba-Waldensian, Inc.
Americana Products
Channel Master Corp.
Coro, Inc.
Dreher Advertising, Inc.
DuBarry-Fifth Avenue, Inc.
Duveen Soap Corporation
Helbros Watches
International Flavors & Fragrances, Inc.
Kayser-Roth Special Marketing Division
Morse Electro Products Corp.
Norda Essential Oil & Chemical Co., Inc.
Oneida Ltd.
Revelation Plastics, Inc.
Springs Mills, Inc.
C. H. Stuart & Co., Inc.
Syroco
Travellers Premium Company, Inc.
United Metal Goods Mfg. Co., Inc.
UOP Fragrances U.S.

NORTH CAROLINA

Active
Bible House Catholic Guild
Doncaster, Inc.
Keller Cosmetics, Inc.
Renn Enterprises, Ltd.

OHIO

Active
Artex Hobby Products, Inc.
Children's Records, Inc.
Cutco Division (Wear-Ever Aluminum, Inc.)
Fashion Frocks, Inc.
Fashion Two Twenty, Inc
Highlights for Children
The Kirby Company
Rubbermaid, Inc.
The Scott & Fetzer Co.
Wear-Ever Aluminum, Inc.

Associate
Anchor Hocking Corporation
The Hewitt Soap Company, Inc.

PENNSYLVANIA

Active
American Foresight, Inc.
The Hanover Shoe, Inc.

Associate
American Manor China & Crystal
The Jeannette Glass Company

RHODE ISLAND

Associate
Richards & Sargent, Inc.

TENNESSEE

Active
Catholic Publishers, Inc.
John H. Daniel Co.
Lucky Heart Cosmetics, Inc.
National Book, Inc.
The Southwestern Company

TEXAS

Active
Beauticontrol, Inc.
HomCare
Home Interiors and Gifts, Inc.
Mary Kay Cosmetics, Inc.
National Photographers Album Co.
Success Motivation Institute, Inc.

Associate
Success Motivation Institute, Inc.
Thuron Industries, Inc.

UTAH

Associate
O. C. Tanner Co.

VIRGINIA

Active
Anna Elizabeth Wade
Blair Quality Products
Chap Stick Company
The Stuart McGuire Company, Inc.

Associate
Brand and Edmonds Associates

WASHINGTON

Active
Rena-Ware Distributors, Inc.
Zylco Cutlery

WISCONSIN

Active
Isle of Aloe, Inc.
Mason Shoe Mfg. Co.
Regal Ware, Inc.
The West Bend Company

Associate
The Parker Pen Company
Regal Ware, Inc.
Spare Time Magazine
The West Bend Company

of the sale which shall be stated in clear and unambiguous language and in readable type comparable in size with all other type thereon.

Recruiting Advertisements

11. An industry member may not use any advertisement which is false, misleading, or deceptive concerning:

a. the salary, commission, income, earnings, profits, or other remuneration which sales-contact personnel receive or may expect to receive; or

b. the chances or opportunities for such remuneration.

Any reference to the amount of compensation should be based on actual, typical earnings.

Illustrations

12. Illustrations of advertised merchandise shall conform without exaggeration or essential difference to the appearance of the merchandise actually on sale, or being offered for sale. Any featured price used in proximity to an illustration shall be the price of the illustrated unit.

Chain Referral Selling

13. No industry member shall use an illegal chain referral sales plan or other scheme for the distribution of prizes, premiums, or gifts by illegal lottery.

Multi-Level Sales Plans

14. All multi-level sales plans shall conform to existing laws and avoid exaggerated earnings possibilities.

Cancellation of Contracts

15. Upon receipt of evidence of fraud, misrepresentation, or undue influence, members of the industry shall cancel contracts and refund deposits.

Deceptive Offers

16. No member of the industry shall make misleading or deceptive statements to induce a purchase by representing that the prospect receives "something for nothing"; that a survey or quiz is being conducted; that, because of the standing of the prospect in the community, the person is to receive special gifts or price considerations; that the prospect was unknowingly entered in a contest and won a prize; or that the prospect will receive benefits in price, quantity, quality, gifts, service, or guarantee without disclosing and clearly explaining full details.

The National Association of Direct Selling Companies, together with its individual members, pledge to seek full compliance with these ethical standards by all engaged in direct selling.

The National Better Business Bureau pledges continuing review of advertising and selling practices in the direct selling industry to the end that conformity to these standards may be perfected throughout the entire industry. The National Better Business Bureau pledges its full facilities to implement these standards through a continuing program of review and eliminating through persuasion and cooperation all violations of this code.

The distribution of this booklet should not be considered an endorsement by the National Better Business Bureau of any security, product, service, or concern. This information, which is believed to be accurate and impartial, is for the benefit of consumers and is not to be used for sales or promotional purposes.

THE RIGHT THING TO DO

A Credo of Business Responsibility

NATIONAL BETTER BUSINESS BUREAU, INC.
230 Park Avenue
New York, N.Y. 10017

NATIONAL ASSOCIATION OF DIRECT SELLING COMPANIES
1730 "M" Street, N.W.
Washington, D.C. 20036

Voluntary adherence to high ethical standards preserves integrity and fairness in the direct selling industry, its manufacturers, distributors and salesmen. Faithful compliance with these standards will increase public confidence in the direct selling industry and thereby help to protect the consumer and legitimate business from unfair and deceptive practices.

Direct sellers include all persons, firms, corporations and organizations engaged in the sale or offering for sale of any kind of product by direct personal contact with consumer-purchasers, or prospective consumer-purchasers, at their home or other places not on the premises of the suppliers or sellers. It excludes those retail establishments that distribute primarily through stores, but also employ in-home selling techniques.

The National Association of Direct Selling Companies and the National Better Business Bureau jointly endorse this program of standards and urge others engaged in direct selling to adhere to them.

Scope

These standards apply to oral representations made for the purpose of selling or including the sale of commodities or services marketed by the direct selling process. They also apply to advertisements and advertising promotion in any form.

Accuracy

1. All statements, written or oral, by industry members, shall be accurate, free of the capacity to mislead or deceive the consumer and shall reveal material facts, the concealment of which might cause customers to be misled.

Competition

2. All statements, whether written or oral, by industry members, shall offer merchandise or service on its merits and refrain from attacking competitors or disparaging their products, services or method of doing business.

Guarantees

3. Guarantees and warranties offered by industry members shall be in writing and adequately and completely disclose their exact scope, limitations, and conditions and shall make clear who is responsible for their fulfillment. Guarantees shall not exceed in time the useful life expectancy of a product. Lifetime guarantees shall be avoided. All sales or promotional references to guarantees shall state in immediate conjunction therewith all material conditions and limitations and the name of the guarantor.

Sales Pricing

4. Any price saving claims, whether oral or in writing, shall make clear whether the saving is from:

a. The seller's usual and customary price for the article in the recent regular course of business; or

b. The current going price of the same articles in the market area; or

c. The current going price of comparable articles in the market area.

No product shall be "pre-ticketed" with any price figure which exceeds the price at which it is regularly and usually sold. The use of "list" prices, which are not the usual and customary retail prices, shall be avoided.

Free Offers

5. If the word "free" is used to describe an item available to the public with the purchase of some other article during a limited time period, the purchased article must be sold at its usual and customary price in exactly the same form as to size, quality and quantity. An item or service which is regularly and continuously sold in combination with another item for a stated price shall not be represented as "free."

Bona Fide Offers

6. All offers shall be bona fide and the merchandise offered must be available promptly in reasonably adequate quantities, freely shown and sold without disparagement at the featured price to any customer responding to the offer.

Superlative Factual Claims

7. Members of the industry shall avoid the use of superlative claims, such as "world's smallest unit" or "rated number one," unless based on fact, and sellers must be prepared to substantiate with facts their use of such claims.

Contracts in Blank

8. No member of the industry shall induce a buyer to sign an order form or contract in blank regardless of the reason given for so doing. A completed copy of the contract should always be provided to the buyer.

Negotiable Instruments

9. Members of the industry should state, if such be the fact, that a contract or a negotiable instrument signed by the customer in connection therewith, may be sold or assigned to a financial institution.

Written Orders

10. All members of the industry must deliver to the customer at the time of sale a written order or receipt setting forth the name and address of the seller and all of the terms and conditions

HB 174

DIRECT SELLING ASSOCIATION

1730 M STREET, N.W., SUITE 610 • WASHINGTON, D.C. 20036 • (202)293-5760

February 23, 1971

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

Dear Representative Moran:

Please send me the date, time and place of any public hearings scheduled for House Bill 174. Thank you.

Cordially,

Bernadette Chapin

(Mrs.) Bernadette Chapin
Legislative Secretary

Enclosures

the RIGHT of FREE MEN to ENGAGE in LEGITIMATE BUSINESS

Published by National Better Business Bureau, Inc.
230 Park Avenue, New York, N. Y. 10017

the RIGHT of FREE MEN to ENGAGE in LEGITIMATE BUSINESS

THE right of free men to engage in legitimate business is exemplified by the door-to-door salesperson who is so familiar a part of the contemporary American scene. He can trace his ancestry to the very birth of our traditional system of free trade and enterprise. In the beginning, the "Yankee peddler" was one of the few means for the distribution of goods and he played a vital part in the early widening of our frontiers. On foot, on horseback and then in wagons, as roads supplanted Indian trails, he traveled from settlement to settlement and farm to farm bringing the inhabitants the manufactures of the towns and cities. With his stocks of tinware, brass, clocks, jewelry and silverware, hats, shawls and laces, drugs and chemicals, pottery, books, brooms, knives and woodenware, cotton and silk goods, the ancestor of today's direct sellers made an indispensable contribution to the early growth of industrial America. He opened markets for the products of struggling manufacturers and modern house-to-house salesmen often perform much the same function.

PIONEERING SMALL BUSINESSMEN

These venturesome small businessmen pioneered in establishing the right of free men to engage in legitimate business. Their markets expanded with the establishment of roads, canals, the railroad and the automobile. At the same time, these improved means of transportation reduced the number of people who were originally almost entirely dependent on these salesmen to obtain manufactured goods. It became easier for people to supply their wants from retail stores or mail order houses which, with direct selling, constitute our three principal forms of merchandising. That the "Yankee peddler" has survived and greatly multiplied himself in the form of the contemporary direct-to-the-home salesperson would in itself indicate that direct selling makes contributions of definite value to our way of life.

These contributions are not always readily apparent or fully appreciated. Even in Colonial days, house-to-house vendors were the victims of prohibitive or punitive legislation. The history of this country is replete with examples of the folly of building barriers against legitimate trade, and laws designed to accomplish this purpose are invariably repealed or fall into disuse. Nevertheless, and despite all the lessons of experience, there are those who would persist in denying to direct sellers the right of free men to engage in legitimate business.

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sewing machines, washers and other home appliances; brushes, mops, cleansers and kindred household necessities; animal feeds; children's wear, dresses, foundation garments, hosiery, knitwear, lingerie, raincoats, shirts, shoes, men's and women's suits and coats, uniforms and work garments; cooking ware and tableware; nursery stock; oils, paints and varnishes; fire extinguishers, blankets and household furnishings and specialities of all kinds; plastic housewares; greeting cards, magazines, encyclopedias and other books, not the least of which is The Bible. All these and many other goods or the immediate means of obtaining them, are brought to your door by approximately 2,000,000 direct salespeople.

WHO ARE THE DIRECT SELLERS?

The great majority of these men and women are your neighbors. The original "Yankee peddler" who carried his pack from settlement to settlement has his descendants in the itinerant salesmen of today and these transient vendors are among the best customers of such local business firms as hotels and motels, garages and service stations, laundries, dry cleaners, restaurants and many others. And the money they spend in these establishments has a way of filtering into other business channels in the community.

Nowadays, however, the itinerant is the exception rather than the rule in house-to-house selling. Actually, 88% of all direct salespersons live in the communities in which they carry on their work. The dollars they earn are returned to the community to purchase food, shelter and clothing for themselves and their families. Their savings are entrusted to the safekeeping of local banks. They vote, participate in local activities, go to church, and send their children to school in the community in which they gain their livelihood. Many of them are members of Rotary, Kiwanis, Chambers of Commerce, Parent-Teacher Associations and other organizations through which they make further contributions to community welfare.

Is it fair to single out these direct sellers by subjecting them to restrictive ordinances?

AMERICA'S SMALLEST BUSINESSMEN

According to a nation-wide survey, the average age of the direct salesperson who calls at your door is between 30 and 45, and he will have been engaged in sales work for approximately five years. He is probably married (87%) and has children (79%). Eighty-nine percent of these men and women own cars. Seventy-one percent own their own homes and have the same problems of fuel and repairs and taxes that other home owners do. In fact, 88% pay local taxes in the communities in which they do their selling.

America's smallest businessman, the direct salesperson occupies an established place in the business and social structure of his community. Do you favor legislation that would deny him his right to engage in legitimate business?

DIRECT SELLING IS LOCAL BUSINESS

Aside from these independent salesmen, a surprising number of established local business firms of an average community use direct selling methods. They include:

- Automobile dealers
- Bakeries
- Bottled gas dealers
- Dairymen
- Department stores
- Electric light and power company
- Electric appliance dealers
- Frozen food dealers
- Fuel oil dealers
- Gas company
- Insurance agents and agencies
- Laundries
- Newspapers
- Oil burner dealers
- Plastic houseware dealers
- Real estate agencies
- Refrigerator dealers
- Roofing, siding and insulation dealers
- Storm window dealers
- Sewing machine agencies
- Truck gardeners
- Vacuum cleaner dealers
- Venetian blind dealers

Local business firms like these use direct selling to obtain new customers, to introduce a new product or service and for other purposes which account for a major portion of their business.

Clubs and fraternal organizations, the Girl Scouts with their cookies, the most respected groups in the community frequently use direct selling as a means of raising funds for useful civic and charitable purposes.

DIRECT SELLING AND RELIGION

The churches of the community often make effective use of direct selling methods. For example, most religious newspapers and periodicals obtain their circulation through house-to-house canvassing. Referring to the Green River Ordinance, the reverend director of the nation's largest Catholic magazine has stated:

> "Ordinances of this type, even if not strictly enforced, would be disastrous to us and have great harm for the cause of religion, since it would be impossible to keep employees if they were constantly living under the threat of being harried by the police in various communities."

Other clergymen have declared that the ordinance would interfere with the sale of Bibles and Bible-reading materials to people in their homes. "It violates the very commission and injunction given by Jesus Christ to evangelize the whole world with His gospel," said the executive secretary of the Board of Home Missions of the Baptist General Conference.

DIRECT SELLING AND EDUCATION

The Bible is the greatest, but only one of the great books, which require direct selling methods for their distribution. It is a fact that every great reference work and encyclopedia is dependent for its existence on sales direct to the home. Only in this way can the educational value and general usefulness of these books be adequately explained by a trained representative. The success of modern educational methods depends upon the widespread availability of this kind of reference material, and direct selling is the only way that has been found to market these books successfully without prohibitive cost to the buyer.

Direct selling is a major factor in the great circulations of the magazines of America. And a big share of the circulations of most of our daily newspapers is from orders placed with carrier boys.

Direct selling contributes to the educational opportunities which are so largely responsible for the greatness of our nation in still another way—through the effective use of college students who must earn their education. It gives remunerative vacation time employment to thousands of students, and thousands more augment their income by door-to-door sales on college campuses and their environs during the school year.

AIDING THE HANDICAPPED

Others who must limit themselves to part time activity find direct selling peculiarly adapted to their needs because the direct salesperson is his own boss. As an independent businessman, he can tailor his working hours to fit his individual circumstances, recognizing that his earnings will be in direct ratio to his own efforts and his own ability.

Widowed mothers may find a career in direct selling the only means by which they can support their families and, at the same time, perform their household duties. Persons living on inadequate pensions and others who need more income often turn to direct selling to increase their earning capacity. Housewives welcome the opportunity for part time work that direct selling offers.

INTRODUCING NEW PRODUCTS

A list of the products, now in everyday use but originally introduced by direct sellers, would read like an inventory of the average, comfortable American household. There are certain kinds of products which seem to demand the direct demonstration method of selling to introduce them when they are first placed on the market. Apparently it is not enough to **tell** people how they can benefit from the possession of these goods; they must be **shown** in their own homes. The vacuum cleaner, the washing machine, the sewing machine and many others were introduced to the American public in this way and continue to be sold economically and effectively by the same methods. Direct selling is largely responsible for the modernization of American home equipment, comforts and labor saving features.

The safety razor and many small articles selling at a low price have been equally dependent on the pioneering efforts of the direct salesperson to introduce them to the public. Can you imagine a modern kitchen without a can-opener? The inventor and original manufacturer of one of the finest can-openers on the market tried in vain to obtain a market through the channels of jobber and retailer. Imminent bankruptcy practically forced him to turn to solicitors to distribute his invention. Through their efforts it rapidly gained such a good reputation that, three or four years later, the inventor was able to resume selling through stores. He did so with great success because the public demand had now been created by direct selling.

CREATING CONTINUING DEMAND

Thus, the door-to-door salesman is a creative, educational force in our economy. He does not take a market away from the local merchant so often as he creates a new market where none existed before. In the long run, the retail merchant benefits from the creative selling and personal demonstrations of the direct seller. He is the pioneer who introduces the new product. He is the educator who makes the consumer aware of his need for the merchandise. He creates the buying desires which develop into an expanding market. The result is that every sale made by the direct seller is multiplied over and over again and these sales, for the most part, go to the local merchant.

DIRECT SELLING AN EMPLOYER AND BUYER

The fifteen hundred companies engaged in direct selling employ more than a million workers to manufacture their merchandise and distribute it to the 2,000,000 direct salespersons. This is in addition to the indirect employment given to thousands of other employees of railroads, trucking companies and local warehouses utilized in the process.

The suppliers of direct selling companies are located in cities and town all over the United States. Mining towns, paper towns, lumbering towns, manufacturing towns, railroad towns—all are part of the web of industry furnishing the raw materials, the tools, the parts, the finished products and the services that go into the manufacture and merchandising of the goods that are brought to your home by the door-to-door salesman. For example, there are thirty-two different parts, produced by as many companies, which must be purchased for the manufacture of a single home-sold vacuum cleaner.

fteen different kinds of tools and equipment must be purchased from other manufacturers to build the cleaner. Dozens of other auxiliary services and materials are utilized by this direct selling manufacturer. The suppliers and distributors to direct selling are a diversified cross-section of industrial America. A survey of a single major city, Chicago, disclosed over 1600 companies involved in supplying basic merchandise and material to the direct selling industry.

DIRECT SELLING AND LABOR

The arbitrary abolition of direct selling through widespread adoption of restrictive ordinances would have a crippling effect on industrial production that would be felt throughout the length and breadth of the land. Unemployment figures and relief rolls would soar because American business could not fail to be grievously injured by the mortal wounding of one of its integral parts. This threat to employment has evoked from labor leaders widespread condemnation of such ordinances.

ABUSES IN DIRECT SELLING

It has been argued that prohibitive or restrictive legislation is needed to protect the citizens of a community from being defrauded or abused by villainous salesmen. There is a small minority of fraudulent direct sellers just as there is a small minority of dishonest retailers and mail order firms. Yet, out of 515,662 complaints received by the nation's Better Business Bureaus in a given year, only one and one-half percent involved direct selling generally.

Honest direct sellers carry credentials to identify themselves as the bona fide representatives of honest companies. They do not demand payment in full until merchandise is delivered nor do they accept money without issuing a receipt. They leave a copy of any contract that has been signed.

The direct selling industry as a whole has pledged its members to a course of fair dealing with its customers. Witness the following Statement of Principles adopted by the National Association of Direct Selling Companies and its member firms on September 17, 1954:

We believe:

1. That salespersons, by creating demands for goods, help provide the American people with employment and the world's highest standard of living and that those who devote their lives to selling are making important contributions to the welfare of our nation.
2. That salespersons in all fields must observe the highest standards of integrity, frankness and responsibility in dealing with consumers, and that, in all selling:
   (a) Descriptions of products must be truthful, and terms of sale clearly stated;
   (b) Honesty is required in the approach to a sale; and
   (c) Courtesy to a prospective customer, and consideration of his needs, are prime essentials of all selling.
3. That the National Association of Direct Selling Companies endorses the efforts of national, state and local organizations, such as the National Better Business Bureau, the Chamber of Commerce of the United States, and local Better Business Bureaus, Chambers of Commerce and Commercial Clubs to establish and maintain high standards of truth and fair practices in the sale of all merchandise.

The overwhelming majority of direct sellers are honest vendors of honest merchandise. To demolish a multi-billion dollar industry in the hopes of catching a few thieves on its fringe is like burning down a barn to roast a pig. It violates a cardinal rule of American justice—deeply rooted in the fundamentals of fair play—that it is better for some who are guilty to escape than for the innocent to suffer.

SHALL THE INNOCENT SUFFER?

Curiously, while the prohibitive or restrictive type of ordinance would effectively bar from business the great majority of law abiding direct sellers, it offers no guarantee of protection against the swindler. Laws can be devised to **punish** fraud but no laws have ever been found which would **prevent** the perpetration of fraud by those who have no respect for the law.

Those householders who prefer to have no dealings with direct sellers have a simple remedy. They can post their premises, secure in the knowledge that legitimate salespersons will not trespass upon their privacy. Any irresponsible or dishonest vendors who do so should be reported to the police. There is every reason to believe, however, that the majority of people welcome the special services the direct seller brings to their door and would resent a law that dictates against their buying as they choose. In city after city where prohibitive ordinances have been submitted to popular vote they have been roundly defeated.

Every community has laws, or should have laws, to punish the minority of direct sellers and other business renegades who are guilty of fraud, misrepresentation or deceit. Enforcement of these laws would seem to be the practical solution to the problem where it exists. It can be done without denying to free men the right to engage in legitimate business serving the needs and convenience of the community and contributing to the economic strength of the nation.

NATIONAL BETTER BUSINESS BUREAU, INC.

Affiliated with Better Business Bureaus in Principal Cities of the United States and Canada

January, 1966

RESTRICTIVE ORDINANCES

More than thirty years ago, the little town of Green River, Wyoming, passed an ordinance, which made it a nuisance, punishable as a misdemeanor, for a person to go in and upon a private residence for the purpose of selling merchandise unless the salesman had been requested or invited to do so by the occupant of the premises. Laws similar to this Green River Ordinance have since been adopted by a number of, for the most part, small communities.

For all practical purposes, the effect of these ordinances, if enforced, is to destroy direct selling as a lawful means of conducting business. In fact, as the late Chief Justice Vinson of the United States Supreme Court stated in a notable decision:

"In my view, the ordinance is a flat prohibition of solicitation."

Naturally, the constitutionality of any law that denies to free men and women the right to engage in legitimate business has been and will be vigorously challenged. Even though the Supreme Court of the United States ruled in 1951 that the Green River Ordinance does not violate **Federal** constitutional law the ruling in no sense legalized the ordinance in communities where it has been held to violate **State** constitutional law. It did not take away from the states the right to determine the validity of the ordinance for themselves under the provisions and limitations of their basic laws. In the 19 states where the Green River Ordinance has been challenged, the highest courts of 12 states have ruled that this type of ordinance is unconstitutional in those states.

Some communities have passed other types of ordinances which are also, in effect, prohibitive of direct selling. Some have adopted registration requirements with long waiting periods before the direct seller can legally go to work. Others have levied fees that, in the aggregate, impose an intolerable toll on legitimate direct selling firms and the people selling their merchandise. Some ordinances require that these sales people submit themselves to fingerprinting and photographing, like criminals; others require health certificates. Regardless of how well intentioned, these and similar restrictive ordinances are in effect prohibitive of direct selling because the survival of honest direct selling is jeopardized by such discriminatory restrictions.

Any governmental unit has, of course, the right validly to exercise its tax and police powers. One may ask, however, whether these powers should be exercised in a prohibitive manner, singling out direct selling—from all other forms of selling—for regulation, taxation and other discriminatory measures? The National Better Business Bureau believes that such legislation violates the spirit of fair play that has made American business great.

Quite apart from legal considerations, thoughtful citizens of every community where prohibitive or restrictive ordinances are proposed should ask themselves whether the prohibition of door-to-door selling will serve their interests, the interests of their community, and the broader interests of the nation.

WHAT IS DIRECT SELLING?

Direct selling is one means of getting goods out of the hands of the producer and into the hands of the consumer. Like the retailer and the mail order house, the door-to-door salesman is a cog in the machinery of distribution. The selling job is just as important as packing, transportation, warehousing or any other part of the distributive process. A manufacturer can produce an abundance of goods and transport them to every corner of the country but, unless the goods are sold, he will have to go out of business. This is not only bad for him and his employees but also has broad social implications. For every consumer is dependent, directly or indirectly, on production for his income.

Direct selling has a great deal in common with advertising. In fact, the one often complements the other. Both sell by the process of "making known." By showing how a product is desirable, how it can make life easier, simpler, or happier, they both create a want but, at the same time, explain how one may gratify that want. Both bring these want-satisfying goods to public attention. Advertising also tells how and where one may buy them and the house-to-house salesman carries the process one step further by bringing the actual goods to the customer or acting as his agent in their procural.

The primary reason for the existence of direct selling is that many manufacturers have found that, for producer and consumer alike, it is one of the quickest, cheapest and most effective means of selling that has been devised, particularly for the introduction of new products. With respect to certain kinds of goods, no other truly effective means of selling has yet been discovered. Furthermore, housewives welcome the comfort, convenience, service and personal demonstrations which the direct seller brings them. Business operates under the stern injunction of economic necessity to please its customers. If they did not like this method of selling, it would have passed out of the picture long ago.

SCOPE OF DIRECT SELLING

Because direct selling fills a vacuum which might otherwise exist in the distributive process, it contributes significantly to our democratic economy. It has increased in scope and stature until today there are in the United States approximately 1500 big and little companies and manufacturing concerns. They do an annual multi-billion dollar business—no one knows the exact amount—part of which is shared by almost every community. The wisdom of abolishing an industry of such magnitude, giving employment to hundreds of thousands of people, may be seriously questioned.

These direct selling companies manufacture and distribute countless necessities and luxuries which have come to be regarded as necessities under the American standard of living. The list includes food products, toilet articles, medicinal preparations and insecticides; vacuum cleaners,

Alaska Retail Association

HB 174

Box 1727 Anchorage, Alaska 99501

March 3, 1971

President:
John W. Walls
Barb's Florists
Anchorage, Alaska

Vice-President:
S. G. "Jerry" Nerland
Nerland's Home Furnishings
Anchorage, Alaska

Secretary-Executive Director
Dean Ehrich
Anchorage, Alaska

BOARD OF DIRECTORS

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Jerry Wolf
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Fairbanks:
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Ron Dukes
Co-op Drugs

Juneau:
William Flint
Behrends Dept. Store

Howie Rider
Lyle's Furniture & Hardware

Nome:
Frank A. Couch
Northern Commercial Co.

TO ALL LEGISLATORS

The Uniform Consumer Credit Code was recently introduced in the House as HB #174. The Alaska Retail Association strongly supports this measure as the most equitable legislation available in the area of consumer credit. We feel the code would solve the vast majority of problems usually associated with this portion of our economy -- both from the standpoint of the credit industry and the consumer.

We are pleased to enclose a "Question and Answer" booklet which, we believe, will provide you with complete, concise information on UCCC. It covers all the basic provisions of the code and includes much valuable information on the background of its development.

We expect that hearings will be held on UCCC sometime within the next 30 days, depending of course on the legislative work load. Meanwhile, we hope you will take the time to go over the enclosed literature.

We welcome any comments or questions you may have on this important legislation. The undersigned can be contacted either at Room 432, Baranof Hotel, Juneau or at the above captioned address.

Respectfully Yours:

Dean Ehrich

DEAN EHRICH
Executive Director

DEfc

Questions & Answers

On

UNIFORM CONSUMER CREDIT CODE

Courtesy of

Alaska Retail Association, Inc.

Box 1727
Anchorage, Alaska

THE UNIFORM CONSUMER CREDIT CODE

Questions and Answers

Q. What is the Uniform Consumer Credit Code?

A. The Uniform Consumer Credit Code is a balanced consumer protection law considered by most authorities to be the finest consumer protection legislation ever written.

Q. Who prepared the UCCC?

A. The Code was prepared by the National Conference of Commissioners on Uniform State Laws.

Q. What is the National conference?

A. The Conference is an organization made up of Commissioners of the 50 states whose function it is to draft uniform legislation to be offered to states for enactment.

Q. How many Commissioners are there in the National Conference?

A. The average number of Commissioners from each state is three making a total of 150 for the Conference as a whole. Provisions for appointment of Commissioners is made by statute with appointments customarily made by the Governor.

Q. What are the qualifications of Commissioners?

A. Commissioners must be either practicing lawyers, judges or law school professors.

Q. Are Commissioners paid for their services?

A. The Commissioners serve without compensation but are reimbursed for most out-of-pocket expenses.

Q. What other laws have been written by the National Conference?

A. The organization which has been in existence since 1892 has drafted several other uniform state laws. Examples of such laws which have been widely enacted include: The Uniform Sales Act, the Uniform Stock Transfer Act, more recently, the Uniform Commercial Code.

Q. What is the relationship of the Commissioners to their respective states?

A. Commissioners are officials of the respective states which they represent and, as such, are public servants with all of the responsibilities and duties incident to public service.

Q. Just how does the role of public servants influence the work of the Commissioners?

A. Commissioners accept their responsibility as public servants with the highest ethics. Every action of the National Conference is determined fully by the public responsibility felt by its members.

Q. How does the Conference draft uniform legislation?

A. The Conference works thoroughly and slowly. Work on the Uniform Commercial Code continued for 12 years before it was finally offered to the states for enactment. The Uniform Consumer Credit Code required more than 4 years in its preparation.

In drafting uniform legislation the Commissioners build solidly on existing law and practice but where they find that by reason of historical accident or some like cause existing laws or practices in their judgment are unsound, archaic or sometimes silly they do not hesitate to provide for their repeal.

Q. Why did the Conference draft Consumer Credit legislation?

A. The major underlying reason for drafting Uniform Credit legislation is the phenomenal growth of consumer credit during the 20th century. The Conference notes that by the latest Federal Reserve figures there is close to 100 billion dollars of installment consumer credit outstanding at any one time in the Unites States, and if household mortgage credit is added to this figure the aggregate total is in the neighborhood of 330 billion dollars. The Conference felt that the extension and growth of such credit are not only matters of social and economic concern, but, also, are matters of major consequence to which the law must adjust.

Q. What is meant by the term "adjust"?

A. As consumer credit developed it became apparent that credit of this type could not live within low rate ceilings. Therefore, a steady series of legal principles or special legislation evolved to circumvent and avoid low rates. This resulted in a proliferation of legislation throughout the nation and despite such proliferation there were still widespread consumer abuses. In 1957, recognizing the need of uniform legislation, the Council of State Governments requested the National Conference to draft such a Credit Code. The Code project got underway in 1964. By that time the Conference was convinced that the need for extensive study and a major drafting effort was clear.

Q. What trend did the Conference follow in developing the Code?

A. The Conference decided to deal with the entire subject of Consumer Credit comprehensively and on fundamental lines, to review all laws relating to Consumer Credit in depth, to consider the background and reasons for Consumer Credit and economic and social aspects of it, and to draft legislation that would treat the entire subject of Consumer Credit on scientific lines rather than a continuance of historical acts.

Q. In defining the Code, the term "balanced" Consumer Protection law has been used. What does this mean?

A. The UCCC restructures all laws imposing maximum charges on the cost of money or credit, regulates consumer credit generally and brings substantially all consumer credit transactions under one comprehensive code. It imposes a single and standard set of maximum charges on almost all types of consumer credit, and except in the case of extortionate charges frees substantially all types of business credit from any maximum charge or rate ceiling. The Code puts all creditors extending consumer credit on virtually an even or balance footing so far as maximum charges and control of balances are concerned. It stimulates competition by eliminating artificial barriers to entry into the credit granting business and be requiring disclosure of the cost of credit both in terms of dollar amounts and in terms of an annual percentage rate. It is a balanced code, fair to all creditors operating in the consumer credit field and fair to consumers.

Q. Should consumer legislation be drafted and enacted at the federal or state level?

A. The National Conference felt that the Code should be enacted at the state level. The Commissioners stated that between a particular buyer and a seller, or a particular borrower and lender both located in the same state it is quite difficult to think of a much more local type of transaction than consumer credit. They, also, pointed out that consumer credit is usually a transaction of small size, ranging from a less than $5.00 sale as a part of a store revolving account or a shopper's credit card operation to purchase of automobiles on time or borrowing from the installment credit department of banks ranging in most cases from $100 to $3,000. The Conference, also, felt that if the Federal government took control of Consumer Credit entirely this would constitute a very large shift in control from the state to the federal government of an important aspect of American life.

Q. What does the federal government think about federal-state control of Consumer Credit?

A. The Banking & Currency Committees of the Senate and House of Representatives in considering the recently enacted Federal Truth-in-Lending Act expressed an awareness of the federal-state problem and were reluctant and hesitant to pre-empt from the states the field of consumer credit. As a result, the recently enacted federal bill included a provision that the Board of Governors of the Federal Reserve system "shall exempt from the requirements of the Act any class of credit transaction which the Board determines is subject to state law which requires disclosure substantially similar to the federal requirements and contains adequate provisions for enforcement." Thus, it follows that the federal government definitely provided a way and a means by which consumer credit may remain a state controlled field.

Q. Will adoption of the Uniform Consumer Credit Code exempt Alaska from supervision of consumer credit by the federal government?

A. Yes, According to all current information available the UCCC meets the Rederal Reserve test and would divest the state of federal supervision. As far as the Turth-in-Lending Act supervises disclosure and related provisions, the Code does likewise and authorities say is even more stringent than the federal law. In addition, the UCCC goes further in that it sets maximum ceilings and correction of virtually all known consumer abuses.

Q. We have been told by some that if the Legislature copies the Federal Truth-in-Lending Act into Alaska law the federal government will divest itself of control of credit in the state. Is this true?

A. Not necessarily. There is a wide field of interpretation regarding Federal Reserve acceptance of supervisory staffing, regulations, transaction requirements etc.

Q. Does the Code contain the regulations pursuant to the Federal Truth-in-Lending law?

A. The UCCC bill, as introduced in the Alaska Legislature, includes all regulations pursuant to the federal act.

Q. What confusion could arise out of copying the federal law into state law rather than passing the UCCC?

A. (1) There is a question as to whether the state would be divested of Federal supervision.
(2) Such action may lead to conditions in which creditors would be required to make double disclosures.
(3) The law would be a "bits and pieces" type of legislation which usually creates confusion in the marketplace
(4) Such action is completely unnecessary since the federal act went into effect on July 1, 1969, thus negating any need for a small "Federal Act."

Q. Is exemption from Federal supervision a strong argument for the passage of the UCCC?

A. Yes. Most Alaskans desire to retain jurisdiction over consumer credit and creditors in the consumer credit field of Alaska certainly do not want to operate under two sets of laws. This fact is one of the major reasons why the enactment of the Code is advisable.

Q. Were attempts made to influence the preparation of the Code in order to preserve segmented consumer credit?

A. Yes. Strong pressures were brought to bear upon the National Conference by opponents of consumer protection legislation to produce more of the same confusion which already exists throughout the nation in the consumer credit field. The status quo is referred to as segmented with segmentation being based to a considerable extent on types of creditors, that is, small loan companies, retail merchants, commercial banks, credit unions etc. The Conference was urged to preserve all this segmentation, some or all of the variations in maximum rate ceilings on finance charges, and some or all of the varying methods for starting ceiling rates. In fact, the Conference was pressured to do nothing more than compound the existing confusion.

Q. How did the Conference react to this pressure?

A. The National Conference took the position that a policy of preserving and attempting to improve one or more existing types of legislation would do nothing more than preserve and stratify types of classifications that are now causing confusion and have partially broken down. The Conference felt it could make no contribution unless a comprehensive approach was adopted.

Q. How much of the installment credit outstanding in the United States do the various segments of the credit industry possess?

A. As of December 31, 1967, the percentage share of different segments of the consumer credit industry in installment consumer credit was as follows:

Commercial banks	43.6%
Sales finance companies	21.6%
Credit unions	11.8%
Consumer finance (small loan) companies	8.1
Other financial institutions insurance companies, savings & loan associations, etc.)	2.5%
Retail outlets	12.4%
Total	100.00%

Q. What limits did the Conference feel were needed in the Code's coverage?

A. The Code covers consumer credit as opposed to business credit.

Q. Why is not the purpose test a part of the Code?

A. There are difficulties in applying a pure purpose test. Actually, purpose is nothing more than the mental intent of an individual. The Code made the distinction between consumer credit and business credit on the basis of whether the debtor is a natural person or whether the debtor is an organization. Organization as defined includes corporations, business trusts, partnerships, associations or governmental entities or bodies.

Q. Are the Code's provisions fair and equitable to both consumers and the credit industry?

A. Yes. The provisions are workable and provide a greatly superior base for handling consumer credit than the mass of legislation presently on statute books throughout the nation. Although some provisions may appear to favor industry and others favor consumers, in actual fact the provisions will be beneficial to both sides of the economic spectrum.

Q. How does the Code affect usury provisions?

A. The Code provides for the outright termination of all usury provisions and rate ceilings in the case of most business credit. The reasoning which supports this principle is that the operation of the money market and the economic rules of supply and demand are better control factors for interest charges in business credit than any legislation. It, also, notes that business debtors can bargain satisfactorily without the need of legislative assistance. The operation of existing general usury statutes has become so much an empty shell and so generally absurd in its unreasonable and haphazard application that they should be repealed outright as to substantially all business credit, according to most authorities.

Q. In the case of consumer credit, are rate ceilings preserved?

A. Rate ceilings are preserved but are evenly distributed across-the-board to all types of consumer credit.

Q. What is consumer credit as defined by the Code?

A. Consumer credit is credit extended to natural persons for personal, family, household or in some instances agricultural use.

Q. Is there a dollar limitation in regard to the jurisdiction established in the Code?

A. Yes. Consumer credit is credit extended up to a dollar jurisdictional amount of $25,000 except in the case of consumer credit secured by real estate where there is no jurisdictional limit.

Q. What are the rate ceiling found in the Code?

A. The rate ceiling prescribed is on a graduated basis with a maximum of 36% per annum on the first $300, 21% per annum on balances of $300 to $1,000 and 15% per annum on balances above $1,000 with the composite rate resulting from these graduated ceilings leveling off at a base ceiling of 18% per annum on balances from $2,500 to $2,900 and above. A major exception from these standard rate ceilings is in sales credit revolving account where the ceilings are 24% per annum or 2% per month on the unpaid balance on the first $500 of balance, and 18% per annum or 1½% per month on the unpaid balance in excess of $500.

Q. How does the Conferenod justify the standard recommended rate ceilings?

A. First, the Conference emphasizes the basic principle that legislation should not attempt to fix rates in the sense that public utility commissions orescribe rates that may be charged by public utilities. Rather, the Conference says the legislation should do nothing more than fix maximum ceilings which may not be exceeded but should be at a level to permit the extension of almost any type of consumer credit through legitimate channels.

Q. Upon what does the Code rely to fix effective rates?

A. The Code places reliance upon the operation of competition to keep actual rates charged below the legislative ceiling prescribed.

Q. How does the Code provide ways to see that the competition will keep lower than established ceiling rates?

A. The Code notes competition, in order to keep rates low, should be permitted to operate to a maximum extent and provides for "easy" entry into the lending field to make it as competitive as the retail field. This means that as far as is possible all extenders of credit must compete on equal terms with all other extenders of credit. It, also, means that a consumer must be able to intelligntly shop for credit.

Q. The Code, to encourage competition, provides "easy" entry into the lending field. What does this mean?

A. "Easy" entry refers to the provision of the Code which makes it possible for individuals or businesses to enter the cash loan fields without being restricted b artificial barriers.

Q. Are "easy" entry lenders regulated?

A. Yes. The Administrator will establish regulations governing such lenders and the Code, itself, provides that –

(1) Such lenders must secure a license from the Administrator.
(2) They cannot loan money for more than 18% per annum.
(3) They cannot accept deposits.
(4) They must pay the same fee to the Administrator's office on credit outstanding during the year as all other lenders.
(5) They must adhere to all disclosure requirements.
(6) They must abide by all consumer protection provisions of the Code.

Q. Why do banks have regulations applicable to lending money not placed on "easy" entry lenders?

A. Banks use depositors' money for lending purposes and the various governments provide regulations to protect the depositor. "Easy" entry lenders cannot accept deposits and they will be lending their own personal money.

Q. Can "easy" entry licenses be revoked?

A. Yes. Any irregular practice is sufficient cause for revocation of license.

Q. Are these basic principles of the Code?

A. The Code, as a whole, is framed on these principles.

Q. Does this establish a new principle in American thinking?

A. No. These principles involve no novelty in basic American thinking. In most areas of economic life in America price-fixing by governmental fiat has been avoided rigorously. Price fixing is inherent in general usury statutes and actually constitutes an exception to the traditional American economic view.

Q. Opponents to the Code say that the rate ceilings as applied to the total consumer credit market will cause an increase in finance charges to the consumer. Is this true?

A. This is not true. Studies made by the National Conference point out that competition does in fact keep interest and finance charges down as much in the case of extension credit as in other types of transactions. Examples include interest rates charged to corporations which under existing law in 30 states do not have full benefit of usury statutes. In these states interest rates have been no higher than in states where usury statutes exist. In Massachusetts and New Hampshire there have been no general usury statutes for many years but the general level of interest

rates and finance charges in these states are not significantly different from those in other states. In automobile financing, rates actually charged are in most cases materially lower than ceilings prescribed in the motor vehicle retail installment sales act.

Q. What fact did the Conference recognize as primary in setting the rate ceilings in the Code?

A The Conference recognized that rates must be sufficient to cover the cost of money, the cost of administering the credit extended, and the risk of nonpayment.

Q. What other factors operate in the cost of granting credit?

A. The Commissioners stated that the cost of money varies in relation to general money market conditions and that the cost of money today is higher than for many years, perhaps, as far back as the stock market crash in 1929. The Conference, also, pointed out that in consumer credit the cost of administering the credit is a most important factor. Commissioners noted one study which showed the average operating expenses other than bad debt reserves of many major national finance companies to be $10.40 on the first $100 of each loan.

Q. Does this explain the higher rate ceilings prescribed for the first $300 of any transaction?

A. Yes, the high cost of setting up any credit transaction on the books of a credit extender explains the high ceiling rate prescribed for the first $300. Actually, the rates prescribed fall at about the midpoint of existing rate limitations in the small loan area and are somewhat above present rates in the area over $3,000.

Q. What did money market studies reveal to the National Conference?

A. Money market studies and economic advice given to the National Conference consistently indicated that the principal effect of fixing maximum rates at a higher or lower level is to permit larger or smaller numbers of consumers into the credit market. High maximums permit more persons to obtain credit from legitimate sources. In contrast, low maximums decrease the number of persons who may obtain credit and drive the borrower and/or buyer to illegal loan sharks.

Q. Is competition the primary factor in establishing effective rates favorable to consumers?

A. Yes. The Code's provisions for improved operation of competition in credit are calculated to keep the rates actually charged well below the maximum ceilings stated.

Q. What are the disclosure requirements in the Code?

A. The Code requires the seller to set forth:
(1) What is being sold.
(2) The cash price.
(3) The down payment.
(4) The balance owing.
(5) Amount payable for registration or certificate of title fees not included in the cash price.
(6) The amount of official fees and taxes.
(7) A description of any insurance provided and if a separate charge is made the amount of the charge.
(8) In the case of a sale of land the amount and a description of the closing costs.
(9) The total amount financed.
(10) The dollar amount of the credit service charge.
(11) The total unpaid balance.
(12) The annual rate of the credit service charge.
(13) The payment schedule
(14) The charges to be made in the event of default.
(15) A description of any security interest taken.

Q. Will the disclosure requirements of the Code enhance competition as a basic principle set forth in the Code?

A. Yes, such disclosure requirements complement quite closely the maximum rate provisions of the Code. They do so by developing a single set of measuring standards by which consumers may shop for credit. Thus, they enhance competition which is relied upon by the Code to keep rates reasonably low.

Q. Does the Code place limitation on creditors' remedies?

A. Yes. The Code contains a number of limitations on creditors' remedies. This is the true reason that there is opposition to the adoption of the Code since these remedies are pure consumer protection.

Q. Does the Code prohibit the use of multiple agreements?

A. Yes. Sellers are prohibited from using multiple agreements for the purpose of obtaining a higher finance charge than would be otherwise permitted.

Q. Are sellers and lessors prohibited from taking negotiable promissory notes to evidence consumer obligation?

A. Yes. The promissory note use has been one of the major consumer abuses where instead of selling the actual installment contract a promissory note has been utilized as a negotiable instrument. Producers of the notes have been held not responsible in any way for claims and defenses of the buyer against the seller.

Q. Does the Code provide that assignees shall be subject to claims and defenses of the buyer against the seller?

A. Yes. The Code provides that an assignee is equally responsible for the quality of goods and services as the original seller. This is an issue of long standing and it is admitted in the consumer credit field. Sellers and banks and finance companies buying sellers' papers argue that assignees shall not be subject to claims and defenses of the buyer against the seller. Consumers, on the other hand, argue with equal strength that a great portion of consumer abuses are traceable to a bank or finance company which is free from claims and defenses of the buyer against the seller.

Q. What is the opinion of merchants regarding this issue?

A. The legitimate merchant does not fear this situation nor should any bank of finance company which does business with legitimate merchants since it has been historically true in Alaska that legitimate stores make restitution for defective goods and services.

Q. Does the Code place controls upon ballon payments?

A. yes. If any scheduled payment is more than twice as large as the average of earlier scheduled payments, the buyer has a right to refinance the amount of that payment at the time it is due without penalty. The terms of the refinancing must be as favorable to the buyer as the terms of the original sale.

Q. Does the Code place limitations on the amount and type of security that may be taken in sales transactions?

A. Yes. A seller may take a security interest
(1) in the property sold;
(2) in goods upon which services are performed;
(3) in property in which goods sold are installed; or
(4) in land to which the goods are affixed or which is maintained, repaired or improved as a result of the sale of the goods or the services, if, in the case of a security interest in land, the debt secured is $1,000 or more or in the case of a security interest in goods the debt secured is $300 or more.

Q. Does the Code make any provisions regarding the assignment of earnings?

A. Yes. A seller or lessor may not take an assignment of earnings of the buyer or lessee for payment or as a security for payment of a debt arising out of a consumer credit sale or a consumer lease.

Q. What does the Code do in respect to referral sales?

A. Referral sale contracts cannot be entered into by sellers and buyers. Any inducement to enter into such a contract is in violation of the Code and the buyer of lessee at his option may rescind the agreement or retain the goods delivered and the benefit of any service performed without any obligation to pay for them.

Q. May terms by changed in the case of revolving charge accounts?

A. Yes. If a change is made in the terms of a revolving charge account the merchant must give the buyer written notice at least 3 times with the first notice issued at least six months before the effective date of the change.

Q. Are there any exceptions to this requirement?

A. Yes. The notice specified is not required if:

(1) The buyer after receiving notice of the change agrees in writing to the change;

(2) The buyer elects to pay an amount designated on a billing statement as including a new charge for the benefit offered to the buyer when the benefit and charge constitute a change in terms and when the billing statement also states the amount payable if the new charge is excluded;

(3) The change involves no significant cost to the buyer;

(4) The buyer has previously consented in writing to the kind of change made and notice of the change is given to the buyer in two billings cycles prior to the effective date of the change; and

(5) The change applies only to purchases made or obligations incurred after a date specified in a notice of the change given in two billing cycles peior to the effective date of the change.

Q. What constitutes notice in regard to changes in revolving credit account?

A. The notice is given to the buyer when mailed to him at the address used by the seller for sending periodic billing statements.

Q. Does the Code provide for a cancelling provision in home solicitation sales?

A. Yes. A buyer has the right to cancel a home solicitation sale until

midnight of the third business day after the day on which he signs the agreement or offer to purchase.

Q. What are the technical procedures in regard to cancellation?

A. Cancellation occurs when the buyer gives written notice of cancellation to the seller.

Q. Where does the Code require that such notice be sent?

A. The notice must be sent to the address listed in the agreement or offer to purchase.

Q. What other provisions for cancellation does the Code provide?

A. The notice of cancellation if by mail is given when the notice is properly addressed with postage prepaid and deposited in a mail box.

Q. Does the notice of cancellation have to take a particular form?

A. No. Notice of cancellation is sufficent if it indicates by any form of written expression the intention of the buyer to cancel the home solicitation sale.

Q. Are there any circumstances under which the buyer may not cancel a home solicitation sale?

A. Yes. The buyer may not cancel a home solicitation sale if he has requested the seller to provide goods or services without delay because of an emergency and the seller in good faith has made a substantial beginning of performance. The buyer also may not cancel a home solicitation sale if the goods cannot be returned to the seller in substantially as good condition as when received by the buyer.

Q. Does the Code provide for the return of goods given as collateral or the down payment by the seller in cancelled home solicitation sales?

A. Yes. Within 10 days after a home solicitation sale has been cancelled the seller must return any payments made by the buyer and any note or other evidence of indebtedness. If the down payment included goods traded the goods must be returned in substantially as good condition as when received by the seller.

Q. Is there a provision made whereby the seller may retain a cancellation fee?

Yes. The seller may retain a cancellation fee amounting to 5% of the cash price but not exceeding the amount of the cash down payment. However, if the seller fails to comply with any obligation imposed by the Code, or if the buyer voids the sale on

any ground independent of his right to cancel provided by the provision of the Code, the seller is not entitled to retain a cancellation fee.

Q. What does the Code provide in regard to the duty of the buyer to the seller of the home solicitation sale?

A. Upon demand, the buyer must give to the seller any goods delivered by the seller pursuant to the sale, but he is is not obligated to deliver the goods to any place other than his residence. If the seller fails to demand possession of the goods within a reasonable time after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them. The Code states that 40 days is a reasonable time. The buyer is required to take reasonable care of the goods in his possession both before cancellation or revocation and for a reasonable time afterwards during which time that goods are otherwise at the seller's risk.

Q. Does the Code provide limitations on garnishment?

A. Yes. The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce payment of a judgment arising from a consumer credit sale, consumer lease or consumer loan may not exceed the lesser of:

(1) 25% of the disposable earnings for that week; or

(2) The amount of which his disposable earnings for that week exceed 40 times the Federal Minimum Hourly Wage. Since the Federal Minimum Hourly Wage at this time is $1.60, this means $64.00.

Disposable earnings as defined by the Code means that part of the earnings of an individual remaining after the deductions of those earnings of amounts required by law to be withheld.

Q. What does the Code provide regarding discharging employees for garnishment?

A. The Code states emphatically that no employer shall discharge an employee because his wages have been subject to garnishment.

Q. What does the Code say in regard to repossession of goods and suit for balance due?

A. The Code, as introduced, provides that the seller may repossess goods with a cash price under $1,000 where the debt is not being repaid or may sue for the balance due but the seller may not do both. He must make a choice between the two actions. Deficiency judgments are forbidden.

Q. We note that the Code contains language in regard to unconscionable agreements and conduct. Just what does this section do?

A. The Conference gave a great deal of study to the fact that the greatest majority of consumer abuse is traceable to a relatively small proportion of fringe operators who do not hesitate to over-reach whenever they can whether inside or outside the law. The question arose as to how a statute can provide protection against this kind of conduct. The Commissioners felt that realistic legislation is of limited value unless it has some language pointed toward this problem and believe there is no escape from having that language flexible enough to adjust to the great variety of schemes and practices that an ingenious type of individual may conceive. Therefore, the Code provided "Unconscionability" to meet this situation. The Code contains language with respect to unconscionable agreements and conduct. This has been done for the simple reason that the Commissioners could see no escape from this provision if the provision was to be flexible enough to adjust to the maneuvers of fringe operators.

Q. Is unconscionability a new concept?

A. Unconscionability is not a new concept. There have been decisions providing relief from unconscionable conduct running back over 100 years. It is, also, a part of the Uniform Commercial Code and there is equal or more reason to use it in the Consumer Credit Code.

Q. Are there any limitations on the action of unconscionability?

A. Yes. Considerable care is used to keep the concept within strict boundaries. Debtors for example cannot determine that conduct of a creditor is unconscionable. The Administrator cannot make such a determination, only courts can make this determination, and in courts only the judge and not the jury. The Code provides that the Administrator may bring a civil action to restrain a creditor from engaging in a course of unconscionable conduct either in effecting consumer credit transactions or in collection of debts arising from these transactions. In every case, however, it is only a court that can make a determination of unconscionability.

Q. How will the Code be administered?

A. The Code provides for administration by the State Banking Commissioner, and it prescribes his powers and functions. In the Code he is referred to as the "Administrator."

Q. What are his powers?

A. (1) He will administer the consumer credit market;

(2) He may bring action on behalf of an individual or a class of debtors to recover excess charges made by a creditor;
(3) He may bring actions to restrain a creditor from engaging in unconscionable conduct;
(4) He may issue orders and subject to appropriate administrative review he may order a creditor or others to cease and desist from engaging in violations of the Code;
(5) The Administrator is given substantial investigatory powers with respect to consumer credit extended by merchants or finance companies; and
(6) He is expected to cooperate with officials having supervisory power over banking institutions to obtain compliance with Code provisions.

In addition, the Administrator

(1) has power to issue regulations with respect to specified subjects;
(2) he may foster and aid programs for education of consumers; and
(3) encourage establishment of non-profit consumer credit counseling agencies.

Q. Does the Code provide for advisors to the Administrators?

A. Yes. The Code recognizes the considerable power of the Administrator and to aid and assist him in the effective performance of his duties the Code provides for a Council of Advisors on Consumer Credit. These are to be drawn in relatively equal proportions from consumers or the public, on the one hand, and from members of the consumer industry on the other.

Q. How is the office of the Administrator financed?

A. All persons or businesses doing credit business must so notify the Administrator and must pay to the Administrator $10 for every $100,000 outstanding credit during a fiscal year. This money will be used to carry on the work and meet the expenses of the office of the Administrator.

Q. Do merchants of Alaska support the adoption of the Uniform Consumer Credit Code?

A. Yes, even though the Code will require merchants to pay a substantial fee for its administration which heretofore has not been required of retailers.

Q. Why is the retail industry favorable to its adoption?

A. (1) It is the finest consumer protection Code ever prepared.

(2) The public policy demands its passage.
(3) The Code will do away with the "Bits and Pieces" type of credit legislation.
(4) The UCCC will give the state as near total consumer protection as is legislatively possible.
(5) The Code solves present and future credit problems in a way that will not require future legislative action.
(6) Creditors can live with the Code, and though there are some provisions which retailing does not like, the Code is a document, which taken as a whole, retailing can support and under which retailing can operate. This is the "on balance" concept which is basic to the Code.
(7) The Code attempts to satisfy the interests of the diverse groups represented in the credit field.
(8) The code is favored by the Alaska Retail Association, The Alaska State Chamber of Commerce and most other chambers throughout the state because they recognize it as one of the most fair documents ever devised in th area of consumer credit. Alaskan retailers acknowledge the fact that problems do exist in the consumer credit field and are proud to support UCCC as the best existing answer to those problems — from the standpoint of both consumer and creditor.

HB-174

Statement by the AFL-CIO Executive Council

on

The Uniform Consumer Credit Code

Bal Harbour, Florida
February 17, 1969

We have carefully examined the Uniform Consumer Credit Code, a "model state law" which has been prepared for introduction in the 47 state legislatures meeting in 1969.

UCCC would repeal and replace virtually all existing state laws relating to consumer credit. Sponsored by the National Conference of Commissioners on Uniform State Laws, it is offered for adoption as a "package," without amendment. The sponsors urge immediate enactment, despite the fact that the Code is a lengthy, complex, and sweeping legislative proposal. The public has had little opportunity to evaluate either its general impact or its specific provisions.

The Code is not essentially a "consumer statute" but seeks to compromise consumer and creditor interests. While it would make a number of desirable reforms in behalf of the consumer, which should be supported, it also contains serious drawbacks from a consumer point of view.

For this reason we cannot endorse the Code in its present form for enactment as a uniform law throughout the United States.

Our principal objections are as follows:

(1) We are shocked by the extraordinarily high finance charge ceilings authorized by the Code, ranging from 18 to 36 percent per year for installment loans and credit, and believe that they would inevitably result in exhorbitantly high credit costs for borrowers and credit buyers.

(2) We cannot concur in the excessive rate of 10 percent per year, which would be permitted on first mortgages.

(3) We are dissatisfied with the provisions on wage garnishment which could, if care is not taken, result in reduction of existing protections for wage earners in a number of states. We cannot in any case endorse a "take" by creditors as high as 25 percent of a person's wages.

(4) We are alarmed at the general repeal contemplated by the Code of present state consumer credit legislation regardless of whether it is superior to Code provisions or covers subjects not covered in the Code.

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The possible impact of Code enactment would vary in each of the 50 states. Each state will need to make a careful assessment of its existing legislation in comparison with Code provisions.

In states with a large body of existing legislation, state AFL-CIO central bodies will probably find it best to reject the Code and instead seek improvements in their present laws, borrowing good features from the Code where appropriate.

In states with little or very deficient legislation, state central bodies may find it advisable to start with the Code as a working basis, but should seek amendment of its worst features.

In any case, precipitous enactment of the Code on an "as is" package basis should be rejected, as well as deviant forms, containing even worse features, which are likely to be introduced in some of the legislatures.

At the national level, the AFL-CIO staff will render whatever assistance it can to state bodies in connection with UCCC. We will also pursue abatement of consumer credit evils through federal legislation, wherever it is possible and appropriate. The door should not be shut on consumer credit reform through federal action. Enactment of federal minimum standards in the consumer credit field may in fact be necessary to reach the states in which reform is most needed and where creditor lobbies are most likely to succeed in blocking it.

BACKGROUND STATEMENT
ON
UNIFORM CONSUMER CREDIT CODE

The Uniform Consumer Credit Code (UCCC) is a type of "model state law" developed by the National Conference of Commissioners on Uniform State Laws. It was officially promulgated by the Conference on July 30, 1968, and subsequently endorsed, on August 7, 1968, by the American Bar Association. The Code has been in process since 1964, although much of the final text was prepared in 1968 to take account of the Federal Consumer Credit Protection Act, which was signed by the President on May 29, 1968.

Since the original text was released, the Code has undergone additional revisions. The current version of the Code is the "Revised Final Draft, November 1968." published in December 1968.

UCCC is designed as a replacement for virtually all existing state laws relating to consumer credit. Present laws on such provisions as maximum finance charge rates, (including usury rates), disclosure, licensing, administration and enforcement would be repealed. The one major exception to general repeal would be in the case of "supervised financial institutions" -- such as banks, savings and loan associations, and credit unions -- which receive deposits as well as make loans, although the new rate structure would apply to them as well as to other creditors.

Because the Code is designed as a uniform law, to be enacted in the same form in every state, it is offered as a "package" for adoption in its entirety, without amendment. Code sponsors are seeking blanket endorsement of the Code, regardless of any deficiencies and drawbacks.

The Code was not developed as a "consumer statute," as such, but rather seeks a "balance" of consumer and creditor interests. The principal "trade-off" appears to be in the form of high finance charges for creditors in exchange for restrictions on some of the more bloodthirsty techniques by which creditors can enforce repayment of debts plus more comprehensive enforcement procedures than now apply under many types of credit statutes.

Present indications are that the compromise is unlikely to be satisfactory to all groups. The Code has drawn support from various segments of the credit industry, but coldness from others (notably the American Bankers Association). No known support has come from consumer groups. The major exception in the consumer community was an endorsement by the Special Assistant to the President for Consumer Affairs and the President's Committee on Consumer Interests. But the Code has come under heavy fire from the Consumer Federation of America, representing 136 consumer-oriented organizations. To date it has been opposed by at least three important state consumer organizations -- the Association of California Consumers, the Consumers League of New Jersey, and the Pennsylvania League for Consumer Protection -- as well as by the Massachusetts Consumers' Council, an official consumer representation body.

Although Code sponsors have sought immediate, wholesale endorsements of their work, and immediate enactment in the 47 state legislatures meeting in 1969, the general public has had little time to gain an understanding of the

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Code or to develop knowledgeable criticism. The possible impacts would, of course, vary in each of the separate 50 states. Study and criticism will be a continuing process, and common sense dictates a rejection of precipitous enactment.

For states which already have a large body of consumer credit legislation, covering both cash loans and retail sales credit, enactment of UCCC may represent little if any gain in consumer protections and in fact is more likely to result in a net loss. Such states should be extremely critical of UCCC and probably will find it best to reject the Code altogether in favor of continuing improvements in their existing statutes.

On the other hand, states with little or very deficient consumer credit legislation could find that UCCC represents a net gain, in the sense that almost anything would be better than what they have. Even in such situations, a cautious approach is advisable. As indicated in the more detailed comments that follow, finance charge ceilings authorized under UCCC are extraordinarily high for types of credit other than for small loans, and the Code has other drawbacks.

Clearly, an important motivation for urging speedy enactment is the hope of forestalling further federal action in the field of consumer credit. An immediate and announced goal of the Conference is to gain exemptions of state credit laws from applicable provisions of the newly enacted federal Consumer Credit Protection Act. Under the federal law, state laws with "substantially similar" provisions may be exempted from federal requirements for disclosure of the cost of consumer credit and from federal requirements limiting the amount of wages that may be garnished. Further possibilities of federal entry into the consumer credit field could come out of the prospective study by the newly authorized National Commission on Consumer Finance which was set up by the Consumer Credit Protection Act with instructions to make a study and recommendations by January 1, 1971. Also specific federal bills may be expected in the field of credit insurance and in door-to-door credit sales, at a minimum.

MAJOR POINTS ABOUT THE UNIFORM CONSUMER CREDIT CODE

Maximum Charges

1. The Code repeals all existing laws setting maximum rates on consumer loans from banks, credit unions, small loan companies and repeals general usury rate statutes (important primarily in mortgage lending). Maximum rates for retail sales are also repealed including finance charge ceilings set for automobiles, for general retail sales, home repair services and for revolving credit. Existing finance charge ceilings for most creditors would be replaced by uniform ceilings patterned on existing rates for small loan companies, the highest-rate legal lenders in the credit market. In effect, the small loan company rates would become an "umbrella" for all creditors, both for cash loans and for sales credit. The new ceilings would thus raise the legally permitted rates of charge for most creditors in most states.

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For most types of consumer credit, except first mortgages, the effective ceilings would be 36% on the first $300, 21% on the next $700 and 15% on the remainder over $1,000. Ceilings on store revolving credit are set at 24% on the first $500 and 18 percent on the remainder. (See Attachment I for more detailed outline.)

2. Over and above the maximum rate ceilings, the Code permits additional charges for official fees and taxes, and for insurance -- property, liability, credit life, and credit accident and disability. These provisions follow the lines of the Federal Consumer Credit Protection Act, which defines "finance charge" in such a way as to permit their exclusion from the finance charge for disclosure purposes. A number of current small loan laws require the lender to include most of these charges in the finance charge, although extra charges for credit life insurance are now generally permitted. The "additional charge" system provides an additional source of revenue to creditors, since the "extras" can be included in the amount of the loan or credit and a finance charge computed on top of them.

3. In addition to charges for official fees, taxes, and insurance, the Code allows "extras" for "other benefits." This provision, although presented as being in conformity with the federal act, actually opens up what could be a dangerous loophole for "tie-in" charges and purchases to be required by the creditor as a condition of extending credit. The Code nowhere makes a flat prohibition of "tie-in" sales, except for limitations on compulsory purchase of various types of insurance.

4. The Code properly requires that a rebate of finance charges be made to the credit buyer or borrower who pays off the credit balance in advance. The rebate is calculated according to the "Rule of 78". Unfortunately, where graduated rate ceilings are used, as under the Uniform Consumer Credit Code, the Rule of 78 provides the creditor with a windfall of unearned credit charges and a corresponding shortfall to the consumer. The "Revised Final Draft" attempts to deal with the problem, not by eliminating the windfall, but by authorizing alternative calculation of the finance charges in such a way as to "legitimize" the windfall. This point will require more analysis and explanation, but some idea of the problem can be obtained by the summary comparisons shown in Attachment II, based on tables appearing in the explanatory text ("Official Comment") of the Code.

Insurance

UCCC insurance provisions are written within the framework of the Model Credit Insurance Act developed by the National Association of Insurance Commissioners and now in effect in a number of states. Although some of the more disreputable creditor practices in the sale of credit insurance are prohibited, UCCC does nothing to deal with fundamental problems of overcharges for credit, life, accident and health policies documented by the Senate Antitrust and Monopoly Subcommittee in its 1967 investigative hearings. These hearings disclosed widespread profiteering by creditors on the sale of high-priced insurance, paid for in its entirety by borrowers.

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Kickbacks, commissions, and rebates from insurance companies and creditor-owned insurance subsidiaries have built a system of "reverse competition" encouraging the sale of insurance at highest possible rates. UCCC forbids charges beyond the legal maximums permitted by the Commissioner of Insurance but does nothing to reduce them further. Lenders' profits on insurance are specifically protected.

Disclosure Provisions

The sections on disclosure are largely a duplicate of the provisions of the Federal law which contains extensive requirements relating to items of cost of the credit provided, including a statement of the annual percentage rate. Both credit contracts and credit advertising are covered. The principal problem about the disclosure provisions is that since all existing state legislation on disclosure is repealed, any disclosure requirements other than the ones copied from the federal law would disappear. Disclosure statutes may, for example, require disclosure of a buyer's rights under the law, make detailed specifications as to contract forms, or other matters. In effect the federal specifications would substitute for existing requirements rather than add to them. In addition, the disclosure provisions could be rendered ineffective by the fact that specific administrative authority for issuing regulations to interpret the disclosure requirements in the Code is not provided. In particular, the decision as to what is "conspicuous" is left to the courts for determination, on a case by case basis.

Restrictions on Contract Provisions

1. Credit Sales

The UCCC makes a commendable attempt to prohibit or restrain certain types of contracts and contract provisions which are notoriously unfair to credit buyers, but it does not go "all the way."

a. Holder in Due Course

The Code knocks a hole in the onerous "holder-in-due course" doctrine under which a finance company which has bought a credit contract from a retailer is held free of all responsibility to the original buyer and is legally entitled to collect monthly payments from the debtor, regardless of fraud in the original contract, overcharges, defects in the product or other failure in the seller's duties.

The Code would prohibit sellers from taking a "negotiable instrument" in connection with consumer credit contracts. A subsequent buyer of the paper (the "holder") would not qualify for "holder in due course" status if he had notice of the seller's violation. However, no provision is made for labeling consumer paper as such and no penalties attach to the "holder" even he does take paper illegally procured by the seller.

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The Code also invalidates agreements whereby the borrower waives his legal defenses against a subsequent holder ("assignee") of a credit contract. Two Alternatives are provided. Alternative A, which subjects assignees to buyer's defenses, is definitely superior to Alternative B, which requires notice by buyer to assignee of defenses within three months. Even under Alternative A, certain limitations are placed on the liability of the assignee.

b. Balloon Contracts

The Code discourages the writing of "balloon contracts," but does not prohibit them. It merely specifies that the buyer shall have the right to refinance a balloon payment "without penalty" in any case where the balloon is more than twice the average of earlier scheduled payments. Current state laws that deal with balloon payments usually prohibit them.

c. Security for Contract

The Code makes certain restrictions on the security that may be taken in a credit sale. In general the seller may not take a security interest in property of the debtor other than in the goods which are the subject of sale. Exceptions are allowed to permit a security interest in goods on which services are performed or in which goods sold are installed. Also a security interest in land may be taken if goods are affixed to it or improvement services performed on it. The debt must be at least $300 in the case of security interest in goods and at least $1,000 in the case of a security interest in land. These provisions are definitely a step in the right direction, but the $300 and $1,000 limits have been criticized as too low.

d. Add-on Sales

The Code reforms but does not eliminate "add-on" sales whereby a buyer's current purchases are permitted to be taken as security for earlier purchases on which payments have not yet been completed, and vice-versa (earlier purchases become security for later purchases). Situations have occurred in which default on the most recent purchase have occasioned loss to the buyer of the entire set of purchases. The Code provides that a buyer's payments must be allocated to the goods in the order which they were bought and the security interest terminated in each item as the debt on each is paid off.

A question remains as to whether "add-on" sales should be prohibited in their entirety. A consideration against such prohibition in the Code as presently written is that multiple separate sales could result in multiple high-charge contracts under the graduated rate structure.

e. Wage Assignments

UCCC prohibits wage assignments, as do a number of existing state laws. This is a desirable reform. A wage assignment is an agreement which provides that the creditor can take part of a worker's wages directly from his employer if the debt is not repaid when due. Under UCCC an assignment of earnings may not be taken unless the employee is free to revoke his authorization of the assignment.

f. Referral Sales

Referral sales are prohibited. A desirable reform. Referral selling is a racket whereby the buyer is persuaded to sign a contract by a promise that he can recoup the purchase price in whole or in part by supplying other customers to the seller.

g. Attorney's Fees

Two alternatives are provided: (A) prohibits agreements providing for payment of attorney's fees by the borrower and (B) limits attorney's fees to 15 percent of the unpaid balance. Alternative (A) is clearly superior, particularly since "reasonable expenses" are allowed to the creditor in realizing on his security interest in case of the borrower's default.

h. Confession of Judgment

This is prohibited. A desirable and important reform. A debtor who "confesses judgment" signs away his legal rights to challenge the validity of the debt.

i. Blank Spaces and Contract Accelerations

Two notable omissions in the Code are (1) the failure to prohibit blank spaces in contracts (a common requirement under existing state legislation) a source of easy fraud on the debtor (2) the failure to curb the creditor's unrestricted right to require immediate payment of the unpaid balance of the debt thereby precipitating a debtor's default. Unilateral acceleration by the creditor should be restricted to cases in which substantial default has actually occurred.

2. Loans

Restrictions on loan agreements are less extensive than those for sales. Provisions on balloon payments, wage assignments, attorney's fees, and confessions of judgment are the same. But no restraints are put upon the rights of holders in due course or on rights of assignees. "Supervised lenders" (licensed lenders and supervised financial institutions) may not

-more-

take a security interest in land unless the debt is over $1,000 but other lenders may do so. Again, the $1,000 cut-off has been criticized as too low.

Restrictions on Creditor Collection Practices

1. Deficiency Judgments

The UCCC makes a limited attack on deficiency judgments. It provides that a seller who repossesses or takes back goods that were the subject of sale (or other security for the debt) may not also obtain payment for the "deficiency" between what the goods sell for and the unpaid balance of the debt. However, this provision applies only where the cash price of the sale was $1,000 or less, thus being of no effect for larger purchases such as new cars. No restraint on deficiency judgments applies in the case of cash lenders.

2. Wage Garnishment

UCCC would restrict garnishment along the lines of the Federal Consumer Credit Protection Act which limits garnishment to 25% of disposable earnings or the excess over $48 per week (30 times the federal minimum hourly wage) whichever is less. In UCCC the minimum exemption is improved to $64 (40 times the minimum wage), but the 25% figure remains unchanged.

In addition UCCC would prohibit garnishment before judgment and would prohibit employers from firing workers on account of garnishment. Federal law forbids firing on account of garnishment for "any one indebtedness" and makes no special provision for garnishment before judgment.

The principal immediate problem presented by UCCC is whether its 25% limit and basic exemption amount would replace more favorable provisions under a number of existing state laws, for example, laws which provide a 10% limit or which do not permit garnishment at all. A "savings clause" is included in the Federal statute for such situations, but not in the text of the Code.

In the most recent published edition of the Code (Revised Final Draft, November 1968) the "Official Comment" has been rewritten to disclaim any intent to undercut existing laws which provide additional protections to wage-earners. However, the fact remains that the statutory language does not in itself accomplish this result.

A further technical difficulty presented by the Code is that its garnishment provisions cover only situations in which the garnishment has arisen out of a transaction covered by the Code (generally, debt characterized either by installment repayments or by the imposition of a finance charge). Garnishment arising out of debt not covered by the Code, such as service credit (doctor bills and utility bills), would not be affected.

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Even assuming the most favorable interpretations of the Code, only modest improvement is made over the Federal provisions which will go into effect July 1, 1970. More comprehensive action on garnishment is needed, either to abolish garnishment altogether, or to severely restrict its application.

Contract Cancellation Rights

UCCC includes a section on "home solicitation sales" giving buyers a three day period in which to cancel a credit contract for goods or services bought from a door-to-door salesman.

The objective of this provision is obviously desirable, but specific points will need to be examined for possible improvements. The provision for a 5% cancellation fee has been particularly criticized.

An additional section, relating to buyer's cancellation rights in the case of a credit sale or loan secured by the buyer's home, is incorporated from the Federal Consumer Credit Protection Act.

Administration and Enforcement

Administration and enforcement is centered in a single Administrator who is given fairly impressive powers in the form of authority to issue "cease and desist" orders, to obtain injunctions and temporary injunctions from the courts, to bring suit for civil penalties, and to recover overcharges in behalf of debtors. Debtors are also given certain rights of bringing private suits.

Licensing requirements are included for all "supervised lenders" and their assignees (i.e., lenders who charge more than 18 percent per year on loans). These provisions would cover lenders presently licensed under state small loan laws and could have the effect of requiring licensing of at least some high rate lenders in the second mortgage market. Licensing provisions are considerably less stringent than those usually applicable to small loan licensees under much existing legislation. No license would be required for lenders charging less than 18 percent per year.

No licensing is required in the credit sales field, either for retailers or for sales finance companies which buy their paper. They are subject only to registration requirements. A number of states currently have licensing requirements for sales finance companies, and in some states retail dealers (especially automobile dealers) must be licensed for credit operations. These laws would be repealed by UCCC. Licensing requirements involve important powers to suspend or revoke the license of an enterprise to continue in business and can provide an important protection against shady operators in the credit field, as well as in securing general compliance with the law.

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Apparently the main weapon in the Code against shady operators in the credit sales field would be recourse by the Administrator to the courts for an injunction against "unconscionable" conduct.

Another notable omission is rule-making power for the Administrator. He is prohibited from issuing regulations except where specifically authorized by the Code to do so. (These relatively few authorizations are nowhere summed up in a list.) It is evidently intended that the Administrator may issue regulations to correspond to those which will be issued by the Federal Reserve Board, assuming the state were to be exempted from the operation of the federal statute with respect to disclosure requirements. However, rule-making powers in the section of the Code dealing with disclosure do not appear sufficient to accomplish this result.

February 7, 1969
AFL-CIO Department of Research/Draper

ATTACHMENT I

FINANCE CHARGE CEILINGS UNDER UNIFORM CONSUMER CREDIT CODE

1. For retail sellers

   Installment credit: *
   36% on first $300
   21% on next $700
   15% on excess over $1,000

   Revolving credit:
   2% per month on first $500 (24% per year)
   1½% per month on excess over $500 (18% per year)

2. For licensed lenders and supervised financial institutions
   (small loan companies, finance companies, commercial and industrial loan banks, credit unions)

   Loans and revolving loan accounts*

   36% on first $300
   21% on next $700
   15% on excess over $1,000

3. Other lenders

   a. 18% per year

   b. Mortgage loans are exempt from certain key provisions of the Code if finance charge is 10% or less. This is intended to result in an effective ceiling of 10% on first mortgages.

*Alternatively, a rate of 18% is authorized if the yield would be larger.

Note: The Code further provides for an escalation of effective ceilings in accordance with rises in the Consumer Price Index. This is done through increasing the sizes of the loan to which the higher rates apply. For example, if the CPI increased by 10%, the $300 to which the 36% rate applies would go to $330 and the 21% rate would apply up to $1,100 instead of $1,000.

Attachment II

CREDITOR'S EARNED INTEREST CHARGES ON LOAN
OF $1500

Month No.	Normal Computation 1/	Rule of 78 2/	Alternative Permitted in Revised Final Draft 3/
1	$ 27.50	$ 32.66	$ 31.38
2	26.06	29.85	29.05
3	24.60	27.14	26.67
4	23.13	24.43	24.25
5	21.63	21.72	21.77
6	19.67	18.99	19.24
7	17.52	16.28	16.66
8	15.33	13.57	14.03
9	13.10	10.86	11.34
10	10.83	8.15	8.59
11	8.19	5.42	5.79
12	4.12	2.71	2.91
Total	$ 211.68	$ 211.68	$ 211.68

Rebate due if loan is paid off after 5 months (the addition of charges for months 6-12):

(1) Normal computation:	$ 88.76
(2) Rule of 78:	75.98
(3) Alternative under Revised Draft:	78.56

1/ Based on month by month application of 36% per year on first $300, 21% on next $700, and 15% on balance over $1,000

2/ Based on distribution of total finance charge according to Rule of 78

3/ Based on recasting of charges at flat annual rate of 25.10 percent, corresponding to 36% on first $300, 21% on next $700, and 15% on balance over $1,000

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

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE 586-7477
JUNEAU, ALASKA 99801

HB 179

1971 APR 9 PM 2 21

#V

RE4017 POM

NOME ALASKA 9

REP BILL MORAN

JUNEAU

1476

THE NOME SCHOOL BOARD ENDORSES HB 179 AND URGES

YOUR SUPPORT

ROBERT SCHICK, TREASURER

NOME ALASKA.

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

FORM SA-1B

HB 183

MEMORANDUM State of Alaska

TO: Honorable Marty Farrell, Chairman
House Resources Committee
Alaska State Legislature
Juneau, Alaska

DATE : February 26, 1971

FROM: R. D. Stevenson
Deputy Commissioner
Department of Revenue

SUBJECT: House Bill 183
Litter Control

Certain portions of House Bill 183 effect the Department of Revenue and the Treasury of the State. Attached is a copy of a memo from L. P. Carroll, Chief, Miscellaneous Tax Section, concerning the provisions of House Bill 183 that concern the Department of Revenue.

In addition there is a fiscal note on costs of administration.

For your information Mr. Carroll administers the Business License Tax. In the event that you should desire clarification on any of the material submitted, kindly advise and Mr. Carroll will be available to your Committee.

RDS:eh

Attachment

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

FORM SA-1B

MEMORANDUM State of Alaska

TO: R. D. Stevenson
Deputy Commissioner

DATE : February 25, 1971

FROM: L. P. Carroll, Chief
Miscellaneous Tax Section

SUBJECT: House Bill 183 - Senate Bill 130--
Litter Control

Effect on Treasury: This legislation imposes a gross receipts tax of 1/20 of 1% on all manufacturers, wholesalers, and retailers to the extent of the gross derived from the manufacture or sale of any commodity which is packaged in a disposable container including newspapers and magazines, household paper, and paper products. To estimate the potential revenue to the State we have made the following assumptions to arrive at a basis of gross receipts subject to the tax.

	* 1969 Actual Gross Manufacturing	* 1969 Actual Gross Wholesale	* 1969 Actual Gross Retail
	$71,299,737	$213,007,177	$712,535,399
Less portion believed not subject to the tax	35,649,868 - 50%	53,251,794 - 25%	285,014,159 - 40%
Balance subject to tax	$35,649,869	$159,755,383	$427,521,240
Add in value of liquor, beer, wine	ø	$ 27,455,674	$ 28,553,900
Total 1969	$35,649,869	$187,211,057	$456,075,140

* See attached

Thus, it may be shown that for calendar year 1969 a total of $678,936,066 gross receipts could have conceivably been subject to the tax at 1/20 of 1%.

Assuming further an accumulated growth factor of 10% to arrive at a figure for 1971 we find the following:

1969 gross subject to tax	$678,936,066
Add 10% growth factor	67,893,606
1971 estimated gross subject to tax	746,829,672
Estimated tax at 1/20 of 1%	$ 373,415

Problems of administration:

Basically we could administer this tax in the same manner as the present gross business license tax. The major problem we can foresee is the difficulty in making an accurate determination of just what portion of the manufacturers', wholesalers', and retailers' gross is attributable to product sales as set forth in Sec. 41.20.580 (b) (1) - (12). To require each business subject to the tax to keep separate records on these particular sales will create a considerable bookkeeping problem. The problem multiplies when you consider staff required to enforce and equitably administer the tax through an audit program.

We urge that the effective date be established on 1/1/72 to allow adequate time for staffing, promulgation of procedures, rules, and regulations, and design of a tax reporting form.

I have attached herewith an estimate of administrative cost which the Department may expect to accrue should this proposed legislation become law.

LPC:mbc
Attachment

SUMMARY: GROSS RECEIPTS AS REPORTED FOR CALENDAR YEAR 1970
JANUARY 1, 1970 - DECEMBER 31, 1970

Municipalities Boroughs	Totals	Agriculture & Forestry	Construction	Manufacturing	Professional	Transportation Communication & Utilities	Wholesale	Retail	Finance & Real Estate	Service	Miscellaneous
Bristol Bay	$ 660,642.70	$	$ 2,700.00	$	$	$ 66,444.68	$	$ 220,449.75	$ 27,361.05	$ 143,659.22	$
Gateway	46,176,232.02	40,320,804.82	1,296,412.84	1,569,379.11		1,585,737.91	460,020.66	386,991.29	466,397.75	130,287.65	
Greater Anchorage Area	331,336,390.08	3,298,925.21	154,958,818.42	1,171,842.61	4,712,542.93	12,802,284.06	21,483,482.88	63,438,548.96	17,209,567.60	49,290,256.88	11,969,016.73
Greater Juneau	18,389,420.45	133,553.33	2,530,295.49	44,950.78	119,346.11	1,040,377.12	696,984.76	8,980,712.37	2,482,857.16	1,127,190.44	154,152.29
Greater Sitka	31,267,793.68	4,575,372.00	145,644.46	24,603,239.55		840,764.72	5,445.60	726,384.41	345,518.81	225,404.13	
Haines	41,381,178.48	5,369,308.00	2,867,394.82	2,378,929.00		316,604.66		197,819.55	43,068.10	408,055.55	
Kenai Peninsula	20,468,615.55	111,650.59	6,112,966.24	2,661,166.57	66,576.71	3,918,150.41	780,853.33	3,300,615.27	1,297,555.93	1,518,388.58	1,300,592.02
Kodiak Island	2,390,679.17		704,446.86	19,215.36		443,238.87	151,200.00	636,461.36	68,719.29	365,565.03	1,811.40
Matanuska Susitna	4,753,007.03	1,370.00	493,486.23	65,461.70	50,527.59	494,956.29	11,499.00	2,274,664.99	922,877.74	401,623.38	37,140.12
North Star	46,002,336.20	72,384.23	18,146,242.15	1,498,061.98	173,158.24	2,514,413.08	4,261,638.06	11,609,329.12	2,623,376.41	2,754,525.84	336,207.09
Total Boroughs	$ 592,468,796.37	$53,683,368.18	$189,221,519.31	$33,612,248.46	$ 5,121,151.58	$ 24,032,993.39	$ 29,851,424.29	$ 96,772,977.07	$ 25,486,701.74	$23,364,976.70	$ 13,798,919.63
Cities											
Alakanuk	$ 113,625.46	$	$	$	$	$	$	$ 113,625.46	$	$	$
Anaktuvuk Pass	27,926.98							27,926.98			
Anchorage	823,138,133.67	127,549.81	79,365,522.84	1,845,318.01	22,158,460.02	66,842,192.51	70,57 879.74	184,921,627.71	362,124,282.84	29,379,292.84	7,797,007.35
Anderson & Clear	308,267.02		1,120.00	873.50		6,813.70		207,511.20	70,718.53	11,047.00	18,183.09
Angoon	207,005.25							207,986.00	4,019.25		
Anvik	59,632.00							59,632.00			
Barrow	1,884,200.05					18,677.90	2,151.00	1,660,057.00		203,314.15	
Bethel	4,740,402.93		119,049.17			1,387,180.58		2,877,417.05	157,666.35	164,450.58	24,639.10
Buckland	3,479.40									3,479.40	
Chevak	258.32							258.32			
Cordova	6,755,782.97		1,844,391.47	56,617.39	125,231.99	602,249.97		2,613,576.23	648,723.74	817,301.14	49,690.84
Craig	303,724.83		21,131.00			18,860.62	10,840.00	214,803.73	8,335.30	29,754.78	
Delta Junction	3,039,059.61		282,193.07		23,800.00	76,454.03	654,577.60	1,043,421.97	822,373.90	104,035.04	
Dillingham	2,261,091.69				32,006.90	696,977.70	17,000.00	1,312,953.07	93,001.43	108,252.59	
Douglas	1,110,275.39				1,275.60	146,882.34	1,274.00	634,301.21	178,369.16	155,663.18	2,510.00
Eagle	67,326.16							12,741.31	14,584.65		
Emmonak	77,981.78					31,457.75		44,417.03		2,107.00	
Fairbanks	228,737,493.81	124,942.44	23,359,641.56	723,605.22	4,802,169.55	30,507,296.50	21,737,213.07	52,371,257.73	31,016,981.26	6,922,990.02	1,161,416.44
Fort Yukon	264,121.19					78,342.97		77,077.62		108,701.60	
Gambell	11,881.30							11,881.30			
Girdwood	388,449.37		7,370.83					340,832.23	40,246.49		
Greyling	170.00						170.00				
Haines	3,549,111.06		178,917.72		106,069.96	559,729.27	119,991.50	2,017,297.05	159,653.35	398,620.21	28,922.00
Homer	4,861,730.02		566,003.87	6,384.00	190,581.16	634,151.94	1,476.00	2,727,478.03	140,055.00	726,841.04	78,739.78
Hoonah	409,803.42			200.00		22,558.00		370,627.42	14,818.00	1,600.00	
Hooper Bay	29,465.00							27,965.00		1,500.00	
Hualin	103,418.24							17,276.24	86,142.00		
Juneau	40,976,386.31		3,351,023.94		3,160,149.52	3,621,159.87	3,780,935.86	18,230,660.69	5,153,036.86	2,398,144.37	99,267.00
Kake	4,034,133.88	3,470,666.00		154,324.00		8,740.00		397,997.74		22,388.15	
Kaltag	89,358.53							89,358.53			
Kenai	9,234,139.63		1,223,320.87		468,108.51	1,286,308.98	401,903.54	3,114,535.08	728,044.16	1,934,201.74	77,717.54
Ketchikan	49,813,286.13	5,932,651.41	2,408,122.44	5,021,091.77	1,440,025.98	4,568,591.94	2,736,131.88	21,419,594.83	3,719,730.25	2,108,722.55	459,252.88
Kiana	297,152.30							297,152.30			
King Cove	294,423.63							294,423.63			
Klawock	60,642.00							60,642.00			
Kodiak	15,238,911.32	25,043.73	924,782.61	15,332.74	554,228.76	1,026,404.81	659,754.75	11,225,198.71	672,930.37	908,236.27	209,970.57
Kotzebue	2,148,375.23			59,810.26		38,041.50	31,768.21	1,913,401.35	44,054.75	60,099.18	
Koyukuk	19,006.80								19,006.80		
Mountain Village	3,486.90							3,486.90			
Nenana	2,897,531.94		166,618.15			1,116,486.72		897,880.60		7,348.67	
Nome	5,773,735.44		211,739.93		4,555.00	659,786.12	67,282.74	2,060,232.34	80,786.30	465,193.57	15,169.08
Noorvik	57,344.63							57,344.63			
North Pole	552,809.42					231,841.94	74,929.19	38,453.96	129,983.23	57,599.58	
Nulato	114,765.14							110,900.84		3,864.30	
Old Harbor	1,050.00								1,050.00		
Palmer	8,808,883.50	18,238.00	383,883.19	193,153.96	361,496.24	188,963.45	1,201,466.94	5,471,103.85	553,761.76	632,659.12	42,057.70
Pelican	145,081.75					17,310.50		112,761.00	1,343.88	13,665.23	
Petersburg	10,608,967.77	217,526.04	1,969,483.00	2,145,274.37	342,676.79	401,338.67	296,663.03	3,931,374.96	328,809.88	973,841.82	
Pilot Station	21,601.86							21,601.86			
Point Hope	7,349.00							7,349.00			
Port Alexander	315.11									315.11	
Port Lions	145,845.53					19,331.60		117,644.93	8,949.00		
Saint Mary's	14,844.75							14,844.75			
Saint Michael's	3,314.64							3,190.00		124.64	
Sand Point	966,999.96			3,470.00				963,429.96			
Savoonga	16,474.00							14,114.00		2,360.00	
Seamans Bay	10,432.63						6,183.76	4,248.87			
Selawik	30,806.04							30,806.04			
Seldovia	755,987.03		12,641.00		21,740.00	25,830.73		683,518.30	12,266.80		
Seward	5,115,963.04		183,409.38		170,833.18	173,349.30	67,631.76	3,440,083.88	163,958.90	911,528.51	
Shishmaref	92,499.51							92,499.51			
Sitka	12,980,886.83		689,896.67	1,288.00	634,731.50	2,308,199.63	198,518.99	8,071,822.02	829,362.89	347,290.13	7,767.00
Skagway	1,350,706.38		3,946.00			217,988.73	8,564.00	973,039.27	63,780.23	81,482.18	
Soldotna	9,465,832.99		418,394.18	26,718.90	446,562.83	2,358,437.66	643,696.38	4,874,784.38	434,443.00	806,875.86	72,938.97
Stebbins	27,203.64							25,182.64		2,021.00	
Tanana	382,884.61		1,673.00			251,025.24		129,186.37			
Teller	320,747.93					49,860.55	98,581.08	154,448.40	1,416.00		18,442.00
Tuluk	20,794.00							20,094.00		700.00	
Unalaska	753,091.59							733,771.59			
Valdez	2,285,589.65		180,340.32		54,466.43	188,970.86		948,286.63	944,118.67	363,688.70	4,719.00
Wainright	60,025.05							53,174.61		6,850.44	
Whittier	10,023.63							10,023.63			
Wrangell	15,934,562.80		107,723.45	11,668,804.71	147,206.52	662,805.32	9,692.96	2,898,992.02	236,871.65	192,819.24	15,446.03
Yakutat	619,346.37					213,026.50		183,536.81	49,230.94	7,273.09	
Total Cities	$1,279,910,882.05	$ 9,901,597.45	$147,594,709.77	$31,885,446.13	$35,149,376.40	$121,176,807.50	$103,471,611.15	$ 548,388,740.44	$429,347,319.09	$31,638,445.25	$ 10,175,881.51
Total Cities and Boroughs	$1,771,897,178.42	$63,591,965.63	$336,817,229.08	$65,497,694.59	$40,270,527.98	$145,209,800.89	$133,323,035.43	$645,159,717.51	$454,834,020.80	$55,003,421.95	$ 23,974,801.14
State	$ 984,897,287.64	$ 992,632.24	$128,692,207.84	$16,021,804.86	$ 1,715,230.18	$299,534,587.01	$ 79,686,135.77	$269,376,642.18	$ 74,017,588.44	$11,477,468.23	$153,590,649.89
Total Gross Receipts	$2,756,844,466.06	$64,584,600.83	$465,510,713.12	$82,399,737.45	$41,985,958.16	$444,744,490.70	$213,009,173.20	$914,536,359.91	$528,851,609.24	$66,480,910.18	$177,565,449.13

Fiscal Note

Personal Services:

1 Sr. Revenue Agent	$15,496.00
2 Revenue Agents	25,008.00
2 Tax Examiners	18,600.00
1 Clerk Typist II	6,924.00
Total Salary	$65,028.00
Benefits	11,054.00
Total Personal Services	$76,082.00

Equipment:

Desks	$ 1,260.00
Chairs	360.00
Adding Machines	1,750.00
Typewriter	480.00
Files	300.00
Miscellaneous Equipment	500.00
Total Equipment	$14,650.00

Statewide Travel:

Audit Purposes	
Travel	$1,000.00
Per Diem	3,100.00
Total Travel	$4,100.00

Commodities:

Printing	$4,000.00
Stationery	500.00
Postage	1,400.00
Telephone	200.00
	$6,100.00

Contractual:

EDP	$2,000.00
Office Space Rent	5,000.00
Miscellaneous	500.00
	$7,500.00

Fiscal Note

Summary:

Personal Services	$76,082.00
Equipment	4,650.00
Travel	4,100.00
Commodities	6,100.00
Contractual	7,500.00
Estimated Total Administrative Costs	$98,432.00

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

Greater Anchorage Area Community Action Agency

P.O. BOX 1886 ANCHORAGE, ALASKA 99501

RESOLUTION NO. 98

RESOLUTION ENDORSING HOUSE BILL NO. 224 AND OTHER SIMILAR BILLS AS RESPONSIVE TO THE NEEDS OF THE POOR

HB 224

WHEREAS, one of the most serious problems affecting the lives of poor families in the Greater Anchorage Area is the inadequate planning, coordination, and distribution of the necessary social services that affect the poor; and

WHEREAS, the Trustees and staff of the Agency feel that it is of critical importance to the meaningful provision of social services that the affected poor people themselves have a powerful voice in those programs (social service and otherwise) that affect their lives; and

WHEREAS, House Bill No. 224 in the present legislature of the State of Alaska embodies the above expressed principles of meaningfulindigenous community participation in the planning, coordination, and administration of comprehensive social service programs that effect their well-being;

NOW, THEREFORE, BE IT RESOLVED that the Board of Trustees of the Greater Anchorage Area Community Action Agency endorse House Bill No. 224 as responsive to the problems and needs of the poor, and call upon all state legislators to support the concept as exemplified in House Bill 224 and other similar bills.

PASSED this 18th day of March, 1971, at Anchorage, Alaska

Johnnie Gay

Johnnie Gay, Acting President

ATTEST:

Jennifer Williams

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

HB-239

MAYNARD & WIRUM
ARCHITECTS
746 Fst anchorage alaska
99501 tel 907 272 3225

April 15, 1971

The Honorable Jalmar M. Kerttula
Chairman, Commerce Committee
State House of Representatives, State Capitol
Juneau, Alaska 99801

Subject: SSHB-239 — File

Dear Mr. Kerttula:

I have been waiting anxiously to read of House Bill 239 being brought to the floor for action, but so far I have been disappointed.

The architects and engineers in the state had planned on submitting this for consideration in 1970 but, because of the anticipated pressure from the oil lease sales, it was decided to delay submittal for one year. This action does not infer lack of urgency but rather a desire that the bill be given due consideration.

There are a number of people practicing architecture in the state illegally and, although charges have been filed, the District Attorney's load is such that it receives low priority. It is imperative then that the State Board be given injunctive powers.

I have heard rumor that there is a petition signed by people in the housing industry opposing passage of this bill. Section 08.48.041(8) specifically excludes control of persons designing one and two-family homes. Once we get into multi-family housing the state, community and building owner have responsibilities to the people occupying these buildings to safeguard their life, health and property as the General Provisions provide. A lot of those persons presently practicing illegally go beyond the housing field and are designing public buildings. This is a dangerous situation. If the practitioner is in fact qualified he can become licensed and thereby responsible for his actions. At present these people carry no insurance and are under no legal obligation to anyone. This is a deplorable situation.

I would respectfully request that this bill be processed THIS YEAR in the interest of all citizens of the state.

Very truly yours,

Kenneth D. Maynard

KENNETH MAYNARD, AIA

KDM:ml

cc: Representatives Gene Guess, Willard L. Bowman, Mike Colletta, Marty Farrell, Tom Fink, Jess Harris, Richard McVeigh, William J. Moran, Mike Rose, Joshua J. Wright, Helen M. Fischer, Earl D. Hillstrand, Edward G. Barber

HB-239

12 April 1971

Honorable William Moran
Chairman, Judiciary Committee
Alaska House of Representatives
Juneau, Alaska 99801

Dear Mr. Moran:

I would like to direct your attention to a legislative matter of prime importance. I have become increasingly aware of the inadequacies of House Bill 239, through correspondence with the National Engineers Legal Fund.

I am concerned over a portion of HB 239 which may be an open invitation to legal actions (Enclosure 1). The objectional portion is that of the wording of "practice of engineering", page 19 of HB 239, Section 08.48.301/7 (Enclosure 2). It appears that this section is attempting to exclude engineers from becoming prime design consultants of buildings.

In a joint Architect-Engineer Registration Act such as HB 239 there should be a clear cross exemption clause included, designed to permit the architect or engineer to contract for all design services.

I would recommend amending HB 239 to read as suggested by the National Council of Engineering Examiners Model Law (Enclosure 3). The Model Law has been endorsed by the National Society of Professional Engineers and several other national engineering groups. I am confident that this amendment will clear up most objections to this bill.

I hope you can give this important matter your attention.

Sincerely yours,

James C. Harle

JAMES C. HARLE, P.E.

3 Enclosures
As stated

SAMPLE CASE ENCLOSURE 1

(Printed and Distributed by: NATIONAL ENGINEERS LEGAL FUND)

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT JULY TERM 1970

ALEX VERICH, EDWARD J. DeBARTOLO d/b/a EDWARD J. DeBARTOLO & ASSOCIATES and EDWARD J. DeBARTOLO CORP.,

Appellants,

v.

THE FLORIDA STATE BOARD OF ARCHITECTURE, an agency of the State of Florida,

Appellee.

CASE NO. 69-40.

Opinion filed July 29, 1970

Appeal from the Circuit Court for Palm Beach County; R.O. Morrow, Judge.

Madison F. Pacetti of Caldwell, Pacetti, Barrow & Salisbury, Palm Beach for appellant.

Selig I. Goldin of Goldin, Jones, Gainesville and Marks, Gray, Yates, Conroy & Gibbs, Jacksonville for appellee.

OWEN, J.

On complaint filed by the Florida State Board of Architecture appellant Alex Verich, a registered professional engineer, was found to be practicing architecture and enjoined from further practice thereof. We reverse that judgment in what we believe to be a case of first impression in this jurisdiction.

Mr. Verich was registered as a professional engineer in the State of Florida as provided under Chapter 471, F.S. He prepared or had prepared under his supervision, plans for a shopping center in West Palm Beach, Florida known as the Palm Beach Mall. Thses plans involved both architecture and engineering. At no time did Mr. Verich hold himself out to be an architect in any manner whatsoever nor did he enter into any

contracts to perform architectural services, as he prepared the plans for the Edward J. DeBartolo Corporation for whom he was a fulltime engineer employee. The Palm Beach Mall is owned by Palm Beach Mall, Inc., a corporation wholly owned by the Edward J. DeBartolo Corporation.

Not unexpectedly, the plaintiff called as witnesses three architects all of whom testified that in their opinion the drawings, plans and specifications for the Palm Beach Mall constituted the work product of the practice of an architect. The defendant called as witnesses several registered professional engineers who expressed the opinion that the preparation of the plans for the Palm Beach Mall constituted the practice of engineering. The engineers testified that in their opinion the engineering services in preparing the necessary drawings and plans constituted approximately 75% of the work and that architecture was approximately 25% of the work. Both the engineers and architects agreed that the Palm Beach Mall was a building and that the plans for the same required the use or knowledge of mathematics and the practice of engineering, while we mention the foregoing conflicts in the testimony, our decision does not turn on a factual basis.

That there is an overlapping between the two professions appears to be readily recognized by the language of Section 467.09(1)(a), F.S. which provides in substance that registered professional engineers are not prohibited from performing architectural services which are purely incidental to their engineering practice, and that registered architects are not prohibited from performing engineering services which are purely incidental to their architectural practice. The overlapping nature of the two professions is well recognized. See 82 ALR2d 1026; 5 Am.Jur.2d, Architects, §3; 6 C.J.S., Architects, §1.

Section 467.09(1)(a), F.S. defines the practice of architecture in a somewhat negative manner. After first providing for certain exemptions, the statute then defines the practice of architecture in the following terms:

> "Otherwise, any person who shall be engaged in the planning or design for the erection, enlargement or alteration of buildings for others or furnishing architectural supervision of the construction thereof shall be deemed to be practicing architecture and be required to secure a certificate and all annual renewals thereof required by the laws of this state as a condition precedent to his so doing."

Stated in rather broad and general terms, the planning or design for the erection of buildings for others is the practice of architecture. The same statute expressly provides that no professional engineer shall practice architecture or use the designation "architect" or any term derived therefrom, but at the same time also expressly provides that nothing in the state law shall be held to prevent a registered professional engineer (or their employees or subordinates under their responsible supervising control) from performing architectural services which are purely incidental to their engineering practice. Standing alone, the statute appears to contain some contradictions in and of itself.

Chapter 471, F.S. pertains to profession engineers and by definition (Section 471.02(5)) the term "professional engineering" includes, among other things, any professional service requiring use of knowledge of mathematics and the principles of engineering rendered or offered to be rendered for public or private buildings and any consultation, investigation, plan, design, or responsible supervision of construction in any public or private buildings. Thus, it can be seen that the preparation of plans and design for and responsible supervision of the construction of buildings is by statute defined as the practice of professional engineering.

If the planning and design of a building and the furnishing of supervision of its construction are functions which are encompassed solely within the practice of architecture, then professional engineers are prohibited from engaging in such functions unless incidental to their engineering practice. But paradoxically, the practice of professional

engineering expressly includes the planning and design of buildings and the supervision of their construction. Thus, the apparent conflict can only be resolved by concluding that the statutes mean a registered architect can plan and design and supervise construction of a building as the practice of architecture and a registered professional engineer can plan and design and supervise construction of a building as a professional engineer. Of course, the professional engineer cannot represent himself as being an architect nor can the architect represent himself as being a professional engineer.

Appellee contends that the statutory definition of "professional engineering" by necessary implication has reference to "buildings" of an industrial nature designed primarily to house machinery and equipment rather than designed primarily for habitation or occupancy by humans. Admittedly, such a qualification as to the type of buildings upon which professional engineers were authorized to plan and supervise construction would help preserve a line of demarcation between the two professions consistent with generally accepted concepts. We feel however that had it been the legislative intent to thus limit or restrict to industrial buildings the type of buildings which professional engineers were authorized to design and supervise construction upon, such qualifications or restrictions would have been explicitedly contained in the statute. We are concerned here with statutory construction and not historical differences of these two professions.

The final judgment is reversed and the cause remanded for entry of a judgment favorable to appellant.

REED, J., concurs.
WALDEN, J., dissents, without opinion.

ENCLOSURE 2

A PORTION OF
HOUSE BILL 239

projects, and architectural review of plans and specifications by regulatory agencies, but does not include the design of complete mechanical, electrical or structural systems for buildings or other structures, but may by regulation of the board include mechanical, electrical or structural design as is of relatively minor importance to the project as a whole; and one who, by verbal claim, sign, advertisement, letterhead, card, or in any way represents himself to be an architect, or through the use of some other title implies that he is an architect or that he is registered under this chapter, or who holds himself out as able to perform or who does perform any service or work the board shall by regulation define as the practice of architecture;

(7) "practice of engineering" means professional or creative work, the adequate performance of which requires the application of specialized knowledge of mathematics and sciences, dealing with the functional and economic design of buildings, structures, machines, equipment, utilities systems, materials, processes, works or projects, public or private; the planning of portions of the earth's surface for man's use, the teaching of advanced engineering courses in institutions of higher learning, the direction of or the performance of engineering and land surveys, including services of consultation, investigation, evaluation, planning, design and inspection for the purpose of assuring compliance with the designs and specifications in connection with public and private structures, buildings, works or projects and engineering review of plans and specifications by regulatory agencies; and the practice of engineering may by regulation of the board include such architectural design as is of relatively minor importance to the project as a whole, but shall not be construed to include comprehensive architectural services; and one, who, by

NEEDS AMENDING

"ENCLOSURE 3."

"NATIONAL COUNCIL OF ENGINEERING EXAMINERS"

THE MODEL LAW

CHAPTER I. REGISTRATION OF ENGINEERS

AN ACT

To Regulate the Practice of Engineering; Provide for the Registration of Qualified Persons as Engineers and the Certification of Engineers-in-Training; Define the Terms "Engineer", "Professional Engineer", "Engineer-in-Training", and "Practice of Engineering"; Create a State Board of Registration for Professional Engineers and Provide for the Appointment and Compensation of its Members; Fix the Term of Members of the Board and Define its Powers and Duties; Set Forth the Minimum Qualifications and Other Requirements for Registration as an Engineer and Certification as an Engineer-in-Training; Establish Registration Fees with Expiration and Renewal Requirements; Impose Certain Duties upon the State and Political Subdivisions thereof in Connection with Public Work, and Provide for the Enforcement of this Act and Penalties for its Violation.

Be it enacted by the General Assembly of the State of . . . . . as follows:

SECTION 1. GENERAL PROVISIONS

In order to safeguard life, health, and property, and to promote the public welfare, the practice of engineering in this state is hereby declared to be subject to regulation in the public interest. It shall be unlawful for any person to practice, or to offer to practice, engineering in this state, as defined in the provisions of this Act, or to use in connection with his name or otherwise assume, or advertise any title or description tending to convey the impression that he is an engineer, unless such person has been duly registered or exempted under the provisions of this Act. The right to engage in the practice of engineering shall be deemed a personal right, based on the qualifications of the individual as evidenced by his certificate of registration, which shall not be transferable.

SECTION 2. DEFINITIONS

(a) Engineer—The term, "engineer", within the intent of this Act shall mean a person who, by reason of his special knowledge and use of the mathematical, physical and engineering sciences and the principles and methods of engineering analysis and design, acquired by engineering education and engineering experience, is qualified to practice engineering.

(b) Professional Engineer—The term, "professional engineer", as used in this Act, shall mean a person who has been duly registered and licensed by the State Board of Registration for Professional Engineers.

(c) Engineer-in-Training—The term, "engineer-in-training", as used in this Act, shall mean a person who complies with the requirements for education, experience and character, and has passed an examination in the fundamental engineering subjects, as provided in Sections 12 and 14 of this Act.

(d) Practice of Engineering—The term, "practice of engineering", within the intent of this Act, shall mean any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, planning the use of land and waters, engineering teaching of advanced engineering subjects or courses related thereto, engineering surveys, and the inspection of construction for the purpose of assuring compliance with drawings and specifications; any of which embraces such service or work either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, or projects and including such architectural work as is incidental to the practice of engineering.

RECOMMENDED AMENDMENT

A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this Act, who practices any branch of the profession of engineering; or who, by verbal claim, sign, advertisement, letterhead, card, or in any ohter way represents himself to be an engineer, or through the use

of some other title implies that he is an engineer or that he is registered under this Act; or who holds himself out as able to perform, or who does perform any engineering service or work or any other service designated by the practitioner which is recognized as engineering.

(e) Board—The term, "Board", as used in this Act shall mean the State Board of Registration for Professional Engineers, hereinafter provided by this Act.

(f) Responsible Charge—This term means direct control and personal supervision of engineering work.

SECTION 3. BOARD—APPOINTMENTS—TERMS

A State Board of Registration for Professional Engineers is hereby created whose duty it shall be to administer the provisions of this Act. The Board shall consist of . . . . . engineers, who shall be appointed by the Governor, preferably from a list of nominees submitted by the representative engineering societies of the State, and shall have the qualifications required by Section 4. Each member of the Board shall receive a certificate of his appointment from the Governor and shall file with the Secretary of State his written oath or affirmation for the faithful discharge of his official duty. Appointments to the Board shall be in such manner and for such period of time that the term of each member shall expire at a different time. On the expiration of the term of any member, the Governor shall in the manner hereinbefore provided appoint for a term of . . . . . years a registered engineer having the qualifications required in Section 4. A member may be reappointed to succeed himself. Each member shall hold office until the expiration of the term for which appointed or until a successor has been duly appointed and has qualified. In the event of a vacancy on the Board for any reason and the Governor failing to appoint a successor within three months after the vacancy occurs, the Board is empowered to fill that vacancy until the Governor makes an appointment.

SECTION 4. BOARD—QUALIFICATIONS

Each member of the Board shall be a professional engineer, who is a citizen and resident of this State and is registered in this State and who shall have been engaged in the lawful practice of engineering for at least twelve years, and who shall have been in responsible charge of important engineering work for at least five years.

SECTION 5. BOARD—COMPENSATION AND EXPENSES

Each member of the Board shall receive the sum of . . . . . Dollars ($ . . . . .) per diem when attending to the work of the Board or any of its committees and for the time spent in necessary travel; and, in addition thereto, shall be reimbursed for all actual traveling, incidental, and clerical expenses necessarily incurred in carrying out the provisions of this Act.

SECTION 6. BOARD—REMOVAL OF MEMBERS—VACANCIES

The Governor may remove any member of the Board for misconduct, incompetency, neglect of duty, or any sufficient cause, in the manner prescribed by law for removal of state officials. Vacancies in the membership of the Board shall be filled for the unexpired term by appointment by the Governor as provided in Section 3.

SECTION 7. BOARD—ORGANIZATION AND MEETINGS

The Board shall hold at least . . . . . regular meetings each year. Special meetings may be held as the by-laws of the Board provide. The Board shall elect or appoint annually the following officers: A chairman, a vice-chairman, and a secretary. A quorum of the Board shall consist of not lesst than . . . . . members.

SECTION 8. BOARD—POWERS

(a) The Board shall have the power to adopt and amend all by-laws and rules of procedure, not inconsistent with the constitution and laws of this state or this Act, including the adoption and promulgation of a Code of Ethics and/or Rules

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PLEASE REPLY BY AIRMAIL

WARREN C. CHRISTIANSON
ATTORNEY AT LAW
SITKA, ALASKA 99835

POST OFFICE BOX 4
TELEPHONE 747-3558
132 LINCOLN ST.

April 2, 1971

The Honorable William J. Moran,
Chairman
Judiciary Committee
Pouch V
Juneau, Alaska 99801

Re: HB 241

Dear Mr. Moran:

As HB 241 - "An Act relating to damages for oil pollution", introduced by Mike Miller has been referred to the Judiciary Committee, I would very much appreciate it if you would give your support to this bill.

Thank you for your assistance in this matter.

Very truly yours

Warren C. Christianson

WCC/dw

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE 586-7477
JUNEAU, ALASKA 99801

HB 264

#V

1971 MAR 29 PM 3 09

CWA069 POM

FAIRBANKS ALASKA 29

REP ANDY HARWICK

JUN 2593

STRONGLY URGE YOU SUPPORT HB264 TO IMPROVE CHILDRENS
EDUCATIONAL OPPORTUNITY

DORIS D RAY 1205 10 AVE

HB264 1209 10.

TOM WHITEHEAD, MINISTER
212 WEST 29TH AVENUE
ANCHORAGE, ALASKA 99503

CHURCH PHONE 279-3342
PARSONAGE PHONE 277-9601

TURNAGAIN UNITED METHODIST CHURCH

3300 NORTHERN LIGHTS BOULEVARD ANCHORAGE, ALASKA 99503

HB 275

Rep. William Moran
Pouch V
Juneau, Ak. 99801

Dear Mr. Moran;

The adult class at Turnagain United Methodist Church in Anchorage was very appreciative of the senators and legislators who took time from their busy schedule to meet with us last Fall. We are even more appreciative of the time that you have put in in Juneau since the first of the year.

When we met with legislators in November, we shared our thinking about several matters that we thought had moral implications. One of those was the matter of drinking and driving. We note that HB 275 sets up a point system for motor vehicle violations which would revoke the licenses of chronic violators who imperil the safety of others. From the sound of the resume, this is a bill that we heartily endorse, and we would urge your support of it.

Sincerely,

Joanne Miller
Beth Henderson
Bill Troyer
Jan G. Hannay
Mary Reardon
Mary Libby
Bonnie J. Hoffenberger
Lukie Troyer
Maureen Blewett
Judith Powell
Carol Daly
Walter L. Hayes
Carolyn Worthington
Wendy Schulstad

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DAVIDSON, ENGSTROM [redacted]
ATTORNEYS AT LAW
JUNEAU, ALASKA 99801

C. GIRARD DAVIDSON
ALLAN A. ENGSTROM
[redacted]

201 NATIONAL BANK OF ALASKA BUILDING
TELEPHONE 586-1445

April 1, 1971

HB 358

Hon. William Moran
Chairman, House Judiciary Committee
State Capitol Building
Juneau, Alaska

Re: H.B. 358

Dear Bill:

House Bill 358, relating to hospitals, would vitally affect my client, Blue Cross Washington Alaska, Inc. Prior to your Committee taking any action on the bill, we would appreciate being heard by your Committee. We would be prepared to appear before your Committee subject to your convenience.

Yours very truly,

ALLAN A. ENGSTROM

AAE:rhm

xxxxxxxxxxxxxxxxx
Ketchikan General Hospital
3100 Tongass Avenue
Ketchikan, Alaska 99901

March 31, 1971

HB #358

Representative Tom Fink
Alaska State House of Representatives
Juneau, Alaska 99801

Dear Representative Fink

I have received a copy of House Bill #358 which was introduced by you on March 26, 1971. I and the other members of the Alaska State Hospital Association have had an opportunity to make an initial review of the proposed Bill and feel that the proposed legislation may not be workable. For instance, many of the Alaska State Hospital Association institutions currently have expense reimbursement contracts existing with the U.S. Public Health Service for periods ranging up to twenty years which apparently would not meet the specifications of your proposal. We would also question whether the Federal Medicare Reimbursement System would be allowable under proposed House Bill #358.

The Alaska State Hospital Association therefore urges that no positive action be taken on this proposal until such time as the Association and other interested parties have an opportunity to give a more complete review to the proposal. I would also appreciate receiving your comments as to the intent of the legislation.

Thank you for your cooperation.

Sincerely

Patrick R. Mahoney
Chairman
Legislative Committee ASHA

cc Jalmar Kerttula, Commerce
William Moran, Judiciary
Frank Peratrovich, Commerce
Dick Whittaker, HW & E

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HB-388

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

March 27, 1971

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: Administration of small estates

The committee's bill on the administration of small estates, as recommended by the director of the court system and by Probate Master Keifer Gray, is attached. Two things about the recommendation are unclear to me: (1) Why was the appropriate change in AS 13.30.006 (which I have included in sec. 4 of the bill) not mentioned? (2) Is the recommended change in sec. 2 of the bill necessary in light of AS 13.30.006? Or perhaps AS 13.30.006 could be amended in this respect too.

SB 92

ALASKA STATE MEDICAL ASSOCIATION

[illegible] WEST EIGHTH AVENUE ANCHORAGE, ALASKA 99501 TELEPHONE 277-6891

March 1, 1971

The Honorable John Rader
Alaska State Senate
Pouch V
Juneau, Alaska 99801

Dear Senator Rader:

On behalf of the Legislative Committee of the Alaska State Medical Association, I wish to make known our position on SB 92, "An act relating to disciplinary procedures of the State Medical Board; and providing for an effective date."

We generally concur with and support Sections 08.64.390 through 08.64.590. We are cognizant, as I am sure you are, of some negative opinions; namely that the procedures outlined are unnecessarily complex, cumbersome, and potentially expensive. We do not share these views. We believe your proposal provides a reasonably clear delineation of powers, procedures, and responsibilities, while still providing maximal protection for both the charged physician and the public interest.

As you probably know, we especially favor Section 08.64.580. These provisions appear well written and should satisfy our needs and those of the State Medical Board. We feel that this immunity from civil liability is the keystone for effective enforcement of disciplinary provisions of the State Medical Practice Act.

With respect to Section 08.64.570, Counsel and Staff, we would suggest a re-draft specifically providing for a full-time executive secretary for the State Medical Board. Such an individual is requested by Dr. Henry Akiyama of the Board, as a means of making their functions more effective. We endorse this view.

We must express our strong disapproval of the proposed amendment of AS 08.64.315(6) which would treble biennial license renewal fees. You were perhaps not aware that a major increase in these fees went into effect only this year. We are unaware of any justification or necessity for a further major increase at this time. Since such expenses are indirectly passed on to the patient in terms of higher medical fees, we feel this would be simply an added factor in the spiralling cost of medical care.

Thank you for introducing this needed legislation. We will be pleased to provide you with any additional clarification of our position, and offer our full assistance in securing passage of the major portions we favor.

Sincerely,

John A. Pennington

John A. Pennington, M.D., Vice Chairman
Legislative Committee

JAP:ch
cc: Representative Genie Chance
Senator Lowell Thomas, Jr.

THE FOLLOWING PAGES WERE TREATED AS
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SB 124

Enclosed is the testimony I gave in Juneau before the joint House and Senate Health, Welfare and Education Committees. Under consideration were the nursery school regulations now being pushed by Health and Welfare social workers in Anchorage and the State. We believe that their misinterpretation of current vague regulations and lack of educational expertise has caused a great deal of unnecessary trouble for established and satisfactorily functioning private nursery schools. The present furor appears unlikely to lead to improvements; rather it may result in overpricing or closure of such private facilities. For this and other reasons, elaborated in this testimony, we recommend placement of these nursery schools under the Department of Education.

We therefore urge your endorsement of Senate Bill No. 124, with the changes in (8) as shown. The (ages 3-5) were inserted by me; the other changes were put in by Dr. Hartmann of the Dept. of Education. He felt that the words "in cooperation with the Department of Health and Welfare" were unnecessary, since Health and Welfare always cooperates in the running of schools anyway (inspecting the schools for cleanliness, space, etc.), and that the inclusion of these words might just add confusion as to which Department would have jurisdiction over the nursery schools.

Marianne von Hippel

Marianne von Hippel, M.D.

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

Original sponsor: Groh

IN THE SENATE

BY THE H'ALTH, WELFARE AND EDUCATION CO MITTEE

CS FOR SENATE BILL NO. 124

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to jurisdiction over prekindergarten schools."

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

* Section 1. AS 47.35.030(4) is amended to read:

(4) "nursery" means an establishment providing care and services for any part of the 24-hour day for a child not related by blood or marriage to the owner or operator, but does not include any establishment whose primary purpose is educational.

* Sec. 2. AS 14.07.020 is amended by adding a new paragraph to read:

(8) ~~in cooperation with the Department of Health and Welfare~~ exercise general supervision over public and private preelementary schools (ages 3-5) whose primary function is educational ~~and over the educational component of nurseries as defined~~ in AS 47.35.030(4).

HB 124

Marianne von Hippel, M.D.
Testimony regarding Anchorage private nursery schools

I am representing five private nursery schools in Anchorage; Safehaven, Mrs. Pointer's, Mrs. Hanshew's at the First Presbyterian Church, Central Lutheran Church and St. Mary's Episcopal Church. The first is a cooperative owned and operated by the mothers; the second is owned by Mrs. Pointer, the teacher; the latter three are run by their respective church boards. All are non-sectarian. Tuition is paid by the parents; none of these schools receive State or Federal aid.

What is the problem? These schools have been running successfully for a few to twenty-three years (Safehaven). Last fall, Mrs. Wolfe, a social worker from the Borough, and Mrs. Johnson, a social worker from the State, have informed all these schools that the regulations state that all day care centers must have one adult for each ten children, or close beginning with the 1971-72 school year. All these schools have been classified as day care centers, since the regulation defines a day care center as one which has more than five children, under the age of five, for any part of the day, in a dwelling other than the home. If the regulation was strictly applied all Sunday Schools would come under this classification, and thus be accountable to representatives of the Department of Health and Welfare. Of the five nursery schools I am representing, all but Mrs. Pointer's have approximately fifteen children to one adult. Mrs. Pointer, who has gradually switched from kindergarten to nursery school, is operating strictly nursery school this year for the first time, and has complied with the Borough Ordinance. However, I have included her school with the other four because her school is similar, and because she is in favor of offering the mothers a choice. (These schools all have other adults in the building present at all times; in case an emergency should arise, someone would be available to help.)

Our feeling is that nursery schools are entirely different from day care centers, and so should come under a different classification.

How are they different? All of the five schools mentioned take children three and four years old only; none of them take infants and toddlers. Central Lutheran, Mrs. Pointer's and Mrs. Hanshew's take four-year-olds only; Savehaven and St. Mary's take three and four-year-olds, having different classes for the two different age groups. All the schools follow the school district age deadline; thus, a four-year-old is a child who will be five after November 1.

All of the five schools have children for only two and a half hours a day. Mrs. Hanshew has children three days a week; St. Mary's has the four-year-olds three days a week and the three-year-olds two days a week; Mrs. Pointer has three different programs - two days, three days and five days; Central Lutheran and Safehaven both have five day weeks. Thus, the children spend anywhere from five to twelve and a half hours a week at the school.

What goes on at the school? While each of the five schools differs in the program it offers, each is similar in that it has an organized curriculum. Most combine free play, during which time the children gain valuable experience in learning to get along with each other, and specific learning situations, such as painting, numbers, learning about their environment, etc. None of these schools teach things that will be taught by the public schools, such as reading, as it is felt that these could be better learned at a later stage of development. The school I am most familiar with, Safehaven, includes poetry for all the children, plus a little Spanish, number concepts and geography for the four-year-olds. Our teachers are selected on the ability to teach and to relate to children of this age, not on the basis of certificates. As a result many of these teachers are not fully certified.

It is obvious from the above that these schools cannot be used as baby sitting services. The children are there for too short a period. They are too old for diapers, bottles, or continuous watching for such dangerous habits as sticking fingers in electric outlets, etc. No meals are served and there are no naps. The children are there for educational and social reasons, not for mothering or baby sitting. The primary purpose is to serve the children, not the mothers. In brief, these are pre-schools, not day-care centers, and are much more like the public school kindergarten, where the ratio is about 1/25.

What would be the problem in reducing the child/adult ratio? First of all, we see no reason that this would be of any benefit to the children. Secondly, the tuition would have to be raised to support more teachers and teacher-aides, which would make nursery schools prohibitive to many families and force the closing of many of the schools. At the present time the cost is as follows:

St. Mary's - $16/month for the three-year-olds
$20/month for the four-year-olds
Mrs. Hanshew's - $25/month
Central Lutheran - $30/month
Safehaven - $30/month
Mrs. Pointer's - $20/month two day program
$30/month three day program
$45/month five day program (As Mrs. Pointer's school has the ten/one ratio, she must charge more.)

Other suggestions made to reduce the ratio are to have mothers help; and to have college students who are Education Majors help. The first suggestion has been discarded by all the schools because most mothers are not interested in this sort of thing (those that are can send their children to cooperative schools where mothers do help), and many teachers are afraid the child of the helping mother would be a behavior problem. The second suggestion (college students helping) is impractical since an adult is defined as a person over twenty-one, and there are not that many college students over twenty-one who have the interest and time to help on a daily basis.**

No school is ideal for everyone. We believe that a large variety of schools is ideal as it offers mothers a chance to select the learning experience most suited for their child.

What children do our schools serve? Generally they serve middle-class children from two-parent homes. Most of the mothers do not work. The one exception to this is Central Lutheran; half of their children come from poverty homes, and these students have their tuition donated by members of the congregation.

As a Board-Certified Pediatrician I have had considerable experience with nursery schools. I often refer a child to a nursery school when I think it would benefit him. When I arrived in Anchorage nearly six years ago there were few schools and they had long waiting lists. I would not like to see this situation return because our present good schools are forced to close; I would not like parents to be unable to send their children to nursery schools because of rising costs. I feel these five schools are excellent and offer valuable experience for pre-schoolers. I can see that some regulations are required for day-care centers so that children of working mothers are not crowded together and given inadequate care; but I see little resemblance between a day care center and our nursery schools.

As a mother of four children who have attended nursery school over a period of six years, I have seen my children gain much, both educationally and socially, and they have had a lot of fun in the process. I am one of the few mothers who do work, but I have never used the nursery school as a baby sitting service, as I have always had a baby sitter in my home when I am at the office.

In our community we have programs for poverty children; we have programs for children with serious emotional difficulties; we have programs for children with physical and mental disabilities, such as cerebral palsy and deafness. Many of these programs are partly or wholly State supported. This is as it should be.

Our nursery schools are privately supported institutions run primarily for normal, middle-class children. These children have rights too.

These schools have proven effective over many years. We hope they will not be destroyed by the present bureaucratic misinterpretation of regulations designed to protect other children under entirely different circumstances.

**It should be pointed out that many teachers do not want to work with another adult, even if this could be done. Mrs. Hanshew, an excellent teacher of many years experience, has told me that she wants to have all her attention on the children, rather than having to concern herself with the other adult and how the children are relating to her. Some teachers work well with another teacher; some don't. Some children can relate well to several adults at one time; some relate best when only one adult is present.

April 12, 1971

SB-124

Dear Rep. Moran,

Enclosed is an article which appeared in the November 1970 issue of Parents magazine, discussing the urgent need for expanded day care services for preschool children. It should be of great interest to you since there have been several bills introduced in the Alaska Legislature this session on the subject.

In the past, many uninformed people have dismissed the topic of day care as one of minor importance, a frivolity. But of late, there has been the realization that money spent on early childhood development, not to be confused with mere custodial care, is the best investment our country can make. President Nixon has allotted $386 million for comprehensive day care services as part of his new welfare program. The major recommendation of the 1970 White House Conference on Children was for "comprehensive family oriented child development programs, including health services, day care and early childhood education."

In Alaska, we have a high proportion of working mothers due to the higher cost of living and the large number of military families. To meet the child care needs of these women in the Anchorage area we have 14 day care centers which can accommodate a total of 300 children, a drop in the bucket when compared to the thousands of women one sees daily in the offices and business establishments of our city. The picture throughout the state is equally dismal.

Funds are desperately needed to provide low cost, quality day care to the mothers whose income is necessary to help provide their families with the essentials of a decent life; for those women who need and want to work but can't because of a lack of child care services; for those women, who in increasing numbers, make a substantial contribution to the Alaskan economy.

Of acute concern to us are the proposed cuts of Operation Upgrade funds. This money, $50,000 (coupled with $150,000 federal funds) operates 10 day care centers from Ketchikan to Nome and without it these centers will doubtlessly close. We would like to see the originally requested $100,000 (which will be matched with $300,000 federal money) approved so that we can expand these vitally needed programs.

In addition, we urge you to give your full support to House Bill 224, entitled Comprehensive Community Services Program, a measure which would provide for locally planned and operated day care services. If passed, multiple funding from various federal and state sources would be made available.

In conclusion, we feel that this area of developing human resources is as deserving of your attention, and as vital to the growth of Alaska, as development of the physical attributes of the state.

Sincerely,

Mrs. Rosaire Kennedy

Mrs. Rosaire Kennedy, Pres.
Mrs. Judy Smith, Vice Pres.
Mrs. Shirley Leighty, Sec.
Mrs. Jan Erickson
Mrs. Susan Heasley
Mrs. Jackie Bloom
Mrs. Diana Berkowitz
Mrs. Gail Simmons
Mrs. Kathy Dubbs
Mothers for Quality Child Care
1712 W. 11th Ave.
Anchorage, Ak. 99501

New Developments in Day Care

A well-known pediatrician discusses the urgent need for expanded day care services for preschoolers.

by Morris A. Wessel, M.D.

Associate Clinical Professor of Pediatrics, Yale University School of Medicine

Barbara Anton, an attractive young woman whose two children I've cared for since their birth, sat in a chair in my office. "Susan's three-and-a half now, you know," she said, "and Bobby's past two. They're both pretty independent and they get along very well when I leave them with a neighbor. What I wanted to ask you was," she continued a little hesitantly, "do you think it would be all right if I left them in a day care center for a few hours every day? I'm thinking of taking some college courses. I can get my degree in a year that way and then I'll be able to teach. I'll want to start working in a couple of years anyway, and I've always thought I'd like to teach. I've been thinking more and more about doing this since Brian was killed."

Barbara's husband was a casualty of the war in Vietnam, killed when their second child, who was born in his absence, was only a few months old. In spite of her grief and shock, Barbara had managed to submerge her sorrow in the day-to-day job of looking after her two babies. Somehow she had even been able to give them a sense of ease and security, and Susan and Bobby were two of the healthiest, nicest youngsters I knew.

Now Barbara was trying to pick up the pieces of her own life as well, and I was delighted that she was thinking ahead and making plans for the future. I assured her that her idea was an excellent one and, moreover, I knew of a fine day care center near the State Teachers College she would be attending. When Barbara left my office she looked happier than I had seen her in a long time, and she called me a few days later to tell me she had been able to schedule all her classes in the mornings so she could pick up the children after lunch and take them home in time for their afternoon naps. I was confident that the arrangement would work out fine for all of them. And it has.

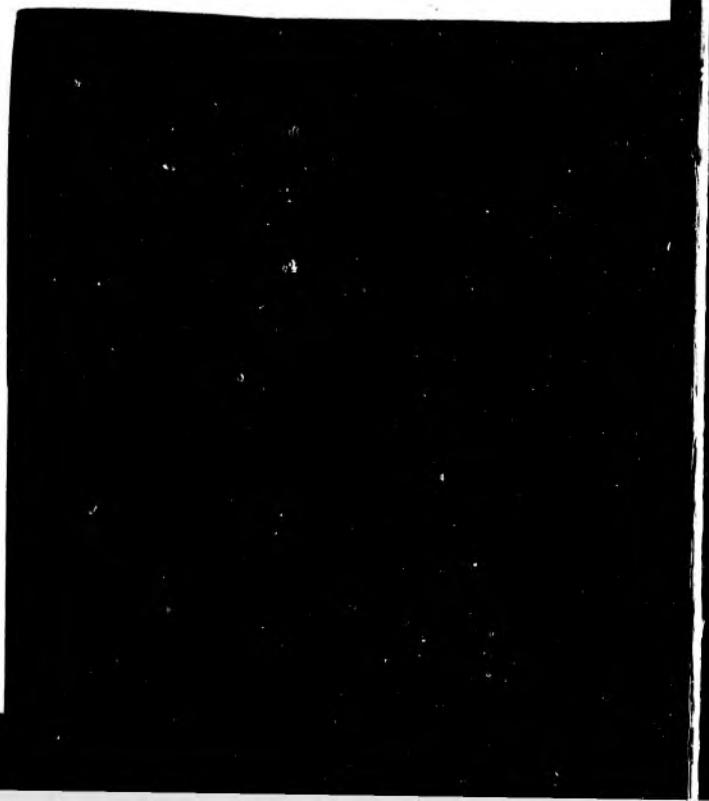
Barbara's youngsters, Susan and Bobby, are two of several million children who are presently being cared for away from home while their mothers work or go to school. Unfortunately, not all the mothers who seek day care services for their youngsters find centers as good as the one Barbara found. Day care centers are too few in this country, and good ones are even fewer. Less than 10 per cent of the children are being cared for in licensed centers, and even some of these licensed services are overcrowded and understaffed, and lack adequate physical and educational facilities.

According to government statistics, mothers of some four million children under the age of six work outside their homes. Often these working mothers have to rely on makeshift arrangements in order to be able to keep a job they badly need. Sometimes women need to work simply can't because there's no one with whom they feel they can safely leave their children.

Increasingly, throughout the country, community councils, hospitals, churches, and government agencies are supporting child care centers, and a number of companies and labor unions have also set up day care centers for the children of their employees or members. Recently, too, there has been a new development in the form of joint sponsorship of a day care center by parents, a government agency, and an industrial company. An example of this is the KLH Child Development Center in Cambridge, Massachusetts, which cares for 60 preschoolers, most of them children of employees of KLH, a manufacturer of stereophonic sound equipment. This center is organized on a cooperative basis. Parents become members of the corporation that owns and operates it, and the center is supported financially by the company, the United States Children's Bureau, private contributions, and fees paid by parents according to their income.

The majority of mothers who work do so because their income is needed to help provide their families with the essentials of a decent life. Some three million of the mothers who work in this country live with their children in homes where there is no father and the mother is the major support of the family.

There are also many families on welfare who are struggling to become self-supporting and could do so if the mother were able to leave her children in a day care center on weekdays. Part of the new welfare program proposed to Congress (*Continued on page* 116)



DAY CARE

(Continued from page 77)

by President Nixon included a request for funds to increase day care facilities for the children of welfare mothers so that these mothers could take jobs. Our country is far behind many others in offering this kind of help to its citizens. Denmark, Sweden, Germany, England, Russia, France, and Israel have had government-supported day care centers for a long time.

Then, of course, a sizable number of women work not to provide the essentials of life, but the highly desirable extra good things. And some women work because it's important to them as people to pursue a particular business or profession, or engage in a creative activity that means a lot to them.

Whatever their reasons for working, mothers of young children need more than just babysitting services. Day care centers should foster—and good ones do—psychological, physical, emotional, and social development of the youngsters who attend them. A good day care center is not a second-best arrangement. In fact, the Child Welfare League of America believes that good centers should be freely available for all preschoolers, whether or not their mothers work, and that all parents should have the option of sending their youngsters to such a center.

What then do good day care programs provide? Where should the center be located? What kind of space, equipment, program, and staffing should it have?

First, of course, the center should be subject to licensing and supervision by a community health agency. In New York City all preschool programs, public and private, involving more than a few children are required to be licensed by the New York City Health Department's Division of Day Care, which insists that certain standards be maintained with regard to food, heat, ventilation, safety and sanitary facilities. The Division also limits the number of children a center is allowed to accommodate, depending on its space, and requires a certain number of properly trained teachers, depending on the number and age of the youngsters enrolled.

For the convenience of both parents and youngsters, it's best if the center is either close to where the family lives or near where the mother works. This means that a big city should have centers located near the heart of all large residential and commercial areas. Smaller communities, of course, will need fewer centers. The center should have plenty of space, both indoors and out, and plenty of sturdy play equipment so that the children can jump, run, climb, and play freely.

Even more important than the plant and equipment is the staff. Young children develop best when they are cared for mainly by one person. This is often difficult to arrange in a day care center, but every effort should be made to provide a primary teacher for each child—one person, that is, with whom the child can form a very special attachment, a closer bond than he forms with other members of the staff.

Clearly, the more the staff members know in advance about a youngster, the easier it is for them to understand and respond to his needs. For this reason, when a mother is preparing to enroll her child in a day care center, she's usually asked about any special habits her child may have. I remember sitting in on one such conference when a mother was telling a staff worker, somewhat apologetically, that her 18-month-old son still took his bottle when he lay down for his nap. "I guess he's a little old for a bottle," she said, "but it seems to comfort him and help him go to sleep." The center worker put the mother at ease by saying, "If he's accustomed to taking a bottle at home when it's naptime, then of course we'll give it to him here."

The people who staff good day care centers know that what may be an ideal provision for one child may be far less suitable for another. Staff members should be able to interpret each child's behavior according to his unique experiences and capacities. I am reminded of Andrew, a little boy of 18 months. His father called me in desperation one night to tell me that he had just learned that his wife had tuberculosis and would need to be in the hospital for several months. The Smiths were new in the community; there were no relatives they could call on for help. Day care seemed to be the only possible solution while the father was at work. Fortunately, a new day care center had just been opened in their neighborhood. The director, Mrs. Summer, had spent several years in England working with Anna Freud in the Hampstead Nursery School. She was particularly sensitive to the individual needs of each child, and organized her staff so that each youngster would have one staff member as his special substitute mother. Andrew did react as might be expected. At first he was often disconsolate, withdrawn, and depressed. Sometimes he would erupt in explosive temper tantrums crying and kicking. It took many weeks for Andrew to realize he could trust his teacher and that she would always look after him. But gradually he began to relax and eventually he became quite sociable, happy, and outgoing again.

What is the daily program in a day care center? In most centers, the first half hour is generally spent just settling the children in. After that, there's usually some kind of organized play—singing, dancing to an accompaniment of rhythm instruments, or playing games. Of course not every youngster may be ready or willing to take part in a group activity. When a child prefers to play in the sandbox by himself or push a truck around, the wise leader leaves him alone to do so. She'll invite him to join the others, but she won't insist, knowing that it's best to let youngsters wait until they're ready to cope with the complexities of getting on with other children.

When youngsters are able to enjoy group play, it can be very valuable to them, teaching them to share toys and to understand and come to like others, and themselves. Among the things children learn more easily through group play in a center than they may at home are that there are better and happier ways to get something than by fighting over it, and that they can count on being treated fairly if they act fairly, too.

Having their children attend a day care center regularly is also a valuable educational experience for parents. Mothers often learn new ways of working with their children by observing the ways the staff members handle the youngsters. A trained day care or nursery teacher helps the children develop verbal skills, for example, by listening attentively to them when they talk and by answering their questions fully and kindly.

A feeling of mutual trust often develops between parents and the director or teachers at a day care center. Many mothers and fathers have no one with whom they can discuss family problems, practical and emotional. Once they become comfortable in a day care setting, they often find it helpful to talk over their concerns with a member of the school staff. Since many centers work closely with a family case work agency or a child guidance clinic, it's usually easy to obtain professional services when problems come up which need specialized counseling.

Day care centers are realizing more and more the full potential of the services they can offer. Health care, for example, is an important service which is being expanded in many centers. Formerly, health care at a center consisted only of a relatively superficial physical examination of the child on his admission, a record of immunizations and, following an illness, the requirement that a physician should state that the child is well enough to return to the center. Increasingly, however, child care centers now have a physician or a trained nurse as a regular, part-time member of their staff. He can spot children who may be suffering from anemia, allergies, malnutrition, visual and hearing deficiencies, learning disabilities—conditions which can often be treated with great success if they're recognized early.

Although the President's request for funds to increase the day care services available to mothers on welfare is a step in the right direction, it's not nearly a big enough one, and has been criticized by many day care specialists as having been made for the wrong reason. Funds should be provided, they say, not simply to enable mothers on welfare to go to work, but because money spent on early childhood development is the best investment our country can make.

At the present time there are youngsters on center waiting lists in almost every city in the nation. Because the need for day care service is so great, some businessmen have recently begun to organize brand-name "chain" day care centers, operated for profit, and are selling franchises to operate these "packaged" centers. Although such centers may be well equipped and well run, educators and welfare specialists are greatly concerned about this trend, fearing that the urge to make a profit may take precedence over the needs of the families who subscribe to the service. Instead of relying on such commercial enterprises to meet the need for expanded day care services, specialists in early childhood education recommend strongly that parents write their Congressmen to ask for more publicly supported day care centers for the increasing number of American families who need and want them. ■

TOM THUMB MONTESSORI SCHOOLS
833 Gambell St.,
Anchorage, Alaska 99501

SB 124

February 12, 1971

Mr. Bill Moran,
Juneau, Alaska

Dear Representative Moran:

We feel that the education of three and four year olds should fall under the jurisdiction of the State Dept. of Education rather than Health and Welfare. The Nebraska State Supreme Court ruled (Sept. 1970) in favor of Montessori as a school rather than a business. I quote two other rulings:

"Dec. 1969 - Ray Page, Sup't. of Public Education, State of Ill.: "There is no question that Montessori preschools are truly 'Schools' as distinguished from 'Centers' where the main purpose is child care. I hope this interprets for you the position of the Supt. of Public Instruction."

"Jan. 1970, N. Eugene Shoemaker, Chief, Div. of Private Academic Schools, Dept. of Public Instruction, Commonwealth of Penn.: "The State Board of Private Academic Schools has recognized Montessori as a method of instruction in the preschool area and primary grades in Pennsylvania for the private licensed school area."

Cognitive psychologists and educators are well aware that the child's intelligence grows as much during his first four years of life as it will grow in the next thirteen years. During this period of extra-rapid growth, the environment exerts its most powerful effect.

Tom Thumb Montessori Schools have worked with three and four year olds, as well as kindergarten and grade school under the Alaska State Dept. of Education for the past fifteen years.

The Dept. of Education has the knowledge, resources and personnel to better work with these young children who are in need of a cognitive learning program. Will you please consider voting for the nursery school children ages 3 and 4 to come under the jurisdiction of the State Dept. of Education? This would also be an advantage to the small bush schools who would then be enabled to run their pre-school program in conjunction with the local public school, perhaps sharing building facilities, teachers aides, lunch program and the ordering of supplies.

For the past two years I have been an Instructor for the University of Alaska, Anchorage Branch, as well as Directress for the six Montessori Schools. In these classes we have done a great deal of fact finding as to what is currently being done in the Pre-school area. I will be in Juneau Feb. 24, 25, 26 and 27th. May I have an opportunity to talk with you concerning the needs of young children?

Sincerely,
Margaret Green
Margaret Green

TOM THUMB MONTESSORI SCHOOLS

833 GAMBELL ST.

ANCHORAGE, ALASKA 99501

OFFICE OF THE DIRECTRESS

SB 124

March 27, 1971

Representative William J. Moran,
Capitol Bldg.,
Juneau, Alaska

Dear Representative Moran,

I had written to you last month concerning Tom Thumb Montessori Schools desiring to continue operating under the Dept. of Education rather than Health and Welfare. We feel that the enclosed Senate Bill No. 124 covers the needed legislation with the amendment of wording "whose major function is educational" as suggested by Dr. Cliff Hartman, Commissioner of Education. We also feel ages 3 through 5 should be inserted as this is the preelementary age referred to.

Sincerely,
Margaret Green
Margaret Green,
School Directress

Encl.

MONTESSORI - SCHOOL OR BUSINESS?

After almost a year of litigation stemming from a suit charging violation of zoning laws brought against Mrs. LaVerne Flambeck, Montessori Educational Center, Omaha, in which the plaintiffs alleged a business, rather than a school was being operated, the Nebraska State Supreme Court ruled (Sept. 1970) in favor of the school, in this opinion:

> "The evidence before the trial court shows that the Montessori Educational Center school 'is a school program that is aimed primarily to introduce a child to a lifetime of creative learning. It aims to develop in them the tools for learning, such as curiosity, extended powers of concentration, a positive attitude toward learning itself, and the habits of attending, of initiating and completing tasks. Perhaps the central idea is to surround the child with an appropriate curriculum of learning materials and tasks that enable the child to acquire the conviction that he can learn on his own, and build up within him a positive attitude toward learning and self-confidence in himself as a learner.'"

Other rulings on this subject:

> Dec. 1969, Ray Page, Sup't. of Public Education, State of Ill.: "there is no question that the Montessori preschools are truly 'schools' as distinguished from 'Centers' where the main purpose is child care. I hope this interprets for you the position of the Office of the Superintendent of Public Instruction."

Jan., 1970, N. Eugene Shoemaker, Chief, Div. of Private Academic Schools, Dep't. of Public Instruction, Commonwealth of Penn.: "The State Board of Private Academic Schools has recognized Montessori as a method of instruction in the preschool area and primary grades in Pennsylvania for the private licensed school area."

TOM THUMB MONTESSORI SCHOOLS
833 Gambell St.,
Anchorage, Alaska 99501

#124

March 4, 1971

Representative Wm. J. Moran
Capitol Bldg.,
Juneau, Alaska

Dear Representative,

For the past fifteen years our Tom Thumb Private School has operated under the jurisdiction of the Dept. of Education. We have children from the ages of three through eleven. Senator Thomas's Bill No. 32 would place education of th ee and four year olds in public schools under the jurisdiction of the State Dept. of Education but doesn't mention private schools. We feel very strongly that this should also include private schools such as ours, who have an educational program for three and four year olds and hire certificated teachers.

Enclosed is a direct quotation from American Montessori Society News 1970 stating that Nebraska, Illinois and Pennsylvania consider Montessori Schools as schools rather than day care centers.

Will you please support any forthcoming legislation for three and four year olds of private schools to be placed under the jurisdiction of the State Dept. of Education rather than Health and Welfare.

Dr. Cliff Hartman is in agreement with our educational program for three and fours remaining under his jurisdiction along with our grade school. As ours is an ungraded open concept school, threes and fours cannot be entirely separated from Kindergarten through sixth grade, and we cannot conceivably work under two separate departments.

Any comments you may have after talking with Dr. Hartman will be greatly appreciated.

Sincerely,
Margaret Green
Margaret Green,
School Directress

Encl.

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

Original sponsor: Groh

IN THE SENATE

BY THE HEALTH, WELFARE AND EDUCATION COMMITTEE

CS FOR SENATE BILL NO. 124

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to jurisdiction over prekindergarten schools."

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

* Section 1. AS 47.35.080(4) is amended to read:

(4) "nursery" means an establishment providing care and services for any part of the 24-hour day for a child not related by blood or marriage to the owner or operator, but does not include any establishment whose primary purpose is educational.

* Sec. 2. AS 14.07.020 is amended by adding a new paragraph to read:

(8) ~~in cooperation with the Department of Health and Welfare~~ exercise general supervision over public and private preelementary schools (pages 4-5) whose primary function is educational ~~and over the educational component of nurseries as defined~~ in AS 47.35.080(4).

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

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE 586-7477
JUNEAU, ALASKA 99801

AL437
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SB 136

1971 APR 7 PM

ANCHORAGE ALASKA 7 424P ASI

HONORABLE WILLIAM MORAN

0990

HOUSE OF REPRESENTATIVES JUN

BELIEVE PUBLIC UTILITY LAW AMENDMENT SB136 UNWORKABLE. MR HALL SO TESTIFIED. ANCHORAGE NATURAL GAS DOES NOT OBJECT TO UNDERGROUND OIL UTILITIES BEING EXEMPT FROM PRICE AND TARIFF FILING NOR TO EXEMPTION FROM REQUIRING AREA CERTIFICATES NOR EXEMPT FROM ALL OR MOST ALL REPORTING. COMMISSION ALREADY HAS POWER TO GRANT EXEMPTIONS IN WHOLE OR IN PART TO UNDERGROUND OIL UTILITIES AS42.05 691 PERMITS CLASSIFICATION AND VARYING ALL REQUIREMENTS. ALSO 42.05/711 AUTHORIZES COMMISSION TO EXEMPT IN WHOLE OR IN PART. SO WOULD APPEAR PROPOSED AMENDEMENT NOT NECESSARY. ALTHOUGH COMMISSION CAN WAIVE PRICE AND AREA REGULATION BY ITS OWN ACTION BUT SHOULD RETAIN POWER TO ENFORCE SAFETY STANDARDS AND CORRECT SERVICE DEFICIENCES OR OTHER DISCRIMINATIONS OR PUBLIC HAS NO PROTECTION OR FORUM TO BE HEARD. SEEMS UNFAIR TO SUBMIT GASS AND ELECTRIC UTILITIES TO FULL REGULATION AND EXEMPT UNDERGROUND OIL UTILITIES FROM UNFAIR COMPETITION AND INCENTIVES. DISCRIMINATORY SERVICE PRACTICES WITH COMPLETE EXEMPTION UNDERGROUND OIL UTILITIES SERVING APPROX 4,000 HOMES IN SUB-DIVISIONS AND TRAILOR COURTS ANCHORAGE AREA ON UNDERGROUND DISTRIBUTION SYSTEMS. UNCLEAR IN BILL AS WRITTEN WHETHER UNDERGROUND PROPANE DISTRIBUTION SYSTEMS SEVING THE PUBLIC WOULD BE EXEMPT OR NOT. THE BILL WOULD EXEMPT OIL SYSTEMS AS TO LARGE AND SMALL SUB-DIVISIONS TO SAME EXTENT AS TRAILOR COURTS ALTHOUGH NOT MENTIONED IN LEGISLATIVE PURPOSE CLAUSE.

PAUL ROBISON

AS42.05 691 42.05/711 4,000

(27).

TELEGRAM

SB 205

RCA ALASKA COMMUNICATIONS, INC.
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REPRESENTATIVE WILLIAM J MORAN

JUN

PRIOR TO ANY LEGISLATIVE ACTION ON SB205 IT IS URGENT THAT STATEWIDE PUBLIC HEARINGS BE SCHEDULED. IF ENACTED AS WRITTEN THIS BILL WOULD SIGNIFICANTLY INCREASE LOCAL TAXES.

RICHARD R GAY PRESIDENT ANCHORAGE BOROUGH SCHOOL BOARD AND JOE D MONTGOMERY SUPERINTENDENT ANCHORAGE BOROUGH SCHOOL DISTRICT

SB205

(15).

FORM SA-1B

MEMORANDUM State of Alaska

TO: Members of the Alaska State Senate and House of Representatives

DATE : April 29, 1971

FROM: Frederick McGinnis F.McG.
Commissioner
Department of Health and Welfare

SUBJECT: Alaska State White House Conference on Aging

The month of May, 1971 has been proclaimed by the President of the United States and the Governor of Alaska as Senior Citizen Month. The theme for this month will be "Towards a National Policy on Aging." Alaska, like forty-seven other states, has scheduled its State White House Conference on Aging during this month. The Alaska State White House Conference is to be held in the City of Anchorage on May 20, 21, and 22. The Anchorage Travelodge has been selected as the Conference Headquarters.

The purpose of the Conference is to participate in the development of a National Policy on Aging. The results of the State Conference will be the drafting of Policy Recommendations, which will become a part of the State of Alaska's report to the National White House Conference. The National White House Conference on Aging is to be held in Washington, D.C. the week of November 28, 1971.

Delegates attending the White House Conference will represent geographical areas of Alaska, the various ethnic groups of people residing in the State, the consumers of service, as well as governmental and non-governmental agencies who are providing services or who have special interests in the older Alaskan.

We would like to take this opportunity to extend an invitation to you to attend and participate in the State White House Conference on Aging and to join with other Alaskans in their efforts to "Make Loads a Little Lighter and Life a Little Brighter for All Older Alaskans."

FMcG/HAH/be
cc: Office of Aging

Magistrates' salaries

Alaska Court System

State of Alaska

MAGISTRATE SUPERVISOR
JIM I. MARTIN

OFFICE OF ADMINISTRATIVE DIRECTOR

941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

April 22, 1971

JIM/104

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

Dear Representative Moran:

I am aware that the General Fund Bill is now before the House. The Alaska Court System's budget allocation presently submitted by the House Finance Committee is about $6,800,000. The original budget request by the Alaska Court System was $9,706,000.

A part of the original budget request was a projected increase in magistrates' salaries which would total $81,000. The General Fund Bill presently limiting the budgetary allocation to the Alaska Court System to about $6,800,000 is a drastic budget cut from the original request. This would indicate that the Alaska Court System would have difficulty allowing the projected increases for all magistrates in the amount that would total $81,000.

I feel that it is most urgent that the court system be allowed a sufficient budget to ensure the projected magistrates' salary increases. The justification for the proposed magistrates' salary increases substantiates the ever-increasing workload placed on all magistrates throughout the state. Many of our magistrates are presently working at salaries unjustly proportionate to their actual workload. These magistrates are continuing to work in hopes that their salaries will be substantially increased to justly compensate them.

The following are examples of magistrates' salaries presently earned with projected monthly salary increases. Please be aware that all magistrates have a minimum base salary of $3,500 per year and any additional pay is computed at how many man months per year the magistrate has to work. Also be aware that the magistrates are having ever-increasing workloads. The magistrate at Skagway presently earns a monthly salary of $293.83. Her projected monthly salary increase should be $400 to justly compensate her

for present work done. The magistrate at Kotzebue presently earns $585 per month. His projected monthly income should be $716.67 to justly compensate him for present work done. The magistrate at Dillingham presently earns $646.17. His projected monthly income should be $900 per month to justly compensate him for present work done. The magistrate at McGrath presently earns $223.08. His projected monthly income should be $341.66 to justly compensate him for present work done.

Please be aware that the above examples are only a sampling of the four judicial districts. Also please be aware that the projected increase for salaries is substantially more per month than the magistrate presently receives and that they are definitely not compensated for their present workload. The examples given above are typical of all the magistrates in Alaska.

If, in the final analysis, the Alaska Court System is limited to a budget of $6,800,000, major priority programs for the 1971-72 fiscal year may have to be cut. It would appear that a just salary increase for magistrates would be doubtful.

I have read in the Anchorage Times that a bill may be proposed to the House to raise state employees' salaries by five percent. Magistrates as judicial officers will not be eligible to participate in that salary increase unless they were specifically mentioned in that bill. If the magistrates are mentioned in the bill, a five percent salary increase would nowhere meet their present need to compensate them for work done. This is readily apparent by the proposed salary increases I have given above.

I solicit your support to properly evaluate the Alaska Court System's fiscal budget and consider making a substantial increase in that budget so that the magistrates may be ensured of a salary increase. I feel that it is imperative that a judicial officer be properly compensated for the amount of work he does in order to ensure his complete effort in adjudicating matters brought before his court. I feel that your consideration in this regard is most urgent to ensure justifiable salary increases for all the magistrates in Alaska.

Very truly yours,

Jim I. Martin
Magistrate Supervisor

JIM:jn

ADMINISTRATIVE INQUIRIES

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K — STATE CAPITOL
JUNEAU 99801

April 28, 1971

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

Dear Mr. Chairman:

This replies to your letter and attachments of April 22, 1971, addressed to the Attorney General, relevant to the House Judiciary Committee Report of May 31, 1970, relating to the Department of Public Safety's "administrative inquiries".

It is my understanding from speaking with Commissioner Emery Chapple this date that the Department of Public Safety has modified its regulations relating to "administrative inquiries" and that a copy of the modified regulations have been forwarded to your committee.

If you or the committee have any further questions on this matter, please contact me at your earliest convenience.

Very truly yours,

JOHN E. HAVELOCK
ATTORNEY GENERAL

By Thomas M. Wardell
Thomas M. Wardell
Deputy Attorney General

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STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER / POUCH N — STATE CAPITOL
JUNEAU 99801

April 23, 1971

The Honorable William J. Moran
Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V, Capitol Building
Juneau, Alaska 99801

Dear Representative Moran:

Attached is a copy of our Section 115.020, Administrative Inquiry, as it existed at the time the Judiciary Committee made its recommendations. Also attached is a copy of our Section 115.020 entitled Investigative Inquiry, which is a revision of the previous regulation that was made and distributed on June 1, 1970.

Whereas this matter had not been given a great deal of thought by me previously, a close reading of the revision appears to me to remove the objections that the Judiciary Committee seemed to have.

It is my view that any manual of regulations, its intents and ultimate uses is pretty much dependent upon those persons administering it, and I assure you that it is my policy to see that these matters are carried out, when they arise, in as proper a manner as possible.

I trust this answers your question satisfactorily. Please do not hesitate to call upon me if further discussion is desired.

Very truly yours,

Emery W. Chapple, Jr.
Commissioner

Encs.

CHAPTER 115

REVIEW, HEARINGS AND APPEALS

Sec. 115.010 PROCEDURES (Re: Rule 12 01.0, State Personnel Rules)

A. Any member in the classified service may seek intra-departmental review of any grievance as follows:

1. The member shall present his grievance in writing to, and discuss it with, his immediate supervisor.

2. If not satisfied, he may proceed to the next superior.

3. If still not settled to member's satisfaction, he may, within 10 days, submit grievance in writing and through chain of command, to the Commissioner. The Commissioner shall, within 15 days after receipt of the written grievance, provide the member with his written decision concerning the matter.

Sec. 115.020 INVESTIGATIVE INQUIRY

A. The Commissioner may direct that an investigative inquiry be made into the circumstances and facts of the charges made against any member which are or may be considered grounds for disciplinary action. The inquiry may be made prior to any disciplinary action or after summary disciplinary action.

An investigative inquiry is not an accusatory nor a decision making body. It is, as the title implies, an investigative body charged with the responsibility for impartially obtaining facts and circumstances surrounding an allegation, and presenting the findings to the Commissioner for consideration during the discharge of his executive responsibilities as the appointing Authority and administrative head of the department.

B. Inquiry members shall consist of the Commissioner or his designee and other personnel designated by him, provided at least one (1) member is of equal rank with the member charged.

C. The Commissioner may, but need not, request the presence of the accused in writing. Oral

notice to attend given by any superior is sufficient.

D. An accused member ordered to appear shall do so or be cited for additional disciplinary action or such other action directed by the Commissioner.

E. The substance of testimony shall be mechanically or visually recorded and in addition reported on Department forms as prescribed in Chapter 113, Section 020. The recommendations of the individual members conducting the inquiry and the basis for the recommendation shall accompany the report. Such reports shall be forwarded to the Commissioner within five (5) days following the inquiry and the Commissioner shall notify the accused of his final decision within ten (10) days after the inquiry. The notice to the accused shall be as prescribed in Chapter 114.050.

F. The accused may, but need not, be suspended during inquiry.

Sec. 115.030 APPEAL

A. If a member is not satisfied with intradepartmental review as outlined in Sections 115.010 - 020, he may request Inter-departmental Review as provided in State Personnel Rules, Section 12 01.14 through 12 01.17, wherein he is allowed legal counsel.

Sec. 115.040 EXEMPTIONS

A. No temporary, provisional or probationary member shall have the right to review, hearing or appeal concerning dismissal, unless same is due to racial, religious or political reasons.

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A. Any member in the classified service may seek intra-departmental review of any grievance as follows:

1. The member shall present his grievance in writing to, and discuss it with, his immediate supervisor.

2. If not satisfied, he may proceed to the next supervisor.

3. If still not settled to member's satisfaction, he may, within 10 days, submit grievance in writing and through chain of command, to the Commissioner. The Commissioner shall, within 15 days after receipt of the written grievance, provide the member with his written decision concerning the matter. (In order to arrive at his decision, the Commissioner may, but need not, ask for an Administrative Inquiry.) (Re: Section 115.020)

Sec. 115.020 ADMINISTRATIVE INQUIRY

A. Inquiry members shall consist of the Commissioner or his designee and other personnel designated by him, provided at least one (1) member is of equal rank with the member charged.

B. The Commissioner may, but need not, request the presence of the accused in writing. Oral notice to attend given by any superior is sufficient.

C. An accused member ordered to appear shall do so or be cited for additional disciplinary action or such other action directed by the Commissioner.

legal?

D. An accused does not have the right of legal counsel at an inquiry; however, he may remain silent.

E. The substance of testimony shall be recorded and reported on Department forms as prescribed in Chapter 113, Section 020, as will the finding and recommendations of the members conducting the inquiry. Such reports shall be forwarded to the Commissioner.

F. The Commissioner shall notify the accused as

prescribed in Sec. 115.010, paragraph 3.

G. The accused may, but need not, be suspended during inquiry.

Sec. 115.030 APPEAL

A. If a member is not satisfied with intra-departmental review as outlined in Sections 115.010 - 020, he may request Inter-departmental Review as provided in State Personnel Rules, Section 12 01.14 through 12 01.17, wherein he is allowed legal counsel.

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

5/31/70

HOUSE JOURNAL

1970 Hse. Journal Supp. #19

Judiciary Committee Report

on

DEPT. OF PUBLIC SAFETY ADMINISTRATIVE INQUIRIES

The disciplinary procedures of the Department of Public Safety have recently come to the attention of the Judiciary Committee. Of particular concern to the committee is Sec. 115.020D of the department's "Regulations and Operations Manual", relating to "Administrative Inquiries", which provides that "An accused does not have the right of legal counsel at an inquiry; however, he may remain silent." Testimony before the committee stated that in at least one instance a trooper subject to disciplinary action was advised that at his administrative inquiry he could have legal counsel, but when he appeared at the inquiry without legal counsel he was not allowed to speak in his own defense or to cross-examine opposing witnesses. As a result of the inquiry he was dismissed from service in the department.

The committee is not concerned with the merits of the personnel action, which has been appealed under the personnel rules.

The committee believes that, although this administrative inquiry is not required by statute or the constitution since a hearing under the state personnel rules is available, when the inquiry is held, due process requires that the accused be allowed to have legal counsel and that whether or not the accused has legal counsel present he be allowed to testify on his own behalf, cross-examine witnesses and present evidence. The committee believes that Sec. 115.020D may be invalid despite the right to a subsequent "due process" hearing before the personnel board and in any event is very bad state policy and that the department's procedure in the case considered by the committee was improper in not allowing the accused trooper to defend himself and to cross-examine witnesses. The committee also believes that it was improper for the administrative inquiry to be filmed (video-taped) for use as an instructional aid at the training school for state troopers. (There was testimony that the film would be used for this purpose, and the committee has been told that the film has come from Sitka, the site of the training school, in response to the committee's request to see it.)

By way of comparison, the committee notes that Art. 135 of the Uniform Code of Military Justice (10 U.S.C., sec. 935) provides that in court-of-inquiry proceedings a person who is designated a "party" to the proceedings shall be given due notice of the inquiry and he has a right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence. In addition, sec. 0304(d) of the Coast Guard Supplement to the Manual for Courts Martial, United States, provides that for all three levels of investigation (informal, formal, and courts of inquiry) in that branch of the armed forces a party to an inquiry or investigation has the following rights: (1) to be given due notice of his designation as a "party"; (2) to be present during proceedings; (3) to be represented by counsel; (4) to challenge members of a court of inquiry but only for cause stated to the court (this obviously applies only to the third type of investigation); (5) to cross-examine witnesses; (6) to introduce evidence; (7) to testify as a witness, but he must first be advised of his rights under Art. 31 of the

U.C.M.J. (Miranda warnings, etc.); (8) to make a voluntary statement; (9) to make concluding argument. These investigations and inquiries are not "courts martial" nor are they non-judicial disciplinary proceedings under Art. 15 of the U.C.M.J. (10 U.S.C., sec. 815); they are investigatory proceedings apart from judicial or other final action, and they thus appear to be analogous to the Department of Public Safety's "administrative inquiries".

The Judiciary Committee requests that the Department of Public Safety, with the assistance and advice of the Department of Law, review its regulations pertaining to disciplinary matters and administrative inquiries, compare them with relevant provisions in the Uniform Code of Military Justice and the Coast Guard Supplement to the Manual for Courts Martial, and revise the regulations in order to assure due process of law and basic procedural fairness.

Barry W. Jackson
Chairman
House Judiciary Committee

CHAPTER 101

PROFESSIONAL CONDUCT

Sec. 101.010 BASIC OBJECTIVES

A. To cause all members to constantly strive to increase the respect and honor of the profession in the public mind, and to strengthen public confidence in law enforecment.

B. To encourage members to fully appreciate and value the responsibilities of their office.

C. To regard the work of the Department as an honorable profession and to consider in it an opportunity to render a valuable service to society.

D. To continually develop and maintain complete support and cooperation of the public.

E. To increase and advance the effectiveness of the service by encouraging complete cooperation of all members for their mutual benefit.

F. To develop complete coordination of effort in all official relationships with other governmental agencies.

Sec. 101.020 GENERAL RULES OF OFFICIAL CONDUCT

All members of the Department shall:

A. Be habitually courteous; they shall dutifully accept their responsibilities as public servants and shall be attentive to citizens seeking assistance or information or who desire to register complaints or give evidence.

B. Regard punctuality in all their engagements and the diligent performance of their duties as a prime responsibility to the public.

C. At all times be cognizant of their primary obligation to render impartial, efficient, and effective services to the public in the discharge of their duties and to always regard their office as a public trust.

D. Administer their duties in a courteous, fair, just, impartial and reasonable manner, according no one more reasonable treatment than others. They shall recognize the limitations of their authority and at no time use the power or influence of their office or position for their own personal advantage.

E. Accept the responsibility for the proper care of state property and recognize the fact that any misuse or waste of such property is equally as reprehensible as the misuse of funds from the state treasury.

F. Cooperate with all Federal, State, City and local officials to further insure the safety and general welfare of the public. They shall not permit personal differences or jealousies to influence their cooperation with other agencies.

G. Add to their further development and effectiveness by adequate study and dedicated attention to self improvement, always keeping in mind that the professional must keep fit not only in body, but particularly in character, education and ideals of service.

They shall welcome the opportunity to make available to everyone any and all useful information concerning matters of public safety and welfare.

H. Conduct their public and private life in such a manner that the public will regard them as examples of fidelity, stability and morality.

I. Bear faithful allegiance to their government, and be loyal to their profession. They shall accept as a sacred obligation their responsibilities as citizens to support the Constitution of the United States, and as public officials they shall consider the privilege of defending the principles of liberty as defined in our Constitution and Laws the greatest honor that may be bestowed upon any man.

Sec. 101.030 ORIGIN OF CODES

It is the philosophy of the Department that the reputation that this governmental organization bears with the public is influenced,

to a very great degree, by the reaction of the public to the impact of the personalities of its members. Personalities that are characterized by such traits as loyalty, determination, alertness, intelligence, unselfishness, honesty and moral ascendency are instantly appealing and respected. Each and every member is expected to make a dedicated effort to so conduct both his official and private life that he will inspire the confidence and trust of the public.

The Department considers law enforcement as an honored profession and recognizes the value and importance of developing and maintaining public confidence in the many and various endeavors and has accordingly enacted exacting rules of official conduct for all members.

To further emphasize the ideals and professional conduct which the Department has always sought to uphold, the Code and Canons of Ethics of the International Association of Chiefs of Police are adopted for the benefit of all Department of Public Safety members and especially for the guidance of all commissioned personnel.

Throughout the history of this Department, other reliable and necessary rules for conduct and performance of duty have been developed and are herein promulgated in their latest form.

Sec. 101.040 APPLICATION OF CODES AND RULES

All of the ethical standards and rules expressed herein are inclusive and together constitute the standards of conduct by which all members of the Department of Public Safety are to be governed. It shall be the duty of each member to study and become familiar with the rules and regulations governing the organization and operation of the Department, as well as the rules governing control and discipline.

CHAPTER 102

CANONS OF POLICE ETHICS

Article 1. Primary Responsibility of Job

The primary responsibility of the police service, and of the individual officer, is the protection of the people of the United States through the upholding of their laws, chief among these is the Constitution of the United States and its amendments. The law enforcement officer always represents the whole of the community and its legally expressed will and is never the arm of any political party or clique.

Article 2. Limitations of Authority

The first duty of a law enforcement officer, as upholder of the law, is to know its bounds upon him in enforcing it. Because he represents the legal will of the community, be it local, state or federal, he must be aware of the limitations and prescriptions which the people, through law have placed upon him. He must recognize the genius of the American system of government which gives to no man, groups of men, or institution, absolute power, and he must insure that he, as a prime defender of that system, does not pervert its character.

Article 3. Duty to be Familiar with the Law and with Responsibilities of Self and other Public Officials

The law enforcement officer shall assiduously apply himself to the study of the principles of the laws which he is sworn to uphold. He will make certain of his responsibilities in the particulars of their enforcement, seeking aid from his superiors in matters of technicality or principle when these are not clear to him; he will make special effort to fully understand his relationship to other public officials, including other law enforcement agencies, particularly on matters of jurisdiction, both geographically and substantively.

Article 4. Utilization of Proper Means to Gain Proper Ends

The law enforcement officer shall be mindful of his responsibility to pay strict heed to the selection of means in discharging the duties of his office. Violations of law or disregard for public safety and property on the part of an officer are intrinsically wrong; they are self-defeating in that they instill in the public mind a like disposition. The employment of illegal means, no matter how worthy the end, is certain to encourage disrespect for the law and its officers. If the law is to be honored, it must first be honored by those who enforce it.

Article 5. Cooperation with Public Officials in the Discharge of Their Authorized Duties

The law enforcement officer shall cooperate fully with other public officials in the discharge of authorized duties, regardless of party affiliation or personal prejudice. He shall be meticulous, however, in assuring himself of the propriety, under the law, of such actions and shall guard against the use of his office or person, whether knowingly or unknowingly, in any improper or illegal action. In any situation open to question, he shall seek authority from his superior officer, giving him a full report of the proposed service or action.

Article 6. Private Conduct

The law enforcement officer shall be mindful of his special identification by the public as an upholder of the law. Laxity of conduct or manner in private life, expressing either disrespect for the law or seeking to gain special privilege, cannot but reflect upon the police officer and the police service. The community and the service require that the law enforcement officer lead the life of a decent and honorable man. Following the career of a policeman gives no man special prerequisites. It does give the satisfaction and pride of following and furthering an unbroken tradition of safeguarding the American republic. The officer who reflects upon this tradition will not degrade it. Rather, he will so conduct his private life that the public will regard him as an example of stability, fidelity and morality.

Article 7. Conduct toward the Public

The law enforcement officer, mindful of his responsibility to the whole community, shall deal with individuals of the community in a manner calculated to instill respect for its laws and its police service. The law enforcement officer shall conduct his official life in a manner such as will inspire confidence and trust. Thus, he will be neither overbearing nor subservient, as no individual citizen has an obligation to stand in awe of him nor a right to command him. The officer will give service where he can, and require compliance with the law. He will do neither from personal preference or prejudice, but rather as a duly appointed officer of the law discharging his sworn obligation.

Article 8. Conduct in Arresting and Dealing with Law Violators

The law enforcement officer shall use his powers of arrest strictly in accordance with the law and with due regard to the rights of the citizen concerned. His office gives him no right to prosecute the violator nor to mete out punishment for the offense. He shall, at all times, have a clear appreciation of his responsibilities and limitations regarding detention of the violator; he shall conduct himself in such a manner as will minimize the possibility of having to use force. To this end he shall cultivate a dedication to the service of the people and the equitable upholding of their laws whether in the handling of law violators or in dealing with the law-abiding.

Article 9. Gifts and Favors

The law enforcement officer, representing government, bears the heavy responsibility of maintaining, in his own conduct, the honor and integrity of all government institutions. He shall, therefore, guard against placing himself in a position in which any person can expect special consideration or in which the public can reasonably assume that special consideration is being given. Thus,he should be firm in refusing gifts, favors, or gratuities, large or small, which can, in the public mind, be interpreted as capable of influencing his judgment in the discharge of his duties.

Article 10. Presentation of Evidence

The law enforcement officer shall be concerned equally in the prosecution of the wrong-doer and the defense of the innocent. He shall ascertain what constitutes evidence and shall present such evidence impartially and without malice. In so doing, he will ignore social, political, and all other distinctions among the persons involved, strengthening the tradition of the reliability and integrity of an officer's word.

The law enforcement officer shall take special pains to increase his perception and skill of observation, mindful that in many situations his is the sole impartial testimony to the facts of the case.

Article 11. Attitude Toward Profession

The law enforcement officer shall regard the discharge of his duties as a public trust and recognize his responsibility as a public servant. By diligent study and sincere attention to self-improvement he shall strive to make the best possible application of science to the solution of crime and, in the field of human relationships, strive for effective leadership and public influence in matters affecting public safety. He shall appreciate the importance and responsibility of his office, and hold police work to be an honorable profession rendering valuable service to his community and his country.

CHAPTER 115

REVIEW, HEARINGS AND APPEALS

Sec. 115.010 PROCEDURES (Re: Rule 12 01.0, State Personnel Rules)

A. Any member in the classified service may seek intra-departmental review of any grievance as follows:

1. The member shall present his grievance in writing to, and discuss it with, his immediate supervisor.

2. If not satisfied, he may proceed to the next supervisor.

3. If still not settled to member's satisfaction, he may, within 10 days, submit grievance in writing and through chain of command, to the Commissioner. The Commissioner shall, within 15 days after receipt of the written grievance, provide the member with his written decision concerning the matter. In order to arrive at his decision, the Commissioner may, but need not, ask for an Administrative Inquiry. (Re: Section 115.020)

Sec. 115.020 ADMINISTRATIVE INQUIRY

A. Inquiry members shall consist of the Commissioner or his designee and other personnel designated by him, provided at least one (1) member is of equal rank with the member charged.

B. The Commissioner may, but need not, request the presence of the accused in writing. Oral notice to attend given by any superior is sufficient.

C. An accused member ordered to appear shall do so or be cited for additional disciplinary action or such other action directed by the Commissioner.

D. An accused does not have the right of legal counsel at an inquiry; however, he may remain silent.

E. The substance of testimony shall be recorded and reported on Department forms as prescribed in Chapter 113, Section 020, as will the finding and recommendations of the members conducting the inquiry. Such reports shall be forwarded to the Commissioner.

F. The Commissioner shall notify the accused as

described in Sec. 115.010, paragraph 3.

C. The accused may, but need not, be suspended during inquiry.

Sec. 115.030 APPEAL

A. If a member is not satisfied with intra-departmental review as outlined in Sections 115.020 - 115.029, he may request Inter-departmental Review as provided in State Personnel Rules, Section 12 01.14 through 12 01.17, wherein he is allowed legal counsel.

Sec. 115.040 EXEMPTIONS

A. No temporary, provisional or probationary member shall have the right of review, hearing or appeal concerning dismissal, unless same is for racial, religious or political reasons.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

LEGISLATIVE AFFAIRS AGENCY

April 19, 1971

M E M O R A N D U M

TO: William J. Moran, Chairman
House Judiciary Committee

FROM: Arthur H. Peterson
Revisor of Statutes

SUBJECT: Department of Public Safety's "administrative inquiries"

You will find attached a copy of the Judiciary Committee's May 31, 1970 report on this subject, appearing in Supp. No. 19 of the 1970 House Journal. In the last paragraph, the committee requested the Department of Public Safety, with the assistance and advice of the Department of Law, to "review its regulations pertaining to disciplinary matters and administrative inquiries, compare them with relevant provisions in the Uniform Code of Military Justice and the Coast Guard Supplement to the Manual for Courts Martial, and revise the regulations in order to assure due process of law and basic procedural fairness." The review and revision may have been completed, but I am not aware of it, nor do I know of a report on the matter by either the Department of Public Safety or the Department of Law in response to the committee's request.

Att.

AHP:ic

5/31/70

HOUSE JOURNAL

Judiciary Committee Report

on

DEPT. OF PUBLIC SAFETY ADMINISTRATIVE INQUIRIES

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The committee is not concerned with the merits of the personnel action, which has been appealed under the personnel rules.

The committee believes that, although this administrative inquiry is not required by statute or the constitution since a hearing under the state personnel rules is available, when the inquiry is held, due process requires that the accused be allowed to have legal counsel and that whether or not the accused has legal counsel present he be allowed to testify on his own behalf, cross-examine witnesses and present evidence. The committee believes that Sec. 115.020D may be invalid despite the right to a subsequent "due process" hearing before the personnel board and in any event is very bad state policy and that the department's procedure in the case considered by the committee was improper in not allowing the accused trooper to defend himself and to cross-examine witnesses. The committee also believes that it was improper for the administrative inquiry to be filmed (video-taped) for use as an instructional aid at the training school for state troopers. (There was testimony that the film would be used for this purpose, and the committee has been told that the film has come from Sitka, the site of the training school, in response to the committee's request to see it.)

By way of comparison, the committee notes that Art. 135 of the Uniform Code of Military Justice (10 U.S.C., sec. 935) provides that in court-of-inquiry proceedings a person who is designated a "party" to the proceedings shall be given due notice of the inquiry and he has a right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence. In addition, sec. 0304(d) of the Coast Guard Supplement to the Manual for Courts Martial, United States, provides that for all three levels of investigation (informal, formal, and courts of inquiry) in that branch of the armed forces a party to an inquiry or investigation has the following rights: (1) to be given due notice of his designation as a "party"; (2) to be present during proceedings; (3) to be represented by counsel; (4) to challenge members of a court of inquiry but only for cause stated to the court (this obviously applies only to the third type of investigation); (5) to cross-examine witnesses; (6) to introduce evidence; (7) to testify as a witness, but he must first be advised of his rights under Art. 31 of the

U.C.M.J. (Miranda warnings, etc.); (8) to make a voluntary statement; (9) to make concluding argument. These investigations and inquiries are not "courts martial" nor are they non-judicial disciplinary proceedings under Art. 15 of the U.C.M.J. (10 U.S.C., sec. 815); they are investigatory proceedings apart from judicial or other final action, and they thus appear to be analogous to the Department of Public Safety's "administrative inquiries".

The Judiciary Committee requests that the Department of Public Safety, with the assistance and advice of the Department of Law, review its regulations pertaining to disciplinary matters and administrative inquiries, compare them with relevant provisions in the Uniform Code of Military Justice and the Coast Guard Supplement to the Manual for Courts Martial, and revise the regulations in order to assure due process of law and basic procedural fairness.

Barry W. Jackson
Chairman
House Judiciary Committee

April 22, 1971

The Honorable John E. Havelock
Attorney General
Pouch K
Juneau, Alaska 99801

Dear Mr. Havelock:

You will find attached a copy of the Judiciary Committee's May 31, 1970 report on the Department of Public Safety's "administrative inquiries," appearing in Supp. No. 19 of the 1970 House Journal. In the last paragraph, the committee requested the Department of Public Safety, with the assistance and advice of the Department of Law, to "review its regulations pertaining to disciplinary matters and administrative inquiries, compare them with relevant provisions in the Uniform Code of Military Justice and the Coast Guard Supplement to the Manual for Courts Martial, and revise the regulations in order to assure due process of law and basic procedural fairness." The review and revision may have been completed, but I am not aware of it, nor do I know of a report on the matter by either the Department of Public Safety or the Department of Law in response to the committee's request.

We appreciate hearing from you on this matter. Thank you.

Sincerely,

William J. Moran
Chairman
House Judiciary

WJM/ls

April 21, 1971

The Honorable Emery W. Chapple, Jr.
Commissioner, Dept. of Public Safety
Pouch N
Juneau, Alaska 99801

Dear Mr. Chapple:

You will find attached a copy of the Judiciary Committee's May 31, 1970 report on the Department's "administrative inquiries," appearing in Supp. No. 19 of the 1970 House Journal. In the last paragraph, the committee requested the Department of Public Safety, with the assistance and advice of the Department of Law, to "review its regulations pertaining to disciplinary matters and administrative inquiries, compare them with relevant provisions in the Uniform Code of Military Justice and the Coast Guard Supplement to the Manual for Courts Martial, and revise the regulations in order to assure due process of law and basic procedural fairness." The review and revisions may have been completed, but I am not aware of it, nor do I know of a report on the matter by either the Department of Public Safety or the Department of Law in response to the committee's request.

We appreciate hearing from you on this matter. Thank you.

Sincerely,

William J. Moran
Judiciary Chairman

WJM:jc

Encl.

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

HB 174

HB 174

Statement by the AFL-CIO Executive Council

on

The Uniform Consumer Credit Code

Bal Harbour, Florida
February 17, 1969

We have carefully examined the Uniform Consumer Credit Code, a "model state law" which has been prepared for introduction in the 47 state legislatures meeting in 1969.

UCCC would repeal and replace virtually all existing state laws relating to consumer credit. Sponsored by the National Conference of Commissioners on Uniform State Laws, it is offered for adoption as a "package," without amendment. The sponsors urge immediate enactment, despite the fact that the Code is a lengthy, complex, and sweeping legislative proposal. The public has had little opportunity to evaluate either its general impact or its specific provisions.

The Code is not essentially a "consumer statute" but seeks to compromise consumer and creditor interests. While it would make a number of desirable reforms in behalf of the consumer, which should be supported, it also contains serious drawbacks from a consumer point of view.

For this reason we cannot endorse the Code in its present form for enactment as a uniform law throughout the United States.

Our principal objections are as follows:

(1) We are shocked by the extraordinarily high finance charge ceilings authorized by the Code, ranging from 18 to 36 percent per year for installment loans and credit, and believe that they would inevitably result in exhorbitantly high credit costs for borrowers and credit buyers.

(2) We cannot concur in the excessive rate of 10 percent per year, which would be permitted on first mortgages.

(3) We are dissatisfied with the provisions on wage garnishment which could, if care is not taken, result in reduction of existing protections for wage earners in a number of states. We cannot in any case endorse a "take" by creditors as high as 25 percent of a person's wages.

(4) We are alarmed at the general repeal contemplated by the Code of present state consumer credit legislation regardless of whether it is superior to Code provisions or covers subjects not covered in the Code.

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The possible impact of Code enactment would vary in each of the 50 states. Each state will need to make a careful assessment of its existing legislation in comparison with Code provisions.

In states with a large body of existing legislation, state AFL-CIO central bodies will probably find it best to reject the Code and instead seek improvements in their present laws, borrowing good features from the Code where appropriate.

In states with little or very deficient legislation, state central bodies may find it advisable to start with the Code as a working basis, but should seek amendment of its worst features.

In any case, precipitous enactment of the Code on an "as is" package basis should be rejected, as well as deviant forms, containing even worse features, which are likely to be introduced in some of the legislatures.

At the national level, the AFL-CIO staff will render whatever assistance it can to state bodies in connection with UCCC. We will also pursue abatement of consumer credit evils through federal legislation, wherever it is possible and appropriate. The door should not be shut on consumer credit reform through federal action. Enactment of federal minimum standards in the consumer credit field may in fact be necessary to reach the states in which reform is most needed and where creditor lobbies are most likely to succeed in blocking it.

BACKGROUND STATEMENT
ON
UNIFORM CONSUMER CREDIT CODE

The Uniform Consumer Credit Code (UCCC) is a type of "model state law" developed by the National Conference of Commissioners on Uniform State Laws. It was officially promulgated by the Conference on July 30, 1968, and subsequently endorsed, on August 7, 1968, by the American Bar Association. The Code has been in process since 1964, although much of the final text was prepared in 1968 to take account of the Federal Consumer Credit Protection Act, which was signed by the President on May 29, 1968.

Since the original text was released, the Code has undergone additional revisions. The current version of the Code is the "Revised Final Draft, November 1968," published in December 1968.

UCCC is designed as a replacement for virtually all existing state laws relating to consumer credit. Present laws on such provisions as maximum finance charge rates, (including usury rates), disclosure, licensing, administration and enforcement would be repealed. The one major exception to general repeal would be in the case of "supervised financial institutions" -- such as banks, savings and loan associations, and credit unions -- which receive deposits as well as make loans, although the new rate structure would apply to them as well as to other creditors.

Because the Code is designed as a uniform law, to be enacted in the same form in every state, it is offered as a "package" for adoption in its entirety, without amendment. Code sponsors are seeking blanket endorsement of the Code, regardless of any deficiencies and drawbacks.

The Code was not developed as a "consumer statute," as such, but rather seeks a "balance" of consumer and creditor interests. The principal "trade-off" appears to be in the form of high finance charges for creditors in exchange for restrictions on some of the more bloodthirsty techniques by which creditors can enforce repayment of debts plus more comprehensive enforcement procedures than now apply under many types of credit statutes.

Present indications are that the compromise is unlikely to be satisfactory to all groups. The Code has drawn support from various segments of the credit industry, but coldness from others (notably the American Bankers Association). No known support has come from consumer groups. The major exception in the consumer community was an endorsement by the Special Assistant to the President for Consumer Affairs and the President's Committee on Consumer Interests. But the Code has come under heavy fire from the Consumer Federation of America, representing 136 consumer-oriented organizations. To date it has been opposed by at least three important state consumer organizations -- the Association of California Consumers, the Consumers League of New Jersey, and the Pennsylvania League for Consumer Protection -- as well as by the Massachusetts Consumers' Council, an official consumer representation body.

Although Code sponsors have sought immediate, wholesale endorsements of their work, and immediate enactment in the 47 state legislatures meeting in 1969, the general public has had little time to gain an understanding of the

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Code or to develop knowledgeable criticism. The possible impacts would, of course, vary in each of the separate 50 states. Study and criticism will be a continuing process, and common sense dictates a rejection of precipitous enactment.

For states which already have a large body of consumer credit legislation, covering both cash loans and retail sales credit, enactment of UCCC may represent little if any gain in consumer protections and in fact is more likely to result in a net loss. Such states should be extremely critical of UCCC and probably will find it best to reject the Code altogether in favor of continuing improvements in their existing statutes.

On the other hand, states with little or very deficient consumer credit legislation could find that UCCC represents a net gain, in the sense that almost anything would be better than what they have. Even in such situations, a cautious approach is advisable. As indicated in the more detailed comments that follow, finance charge ceilings authorized under UCCC are extraordinarily high for types of credit other than for small loans, and the Code has other drawbacks.

Clearly, an important motivation for urging speedy enactment is the hope of forestalling further federal action in the field of consumer credit. An immediate and announced goal of the Conference is to gain exemptions of state credit laws from applicable provisions of the newly enacted federal Consumer Credit Protection Act. Under the federal law, state laws with "substantially similar" provisions may be exempted from federal requirements for disclosure of the cost of consumer credit and from federal requirements limiting the amount of wages that may be garnished. Further possibilities of federal entry into the consumer credit field could come out of the prospective study by the newly authorized National Commission on Consumer Finance which was set up by the Consumer Credit Protection Act with instructions to make a study and recommendations by January 1, 1971. Also specific federal bills may be expected in the field of credit insurance and in door-to-door credit sales, at a minimum.

MAJOR POINTS ABOUT THE UNIFORM CONSUMER CREDIT CODE

Maximum Charges

1. The Code repeals all existing laws setting maximum rates on consumer loans from banks, credit unions, small loan companies and repeals general usury rate statutes (important primarily in mortgage lending). Maximum rates for retail sales are also repealed including finance charge ceilings set for automobiles, for general retail sales, home repair services and for revolving credit. Existing finance charge ceilings for most creditors would be replaced by uniform ceilings patterned on existing rates for small loan companies, the highest-rate legal lenders in the credit market. In effect, the small loan company rates would become an "umbrella" for all creditors, both for cash loans and for sales credit. The new ceilings would thus raise the legally permitted rates of charge for most creditors in most states.

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For most types of consumer credit, except first mortgages, the effective ceilings would be 36% on the first $300, 21% on the next $700 and 15% on the remainder over $1,000. Ceilings on store revolving credit are set at 24% on the first $500 and 18 percent on the remainder. (See Attachment I for more detailed outline.)

2. Over and above the maximum rate ceilings, the Code permits additional charges for official fees and taxes, and for insurance -- property, liability, credit life, and credit accident and disability. These provisions follow the lines of the Federal Consumer Credit Protection Act, which defines "finance charge" in such a way as to permit their exclusion from the finance charge for disclosure purposes. A number of current small loan laws require the lender to include most of these charges in the finance charge, although extra charges for credit life insurance are now generally permitted. The "additional charge" system provides an additional source of revenue to creditors, since the "extras" can be included in the amount of the loan or credit and a finance charge computed on top of them.

3. In addition to charges for official fees, taxes, and insurance, the Code allows "extras" for "other benefits." This provision, although presented as being in conformity with the federal act, actually opens up what could be a dangerous loophole for "tie-in" charges and purchases to be required by the creditor as a condition of extending credit. The Code nowhere makes a flat prohibition of "tie-in" sales, except for limitations on compulsory purchase of various types of insurance.

4. The Code properly requires that a rebate of finance charges be made to the credit buyer or borrower who pays off the credit balance in advance. The rebate is calculated according to the "Rule of 78". Unfortunately, where graduated rate ceilings are used, as under the Uniform Consumer Credit Code, the Rule of 78 provides the creditor with a windfall of unearned credit charges and a corresponding shortfall to the consumer. The "Revised Final Draft" attempts to deal with the problem, not by eliminating the windfall, but by authorizing alternative calculation of the finance charges in such a way as to "legitimize" the windfall. This point will require more analysis and explanation, but some idea of the problem can be obtained by the summary comparisons shown in Attachment II, based on tables appearing in the explanatory text ("Official Comment") of the Code.

Insurance

UCCC insurance provisions are written within the framework of the Model Credit Insurance Act developed by the National Association of Insurance Commissioners and now in effect in a number of states. Although some of the more disreputable creditor practices in the sale of credit insurance are prohibited, UCCC does nothing to deal with fundamental problems of overcharges for credit, life, accident and health policies documented by the Senate Antitrust and Monopoly Subcommittee in its 1967 investigative hearings. These hearings disclosed widespread profiteering by creditors on the sale of high-priced insurance, paid for in its entirety by borrowers.

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Kickbacks, commissions, and rebates from insurance companies and creditor-owned insurance subsidiaries have built a system of "reverse competition" encouraging the sale of insurance at highest possible rates. UCCC forbids charges beyond the legal maximums permitted by the Commissioner of Insurance but does nothing to reduce them further. Lenders' profits on insurance are specifically protected.

Disclosure Provisions

The sections on disclosure are largely a duplicate of the provisions of the Federal law which contains extensive requirements relating to items of cost of the credit provided, including a statement of the annual percentage rate. Both credit contracts and credit advertising are covered. The principal problem about the disclosure provisions is that since all existing state legislation on disclosure is repealed, any disclosure requirements other than the ones copied from the federal law would disappear. Disclosure statutes may, for example, require disclosure of a buyer's rights under the law, make detailed specifications as to contract forms, or other matters. In effect the federal specifications would substitute for existing requirements rather than add to them. In addition, the disclosure provisions could be rendered ineffective by the fact that specific administrative authority for issuing regulations to interpret the disclosure requirements in the Code is not provided. In particular, the decision as to what is "conspicuous" is left to the courts for determination, on a case by case basis.

Restrictions on Contract Provisions

1. Credit Sales

The UCCC makes a commendable attempt to prohibit or restrain certain types of contracts and contract provisions which are notoriously unfair to credit buyers, but it does not go "all the way."

a. Holder in Due Course

The Code knocks a hole in the onerous "holder-in-due course" doctrine under which a finance company which has bought a credit contract from a retailer is held free of all responsibility to the original buyer and is legally entitled to collect monthly payments from the debtor, regardless of fraud in the original contract, overcharges, defects in the product or other failure in the seller's duties.

The Code would prohibit sellers from taking a "negotiable instrument" in connection with consumer credit contracts. A subsequent buyer of the paper (the "holder") would not qualify for "holder in due course" status if he had notice of the seller's violation. However, no provision is made for labeling consumer paper as such and no penalties attach to the "holder" even he does take paper illegally procured by the seller.

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The Code also invalidates agreements whereby the borrower waives his legal defenses against a subsequent holder ("assignee") of a credit contract. Two Alternatives are provided. Alternative A, which subjects assignees to buyer's defenses, is definitely superior to Alternative B, which requires notice by buyer to assignee of defenses within three months. Even under Alternative A, certain limitations are placed on the liability of the assignee.

b. Balloon Contracts

The Code discourages the writing of "balloon contracts," but does not prohibit them. It merely specifies that the buyer shall have the right to refinance a balloon payment "without penalty" in any case where the balloon is more than twice the average of earlier scheduled payments. Current state laws that deal with balloon payments usually prohibit them.

c. Security for Contract

The Code makes certain restrictions on the security that may be taken in a credit sale. In general the seller may not take a security interest in property of the debtor other than in the goods which are the subject of sale. Exceptions are allowed to permit a security interest in goods on which services are performed or in which goods sold are installed. Also a security interest in land may be taken if goods are affixed to it or improvement services performed on it. The debt must be at least $300 in the case of security interest in goods and at least $1,000 in the case of a security interest in land. These provisions are definitely a step in the right direction, but the $300 and $1,000 limits have been criticized as too low.

d. Add-on Sales

The Code reforms but does not eliminate "add-on" sales whereby a buyer's current purchases are permitted to be taken as security for earlier purchases on which payments have not yet been completed, and vice-versa (earlier purchases become security for later purchases). Situations have occurred in which default on the most recent purchase have occasioned loss to the buyer of the entire set of purchases. The Code provides that a buyer's payments must be allocated to the goods in the order which they were bought and the security interest terminated in each item as the debt on each is paid off.

A question remains as to whether "add-on" sales should be prohibited in their entirety. A consideration against such prohibition in the Code as presently written is that multiple separate sales could result in multiple high-charge contracts under the graduated rate structure.

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e. Wage Assignments

UCCC prohibits wage assignments, as do a number of existing state laws. This is a desirable reform. A wage assignment is an agreement which provides that the creditor can take part of a worker's wages directly from his employer if the debt is not repaid when due. Under UCCC an assignment of earnings may not be taken unless the employee is free to revoke his authorization of the assignment.

f. Referral Sales

Referral sales are prohibited. A desirable reform. Referral selling is a racket whereby the buyer is persuaded to sign a contract by a promise that he can recoup the purchase price in whole or in part by supplying other customers to the seller.

g. Attorney's Fees

Two alternatives are provided: (A) prohibits agreements providing for payment of attorney's fees by the borrower and (B) limits attorney's fees to 15 percent of the unpaid balance. Alternative (A) is clearly superior, particularly since "reasonable expenses" are allowed to the creditor in realizing on his security interest in case of the borrower's default.

h. Confession of Judgment

This is prohibited. A desirable and important reform. A debtor who "confesses judgment" signs away his legal rights to challenge the validity of the debt.

i. Blank Spaces and Contract Accelerations

Two notable omissions in the Code are (1) the failure to prohibit blank spaces in contracts (a common requirement under existing state legislation) a source of easy fraud on the debtor (2) the failure to curb the creditor's unrestricted right to require immediate payment of the unpaid balance of the debt thereby precipitating a debtor's default. Unilateral acceleration by the creditor should be restricted to cases in which substantial default has actually occurred.

2. Loans

Restrictions on loan agreements are less extensive than those for sales. Provisions on balloon payments, wage assignments, attorney's fees, and confessions of judgment are the same. But no restraints are put upon the rights of holders in due course or on rights of assignees. "Supervised lenders" (licensed lenders and supervised financial institutions) may not

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take a security interest in land unless the debt is over $1,000 but other lenders may do so. Again, the $1,000 cut-off has been criticized as too low.

Restrictions on Creditor Collection Practices

1. Deficiency Judgments

The UCCC makes a limited attack on deficiency judgments. It provides that a seller who repossesses or takes back goods that were the subject of sale (or other security for the debt) may not also obtain payment for the "deficiency" between what the goods sell for and the unpaid balance of the debt. However, this provision applies only where the cash price of the sale was $1,000 or less, thus being of no effect for larger purchases such as new cars. No restraint on deficiency judgments applies in the case of cash lenders.

2. Wage Garnishment

UCCC would restrict garnishment along the lines of the Federal Consumer Credit Protection Act which limits garnishment to 25% of disposable earnings or the excess over $48 per week (30 times the federal minimum hourly wage) whichever is less. In UCCC the minimum exemption is improved to $64 (40 times the minimum wage), but the 25% figure remains unchanged.

In addition UCCC would prohibit garnishment before judgment and would prohibit employers from firing workers on account of garnishment. Federal law forbids firing on account of garnishment for "any one indebtedness" and makes no special provision for garnishment before judgment.

The principal immediate problem presented by UCCC is whether its 25% limit and basic exemption amount would replace more favorable provisions under a number of existing state laws, for example, laws which provide a 10% limit or which do not permit garnishment at all. A "savings clause" is included in the Federal statute for such situations, but not in the text of the Code.

In the most recent published edition of the Code (Revised Final Draft, November 1968) the "Official Comment" has been rewritten to disclaim any intent to undercut existing laws which provide additional protections to wage-earners. However, the fact remains that the statutory language does not in itself accomplish this result.

A further technical difficulty presented by the Code is that its garnishment provisions cover only situations in which the garnishment has arisen out of a transaction covered by the Code (generally, debt characterized either by installment repayments or by the imposition of a finance charge). Garnishment arising out of debt not covered by the Code, such as service credit (doctor bills and utility bills), would not be affected.

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Even assuming the most favorable interpretations of the Code, only modest improvement is made over the Federal provisions which will go into effect July 1, 1970. More comprehensive action on garnishment is needed, either to abolish garnishment altogether, or to severely restrict its application.

Contract Cancellation Rights

UCCC includes a section on 'home solicitation sales" giving buyers a three day period in which to cancel a credit contract for goods or services bought from a door-to-door salesman.

The objective of this provision is obviously desirable, but specific points will need to be examined for possible improvements. The provision for a 5% cancellation fee has been particularly criticized.

An additional section, relating to buyer's cancellation rights in the case of a credit sale or loan secured by the buyer's home, is incorporated from the Federal Consumer Credit Protection Act.

Administration and Enforcement

Administration and enforcement is centered in a single Administrator who is given fairly impressive powers in the form of authority to issue "cease and desist" orders, to obtain injunctions and temporary injunctions from the courts, to bring suit for civil penalties, and to recover overcharges in behalf of debtors. Debtors are also given certain rights of bringing private suits.

Licensing requirements are included for all "supervised lenders" and their assignees (i.e., lenders who charge more than 18 percent per year on loans). These provisions would cover lenders presently licensed under state small loan laws and could have the effect of requiring licensing of at least some high rate lenders in the second mortgage market. Licensing provisions are considerably less stringent than those usually applicable to small loan licensees under much existing legislation. No license would be required for lenders charging less than 18 percent per year.

No licensing is required in the credit sales field, either for retailers or for sales finance companies which buy their paper. They are subject only to registration requirements. A number of states currently have licensing requirements for sales finance companies, and in some states retail dealers (especially automobile dealers) must be licensed for credit operations. These laws would be repealed by UCCC. Licensing requirements involve important powers to suspend or revoke the license of an enterprise to continue in business and can provide an important protection against shady operators in the credit field, as well as in securing general compliance with the law.

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Apparently the main weapon in the Code against shady operators in the credit sales field would be recourse by the Administrator to the courts for an injunction against "unconscionable" conduct.

Another notable omission is rule-making power for the Administrator. He is prohibited from issuing regulations except where specifically authorized by the Code to do so. (These relatively few authorizations are nowhere summed up in a list.) It is evidently intended that the Administrator may issue regulations to correspond to those which will be issued by the Federal Reserve Board, assuming the state were to be exempted from the operation of the federal statute with respect to disclosure requirements. However, rule-making powers in the section of the Code dealing with disclosure do not appear sufficient to accomplish this result.

February 7, 1969
AFL-CIO Department of Research/Draper

ATTACHMENT I

FINANCE CHARGE CEILINGS UNDER UNIFORM CONSUMER CREDIT CODE

1. For retail sellers

Installment credit: *
36% on first $300
21% on next $700
15% on excess over $1,000

Revolving credit:
2% per month on first $500 (24% per year)
1½% per month on excess over $500 (18% per year)

2. For licensed lenders and supervised financial institutions
(small loan companies, finance companies, commercial and industrial loan banks, credit unions)

Loans and revolving loan accounts*

36% on first $300
21% on next $700
15% on excess over $1,000

3. Other lenders

a. 18% per year

b. Mortgage loans are exempt from certain key provisions of the Code if finance charge is 10% or less. This is intended to result in an effective ceiling of 10% on first mortgages.

*Alternatively, a rate of 18% is authorized if the yield would be larger.

Note: The Code further provides for an escalation of effective ceilings in accordance with rises in the Consumer Price Index. This is done through increasing the sizes of the loan to which the higher rates apply. For example, if the CPI increased by 10%, the $300 to which the 36% rate applies would go to $330 and the 21% rate would apply up to $1,100 instead of $1,000.

Attachment II

CREDITOR'S EARNED INTEREST CHARGES ON LOAN
OF $1500

Month No.	Normal Computation 1/	Rule of 78 2/	Alternative Permitted in Revised Final Draft 3/
1	$ 27.50	$ 32.66	$ 31.38
2	26.06	29.85	29.05
3	24.60	27.14	26.67
4	23.13	24.43	24.25
5	21.63	21.72	21.77
6	19.67	18.99	19.24
7	17.52	16.28	16.66
8	15.33	13.57	14.03
9	13.10	10.86	11.34
10	10.83	8.15	8.59
11	8.19	5.42	5.79
12	4.12	2.71	2.91
Total	$ 211.68	$ 211.68	$ 211.68

Rebate due if loan is paid off after 5 months (the addition of charges for months 6-12):

(1) Normal computation: $ 88.76
(2) Rule of 78: 75.98
(3) Alternative under Revised Draft: 78.56

1/ Based on month by month application of 36% per year on first $300, 21% on next $700, and 15% on balance over $1,000

2/ Based on distribution of total finance charge according to Rule of 78

3/ Based on recasting of charges at flat annual rate of 25.10 percent, corresponding to 36% on first $300, 21% on next $700, and 15% on balance over $1,000

A SUMMARY

OF THE

UNIFORM CONSUMER CREDIT CODE

PREPARED BY
NATHANIEL E. BUTLER
Educational Director

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
1155 East 60th Street
Chicago, Illinois 60637

The National Conference of Commissioners on Uniform State Laws is an organization of state appointed officials who are practicing lawyers, judges and law school professors. Customarily the governor of each state appoints three men to serve as Commissioners. The Commissioners serve without compensation. The expenses of the Conference are paid from appropriations made by the states, and when special projects are undertaken, foundations and interested groups often make contributions. The function of the Conference is to draft legislation in areas of the law where uniformity among the states is particularly desirable and offer it to the states for enactment.

THE PROBLEM

Consumer credit is treated under a variety of laws in each state today. Historically, a type of statute that has dominated the growth of consumer credit has been the simple general usury statute. These statutes, originating in this country as early as 1664, set flat 6% and 8% per annum ceilings on the rate of interest that may be charged for loans of money. In the twentieth century these ceiling rates have been unevenly increased in some states so that today the ceiling rates range from 6% to 12% per annum with one state having a 16% ceiling, one state a 21% ceiling and two states none at all. The 6% to 12% rates are below those at which legitimate creditors can extend many kinds of consumer credit. As a result, many exceptions and exemptions from usury laws have been created by courts and legislatures. In most states today general usury statutes cover only a small portion of consumer credit transactions, and this coverage is highly erratic and generally unreasoned.

Exceptions to usury statutes have come from both the courts and the legislatures. The so-called "Time Price" doctrine developed by the courts exempts from general usury statutes all sales credit purchases. This doctrine creates an enormous exception to usury statutes and is recognized in all but two of the states.

State legislatures have recognized the distinction between credit sales and direct loans and have enacted many laws regulating credit sales. Often there is one law regulating credit sales of motor vehicles, and another regulating credit sales of goods other than motor vehicles. Sometimes there are additional laws governing home improvement sales, revolving store charge accounts, and insurance premium financing. Generally these laws are limited to consumer transactions, but occasionally they have broader application. Not infrequently these laws provide different ceilings on rates that can be charged, and express the rate ceilings differently (add-on, discount, U.S. Rule, per cent per month, etc.). Often these laws treat substantially similar aspects of different credit transactions differently where no reason for the difference in treatment exists.

In addition to the exemption from usury laws for sales credit, state legislatures have enacted a number of laws permitting loans to be made at rates in excess of the usury rate. Most common are the Small Loan Laws which require the lender to be licensed and limit both the amount and length of the loan. In addition to the Small Loan Laws, many states have enacted so-called Installment Loan Laws, Industrial Loan Laws and other laws exempting from general usury statutes certain classes of lenders such as commercial banks, credit unions and savings and loan associations or a certain class of transactions such as revolving loan accounts. These laws also frequently set different rules for what are very similar aspects of the various transactions.

Finally, some states have enacted laws dealing with specific aspects of consumer credit transactions such as door-to-door sales cancellation acts, rate disclosure (truth-in-lending) acts and so forth.

Compounding the problem of the numerous laws governing the consumer credit market is the new Federal Truth-in-Lending Act which is effective July 1, 1969. It requires full disclosure of the terms of substantially all consumer credit transactions including, among other things, the rate of the credit service or loan finance charge stated in terms of an annual percentage. This law provides that if a state passes a law which requires substantially similar disclosure, the state law will apply and the control will move back from the federal to the state government.

THE UNIFORM CONSUMER CREDIT CODE — GENERALLY

The Uniform Consumer Credit Code is a balanced consumer protection law. It restructures all laws imposing maximum charges on the cost of money or credit, regulates consumer credit generally and brings substantially all consumer credit transactions under one comprehensive code. In the area of maximum charges and rate ceilings it imposes a single and standard set of maximum charges on substantially all types of consumer credit and, except in the case of extortionate charges, frees substantially all types of business credit from any maximum charge or rate ceiling. It puts all creditors extending consumer credit on substantially an equal footing so far as maximum charges and control of practices are concerned. It stimulates competition by eliminating artificial barriers to entry into the credit granting business and by requiring disclosure of the cost of the credit, both in terms of the dollar amount and in terms of an annual percentage rate. While the Uniform Consumer Credit Code sets *maximum ceilings* on rates which may be charged in consumer transactions, it relies on competition to *fix actual effective rates*. It restricts certain practices of creditors which have been shown to be particularly subject to abuse and has broad provisions to eliminate unconscionable conduct.

It is designed to secure for any state enacting it exemption from the Federal Truth-in-Lending Act.

COVERAGE

Generally, the Code applies to consumer credit transactions and excludes business transactions. The basic test is the kind of debtor involved. If the debtor is an individual, some or all of the provisions of the Code apply. If the debtor is an organization, (a corporation, partnership, trust, governmental body or the like), with one minor exception regulatory and maximum rate provisions of the Code do not apply. The non-application of the Code to organizations eliminates the major portion of all business credit from regulatory coverage.

If an individual debtor (sometimes called a sole proprietor) seeks not in excess of $25,000 of credit for a business purpose, the transaction will be covered only by the provisions of the Code relating to maximum rates and charges which can be made. In other words, the sole proprietor of a corner grocery is given maximum rate protection under the Code in transactions up to $25,000 but otherwise the transaction is unregulated.

The major concern of the Code is with consumer credit and except for the provisions on rates and maximum charges having limited applicability to non-consumer transactions, all of the Code's provisions apply only to consumer credit. Consumer credit includes and is limited to credit extended for the personal, family, household or agricultural purpose of the person to whom credit is extended.

Credit extended for agricultural purposes is included in consumer credit, but it is excluded from a number of the substantive provisions found to be unsuited to the particular characteristics of farm financing. Of course, if the debtor is not an individual, regulatory provisions of the Code do not apply.

Credit sales of homes and home mortgages entered into for a consumer purpose are covered by the maximum rate and charge limitations as well as the disclosure requirements of the Code. Transactions in which the rate of credit service or loan finance charge exceeds 10%, calculated as prescribed in the Code, are subject to all of the substantive provisions of the Code.

REGULATION OF PRACTICES

The Code takes three basic approaches to the problem of better enabling the consumer to deal with the professional creditor. First, it requires full disclosure of the cost of credit to the consumer prior to or at the time the transaction is entered into. Second, it makes illegal or severely limits certain specific practices of creditors which have been shown to be subject to abuse. Finally, it has broad provisions for attacking and eliminating unconscionable conduct.

The first approach is the requirement of complete disclosure of the terms of the credit transaction including disclosure of the cost to the debtor both in dollar amounts and in terms of an annual percentage rate. The disclosure provisions are more fully discussed below.

The second approach is to prohibit or greatly limit certain kinds of agreements and practices. In deciding what practices to prohibit or limit, the Commissioners recognized that unless there were very real and corresponding benefits to the consumer, restrictions on rights of creditors could, in fact, hurt consumers because the restrictions might result in higher costs and consequently higher rates throughout the consumer credit market. With this process of evaluating and balancing in mind, the Commissioners sought only to restrict rights and practices in which evidence of serious abuse of consumers was strong.

Among the specific restrictions the Code imposes is the prohibition of negotiable promissory notes in sales credit transactions. Closely related to this is the treatment of the buyer's waiving as to an assignee of the consumer's contract any defenses he might have against the seller. The Code offers alternative sections, either of which might be enacted. The first alternative prohibits and renders non-effective the buyer's waiving his defenses. The second alternative requires the buyer promptly to inform the assignee of any defenses which arise within three months of the sale and if he fails to do so, the assignee is freed from defenses arising during the three month period. Under the present law of most states, once the contract is assigned, the buyer must pay the finance company and try to seek his remedy from the seller. The theory of the Code's provision is that the financing institution is in a better position to guard against the seller pushing shoddy and sub-standard goods or services than the buyer who very likely has only a single isolated transaction with the seller.

Another practice the Code prohibits in sales credit transactions is the seeking of a deficiency judgment after goods have been repossessed if the original cash price of the goods was less than $1,000. In effect, where the cash price is less than $1,000, the Code provides that the creditor must either elect to sue on the contract or repossess the goods; he may not do both. The theory of this section is that in transactions in which the cash price is under $1,000, the right to seek a deficiency after repossession is worth little to the legitimate creditor, but it can be used abusively by the unscrupulous creditor.

The Code eliminates in sales credit the practice of the seller's taking a security interest in a houseful of furniture to secure the payment of the price of a single refrigerator or television set. Although the Code does permit taking a security interest in more than the goods sold when debts arising out of other sales are consolidated, it requires payments to be allocated so that the goods are freed from the security interest on a first in first out basis.

The Code restricts balloon payments which often have been used to push a debtor into extending and refinancing the debt. It also prohibits irrevocable assignments of earnings, garnishment proceedings prior to judgment, and confessions of judgment. It sets limits on charges which can be made on default, attorney's fees which can be collected from debtors, and the amount of a debtor's earnings subject to garnishment. It limits small loans to 25 months or 37 months when the annual rate of loan finance charge exceeds 10%. It gives buyers three days to cancel home solicitation sales and prohibits referral sales. It includes provisions on credit life insurance and credit accident and health insurance like those now in force in states which effectively regulate such insurance.

The third approach of the Code toward eliminating harmful practices

and enabling consumers to deal more effectively with creditors is contained in provisions which permit courts in proceedings commenced by the Administrator to declare any agreement or part of an agreement unconscionable and unenforceable as a whole or in part. The court is empowered to order the enforcement of the agreement in such a way as to avoid any unconscionable result. Debtors themselves and also the Administrator may bring proceedings to recover excess charges, the Administrator may himself order creditors to cease violating the Code and the Administrator may bring court proceedings to obtain injunctions against violations of the Code and against unconscionable conduct. Varying special civil and criminal penalties are provided for different kinds of violations. Studies have shown that the major part of overreaching and abuse stems from a relatively small percentage of creditors. In total effect the Code sets standards of conduct for all creditors participating in consumer credit and provides strong and effective remedies against creditors committing serious abuses without impairing the rights of legitimate creditors and without seriously raising the general cost of credit to consumers.

DISCLOSURE

The disclosure requirements of the Code are in most cases the same as those in the Federal Truth-in-Lending Act. Where they differ, the Code's provisions are more stringent.

Basically, in a credit sale the seller is required to set forth: 1) what is being sold; 2) the cash price; 3) the down payment; 4) the balance owing; 5) amount payable for registration or certificate of title fees not included in the cash price; 6) the amount of official fees and taxes; 7) a brief description of any insurance provided and, if a separate charge is made, the amount of the charge; 8) in the case of a sale of land the amount and a description of the closing costs; 9) the total amount financed; 10) the dollar amount of the credit service charge; 11) the total unpaid balance; 12) the annual rate of the credit service charge; 13) the payment schedule; 14) the charges to be made in the event of default; and 15) a description of any security interest taken.

The dollar amount of the credit service charge is not required in a land transaction if the rate of credit service charge is under 10%.

Similar disclosure is required in the case of loans, and under somewhat different mechanical requirements, in the case of revolving sale and loan accounts, and in refinancings, consolidations, and deferrals.

The percentage rate which is disclosed must be computed according to what is known as the U.S. Rule. This is the method traditionally employed in first mortgage real estate financing where payments are applied first to accrued interest and then to the reduction of principal.

The kinds of charges which may be excluded from the calculation of the rate to be disclosed are limited. Except for certain closing costs in real estate transactions involving a credit service or loan finance

charge not exceeding 10% per year, all extra charges must be included in the credit service or loan finance charge except a defined category called "additional charges". "Additional charges" are official fees and taxes, liability and casualty insurance if the buyer is told that he can choose the insurer, and life, health and accident insurance if such insurance is not a factor in the granting of the credit and the buyer is so told. If insurance charges do not meet these tests, they must be included in the credit service charge or loan finance charge. Other charges of benefit to the debtor apart from the granting of credit may be excluded from the finance charge if the Administrator has approved them.

These exceptions from the credit service and loan finance charge are the same as those in the Federal Truth-in-Lending Act. All other extra charges must be included in the credit service or loan finance charge in calculating the rate.

The theory of the disclosure requirements is that the buyer or borrower will be able to shop for credit just as he shops for other commodities. The dollar cost of having goods or money immediately rather than waiting will be clear to him. The requirements that all creditors state a rate in the same manner (in terms of an annual percentage) will permit the consumer to make meaningful comparisons and choose between alternative sources of credit and get the best deal. Looking at the dollar cost and the rate, the consumer might decide to use savings rather than to incur debt at all.

RATES

The rates in the Code are based on the underlying principle that legislation should *not* attempt to fix rates in the sense that public utility commissions fix rates for public utilities, but rather that the economic forces of free enterprise and supply and demand should set rates through improved competition within maximum ceilings prescribed in the consumer credit area. In consumer credit, ceilings are imposed in part because they have been imposed frequently in the past and in part because consumers are generally considered not to have equal bargaining power with creditors. On the other hand, with two narrow exceptions, no ceilings are imposed for business credit and any residual ceilings still applicable to business credit under general usury statutes are removed.

In deciding what the rate maximums should be, the Commissioners took into account that raising and lowering maximum rates have the inevitable effect of increasing or decreasing the size of the consumer credit market. High maximums permit more persons to obtain credit from legitimate sources; low maximums decrease the number of persons who may obtain credit. The maximum ceilings provided in the Code are designed to permit most credit-worthy consumers to have access to the consumer credit market.

The basic maximum rate in the Code is 18%. There are higher graduated rates where the amount of the credit is small. 36% per annum is permitted on the amount of the unpaid balance up to $300, 21% on the amount from $300 to $1,000 and 15% on the amount over $1,000, with the composite actual rate under these graduated rates levelling off at 18%. In order to charge rates in excess of 18%, a lender (but not a seller) must either be licensed or a supervised financial organization, e.g., a bank, credit union or the like.

On revolving charge accounts in sales credit, the maximum permitted rate is 2% per month (24% per year) on the amount outstanding up to $500, and 1½% per month (18% per year) on the amount in excess of $500.

LICENSING, FEES AND ADMINISTRATION

Each creditor who is regularly engaged in the business of granting consumer credit is required to notify the Administrator that he is so engaged. In addition, he is required to pay an annual fee based upon the amount of the consumer credit obligations owed to him. This fee is designed to defray all or part of the cost of administering the Act.

In order to make loans at rates in excess of 18%, a lender must first obtain a license from the Administrator. The Administrator is directed to investigate the applicant and grant the license only if he finds that the financial responsibility, character and fitness of the applicant are such as to warrant belief that the business will be conducted fairly.

Banks and other institutions which are supervised by other governmental agencies are not subject to the licensing requirement.

The Administrator has broad powers to investigate, issue orders and go to court to obtain compliance by creditors with the act. His actions, however, are subject to notice, fair hearing and other due process requirements.

Among his other powers, the Administrator is authorized to seek an injunction against unconscionable agreements or conduct.

EFFECT OF CODE ON POWERS OF ORGANIZATIONS

The Code prescribes maximum charges for all creditors extending consumer credit and displaces existing limitations on the powers of creditors based on maximum charges.

In the case of sellers of goods or services, small loan companies, licensed lenders, consumer and sales finance companies, industrial banks and loan companies, and commercial banks and trust companies, the Code displaces existing limitations on their powers based solely on amount or duration of credit.

Except as to maximum charges, the Code does not displace limitations on powers of credit unions, savings banks, savings and loan associations, or other thrift institutions.

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Questions & Answers

On

UNIFORM CONSUMER CREDIT CODE

Courtesy of

Alaska Retail Association, Inc.

Box 1727
Anchorage, Alaska

THE UNIFORM CONSUMER CREDIT CODE

Questions and Answers

Q. What is the Uniform Consumer Credit Code?

A. The Uniform Consumer Credit Code is a balanced consumer protection law considered by most authorities to be the finest consumer protection legislation ever written.

Q. Who prepared the UCCC?

A. The Code was prepared by the National Conference of Commissioners on Uniform State Laws.

Q. What is the National conference?

A. The Conference is an organization made up of Commissioners of the 50 states whose function it is to draft uniform legislation to be offered to states for enactment.

Q. How many Commissioners are there in the National Conference?

A. The average number of Commissioners from each state is three making a total of 150 for the Conference as a whole. Provisions for appointment of Commissioners is made by statute with appointments customarily made by the Governor.

Q. What are the qualifications of Commissioners?

A. Commissioners must be either practicing lawyers, judges or law school professors.

Q. Are Commissioners paid for their services?

A. The Commissioners serve without compensation but are reimbursed for most out-of-pocket expenses.

Q. What other laws have been written by the National Conference?

A. The organization which has been in existence since 1892 has drafted several other uniform state laws. Examples of such laws which have been widely enacted include: The Uniform Sales Act, the Uniform Stock Transfer Act, more recently, the Uniform Commercial Code.

Q. What is the relationship of the Commissioners to their respective states?

A. Commissioners are officials of the respective states which they represent and, as such, are public servants with all of the responsibilities and duties incident to public service.

Q. Just how does the role of public servants influence the work of the Commissioners?

A. Commissioners accept their responsibility as public servants with the highest ethics. Every action of the National Conference is determined fully by the public responsibility felt by its members.

Q. How does the Conference draft uniform legislation?

A. The Conference works thoroughly and slowly. Work on the Uniform Commercial Code continued for 12 years before it was finally offered to the states for enactment. The Uniform Consumer Credit Code required more than 4 years in its preparation.

In drafting uniform legislation the Commissioners build solidly on existing law and practice but where they find that by reason of historical accident or some like cause existing laws or practices in their judgment are unsound, archaic or sometimes silly they do not hesitate to provide for their repeal.

Q. Why did the Conference draft Consumer Credit legislation?

A. The major underlying reason for drafting Uniform Credit legislation is the phenomenal growth of consumer credit during the 20th century. The Conference notes that by the latest Federal Reserve figures there is close to 100 billion dollars of installment consumer credit outstanding at any one time in the Unites States, and if household mortgage credit is added to this figure the aggregate total is in the neighborhood of 330 billion dollars. The Conference felt that the extension and growth of such credit are not only matters of social and economic concern, but, also, are matters of major consequence to which the law must adjust.

Q. What is meant by the term "adjust"?

A. As consumer credit developed it became apparent that credit of this type could not live within low rate ceilings. Therefore, a steady series of legal principles or special legislation evolved to circumvent and avoid low rates. This resulted in a proliferation of legislation throughout the nation and despite such proliferation there were still widespread consumer abuses. In 1957, recognizing the need of uniform legislation, the Council of State Governments requested the National Conference to draft such a Credit Code. The Code project got underway in 1964. By that time the Conference was convinced that the need for extensive study and a major drafting effort was clear.

Q. What trend did the Conference follow in developing the Code?

A. The Conference decided to deal with the entire subject of Consumer Credit comprehensively and on fundamental lines, to review all laws relating to Consumer Credit in depth, to consider the background and reasons for Consumer Credit and economic and social aspects of it, and to draft legislation that would treat the entire subject of Consumer Credit on scientific lines rather than a continuance of historical acts.

Q. In defining the Code, the term "balanced" Consumer Protection law has been used. What does this mean?

A. The UCCC restructures all laws imposing maximum charges on the cost of money or credit, regulates consumer credit generally and brings substantially all consumer credit transactions under one comprehensive code. It imposes a single and standard set of maximum charges on almost all types of consumer credit, and except in the case of extortionate charges frees substantially all types of business credit from any maximum charge or rate ceiling. The Code puts all creditors extending consumer credit on virtually an even or balance footing so far as maximum charges and control of balances are concerned. It stimulates competition by eliminating artificial barriers to entry into the credit granting business and be requiring disclosure of the cost of credit both in terms of dollar amounts and in terms of an annual percentage rate. It is a balanced code, fair to all creditors operating in the consumer credit field and fair to consumers.

Q. Should consumer legislation be drafted and enacted at the federal or state level?

A. The National Conference felt that the Code should be enacted at the state level. The Commissioners stated that between a particular buyer and a seller, or a particular borrower and lender both located in the same state it is quite difficult to think of a much more local type of transaction than consumer credit. They, also, pointed out that consumer credit is usually a transaction of small size, ranging from a less than $5.00 sale as a part of a store revolving account or a shopper's credit card operation to purchase of automobiles on time or borrowing from the installment credit department of banks ranging in most cases from $100 to $3,000. The Conference, also, felt that if the Federal Government took control of Consumer Credit entirely this would constitute a very large shift in control from the state to the federal government of an important aspect of American life.

Q. What does the federal government think about federal-state control of Consumer Credit?

A. The Banking & Currency Committees of the Senate and House of Representatives in considering the recently enacted Federal Truth-in-Lending Act expressed an awareness of the federal-state problem and were reluctant and hesitant to pre-empt from the states the field of consumer credit. As a result, the recently enacted federal bill included a provision that the Board of Governors of the Federal Reserve system "shall exempt from the requirements of the Act any class of credit transaction which the Board determines is subject to state law which requires disclosure substantially similar to the federal requirements and contains adequate provisions for enforcement." Thus, it follows that the federal government definitely provided a way and a means by which consumer credit may remain a state controlled field.

Q. Will adoption of the Uniform Consumer Credit Code exempt Alaska from supervision of consumer credit by the federal government?

A. Yes, According to all current information available the UCCC meets the Rederal Reserve test and would divest the state of federal supervision. As far as the Turth-in-Lending Act supervises disclosure and related provisions, the Code does likewise and authorities say is even more stringent than the federal law. In addition, the UCCC goes further in that it sets maximum ceilings and correction of virtually all known consumer abuses.

Q. We have been told by some that if the Legislature copies the Federal Truth-in-Lending Act into Alaska law the federal government will divest itself of control of credit in the state. Is this true?

A. Not necessarily. There is a wide field of interpretation regarding Federal Reserve acceptance of supervisory staffing, regulations, transaction requirements etc.

Q. Does the Code contain the regulations pursuant to the Federal Truth-in-Lending law?

A. The UCCC bill, as introduced in the Alaska Legislature, includes all regulations pursuant to the federal act.

Q. What confusion could arise out of copying the federal law into state law rather than passing the UCCC?

A. (1) There is a question as to whether the state would be divested of Federal supervision.

(2) Such action may lead to conditions in which creditors would be required to make double disclosures.

(3) The law would be a "bits and pieces" type of legislation which usually creates confusion in the marketplace.

(4) Such action is completely unnecessary since the federal act went into effect on July 1, 1969, thus negating any need for a small "Federal Act."

Q. Is exemption from Federal supervision a strong argument for the passage of the UCCC?

A. Yes. Most Alaskans desire to retain jurisdiction over consumer credit and creditors in the consumer credit field of Alaska certainly do not want to operate under two sets of laws. This fact is one of the major reasons why the enactment of the Code is advisable.

Q. Were attempts made to influence the preparation of the Code in order to preserve segmented consumer credit?

A. Yes. Strong pressures were brought to bear upon the National Conference by opponents of consumer protection legislation to produce more of the same confusion which already exists throughout the nation in the consumer credit field. The status quo is referred to as segmented with segmentation being based to a considerable extent on types of creditors, that is, small loan companies, retail merchants, commercial banks, credit unions etc. The Conference was urged to preserve all this segmentation, some or all of the variations in maximum rate ceilings on finance charges, and some or all of the varying methods for starting ceiling rates. In fact, the Conference was pressured to do nothing more than compound the existing confusion.

Q. How did the Conference react to this pressure?

A. The National Conference took the position that a policy of preserving and attempting to improve one or more existing types of legislation would do nothing more than preserve and stratify types of classifications that are now causing confusion and have partially broken down. The Conference felt it could make no contribution unless a comprehensive approach was adopted.

Q. How much of the installment credit outstanding in the United States do the various segments of the credit industry possess?

A. As of December 31, 1967, the percentage share of different segments of the consumer credit industry in installment consumer credit was as follows:

Commercial banks	43.6%
Sales finance companies	21.6%
Credit unions	11.8%
Consumer finance (small loan) companies	8.1
Other financial institutions insurance companies, savings & loan associations, etc.)	2.5%
Retail outlets	12.4%
Total	100.00%

Q. What limits did the Conference feel were needed in the Code's coverage?

A. The Code covers consumer credit as opposed to business credit.

Q. Why is not the purpose test a part of the Code?

A. There are difficulties in applying a pure purpose test. Actually, purpose is nothing more than the mental intent of an individual. The Code made the distinction between consumer credit and business credit on the basis of whether the debtor is a natural person or whether the debtor is an organization. Organization as defined includes corporations, business trusts, partnerships, associations or governmental entities or bodies.

Q. Are the Code's provisions fair and equitable to both consumers and the credit industry?

A. Yes. The provisions are workable and provide a greatly superior base for handling consumer credit than the mass of legislation presently on statute books throughout the nation. Although some provisions may appear to favor industry and others favor consumers, in actual fact the provisions will be beneficial to both sides of the economic spectrum.

Q. How does the Code affect usury provisions?

A. The Code provides for the outright termination of all usury provisions and rate ceilings in the case of most business credit. The reasoning which supports this principle is that the operation of the money market and the economic rules of supply and demand are better control factors for interest charges in business credit than any legislation. It, also, notes that business debtors can bargain satisfactorily without the need of legislative assistance. The operation of existing general usury statutes has become so much an empty shell and so generally absurd in its unreasonable and haphazard application that they should be repealed outright as to substantially all business credit, according to most authorities.

Q. In the case of consumer credit, are rate ceilings preserved?

A. Rate ceilings are preserved but are evenly distributed across-the-board to all types of consumer credit.

Q. What is consumer credit as defined by the Code?

A. Consumer credit is credit extended to natural persons for personal, family, household or in some instances agricultural use.

Q. Is there a dollar limitation in regard to the jurisdiction established in the Code?

A. Yes. Consumer credit is credit extended up to a dollar jurisdictional amount of $25,000 except in the case of consumer credit secured by real estate where there is no jurisdictional limit.

Q. What are the rate ceiling found in the Code?

A. The rate ceiling prescribed is on a graduated basis with a maximum of 36% per annum on the first $300, 21% per annum on balances of $300 to $1,000 and 15% per annum on balances above $1,000 with the composite rate resulting from these graduated ceilings leveling off at a base ceiling of 18% per annum on balances from $2,500 to $2,900 and above. A major exception from these standard rate ceilings is in sales credit revolving account where the ceilings are 24% per annum or 2% per month on the unpaid balance on the first $500 of balance, and 18% per annum or 1½% per month on the unpaid balance in excess of $500.

Q. How does the Conferencd justify the standard recommended rate ceilings?

A. First, the Conference emphasizes the basic principle that legislation should not attempt to fix rates in the sense that public utility commissions prescribe rates that may be charged by public utilities. Rather, the Conference says the legislation should do nothing more than fix maximum ceilings which may not be exceeded but should be at a level to permit the extension of almost any type of consumer credit through legitimate channels.

Q. Upon what does the Code rely to fix effective rates?

A. The Code places reliance upon the operation of competition to keep actual rates charged below the legislative ceiling prescribed.

Q. How does the Code provide ways to see that the competition will keep lower than established ceiling rates?

A. The Code notes competition, in order to keep rates low, should be permitted to operate to a maximum extent and provides for "easy" entry into the lending field to make it as competitive as the retail field. This means that as far as is possible all extenders of credit must compete on equal terms with all other extenders of credit. It, also, means that a consumer must be able to intelligntly shop for credit.

Q. The Code, to encourage competition, provides "easy" entry into the lending field. What does this mean?

A. "Easy" entry refers to the provision of the Code which makes it possible for individuals or businesses to enter the cash loan fields without being restricted by artificial barriers.

Q. Are "easy" entry lenders regulated?

A. Yes. The Administrator will establish regulations governing such lenders and the Code, itself, provides that –

(1) Such lenders must secure a license from the Administrator.
(2) They cannot loan money for more than 18% per annum.
(3) They cannot accept deposits.
(4) They must pay the same fee to the Administrator's office on credit outstanding during the year as all other lenders.
(5) They must adhere to all disclosure requirements.
(6) They must abide by all consumer protection provisions of the Code.

Q. Why do banks have regulations applicable to lendin money not placed on "easy" entry lenders?

A. Banks use depositors' money for lending purposes and the various governments provide regulations to protect the depositor. "Easy" entry lenders cannot accept deposits and they will be lending their own personal money.

Q. Can "easy" entry licenses be revoked?

A. Yes. Any irregular practice is sufficient cause for revocation of license.

Q. Are these basic principles of the Code?

A. The Code, as a whole, is framed on these principles.

Q. Does this establish a new principle in American thinking?

A. No. These principles involve no novelty in basic American thinking. In most areas of economic life in America price-fixing by governmental fiat has been avoided rigorously. Price fixing is inherent in general usury statutes and actually constitutes an exception to the traditional American economic view.

Q. Opponents to the Code say that the rate ceilings as applied to the total consumer credit market will cause an increase in finance charges to the consumer. Is this true?

A. This is not true. Studies made by the National Conference point out that competition does in fact keep interest and finance charges down as much in the case of extension credit as in other types of transactions. Examples include interest rates charged to corporations which under existing law in 30 states do not have full benefit of usury statutes. In these states interest rates have been no higher than in states where usury statutes exist. In Massachusetts and New Hampshire there have been no general usury statutes for many years but the general level of interest

rates and finance charges in these states are not significantly different from those in other states. In automobile financing, rates actually charged are in most cases materially lower than ceilings prescribed in the motor vehicle retail installment sales act.

Q. What fact did the Conference recognize as primary in setting the rate ceilings in the Code?

A. The Conference recognized that rates must be sufficient to cover the cost of money, the cost of administering the credit extended, and the risk of nonpayment.

Q. What other factors operate in the cost of granting credit?

A. The Commissioners stated that the cost of money varies in relation to general money market conditions and that the cost of money today is higher than for many years, perhaps, as far back as the stock market crash in 1929. The Conference, also, pointed out that in consumer credit the cost of administering the credit is a most important factor. Commissioners noted one study which showed the average operating expenses other than bad debt reserves of many major national finance companies to be $10.40 on the first $100 of each loan.

Q. Does this explain the higher rate ceilings prescribed for the first $300 of any transaction?

A. Yes, the high cost of setting up any credit transaction on the books of a credit extender explains the high ceiling rate prescribed for the first $300. Actually, the rates prescribed fall at about the midpoint of existing rate limitations in the small loan area and are somewhat above present rates in the area over $3,000.

Q. What did money market studies reveal to the National Conference?

A. Money market studies and economic advice given to the National Conference consistently indicated that the principal effect of fixing maximum rates at a higher or lower level is to permit larger or smaller numbers of consumers into the credit market. High maximums permit more persons to obtain credit from legitimate sources. In contrast, low maximums decrease the number of persons who may obtain credit and drive the borrower and/or buyer to illegal loan sharks.

Q. Is competition the primary factor in establishing effective rates favorable to consumers?

A. Yes. The Code's provisions for improved operation of competition in credit are calculated to keep the rates actually charged well below the maximum ceilings stated.

Q. What are the disclosure requirements in the Code?

A. The Code requires the seller to set forth:

(1) What is being sold.
(2) The cash price.
(3) The down payment.
(4) The balance owing.
(5) Amount payable for registration or certificate of title fees not included in the cash price.
(6) The amount of official fees and taxes.
(7) A description of any insurance provided and if a separate charge is made the amount of the charge.
(8) In the case of a sale of land the amount and a description of the closing costs.
(9) The total amount financed.
(10) The dollar amount of the credit service charge.
(11) The total unpaid balance.
(12) The annual rate of the credit service charge.
(13) The payment schedule
(14) The charges to be made in the event of default.
(15) A description of any security interest taken.

Q. Will the disclosure requirements of the Code enhance competition as a basic principle set forth in the Code?

A. Yes, such disclosure requirements complement quite closely the maximum rate provisions of the Code. They do so by developing a single set of measuring standards by which consumers may shop for credit. Thus, they enhance competition which is relied upon by the Code to keep rates reasonably low.

Q. Does the Code place limitation on creditors' remedies?

A. Yes. The Code contains a number of limitations on creditors' remedies. This is the true reason that there is opposition to the adoption of the Code since these remedies are pure consumer protection.

Q. Does the Code prohibit the use of multiple agreements?

A. Yes. Sellers are prohibited from using multiple agreements for the purpose of obtaining a higher finance charge than would be otherwise permitted.

Q. Are sellers and lessors prohibited from taking negotiable promissory notes to evidence consumer obligation?

A. Yes. The promissory note use has been one of the major consumer abuses where instead of selling the actual installment contract a promissory note has been utilized as a negotiable instrument. Producers of the notes have been held not responsible in any way for claims and defenses of the buyer against the seller.

Q. Does the Code provide that assignees shall be subject to claims and defenses of the buyer against the seller?

A. Yes. The Code provides that an assignee is equally responsible for the quality of goods and services as the original seller. This is an issue of long standing and it is admitted in the consumer credit field. Sellers and banks and finance companies buying sellers' papers argue that assignees shall not be subject to claims and defenses of the buyer against the seller. Consumers, on the other hand, argue with equal strength that a great portion of consumer abuses are traceable to a bank or finance company which is free from claims and defenses of the buyer against the seller.

Q. What is the opinion of merchants regarding this issue?

A. The legitimate merchant does not fear this situation nor should any bank of finance company which does business with legitimate merchants since it has been historically true in Alaska that legitimate stores make restitution for defective goods and services.

Q. Does the Code place controls upon ballon payments?

A. yes. If any scheduled payment is more than twice as large as the average of earlier scheduled payments, the buyer has a right to refinance the amount of that payment at the time it is due without penalty. The terms of the refinancing must be as favorable to the buyer as the terms of the original sale.

Q. Does the Code place limitations on the amount and type of security that may be taken in sales transactions?

A. Yes. A seller may take a security interest
(1) in the property sold;
(2) in goods upon which services are performed;
(3) in property in which goods sold are installed; or
(4) in land to which the goods are affixed or which is maintained, repaired or improved as a result of the sale of the goods or the services, if, in the case of a security interest in land, the debt secured is $1,000 or more or in the case of a security interest in goods the debt secured is $300 or more.

Q. Does the Code make any provisions regarding the assignment of earnings?

A. Yes. A seller or lessor may not take an assignment of earnings of the buyer or lessee for payment or as a security for payment of a debt arising out of a consumer credit sale or a consumer lease.

Q. What does the Code do in respect to referral sales?

A. Referral sale contracts cannot be entered into by sellers and buyers. Any inducement to enter into such a contract is in violation of the Code and the buyer of lessee at his option may rescind the agreement or retain the goods delivered and the benefit of any service performed without any obligation to pay for them.

Q. May terms by changed in the case of revolving charge accounts?

A. Yes. If a change is made in the terms of a revolving charge account the merchant must give the buyer written notice at least 3 times with the first notice issued at least six months before the effective date of the change.

Q. Are there any exceptions to this requirement?

A. Yes. The notice specified is not required if:

(1) The buyer after receiving notice of the change agrees in writing to the change;

(2) The buyer elects to pay an amount designated on a billing statement as including a new charge for the benefit offered to the buyer when the benefit and charge constitute a change in terms and when the billing statement also states the amount payable if the new charge is excluded;

(3) The change involves no significant cost to the buyer;

(4) The buyer has previously consented in writing to the kind of change made and notice of the change is given to the buyer in two billings cycles prior to the effective date of the change; and

(5) The change applies only to purchases made or obligations incurred after a date specified in a notice of the change given in two billing cycles peior to the effective date of the change.

Q. What constitutes notice in regard to changes in revolving credit account?

A. The notice is given to the buyer when mailed to him at the address used by the seller for sending periodic billing statements.

Q. Does the Code provide for a cancelling provision in home solicitation sales?

A. Yes. A buyer has the right to cancel a home solicitation sale until

midnight of the third business day after the day on which he signs the agreement or offer to purchase.

Q. What are the technical procedures in regard to cancellation?

A. Cancellation occurs when the buyer gives written notice of cancellation to the seller.

Q. Where does the Code require that such notice be sent?

A. The notice must be sent to the address listed in the agreement or offer to purchase.

Q. What other provisions for cancellation does the Code provide?

A. The notice of cancellation if by mail is given when the notice is properly addressed with postage prepaid and deposited in a mail box.

Q. Does the notice of cancellation have to take a particular form?

A. No. Notice of cancellation is sufficent if it indicates by any form of written expression the intention of the buyer to cancel the home solicitation sale.

Q. Are there any circumstances under which the buyer may not cancel a home solicitation sale?

A. Yes. The buyer may not cancel a home solicitation sale if he has requested the seller to provide goods or services without delay because of an emergency and the seller in good faith has made a substantial beginning of performance. The buyer also may not cancel a home solicitation sale if the goods cannot be returned to the seller in substantially as good condition as when received by the buyer.

Q. Does the Code provide for the return of goods given as collateral or the down payment by the seller in cancelled home solicitation sales?

A. Yes. Within 10 days after a home solicitation sale has been cancelled the seller must return any payments made by the buyer and any note or other evidence of indebtedness. If the down payment included goods traded the goods must be returned in substantially as good condition as when received by the seller.

Q. Is there a provision made whereby the seller may retain a cancellation fee?

A. Yes. The seller may retain a cancellation fee amounting to 5% of the cash price but not exceeding the amount of the cash down payment. However, if the seller fails to comply with any obligation imposed by the Code, or if the buyer voids the sale on

any ground independent of his right to cancel provided by the provision of the Code, the seller is not entitled to retain a cancellation fee.

Q. What does the Code provide in regard to the duty of the buyer to the seller of the home solicitation sale?

A. Upon demand, the buyer must give to the seller any goods delivered by the seller pursuant to the sale, but he is is not obligated to deliver the goods to any place other than his residence. If the seller fails to demand possession of the goods within a reasonable time after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them. The Code states that 40 days is a reasonable time. The buyer is required to take reasonable care of the goods in his possession both before cancellation or revocation and for a reasonable time afterwards during which time that goods are otherwise at the seller's risk.

Q. Does the Code provide limitations on garnishment?

A. Yes. The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce payment of a judgment arising from a consumer credit sale, consumer lease or consumer loan may not exceed the lesser of:

(1) 25% of the disposable earnings for that week; or

(2) The amount of which his disposable earnings for that week exceed 40 times the Federal Minimum Hourly Wage. Since the Federal Minimum Hourly Wage at this time is $1.60, this means $64.00.

Disposable earnings as defined by the Code means that part of the earnings of an individual remaining after the deductions of those earnings of amounts required by law to be withheld.

Q. What does the Code provide regarding discharging employees for garnishment?

A. The Code states emphatically that no employer shall discharge an employee because his wages have been subject to garnishment.

Q. What does the Code say in regard to repossession of goods and suit for balance due?

A. The Code, as introduced, provides that the seller may repossess goods with a cash price under $1,000 where the debt is not being repaid or may sue for the balance due but the seller may not do both. He must make a choice between the two actions. Deficiency judgments are forbidden.

Q. We note that the Code contains language in regard to unconscionable agreements and conduct. Just what does this section do?

A. The Conference gave a great deal of study to the fact that the greatest majority of consumer abuse is traceable to a relatively small proportion of fringe operators who do not hesitate to over-reach whenever they can whether inside or outside the law. The question arose as to how a statute can provide protection against this kind of conduct. The Commissioners felt that realistic legislation is of limited value unless it has some language pointed toward this problem and believe there is no escape from having that language flexible enough to adjust to the great variety of schemes and practices that an ingenious type of individual may conceive. Therefore, the Code provided "Unconscionability" to meet this situation. The Code contains language with respect to unconscionable agreements and conduct. This has been done for the simple reason that the Commissioners could see no escape from this provision if the provision was to be flexible enough to adjust to the maneuvers of fringe operators.

Q. Is unconscionability a new concept?

A. Unconscionability is not a new concept. There have been decisions providing relief from unconscionable conduct running back over 100 years. It is, also, a part of the Uniform Commercial Code and there is equal or more reason to use it in the Consumer Credit Code.

Q. Are there any limitations on the action of unconscionability?

A. Yes. Considerable care is used to keep the concept within strict boundaries. Debtors for example cannot determine that conduct of a creditor is unconscionable. The Administrator cannot make such a determination, only courts can make this determination, and in courts only the judge and not the jury. The Code provides that the Administrator may bring a civil action to restrain a creditor from engaging in a course of unconscionable conduct either in effecting consumer credit transactions or in collection of debts arising from these transactions. In every case, however, it is only a court that can make a determination of unconscionability.

Q. How will the Code be administered?

A. The Code provides for administration by the State Banking Commissioner, and it prescribes his powers and functions. In the Code he is referred to as the "Administrator."

Q. What are his powers?

A. (1) He will administer the consumer credit market;

(2) He may bring action on behalf of an individual or a class of debtors to recover excess charges made by a creditor;
(3) He may bring actions to restrain a creditor from engaging in unconscionable conduct;
(4) He may issue orders and subject to appropriate administrative review he may order a creditor or others to cease and desist from engaging in violations of the Code;
(5) The Administrator is given substantial investigatory powers with respect to consumer credit extended by merchants or finance companies; and
(6) He is expected to cooperate with officials having supervisory power over banking institutions to obtain compliance with Code provisions.

In addition, the Administrator

(1) has power to issue regulations with respect to specified subjects;
(2) he may foster and aid programs for education of consumers; and
(3) encourage establishment of non-profit consumer credit counseling agencies.

Q. Does the Code provide for advisors to the Administrators?

A. Yes. The Code recognizes the considerable power of the Administrator and to aid and assist him in the effective performance of his duties the Code provides for a Council of Advisors on Consumer Credit. These are to be drawn in relatively equal proportions from consumers or the public, on the one hand, and from members of the consumer industry on the other.

Q. How is the office of the Administrator financed?

A. All persons or businesses doing credit business must so notify the Administrator and must pay to the Administrator $10 for every $100,000 outstanding credit during a fiscal year. This money will be used to carry on the work and meet the expenses of the office of the Administrator.

Q. Do merchants of Alaska support the adoption of the Uniform Consumer Credit Code?

A. Yes, even though the Code will require merchants to pay a substantial fee for its administration which heretofore has not been required of retailers.

Q. Why is the retail industry favorable to its adoption?

A. (1) It is the finest consumer protection Code ever prepared.

(2) The public policy demands its passage.
(3) The Code will do away with the "Bits and Pieces" type of credit legislation.
(4) The UCCC will give the state as near total consumer protection as is legislatively possible.
(5) The Code solves present and future credit problems in a way that will not require future legislative action.
(6) Creditors can live with the Code, and though there are some provisions which retailing does not like, the Code is a document, which taken as a whole, retailing can support and under which retailing can operate. This is the "on balance" concept which is basic to the Code.
(7) The Code attempts to satisfy the interests of the diverse groups represented in the credit field.
(8) The code is favored by the Alaska Retail Association, The Alaska State Chamber of Commerce and most other chambers throughout the state because they recognize it as one of the most fair documents ever devised in th area of consumer credit. Alaskan retailers acknowledge the fact that problems do exist in the consumer credit field and are proud to suoport UCCC as the best existing answer to those problems – from the standpoint of both consumer and creditor.

Instalment Credit
GUIDE

— EXTRA EDITION —

NUMBER 183 AUGUST 19, 1968

UNIFORM CONSUMER CREDIT CODE

With Prefatory Note and Comments

FINAL DRAFT

(DRAFT SUBJECT TO CHANGES TO CONFORM TO CONSUMER CREDIT PROTECTION ACT REGULATIONS)

Extra copies of this Report may be obtained by writing Commerce Clearing House, Inc., 4025 W. Peterson Ave., Chicago, Illinois 60646. Price: 1-4 Copies, $2.00 each; 5-9 Copies, $1.80 each; 10-24 Copies, $1.70 each; 25-49 Copies, $1.50 each.

COMMERCE CLEARING HOUSE, INC.
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NEW YORK CHICAGO WASHINGTON

About This Code

The Uniform Consumer Credit Code, having been formulated with the concept that "credit transactions" is but one subject of the law, is intended to replace various laws regulating consumer and other credit transactions.

Application . . . The UCCC is generally applicable to:

(1) consumer credit sales of goods or services for $25,000 or less, consumer leases, and consumer credit sales of an interest in land for any amount;

(2) consumer loans of $25,000 or less, except that loans secured by an interest in land are covered for any amount; and

(3) insurance provided in relation to the consumer credit sale, consumer loan or consumer lease.

Purchases made and debts incurred must be primarily for personal, family, household or agricultural purpose.

Facets . . . The Code provides maximum credit service charges and is intended to replace general usury laws, consumer credit regulatory acts imposing maximum charges, and other acts providing maximum charges for loans or extensions of credit. Provisions cover the enforcement of rights, and other provisions govern administrative regulation. Advertising, referral sales, license for supervised loans, assignment of earnings, unconscionability, revolving charges, cross-collateral, adjustment of dollar amounts, prohibition of certain negotiable instruments, garnishment, and home solicitation are just a few of the many facets covered by this Code.

Exemptions . . . The Code exempts:

(1) credit extended to governments or their agencies;

(2) sale of insurance by an insurer, except for the sale of credit insurance;

(3) public utility or common carrier rates under state or federal regulation; and

(4) licensed pawnbroker transactions.

Consumer credit sale exemptions include 30-day charge accounts and services furnished on short-term credit for which no finance charge is made. Consumer loan exemptions include loans secured by business collateral. Except for disclosure and remedies, sales or loans involving an interest in land are exempt if the finance or service charge is 10% or less per year.

Federal . . . The UCCC conforms to the requirements of the Federal Consumer Credit Protection Act (INSTALMENT CREDIT GUIDE, No. 177, Extra Edition, May 22, 1968, and No. 177, Second Extra Edition, May 24, 1968) so that a UCCC state is exempt from the federal requirements.

Final Draft . . . This Final Draft of the UCCC was approved by the National Conference of Commissioners on Uniform State Laws on July 30, 1968, and by the American Bar Association on August 7, 1968.

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UNIFORM CONSUMER CREDIT CODE

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

Final Draft*

UNIFORM CONSUMER CREDIT CODE

With Prefatory Note and Comments*

* Subject to Style Changes and Changes to Conform to Requirements and Regulations of Board of Governors of the Federal Reserve System Pursuant to the Federal Consumer Credit Protection Act, and to Additions to and Corrections of Prefatory Note and Comments.

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Prefatory Note

This, the Final Draft of the Uniform Consumer Credit Code, has been approved by the National Conference of Commissioners on Uniform State Laws on July 30, 1968 and by the American Bar Association on August 7, 1968. It is, however, subject to style changes and to changes to conform it to the requirements and Regulations of the Board of Governors of the Federal Reserve System pursuant to the Federal Consumer Credit Protection Act. Moreover, this Prefatory Note and the Comments are subject to additions and corrections.

The second previous draft, the Tentative Final Draft—Working Draft No. 8, was prepared prior to action by the Congress on a final version of S. 5 (the Proxmire "Truth-in-Lending Act") or H. R. 11601 (the Sullivan "Consumer Credit Protection Act"), but after the passage of those bills by the Senate and the House, respectively. Wide distribution of that draft was made so that the Special Committee might have the advantage of further comments before the 1968 Annual Meeting of the National Conference.

The last previous draft, the Revised Tentative Final Draft—Working Draft No. 9, was prepared in the light of the enactment by the Congress and the approval by the President of S. 5, the Consumer Credit Protection Act (Public Law 90-321, 82 Stat. 146) and, specifically, of § 123 of that Act as follows:

> "§ 123. Exemption for State-regulated transactions
>
> The Board [of Governors of the Federal Reserve System] shall by regulation exempt from the requirements of this chapter [i.e., Chapter 2 of Title I of the Consumer Credit Protection Act, relating to disclosure in consumer credit transactions], any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this chapter, and that there is adequate provision for enforcement."

and in the beliefs that:

1. The Board of Governors of the Federal Reserve System will exempt by regulation from the disclosure requirements of Chapter 2 of the Consumer Credit Protection Act the classes of consumer credit transactions governed by the Uniform Consumer Credit Code within any State which enacts the Code, and

2. The provisions of the Uniform Consumer Credit Code relating to consumer credit advertising will conform to the requirements of Chapter 3 of Title I of the Consumer Credit Protection Act, relating to Credit Advertising, and to any implementing regulation prescribed by the Board of Governors of the Federal Reserve System pursuant to § 105 of the Consumer Credit Protection Act as follows:

> "§ 105. Regulations
>
> The Board shall prescribe regulations to carry out the purposes of this title [i.e., Title I including Chapter 1, General Provisions, Chapter 2, Credit Transactions, and Chapter 3, Credit Advertising]. These regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith."

Time has not permitted the Special Committee to ascertain the views of the Board of Governors of the Federal Reserve System with respect to these matters. Consequently, the Special Committee has requested and received from the National Conference authority, subject to the approval of the Executive Committee of the National Conference, and with the understanding that the changes will be submitted to the National Conference at its 1969 Annual Meeting for ratification, to make changes in this Final Draft to conform it to the requirements and regulations of the Board of Governors of the Federal Reserve System.

Research

Prior to the creation of the Special Committee, the American Bar Foundation, at the request of the Conference and of the Committee's predecessor, the Special Committee on a Uniform Retail Instalment Sales Act, undertook a thorough survey of consumer credit laws of all the States. In 1965, the American Bar Foundation published its "Trends in Consumer Credit Legislation" prepared by Miss Barbara A. Curran of the Foundation's research staff. The book has proved invaluable to the Committee.

Since the creation of the Committee, its members and staff have prepared papers on various legal, economic and sociological aspects of consumer credit. These papers have provided bases for the Committee's discussions with its staff and Advisory Committee and Panels of Advisors on specific subjects, as well as for its policy decisions.

Basic Assumptions

This draft, like those which preceded it, is predicated on various basic assumptions, including:

First, the successful American way of permitting competition to determine prices of non-monopoly commodities and services should also be allowed to apply to the pricing of money and credit;

Second, usury laws imposing inflexible price ceilings on money and credit are historical vestiges of the erroneous supposition that emperors, kings and governments could effectively fix all prices; the need to escape the rigidity of usury laws has led to special laws, which only the expert can find or understand, for most types of credit transactions requiring a charge higher than the usury rate;

Third, consumer credit legislation should be contained in one law so that any attorney can quickly and effectively advise his consumer client;

Fourth, for competition effectively to determine the pricing of money and credit requires:

a. for credit grantors, relatively easy entry into the market to avoid monopoly;

b. for knowledgeable and sophisticated credit recipients, eliminating or at least minimizing controls;

c. for the protection of less knowledgeable and less sophisticated credit recipients:

1. uniform disclosure of the costs and terms of credit to permit informed judgments as to whether or not to use credit, to facilitate

"shopping for credit," and to enable the forces of competition to work freely;

2. ceilings on the price of credit, restrictions on creditors' rights and remedies, and enhancements of debtors' rights and remedies sufficient to prevent overreaching by creditors without unduly limiting the availability of credit;

3. administrative powers and self-executing judicial remedies ample to assure compliance with statutory requirements;

4. enough financial resources available to the Administrator to enable him effectively to exercise the powers of his office; and

5. a broad-gauged Advisory Council to advise the Administrator in the exercise of his powers in the interests of our entire society and economy.

In preparing this draft on these assumptions, the Special Committee has recognized that:

a. a combination of too low ceiling rates, too substantial restrictions on creditors' rights and remedies, or too great enhancements of debtors' rights or remedies, might deprive the less credit-worthy of lawful sources of credit and drive them to "loan sharks" and other illegal credit grantors in whose hands they will enjoy no legal protections; it was to remedy the "loan shark" evil that the Russell Sage Foundation proposed its Uniform Small Loan Laws; and

b. the provisions governing ease of entry into the market, uniform disclosure of costs and terms, rate ceilings, restriction of creditors' rights and remedies, enlargement of debtors' rights and remedies, and powers granted to the Administrator are so inextricably interrelated that any substantial change in one area requires a major review of the balance struck in all other areas.

In order to permit the organization of panels of advisors on the subjects of consumer credit counseling agencies and wage earner receiverships before completing its consideration of those subjects, the Committee has made no attempt to complete the drafting of provisions relating to them, but has reserved for them Articles 7 and 8 of the Code in case, after 1968, the Committee recommends and the National Conference approves the inclusion in the Code of provisions relating to those subjects.

Uniform Legislation Desirable

The Special Committee believes that consumer credit legislation should be uniform among the States. Uniform laws on the subject will benefit both the consumer and the consumer credit industry.

Consumer understanding of credit transactions and of alternative sources of consumer credit is a primary essential for the effective operation of both consumer credit laws and of the forces of competition in consumer credit extensions. The mobility of our people makes uniformity of State consumer credit laws a prerequisite for maximum consumer understanding.

The extent to which segments of the consumer credit industry operate across the State lines makes uniformity of consumer credit laws desirable to facilitate and to reduce the costs of their interstate operations, and thus to promote competition and so ultimately to reduce the costs to the consumer of credit extensions.

Prior Drafts

The First Tentative Draft (Working Draft No. 1) was submitted for consideration to the National Conference at its 1966 Annual Meeting. Comments on that draft by the Committee's advisors and others at that meeting led the Committee to the conclusion that loan transactions and sales transactions should be treated separately.

In reaching that conclusion, the Committee was and is aware that, sociologically and economically, sales credit and loan credit are alike and that their separate treatment results in much duplication in drafting. Nevertheless, we are mindful of the weight given to Uniform Acts by Courts of States which have not enacted them. Thus, long before the Uniform Commercial Code was enacted or even introduced in New York, the New York Court of Appeals relied in part on a provision of the Uniform Commercial Code in overruling the Court's prior decisions on privity of contract and determining who may recover upon a breach of warranty in a sale of goods. The Committee believes that any encouragement to the courts of a State which has not enacted the Uniform Consumer Credit Code to rely on the Code's provisions to reject the time sale price doctrine would have most unfortunate social and economic consequences for both consumers and credit grantors.

A Second Tentative Draft (Working Draft No. 4) was prepared for consideration by the National Conference at its 1967 Annual Meeting. In order to obtain a maximum of comments, suggestions, and criticisms, more than 4,000 copies of the draft and invitations to attend a public discussion of it were distributed. Section F of the National Conference and the Committee accordingly held a public hearing on Working Draft No. 4 in June 1967.

The Second Tentative Draft (Working Draft No. 4) together with an Addendum to it predicated on the written and oral comments received before, during and after the June, 1967, hearing, were submitted to the National Conference at its 1967 Annual Meeting.

The discussions at the 1967 Annual Meeting and further consideration of the comments, compiled section-by-section, on Working Draft No. 4 led to Working Draft No. 5, not publicly distributed but considered by the Committee and its staff in preparing Working Draft No. 6. About 4,000 copies of that draft were distributed. It was considered at length at a public hearing conducted by the Committee in January, 1968. It was further discussed at joint meetings of the Committee and its Advisory Committee and Panels of Advisors on Special Subjects. These discussions and the comments on Working Draft No. 6, compiled section-by-section, led to Working Draft No. 7. That draft was not publicly distributed but provided the basis for the Tentative Final Draft (Working Draft No. 8) which, as noted above, was widely distributed with requests for comments.

Federal Disclosure Legislation

The Congress has passed and the President has approved the Consumer Credit Protection Act (Public Law 90-321; 82 Stat. 146), including as Title I—Consumer Credit Cost Disclosure, the "Truth-in-Lending Act." The Federal Act (§ 123) requires that the Board of Governors of the Federal Reserve System exempt from Federal disclosure requirements "any class of credit transactions within any State

if it [the Board] determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this chapter [i.e., Chapter 2—Credit Transactions], and that there is adequate provision for enforcement."

The Consumer Credit Protection Act consequently presents an unusual opportunity for the early enactment by the States of the Final Draft of the Uniform Consumer Credit Code. The Federal Act requires a complete review, expansion and revision of most States' consumer credit laws. In the view of the Committee it will be far better for the various States to enact a comprehensive Uniform Consumer Credit Code than to tinker with the hodgepodge of existing State consumer credit legislation.

If the Board of Governors of the Federal Reserve System is to exempt from the requirements of the Federal Act the Uniform Consumer Credit Code as enacted by any State, the Code must require at least the disclosures provided for in the Federal Act. This Final Draft attempts to do so.

Plans for Continuation of Consumer Credit Project

Under the rules of the National Conference this Special Committee will be continued for at least two years for, among others, the following purposes.

1. Assisting in enactment of the Uniform Consumer Credit Code by State Legislatures;

2. Considering insertion in the Code of provisions concerning
   (a) consumer credit counseling agencies,
   (b) wage earner receiverships; and
   (c) other appropriate subjects.

3. Receiving suggestions for modification of the Code and, in its judgment, transmitting those suggestions to the National Conference for consideration.

4. Assisting in educational programs regarding consumer credit.

After the discharge of this Special Committee, the National Conference has under consideration the advisability of creating a Permanent Review Board to receive and consider recommended changes in the Consumer Credit Code.

Liaison with the American Bar Association

In accordance with the standard procedures of the National Conference and the American Bar Association, the Committee has consulted with appropriate sections of the American Bar Association, including the Corporation, Banking and Business Law Section and the Section on Administrative Law, as well as with legal organizations affiliated with the American Bar Association, such as the National Legal Aid and Defender Association.

The Advisory Committee and the Panels of Advisors

In conformity to usual National Conference procedures, the Committee has appointed an Advisory Committee representative of affected segments of the public and of the consumer credit industry.

Whatever the Committee's other accomplishments, it has established, perhaps for the first time, a close personal working relationship, a feeling of mutual respect and a rapport between representatives of the two groups.

It is the hope of the Committee that the Council of Advisors to the Administrator proposed in this and prior drafts will continue to expand communication and relationships between representatives of groups having apparently diverse but actually identical interests—the improvement of our society and economy.

The Committee takes this opportunity of expressing its appreciation to its Advisors for their invaluable help and for the almost unlimited time and effort they have devoted to the Committee's project.

The names and addresses of the members of the Advisory Committee and of the various Panels of Advisors follow. [NOTE: The names and addresses are not reproduced.—CCH.]

UNIFORM CONSUMER CREDIT CODE

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Uniform Consumer Credit Code

An Act

Relating to certain consumer and other credit transactions and constituting the uniform consumer credit code; consolidating and revising certain aspects of the law relating to consumer and other loans, consumer and other sales of goods, services and interests in land, and consumer leases; revising the law relating to usury; regulating certain practices relating to insurance in consumer credit transactions; providing for administrative regulations of certain consumer credit transactions; making uniform the law with respect thereto; and repealing inconsistent legislation.

COMMENT

The long title of the Code should be adapted to the constitutional and statutory requirements and practices of the enacting State.

The concept of the Code is that "credit transactions" is a single subject of the law, notwithstanding its many facets.

Article 1—General Provisions and Definitions

PART 1—SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

[¶ 800] [Short Title]

Sec. 1.101. This Act shall be known and may be cited as Uniform Consumer Credit Code.

[¶ 801] Purposes; Rules of Construction

Sec. 1.102. (1) This Act shall be liberally construed and applied to promote its underlying purposes and policies.

(2) The underlying purposes and policies of this Act are:

(a) to simplify, clarify and modernize the law governing retail instalment sales, consumer credit, small loans and usury;

(b) to provide rate ceilings to assure an adequate supply of credit to consumers;

(c) to further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost;

(d) to protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;

(e) to permit and encourage the development of fair and economically sound consumer credit practices;

(f) to conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act; and

(g) to make uniform the law including administrative rules among the various jurisdictions.

[¶ 802] Supplementary General Principles of Law Applicable

Sec. 1.103. Unless displaced by the particular provisions of this Act, the Uniform Commercial Code and the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

[¶ 803] Construction Against Implicit Repeal

Sec. 1.104. This Act being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

[¶ 804] Severability

Sec. 1.105. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

[¶ 805] Adjustment of Dollar Amounts

Sec. 1.106. (1) From time to time the dollar amounts in this Act designated as subject to change shall change, as provided in this section, in accordance with and to the extent of changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: U. S. City Average, All Items, 1957-59 = 100, compiled by the Bureau of Labor Statistics, United States Department of Labor, and hereafter referred to as the Index. The Index for December, 1967, is the Reference Base Index.

(2) The designated dollar amounts shall change on July 1 of each even-numbered year if the percentage of change, calculated to the nearest whole percentage point, between the Index at the end of the preceding year and the Reference Base Index is 10 per cent or more, except that

(a) the portion of the percentage change in the Index in excess of a multiple of 10 per cent shall be disregarded and the dollar amounts shall change only in multiples of 10 per cent of the amounts appearing in this Act on the date of enactment;

(b) the dollar amounts shall not change if the amounts required by this section are those currently in effect pursuant to this Act as a result of earlier application of this section; and

(c) in no event shall the dollar amounts be reduced below the amounts appearing in this Act on the date of enactment.

(3) If the Index is revised after December, 1967, the percentage of change pursuant to this section shall be calculated on the basis of the revised Index. If the revision of the Index changes the Reference Base Index, a revised Reference Base Index shall be determined by multiplying the Reference Base Index then applicable by the ratio of the revised Index to the current Index, as each was for the first month in which the revised Index is available. If the Index is superseded, the Index referred to in this section shall be the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for consumers.

(4) The Administrator shall issue a rule announcing

(a) on or before April 30 of each year in which dollar amounts are to change, the changes in dollar amounts required by subsection (2); and

(b) promptly after the changes occur, changes in the Index required by subsection (3) including, when applicable, the numerical equivalent of the Reference Base Index under a revised Reference Base Index and the designation or title of any index superseding the Index.

(5) No person violates this Act if with respect to a transaction otherwise complying with this Act he relies on dollar amounts either determined in accordance with subsection (2) or appearing in the last rule of the Administrator announcing the then current dollar amounts.

(6) If the percentage of change between the Index at the end of the odd-numbered year preceding the effective date of this Act and the Reference Base Index would require change in the designated dollar amounts pursuant to subsection (2), the designated dollar amounts shall change upon the effective date of this Act and, on or before that date, the Administrator shall issue a rule announcing the changes required by this subsection. Subsection (5) also applies if the transaction is based on dollar amounts appearing in the Act and the Administrator has issued no rule as required by this subsection.

COMMENT

Under this section the dollar amounts designated as subject to change will automatically change on July 1 of each even-numbered year if the change in the Consumer Price Index is great enough. The Act will be enacted in all jurisdictions with the dollar amounts now appearing in it without regard to when enactment occurs. December, 1967, has been selected as the reference base period. Examples of how the section operates follow. Assume in each case that the Index for December, 1967, (the Reference Base Index) is 100. The $300 figure appearing in Section 2.201(2)(a) will be used as an illustrative dollar amount.

Case 1: The Index for December, 1969, is 107. The change from the Reference Base Index of 100 is an increase of 7%. Since the change is less than 10%, no change in dollar amounts occurs.

Case 2: The Index for December, 1971, is 112. The change from the Reference Base Index of 100 is an increase of 12%. Since this is more than 10%, a change occurs. The portion of the 12% in excess of 10% is disregarded; hence, an increase of 10% is indicated. 10% of $300 is $30. The dollar amount is $330, effective July 1, 1972.

Case 3: The Index for December, 1973, is 118. The change from the Reference Base Index of 100 is an increase of 18%. The portion of 18% in excess of 10% is disregarded; hence, an increase of 10% is indicated. However, the $300 amount changed to $330 in 1972 (see Case 2). Since the amount currently in effect ($330) is still the correct amount under this section, no change occurs.

Case 4: The Index for December, 1975, is 122. The change from the Reference Base Index of 100 is an increase of 22%. The portion of 22% in excess of a multiple of 10% (here 20%) is disregarded and a 20% increase is indicated. 20% of $300 is $60. The dollar amount is $360, effective July 1, 1976.

Case 5: The Index for December, 1977, is 117. The change from the Reference Base Index of 100 is an increase of 17%. The portion of 17% in excess of 10% is disregarded and a 10% increase is indicated. 10% of $300 is $30. The dollar amount is $330, effective July 1, 1978, a decrease from the $360 amount in effect since 1976 (see Case 4).

Case 6: State X adopts this Act on July 22, 1980, to become effective on January 1, 1981. The Index for December, 1979, is 135. A comparison of the Reference Base Index (100) with the Index for December, 1979 (135) indicates an increase of the $300 amount by 30% or $90, effective January 1, 1981. On July 1, 1982, the dollar amounts again change if subsection (2) requires.

Case 7: In 1983 BLS revises the Index, changing coverage components, and selecting a new base period. If only the coverage or components were changed, the revised Index should be used for subsequent calculations. However, if a new base period is selected (1981-82=100), an equivalent on the scale of the revised Index must be assigned to the Reference Base Index (December, 1967). Assume that the revised Index is first available for July, 1983. For that month the old Index is 200 and the new Index (1981-2=100) has gone up to 104. The revised Reference Base Index (that is, the Index for December, 1967, on the revised scale) may be found by this calculation:

$$\frac{\text{(old Index)}}{\text{(new Index)}} = \frac{200}{104} = \frac{100}{X} \quad \text{(old Reference Base Index)}$$

$$X = \frac{100 \times 104}{200}$$

X = 52 (revised Reference Base Index)

A comparison of the revised Index for December, 1983 (108) with the revised Reference Base Index (52) shows that the change from the revised Reference Base Index is an increase of 107.7%.

$$\frac{108.0 - 52.0}{52.0} = 1.077 = 107.7\%$$

Under subsection (2), 107.7% becomes 108%. The portion of 108% in excess of a multiple of 10% (here 100%) is disregarded, and a 100% increase is indicated. The dollar amount is $600, effective July 1, 1984.

[¶ 806] Waiver; Agreement to Forego Rights; Settlement of Claims

Sec. 1.107. (1) Except as otherwise provided in this Act, a buyer, lessee, or debtor may not waive or agree to forego rights or benefits under this Act.

(2) A claim by a buyer, lessee, or debtor against a creditor for an excess charge, other violation of this Act, or civil penalty, or a claim against a buyer, lessee, or debtor for default or breach of a duty imposed by this Act, if disputed in good faith, may be settled by agreement.

(3) A claim, whether or not disputed, against a buyer, lessee or debtor may be settled for less value than the amount claimed.

(4) A settlement in which the buyer, lessee, or debtor waives or agrees to forego rights or benefits under this Act is invalid if the court as a matter of law finds the settlement to have been unconscionable at the time it was made. The competence of the buyer, lessee, or debtor, any deception or coercion practiced upon him, the nature and extent of the legal advice received by him, and the value of the consideration are relevant to the issue of unconscionability.

[¶ 807] Effect of Act on Powers of Organizations

Sec. 1.108. (1) This Act prescribes maximum charges for all creditors extending consumer credit, except lessors and those excluded (Section 1.202), and displaces existing limitations on the powers of those creditors based on maximum charges.

(2) With respect to sellers of goods or services, small loan companies, licensed lenders, consumer and sales finance companies, industrial banks and loan companies, and commercial banks and trust companies, this Act displaces existing limitations on their powers based solely on amount or duration of credit.

(3) Except as provided in subsection (1) [and in the Article on Effective Date and Repealer (Article 9)], this Act does not displace limitations on powers of credit unions, savings banks, savings and loan associations, or other thrift institutions whether organized for the profit of shareholders or as mutual organizations.

(4) Except as provided in subsections (1) and (2) [and in the Article on Effective Date and Repealer (Article 9)], this Act does not displace

(a) limitations on powers of supervised financial organizations (subsection (16) of Section 1.301) with respect to the amount of a loan to a single borrower, the ratio of a loan to the value of collateral, the duration of a loan secured by an interest in land, or other similar restrictions designed to protect deposits, or

(b) limitations on powers an organization is authorized to exercise under the laws of this State or the United States.

COMMENT

The bracketed language in subsections (3) and (4) should be included and the brackets omitted if the enacting State adds to the Article on Effective Date and Repealer (Article 9) provisions displacing limitations on powers of the kinds of organizations enumerated in subsections (3) and (4).

PART 2—SCOPE AND JURISDICTION

[¶ 808] Territorial Application

Sec. 1.201. (1) Except as otherwise provided in this section, this Act applies to sales, leases, and loans made in this State and to modifications, including refinancings, consolidations, and deferrals, made in this State, of sales, leases, and loans, wherever made. For purposes of this Act

(a) a sale or modification of a sale agreement is made in this State if the buyer's agreement or offer to purchase or to modify is received by the seller in this State;

(b) a lease or modification of a lease agreement is made in this State if the lessee's agreement or offer to lease or to modify is received by the lessor in this State; and

(c) a loan or modification of a loan agreement is made in this State if a writing signed by the debtor and evidencing the debt is received by the lender in this State.

(2) With respect to sales made pursuant to a revolving charge account (Section 2.108), this Act applies if the buyer's communication or indication of his intention to establish the account is received by the seller in this State. If no communication or indication of intention is given by the buyer before the first sale, this Act applies if the seller's communication notifying the buyer of the privilege of using the account is mailed or personally delivered in this State.

(3) With respect to loans made pursuant to a lender credit card or similar arrangement (subsection (8) of Section 1.301), this Act applies if the debtor's communication or indication of his intention to establish the arrangement with the lender is received by the lender in this State. If no communication or indication of intention is given by the debtor before the first loan, this Act applies if the lender's communication notifying the debtor of the privilege of using the arrangement is mailed or personally delivered in this State.

(4) The Part on Limitations on Creditors' Remedies (Part 1) of the Article on Remedies and Penalties (Article 5) applies to actions or other proceedings brought in this State to enforce rights arising out of a consumer credit sale, consumer lease, or consumer loan, or modification thereof, wherever made.

(5) If a consumer credit sale, consumer lease, or consumer loan, or modification thereof, is made in another state to a person who is a resident of this State when the sale, lease, loan, or modification is made, the following provisions apply as though the transaction occurred in this State:

(a) a seller, lessor, lender, or assignee of his rights, may not collect charges through actions or other proceedings in excess of those permitted by the Article on Credit Sales (Article 2) or by the Article on Loans (Article 3); and

(b) a seller, lessor, lender, or assignee of his rights, may not enforce rights against the buyer, lessee, or debtor, with respect to the provisions of agreements which violate the provisions on Limitations on Agreements and Practices (Part 4) of the Article on Credit Sales (Article 2) or of the Article on Loans (Article 3).

(6) Except as provided in subsection (4), a sale, lease, loan, or modification thereof, made in another state to a person who was not a resident of this State at the time the sale, lease, loan, or modification was made is valid and

enforceable in this State according to its terms to the extent that it is valid and enforceable under the laws of the state applicable to the transaction.

(7) For the purposes of this Act, the residence of a buyer, lessee, or debtor, is the address given by him as his residence in any writing signed by him in connection with a credit transaction. Until he notifies the creditor of a new or different address, his address is presumed to be unchanged.

(8) Notwithstanding other provisions of this section

(a) except as provided in subsection (4), this Act does not apply if the buyer, lessee, or debtor is not a resident of this State at the time of a credit transaction and the parties then agree that the law of his residence applies; and

(b) this Act applies if the buyer, lessee, or debtor is a resident of this State at the time of a credit transaction and the parties then agree that the law of this State applies.

(9) Except as provided in subsection (8), the following agreements by a buyer, lessee, or debtor are invalid with respect to consumer credit sales, consumer leases, consumer loans, or modifications thereof, to which this Act applies:

(a) that the law of another state shall apply;

(b) that the buyer, lessee, or debtor consents to the jurisdiction of another state; and

(c) that fixes venue.

(10) The following provisions of this Act specify the applicable law governing certain cases:

(a) applicability (Section 6.102) of the Part on Powers and Functions of Administrator (Part 1) of the Article on Administration (Article 6); and

(b) applicability (Section 6.201) of the Part on Notification and Fees (Part 2) of the Article on Administration (Article 6).

[¶ 809] Exclusions

Sec. 1.202. This Act does not apply to

(1) extensions of credit to government or governmental agencies or instrumentalities;

(2) the sale of insurance by an insurer, except as otherwise provided in the Article on Insurance (Article 4);

(3) transactions under public utility or common carrier tariffs if a subdivision or agency of this State or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment; or

(4) the rates and charges and the disclosure of rates and charges of a licensed pawnbroker established in accordance with a statute or ordinance concerning these matters.

COMMENT

The Federal Consumer Credit Protection Act is referred to in the Comments as CCPA. Subsection (1) is derived from CCPA Section 104(1). Subsection (3) is derived from CCPA Section 104(4). Unless excluded by regulations, pawnbrokers will be subject to the CCPA. Rather than attempt to study the pawnbroker business

at this time to determine the appropriateness of applying this Code to pawnbroker transactions, the Committee suggests that the exclusion of this type of transaction from the Code be continued.

[¶ 810] [Jurisdiction and Service of Process]

[Sec. 1.203. (1) The [ ] court of this State may exercise jurisdiction over any creditor with respect to any conduct in this State governed by this Act or with respect to any claim arising from a transaction subject to this Act. In addition to any other method provided by [rule or by] statute, personal jurisdiction over a creditor may be acquired in a civil action or proceeding instituted in the [ ] court by the service of process in the manner provided by this section.

(2) If a creditor is not a resident of this State or is a corporation not authorized to do business in this State and engages in any conduct in this State governed by this Act, or engages in a transaction subject to this Act, he may designate an agent upon whom service of process may be made in this State. The agent shall be a resident of this State or a corporation authorized to do business in this State. The designation shall be in a writing and filed with the Secretary of State. If no designation is made and filed or if process cannot be served in this State upon the designated agent, process may be served upon the Secretary of State, but service upon him is not effective unless the plaintiff or petitioner forthwith mails a copy of the process and pleading by registered or certified mail to the defendant or respondent at his last reasonably ascertainable address. An affidavit of compliance with this section shall be filed with the clerk of the court on or before the return day of the process, if any, or within any further time the court allows.]

PART 3—DEFINITIONS

[¶ 811] General Definitions

Sec. 1.301. In addition to definitions appearing in subsequent Articles, in this Act

(1) "Administrator" means the Administrator designated in the Article (Article 6) on Administration (Section 6.103).

(2) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance.

(3) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

COMMENT

This definition of "agricultural products" is derived from the Agricultural Marketing Act of 1946, 7 U. S. C. Section 1626.

(4) "Closing costs" with respect to a debt secured by an interest in land includes:

(a) fees or premiums for title examination, title insurance, or similar purposes including surveys,

(b) fees for preparation of a deed, settlement statement, or other documents,

(c) escrows for future payments of taxes and insurance,

(d) fees for notarizing deeds and other documents,

(e) appraisal fees, and

(f) credit reports.

COMMENT

Except for "including surveys" in subsection(4)(a), this definition is derived from CCPA Section 106(e).

(5) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term or clause is conspicuous or not is for decision by the court.

COMMENT

This definition is derived in part from UCC Section 1-201(10).

(6) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incure debt and defer its payment.

(7) "Earnings" means compensation paid or payable to an individual or for his account for personal services rendered or to be rendered by him, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension, retirement, or disability program.

COMMENT

This definition is derived in part from CCPA Section 302(a).

(8) "Lender credit card or similar arrangement" means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using a credit card, letter of credit, or other credit confirmation or identification in transactions out of which debt arises

(a) by the lender's honoring a draft or similar order for the payment of money drawn or accepted by the debtor;

(b) by the lender's payment or agreement to pay the debtor's obligations; or

(c) by the lender's purchase from the obligee of the debtor's obligations.

(9) "Official fees" means

(a) fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit sale, consumer lease, or consumer loan; or

(b) premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale,

lease, or loan, if the premium does not exceed the fees and charges described in paragraph (a) which would otherwise be payable.

COMMENT

This subsection is derived from CCPA Section 106(d).

(10) "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(11) "Payable in instalments" means that payment is required or permitted by agreement to be made in (a) two or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which a credit service charge is made, (b) four or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which no credit service charge is made, or (c) two or more periodic payments with respect to a debt arising from a consumer loan. If any periodic payment other than the down payment under an agreement requiring or permitting two or more periodic payments is more than twice the amount of any other periodic payment, excluding the down payment, the consumer credit sale, consumer lease, or consumer loan is "payable in instalments."

COMMENT

A consumer credit sale in which the buyer has the options of paying the cash price in full in 90 days without a credit service charge or of paying in instalments the amount financed, including a credit service charge, is "payable in instalments".

(12) "Person" includes a natural person or an individual, and an organization.

(13) "Person related to" with respect to an individual means (a) the spouse of the individual, (b) a brother, brother-in-law, sister, sister-in-law of the individual, (c) an ancestor or lineal descendant of the individual or his spouse, and (d) any other relative, by blood or marriage, of the individual or his spouse who shares the same home with the individual. "Person related to" with respect to an organization means (a) a person directly or indirectly controlling, controlled by or under common control with the organization, (b) an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization, (c) the spouse of a person related to the organization, and (d) a relative by blood or marriage of a person related to the organization who shares the same home with him.

(14) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its non-existence.

(15) "Seller credit card" means an arrangement pursuant to which a person gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification primarily for the purpose of purchasing or leasing goods or services from that person, a person related to that person, or others licensed or franchised to do business under his business or trade name or designation.

(16) "Supervised financial organization" means a person, other than an insurance company or other organization primarily engaged in an insurance business,

(a) organized, chartered, or holding an authorization certificate under the laws of this State or of the United States which authorize the

person to make loans and to receive deposits, including a savings, share, certificate or deposit account, and

(b) subject to supervision by an official or agency of this State or of the United States.

(17) "United States rule" means the actuarial method of allocating payments made on a debt between principal or amount financed and loan finance charge or credit service charge, pursuant to which a payment is applied first to the accumulated loan finance charge or credit service charge and the balance is applied to the unpaid principal or amount financed.

COMMENT

For a discussion of the operation of the United States rule, see Comment to Section 2.304.

[¶ 812] Definition: "Federal Consumer Credit Protection Act"

Sec. 1.302. In this Act "Federal Consumer Credit Protection Act" means the Consumer Credit Protection Act (Public Law 90-321; 82 Stat. 146), as amended, and includes regulations issued pursuant to that Act.

[¶ 813] Index of Definitions in Act

Sec. 1.303. Definitions in this Act and the sections in which they appear are:

"Administrator"—Section 1.301(1)
"Administrator"—Section 6.103
"Agreement"—Section 1.301(2)
"Agricultural purpose"—Section 1.301(3)
"Amount financed"—Section 2.111
"Annual percentage rate" (sale)—Section 2.304
"Annual percentage rate" (loan)—Section 3.304
"Business collateral"—Section 3.105
"Cash price"—Section 2.110
"Closing costs"—Section 1.301(4)
"Conspicuous"—Section 1.301(5)
"Consumer credit insurance"—Section 4.103(1)
"Consumer credit sale"—Section 2.104
"Consumer lease"—Section 2.106
"Consumer loan"—Section 3.104
"Consumer related loan"—Section 3.602
"Consumer related sale"—Section 2.602
"Contested case"—Section 6.402(1)
"Corresponding nominal annual percentage rate" (sale)—Section 2.304
"Corresponding nominal annual percentage rate" (loan)—Section 3.304
"Credit"—Section 1.301(6)
"Credit Insurance Act"—Section 4.103(2)
"Credit service charge"—Section 2.109

"Earnings"—Section 1.301(7)
"Federal Consumer Credit Protection Act"—Section 1.302
"Goods"—Section 2.105(1)
"Home solicitation sale"—Section 2.501
"Lender"—Section 3.107(1)
"Lender credit card or similar arrangement"—Section 1.301(8)
"License"—Section 6.402(2)
"Licensing"—Section 6.402(3)
"Loan"—Section 3.106
"Loan finance charge"—Section 3.109
"Merchandise certificate"—Section 2.105(2)
"Official fees"—Section 1.301(9)
"Organization"—Section 1.301(10)
"Party"—Section 6.402(4)
"Payable in instalments"—Section 1.301(11)
"Person"—Section 1.301(12)
"Person related to"—Section 1.301(13)
"Precomputed (loan)"—Section 3.107(2)
"Precomputed (sale)"—Section 2.105(7)
"Presumed" or "presumption"—Section 1.301(14)
"Principal"—Section 3.107(3)
"Regulated lender"—Section 3.501(2)
"Regulated loan"—Section 3.501(1)
"Revolving charge account"—Section 2.108
"Revolving loan account"—Section 3.108
"Rule"—Section 6.402(5)
"Sale of goods"—Section 2.105(4)
"Sale of an interest in land"—Section 2.105(6)
"Sale of services"—Section 2.105(5)
"Seller"—Section 2.107
"Seller credit card"—Section 1.301(15)
"Services"—Section 2.105(3)
"Supervised financial organization"—Section 1.301(16)
"Supervised lender"—Section 3.501(4)
"Supervised loan"—Section 3.501(3)
"United States rule"—Section 1.301(17)

Article 2—Credit Sales

PART 1—GENERAL PROVISIONS

[¶ 814] Short Title

Sec. 2.101. This Article shall be known and may be cited as Uniform Consumer Credit Code—Credit Sales.

[¶ 815] Scope

Sec. 2.102. This Article applies to consumer credit sales, including home solicitation sales, and consumer leases; in addition Part 6 applies to consumer related sales.

[¶ 816] Definitions in Article

Sec. 2.103. The following definitions apply to this Act and appear in this Article as follows:

"Amount financed"	Section 2.111
"Annual percentage rate"	Section 2.304(2)
"Cash price"	Section 2.110
"Consumer credit sale"	Section 2.104
"Consumer lease"	Section 2.106
"Consumer related sale"	Section 2.602
"Corresponding nominal annual percentage rate"	Section 2.304(3)
"Credit service charge"	Section 2.109
"Goods"	Section 2.105(1)
"Home solicitation sale"	Section 2.501
"Merchandise certificate"	Section 2.105(2)
"Precomputed"	Section 2.105(7)
"Revolving charge account"	Section 2.108
"Sale of goods"	Section 2.105(4)
"Sale of an interest in land"	Section 2.105(6)
"Sale of services"	Section 2.105(5)
"Seller"	Section 2.107
"Services"	Section 2.105(3)

[¶ 817] Definition: "Consumer Credit Sale"

Sec. 2.104. (1) Except as provided in subsection (2), "consumer credit sale" is a sale of goods, services, or an interest in land in which

(a) credit is granted by a seller who regularly engages as a seller in credit transactions of the same kind,

(b) the buyer is a person other than an organization,

(c) the goods, services, or interest in land are purchased primarily for a personal, family, household, or agricultural purpose,

(d) either the debt is payable in instalments or a credit service charge is made, and

(e) with respect to a sale of goods or services, the amount financed does not exceed $25,000.

(2) Unless the sale is made subject to this Act by agreement (Section 2.601), "consumer credit sale" does not include

(a) a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement, or

(b) except as provided with respect to disclosure (Section 2.301) and debtors' remedies (Section 5.201), a sale of an interest in land if the credit service charge does not exceed 10 per cent per year calculated according to the United States rule on the unpaid balances of the amount financed on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term.

(3) The amount of $25,000 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

COMMENT

Subsection (1)(d) excludes from the Code two familiar credit transactions: (1) services furnished on short-term credit with neither a credit service charge nor instalment payments; professional men usually furnish their services on this basis as do many electricians, plumbers, and the like; and (2) the typical 30-day retail charge account. The credit clothing merchant or credit jeweler who does not separately state a credit service charge is covered by this section if his contracts are payable in instalments. Subsection (1)(e) excludes sales of goods or services of over $25,000, but does not do so for sale of real property.

[¶ 818] Definitions: "Goods"; "Merchandise Certificate"; "Services"; "Sale of Goods"; "Sale of Services"; "Sale of an Interest in Land"; "Precomputed"

Sec. 2.105. (1) "Goods" includes goods not in existence at the time the transaction is entered into and merchandise certificates, but excludes money, chattel paper, documents of title, and instruments.

(2) "Merchandise certificate" means a writing issued by a seller not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.

(3) "Services" includes (a) work, labor, and other personal services, (b) privileges with respect to transportation, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like, and (c) insurance provided by a person other than the insurer.

(4) "Sale of goods" includes any agreement in the form of a bailment or lease of goods if the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with his obligations under the agreement.

COMMENT

This subsection is derived from CCPA Section 103(g).

(5) "Sale of services" means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by another.

(6) "Sale of an interest in land" includes a lease in which the lessee has an option to purchase the interest and all or a substantial part of the rental or other payments previously made by him are applied to the purchase price.

(7) A sale, refinancing, or consolidation is "precomputed" if the debt is expressed as a sum comprising the amount financed and the amount of the credit service charge computed in advance.

[¶ 819] Definition: "Consumer Lease"

Sec. 2.106. (1) "Consumer lease" means a lease of goods

(a) which a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family, household, or agricultural purpose,

(b) in which the amount payable under the lease does not exceed $25,000, and

(c) which is for a term exceeding four months.

(2) "Consumer lease" does not include a lease made pursuant to a lender credit card or similar arrangement.

(3) The amount of $25,000 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

[¶ 820] Definition: "Seller"

Sec. 2.107. Except as otherwise provided, "seller" includes an assignee of the seller's right to payment but use of the term does not in itself impose on an assignee any obligation of the seller with respect to events occurring before the assignment.

COMMENT

Compare Section 3.107(1) defining lender to include an assignee. This section is intended to confer on the assignee all the rights of the seller. Unless the assignee undertakes direct collection of payments or enforcement of rights arising from the sale, he is not subject to penalties under Section 5.202.

[¶ 821] Definition: "Revolving Charge Account"

Sec. 2.108. "Revolving charge account" means an arrangement between a seller and a buyer pursuant to which (1) the seller may permit the buyer purchase goods or services on credit either from the seller or pursuant to a seller credit card, (2) the unpaid balances of amounts financed arising from purchases and the credit service and other appropriate charges are debited to an account, (3) a credit service charge if made is not precomputed but is computed on the outstanding unpaid balances of the buyer's account from time to time, and (4) the buyer has the privilege of paying the balances in instalments.

[¶ 822] Definition: "Credit Service Charge"

Sec. 2.109. "Credit service charge" means the sum of (1) all charges payable directly or indirectly by the buyer and imposed directly or indirectly by the seller as an incident to the extension of credit, including any of the following types of charges which are applicable: time price differential, service, carrying or other charge, however denominated, premium or other charge for any guarantee or insurance protecting the seller against the buyer's default or other credit loss; and (2) charges incurred for investigating the collateral or credit-worthiness of the buyer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the seller had no notice of the charges when the credit was granted. The term does not include charges as a result of default, additional charges (Section 2.202), delinquency charges (Section 2.203), or deferral charges (Section 2.204).

COMMENT

The first part of the definition is derived from CCPA Section 106(a), with changes made to relate the definition to sales. The second part broadens the definition to include charges with respect to commissions and brokerage within the credit service charge whether or not the creditor imposed them so long as he knew of the charges.

[¶ 823] Definition: "Cash Price"

Sec. 2.110. The "cash price" of goods, services, or an interest in land means the price at which the goods, services, or interest in land are offered for sale by the seller to cash buyers in the ordinary course of business, and may include (1) applicable sales, use, and excise and documentary stamp taxes, (2) the cash price of accessories or related services such as delivery, installation, servicing, repairs, alterations, and improvements, and (3) amounts actually paid or to be paid by the seller for registration, certificate of title, or license fees. The cash price stated by the seller to the buyer pursuant to the provisions on disclosure (Part 3) of this Article is presumed to be the cash price.

[¶ 824] Definition: "Amount Financed"

Sec. 2.111. "Amount financed" means the total of the following items to the extent that payment is deferred:

(1) the cash price of the goods, services, or interest in land, less the amount of any down payment whether made in cash or in property traded in,

(2) the amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in or a lien on property traded in, and

(3) if not included in the cash price

(a) any applicable sales, use, or excise and documentary stamp taxes,

(b) amounts actually paid or to be paid by the seller for registration, certificate of title, or license fees, and

(c) additional charges permitted by this Article (Section 2.202).

PART 2—MAXIMUM CHARGES

[¶ 825] Credit Service Charge for Consumer Credit Sales other than Revolving Charge Accounts

Sec. 2.201. (1) With respect to a consumer credit sale, other than a sale pursuant to a revolving charge account, a seller may contract for and receive a credit service charge not exceeding that permitted by this section.

(2) The credit service charge, calculated according to the United States rule, may not exceed the equivalent of the greater of either of the following:

(a) the total of

(i) 36 per cent per year on that part of the unpaid balances of the amount financed which is $300 or less;

(ii) 21 per cent per year on that part of the unpaid balances of the amount financed which is more than $300 but does not exceed $1,000; and

(iii) 15 per cent per year on that part of the unpaid balances of the amount financed which is more than $1,000; or

(b) 18 per cent per year on the unpaid balances of the amount financed.

(3) This section does not limit or restrict the manner of contracting for the credit service charge, whether by way of add-on, discount, or otherwise, so long as the rate of the credit service charge does not exceed that permitted by this section. If the sale is precomputed,

(a) the credit service charge may be calculated on the assumption that all scheduled payments will be made when due, and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (Section 2.210).

(4) For the purposes of this section, the term of a sale agreement commences with the date the credit is granted or, if goods are delivered or services performed 10 days or more after that date, with the date of commencement of delivery or performance. Differences in the lengths of months are disregarded and a day may be counted as 1/30th of a month. Subject to classifications and differentiations the seller may reasonably establish, a part of a month in excess of 15 days may be treated as a full month if periods of 15 days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(5) Subject to classifications and differentiations the seller may reasonably establish, he may make the same credit service charge on all amounts financed within a specified range. A credit service charge so made does not violate subsection (2) if

(a) when applied to the median amount within each range, it does not exceed the maximum permitted by subsection (2), and

(b) when applied to the lowest amount within each range, it does not produce a rate of credit service charge exceeding the rate calculated according to paragraph (a) by more than 8 per cent of the rate calculated according to paragraph (a).

(6) Notwithstanding subsection (2), the seller may contract for and receive a credit service charge of not more than $5 when the amount financed does not exceed $75 or not more than $7.50 when the amount financed exceeds $75.

(7) The amounts of $300 and $1,000 in subsection (2) are subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

COMMENT

1. *Purpose of rate ceilings provisions.* The purpose of this section and Section 3.508 (Loan Finance Charge for Supervised Loans) is to set ceilings and not to fix rates. Even under present statutes, considerable rate competition exists. The intent of this Act is to provide even more effective competition. Therefore, while this section sets rate ceilings, several other sections are designed to generate sufficient competition to set rates. In addition, other provisions have been omitted by design, because they would have tended to restrict competition. Other provisions related to this section include:

(1) Provisions for disclosure of the credit service charge and loan finance charge both in dollar amounts and as annual percentages (Article 2, Part 3; Article 3, Part 3) are designed to facilitate comparative shopping. This is the most effective means of limiting prices. For most goods and services offered for sale in competitive markets, disclosure of the price has been deemed sufficient to regulate prices.

(2) The absence of special rate ceilings according to the type of credit grantors, type of item financed, or the form of credit extension is by design. Segmentation of the market for credit by differentiated rate ceilings tends to reduce competition and introduce rigidities into the market that benefit a few suppliers at the expense of others and work to the disadvantage of consumers.

(3) Greater freedom of entry to the credit field is fostered by several provisions, as well as by several deliberate omissions. Re-

volving credit may be offered both in connection with credit sales, loans, and supervised loans. No type of credit grantor is limited by this Act in the amount of credit that may be extended. By design the license required to make supervised loans is made readily accessible to those showing financial responsibility, character, and fitness. Provisions for minimum financial assets and for a showing of convenience and advantage have been deliberately omitted, since their inclusion would tend to restrict competition and require establishment of rates, rather than ceilings.

Because of the different cost structures that will be developed as a result of this Act, comparison of these rate ceilings cannot be made to existing rate ceilings. In this respect, the rate ceilings in this section are intimately related to other parts of the Act which provide for limitations on agreements and practices (Article 2, Parts 4 and 5; Article 3, Part 4) and for limitations on creditors' remedies (Article 5, Part 1). Provisions such as holding the assignee subject to defenses (Section 2.404), buyer's right to cancel (2.502), no assignment of earnings (2.410; 3.403), and restrictions on deficiency judgments in consumer credit sales (5.103) will tend to raise operating costs of credit grantors above current levels. Other things being equal, these provisions would require higher rate ceilings than now exist. If they were not provided, the least credit-worthy consumers now in the market would be relegated to the illegal market.

The rate ceiling declines with the amount of credit granted by design. There are substantial fixed costs in granting consumer instalment credit. Up to a point the relative amount of fixed costs decline as the amount of credit granted increases. The present rate structure is designed not to restrict the amount of credit granted in any size category. Consequently, any changes in the rate ceilings provided would require a complete re-evaluation of the gradation in the structure, as well as of the other above-mentioned sections of this Act which are closely related in an economic sense to this rate ceiling.

2. *Explanation of operation of rate ceilings.* This explanation of maximum rates applies equally to credit service charges made under Section 2.201 and to loan finance charges made under Section 3.508.

It should be made clear that the graduated rates permitted are calculated on the periodic declining unpaid balances. The provisions for graduated rates should not be construed as requiring simultaneous liquidation of different portions of the original unpaid balance. Thus, the 21% annual rate permitted on unpaid balances exceeding $300, but not exceeding $1,000, does not apply to the initial unpaid balance in that range for the scheduled maturity of the loan, but only to the extent that periodic declining unpaid balances fall within the range from $300.01 to $1,000.

The operation of this principle with respect to a $1,500 principal amount of advance for twelve months is illustrated in Table A below. The table shows the total dollar charge, the monthly payments and the charge earned each month when the rates stated in Sections 2.201 and 3.508 are computed on the unpaid balance as of each scheduled payment date and each payment is applied first to the earned charge and then to principal. It also shows the unpaid balances which result from applying the rates stated in Sections 2.201 and 3.508 and the parts of each unpaid balance to which each rate applies each month. The total dollar charge so computed is $211.71, but 3¢ is waived rather than increase the final payment.

TABLE A

Amortization Schedule for $1,500 Paid In Twelve Equal And Consecutive Monthly Installments of Principal And Charge Combined With The Charge Computed At Maximum Graduated Rates Authorized by Sections 2.201 and 3.508—36% Per Year on That Part Of The Unpaid Balances Not Exceeding $300, Plus 21% Per Year On That Part Of The Unpaid Balances Exceeding $300 But Not Exceeding $1,000, Plus 15% Per Year On That Part Of The Unpaid Balances Exceeding $1,000, Yields $211.68.

Mo.	Unpaid Principal Balances Outstanding During Month @ 36%	@ 21%	@ 15%	Total	Application of $142.64 Monthly Payments Charges	Principal
1	$300.00	$700.00	$500.00	$1,500.00	$ 27.50	$ 115.14
2	300.00	700.00	384.86	1,384.86	26.06	116.58
3	300.00	700.00	268.28	1,268.28	24.60	118.04

Mo.	Unpaid Principal Balances Outstanding During Month @ 36%	@ 21%	@ 15%	Total	Application of $142.64 Monthly Payments Charges	Principal
4	300.00	700.00	150.24	1,150.24	23.13	119.51
5	300.00	700.00	30.73	1,030.73	21.63	121.01
6	300.00	609.72	....	909.72	19.67	122.97
7	300.00	486.75	....	786.75	17.52	125.12
8	300.00	361.63	....	661.63	15.33	127.31
9	300.00	234.32	....	534.32	13.10	129.54
10	300.00	104.78	....	404.78	10.83	131.81
11	272.97	....	....	272.97	8.19	134.45
12	138.52	....	....	138.52	4.12*	138.52
TOTALS					$211.68	$1,500.00

Note: Interest rates are applied to parts of unpaid principal balances scheduled to be outstanding. For example, the interest on $1,030.73 is computed as follows:

36% on	$ 300.00 =	$ 9.00
21% on	700.00 =	12.25
15% on	30.73 =	.38
	$1,030.73	$21.63

* The charge earned the last month is $4.15, but 3¢ is waived and applied to principal to make the final payment equal to the others.

For purposes of disclosure under Section 2.304(2) and 3.304(2) the credit grantor must determine the single annual percentage rate which, when applied according to the U. S. rule, earns the same dollar amount of charge that is produced by the graduated rates. Table B shows that an annual rate of 25.10% applied monthly to the periodic declining unpaid balances produces the same total dollar charge of $211.68 calculated by application of graduated rates in Table A.

TABLE B

Amortization Schedule for $1,500 Paid in Twelve Equal And Consecutive Monthly Installments Of Principal and Charge Combined Showing That The Flat Annual Percentage Rate of 25.10% Computed By The U. S. Rule Yields $211.68.

Mo.	Unpaid Principal Balances	Application of $142.64 Monthly Payments Charges	Principal
1	$1,500.00	$ 31.38	$ 111.26
2	1,388.74	29.05	113.59
3	1,275.15	26.67	115.97
4	1,159.18	24.25	118.39
5	1,040.79	21.77	120.87
6	919.92	19.24	123.40
7	796.52	16.66	125.98
8	670.54	14.03	128.61
9	541.93	11.34	131.30
10	410.63	8.59	134.05
11	276.58	5.79	136.85
12	139.73	2.91*	139.73
		$211.68	$1,500.00

* The charge earned the last month is $2.92, but 1¢ is waived and applied to principal to make the final payment equal to the others.

The Code is intended to give the creditors the following choices in making their charges under Section 2.201 and Section 3.508:

(1) The contract may be precomputed to include the dollar finance charge for payment according to schedule. In the example shown, the dollar finance charge of $211.68 would be added to the original unpaid principal, making a total of $1,711.68 to be repaid in twelve monthly instalments of $142.64.

A precomputed contract is subject to rebate for prepayment in full and to default and deferment charges in the case of delinquency or deferral. In such cases the creditor has the option (a) to rebate according to Section 2.210 or 3.210 and to make default or deferment charges according to Sections 2.203 and 2.204 or 3.203 and 3.204, *or* (b) to recompute charges at the flat annual percentage rate which yields the precomputed charge when computed according to the U. S. rule. (In the example shown that rate is 25.10%.) Under this second option, the flat annual percentage rate would be computed on the actual unpaid balances of the original principal amount (excluding precomputed charge) for the actual time outstanding and the total charge so computed would be in lieu of the precomputed charge and default and deferment charges. In the case of a precomputed loan (but not sale), if two or more instalments are delinquent ten days, the lender may convert to the flat annual percentage rate (or graduated rates) as of the due date of the first delinquent instalment rather than recompute from the beginning. See Section 3.203(4). The conversion is by rebating the precomputed charge as of the due date of the first delinquent instalment. Charges at the flat annual percentage rate on unpaid balances after conversion are in lieu of the rebate and subsequent default and deferment charges.

(2) The agreement may call for the maximum flat annual rate of charge (or lesser annual flat rate) computed on actual unpaid balances for the actual time outstanding. The flat annual percentage is the rate which yields the charge for payment according to schedule when the rate is computed according to the U. S. rule. In the example, the rate is 25.10%. In this case there is no rebate for prepayment in full because the charges are collected only as earned, and there are no separate charges for default or deferment.

(3) The agreement may call for the computation of the graduated rates on parts of the actual unpaid balance for the time actually outstanding when each payment is made. In this case there is no rebate for prepayment in full because charges are collected only as earned, and there are no separate charges for default or deferment.

(4) In the case of a credit service charge for revolving charge accounts, the charge for each period must be computed on the parts of the unpaid balance from time to time as defined in Section 2.207(2). In the case of a revolving loan account, the charge for each period must be computed on the parts of the unpaid balance from time to time as defined in Section 3.201(4).

3. *Explanation of subsection (5).* With respect to Section 2.201(5), the variation permitted is limited to 8 per cent of the *rate* of the finance charge and does not permit an 8 *percentage point* variation. For example, if a credit grantor were to levy an annual add-on finance charge of $10 per $100 of initial unpaid balance, under the provisions of this section he could establish the following maximum range for one-year contracts:

Amount Financed	Credit Service Charge
$92.40-$107.60	$10.00

The median amount financed is $100.00; that is, this amount is $7.60 from both the upper and lower limits of the specified range. Alternatively, it is just halfway between $92.40 and $107.60.

The specified range is limited by the 8 per cent requirement. On one-year contracts the add-on finance charge results in an actuarial rate of 17.972 per cent. Subparagraph (b) specifies that the yield on the lowest amount within the range may not be more than 8 per cent higher than the yield provided on the median amount. Thus the yield on the lowest amount may not exceed 19.410 per cent ($.08 \times 17.972 + 17.972 = 19.410$). It follows that the lower amount must be such that the $10 credit service charge produces an annual rate not in excess of 19.410 per cent. Interpolation from annuity tables shows that the lower amount must be about $92.40. Since the median is halfway between the upper and lower limits, the upper amount must be $107.60. These are close approximations; in actual practice very precise limits can be determined.

To gain the convenience of using a single dollar amount of credit service charge for a specified range of amounts financed the credit grantor must undercharge for amounts financed above the median. Thus the $10 credit service charge is $0.76 less than the $10.76 credit service charge that could have

been received by precise application of an add-on rate of $10 per $100 per annum on the initial unpaid balance. These results are summarized below for one-year monthly instalment contracts.

(A) Amount financed	(B) Actual finance charge	(C) Accurate finance charge	(D) Dollar difference (C) — (B)	(E) Annual percentage
$107.60	$10.00	$10.76	—$0.76	16.73%
$100.00	$10.00	$10.00	0.00	17.97%
$ 92.40	$10.00	$ 9.24	+$0.76	19.41%

4. *Explanation of subsection (6).* Subsection (6) of this section permits minimum charges equal to those for which the CCPA requires no annual percentage rate disclosure. The CCPA does not set limits on the amounts of minimum charges, but does require annual percentage rate disclosure when the minimum charges exceed those permitted by subsection (6). Subsection (6) also sets limits on the amounts of minimum charges.

[¶ 826] Additional Charges

Sec. 2.202. (1) In addition to the credit service charge permitted by this Part, a seller may contract for and receive the following additional charges in connection with a consumer credit sale:

(a) official fees and taxes;

(b) charges for insurance as described in subsection (2); and

(c) charges for other benefits, including insurance, conferred on the buyer, if the benefits are of value to him apart from the granting of the credit, the charges are reasonable in relation to the benefits, and the Administrator has by rule determined that the charges are permissible additional charges.

(2) An additional charge may be made for insurance written in connection with the sale, other than insurance protecting the seller against the buyer's default or other credit loss,

(a) with respect to insurance against loss of or damage to property, or against liability, if the seller furnishes a clear and specific statement in writing to the buyer, setting forth the cost of the insurance if obtained from or through the seller, and stating that the buyer may choose the person through which the insurance is to be obtained; and

(b) with respect to consumer credit insurance providing life, accident or health coverage, if the insurance coverage is not a factor in the approval by the seller of the extension of credit and this fact is clearly disclosed in writing to the buyer, and if, in order to obtain the insurance in connection with the extension of credit, the buyer gives specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.

(3) For the purposes of the Part on Disclosure and Advertising (Part 3), if the credit service charge with respect to a sale of an interest in land does not exceed 10 per cent per year (paragraph (b) of subsection (2) of Section 2.104), reasonable closing costs even though not within subsection (1) may be treated as additional charges.

COMMENT

Paragraph (c) of subsection (1), above, sets standards to be observed by the Administrator in determining whether charges are permissible additional charges pursuant to paragraph (c). These standards conform to the legislative history of CCPA Section 106 (d)(4) as indicated in the "Statement of Managers" on page 25 of the Conference Report on the CCPA under the heading "Other Charges." Section 6.104(2) of this

Code directs the Administrator to take into account federal regulations on the subject before adopting his rules.

CCPA Section 106(b) requires that charges or premiums for insurance be included in the "finance charge" for the purposes of disclosing the annual percentage rate or corresponding nominal annual percentage rate unless the insurance meets the tests specified in paragraph (a) or paragraph (b) of subsection (2). The effect of subsection (2) is to require that charges or premiums for insurance be included in the credit service charge for ceilings purposes as well unless the insurance meets the tests specified in paragraph (a) or paragraph (b) of subsection (2).

[¶ 827] Delinquency Charges

Sec. 2.203. (1) With respect to a precomputed consumer credit sale, refinancing, or consolidation, the parties may contract for a delinquency charge on any instalment not paid in full within 10 days after its scheduled due date in an amount not exceeding the greater of

(a) an amount, not exceeding $5, which is 5 per cent of the unpaid amount of the instalment, or

(b) the deferral charge (subsection (1) of Section 2.204) that would be permitted to defer the unpaid amount of the instalment for the period that it is delinquent.

(2) A delinquency charge under paragraph (a) of subsection (1) may be collected only once on an instalment however long it remains in default. No delinquency charge may be collected if the instalment has been deferred and a deferral charge (Section 2.204) has been paid or incurred. A delinquency charge may be collected at the time it accrues or at any time thereafter.

(3) No delinquency charge may be collected on an instalment which is paid in full within 10 days after its scheduled instalment due date even though an earlier maturing instalment or a delinquency charge on an earlier instalment may not have been paid in full. For purposes of this subsection payments are applied first to current instalments and then to delinquent instalments.

(4) The amount of $5 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

COMMENT

It should be noted that this section and later sections providing for deferral charges (Section 2.204), credit service charge upon refinancing (2.205), and rebate upon prepayment (2.210) apply only to precomputed sales. When a credit service charge is precomputed, the calculations are based on the assumption that all scheduled payments will be made when due (2.201(3)). If a buyer is late in making a payment on a precomputed sale, the seller would receive no income for the period of the delay unless a separate delinquency charge were permitted. The alternative of not permitting delinquency charges is rejected, because the result would be to enforce a lower effective ceiling on credit service charge rates for delinquent buyers than for buyers who paid promptly. The same line of reasoning that calls for a delinquency charge also supports rebates of appropriate portions of the credit service charge upon prepayment (2.210). Instead of paying behind schedule, the buyer is paying ahead of schedule. Consequently, he is entitled to a rebate of a portion of the prescheduled credit service charge.

The adjustments to the precomputed credit service charge permitted in these sections are not needed for revolving charge accounts. In general, the credit service charge accumulates in direct relation to the size of the unpaid balance and the period for which it has been outstanding. If the buyer is late in making a payment the credit service charge continues to accumulate, so that the seller is compensated for his forbearance. Similarly, the buyer may prepay the sale at any time and is obligated to pay only the credit service charge that has accumulated to the date of prepayment.

[¶ 828] Deferral Charges

Sec. 2.204. (1) With respect to a precomputed consumer credit sale, refinancing or consolidation, the parties before or after default may agree in writing to defer payment of all or part of one or more unpaid instalments, and the seller may make and collect a charge not exceeding the rate previously stated to the buyer pursuant to the provisions on disclosure (Part 3) applied to the amount or amounts deferred for the period of deferral calculated without regard to differences in lengths of months, but proportionally for a part of a month, counting each day as 1/30 of a month. A deferral charge may be collected at the time it is assessed or at any time thereafter.

(2) The seller may, in addition to the deferral charge, make appropriate additional charges (Section 2.202), and the amount of these charges which is not paid in cash may be added to the amount deferred for the purpose of calculating the deferral charge.

(3) The parties may agree in writing at the time of a precomputed consumer credit sale, refinancing, or consolidation that if an instalment is not paid within 10 days after its due date, the seller may unilaterally grant a deferral and make charges as provided in this section. No deferral charge may be made for a period after the date that the seller elects to accelerate the maturity of the agreement.

(4) A delinquency charge made by the seller on an instalment may not be retained if a deferral charge is made pursuant to this section with respect to the period of delinquency.

[¶ 829] Credit Service Charge on Refinancing

Sec. 2.205. With respect to a consumer credit sale, refinancing, or consolidation, the seller may by agreement with the buyer refinance the unpaid balance and may contract for and receive a credit service charge based on the amount financed resulting from the refinancing at a rate not exceeding that permitted by the provisions on credit service charge for consumer credit sales (Section 2.201). For the purpose of determining the credit service charge permitted, the amount financed resulting from the refinancing comprises the following:

(1) if the transaction was not precomputed, the total of the unpaid balance and accrued charges on the date of refinancing, or, if the transaction was precomputed, the amount which the buyer would have been required to pay upon prepayment pursuant to the provisions on rebate upon prepayment (Section 2.210) on the date of refinancing, except that for the purpose of computing this amount no minimum credit service charge (subsection (6) of Section 2.201) shall be allowed; and

(2) appropriate additional charges (Section 2.202), payment of which is deferred.

[¶ 830] Credit Service Charge on Consolidation

Sec. 2.206. If a buyer owes an unpaid balance to a seller with respect to a consumer credit sale, refinancing, or consolidation, and becomes obligated on another consumer credit sale, refinancing, or consolidation, with the same seller, the parties may agree to a consolidation resulting in a single schedule of payments pursuant to either of the following subsections:

(1) The parties may agree to refinance the unpaid balance with respect to the previous sale pursuant to the provisions on refinancing (Section 2.205)

and to consolidate the amount financed resulting from the refinancing by adding it to the amount financed with respect to the subsequent sale. The seller may contract for and receive a credit service charge based on the aggregate amount financed resulting from the consolidation at a rate not exceeding that permitted by the provisions on credit service charge for consumer credit sales (Section 2.201).

(2) The parties may agree to consolidate by adding together the unpaid balances with respect to the two sales.

COMMENT

Refinancing under Section 2.205 means that the balance owing is treated as though it is prepaid, with the buyer being credited with all refunds; a credit service charge is then calculated on the basis of the balance owing less refunds. Consolidation, which is covered in 2.206, refers to the process of adding together amounts owing with respect to more than one sale. There are two ways of consolidating and both are described in 2.206. Subsection (1) involves the familiar rewrite; the old balance is refinanced and added to the amount financed under the new sale. The credit service charge is based on the aggregate amounts financed. Under subsection (2) no refinancing is involved. The *balances owing* are simply added together and made payable on one schedule of payments. This usually means that the maturity of the first sale will be extended.

[¶ 831] Credit Service Charge for Revolving Charge Accounts

Sec. 2.207. (1) With respect to a consumer credit sale made pursuant to a revolving charge account, the parties to the sale may contract for the payment by the buyer of a credit service charge not exceeding that permitted in this section.

(2) A charge may be made in each billing cycle which is a percentage of an amount no greater than

(a) the average daily balance of the account,

(b) the unpaid balance of the account on the same day of the billing cycle, or

(c) the median amount within a specified range within which the average daily balance of the account or the unpaid balance of the account on the same day of the billing cycle is included. A charge may be made pursuant to this paragraph only if the seller, subject to classifications and differentiations he may reasonably establish, makes the same charge on all balances within the specified range and if the percentage when applied to the median amount within the range does not produce a charge exceeding the charge resulting from applying that percentage to the lowest amount within the range by more than 8 per cent of the charge on the median amount.

(3) If the billing cycle is monthly, the charge may not exceed 2 per cent of that part of the amount pursuant to subsection (2) which is $500 or less and 1½ per cent on that part of this amount which is more than $500. If the billing cycle is not monthly, the maximum charge is that percentage which bears the same relation to the applicable monthly percentage as the number of days in the billing cycle bears to 30. For the purposes of this section, a variation of not more than 4 days from month to month is "the same day of the billing cycle."

(4) Notwithstanding subsection (3), if there is an unpaid balance on the date as of which the credit service charge is applied, the seller may contract for and receive a charge not exceeding 50¢, if the billing cycle is monthly or longer, or the pro rata part of 50¢ which bears the same relation to 50¢ as the number of days in the billing cycle bears to 30, if the billing cycle is shorter than monthly.

(5) The amounts of $500 in subsection (3) are subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

COMMENT

CCPA Section 127(b)(6) requires the disclosure of the finance charge on open end credit plans in terms of an annual percentage rate if "the total finance charge exceeds 50¢ for a monthly or longer billing cycle, or the pro rata part of 50¢ for a billing cycle shorter than monthly." It would for all practical purposes be impossible to express a minimum charge in terms of an annual percentage rate. Consequently, subsection (4) prescribes as the minimum the amount of the charge for which the CCPA requires no annual percentage rate disclosure. It also prescribes the method of calculating the pro rata part of the permitted minimum charge when the billing cycle is less than one month.

[¶ 832] Advances to Perform Covenants of Buyer

Sec. 2.208. (1) If the agreement with respect to a consumer credit sale, refinancing, or consolidation contains covenants by the buyer to perform certain duties pertaining to insuring or preserving collateral and the seller pursuant to the agreement pays for performance of the duties on behalf of the buyer, he may add the amounts paid to the debt. Within a reasonable time after advancing any sums, he shall state to the buyer in writing the amount of the sums advanced, any charges with respect to this amount, and any revised payment schedule and, if the duties of the buyer performed by the seller pertain to insurance, a brief description of the insurance paid for by the seller including the type and amount of coverages. No further information need be given.

(2) A credit service charge may be made for sums advanced pursuant to subsection (1) at a rate not exceeding the rate stated to the buyer pursuant to the provisions on disclosure (Part 3) with respect to the sale, refinancing, or consolidation, except that with respect to a revolving charge account the amount of the advance may be added to the unpaid balance of the account and the seller may make a credit service charge not exceeding that permitted by the provisions on credit service charge for revolving charge accounts (Section 2.207).

[¶ 833] Right to Prepay

Sec. 2.209. Subject to the provisions on rebate upon prepayment (Section 2.210), the buyer may prepay in full the unpaid balance of a consumer credit sale, refinancing, or consolidation at any time without penalty.

[¶ 834] Rebate Upon Prepayment

Sec. 2.210. (1) Except as provided in subsection (2), upon prepayment in full of the unpaid balance of a precomputed consumer credit sale, refinancing, or consolidation, an amount not less than the unearned portion of the credit service charge calculated according to this section shall be rebated to the buyer. If the rebate otherwise required is less than $1, no rebate need be made.

(2) Upon prepayment in full of a consumer credit sale, refinancing, or consolidation, other than one pursuant to a revolving charge account, if the credit service charge then earned is less than any permitted minimum credit service charge (subsection (6) of Section 2.201) contracted for, whether or not the sale, refinancing, or consolidation is precomputed, the seller may collect or retain the minimum charge, as if earned, not exceeding the credit service charge contracted for.

(3) Except as otherwise provided in this subsection with respect to a sale of an interest in land or a consumer credit sale secured by an interest in land, the unearned portion of the credit service charge is a fraction of the credit service charge of which the numerator is the sum of the periodic balances scheduled to follow the computational period in which prepayment occurs, and the denominator is the sum of all periodic balances under either the sale agreement or, if the balance owing resulted from a refinancing (Section 2.205) or a consolidation (Section 2.206), under the refinancing agreement or consolidation agreement. In the case of a sale of an interest in land or a consumer credit sale secured by an interest in land, reasonable sums actually paid or payable to persons not related to the seller for customary closing costs included in the credit service charge are deducted from the credit service charge before the calculation prescribed by this subsection is made.

COMMENT

Subsection (3), together with paragraph (a) of subsection (4), states the "Rule of 78" with respect to a sale, refinancing or consolidation payable in equal instalments at equal intervals from the date of the sale, refinancing or consolidation to the final scheduled payment date. In the case of such a sale, refinancing or consolidation, "computational period" may read as "scheduled payment period", and the provisions relating to irregular payment schedules, viz., paragraphs (b), (c) and (d) of subsection (4) and subsection (5) in its entirety, may be disregarded.

(4) In this section

(a) "periodic balance" means the amount scheduled to be outstanding on the last day of a computational period before deducting the payment, if any, scheduled to be made on that day;

(b) "computational period" means one month if one-half or more of the intervals between scheduled payments under the agreement is one month or more, and otherwise means one week;

(c) the "interval" to the due date of the first scheduled instalment or the final scheduled payment date is measured from the date of a sale, refinancing, or consolidation, or any later date prescribed for calculating maximum credit service charges (subsection (4) of Section 2.201), and includes either the first or last day of the interval;

(d) if the interval to the due date of the first scheduled instalment does not exceed one month by more than 15 days when the computational period is one month, or 11 days when the computational period is one week, the interval shall be considered as one computational period.

(5) This subsection applies only if the schedule of payments is not regular (subsection (6) of Section 2.304).

(a) If the computational period is one month and

(i) if the number of days in the interval to the due date of the first scheduled instalment is less than one month by more than 5 days, or more than one month by more than 5 but not more than

15 days, the unearned credit service charge shall be increased by an adjustment for each day by which the interval is less than one month and, at the option of the seller, may be reduced by an adjustment for each day by which the interval is more than one month; the adjustment for each day shall be 1/30th of that part of the credit service charge earned in the computational period prior to the due date of the first scheduled instalment assuming that period to be one month; and

(ii) if the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full month, the additional number of days shall be considered a computational period only if 16 days or more. This subparagraph applies whether or not subparagraph (i) applies.

(b) Notwithstanding paragraph (a), if the computational period is one month, the number of days in the interval to the due date of the first instalment exceeds one month by not more than 15 days, and the schedule of payments is otherwise regular, the seller may, at his option, exclude the extra days and the charge for the extra days in computing the unearned credit service charge; but if he does so and a rebate is required before the due date of the first scheduled instalment, he shall compute the earned charge for each elapsed day as 1/30th of the amount the earned charge would have been if the first interval had been one month.

(c) If the computational period is one week and

(i) if the number of days in the interval to the due date of the first scheduled instalment is less than 5 days, or more than 9 days but not more than 11 days, the unearned credit service charge shall be increased by an adjustment for each day by which the interval is less than 7 days and, at the option of the seller, may be reduced by an adjustment for each day by which the interval is more than 7 days; the adjustment for each day shall be 1/7th of that part of the credit service charge earned in the computational period prior to the due date of the first scheduled instalment assuming that period to be one week; and

(ii) if the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full week, the additional number of days shall be considered a computational period only if 4 days or more. This subparagraph applies whether or not subparagraph (i) applies.

(6) If a deferral (Section 2.204) has been agreed to, the unearned portion of the credit service charge shall be computed without regard to the deferral. The amount of deferral charge earned at the date of prepayment shall also be calculated. If the deferral charge earned is less than the deferral charge paid, the difference shall be added to the unearned portion of the credit service charge. If any part of a deferral charge has been earned but has not been paid, that part shall be subtracted from the unearned portion of the credit service charge, or shall be added to the unpaid balance.

(7) This section does not preclude the collection or retention by the seller of delinquency charges (Section 2.203).

(8) If the maturity is accelerated for any reason and judgment is obtained, the buyer is entitled to the same rebate as if payment had been made on the date judgment is entered.

(9) Upon prepayment in full of a consumer credit sale by the proceeds of consumer credit insurance (Section 4.103), the buyer or his estate is entitled to the same rebate as though the buyer had prepaid the agreement on the date the proceeds of the insurance are paid to the seller, but no later than 10 business days after satisfactory proof of loss is furnished to the seller.

COMMENT

Subsection (9) applies only in the case of consumer credit insurance as defined in Section 4.103, *i.e.*, insurance over which the creditor has partial control, and resolves a question under prior law. When a consumer credit sale is prepaid in full by proceeds of insurance other than consumer credit insurance, the prior provisions of Section 2.210 apply. Examples of the application of Section 2.210 follow:

Example 1:

Time sale contract executed July 1, 1968, and goods delivered the same day. Payable in 12 equal monthly payments beginning August 1, 1968.

1. Sale price is $1,000.00, credit service charge is $71.24, and the monthiy payment is $89.27. Debtor prepays in full on October 1, 1968.

a. The "computational period" is one month (subsection (4)(b)). The "interval to the due date of the first instalment" starts July 1 (subsection (4)(c) and subsection (4) of Section 2.201) and, being one month, constitutes one computational period. No part of subsection (5) is applicable.

The denominator of the fraction called for by subsection (3) is therefore the sum of the 12 scheduled unpaid balances as of the last days of the months of July, 1968, through June, 1969, *before* deducting the payments scheduled for those days (subsection (4)(a)).

Sum of 12 balances (1,071.24; 981.97; 892.70 . . . 89.27) = 6,963.06.

b. The computational periods in the numerator of the fraction called for by subsection (3) begin with the one starting on October 2, 1968, so the numerator is the sum of the nine scheduled unpaid balances as of the first days of the months of November, 1968, through July, 1969, *before* deducting the payments scheduled for those days (subsection (4)(a)).

Sum of nine balances (803.43; 714.16; 624.89 . . . 89.27) = 4,017.15.

c. Refund is $\frac{4{,}017.15}{6{,}963.06} \times 71.24 = \$41.10$

Example 2:

Time sale contract executed July 1, 1968, and goods delivered same day. Payable in 26 equal weekly payments beginning July 8. Sale price is $400.00, credit service charge is $31.60, and the weekly payment is $16.60. Debtor prepays in full on July 29, 1968.

a. The "computational period" is one week (subsection (4)(b)). The "interval to the due date of the first instalment" starts July 1 (subsection (4)(c) and subsection (4) of Section 2.201) and, being one week, constitutes one computational period. No part of subsection (5) is applicable.

The denominator of the fraction called for by subsection (3) therefor is the sum of the 26 scheduled unpaid balances as of July 8, 15, 22, 29 and so on, *before* deducting the payments scheduled for those days (subsection (4)(a)).

Sum of 26 balances (431.60, 415.00, 398.40, . . ., 16.60) = 5,826.60.

b. The computational periods in the numerator of the fraction called for by subsection (3) begin with the one starting on July 30, so the numerator is the sum of the 22 scheduled unpaid balances beginning August 5, 1968, *before* deducting the payments scheduled for those days (subsection (4)(a)).

Sum of 22 balances (365.20, 348.60 . . . 16.60) = 4,199.80.

c. Refund is $\frac{4{,}199.80}{5{,}826.60} \times 3.160 = \$22.78$

Example 3:

Time sale executed June 26, 1968, and goods delivered July 9, 1968. Payable in 12 equal monthly payments beginning August 15. Sale price is $1,000.00, credit service charge is $71.24, and the monthly payment is $89.27. Debtor prepays in full on November 10, 1968.

a. The "computational period" is one month (subsection (4)(b)). The "interval to the due date of the first instalment" starts July 9 (subsection (4)(c) and subsection (4) of Section 2.201) and constitutes one computational period (subsection (4)(d)). Since the interval is 37 days, the seller has the option of reducing the rebate by an adjustment for seven days (subsection (5)(a)(i)). Subsection (5)(a)(ii) does not apply.

The denominator of the fraction called for by subsection (3) therefore is the sum of the 12 scheduled unpaid balances as of the 15th days of the months of August through July *before* deducting the payment scheduled for those days (subsection (4)(a)).

Sum of 12 balances (1,071.24; 981.97; 892.70 . . . 89.27) = 6,963.06.

The adjustment is found by taking 7/30 of the credit service charge earned in the computational period to the first scheduled due date or:

$$\frac{7}{30} \times \frac{\text{Beginning balance}}{\text{Denominator as determined above}} \times \text{Credit Service Charge.}$$

$$\frac{7}{30} \times \frac{1{,}071.24}{6{,}963.06} \times 71.24 = \$2.56.$$

b. The computational periods in the numerator of the fraction called for by subsection (3) begin with the one starting on November 16 (subsection (3)) so the numerator is the sum of the eight scheduled balances as of the 15th of the months of December, 1968, through July, 1969, *before* deducting the payment scheduled for that day.

Sum of eight balances (714.16; 624.89; 535.62 . . . 89.27) = 3,213.72.

c. Refund is $\frac{3{,}213.72}{6{,}963.06} \times 71.24 = \$32.88.$

$32.88 minus adjustment of $2.56 = $30.32.

Example 4:

Time sale executed June 28, 1968, and goods delivered July 3, 1968. Payable in 26 weekly payments beginning July 8. Sale price is $400.00, credit service charge is $31.60, and the weekly payment is $16.60. Debtor prepays in full on July 23, 1968.

a. The "computational period" is one week (subsection (4)(b)). The "interval to the due date of the first instalment" starts June 28 (subsection (4)(c) and subsection (4) of Section 2.201) and constitutes one computational period (subsection (4)(d)). Since the interval is ten days, the seller has the option of reducing the rebate by an adjustment for three days (subsection (5)(b)(i)). Subsection (5)(b)(ii) does not apply.

The denominator of the fraction called for by subsection (3) therefore is the sum of the 26 scheduled unpaid balances as of July 8, 15, 22 and 29 and so on, *before* deducting the payments scheduled for those days (subsection (4)(a)).

Sum of 26 balances (431.60; 415.00; 398.40 . . . 16.60) = 5,826.60.

The adjustment is found by taking 3/7 of the credit service charge earned in the computational period to the first scheduled due date or:

$$\frac{3}{7} \times \frac{\text{Beginning balance}}{\text{Denominator as determined above}} \times \text{Credit service charge.}$$

$$\frac{3}{7} \times \frac{431.60}{5{,}826.60} \times 31.60 = \$1.00.$$

b. The computational periods in the numerator of the fraction called for by subsection (7) begin with the one starting July 30, so the numerator is the sum of the 22 scheduled unpaid balances beginning August 5, 1968, *before* deducting the payments scheduled for those days (subsection (1)(a)).

Sum of 22 balances (365.20; 348.60 . . . 16.60) = 4,199.80.

c. Refund is $\frac{4{,}199.80}{5{,}826.60} \times 31.60 = 22.78.$

$22.78 minus adjustment of $1.00 = $21.78.

Example 5:

Time sale executed July 9, 1968, and the goods delivered July 12, 1968. Payments scheduled on November 15, 1968 and November 15, 1969. Sale price is $1,000.00, credit service charge is $104.36, and each of the two payments is $552.18. Debtor prepays on January 10, 1969.

a. The "computational period" is one month (subsection (4)(b)). The "interval to the due date of the first instalment" starts on July 9, 1968 (subsection (4) of Section 2.201) and is more than 45 days, so the special rule of subsection (4)(d) and the adjustment of subsection (5)(a)(i) do not apply. The interval to the final scheduled payment date is 16 months and six days. The additional days, being less than 16, are disregarded (subsection (5)(a)(ii)).

The denominator of the fraction called for by subsection (3) therefore is the sum of the 16 scheduled unpaid balances as of the 8th days of the months of August, 1968, through November, 1969 (subsection (4)(a)).

Balance of $1,104.36 for four computational periods	= $ 4,417.44
Balance of $552.18 for 12 computational periods	= 6,626.16
Total denominator	$11,043.60

b. The computational periods in the numerator of the fraction called for by subsection (3) begin with the one starting on February 9, 1969, so the numerator is the sum of the nine scheduled unpaid balances as of the 8th days of the months of March through November, 1969.

Balance of $552.18 for nine computational periods $4,969.62.

c. Refund is $\frac{\$\ 4,969.62}{\$11,043.60} \times 104.36 = \$46.96$

Example 6:

Same facts as in Example 5, except the debtor did not pay the installment due 11/15/68 in full, but paid $184.18 (approximately 1/3 of the installment) and was permitted to defer the rest ($368.00) until March 15 (four months). A deferral charge of $17.00 was assessed, so the amount coming due March 15 is $385.00. Debtor prepays in full on 10 January 1969.

a. Compute the rebate of credit service charge as though the extension had not occurred (subsection (6)) and as though the balances had been reduced as *scheduled* (subsection (4)(a)). The computations are the same as in Example 5 and the rebate of credit service charge is $46.96 as in Example 5.

b. Compute also the rebate of unearned deferral charge. Of the 120 days of the extension period 64 remained at the time of the prepayment so the rebate of deferral charge is:

$$\frac{64}{120} \times 17 = \$9.07$$

PART 3—DISCLOSURE AND ADVERTISING

[¶ 835] Applicability; Information Required

Sec. 2.301. (1) For purposes of this Part, consumer credit sale includes the sale of an interest in land without regard to the rate of the credit service charge if the sale is otherwise a consumer credit sale (Section 2.104).

(2) The seller shall disclose to the buyer to whom credit is extended with respect to a consumer credit sale the information required by either

(a) this Part, or

(b) except with respect to a consumer credit sale of an interest in land or secured by an interest in land, the Federal Consumer Credit Protection Act.

(3) For the purposes of paragraph (b) of subsection (2), information which would otherwise be required pursuant to the Federal Consumer Credit Protection Act is sufficient even though the transaction is one of a class of credit transactions exempted from that Act pursuant to a determination by the Board of Governors of the Federal Reserve System that the class of transactions is subject under the law of this State to requirements substantially similar to those imposed under that Act.

(4) The lessor shall disclose to the lessee to whom credit is extended with respect to a consumer lease the information required by this Part.

[¶ 836] General Disclosure Requirements and Provisions

Sec. 2.302. (1) The disclosure by this Part

(a) shall be made clearly and conspicuously;

(b) shall be in writing, a copy of which shall be delivered to the buyer or lessee, but need not be contained in a single writing nor made in the order set forth in this Part;

(c) may use terminology different from that employed in this Part if it conveys substantially the same meaning;

(d) may be supplemented by additional information or explanations supplied by the seller or lessor;

(e) need be made only to the extent applicable and only as to those items for which the seller or lessor makes a separate charge to the buyer or lessee;

(f) shall be made on the assumption that all scheduled instalments are paid when due; and

(g) comply with this Part although rendered inaccurate by any act, occurrence, or agreement subsequent to the required disclosure.

(2) Except with respect to sales made by telephone or mail (Section 2.305) and consolidations (Section 2.308),

(a) the disclosures required by this Part shall be made before credit is extended, but may be made in the sale, refinancing, or consolidation agreement, lease, or other evidence of indebtedness to be signed by the buyer or lessee if set forth conspicuously therein, and need be made only to one buyer or lessee if there are more than one, and

(b) if an evidence of indebtedness is signed by the buyer or lessee, the seller or lessor shall give him a copy when the writing is signed.

(3) Except as provided with respect to rescission by a buyer (Section 5.204) and civil liability for violations of disclosure provisions (subsection (4) of Section 5.203), written acknowledgment of receipt by a buyer or lessee to whom a statement is required to be given pursuant to this Part

(a) in an action or proceeding by or against the original seller or lessor, creates a presumption that the statement was given, and

(b) in an action or proceeding by or against an assignee without knowledge to the contrary when he acquires the obligation, is conclusive proof of the delivery of the statement and, unless the violation is apparent on the face of the statement, of compliance with this Part.

[¶ 837] Overstatement

Sec. 2.303. The disclosure of an amount or percentage which is greater than the amount or percentage required to be disclosed under this Part does not in itself constitute a violation of this Part if the overstatement is not materially misleading and is not used to avoid meaningful disclosure.

COMMENT

This section is derived from CCPA Sections 103(1) and 107(b).

[¶ 838] Calculation of Rate to Be Disclosed

Sec. 2.304. (1) Except as otherwise specifically provided, if a seller is required to give to a buyer a statement of the rate of the credit service charge he shall state the rate in terms of an annual percentage rate as defined in subsection (2) or in terms of a corresponding nominal annual percentage rate as defined in subsection (3), whichever is appropriate.

(2) "Annual percentage rate"

(a) with respect to a consumer credit sale other than one made pursuant to a revolving charge account, is either

(i) that nominal annual percentage rate which, when applied to the unpaid balances of the amount financed calculated according to the United States rule, will yield a sum equal to the amount of the credit service charge, or

(ii) that rate determined by any method prescribed by the Administrator as a method which materially simplifies computation while retaining reasonable accuracy as compared with the rate determined pursuant to subparagraph (i);

(b) with respect to a consumer credit sale made pursuant to a revolving charge account, is the quotient expressed as a percentage of the total credit service charge for the period to which it relates divided by the amount upon which the credit service charge for that period is based, multiplied by the number of these periods in a year; if the period is one day, the number of periods in a year is deemed to be 360.

(3) "Corresponding nominal annual percentage rate" is the percentage or percentages used to calculate the credit service charge for one billing cycle or other period pursuant to a revolving charge account multiplied by the number of billing cycles or periods in a year; if the period is one day, the number of periods in a year is deemed to be 360.

(4) If a seller is permitted to make the same credit service charge for all amounts financed within a specified range (subsection (5) of Section 2.201) or for all balances within a specified range (subsection (2) of Section 2.207), he shall state the annual percentage rate or corresponding nominal annual percentage rate, whichever is appropriate, as applied to the median amount of the range within which the actual amount financed or balance is included.

(5) If a debt is payable on a schedule of instalment payments which is regular except for one or more of the following irregularities:

(a) the amount of one instalment payment is not substantially equal to the amount of each of the other instalment payments;

(b) the interval between the date the credit is granted and the first instalment payment is not equal to the interval between instalment payments; or

(c) in one or more payment periods no instalment payment is due, not exceeding one-fourth of the payment periods in any year if the length of the term of the agreement is a year or more, or one-fourth of the payment periods if the length of the term of the agreement is less than a year, the seller may, at his option, calculate the rate to be disclosed as if the debt were payable under an agreement having the same amount financed, the same length of term to the nearest full scheduled payment period, and a regular schedule of payments having the same interval between payments as the interval between the majority of instalments as scheduled in the sale agreement.

(6) A schedule of payments is regular if (a) the instalment payments other than the down payment are substantially equal in amount, (b) the interval between instalment payments is one month, or the intervals between instalment payments are equal and less than one month, and (c) the interval between the date the credit is granted and the first instalment payment is equal to the interval between instalment payments.

(7) If the credit service charge does not begin to accrue until after the date the credit is granted, the seller may, at his option, calculate the rate to be disclosed on the basis of the period between the date when the credit service

charge begins to accrue and the date of the final payment under the agreement, and, if he does so, he shall inform the buyer of the date when the credit service charge begins to accrue.

(8) A statement of rate complies with this Part if it does not vary from the accurately computed rate by more than the following tolerances:

(a) the annual percentage rate may be rounded to the nearest quarter of 1 per cent for consumer credit sales payable in substantially equal instalments when a seller determines the total credit service charge on the basis of a single add-on, discount, periodic, or other rate, and the rate is converted into an annual percentage rate under procedures prescribed by the Administrator;

(b) the Administrator may authorize the use of rate tables or charts which may provide for the disclosure of annual percentage rates which vary from the rate determined in accordance with paragraph (a) by not more than the tolerances the Administrator may allow; the Administrator may not allow a tolerance greater than 8 per cent of that rate except to simplify compliance where irregular payments are involved; and

(c) in case a seller determines the annual percentage rate in a manner other than as described in paragraph (a) or (b), the Administrator may authorize other reasonable tolerances.

COMMENT

1. Definition of "annual percentage rate" is derived from CCPA Section 107(a). The definition "corresponding nominal annual percentage rate" is derived from CCPA Section 127(a)(4) and (b)(5). Subsections (5) - (7) are intended to deal with irregular contracts and are subject to approval by the Board. Subsection (8) is derived from CCPA Section 107(c) - (e).

2. The assumption underlying the United States rule is that a periodic payment is applied first to the unpaid credit service charge. If the payment exceeds the unpaid credit service charge, the remainder of the payment is applied to reduce the unpaid balance of the amount financed. This procedure is based upon *Story v. Livingston*, 38 U. S. 359 (1839).

To illustrate the application of this rule assume that the amount financed on a four-month contract is $500, and that the credit service charge is $12.56. Four monthly payments of $128.14 are contemplated. Thus the amount financed ($500) plus the credit service charge ($12.56) equals the original unpaid balance ($512.56), which is divided into four equal monthly payments, the first payment being one month from date of contract. The application of the United States rule is demonstrated below:

(A)		(B)		(C)		(D)		(E)
				Application of payment				
Unpaid balance of amount financed		Monthly rate		Credit service charge		Amount financed		Total monthly payment (C) + (D)
500.00	×	1%	=	5.00		123.14		128.14
376.86	×	1%	=	3.77		124.37		128.14
252.49	×	1%	=	2.52		125.62		128.14
126.87	×	1%	=	1.27		126.87		128.14
				12.56	+	500.00	=	512.56

Rate disclosure involves finding that rate which will generate the stated credit service charge when applied to the unpaid balances of the amount financed according to the United States rule. A monthly rate of 1% produces a credit service charge of $12.56, the difference between the sum of the monthly payments and the amount financed. The annual percentage rate would be twelve times the monthly rate, or 12%. In mathematical literature this is generally referred to as the nominal annual rate.

Note the application of the U. S. rule. In the first month the first $5 (1% × $500) of the monthly payment of $128.14 is applied to the credit service charge, leaving a balance of $123.14. This remainder is then applied to reduce the unpaid balance of the amount financed from $500 to $376.86. The same process is repeated in subsequent months.

[¶ 839] Sales Made by Telephone or Mail

Sec. 2.305. (1) With respect to a consumer credit sale, other than a sale made pursuant to a revolving charge account, if the seller receives a purchase order or offer by mail or telephone without personal solicitation, the seller complies with this Part if (a) he makes the disclosures at the time and in the manner provided in the general disclosure requirements and provisions (subsection (2) of Section 2.302), or (b) the seller's catalog or other printed material distributed to the public sets forth the cash price, the method of determining the deferred payment price, and the terms of financing, including the annual percentage rate, and before the first payment is due on the sale, he gives the information required by this Part including the notice prescribed in subsection (2).

(2) The notice shall be in writing and conspicuous and shall provide that if the buyer does not wish to make the purchase on credit, he may, within 15 days of receipt of the notice, prepay the obligation as to that purchase for an amount stated or identified in the notice and avoid the payment of any credit service charge as to that purchase. A prepayment under this Section is subject to the provisions of this Act on prepayment, except that no credit service charge shall be made if prepayment in full is made within the period specified in the notice. Payment by mail is effective when posted.

COMMENT

This section is derived in part from CCPA Section 128(c).

[¶ 840] Consumer Credit Sales Not Pursuant to Revolving Charge Account

Sec. 2.306. (1) This section applies to a consumer credit sale not made pursuant to a revolving charge account (Section 2.310).

(2) The seller shall give to the buyer the following information:

(a) brief description or identification of the goods, services, or interest in land;

(b) cash price of the goods, services, or interest in land, and any applicable sales, use, excise, transfer, or documentary stamp taxes not included in the cash price; if property and related services are sold as part of one transaction, the price of the property and services may be separately stated or combined;

(c) amount of the down payment and a statement of the portion paid in money and the portion paid by an allowance for property traded in; if there is a security interest in the property traded in which the seller agrees to discharge, the seller shall also state the amount which the seller agrees to pay to discharge the security interest and this amount may be deducted from the allowance for property traded in;

(d) difference between the amount of cash price (paragraph (b)) and the amount of down payment (paragraph (c));

(e) amount paid or payable for registration, certificate of title or license fees, if not included in the cash price, and a description or identification of the fees;

(f) amount of official fees and taxes if not included in the cash price and a description or identification of them;

(g) brief description of insurance to be provided or paid for by the seller including the type and amount of the coverages, and if a separate charge is made, the amount of the charge;

(h) amount of other additional charges (Section 2.202), and a brief description or identification of them;

(i) amount financed (sum of amounts stated in paragraphs (d), (e), (f), (g), and (h));

(j) except in the case of a sale of a dwelling when the credit service charge does not exceed 10 per cent per year (Section 2.104), the amount of the credit service charge and the amount of the unpaid balance (amount financed plus credit service charge);

(k) rate of the credit service charge as applied to the amount financed in accordance with the provisions on calculation of rate (Section 2.304), except in the case of a credit service charge which does not exceed $5 when the amount financed does not exceed $75 or $7.50 when the amount financed exceeds $75;

(l) number of payments, amount of each payment, due date of first payment, and the due date of subsequent payments or interval between payments;

(m) default, delinquency, or similar charges payable in the event of late payments; and

(n) description of any security interest held or to be retained or acquired by the seller in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

COMMENT

This section is derived in part from CCPA Section 128.

[¶ 841] Refinancing

Sec. 2.307. If the seller refinances the balance owing with respect to a consumer credit sale, refinancing, or consolidation pursuant to the provisions on refinancing (Section 2.205), he shall state to the buyer the following:

(1) unpaid balance before refinancing;

(2) amount and brief itemization of rebates to which buyer would have been entitled if the debt had been prepaid pursuant to the provisions on rebate upon prepayment (Section 2.210) on the date of refinancing, except that for the purpose of computing this amount no minimum credit service charge (subsection (6) of Section 2.201) shall be allowed;

(3) amount and brief itemization of additional charges in connection with the refinancing and a brief indication of any change in the type or terms of insurance;

(4) amount financed resulting from the refinancing;

(5) amount of credit service charge;

(6) amount of unpaid balance;

(7) number of payments, amount of each payment, due date f first payment, and the due date of subsequent payments or interval between payments; and

(8) rate of the credit service charge as applied to the amount financed in accordance with the provisions on calculation of rate (Section 2.304), except in the case of a credit service charge which does not exceed $5 when the amount financed does not exceed $75 or $7.50 when the amount financed exceeds $75.

[¶ 842] Consolidation

Sec. 2.308. (1) Except as provided in subsection (2), if the parties agree to consolidate an existing unpaid balance from a previous consumer credit sale, refinancing, or consolidation, with the amount financed from a subsequent consumer credit sale, refinancing, or consolidation, the seller shall state:

(a) with respect to the refinanced unpaid balance, the information required by the provisions on refinancing (subsections (1) through (4) of Section 2.307);

(b) with respect to the subsequent sale, the information required by the provisions on consumer credit sales other than revolving charge accounts (paragraphs (a) through (j) of subsection (2) of Section 2.306);

(c) the aggregate amount financed, the amount of the credit service charge, the amount of the unpaid balance, the number of payments, the amount of each payment, the due date of the first payment, and the due dates of subsequent payments or the interval between payments; and

(d) the rate of the credit service charge as applied to the aggregate amount financed in accordance with the provisions on calculation of rate (Section 2.304), except in the case of a credit service charge which does not exceed $5 when the aggregate amount financed does not exceed $75 or $7.50 when the amount financed exceeds $75.

(2) If a consumer credit sale is made pursuant to an agreement providing for the addition of the unpaid balance resulting from a subsequent sale to an existing unpaid balance resulting from a previous sale, and the buyer has approved in writing both the annual percentage rate or rates and the method of computing the credit service charge or charges,

(a) the information required to be given with respect to the subsequent sale (Section 2.306) may be given on or before the due date of the first instalment under the consolidated schedule of payments; and

(b) with respect to the consolidation, the seller, on or before the due date of the first instalment under the consolidated schedule of payments, shall state to the buyer the amount of the consolidated unpaid balance, the number of payments, amount of each payment, the due date of the first payment, and the due dates of subsequent payments or the interval between payments.

COMMENT

Subsection (2) is derived from CCPA Section 128(d). The security problem raised in that section of the CCPA is covered in Section 2.409.

[¶ 843] **Deferral**

Sec. 2.309. If the seller makes a deferral pursuant to the provisions on deferral charges (Section 2.204), he shall state to the buyer, at the time of or promptly after the deferral:

(1) amount deferred;

(2) any appropriate additional charges (Section 2.202);

(3) aggregate amount deferred, which is the sum of the amount in (1) and any unpaid amount included in (2);

(4) time to which payment is deferred; and

(5) amount and annual percentage rate of the deferral charge and when it is payable.

[¶ 844] **Revolving Charge Accounts**

Sec. 2.310. (1) Before making a consumer credit sale pursuant to a revolving charge account, the seller shall give to the buyer the following information:

(a) conditions under which a credit service charge may be made, including the time period, if any, within which any credit extended may be repaid without incurring a credit service charge;

(b) method of determining the balance upon which a credit service charge will be computed;

(c) method of determining the amount of the credit service charge, including the periodic percentage or percentages used to calculate the credit service charge and the amount of any minimum credit service charge;

(d) corresponding nominal annual percentage rate (subsection (3) of Section 2.304); if more than one corresponding nominal annual percentage rate may be used, the amount of a balance to which each corresponding nominal annual percentage rate applies shall also be stated;

(e) if the seller elects he may also state either

(i) the average effective annual percentage rate of return received from revolving charge accounts for a representative period of time; or

(ii) if circumstances are such that the computation of a rate under subparagraph (i) would not be feasible or practical, or would be misleading or meaningless, a projected rate of return to be received from revolving charge accounts; the Administrator shall prescribe rules, consistent with commonly accepted standards for accounting or statistical procedures, to carry out the purposes of this paragraph (e);

(f) conditions under which additional charges may be made and the method by which they will be determined; and

(g) conditions under which the seller may retain or acquire a security interest in property to secure the balances resulting from sales made pursuant to the revolving charge account, and a description of the interest or interests which may be retained or acquired.

(2) If there is an outstanding balance owing at the end of the billing cycle or if a credit service charge is made with respect to the billing cycle, the seller shall give to the buyer the following information within a reasonable time after the end of the billing cycle:

(a) outstanding balance at the beginning of the billing cycle;

(b) cash price and date of each sale during the billing cycle and, unless previously furnished, a brief description or identification of the goods or services sold;

(c) amount credited to the account during the billing cycle;

(d) amount of credit service charge and additional charges debited during the billing cycle, with an itemization or explanation to show the total amount of credit service charge, if any, due to the application of one or more periodic percentages and the amount, if any, imposed as a minimum charge;

(e) the periodic percentage used to calculate the credit service charge; if more than one periodic percentage is used, each percentage and the amount of the balance to which each applies;

(f) the balance on which the credit service charge is computed and a statement of how the balance is determined; if the balance is determined without first deducting all amounts credited during the period, that fact and the amounts credited shall also be stated;

(g) if the credit service charge for the billing cycle exceeds 50¢ for a monthly or longer billing cycle, or the pro rata part of 50¢ for a billing cycle shorter than monthly, the credit service charge expressed as an annual percentage rate (paragraph (b) of subsection (2) of Section 2.304); if more than one periodic percentage is used to calculate the credit service charge, the seller may, in lieu of stating a single annual percentage rate, state more than one annual percentage rate and the amount of the balance to which each annual percentage rate applies;

(h) if the credit service charge for the billing cycle does not exceed 50¢ for a monthly or longer billing cycle, or the pro rata part of 50¢ for a billing cycle shorter than monthly, the corresponding nominal annual percentage rate (subsection (3) of Section 2.304);

(i) if the seller elects, the average effective annual percentage rate of return or the projected rate as prescribed in paragraph (e) of subsection (1);

(j) outstanding balance at the end of the billing cycle; and

(k) date by which or period within which payment must be made to avoid additional credit service charges.

COMMENT

1. This section is derived in part from CCPA Section 127.

2. If the balance on which the charge is calculated is $750 and the creditor's monthly percentages are 1½% on the first $500 and 1% on the remainder, he would state the corresponding nominal annual percentage rates as 18% on the first $500 and 12% on the remaining $250.

[¶ 845] Consumer Leases

Sec. 2.311. With respect to a consumer lease the lessor shall give to the lessee the following information:

(1) brief description or identification of the goods;

(2) amount of any payment required at the inception of the lease;

(3) amount paid or payable for official fees, registration, certificate of title, or license fees or taxes;

(4) amount of other charges not included in the periodic payments and a brief description of the charges;

(5) brief description of insurance to be provided or paid for by the lessor, including the types and amounts of the coverages;

(6) number of periodic payments, the amount of each payment, the due date of the first payment, the due dates of subsequent payments or interval between payments, and the total amount payable by the lessee;

(7) statement of the conditions under which the lessee may terminate the lease prior to the end of the term; and

(8) statement of the liabilities the lease imposes upon the lessee at the end of the term.

[¶ 846] Content of Periodic Statements

Sec. 2.312. The Administrator may by rule require a creditor who transmits periodic statements in connection with any consumer credit sale, not made pursuant to a revolving charge account, to set forth in each statement each of the following items:

(1) the annual percentage rate of the credit service charge with respect to each consumer credit sale to which the statement relates;

(2) the date by which or the period, if any, within which payment must be made in order to avoid further credit service charges or other charges; and

(3) the other items set forth in the provisions on disclosure with respect to revolving charge accounts (subsection (2) of Section 2.310) appropriate to the terms and conditions under which the consumer credit sale is made.

COMMENT

Since this section, derived from CCPA Section 126, may not be in the best interests of consumers, it becomes operative only upon a ruling by the Administrator.

[¶ 847] Advertising

Sec. 2.313. (1) No seller or lessor shall engage in this State in false or misleading advertising concerning the terms or conditions of credit with respect to a consumer credit sale or consumer lease.

(2) Without limiting the generality of subsection (1) and without requiring a statement of rate of credit service charge if the credit service charge is not more than $5 when the amount financed does not exceed $75 or more than $7.50 when the amount financed exceeds $75, an advertisement with respect to a consumer credit sale made by the posting of a public sign, or by catalog, magazine, newspaper, radio, television, or similar mass media, is misleading if

(a) it states the rate of credit service charge and the rate is not stated in the form required by the provisions on calculation of rate to be disclosed (Section 2.304), or

(b) it states the dollar amounts of the credit service charge or instalment payments, and does not also state the rate of any credit service charge and the number and amount of the instalment payments.

(3) In this section a catalog or other multiple-page advertisement is considered a single advertisement if it clearly and conspicuously displays a credit terms table setting forth the information required by this section.

(4) This section imposes no liability on the owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

(5) Advertising which complies with the Federal Consumer Credit Protection Act does not violate subsection (2).

PART 4.—LIMITATIONS ON AGREEMENTS AND PRACTICES

[¶ 848] Scope

Sec. 2.401. This Part applies to consumer credit sales and consumer leases.

[¶ 849] Use of Multiple Agreements

Sec. 2.402. A seller may not use multiple agreements with intent to obtain a higher credit service charge than would otherwise be permitted by this Article or to avoid disclosure of an annual percentage rate pursuant to the provisions on disclosure and advertising (Part 3). The excess amount of credit service charge provided for in agreements in violation of this section is an excess charge for the purposes of the provisions on the effect of violations on rights of parties (Section 5.202) and the provisions on civil actions by Administrator (Section 6.113).

[¶ 850] Certain Negotiable Instruments Prohibited

Sec. 2.403. In a consumer credit sale or consumer lease, other than a sale or lease primarily for an agricultural purpose, the seller or lessor may not take a negotiable instrument other than a check as evidence of the obligation of the buyer or lessee. A holder is not in good faith if he takes a negotiable instrument with notice that it is issued in violation of this section. A holder in due course is not subject to the liabilities set forth in the provisions on the effect of violations on rights of parties (Section 5.202) and the provisions on civil actions by Administrator (Section 6.113)

COMMENT

Since the prohibition against negotiable notes in consumer financing will be well known in the financial community after enactment of this Act, professional financers buying consumer paper will normally not qualify as holders in due course with respect to notes taken by dealers in violation of this section and negotiated to them. However, it is possible that in rare cases second or third takers may not know of an instrument's consumer origin; in this unusual situation the policy favoring negotiability is upheld in order not to cast a cloud over negotiable instruments generally. A person who takes a negotiable note in violation of this section is subject to Sections 5.202 and 6.113.

[¶ 851] Assignee Subject to Defenses

Sec. 2.404. *Alternative A:* With respect to a consumer credit sale or consumer lease, other than a sale or lease primarily for an agricultural purpose, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the buyer or lessee against the seller or lessor arising out of the sale or lease notwithstanding an agreement to the contrary, but the assignee's liability under this section may not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. Rights of the buyer or lessee under this section can only be asserted as a matter of defense to or set-off against a claim by the assignee.

[¶ 852] When Assignee Not Subject to Defenses

Sec. 2.404. *Alternative B:* (1) With respect to a consumer credit sale or consumer lease, other than a sale or lease primarily for an agricultural purpose, an agreement by the buyer or lessee not to assert against an assignee a claim or defense arising out of the sale or lease is enforceable only by an assignee not related to the seller or lessor who acquires the buyer's or lessee's contract in good faith and for value, who gives the buyer or lessee notice of the assignment as provided in this section and who, within 3 months after the mailing of the notice of assignment, receives no written notice of the facts giving rise to the buyer's or lessee's claim or defense. This agreement is enforceable only with respect to claims or defenses which have arisen before the end of the 3-month period after notice was mailed. The notice of assignment shall be in writing and addressed to the buyer or lessee at his address as stated in the contract, identify the contract, describe the goods or services, state the names of the seller or lessor and buyer or lessee, the name and address of the assignee, the amount payable by the buyer or lessee and the number, amounts and due dates of the instalments, and contain a conspicuous notice to the buyer or lessee that he has 3 months within which to notify the assignee in writing of any complaints, claims or defenses he may have against the seller or lessor and that if written notification of the complaints, claims or defenses is not received by the assignee within the 3-month period, the assignee will have the right to enforce the contract free of any claims or defenses the buyer or lessee may have against the seller or lessor which have arisen before the end of the 3-month period after notice was mailed.

(2) An assignee does not acquire a buyer's or lessee's contract in good faith within the meaning of subsection (1) if the assignee has knowledge or, from his course of dealing with the seller or lessor or his records, notice of substantial complaints by other buyers or lessees of the seller's or lessor's failure or refusal to perform his contracts with them and of the seller's or lessor's failure to remedy his defaults within a reasonable time after the assignee notifies him of the complaints.

(3) To the extent that under this section an assignee is subject to claims or defenses of the buyer or lessee against the seller or lessor, the assignee's liability under this section may not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee and rights of the buyer or lessee under this section can only be asserted as a matter of defense to or set-off against a claim by the assignee.

[¶ 853] Balloon Payments

Sec. 2.405. With respect to a consumer credit sale, other than one primarily for an agricultural purpose or one pursuant to a revolving charge account, if any scheduled payment is more than twice as large as the average of earlier scheduled payments, the buyer has the right to refinance the amount of that payment at the time it is due without penalty. The terms of the refinancing shall be no less favorable to the buyer than the terms of the original sale. These provisions do not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the buyer.

[¶ 854] Restriction on Liability in Consumer Lease

Sec. 2.406. The obligation of a lessee upon expiration of a consumer lease, other than one primarily for an agricultural purpose, may not exceed twice the average payment allocable to a monthly period under the lease. This

limitation does not apply to charges for damages to the leased property or for other default.

[¶ 855] Security in Sales or Leases

Sec. 2.407. (1) With respect to a consumer credit sale, a seller may take a security interest in the property sold. In addition, a seller may take a security interest in goods upon which services are performed or in which goods sold are installed or to which they are annexed, or in land to which the goods are affixed or which is maintained, repaired or improved as a result of the sale of the goods or services, if in the case of a security interest in land the debt secured is $1,000 or more, or, in the case of a security interest in goods the debt secured is $300 or more. The seller may also take a security interest in any property of the buyer to secure the debt arising from a consumer credit sale primarily for an agricultural purpose. Except as provided with respect to cross-collateral (Section 2.408), a seller may not otherwise take a security interest in property of the buyer to secure the debt arising from a consumer credit sale.

(2) With respect to a consumer lease other than a lease primarily for an agricultural purpose, a lessor may not take a security interest in property of the lessee to secure the debt arising from the lease.

(3) A security interest taken in violation of this section is void.

(4) The amounts of $1,000 and $300 in subsection (1) are subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

[¶ 856] Cross-Collateral

Sec. 2.408. (1) In addition to contracting for a security interest pursuant to the provisions on security in sales or leases (Section 2.407), a seller in a consumer credit sale may secure the debt arising from the sale by contracting for a security interest in other property if as a result of a prior sale the seller has an existing security interest in the other property. The seller may also contract for a security interest in the property sold in the subsequent sale as security for the previous debt.

(2) If the seller contracts for a security interest in other property pursuant to this section, the rate of credit service charge thereafter on the aggregate unpaid balances so secured may not exceed that permitted if the balances so secured were consolidated pursuant to the provisions on consolidation involving a refinancing (subsection (1) of Section 2.206). The seller has a reasonable time after so contracting to make any adjustments required by this section. "Seller" in this section does not include an assignee not related to the original seller.

[¶ 857] Debt Secured by Cross-Collateral

Sec. 2.409. (1) If debts arising from two or more consumer credit sales, other than sales primarily for an agricultural purpose or pursuant to a revolving charge account, are secured by cross-collateral (Section 2.408) or consolidated into one debt payable on a single schedule of payments, and the debt is secured by security interests taken with respect to one or more of the sales, payments received by the seller after the taking of the cross-collateral or the consolidation are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been first applied to the

payment of the debts arising from the sales first made. To the extent debts are paid according to this section, security interests in items of property terminate as the debts originally incurred with respect to each item is paid.

(2) Payments received by the seller upon a revolving charge account are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of credit service charges in the order of their entry to the account and then to the payment of debts in the order in which the entries to the account showing the debts were made.

(3) If the debts consolidated arose from two or more sales made on the same day, payments received by the seller are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of the smallest debt.

COMMENT

Subsection (1) states the first-in-first-out rule for consolidations and subsection (2) applies the same principle to revolving charge accounts. Subsection (3) covers the case in which the buyer purchases a $750 TV in one department at 9:30 a. m. and a $150 typewriter in another department at 10:00 a. m. Subsequently the debts are consolidated. This subsection relieves the seller of having to keep records of the exact hour a sale is made. It is derived from Consumer Credit Protection Act Section 128(d).

[¶ 858] No Assignment of Earnings

Sec. 2.410. A seller or lessor may not take an assignment of earnings of the buyer or lessee for payment or as security for payment of a debt arising out of a consumer credit sale or a consumer lease. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the buyer or lessee. This section does not prohibit an employee from authorizing deductions from his earnings if the authorization is revocable.

[¶ 859] Referral Sales

Sec. 2.411. With respect to a consumer credit sale or consumer lease the seller or lessor may not give or offer to give a rebate or discount or otherwise pay or offer to pay value to the buyer or lessee as an inducement for a sale or lease in consideration of his giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale or lease to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease. If a buyer or lessee is induced by a violation of this section to enter into a consumer credit sale or consumer lease, the agreement is unenforceable by the seller or lessor and the buyer or lessee, at his option, may rescind the agreement or retain the goods delivered and the benefit of any services performed, without any obligation to pay for them.

[¶ 860] Notice of Assignment

Sec. 2.412. The buyer or lessee is authorized to pay the original seller or lessor until the buyer or lessee receives notification of assignment of the rights to payment pursuant to a consumer credit sale or consumer lease and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the buyer or

lessee, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the buyer or lessee may pay the seller or lessor.

COMMENT

This section is derived from UCC Section 9-318(3).

[¶ 861] Attorney's Fees

Alternative A:

Sec. 2.413. With respect to a consumer sale or consumer lease the agreement may not provide for the payment by the buyer or lessee of attorney's fees. A provision in violation of this section is unenforceable.

[¶ 862] Attorney's Fees

Alternative B:

Sec. 2.413. With respect to a consumer credit sale or consumer lease the agreement may provide for the payment by the buyer or lessee of reasonable attorney's fees not in excess of 15 per cent of the unpaid debt after default and referral to an attorney not a salaried employee of the seller, or of the lessor or his assignee. A provision in violation of this section is unenforceable.

[¶ 863] Limitation on Default Charges

Sec. 2.414. Except for reasonable expenses incurred in realizing on a security interest, the agreement with respect to a consumer credit sale may not provide for any charges as a result of default by the buyer other than those authorized by this Act. A provision in violation of this section is unenforceable.

[¶ 864] Authorization to Confess Judgment Prohibited

Sec. 2.415. A buyer or lessee may not authorize any person to confess judgment on a claim arising out of a consumer credit sale or consumer lease. An authorization in violation of this section is void.

[¶ 865] Change in Terms of Revolving Charge Accounts

Sec. 2.416. (1) If a seller makes a change in the terms of a revolving charge account without complying with this section any additional cost or charge to the buyer resulting from the change is an excess charge and subject to the remedies available to debtors (Section 5.202) and to the Administrator (Section 6.113).

(2) A seller may change the terms of a revolving charge account whether or not the change is authorized by prior agreement. Except as provided in subsection (3), the seller shall give to the buyer written notice of any change at least three times, with the first notice at least six months before the effective date of the change.

(3) The notice specified in subsection (2) is not required if

(a) the buyer after receiving notice of the change agrees in writing to the change;

(b) the buyer elects to pay an amount designated on a billing statement (subsection (2) of Section 2.310) as including a new charge for a

benefit offered to the buyer when the benefit and charge constitute the charge in terms and when the billing statement also states the amount payable if the new charge is excluded;

(c) the change involves no significant cost to the buyer;

(d) the buyer has previously consented in writing to the kind of change made and notice of the change is given to the buyer in two billing cycles prior to the effective date of the change; or

(e) the change applies only to purchases made or obligations incurred after a date specified in a notice of the change given in two billing cycles prior to the effective date of the change.

(4) The notice provided for in this section is given to the buyer when mailed to him at the address used by the seller for sending periodic billing statements.

PART 5—HOME SOLICITATION SALES

[¶ 866] Definition: "Home Solicitation Sale"

Sec. 2.501. "Home solicitation sale" means a consumer credit sale of goods, other than farm equipment, or services in which the seller or a person acting for him engages in a personal solicitation of the sale at a residence of the buyer and the buyer's agreement or offer to purchase is there given to the seller or a person acting for him. It does not include a sale made pursuant to a preexisting revolving charge account, or a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale.

[¶ 867] Buyer's Right to Cancel

Sec. 2.502. (1) Except as provided in subsection (5), in addition to any right otherwise to revoke an offer, the buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase which complies with this Part.

(2) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement or offer to purchase.

(3) Notice of cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid.

(4) Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale.

(5) The buyer may not cancel a home solicitation sale if the buyer requests the seller to provide goods or services without delay because of an emergency, and

(a) the seller in good faith makes a substantial beginning of performance of the contract before the buyer gives notice of cancellation, and

(b) in the case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer.

(6) If a home solicitation sale is also subject to the provisions on debtors' right to rescind certain transactions (Section 5.204), the buyer may proceed either under those provisions or under this Part.

[¶ 868] Form of Agreement or Offer; Statement of Buyer's Rights

Sec. 2.503. (1) In a home solicitation sale, unless the buyer requests the seller to provide goods or services without delay in an emergency, the seller must present to the buyer and obtain his signature to a written agreement or offer to purchase which designates as the date of the transaction the date on which the buyer actually signs and contains a statement of the buyer's rights which complies with subsection (2).

(2) The statement must

(a) appear under the conspicuous caption: "BUYER'S RIGHT TO CANCEL", and

(b) read as follows: "If this agreement was solicited at your residence and you do not want the goods or services, you may cancel this agreement by mailing a notice to the seller. The notice must say that you do not want the goods or services and must be mailed before midnight on the third business day after you sign this agreement. The notice must be mailed to: ———————————————. If you cancel,
(insert name and mailing address of seller)
the seller may keep all or part of your cash down payment."

(3) Until the seller has complied with this section the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of his intention to cancel.

[¶ 869] Restoration of Down Payment; Retention of Cancellation Fee

Sec. 2.504. (1) Except as provided in this section, within 10 days after a home solicitation sale has been cancelled or an offer to purchase revoked the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.

(2) If the down payment includes goods traded in, the goods must be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) The seller may retain as a cancellation fee 5 per cent of the cash price but not exceeding the amount of the cash down payment. If the seller fails to comply with an obligation imposed by this section, or if the buyer avoids the sale on any ground independent of his right to cancel provided by the provisions on the buyer's right to cancel (subsection (1) of Section 2.502) or revokes his offer to purchase, the seller is not entitled to retain a cancellation fee.

(4) Until the seller has complied with the obligations imposed by this section the buyer may retain possession of goods delivered to him by the seller and has a lien on the goods in his possession or control for any recovery to which he is entitled.

[¶ 870] Duty of Buyer; No Compensation for Services Prior to Cancellation

Sec. 2.505. (1) Except as provided by the provisions on retention of goods by the buyer (subsection (4) of Section 2.504), within a reasonable time after a home solicitation sale has been cancelled or an offer to purchase

revoked, the buyer upon demand must tender to the seller any goods delivered by the seller pursuant to the sale but he is not obligated to tender at any place other than his residence. If the seller fails to demand possession of goods within a reasonable time after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them. For the purpose of this section, 40 days is presumed to be a reasonable time.

(2) The buyer has a duty to take reasonable care of the goods in his possession both before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk.

(3) If the seller has performed any services pursuant to a home solicitation sale prior to its cancellation, the seller is entitled to no compensation except the cancellation fee provided in this Part.

PART 6—SALES OTHER THAN CONSUMER CREDIT SALES

[¶ 871] Sales Subject to Act by Agreement of Parties

Sec. 2.601. The parties to a sale other than a consumer credit sale may agree in a writing signed by the parties that the sale is subject to the provisions of this Act applying to consumer credit sales. If the parties so agree the sale is a consumer credit sale for the purposes of this Act.

[¶ 872] Definition: "Consumer Related Sale"; Rate of Credit Service Charge

Sec. 2.602. (1) A "consumer related sale" is a sale of goods, services, or an interest in land which is not subject to the provisions of this Act applying to consumer credit sales and in which the amount financed does not exceed $25,000 if

(a) the buyer is a person other than an organization; or

(b) the debt is secured primarily by a security interest in a one or two family dwelling occupied by a person related to the debtor.

(2) With respect to a consumer related sale not made pursuant to a revolving charge account, the parties may contract for the payment by the buyer of an amount comprising the amount financed and a credit service charge not in excess of 18 per cent per year calculated according to the United States rule on the unpaid balances of the amount financed.

(3) With respect to a consumer related sale made pursuant to a revolving charge account, the parties may contract for the payment of a credit service charge not in excess of that permitted by the provisions on credit service charge for revolving charge accounts (Section 2.207).

(4) The amount of $25,000 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

COMMENT

This section imposes a rate ceiling on certain sales not subject to the rate ceilings for consumer credit sales. The principal cases covered are (1) credit sales by a seller not regularly engaged in similar credit transactions, (2) credit sales to persons for a business purpose, and (3) sales of one or two family dwellings to an organization where the dwelling is occupied by an individual related to the organization. The ceiling does not apply if the amount financed exceeds $25,000 or, except in the dwelling case, if the debtor is an organization.

[¶ 873] Applicability of Other Provisions to Consumer Related Sales

Sec. 2.603. Except for the rate of the credit service charge and the rights to prepay and to rebate upon prepayment, the provisions of Part 2 of this Article apply to a consumer related sale.

[¶ 874] Limitation on Default Charges in Consumer Related Sales

Sec. 2.604. (1) The agreement with respect to a consumer related sale may provide for only the following charges as a result of the buyer's default:

(a) reasonable attorney's fees and reasonable expenses incurred in realizing on a security interest;

(b) deferral charges not in excess of 18 per cent per year of the amount deferred for the period of deferral; and

(c) other charges that could have been made had the sale been a consumer credit sale.

(2) A provision in violation of this section is unenforceable.

[¶ 875] Credit Service Charge for Other Sales

Sec. 2.605. With respect to a sale other than a consumer credit sale or a consumer related sale, the parties may contract for the payment by the buyer of any credit service charge.

COMMENT

See Section 5.107—Extortionate Extensions of Credit.

Article 3—Loans

PART 1—GENERAL PROVISIONS

[¶ 876] Short Title

Sec. 3.101. This Article shall be known and may be cited as Uniform Consumer Credit Code—Loans.

[¶ 877] Scope

Sec. 3.102. This Article applies to consumer loans, including regulated and supervised loans; in addition Part 6 applies to consumer related loans.

[¶ 878] Definitions in Article

Sec. 3.103. The following definitions apply to this Act and appear in this Article as follows:

"Annual percentage rate"	Section 3.304(2)
"Business collateral"	Section 3.105
"Consumer loan"	Section 3.104
"Consumer related loan"	Section 3.602(1)
"Corresponding nominal annual percentage rate"	Section 3.304(3)
"Lender"	Section 3.107(1)
"Loan"	Section 3.106
"Loan finance charge"	Section 3.109
"Precomputed"	Section 3.107(2)
"Principal"	Section 3.107(3)
"Regulated lender"	Section 3.501(2)
"Regulated loan"	Section 3.501(1)
"Revolving loan account"	Section 3.108
"Supervised lender"	Section 3.501(4)
"Supervised loan"	Section 3.501(3)

[¶ 879] Definition: "Consumer Loan"

Sec. 3.104. (1) Except as provided in subsection (2), "consumer loan" is a loan made by a person regularly engaged in the business of making loans in which

(a) the debtor is a person other than an organization;

(b) the debt is incurred primarily for a personal, family, household, or agricultural purpose;

(c) either the debt is payable in instalments or a loan finance charge is made; and

(d) either the principal does not exceed $25,000 or the debt is secured by an interest in land.

(2) Unless the loan is made subject to this Act by agreement (Section 3.601), "consumer loan" does not include a loan which is secured primarily by

(a) business collateral, if at the time the loan is made the value of this collateral is substantial in relation to the amount of the loan, or,

(b) except as provided with respect to disclosure (Section 3.301) and debtors' remedies (Section 5.201), an interest in land, if at the time the loan is made the value of this collateral is substantial in relation to the amount of the loan, and the loan finance charge does not exceed 10 per cent per year calculated according to the United States rule on the unpaid balances of the principal on the assumption that the debt will be paid according to the agreed terms and will not be paid before the end of the agreed term.

(3) The amount of $25,000 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amount (Section 1.106).

COMMENT

The purpose of subsection (2)(b) is to exclude the ordinary home mortgage from all provisions of this Act except the rate provisions; however, the Act is intended to include as a consumer loan the high rate loans which are characteristic of the second mortgage small loan business. Because the ordinary home mortgage invariably has a loan finance charge below 10 per cent, the exclusion has been based on the amount of the loan finance charge.

[¶ 880] Definition: "Business Collateral"

Sec. 3.105. "Business collateral" means an interest in land used primarily for other than a personal, family, household, or agricultural purpose, or accounts or contract rights other than earnings, business equipment, chattel paper, documents of title, instruments, inventory, or business general intangibles. Business equipment does not include farm equipment.

[¶ 881] Definition: "Loan"

Sec. 3.106. "Loan" includes

(1) the creation of debt by the lender's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor;

(2) the creation of debt by a credit to an account with the lender upon which the debtor is entitled to draw immediately;

(3) the creation of debt pursuant to a lender credit card or similar arrangement; and

(4) the forbearance of debt arising from a loan.

[¶ 882] Definitions: "Lender"; "Precomputed"; "Principal"

Sec. 3.107. (1) Except as otherwise provided, "lender" includes an assignee of the lender's right to payment but use of the term does not in itself impose on an assignee any obligation of the lender with respect to events occurring before the assignment.

(2) A loan, refinancing, or consolidation is "precomputed" if the debt is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance.

(3) "Principal" of a loan means the total of

(a) the net amount paid to, receivable by, or paid or payable for the account of the debtor,

(b) the amount of any discount excluded from the loan finance charge (subsection (2) of Section 3.109), and,

(c) to the extent that payment is deferred,

(i) amounts actually paid or to be paid by the lender for registration, certificate of title, or license fees if not included in (a), and

(ii) additional charges permitted by this Article (Section 3.202).

[¶ 883] Definition: "Revolving Loan Account"

Sec. 3.108. "Revolving loan account" means an arrangement between a lender and a debtor pursuant to which (1) the lender may permit the debtor to obtain loans from time to time, (2) the unpaid balances of principal and the loan finance and other appropriate charges are debited to an account, (3) a loan finance charge if made is not precomputed but is computed on the outstanding unpaid balances of the debtor's account from time to time, and (4) the debtor has the privilege of paying the balances in instalments.

COMMENT

The usual use of the revolving loan account in consumer transactions is in connection with lender credit cards or check credit plans.

[¶ 884] Definition: "Loan Finance Charge"

Sec. 3.109. (1) "Loan finance charge" means the sum of (a) all charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit, including any of the following types of charges which are applicable: interest or any amount payable under a point, discount, or other system of charges, however denominated, premium or other charge for any guarantee or insurance protecting the lender against the debtor's default or other credit loss; and (b) charges incurred for investigating the collateral or credit-worthiness of the debtor or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable unless the lender had no notice of the charges when the loan was made. The term does not include charges as a result of default, additional charges (Section 3.202), delinquency charges (Section 3.203), or deferral charges (Section 3.204).

(2) If a lender makes a loan to a debtor by purchasing or satisfying obligations of the debtor pursuant to a lender credit card or similar arrangement, and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the loan finance charge.

PART 2—MAXIMUM CHARGES

[¶ 885] Loan Finance Charge for Consumer Loans other than Supervised Loans

Sec. 3.201. (1) With respect to a consumer loan other than a supervised loan (Section 3.501), a lender may contract for and receive a loan finance charge, calculated according to the United States rule, not exceeding 18 per cent per year on the unpaid balances of the principal.

(2) This section does not limit or restrict the manner of contracting for the loan finance charge, whether by way of add-on, discount, or otherwise,

so long as the rate of the loan finance charge does not exceed that permitted by this section. If the loan is precomputed,

(a) the loan finance charge may be calculated on the assumption that all scheduled payments will be made when due, and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (Section 3.210).

(3) For the purposes of this section, the term of a loan commences with the date the loan is made. Differences in the lengths of months are disregarded and a day may be counted as 1/30th of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of 15 days may be treated as a full month if periods of 15 days or less are disregarded and if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(4) With respect to a consumer loan made pursuant to a revolving loan account

(a) the loan finance charge shall be deemed not to exceed 18 per cent per year if the loan finance charge contracted for and received does not exceed a charge in each monthly billing cycle which is 1½ per cent of an amount no greater than

(i) the average daily balance of the debt,

(ii) the unpaid balance of the debt on the same day of the billing cycle, or

(iii) the median amount within a specified range within which the average daily balance or the unpaid balance of the debt, on the same day of the billing cycle, is included; a charge may be made pursuant to this subparagraph only if the lender, subject to the classifications and differentiations he may reasonably establish, makes the same charge on all balances within a specified range and if the percentage when applied to the median amount within the range does not produce a charge exceeding the charge resulting from applying that percentage to the lowest amount within the range by more than 8 per cent of the charge on the median amount; for the purposes of this subparagraph and subparagraph (ii), a variation of not more than 4 days from month to month is "the same day of the billing cycle";

(b) if the billing cycle is not monthly, the loan finance charge shall be deemed not to exceed 18 per cent per year if the loan finance charge contracted for and received does not exceed a percentage which bears the same relation to 1½ per cent as the number of days in the billing cycle bears to 30; and

(c) notwithstanding subsection (1), if there is an unpaid balance on the date as of which the loan finance charge is applied, a charge not exceeding 50¢ may be made if the billing cycle is monthly or longer, or the pro rata part of 50¢ which bears the same relation to 50¢ as the number of days in the billing cycle bears to 30, if the billing cycle is shorter than monthly, but no charge may be made pursuant to this paragraph if the lender has made an annual charge for the same period as permitted by the provisions on additional charges (paragraph (c) of subsection (1) of Section 3.202) .

[¶ 886] Additional Charges

Sec. 3.202. (1) In addition to the loan finance charge permitted by this Part, a lender may contract for and receive the following additional charges in connection with a consumer loan:

(a) official fees and taxes;

(b) charges for insurance as described in subsection (2);

(c) annual charges, payable in advance, for the privilege of using a lender credit card or similar arrangement which entitles the user to purchase goods or services from at least 100 persons not related to the issuer of the lender credit card or similar arrangement, under an arrangement pursuant to which the debts resulting from the purchases are payable to the issuer; and

(d) charges for other benefits, including insurance, conferred on the debtor, if the benefits are of value to him apart from the granting of the credit, the charges are reasonable in relation to the benefits, and the Administrator has by rule determined that the charges are permissible additional charges.

(2) An additional charge may be made for insurance written in connection with the loan, other than insurance protecting the lender against the debtor's default or other credit loss,

(a) with respect to insurance against loss of or damage to property, or against liability, if the lender furnishes a clear and specific statement in writing to the debtor, setting forth the cost of the insurance if obtained from or through the lender, and stating that the debtor may choose the person through which the insurance is to be obtained; and,

(b) with respect to consumer credit insurance providing life, accident, or health coverage, if the insurance coverage is not a factor in the approval by the lender of the extension of credit, and this fact is clearly disclosed in writing to the debtor, and if in order to obtain the insurance in connection with the extension of credit, the debtor gives specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.

(3) For the purposes of the Part on Disclosure and Advertising (Part 3), if the loan finance charge with respect to a loan primarily secured by an interest in land does not exceed 10 per cent per year (paragraph (b) of subsection (2) of Section 3.104), reasonable closing costs even though not within subsection (1) may be treated as additional charges.

COMMENT

See Comment to Section 2.202.

[¶ 887] Delinquency Charges

Sec. 3.203. (1) With respect to a precomputed consumer loan, refinancing, or consolidation, the parties may contract for a delinquency charge on any instalment not paid in full within 10 days after its scheduled due date in an amount not exceeding the greater of

(a) an amount, not exceeding $5, which is 5 per cent of the unpaid amount of the instalment, or

(b) the deferral charge (subsection (1) of Section 3.204) that would be permitted to defer the unpaid amount of the instalment for the period that it is delinquent.

(2) A delinquency charge under paragraph (a) of subsection (1) may be collected only once on an instalment however long it remains in default. No delinquency charge may be collected if the instalment has been deferred and a deferral charge (Section 3.204) has been paid or incurred. A delinquency charge may be collected at the time it accrues or at any time thereafter.

(3) No delinquency charge may be collected on an instalment which is paid in full within 10 days after its scheduled instalment due date even though an earlier maturing instalment or a delinquency charge on an earlier instalment may not have been paid in full. For purposes of this subsection payments are applied first to current instalments and then to delinquent instalments.

(4) If two instalments or parts thereof of a precomputed loan are in default for 10 days or more, the lender may elect to convert the loan from a precomputed loan to one in which the loan finance charge is based on unpaid balances. In this event he shall make a rebate pursuant to the provisions on rebate upon prepayment (Section 3.210) as of the maturity date of the first delinquent instalment, and thereafter may make a loan finance charge as authorized by the provisions on loan finance charge for consumer loans (Section 3.201) or the provisions on loan finance charge for supervised loans (Section 3.508), whichever is appropriate. The amount of the rebate shall not be reduced by the amount of any permitted minimum charge (Section 3.210). If the lender proceeds under this subsection, any delinquency or deferral charges made with respect to instalments due at or after the maturity date of the first delinquent instalment shall be rebated, and no further delinquency or deferral charges shall be made.

(5) The amount of $5 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

COMMENT

See Comment to Section 2.203.

[¶ 886] Deferral Charges

Sec. 3.204. (1) With respect to a precomputed consumer loan, refinancing, or consolidation, the parties before or after default may agree in writing to a deferral of all or part of one or more unpaid instalments, and the lender may make and collect a charge not exceeding the rate previously stated to the debtor pursuant to the provisions on disclosure (Part 3) applied to the amount or amounts deferred for the period of deferral calculated without regard to difference in the lengths of months, but proportionally for a part of a month, counting each day as 1/30 of a month. A deferral charge may be collected at the time it is assessed or at any time thereafter.

(2) The lender may, in addition to the deferral charge, make appropriate additional charges (Section 3.202), and the amount of these charges which is not paid in cash may be added to the amount deferred for the purpose of calculating the deferral charge.

(3) The parties may agree in writing at the time of a precomputed consumer loan, refinancing, or consolidation that if an instalment is not paid within 10 days after its due date, the lender may unilaterally grant a deferral and

make charges as provided in this section. No deferral charge may be made for a period after the date that the lender elects to accelerate the maturity of the agreement.

(4) A delinquency charge made by the lender on an instalment may not be retained if a deferral charge is made pursuant to this section with respect to the period of delinquency.

[¶ 889] Loan Finance Charge on Refinancing

Sec. 3.205. With respect to a consumer loan, refinancing, or consolidation, the lender may by agreement with the debtor refinance the unpaid balance and may contract for and receive a loan finance charge based on the principal resulting from the refinancing at a rate not exceeding that permitted by the provisions on loan finance charge for consumer loans (Section 3.201) or the provisions on loan finance charge for supervised loans (Section 3.508), whichever is appropriate. For the purpose of determining the loan finance charge permitted, the principal resulting from the refinancing comprises the following:

(1) if the transaction was not precomputed, the total of the unpaid balance and the accrued charges on the date of the refinancing, or, if the transaction was precomputed, the amount which the debtor would have been required to pay upon prepayment pursuant to the provisions on rebate upon prepayment (Section 3.210) on the date of refinancing, except that for the purpose of computing this amount no minimum charge (Section 3.210) shall be allowed; and

(2) appropriate additional charges (Section 3.202), payment of which is deferred.

[¶ 890] Loan Finance Charge on Consolidation

Sec. 3.206. (1) If a debtor owes an unpaid balance to a lender with respect to a consumer loan, refinancing, or consolidation, and becomes obligated on another consumer loan, refinancing, or consolidation with the same lender, the parties may agree to a consolidation resulting in a single schedule of payments. If the previous consumer loan, refinancing, or consolidation was not precomputed, the parties may agree to add the unpaid amount of principal and accrued charges on the date of consolidation to the principal with respect to the subsequent loan. If the previous consumer loan, refinancing, or consolidation was precomputed, the parties may agree to refinance the unpaid balance pursuant to the provisions on refinancing (Section 3.205) and to consolidate the principal resulting from the refinancing by adding it to the principal with respect to the subsequent loan. In either case the lender may contract for and receive a loan finance charge based on the aggregate principal resulting from the consolidation at a rate not in excess of that permitted by the provisions on loan finance charge for consumer loans (Section 3.201) or the provisions on loan finance charge for supervised loans (Section 3.508), whichever is appropriate.

(2) The parties may agree to consolidate the unpaid balance of a consumer loan with the unpaid balance of a consumer credit sale. The parties may agree to refinance the previous unpaid balance pursuant to the provisions on refinancing sales (Section 2.205) or the provisions on refinancing loans (Section 3.205), whichever is appropriate, and to consolidate the amount

financed resulting from the refinancing or the principal resulting from the refinancing by adding it to the amount financed or principal with respect to the subsequent sale or loan. The aggregate amount resulting from the consolidation shall be deemed principal, and the creditor may contract for and receive a loan finance charge based on the principal at a rate not in excess of that permitted by the provisions on loan finance charge for consumer loans (Section 3.201) or the provisions on loan finance charge for supervised loans (Section 3.508), whichever is appropriate.

[¶ 891] Conversion to Revolving Loan Account

Sec. 3.207. The parties may agree to add to a revolving loan account the unpaid balance of a consumer loan, not made pursuant to a revolving loan account, or a refinancing, or consolidation thereof, or the unpaid balance of a consumer credit sale, refinancing or consolidation. For the purpose of this section

(1) the unpaid balance of a consumer loan, refinancing, or consolidation is an amount equal to the principal determined according to the provisions on refinancing (Section 3.205); and

(2) the unpaid balance of a consumer credit sale, refinancing, or consolidation is an amount equal to the amount financed determined according to the provisions on refinancing (Section 2.205).

[¶ 892] Advances to Perform Covenants of Debtor

Sec. 3.208. (1) If the agreement with respect to a consumer loan, refinancing, or consolidation contains covenants by the debtor to perform certain duties pertaining to insuring or preserving collateral and if the lender pursuant to the agreement pays for performance of the duties on behalf of the debtor he may add the amounts paid to the debt. Within a reasonable time after advancing any sums, he shall state to the debtor in writing the amount of the sums advanced, any charges with respect to this amount, and any revised payment schedule, and, if the duties of the debtor performed by the lender pertain to insurance, a brief description of the insurance paid for by the lender including the type and amount of coverages. No further information need be given.

(2) A loan finance charge may be made for sums advanced pursuant to subsection (1) at a rate not exceeding the rate stated to the debtor pursuant to the provisions on disclosure (Part 3) with respect to the loan, refinancing, or consolidation, except that with respect to a revolving loan account the amount of the advance may be added to the unpaid balance of the debt and the lender may make a loan finance charge not exceeding that permitted by the provisions on loan finance charge for consumer loans (Section 3.201) or for supervised loans (Section 3.508), whichever is appropriate.

[¶ 893] Right to Prepay

Sec. 3.209. Subject to the provisions on rebate upon prepayment (Section 3.210), the debtor may prepay in full the unpaid balance of a consumer loan, refinancing, or consolidation at any time without penalty.

[¶ 894] Rebate upon Prepayment

Sec. 3.210. (1) Except as provided in subsection (2), upon prepayment in full of the unpaid balance of a precomputed consumer loan, refinancing, or

consolidation, an amount not less than the unearned portion of the loan finance charge calculated according to this section shall be rebated to the debtor. If the rebate otherwise required is less than $1, no rebate need be made.

(2) Upon prepayment in full of a consumer loan, other than one pursuant to a revolving loan account, a refinancing or consolidation, whether or not precomputed, the lender may collect or retain a minimum charge within the limits stated in this subsection if the loan finance charge earned at the time of prepayment is less than any minimum charge contracted for. The minimum charge may not exceed the amount of loan finance charge contracted for, or $5 in a transaction which had a principal of $75 or less, or $7.50 in a transaction which had a principal of more than $75.

(3) Except as otherwise provided in this subsection with respect to a loan primarily secured by an interest in land, the unearned portion of the loan finance charge is a fraction of the loan finance charge of which the numerator is the sum of the periodic balances scheduled to follow the computational period in which prepayment occurs, and the denominator is the sum of all periodic balances under either the loan agreement or, if the balance owing resulted from a refinancing (Section 3.205) or a consolidation (Section 3.206), under the refinancing agreement or consolidation agreement. In the case of a loan primarily secured by an interest in land, reasonable sums actually paid or payable to persons not related to the lender for customary closing costs included in the loan finance charge are deducted from the loan finance charge before the calculation prescribed by this subsection is made.

COMMENT

Subsection (3), together with paragraph (a) of subsection (4), states the "Rule of 78" with respect to a loan, refinancing or consolidation payable in equal instalments at equal intervals from the date of the loan, refinancing or consolidation to the final scheduled payment date. In the case of such a loan, refinancing or consolidation, "computational period" may be read as "scheduled payment period", and the provisions relating to irregular payment schedules, viz., paragraphs (b), (c) and (d) of subsection (4) and subsection (5), in its entirety, may be disregarded.

(4) In this section

(a) "periodic balance" means the amount scheduled to be outstanding on the last day of a computational period before deducting the payment, if any, scheduled to be made on that day;

(b) "computational period" means one month if one-half or more of the intervals between scheduled payments under the agreement is one month or more, and otherwise means one week;

(c) the "interval" to the due date of the first scheduled instalment or the final scheduled payment date is measured from the date of a loan, refinancing, or consolidation, and includes either the first or last day of the interval;

(d) if the interval to the due date of the first scheduled instalment does not exceed one month by more than 15 days when the computational period is one month, or 11 days when the computational period is one week, the interval shall be considered as one computational period.

(5) This subsection applies only if the schedule of payments is not regular (subsection (6) of Section 3.304).

(a) If the computational period is one month and

(i) if the number of days in the interval to the due date of the first scheduled instalment is less than one month by more than 5 days, or more than one month by more than 5 but not more than 15 days, the unearned loan finance charge shall be increased by an adjustment for each day by which the interval is less than one month and, at the option of the lender, may be reduced by an adjustment for each day by which the interval is more than one month; the adjustment for each day shall be 1/30th of that part of the loan finance charge earned in the computational period prior to the due date of the first scheduled instalment assuming that period to be one month; and

(ii) if the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full month, the additional number of days shall be considered a computational period only if 16 days or more. This subparagraph applies whether or not subparagraph (i) applies.

(b) Notwithstanding paragraph (a), if the computational period is one month, the number of days in the interval to the due date of the first instalment exceeds one month by not more than 15 days, and the schedule of payments is otherwise regular, the lender may, at his option, exclude the extra days and the charge for the extra days in computing the unearned loan finance charge; but if he does so and a rebate is required before the due date of the first scheduled instalment, he shall compute the earned charge for each elapsed day as 1/30th of the amount the earned charge would have been if the first interval had been one month.

(c) If the computational period is one week and

(i) if the number of days in the interval to the due date of the first scheduled instalment is less than 5 days, or more than 9 days but not more than 11 days, the unearned loan finance charge shall be increased by an adjustment for each day by which the interval is less than 7 days and, at the option of the lender, may be reduced by an adjustment for each day by which the interval is more than 7 days; the adjustment for each day shall be 1/7th of that part of the loan finance charge earned in the computational period prior to the due date of the first scheduled instalment assuming that period to be one week; and

(ii) if the interval to the final scheduled payment date is a number of computational periods plus an additional number of days less than a full week, the additional number of days shall be considered a computational period only if 4 days or more. This subparagraph applies whether or not subparagraph (i) applies.

(6) If a deferral (Section 3.204) has been agreed to, the unearned portion of the loan finance charge shall be computed without regard to the deferral. The amount of deferral charge earned at the date of prepayment shall also be calculated. If the deferral charge earned is less than the deferral charge paid, the difference shall be added to the unearned portion of the loan finance charge. If any part of a deferral charge has been earned but has not been paid, that part shall be subtracted from the unearned portion of the loan finance charge, or shall be added to the unpaid balance.

(7) This section does not preclude the collection or retention by the lender of delinquency charges (Section 3.203).

(8) If the maturity is accelerated for any reason and judgment is obtained, the debtor is entitled to the same rebate as if the payment had been made on the date judgment is entered.

(9) Upon prepayment in full of a consumer loan by the proceeds of consumer credit insurance (Section 4.103), the debtor or his estate is entitled to the same rebate as though the debtor had prepaid the agreement on the date the proceeds of the insurance are paid to the lender, but no later than 10 business days after satisfactory proof of loss is furnished to the lender.

COMMENT

For examples of the application of this section, see Comment to Section 2.210.

PART 3—DISCLOSURE AND ADVERTISING

[¶ 895] Applicability; Information Required

Sec. 3.301. (1) For purposes of this Part, consumer loan includes a loan secured primarily by an interest in land without regard to the rate of the loan finance charge if the loan is otherwise a consumer loan (Section 3.104).

(2) The lender shall disclose to the debtor to whom credit is extended with respect to a consumer loan the information required by either

(a) this Part, or

(b) except with respect to a loan secured primarily by an interest in land, the Federal Consumer Credit Protection Act.

(3) For the purposes of paragraph (b) of subsection (2), information which would otherwise be required pursuant to the Federal Consumer Credit Protection Act is sufficient even though the transaction is one of a class of credit transactions exempted from that Act pursuant to a determination by the Board of Governors of the Federal Reserve System that the class of transactions is subject under the law of this State to requirements substantially similar to those imposed under that Act.

[¶ 896] General Disclosure Requirements and Provisions

Sec. 3.302. (1) The disclosures required by this Part

(a) shall be made clearly and conspicuously;

(b) shall be in writing, a copy of which shall be delivered to the debtor, but need not be contained in a single writing nor made in the order set forth in this Part;

(c) may use terminology different from that employed in this Part if it conveys substantially the same meaning;

(d) may be supplemented by additional information or explanations supplied by the lender;

(e) need be made only to the extent applicable and only as to those items for which the lender makes a separate charge to the debtor;

(f) shall be made on the assumption that all scheduled instalments are paid when due; and

(g) comply with this Part although rendered inaccurate by any act, occurrence, or agreement subsequent to the required disclosure.

(2) Except with respect to loans made by telephone or mail (Section 3.305), loans made pursuant to a binding commitment (subsection (3) of Section 3.306), and loans made pursuant to a lender credit card (Section 3.310),

(a) the disclosures required by this Part shall be made before credit is extended, but may be made in the loan, refinancing, or consolidation agreement, or other evidence of indebtedness to be signed by the debtor if set forth conspicuously therein, and need be made only to one debtor if there are more than one, and

(b) if an evidence of indebtedness is signed by the debtor, the lender shall give him a copy when the writing is signed.

(3) Except as provided with respect to rescission by a debtor (Section 5.204) and civil liability for violations of disclosure provisions (subsecton (4) of Section 5.203), written acknowledgment of receipt by a debtor to whom a statement is required to be given pursuant to this art

(a) in an action or proceeding by or against the original lender, creates a presumption that the statement was given, and

(b) in an action or proceeding by or against an assignee without knowledge to the contrary when he acquires the obligation, is conclusive proof of the delivery of the statement and, unless the violation is apparent on the face of the statement, of compliance with this Part.

[¶ 897] Overstatement

Sec. 3.303. The disclosure of an amount or percentage which is greater than the amount or percentage required to be disclosed under this Part does not in itself constitute a violation of this Part if the overstatement is not materially misleading and is not used to avoid meaningful disclosure.

[¶ 898] Calculation of Rate to Be Disclosed

Sec. 3.304. (1) Except as otherwise specifically provided, if a lender is required to give to a debtor a statement of the rate of the loan finance charge he shall state the rate in terms of an annual percentage rate as defined in subsection (2) or in terms of a corresponding nominal annual percentage rate as defined in subsection (3), whichever is appropriate.

(2) "Annual percentage rate"

(a) with respect to a consumer loan other than one made pursuant to a resolving loan account, is either

(i) that nominal annual percentage rate which, when applied to the unpaid balances of the principal calculated according to the United States rule, will yield a sum equal to the amount of the loan finance charge, or

(ii) that rate determined by any method prescribed by the Administrator as a method which materially simplifies computation while retaining reasonable accuracy as compared with the rate determined pursuant to subparagraph (i);

(b) with respect to a consumer loan made pursuant to a revolving loan account, is the quotient expressed as a percentage of the total loan finance charge for the period to which it relates divided by the amount upon which the loan finance charge for that period is based, multiplied by the number of these periods in a year; if the period is one day, the number of periods in a year is deemed to be 360.

(3) "Corresponding nominal annual percentage rate" is the percentage or percentages used to calculate the loan finance charge for one billing cycle or other period pursuant to a revolving loan account multiplied by the number of billing cycles or periods in a year; if the period is one day, the number of periods in a year is deemed to be 360.

(4) If a lender is permitted to make the same loan finance charge for all principal amounts within a specified range (subsection (4) of Section 3.201) or for all balances within a specified range (subsection (5) of Section 3.508), he shall state the annual percentage rate or corresponding nominal annual percentage rate, whichever is appropriate, as applied to the median amount of the range within which the actual principal amount or balance is included.

(5) If a debt is payable on a schedule of instalment payments which is regular except for one or more of the following irregularities:

(a) the amount of one instalment payment is not substantially equal to the amount of each of the other instalment payments;

(b) the interval between the date the credit is granted and the first instalment payment is not equal to the interval between instalment payments; or

(c) in one or more payment periods no instalment payment is due, not exceeding one-fourth of the payment periods in any year if the length of the term of the agreement is a year or more, or one-fourth of the payment periods if the length of the term of the agreement is less than a year,

the lender may, at his option, calculate the rate to be disclosed as if the debt were payable under an agreement having the same principal, the same length of term to the nearest scheduled payment period, and a regular schedule of payments having the same interval between payments as the interval between the majority of instalments as scheduled in the loan agreement.

(6) A schedule of payments is regular if (a) the instalment payments are substantially equal in amount, (b) the interval between instalment payments is one month, or the intervals between instalment payments are equal and less than one month, and (c) the interval between the date the credit is granted and the first instalment payment is equal to the interval between instalment payments.

(7) A statement of rate complies with this Part if it does not vary from the accurately computed rate by more than the following tolerances:

(a) the annual percenage rate may be rounded to the nearest quarter of 1 per cent for consumer loans payable in substantially equal instalments when a lender determines the total loan finance charge on the basis of a single add-on, discount, periodic, or other rate, and the rate is converted into an annual percentage rate under procedures prescribed by the Administrator;

(b) the Administrator may authorize the use of rate tables or charts which may provide for the disclosure of annual percentage rates which vary from the rate determined in accordance with paragraph (a) by not more than the tolerances the Administrator may allow; the Administrator may not allow a tolerance greater than 8 per cent of that rate except to simplify compliance where irregular payments are involved; and

(c) in case a lender determines the annual percentage rate in a manner other than as described in paragraph (a) or (b), the Administrator may authorize other reasonable tolerances.

COMMENT

See Comment to Section 2.304.

[¶ 899] Loans Made by Telephone or Mail

Sec. 3.305. With respect to a consumer loan, other than a loan made pursuant to a revolving loan account, if the lender receives a request for an extension of credit by mail or telephone without personal solicitation, the lender complies with this Part if the lender's printed material distributed to the public or the loan agreement or other printed material delivered to the debtor sets forth the terms of financing, including the annual percentage rate for representative amounts of credit, and if he gives the information required by this Part on or before the date the first payment is due on the loan.

[¶ 900] Consumer Loans Not Pursuant to Revolving Loan Account

Sec. 3.306. (1) This section applies to a consumer loan not made pursuant to a revolving loan account (Section 3.309).

(2) The lender shall give to the debtor the following information:

(a) net amount paid to, receivable by, or paid or payable for the account of the debtor or in the case of a loan resulting from a refinancing, the amount prescribed by the provisions on loan finance charge on refinancing (subsection (1) of Section 3.205); if any amount is paid or payable to a third person, a brief itemization, which may be contained in a separate writing or writings, shall also be given;

(b) amount paid or payable for registration, certificate of title or license fees, if not included in (a), and a description or identification of the fees;

(c) amount of official fees and taxes and a description or identification of them;

(d) brief description of insurance to be provided or paid for by the lender including the type and the amount of the coverages, and if a separate charge is made, the amount of the charge;

(e) amount of other additional charges (Section 3.202), and a brief description or identification of them;

(f) amount of principal (sum of amounts stated in paragraphs (a), (b), (c), (d), and (e));

(g) except in the case of a loan secured by a first lien on a dwelling, made to finance the purchase of that dwelling, and in which the loan finance charge does not exceed 10 per cent per year (Section 3.104), the

amount of the loan finance charge and the amount of the unpaid balance (principal plus loan finance charge);

(h) rate of the loan finance charge as applied to the principal in accordance with the provisions on calculation of rate (Section 3.304), except in the case of a loan finance charge which does not exceed $5 when the principal does not exceed $75 or $7.50 when the principal exceeds $75;

(i) number of payments, amount of each payment, due date of first payment, and the due date of subsequent payments or interval between payments;

(j) default, delinquency, or similar charges payable in the event of late payments; and

(k) description of any security interest held or to be retained or acquired by the lender in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

(3) If a lender makes a binding commitment to make a consumer loan by allowing the debtor to draw on the lender and at the time the commitment is made the amount of the loan has not been determined, the lender shall then give to the debtor a statement of the terms under which the loan will be made, including the rate of the loan finance charge calculated in accordance with the provisions on calculation of rate (Section 3.304). If the rate of the loan finance charge varies according to the amount of the loan, the lender shall state the minimum and maximum annual percentage rates which would be applicable to the amounts which could be drawn pursuant to the commitment. If additional charges (Section 3.202) may be made, the lender shall also state the conditions under which the charges may be made, the amount or method of computing the charges, and a brief description or identification of the charges. Within a reasonable time after the loan is made, and in any event on or before the due date of the first instalment, the lender shall give the information required by this section.

[¶ 901] Consolidation

Sec. 3.307. If the parties to a consumer loan or consumer credit sale agree to a consolidation (Section 3.206), the creditor shall give to the debtor the information required with respect to consumer loans not pursuant to a revolving loan account (Section 3.306). To comply with those provisions (paragraph (a) of subsection (2) of Section 3.306), the amount with respect to the previous loan or sale to be consolidated shall be separately stated and shall be added to the net amount paid to, receivable by, or paid or payable for the account of the debtor in connection with the subsequent loan or sale.

[¶ 902] Deferral

Sec. 3.308. If the lender makes a deferral pursuant to the provisions on deferral charges (Section 3.204), he shall state to the debtor, at the time of or promptly after the deferral:

(1) amount deferred;

(2) any appropriate additional charges (Section 3.202);

(3) aggregate amount deferred, which is the sum of the amount in (1) and any unpaid amount included in (2);

(4) time to which payment is deferred; and

(5) amount and annual percentage rate of the deferral charge and when it is payable.

[¶ 903] Revolving Loan Acounts

Sec. 3.309. (1) Before making a consumer loan pursuant to a revolving loan account, the lender shall give to the debtor the following information:

(a) conditions under which a loan finance charge may be made, including the time period, if any, within which any credit extended may be repaid without incurring a loan finance charge;

(b) method of determining the balance upon which a loan finance charge will be computed;

(c) method of determining the amount of the loan finance charge, including the periodic percentage or percentages used to calculate the loan finance charge and the amount of any minimum loan finance charge;

(d) corresponding nominal annual percentage rate (subsection (3) of Section 3.304); if more than one corresponding nominal annual percentage rate may be used, the amount of a balance to which each corresponding nominal annual percentage rate applies shall also be stated;

(e) if the lender elects he may also state either

(i) the average effective annual percentage rate of return received from revolving loan accounts for a representative period of time; or

(ii) if circumstances are such that the computation of a rate under subparagraph (i) would not be feasible or practical, or would be misleading or meaningless, a projected rate of return to be received from revolving loan accounts; the Administrator shall prescribe rules, consistent with commonly accepted standards for accounting or statistical procedures, to carry out the purposes of this paragraph (e);

(f) conditions under which additional charges may be made and the method by which they will be determined; and

(g) conditions under which the lender may retain or acquire a security interest in property to secure the balances resulting from loans made pursuant to the revolving loan account, and a description of the interest or interests which may be retained or acquired.

(2) If there is an outstanding balance owing at the end of the billing cycle or if a loan finance charge is made with respect to the billing cycle, the lender shall give to the debtor the following information within a reasonable time after the end of the billing cycle:

(a) outstanding balance at the beginning of the billing cycle;

(b) brief description or identification of loans made during the billing cycle in a statement or in accompanying cancelled checks, memoranda or the like;

(c) amount credited to the account during the billing cycle;

(d) amount of loan finance charge and additional charges debited during the billing cycle, with an itemization or explanation to show the total amount of loan finance charge, if any, due to the application of one or more periodic percentages and the amount, if any, imposed as a minimum charge;

(e) the periodic percentage used to calculate the loan finance charge; if more than one periodic percentage is used, each percentage and the amount of the balance to which each applies;

(f) the balance on which the loan finance charge is computed and a statement of how the balance is determined; if the balance is determined without first deducting all amounts credited during the period, that fact and the amounts credited shall also be stated;

(g) if the loan finance charge for the billing cycle exceeds 50¢ for a monthly or longer billing cycle, or the pro rata part of 50¢ for a billing cycle shorter than monthly, the loan finance charge expressed as an annual percentage rate (paragraph (b) of subsection (2) of Section 3.304); if more than one periodic percentage is used to calculate the loan finance charge, the lender may, in lieu of stating a single annual percentage rate, state more than one annual percentage rate and the amount of the balance to which each annual percentage rate applies;

(h) if the loan finance charge for the billing cycle does not exceed 50¢ for a monthly or longer billing cycle, or the pro rata part of 50¢ for a billing cycle shorter than monthly, the corresponding nominal annual percentage rate (subsection (3) of Section 3.304);

(i) if the lender elects, the average effective annual percentage rate of return or the projected rate as prescribed in paragraph (e) of subsection (1);

(j) outstanding balance at the end of the billing cycle; and

(k) date by which or period within which payment must be made to avoid additional loan finance charges.

COMMENT

See Comment to Section 2.310.

[¶ 904] Loan Pursuant to Lender Credit Card or Similar Arrangement

Sec. 3.310. Before a consumer loan, other than one made pursuant to a revolving loan account, is first made pursuant to a lender credit card or similar arrangement, the lender shall give to the debtor a statement of the annual percentage rate or rates at which loans will be made to the debtor and a brief description or identification of the additional charges that may be made. The lender shall give to the debtor the information required by this Part with respect to consumer loans other than revolving loan accounts (Section 3.306) within a reasonable time after a loan is made and in any event before the due date of the first instalment.

[¶ 905] Content of Periodic Statements

Sec. 3.311. The Administrator may by rule require a creditor who transmits periodic statements in connection with any consumer loan not made pursuant to a revolving loan account to set forth in each statement each of the following items:

(1) the annual percentage rate of the loan finance charge with respect to each consumer loan to which the statement relates;

(2) the date by which or the period, if any, within which payment must be made in order to avoid further loan finance charges or other charges; and

(3) the other items set forth in the provisions on disclosure with respect to revolving loan accounts (subsection (2) of Section 3.309) appropriate to the terms and conditions under which the consumer loan is made.

COMMENT

See Comment to Section 2.312.

[¶ 906] Advertising

Sec. 3.312. (1) No lender shall engage in this State in false or misleading advertising concerning the terms or conditions of credit with respect to a consumer loan.

(2) Without limiting the generality of subsection (1), and without requiring a statement of rate of loan finance charge if the loan finance charge is not more than $5 when the principal does not exceed $75 or more than $7.50 when the principal exceeds $75, and advertisement with respect to a consumer credit loan made by the posting of a public sign, or by catalog, magazine, newspaper, radio, television, or similar mass media, is misleading if

(a) it states the rate of the loan finance charge and the rate is not stated in the form required by the provisions on calculation of rate (Section 3.304) or

(b) it states the dollar amounts of the loan finance charge or instalment payments, and does not also state the rate of any loan finance charge and the number and amount of the instalment payments.

(3) In this section a catalog or other multiple-page advertisement is considered a single advertisement if it clearly and conspicuously displays a credit terms table setting forth the information required by this section.

(4) This section imposes no liability on the owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

(5) Advertising which complies with the Federal Consumer Credit Protection Act does not violate subsection (2).

PART 4.—LIMITATIONS ON AGREEMENTS AND PRACTICES

[¶ 907] Scope

Sec. 3.401. This Part applies to consumer loans.

[¶ 908] Balloon Payments

Sec. 3.402. With respect to a consumer loan, other than one primarily for an agricultural purpose or one pursuant to a revolving loan account, if any scheduled payment is more than twice as large as the average of earlier scheduled payments, the debtor has the right to refinance the amount of that payment at the time it is due without penalty. The terms of the refinancing shall be no less favorable to the debtor than the terms of the original loan. These provisions do not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the debtor.

[¶ 909] No Assignment of Earnings

Sec. 3.403. (1) A lender may not take an assignment of earnings of the debtor for payment or as security for payment of a debt arising out of a consumer loan. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the debtor. This section does not prohibit an employee from authorizing deductions from his earnings if the authorization is revocable.

(2) A sale of unpaid earnings made in consideration of the payment of money to or for the account of the seller of the earnings is deemed to be a loan to him secured by an assignment of earnings.

[¶ 910] Attorney's Fees

Alternative A:

Sec. 3.404. With respect to a consumer loan the agreement may not provide for the payment by the debtor of attorney's fees. A provision in violation of this section is unenforceable.

[¶ 911] Attorney's Fees

Alternative B:

Sec. 3.404. Except as provided by the limitations on attorney's fees in certain supervised loans (Section 3.511), with respect to a consumer loan the agreement may provide for the payment by the debtor of reasonable attorney's fees not in excess of 15 per cent of the unpaid debt after default and referral to an attorney not a salaried employee of the lender. A provision in violation of this section is unenforceable.

[¶ 912] Limitation on Default Charges

Sec. 3.405. Except for reasonable expenses incurred in realizing on a security interest, the agreement with respect to a consumer loan may not provide for charges as a result of default by the debtor other than those authorized by this Act. A provision in violation of this section is unenforceable.

[¶ 913] Notice of Assignment

Sec. 3.406. The debtor is authorized to pay the original lender until he receives notification of assignment of rights to payment pursuant to a consumer loan and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the debtor may pay the original lender.

COMMENT

This section is derived from UCC Section 9-318(3).

[¶ 914] Authorization to Confess Judgment Prohibited

Sec. 3.407. A debtor may not authorize any person to confess judgment on a claim arising out of a consumer loan. An authorization in violation of this section is void.

[¶ 915] Change in Terms of Revolving Loan Accounts

Sec. 3.408. (1) If a lender makes a change in the terms of a revolving loan account without complying with this section any additional cost or charge to the debtor resulting from the change is an excess charge and subject to the remedies available to debtors (Section 5.202) and to the Administrator (Section 6.113).

(2) A lender may change the terms of a revolving loan account whether or not the change is authorized by prior agreement. Except as provided in subsection (3), the lender shall give to the debtor written notice of any change at least three times, with the first notice at least six months before the effective date of the change.

(3) The notice specified in subsection (2) is not required if

(a) the debtor after receiving notice of the change agrees in writing to the change;

(b) the debtor elects to pay an amount designated on a billing statement (subsection (2) of Section 3.309) as including a new charge for a benefit offered to the debtor when the benefit and charge constitute the change in terms and when the billing statement also states the amount payable if the new charge is excluded;

(c) the change involves no significant cost to the debtor;

(d) the debtor has previously consented in writing to the kind of change made and notice of the change is given to the debtor in two billing cycles prior to the effective date of the change; or

(e) the change applies only to debts incurred after a date specified in a notice of the change given in two billing cycles prior to the effective date of the change.

(4) The notice provided for in this section is given to the debtor when mailed to him at the address used by the lender for sending periodic billing statements.

PART 5.—REGULATED AND SUPERVISED LOANS

[¶ 916] Definitions: "Regulated Loan"; "Regulated Lender"; "Supervised Loan"; "Supervised Lender"

Sec. 3.501. (1) "Regulated loan" means a consumer loan, including a loan made pursuant to a revolving loan account, in which the rate of the loan finance charge is in excess of 10 per cent per year calculated on the unpaid balances of the principal according to the United States rule.

(2) "Regulated lender" means a person engaged in the business of making regulated loans.

(3) "Supervised loan" means a regulated loan in which the rate of the loan finance charge exceeds 18 per cent per year as determined according to the provisions on loan finance charge for consumer loans (Section 3.201).

(4) "Supervised lender" means a person authorized to make or take assignments of supervised loans.

[¶ 917] Authority to Make Supervised Loans

Sec. 3.502. Unless a person is a supervised financial organization or has first obtained a license from the Administrator authorizing him to make supervised loans, he shall not engage in the business of

(1) making supervised loans, or

(2) taking assignments of and undertaking direct collection of payments from or enforcement of rights against debtors arising from supervised loans,

but he may collect and enforce for three months without a license if he promptly applies for a license and his application has not been denied.

COMMENT

Unlike some statutes, this section contemplates that a supervised lender needs to obtain only one license to operate one or more offices in a State. While the single license permits the supervised lender to locate offices wherever he deems them to be economically justified, he must annually notify the Administrator of the location of each office (Section 6.202). Although license fees have been viewed as a source of income for the regulatory agency, licensing of supervised lenders is not to be regarded as a source of income. Instead, income for the operations of the Administrator is to be derived from general appropriations. Annual fees are required of all persons required to file notification (Section 6.203).

Moreover, this Section does not contemplate the annual renewal of licenses; such a requirement would merely increase the administrative burdens of the Administrator and the licensee.

In this Section "person" implies no limitation on the residence of the applicant. He need not be a resident of the State in which he seeks to be licensed as a supervised lender. Even though he is not physically within the State, the licensee is bound by the laws of the State in which he makes supervised loans.

If an unlicensed assignee not in the business of making collections or enforcing rights under the paper assigned to him finds that he must undertake collection or enforcement, subsection (2) gives him a 3-month grace period during which he can operate before he obtains a license.

[¶ 918] License to Make Supervised Loans

Sec. 3.503. (1) The Administrator shall receive and act on all applications for licenses to make supervised loans under this Act. Applications shall be filed in the manner prescribed by the Administrator and shall contain such information as the Administrator may require to make an evaluation of the financial responsibility, character and fitness of the applicant.

(2) No license shall be issued unless the Administrator, upon investigation, finds that the financial responsibility, character and fitness of the applicant, and of the members thereof (if the applicant is a co-partnership or association) and of the officers and directors thereof (if the applicant is a corporation), are such as to warrant belief that the business will be operated honestly and fairly within the purposes of this Act.

(3) Upon written request, the applicant is entitled to a hearing on the question of his qualifications for a license if (a) the Administrator has notified the applicant in writing that his application has been denied, or (b) the Administrator has not issued a license within 60 days after the application for the license was filed. A request for a hearing may not be made more than 15 days after the Administrator has mailed a writing to the applicant notifying him that the application has been denied and stating in substance the Administrator's findings supporting denial of the application.

COMMENT

This section is intimately related to disclosure (Part 3 of Article 2 and Part 3 of Article 3) and to maximum charges (Part 2 of Article 2 and Part 2 of Article 3). The purpose is to facilitate entry into the cash loan field so that the resultant rate competition fostered by disclosure will generally force rates below the permitted maximum charges. Competition is further encouraged by the absence of any licensing requirements in credit sales (Article 2).

A secondary purpose is to reduce the likelihood of establishing localized monopolies in the granting of cash credit. Such monopolies tend to push rates charged to the maximum permitted levels and to establish conditions under which some share of the anticipated monopoly profits are devoted to direct or indirect pressures to obtain the license.

Since this section does not apply to supervised financial organizations, the safety of depositors' funds is not directly endangered by the competition fostered by the freedom of entry. To the extent, if any, that the increased competition causes the development of undesirable credit practices, these are directly controlled by powers to revoke or suspend a license (Section 3.504), prohibition on multiple agreements (Section 3.509), restrictions on real property security (Section 3.510), and by the provisions on remedies and penalties provided (Article 5) and the powers and functions of the Administrator (Article 6).

[¶ 919] Revocation or Suspension of License

Sec. 3.504. (1) The Administrator may issue to a person licensed to make supervised loans an order to show cause why his license should not be revoked or suspended for a period not in excess of 6 months. The order shall state the place for a hearing and set a time for the hearing that is no less than 10 days from the date of the order. After the hearing the Administrator shall revoke or suspend the license if he finds that:

(a) the licensee has repeatedly and willfully violated this Act or any rule or order lawfully made pursuant to this Act; or

(b) facts or conditions exist which would clearly have justified the Administrator in refusing to grant a license had these facts or conditions been known to exist at the time the application for the license was made.

(2) No revocation or suspension of a license is lawful unless prior to institution of proceedings by the Administrator notice is given to the licensee of the facts or conduct which warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.

(3) If the Administrator finds that probable cause for revocation of a license exists and that enforcement of this Act requires immediate suspension of the license pending investigation, he may, after a hearing upon 5 days' written notice, enter an order suspending the license for not more than 30 days.

(4) Whenever the Administrator revokes or suspends a license, he shall enter an order to that effect and forthwith notify the licensee of the revocation or suspension. Within five days after the entry of the order he shall deliver to the licensee a copy of the order and the findings supporting the order.

(5) Any person holding a license to make supervised loans may relinquish the license by notifying the Administrator in writing of its relinquishment, but this relinquishment shall not affect his liability for acts previously committed.

(6) No revocation, suspension, or relinquishment of a license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any debtor.

(7) The Administrator may reinstate a license, terminate a suspension, or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists which clearly would have justified the Administrator in refusing to grant a license.

[¶ 920] Records; Annual Reports

Sec. 3.505. (1) Every licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the Administrator to determine whether the licensee is complying with the provisions of this Act. The record keeping system of a licensee shall be sufficient if he makes the required information reasonably available. The records need not be kept in the place of business where supervised loans are made, if the Administrator is given free access to the records wherever located. The records pertaining to any loan need not be preserved for more than two years after making the final entry relating to the loan, but in the case of a revolving loan account the two years is measured from the date of each entry.

(2) On or before April 15 each year every licensee shall file with the Administrator a composite annual report in the form prescribed by the Administrator relating to all supervised loans made by him. The Administrator shall consult with comparable officials in other states for the purpose of making the kinds of information required in annual reports uniform among the states. Information contained in annual reports shall be confidential and may be published only in composite form.

[¶ 921] Examinations and Investigations

Sec. 3.506. (1) The Administrator shall periodically examine at such intervals as he deems appropriate the loans, business, and records of every licensee. In addition, for the purpose of discovering violations of this Act or securing information lawfully required, the Administrator or the official or agency to whose supervision the organization is subject (Section 6.105) may at any time investigate the loans, business, and records of any regulated lender. For these purposes he shall have free and reasonable access to the offices, places of business, and records of the lender.

(2) If the lender's records are located outside this State, the lender shall, at his option, either make them available to the Administrator at a convenient location within this State, or pay the reasonable and necessary expenses for the Administrator or his representative to examine them at the place where they are maintained. The Administrator may designate representatives, including comparable officials of the State in which the records are located, to inspect them on his behalf.

(3) For the purposes of this section, the Administrator may administer oaths or affirmations, and upon his own motion or upon request of any party may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(4) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the Administrator may apply to [ ] court for an order compelling compliance.

[¶ 922] Application of [Administrative Procedure Act] [Part on Administrative Procedure and Judicial Review] to Part

Sec. 3.507. Except as otherwise provided, the [State administrative procedure act] [Part on Administrative Procedure and Judicial Review (Part 4 of the Article on Administration (Article 6))] applies to and governs all administrative action taken by the Administrator pursuant to this Part.

[¶ 923] Loan Finance Charge for Supervised Loans

Sec. 3.508. (1) With respect to a supervised loan, including a loan pursuant to a revolving loan account, a supervised lender may contract for and receive a loan finance charge not exceeding that permitted by this section.

(2) The loan finance charge, calculated according to the United States rule, may not exceed the equivalent of the greater of either of the following:

(a) the total of

(i) 36 per cent per year on that part of the unpaid balances of the principal which is $300 or less;

(ii) 21 per cent per year on that part of the unpaid balances of the principal which is more than $300 but does not exceed $1,000; and

(iii) 15 per cent per year on that part of the unpaid balances of the principal which is more than $1,000; or

(b) 18 per cent per year on the unpaid balances of the principal.

(3) This section does not limit or restrict the manner of contracting for the loan finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the loan finance charge does not exceed that permitted by this section. If the loan is precomputed,

(a) the loan finance charge may be calculated on the assumption that all scheduled payments will be made when due, and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (Section 3.210).

(4) The term of a loan for the purposes of this section commences on the date the loan is made. Differences in the lengths of months are disregarded and a day may be counted as 1/30th of a month. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of 15 days may be treated as a full month if periods of 15 days or less are disregarded and if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(5) Subject to classifications and differentiations the lender may reasonably establish, he may make the same loan finance charge on all principal amounts within a specified range. A loan finance charge so made does not violate subsection (2) if

(a) when applied to the median amount within each range, it does not exceed the maximum permitted in subsection (2), and

(b) when applied to the lowest amount within each range, it does not produce a rate of loan finance charge exceeding the rate calculated according to paragraph (a) by more than 8 per cent of the rate calculated according to paragraph (a).

(6) The amounts of $300 and $1,000 in subsection (2) are subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

COMMENT

See Comment to Section 2.201. Since there is no basic economic difference between loans pursuant to a revolving loan account and precomputed instalments loans, which may be, and often are, refinanced or deferred, the same rate ceiling is provided for all supervised loans. Lenders are not required to use a graduated rate, but may find it more economical to use a flat monthly rate of charge, provided that it does not exceed the rate ceiling specified. Lenders offering revolving loan accounts may not levy delinquency charges (3.203), and deferral charges (3.204), or a loan finance charge on refinancing (3.205). At the same time a debtor is not entitled to rebates upon prepayment (3.210), since at the time of his prepayment there will be no prepaid, but unearned, finance charges on his revolving loan account.

[¶ 924] Use of Multiple Agreements

Sec. 3.509. With respect to a supervised loan, no lender may permit any person, or husband and wife, to become obligated in any way under more than one loan agreement with the lender or with a person related to the lender, with intent to obtain a higher rate of loan finance charge than would otherwise be permitted by the provisions on loan finance charge for supervised loans (Section 3.508) or to avoid disclosure of an annual percentage rate pursuant to the provisions on disclosure and advertising (Part 3). The excess amount of loan finance charge provided for in agreements in violation of this section are excess charges for the purposes of the provisions on effect of violations on rights of parties (Section 5.202) and the provisions on civil actions by Administrator (Section 6.113).

[¶ 925] Restrictions on Interest in Land as Security

Sec. 3.510. (1) With respect to a supervised loan in which the principal is $1,000 or less, a lender may not contract for an interest in land as security. A security interest taken in violation of this section is void.

(2) The amount of $1,000 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

[¶ 926] [Limitation on Attorney's Fees]

[**Sec. 3.511.** (1) With respect to a supervised loan in which the principal is $1,000 or less, the agreement may not provide for the payment by the debtor of attorney's fees. A provision in violation of this section is unenforceable.

(2) The amount of $1,000 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).]

COMMENT

If Alternative A of Section 3.404 is enacted, Section 3.511 should be omitted.

[¶ 927] Regular Schedule of Payments; Maximum Loan Term

Sec. 3.512. (1) Regulated loans payable in instalments, other than loans pursuant to a revolving loan account, in which the principal is $1,000 or less shall be repayable in substantially equal instalments which shall be payable at equal periodic intervals except to the extent that the schedule of payments is adjusted to the seasonal or irregular income of the debtor. Regulated loans payable in instalments, other than loans pursuant to a revolving loan account, in which the principal is $300 or less shall be scheduled to be payable over a period of not more than 25 months, and regulated loans in which the principal is more than $300 but does not exceed $1,000 shall be scheduled to be payable over a period of not more than 37 months.

(2) The amounts of $300 and $1,000 in subsection (1) are subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

[¶ 928] Conduct of Business Other than Making Loans

Sec. 3.513. A licensee may carry on other business at a location where he makes supervised loans unless he carries on other business for the purpose of evasion or violation of this Act.

COMMENT

A seller who makes loans must comply with Article 3 with respect to his loan operations.

[¶ 929] Application of Other Provisions

Sec. 3.514. Except as otherwise provided, all provisions of this Act applying to consumer loans apply to regulated loans.

PART 6—LOANS OTHER THAN CONSUMER LOANS

[¶ 930] Loans Subject to Act by Agreement of Parties

Sec. 3.601. The parties to a loan other than a consumer loan may agree in a writing signed by the parties that the loan is subject to the provisions of this Act applying to consumer loans. If the parties so agree, the loan is a consumer loan for the purposes of this Act.

[¶ 931] Definition: "Consumer Related Loan"; Rate of Loan Finance Charge

Sec. 3.602. (1) A "consumer related loan" is a loan which is not subject to the provisions of this Act applying to consumer loans and in which the principal does not exceed $25,000, if

(a) the debtor is a person other than an organization, or

(b) the debt is secured primarily by a security interest in a one or two family dwelling occupied by a person related to the debtor.

(2) With respect to a consumer related loan, including one made pursuant to a revolving loan account, the parties may contract for the payment

of a loan finance charge not in excess of that permitted by the provisions on loan finance charge for consumer loans other than supervised loans (Section 3.201).

(3) The amount of $25,000 in subsection (1) is subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

COMMENT

See Comment to Section 2.602.

[¶ 932] Applicability of Other Provisions to Consumer Related Loans

Sec. 3.603. Except for the rate of the loan finance charge and the rights to prepay and to rebate upon prepayment, the provisions of Part 2 of this Article apply to a consumer related loan.

[¶ 933] Limitation on Default Charges in Consumer Related Loans

Sec. 3.604. (1) The agreement with respect to a consumer related loan may provide for only the following charges as a result of the debtor's default:

(a) reasonable attorney's fees and reasonable expenses incurred in realizing on a security interest;

(b) deferral charges not in excess of 18 per cent per year of the amount deferred for the period of deferral; and

(c) other charges that could have been made had the loan been a consumer loan.

(2) A provision in violation of this section is unenforceable.

[¶ 934] Loan Finance Charge for Other Loans

Sec. 3.605. With respect to a loan other than a consumer loan or a consumer related loan, the parties may contract for the payment by the debtor of any loan finance charge.

COMMENT

See Section 5.107—Extortionate Extensions of Credit.

Article 4—Insurance

PART 1—INSURANCE IN GENERAL

[¶ 935] Short Title

Sec. 4.101. This Article shall be known and may be cited as Uniform Consumer Credit Code—Insurance.

[¶ 936] Scope [; Relation to Credit Insurance Act; Applicability to Parties]

Sec. 4.102. (1) Except as provided in subsection (2), this Article applies to insurance provided or to be provided in relation to a consumer credit sale (Section 2.104), a consumer lease (Section 2.106), or a consumer loan (Section 3.104).

(2) The provision on cancellation by a creditor (Section 4.304) applies to loans the primary purpose of which is the financing of insurance. No other provision of this Article applies to insurance so financed.

[(3) This Article supplements and does not repeal the Credit Insurance Act. The provisions of this Act concerning administrative controls, liabilities, and penalties do not apply to persons acting as insurers, and the similar provisions of the Credit Insurance Act do not apply to creditors and debtors.]

COMMENT

If the enacting State has not already enacted the NAIC Model Act for the regulation of credit life insurance and credit accident and health insurance, or similar legislation, material in brackets should be omitted.

By subsection (2) a single provision of this Article is made applicable to lenders engaged in insurance premium financing. (The borrower should be forewarned of cancellation of his insurance by the lender: Section 4.304.) Nothing else in this Article affects the practices of a lender in that business.

The Special Committee is aware that premium financing is regulated under special statutes in a number of states. It has considered the alternative courses of (1) exempting premium loans from this Act, and (2) proposing distinctive rules for premium loans as opposed to consumer loans generally. The Special Committee has concluded, after deliberation, that the provisions of this Act may appropriately be applied to insurance premium loans.

[¶ 937] Definition[s]: "Consumer Credit Insurance" [; "Credit Insurance Act"]

Sec. 4.103. In this Act [(1)] "Consumer credit insurance" means insurance, other than insurance on property, by which the satisfaction of debt in whole or in part is a benefit provided, but does not include

(a) insurance provided in relation to a credit transaction in which a payment is scheduled more than 10 years after the extension of credit;

(b) insurance issued as an isolated transaction on the part of the insurer not related to an agreement or plan for insuring debtors of the creditor; or

(c) insurance indemnifying the creditor against loss due to the debtor's default.

[(2) "Credit Insurance Act" means [NAIC Model Act, or any similar statute].]

COMMENT

If the enacting State has not already enacted the NAIC Model Act for the regulation of credit life insurance and credit accident and health insurance, or similar legislation, material in brackets should be omitted.

[¶ 938] Creditor's Provision of and Charge for Insurance; Excess Amount of Charge

Sec. 4.104. (1) Except as otherwise provided in this Article and subject to the provisions on additional charges (Section 2.202 and Section 3.202) and maximum charges (Part 2 of Article 2 and Article 3), a creditor may agree to provide insurance, and may contract for and receive a charge for insurance separate from and in addition to other charges. A creditor need not make a separate charge for insurance provided or required by him. This Act does not authorize the issuance of any insurance prohibited under any statute, or rule thereunder, governing the business of insurance.

(2) The excess amount of a charge for insurance provided for in agreements in violation of this Article is an excess charge for the purposes of the provisions of the Article on Remedies and Penalties (Article 5) as to effect of violations on rights of parties (Section 5.202) and of the provisions of the Article on Administration (Article 6) as to civil actions by the Administrator (Section 6.113).

COMMENT

Consideration has been given to the desirability of defining a "separate charge" for consumer credit insurance when the seller or lender establishes different rates of charge for sale or loan transactions predicated on whether or not consumer credit insurance is provided. The question has recently been raised by supervisory authorities in New York, where the creditors affected resolved the problem by increasing the rate of charge on transactions as to which consumer credit insurance was previously not provided to the higher rate of charge which had previously applied only to transactions as to which consumer credit insurance was provided.

It has been concluded that:

1. A definition of "separate charge" for insurance in the light of variations in credit service or loan finance charge rates depending on whether or not consumer credit insurance is provided would be futile.

2. The required disclosure of credit service charge or loan finance charge in terms of an annual percentage rate coupled with permission for exclusion from the credit service or loan finance charge and separate dollar disclosure of the charge for consumer credit insurance will encourage creditors to reduce to a minimum the disclosed rate of credit service or loan finance charge and to disclose the charge for consumer credit insurance as a separate charge not included in the credit service or loan finance charge.

[¶ 939] Conditions Applying to Insurance to Be Provided by Creditor

Sec. 4.105. If a creditor agrees with a debtor to provide insurance

(1) the insurance shall be evidenced by an individual policy or certificate of insurance delivered to the debtor, or sent to him at his address as stated by him, within 30 days after the term of the insurance commences under the agreement between the creditor and debtor; or

(2) the creditor shall promptly notify the debtor of any failure or delay in providing the insurance.

[¶ 940] Unconscionability

Sec. 4.106. (1) In applying the provisions of the Act on unconscionability (Sections 5.108 and 6.111) to a separate charge for insurance, consideration shall be given, among other factors, to

(a) potential benefits to the debtor including the satisfaction of his obligations;

(b) the creditor's need for the protection provided by the insurance; and

(c) the relation between the amount and terms of credit granted and the insurance benefits provided.

(2) If consumer credit insurance otherwise complies with this Article and other applicable law, neither the amount nor the term of the insurance nor the amount of a charge therefor is in itself unconscionable.

[¶ 941] Maximum Charge by Creditor for Insurance

Sec. 4.107. (1) Except as provided in subsection (2), if a creditor contracts for or receives a separate charge for insurance, the amount charged to the debtor for the insurance may not exceed the premium to be charged by the insurer, as computed at the time the charge to the debtor is determined, conforming to any rate filings required by law and made by the insurer with the [Commissioner] of Insurance.

(2) A creditor who provides consumer credit insurance in relation to a revolving charge account (Section 2.108) or revolving loan account (Section 3.108) may calculate the charge to the debtor in each billing cycle by applying the current premium rate to

(a) the average daily unpaid balance of the debt in the cycle;

(b) the unpaid balance of the debt or a median amount within a specified range of unpaid balances of debt on approximately the same day of the cycle. The day of the cycle need not be the day used in calculating the credit service charge (Section 2.207) or loan finance charge (Section 3.201 and Section 3.508), but the specified range shall be the range used for that purpose; or

(c) the unpaid balances of principal calculated according to the United States rule.

[¶ 942] Refund or Credit Required; Amount

Sec. 4.108. (1) Upon prepayment in full of a consumer credit sale or consumer loan by the proceeds of consumer credit insurance, the debtor or his estate is entitled to a refund of any portion of a separate charge for insurance which by reason of prepayment is retained by the creditor or returned to him by the insurer unless the charge was computed from time to time on the basis of the balances of the debtor's account.

(2) This Article does not require a creditor to grant a refund or credit to the debtor if all refunds and credits due to the debtor under this Article amount is less than $1, and except as provided in subsection (1) does not require the creditor to account to the debtor for any portion of a separate charge for insurance because

(a) the insurance is terminated by performance of the insurer's obligation;

(b) the creditor pays or accounts for premiums to the insurer in amounts and at times determined by the agreement between them; or

(c) the creditor receives directly or indirectly under any policy of insurance a gain or advantage not prohibited by law.

(3) Except as provided in subsection (2), the creditor shall promptly make or cause to be made an appropriate refund or credit to the debtor with respect to any separate charge made to him for insurance if

(a) insurance is not provided or is provided for a shorter term than that for which the charge to the debtor for insurance was computed; or

(b) the insurance terminates prior to the end of the term for which it was written because of prepayment in full or otherwise.

(4) A refund or credit required by subsection (3) is appropriate as to amount if it is computed according to a method prescribed or approved by the [Commissioner] of Insurance or a formula filed by the insurer with the [Commissioner] of Insurance at least 30 days before the debtor's right to a refund or credit becomes determinable, unless the method or formula is employed after the [Commissioner] of Insurance notifies the insurer that he disapproves it.

COMMENT

Subsection (2)(c) of Section 4.108 permits a creditor to derive from consumer credit insurance gains and advantages such as dividends and refunds resulting from favorable mortality or morbidity experience with respect to insured debtors.

The provisions of Article 4 relating to consumer credit insurance are predicated on the Special Committee's conclusions that:

1. Although the gains and advantages may be large to the creditor, they are relatively insignificant to each insured debtor and the calculating, clerical and mailing costs of returning them to insured debtors would be unreasonably disproportionate to the amounts involved.

2. The requirements of Article 4 that premiums for consumer credit insurance be reasonable in relation to benefits, if properly enforced by the State insurance commissioner or superintendent, will preclude the possibility of the use of consumer credit insurance as a device by creditors for concealing hidden charges from debtors.

[¶ 943] Existing Insurance; Choice of Insurer

Sec. 4.109. If a creditor requires insurance, upon notice to the creditor the debtor shall have the option of providing the required insurance through an existing policy of insurance owned or controlled by the debtor, or through a policy to be obtained and paid for by the debtor, but the creditor may for reasonable cause decline the insurance provided by the debtor.

[¶ 944] Charge for Insurance in Connection with a Deferral, Refinancing, or Consolidation; Duplicate Charges

Sec. 4.110. (1) A creditor may not contract for or receive a separate charge for insurance in connection with a deferral (Section 2.204 or Section 3.204), a refinancing (Section 2.205 or Section 3.205), or a consolidation (Section 2.206 or Section 3.206), unless

(a) the debtor agrees at or before the time of the deferral, refinancing, or consolidation that the charge may be made;

(b) the debtor is or is to be provided with insurance for an amount or a term, or insurance of a kind, in addition to that to which he would have been entitled had there been no deferral, refinancing, or consolidation;

(c) the debtor receives a refund or credit on account of any unexpired term of existing insurance in the amount that would be required if the insurance were terminated (Section 4.108); and

(d) the charge does not exceed the amount permitted by this Article (Section 4.107).

(2) A creditor may not contract for or receive a separate charge for insurance which duplicates insurance with respect to which the creditor has previously contracted for or received a separate charge.

[¶ 945] Cooperation Between Administrator and [Commissioner] of Insurance

Sec. 4.111. The Administrator and the [Commissioner] of Insurance are authorized and directed to consult and assist one another in maintaining compliance with this Article. They may jointly pursue investigations, prosecute suits, and take other official action, as may seem to them appropriate, if either of them is otherwise empowered to take the action. If the Administrator is informed of a violation or suspected violation by an insurer of this Article, or of the insurance laws, rules, and regulations of this State, he shall advise the [Commissioner] of Insurance of the circumstances.

[¶ 946] [Administrative Action of [Commissioner] of Insurance]

[**Sec. 4.112.** (1) To the extent that his responsibility under this Article requires, the [Commissioner] of Insurance shall issue rules with respect to insurers, and with respect to refunds (Section 4.108), forms, schedules of premium rates and charges (Section 4.203), and his approval or disapproval thereof and, in case of violation, may make an order for compliance.

(2) [The State administrative procedure act] [Each provision of the Part on Administrative Procedures and Judicial Review (Part 4) of the Article on Administration (Article 6) which applies to and governs administrative action taken by the Administrator also] applies to and governs all administrative action taken by the [Commissioner] of Insurance pursuant to this section.]

COMMENT

This section may be omitted in an enacting State in which the NAIC Model Act or any similar statute and adequate statutes applying to and governing administrative action taken by the [Commissioner] of Insurance are in force.

PART 2—CONSUMER CREDIT INSURANCE

[¶ 947] Term of Insurance

Sec. 4.201. (1) Consumer credit insurance provided by a creditor may be subject to the furnishing of evidence of insurability satisfactory to the insurer. Whether or not such evidence is required, the term of the insurance shall commence

no later than when the debtor becomes obligated to the creditor or when the debtor applies for the insurance, whichever is later, except as follows:

(a) if any required evidence of insurability is not furnished until more than 30 days after the term would otherwise commence, the term may commence on the date when the insurer determines the evidence to be satisfactory; or

(b) if the creditor provides insurance not previously provided covering debts previously created, the term may commence on the effective date of the policy.

(2) The originally scheduled term of the insurance shall extend at least until the due date of the last scheduled payment of the debt except as follows:

(a) if the insurance relates to a revolving charge account or revolving loan account, the term need extend only until the payment of the debt under the account and may be sooner terminated after at least 30 days' notice to the debtor; or

(b) if the debtor is advised in writing that the insurance will be written for a specified shorter time, the term need extend only until the end of the specified time.

(3) The term of the insurance shall not extend more than 15 days after the originally scheduled due date of the last scheduled payment of the debt unless it is extended without additional cost to the debtor or as an incident to a deferral, refinancing, or consolidation.

[¶ 948] Amount of Insurance

Sec. 4.202. (1) Except as provided in subsection (2),

(a) in the case of consumer credit insurance providing life coverage, the amount of insurance may not initially exceed the debt and, if the debt is payable in instalments, may not at any time exceed the greater of the scheduled or actual amount of the debt; or

(b) in the case of any other consumer credit insurance, the total amount of periodic benefits payable may not exceed the total of scheduled unpaid instalments of the debt, and the amount of any periodic benefit may not exceed the original amount of debt divided by the number of periodic instalments in which it is payable.

(2) If consumer credit insurance is provided in connection with a revolving charge account or revolving loan account, the amounts payable as insurance benefits may be reasonably commensurate with the amount of debt as it exists from time to time. If consumer credit insurance is provided in connection with a commitment to grant credit in the future, the amounts payable as insurance benefits may be reasonably commensurate with the total from time to time of the amount of debt and the amount of the commitment. If the debt or the commitment is primarily for an agricultural purpose, and there is no regular schedule of payments, the amounts payable as insurance benefits may equal the total of the initial amount of debt and the amount of the commitment.

[¶ 949] Filing and Approval of Rates and Forms

Sec. 4.203. (1) A creditor may not use a form, or a schedule of premium rates or charges, the filing of which is required by this section, if the [Com-

missioner] of Insurance has disapproved the form or schedule and has notified the insurer of his disapproval. A creditor may not use a form or schedule unless

(a) the form or schedule has been on file with the [Commissioner] of Insurance for 30 days, or has earlier been approved by him; and

(b) the insurer has complied with this section with respect to the insurance.

(2) Except as provided in subsection (3), all policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders relating to consumer credit insurance delivered or issued for delivery in this State, and the schedules of premium rates or charges pertaining thereto, shall be filed by the insurer with the [Commissioner] of Insurance. He shall, within 30 days after the filing of any form or schedule, disapprove it if the premium rates or charges are unreasonable in relation to the benefits provided under the form, or if the form contains provisions which are unjust, unfair, inequitable, or deceptive or encourage misrepresentation of the coverage or are contrary to any provision of the [Insurance Code] or of any rule or regulation promulgated thereunder.

(3) If a group policy has been delivered in another state, the forms to be filed by the insurer with the [Commissioner] of Insurance are the group certificates and notices of proposed insurance. He shall approve them if

(a) they provide the information that would be required if the group policy were delivered in this State; and

(b) the applicable premium rates or charges do not exceed those established by his rules or regulations.

COMMENT

Subsection (2) follows the formulation of New York Insurance Law Section 154.7, which has been upheld by the New York Court of Appeals as directing the New York Superintendent of Insurance not to approve premium rates for consumer credit insurance if they are "unreasonable in relation to the benefits provided" under the related form of policy or certificate. Some doubt has been expressed as to whether the Commissioner of Insurance has the same power under the provisions of paragraph B of Section 7 of the NAIC Model Act, which require the Commissioner to "disapprove any . . . form if the benefits provided therein are not reasonable in relation to the premium charge."

PART 3—PROPERTY AND LIABILITY INSURANCE

[¶ 950] Property Insurance

Sec. 4.301. (1) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless

(a) the insurance covers a substantial risk of loss of or damage to property related to the credit transaction;

(b) the amount, terms, and conditions of the insurance are reasonable in relation to the character and value of the property insured or to be insured; and

(c) the term of the insurance is reasonable in relation to the terms of credit.

(2) The term of the insurance is reasonable if it is customary and does not extend substantially beyond a scheduled maturity.

(3) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless the amount financed or principal exclusive of charges for the insurance is $300 or more, and the value of the property is $300 or more.

(4) The amounts of $300 in subsection (3) are subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

[¶ 951] Insurance on Creditor's Interest Only

Sec. 4.302. If a creditor contracts for or receives a separate charge for insurance against loss of or damage to property, the risk of loss or damage not willfully caused by the debtor is on the debtor only to the extent of any deficiency in the effective coverage of the insurance, even though the insurance covers only the interest of the creditor.

COMMENT

The allocation of loss under this section is not to be upset by subrogation.

[¶ 952] Liability Insurance

Sec. 4.303. A creditor may not contract for or receive a separate charge for insurance against liability unless the insurance covers a substantial risk of liability arising out of the ownership or use of property related to the credit transaction.

[¶ 953] Cancellation by Creditor

Sec. 4.304. A creditor shall not request cancellation of a policy of property or liability insurance except after the debtor's default or in accordance with a written authorization by the debtor, and in either case the cancellation does not take effect until written notice is delivered to the debtor or mailed to him at his address as stated by him. The notice shall state that the policy may be cancelled on a date not less than 10 days after the notice is delivered, or, if the notice is mailed, not less than 13 days after it is mailed.

Article 5—Remedies and Penalties

PART 1—LIMITATIONS ON CREDITORS' REMEDIES

[¶ 954] Short Title

Sec. 5.101. This Article shall be known and may be cited as Uniform Consumer Credit Code—Remedies and Penalties.

[¶ 955] Scope

Sec. 5.102. This Part applies to actions or other proceedings to enforce rights arising from consumer credit sales, consumer leases and consumer loans; and, in addition, to extortionate extensions of credit (Section 5.107).

COMMENT

Section 1.201 states the territorial applicability of this Act. Sections 2.601 and 3.601 provide for the applicability of this Act by written agreement.

[¶ 956] Restrictions on Deficiency Judgments in Consumer Credit Sales

Sec. 5.103. (1) This section applies to a consumer credit sale of goods or services.

(2) If the seller repossesses or voluntarily accepts surrender of goods which were the subject of the sale and in which he has a security interest and the cash price of the goods repossessed or surrendered was $1000 or less, the buyer is not personally liable to the seller for the unpaid balance of the debt arising from the sale of the goods, and the seller is not obligated to resell the collateral.

(3) If the seller repossesses or voluntarily accepts surrender of goods which were not the subject of the sale but in which he has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services and the cash price of the sale was $1000 or less, the buyer is not personally liable to the seller for the unpaid balance of the debt arising from the sale.

(4) For the purpose of determining the unpaid balance of consolidated debts or debts pursuant to revolving charge accounts, the allocation of payments to a debt shall be determined in the same manner as provided for determining the amount of debt secured by various security interests (Section 2.409).

(5) The buyer may be liable in damages to the seller if the buyer has wrongfully damaged the collateral or if, after default and demand, the buyer has wrongfully failed to make the collateral available to the seller.

(6) If the seller elects to bring an action against the buyer for a debt arising from a consumer credit sale of goods or services, when under this section he would not be entitled to a deficiency judgment if he repossessed the collateral, and obtains judgment

(a) he may not repossess the collateral, and

(b) the collateral is not subject to levy or sale on execution or similar proceedings pursuant to the judgment.

(7) The amounts of $1000 in subsection (2) and (3) are subject to change pursuant to the provisions on adjustment of dollar amounts (Section 1.106).

[¶ 957] No Garnishment Before Judgment

Sec. 5.104. Prior to entry of judgment in an action against the debtor for debt arising from a consumer credit sale, a consumer lease, or a consumer loan, the creditor may not attach unpaid earnings of the debtor by garnishment or like proceedings.

[¶ 958] Limitation on Garnishment

Sec. 5.105. (1) For the purposes of this Part

(a) "disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld; and

(b) "garnishment" means any legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of a debt.

(2) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment to enforce payment of a judgment arising from a consumer credit sale, consumer lease, or consumer loan may not exceed the lesser of

(a) 25 per cent of his disposable earnings for that week, or

(b) the amount by which his disposable earnings for that week exceed forty times the Federal minimum hourly wage prescribed by Section 6 (a)(1) of the Fair Labor Standards Act of 1938, U. S. C. tit. 29, § 206(a)(1), in effect at the time the earnings are payable.

(c) In the case of earnings for a pay period other than a week, the Administrator shall by rule prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (b).

(3) No court may make, execute, or enforce an order or process in violation of this section.

COMMENT

This section is derived from CCPA Sections 302 and 303. The exemption has been increased from thirty times the minimum hourly wage to forty in the belief that the higher figure was justified in consumer transactions.

[¶ 959] No Discharge From Employment for Garnishment

Sec. 5.106. No employer shall discharge an employee for the reason that a creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment or like proceedings directed to the employer for the purpose of paying a judgment arising from a consumer credit sale, consumer lease, or consumer loan.

COMMENT

The penalty for violation of this section is found in Section 5.202(6).

This Section is derived from CCPA § 304. However, it prohibits an employer from discharging an employee by reason of any garnishment (whether one or more) under a judgment arising from a consumer credit sale, consumer lease, or consumer loan.

[¶ 960] Extortionate Extensions of Credit

Sec. 5.107. (1) If it is the understanding of the creditor and the debtor at the time an extension of credit is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person, the repayment of the extension of credit is unenforceable through civil judicial processes against the debtor.

(2) If it is shown that an extension of credit was made at an annual rate exceeding 45 per cent calculated according to the United States rule and that the creditor then had a reputation for the use or threat of use of violence or other criminal means to cause harm to the person, reputation, or property of any person to collect extensions of credit or to punish the nonrepayment thereof, there is prima facie evidence that the extension of credit was unenforceable under subsection (1).

COMMENT

This section is derived from CCPA Section 892.

[¶ 961] Unconscionability

Sec. 5.108. (1) With respect to a consumer credit sale, consumer lease, or consumer loan, if the court as a matter of law finds the agreement or any clause of the agreement to have been unconscionable at the time it was made the court may refuse to enforce the agreement, or it may enforce the remainder of the agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) If it is claimed or appears to the court that the agreement or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making the determination.

(3) For the purpose of this section, a charge or practice expressly permitted by this Act is not in itself unconscionable.

COMMENT

Subsections (1) and (2) are derived from UCC Section 2-302.

PART 2—DEBTORS' REMEDIES

[¶ 962] Interests in Land

Sec. 5.201. For purposes of the provisions of this Part on civil liability for violation of disclosure provisions (Section 5.203) and on debtor's right to rescind certain transactions (Section 5.204)

(1) consumer credit sale includes a sale of an interest in land without regard to the rate of the credit service charge if the sale is otherwise a consumer credit sale (Section 2.104); and

(2) consumer loan includes a loan primarily secured by an interest in land without regard to the rate of the loan finance charge if the loan is otherwise a consumer loan (Section 3.104).

COMMENT

Sections 5.203 and 5.204 apply to transactions secured by interests in land even though the credit service charge or loan finance charge does not exceed 10%.

[¶ 963] Effect of Violations on Rights of Parties

Sec. 5.202. (1) If a creditor has violated the provisions of this Act applying to certain negotiable instruments (Section 2.403), or limitations on the schedule of payments or loan term for regulated loans (Section 3.512), the debtor is not obligated to pay the credit service charge or loan finance charge, and has a right to recover from the person violating this Act or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt a penalty in an amount determined by the court not in excess of three times the amount of the credit service charge or loan finance charge. No action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement with respect to which the violation occurred.

(2) If a creditor has violated the provisions of this Act applying to authority to make supervised loans (Section 3.502), the loan is void and the debtor is not obligated to pay either the principal or loan finance charge. If he has paid any part of the principal or of the loan finance charge, he has a right to recover the payment from the person violating this Act or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt. With respect to violations arising from loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than two years after the violation occurred. With respect to violations arising from other loans, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was paid.

(3) A debtor is not obligated to pay a charge in excess of that allowed by this Act, and if he has paid an excess charge he has a right to a refund. A refund may be made by reducing the debtor's obligation by the amount of the excess charge. If the debtor has paid an amount in excess of the lawful obligation under the agreement, the debtor may recover the excess amount from the person who made the excess charge or from an assignee of that person's rights who undertakes direct collection of payments from or enforcement of rights against debtors arising from the debt.

(4) If a debtor is entitled to a refund and a person liable to the debtor refuses to make a refund within a reasonable time after demand, the debtor may recover from that person a penalty in an amount determined by a court not exceeding the greater of either the amount of the credit service or loan finance charge or ten times the amount of the excess charge. If the creditor has made an excess charge in deliberate violation of or in reckless disregard for this Act, the penalty may be recovered even though the creditor has refunded the excess charge. No penalty pursuant to this subsection may be recovered if a court has ordered a similar penalty assessed against the same person in a civil action by the Administrator (Section 6.113). With respect to excess charges arising from sales made pursuant to revolving charge accounts or from loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than two years after the time the

excess charge was made. With respect to excess charges arising from other consumer credit sales or consumer loans, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made.

(5) Except as otherwise provided, no violation of this Act impairs rights on a debt.

(6) If an employer discharges an employee in violation of the provisions prohibiting discharge (Section 5.106), the employee may within [ ] days bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for six weeks.

(7) If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error no liability is imposed under subsections (1), (2), and (4) and the validity of the transaction is not affected.

(8) In any case in which it is found that a creditor has violated this Act, the court may award reasonable attorney's fees incurred by the debtor.

[¶ 964] Civil Liability for Violation of Disclosure Provisions

Sec. 5.203. (1) Except as otherwise provided in this section, a creditor who, in violation of the provisions on disclosure (Part 3), other than the provisions on advertising (Sections 2.313 and 3.312), of the Article on Credit Sales (Article 2) and the Article on Loans (Article 3), fails to disclose information to a person entitled to the information under this Act is liable to that person in an amount equal to the sum of

(a) twice the amount of the credit service or loan finance charge in connection with the transaction, but the liability pursuant to this paragraph shall be not less than $100 nor more than $1000; and

(b) in the case of a successful action to enforce the liability under paragraph (a), the costs of the action together with reasonable attorney's fees as determined by the court.

(2) A creditor has no liability under this section if within 15 days after discovering an error, and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to insure that the person will not be required to pay a credit service charge or loan finance charge in excess of the amount or percentage rate actually disclosed.

(3) A creditor may not be held liable in any action brought under this section for a violation of this Act if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

(4) Any action which may be brought under this section against the original creditor in any credit transaction involving a security interest in land may be maintained against any subsequent assignee of the original creditor where the assignee, its subsidiaries, or affiliates were in a continuing business relationship with the original creditor either at the time the credit

was extended or at the time of the assignment, unless the assignment was involuntary, or the assignee shows by a preponderance of evidence that it did not have reasonable grounds to believe that the original creditor was engaged in violations of this Act and that it maintained procedures reasonably adapted to apprise it of the existence of the violations.

(5) No action pursuant to this section may be brought more than one year after the date of the occurrence of the violation.

COMMENT

This section is derived from Section 130 of the CCPA.

[¶ 965] Debtor's Right to Rescind Certain Transactions

Sec. 5.204. (1) Except as otherwise provided in this section, in the case of a consumer credit sale or consumer loan with respect to which a security interest is retained or acquired in an interest in land which is used or expected to be used as the residence of the person to whom credit is extended, the debtor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the disclosures required under this section and all other material disclosures required by this Act, whichever is later, by notifying the creditor, in accordance with rules of the Administrator, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with rules of the Administrator, to the debtor in a transaction subject to this section the rights of the debtor under this section. The creditor shall also provide, in accordance with rules of the Administrator, an adequate opportunity to the obligor to exercise his right to rescind any transaction subject to this section.

(2) When a debtor exercises his right to rescind under subsection (1), he is not liable for any credit service charge, loan finance charge, or other charge, and any security interest given by the debtor becomes void upon the rescission. Within 10 days after receipt of a notice of rescission, the creditor shall return to the debtor the money or property given as earnest money, down payment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered property to the debtor, the debtor may retain possession of it. Upon the performance of the creditor's obligations under this section, the debtor shall tender the property to the creditor, except that if return of the property in kind would be impractical or inequitable, the debtor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the debtor, at the option of the debtor. If the creditor does not take possession of the property within 10 days after tender by the debtor, ownership of the property vests in the debtor without obligation on his part to pay for it.

(3) Notwithstanding any rule of evidence, written acknowledgment of receipt of any disclosure required under this Act by a person to whom a statement is required to be given pursuant to this section does no more than create a rebuttable presumption of delivery thereof.

(4) The Administrator may, if he finds that the action is necessary in order to permit homeowners to meet bona fide personal financial emergencies, prescribe rules authorizing the modification or waiver of any rights created under this section to the extent and under the circumstances set forth in those rules.

(5) This section does not apply to the creation or retention of a first lien against a dwelling to finance the acquisition of that dwelling.

COMMENT

This section is derived from CCPA Section 125.

[¶ 966] Refunds and Penalties as Set-Off to Obligation

Sec. 5.205. Refunds or penalties to which the debtor is entitled pursuant to this Part may be set off against the debtor's obligation, and may be raised as a defense to a suit on the obligation without regard to the time limitations prescribed by this Part.

PART 3—CRIMINAL PENALTIES

[¶ 967] Willful Violations

Sec. 5.301. (1) A supervised lender who willfully makes charges in excess of those permitted by the provisions of the Article on Loans (Article 3) applying to supervised loans (Part 5) is guilty of a misdemeanor and upon conviction may be [sentenced to pay a fine not exceeding $[ ], or to imprisonment not exceeding one year, or both].

(2) A person, other than a supervised financial organization, who willfully engages in the business of making supervised loans without a license in violation of the provisions of this Act applying to authority to make supervised loans (Section 3.502) is guilty of a misdemeanor and upon conviction may be [sentenced to pay a fine not exceeding $[ ], or to imprisonment not exceeding one year, or both].

(3) A person who willfully engages in the business of making consumer credit sales, consumer leases, or consumer loans, or of taking assignments of rights against debtors arising therefrom and undertakes direct collection of payments or enforcement of these rights, without complying with the provisions of this Act concerning notification (Section 6.202) or payment of fees (Section 6.203), is guilty of a misdemeanor and upon conviction may be [sentenced to pay a fine not exceeding $100].

[¶ 968] Disclosure Violations

Sec. 5.302. A person who knowingly and willfully violates the provisions on disclosure (Part 3) of the Article on Credit Sales (Article 2) or of the Article on Loans (Article 3) is guilty of a [misdemeanor] and upon conviction may be sentenced to pay a fine not exceeding $5000, or to imprisonment not exceeding one year, or both.

Article 6—Administration

PART 1—POWERS AND FUNCTIONS OF ADMINISTRATOR

[¶ 969] Short Title

Sec. 6.101. This Article shall be known and may be cited as Uniform Consumer Credit Code—Administration.

[¶ 970] Applicability

Sec. 6.102. This Part applies to persons who in this State

(1) make or solicit consumer credit sales, consumer leases, consumer loans, consumer related sales (Section 2.602) and consumer related loans (Section 3.602); or

(2) directly collect payments from or enforce rights against debtors arising from sales, leases, or loans specified in subsection (1), wherever they are made.

[¶ 971] Administrator

Sec. 6.103. "Administrator" means [ ].

COMMENT

In order to obtain the administration that is so vital to the effectiveness of the Uniform Consumer Credit Code, the National Conference recommends centralizing all powers of administration in a single official or agency. In recognition of the fact that in some States a single official or agency either is not constitutionally possible or may not be politically feasible, the Act does not attempt to identify the Administrator. The Administrator may be a single State official or department, two or more State officials or departments, or a Commission. For example in a State in which a single official (*e.g.*, Superintendent or Commissioner of Banks, Banking or Financial Institutions) or a single department (*e.g.*, Banking Department, Commerce Department or Department of Financial Institutions) presently supervises both banks and other financial institutions such as consumer finance companies and sales finance companies, it may be desirable to designate that official or department as the single Administrator. If two or more State officials or departments are to share the powers of the Administrator, the National Conference recommends that a Commission including those officials or departments be designated as Administrator, and that, unless a statutory division of areas of power and authority is provided for, the Commission be given power to prescribe the areas in which the officials or departments who are members of the Commission shall exercise the power and authority of the Administrator.

[¶ 972] Powers of Administrator; Harmony with Federal Regulations; Reliance on Rules; Duty to Report

Sec. 6.104. (1) In addition to other powers granted by this Act, the Administrator may within the limitations provided by law

(a) receive and act on complaints, take action designed to obtain voluntary compliance with this Act, or commence proceedings on his own initiative;

(b) counsel persons and groups on their rights and duties under this Act;

(c) establish programs for the education of consumers with respect to credit practices and problems;

(d) make studies appropriate to effectuate the purposes and policies of this Act and make the results available to the public; [and]

(e) adopt, amend, and repeal substantive rules when specifically authorized by this Act, and adopt, amend, and repeal procedural rules to carry out the provisions of this Act [;

(f) maintain offices within this State; and]

[(g) appoint any necessary attorneys, hearing examiners, clerks, and other employees and agents and fix their compensation, and authorize attorneys appointed under this section to appear for and represent the Administrator in court].

(2) To keep the Administrator's rules in harmony with the Federal Consumer Credit Protection Act and the regulations prescribed from time to time pursuant to that Act by the Board of Governors of the Federal Reserve System and with the rules of administrators in other jurisdictions which enact the Uniform Consumer Credit Code, the Administrator, so far as is consistent with the purposes, policies and provisions of this Act, shall

(a) before adopting, amending, and repealing rules, advise and consult with administrators in other jurisdictions which enact the Uniform Consumer Credit Code; and

(b) in adopting, amending, and repealing rules, take into consideration:

(i) the regulations so prescribed by the Board of Governors of the Federal Reserve System; and

(ii) the rules of administrators in other jurisdictions which enact the Uniform Consumer Credit Code.

(3) Except for refund of an excess charge, no liability is imposed under this Act for an act done or omitted in conformity with a rule of the Administrator notwithstanding that after the act or omission the rule may be amended or repealed or be determined by judicial or other authority to be invalid for any reason.

(4) The Administrator shall report [annually on or before January 1] to the [Governor and Legislature] on the operation of his office, on the use of consumer credit in the State, and on the problems of persons of small means obtaining credit from persons regularly engaged in extending sales or loan credit. For the purpose of making the report, the Administrator is authorized to conduct research and make appropriate studies. The report shall include a description of the examination and investigation procedures and policies of his office, a statement of policies followed in deciding whether to investigate or examine the offices of credit suppliers subject to this Act, a statement of the number and percentages of offices which are periodically investigated or examined, a statement of the types of consumer credit problems of both creditors and debtors which have come to his attention through his examinations and investigations and the disposition of them under existing law, a statement of the extent to which the rules of the Administrator pursuant to this Act are not in harmony with the regulations prescribed by the Board of Governors of the Federal Reserve System pursuant to the Federal Consumer Credit Protection Act or the rules of administrators in other jurisdictions which enact the Uniform Consumer Credit Code and the reasons for such variations, and a general

statement of the activities of his office and of others to promote the purposes of this Act. The report shall not identify the creditors against whom action is taken by the Administrator.

COMMENT

The direction to the Administrator in subsection (2) to keep his rules in harmony with the federal regulations issued pursuant to the CCPA and with the rules of administrators in other jurisdictions which enact the Uniform Consumer Credit Code is derived from the Uniform Narcotic Drug Act Section 1(14)(Alt.).

[¶ 973] Administrative Powers with Respect to Supervised Financial Organizations

Sec. 6.105. (1) With respect to supervised financial organizations, the powers of examination and investigation (Sections 3.506 and 6.106) and administrative enforcement (Section 6.108) shall be exercised by the official or agency to whose supervision the organization is subject. All other powers of the Administrator under this Act may be exercised by him with respect to a supervised financial organization.

(2) If the Administrator receives a complaint or other information concerning non-compliance with this Act by a supervised financial organization, he shall inform the official or agency having supervisory authority over the organization concerned. The Administrator may request information about supervised financial organizations from the officials or agencies supervising them.

(3) The Administrator and any official or agency of this State having supervisory authority over a supervised financial organization are authorized and directed to consult and assist one another in maintaining compliance with this Act. They may jointly pursue investigations, prosecute suits, and take other official action, as they deem appropriate, if either of them is otherwise empowered to take the action.

[¶ 974] Investigatory Powers

Sec. 6.106. (1) If the Administrator has probable cause to believe that a person has engaged in an act which is subject to action by the Administrator, he may make an investigation to determine whether the act has been committed, and, to the extent necessary for this purpose, may administer oaths or affirmations, and upon his own motion or upon request of any party may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(2) If the person's records are located outside this State, the person shall, at his option, either make them available to the Administrator at a convenient location within this State, or pay the reasonable and necessary expenses for the Administrator or his representative to examine them at the place where they are maintained. The Administrator may designate representatives, including comparable officials of the State in which the records are located, to inspect them on his behalf.

(3) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the Administrator may apply to [ ] court for an order compelling compliance.

(4) The Administrator shall not make public the name or identity of a person whose acts or conduct he investigates pursuant to this section or the facts disclosed in the investigation, but this subsection does not apply to disclosures in actions or enforcement proceedings pursuant to this Act.

COMMENT

Administrator under this section includes the official or agency referred to in Section 6.105(1).

A course of conduct is an act subject to action by the Administrator under subsection (1).

[¶ 975] Application of [Administrative Procedure Act] [Part on Administrative Procedure and Judicial Review]

Sec. 6.107. Except as otherwise provided, the [State administrative procedure act] [Part on Administrative Procedure and Judicial Review (Part 4) of this Article] applies to and governs all administrative action taken by the Administrator pursuant to this Article or the Part on Regulated and Supervised Loans (Part 5) of the Article on Loans (Article 3).

COMMENT

This section subjects actions of the Administrator to the State administrative procedure act, regarding, *inter alia*, adoption of rules, notice and hearing, contested cases, and judicial review. If the State does not have an adequate administrative procedure act providing equivalent procedural and judicial review protections, Part 4 of this Article should be enacted; otherwise, it may be omitted.

[¶ 976] Administrative Enforcement Orders

Sec. 6.108. (1) After notice and hearing the Administrator may order a creditor or a person acting in his behalf to cease and desist from engaging in violations of this Act. A respondent aggrieved by an order of the Administrator may obtain judicial review of the order and the Administrator may obtain an order of the court for enforcement of its order in the [ ] court. The proceeding for review or enforcement is initiated by filing a petition in the court. Copies of the petition shall be served upon all parties of record.

(2) Within 30 days after service of the petition for review upon the Administrator, or within any further time the court may allow, the Administrator shall transmit to the court the original or a certified copy of the entire record upon which the order is based, including any transcript of testimony, which need not be printed. By stipulation of all parties to the review proceeding, the record may be shortened. After hearing, the court may (a) reverse or modify the order if the findings of fact of the Administrator are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, (b) grant any temporary relief or restraining order it deems just, and (c) enter an order enforcing, modifying, and enforcing as modified, or setting aside in whole or in part the order of the Administrator, or remanding the case to the Administrator for further proceedings.

(3) An objection not urged at the hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown.

A party may move the court to remand the case to the Administrator in the interest of justice for the purpose of adducing additional specified and material evidence and seeking findings thereon upon good cause shown for the failure to adduce this evidence before the Administrator.

(4) The jurisdiction of the court shall be exclusive and its final judgment or decree shall be subject to review by the [ ] court in the same manner and form and with the same effect as in appeals from a final judgment or decree in a [special proceeding]. The Administrator's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

(5) A proceeding for review under this section must be initiated within 30 days after a copy of the order of the Administrator is received. If no proceeding is so initiated, the Administrator may obtain a decree of the [ ] court for enforcement of its order upon a showing that the order was issued in compliance with this section, that no proceeding for review was initiated within 30 days after copy of the order was received, and that the respondent is subject to the jurisdiction of the court.

(6) With respect to unconscionable agreements or fraudulent or unconscionable conduct by the respondent, the Administrator may not issue an order pursuant to this section but may bring a civil action for an injunction (Section 6.111).

COMMENT

If the respondent does not seek review of the Administrator's cease and desist order, this section makes that order final and allows the Administrator to obtain enforcement of it without having to support its findings with substantial evidence.

[¶ 977] Assurance of Discontinuance

Sec. 6.109. If it is claimed that a person has engaged in conduct subject to an order by the Administrator (Section 6.108) or by a court (Sections 6.110 through 6.112), the Administrator may accept an assurance in writing that the person will not engage in the conduct in the future. If a person giving an assurance of discontinuance fails to comply with its terms, the assurance is evidence that prior to the assurance he engaged in the conduct described in the assurance.

[¶ 978] Injunctions Against Violations of Act

Sec. 6.110. The Administrator may bring a civil action to restrain a person from violating this Act and for other appropriate relief.

[¶ 979] Injunctions Against Unconscionable Agreements and Fraudulent or Unconscionable Conduct

Sec. 6.111. (1) The Administrator may bring a civil action to restrain a creditor or a person acting in his behalf from engaging in a course of

(a) making or enforcing unconscionable terms or provisions of consumer credit sales, consumer leases, or consumer loans;

(b) fraudulent or unconscionable conduct in inducing debtors to enter into consumer credit sales, consumer leases, or consumer loans; or

(c) fraudulent or unconscionable conduct in the collection of debts arising from consumer credit sales, consumer leases, or consumer loans.

(2) In an action brought pursuant to this section the court may grant relief only if it finds

(a) that the respondent has made unconscionable agreements or has engaged or is likely to engage in a course of fraudulent or unconscionable conduct;

(b) that the agreements or conduct of the respondent has caused or is likely to cause injury to consumers; and

(c) that the respondent has been able to cause or will be able to cause the injury primarily because the transactions involved are credit transactions.

(3) In applying this section, consideration shall be given to each of the following factors, among others:

(a) belief by the creditor at the time consumer credit sales, consumer leases, or consumer loans are made that there was no reasonable probability of payment in full of the obligation by the debtor;

(b) in the case of consumer credit sales or consumer leases, knowledge by the seller or lessor at the time of the sale or lease of the inability of the buyer or lessee to receive substantial benefits from the property or services sold or leased;

(c) in the case of consumer credit sales or consumer leases, gross disparity between the price of the property or services sold or leased and the value of the property or services measured by the price at which similar property or services are readily obtainable in credit transactions by like buyers or lessees;

(d) the fact that the creditor contracted for or received separate charges for insurance with respect to consumer credit sales or consumer loans with the effect of making the sales or loans, considered as a whole, unconscionable; and

(e) the fact that the respondent has knowingly taken advantage of the inability of the debtor reasonably to protect his interests by reason of physical or mental infirmities, ignorance, illiteracy or inability to understand the language of the agreement, or similar factors.

(4) In an action brought pursuant to this section, a charge or practice expressly permitted by this Act is not in itself unconscionable.

COMMENT

One purpose of this section is to afford the Administrator a means of dealing with new patterns of fraudulent or unconscionable conduct unforeseen and, perhaps, unforeseeable at the writing of this Act. Another is to give him a more flexible remedy for halting reprehensible creditor practices that have been specifically and somewhat rigidly treated in previous consumer credit legislation. For instance, this Act has no specific prohibition against the creditor's allowing the debtor to sign a credit agreement containing blanks. In some situations there may be legitimate reasons for a contract to contain blanks at the time of signing. However, if the creditor deliberately leaves blanks to be filled in after the debtor's signature and without his consent, the Administrator may seek to restrain the practice as fraudulent or unconscionable conduct under this section.

[¶ 980] **Temporary Relief**

Sec. 6.112. With respect to an action brought to enjoin violations of the Act (Section 6.110) or unconscionable agreements or fraudulent or uncon-

sciensable conduct (Section 6.111), the Administrator may apply to the court for appropriate temporary relief against a respondent, pending final determination of proceedings. If the court finds after a hearing held upon notice to the respondent that there is reasonable cause to believe that the respondent is engaging in or is likely to engage in conduct sought to be restrained, it may grant any temporary relief or restraining order it deems appropriate.

[¶ 981] Civil Actions by Administrator

Sec. 6.113. (1) After demand, the Administrator may bring a civil action against a creditor for making or collecting charges in excess of those permitted by this Act. An action may relate to transactions with more than one debtor. If it is found that an excess charge has been made, the court shall order the respondent to refund to the debtor or debtors the amount of the excess charge. If a creditor has made an excess charge in deliberate violation of or in reckless disregard for this Act, or if a creditor has refused to refund an excess charge within a reasonable time after demand by the debtor or the Administrator, the court may also order the respondent to pay to the debtor or debtors a civil penalty in an amount determined by the court not in excess of the greater of either the amount of the credit service or loan finance charge or ten times the amount of the excess charge. Refunds and penalties to which the debtor is entitled pursuant to this subsection may be set off against the debtor's obligation. If a debtor brings an action against a creditor to recover an excess charge or civil penalty, an action by the Administrator to recover for the same excess charge or civil penalty shall be stayed while the debtor's action is pending and shall be dismissed if the debtor's action is dismissed with prejudice or results in a final judgment granting or denying the debtor's claim. With respect to excess charges arising from sales made pursuant to revolving charge accounts or from loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than two years after the time the excess charge was made. With respect to excess charges arising from other consumer credit sales or consumer loans, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made. If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error, no liability to pay a penalty shall be imposed under this subsection.

(2) The Administrator may bring a civil action against a creditor or a person acting in his behalf to recover a civil penalty for willfully violating this Act, and if the court finds that the defendant has engaged in a course of repeated and willful violations of this Act, it may assess a civil penalty of no more than $5,000. No civil penalty pursuant to this subsection may be imposed for violations of this Act occurring more than two years before the action is brought or for making unconscionable agreements or engaging in a course of fraudulent or unconscionable conduct.

[¶ 982] Jury Trial

Sec. 6.114. In an action brought by the Administrator under this Act, he has no right to trial by jury.

[¶ 983] Debtors' Remedies Not Affected

Sec. 6.115. The grant of powers to the Administrator in this Article does not affect remedies available to debtors under this Act or under other principles of law or equity.

[¶ 984] [Venue]

[**Sec. 6.116.** The Administrator may bring actions or proceedings in a court in a county in which an act on which the action or proceeding is based occurred or in a county in which respondent resides or transacts business.]

COMMENT

This section is bracketed because it may be unnecessary in some States because of adequate venue rules in those states.

PART 2—NOTIFICATION AND FEES

[¶ 985] Applicability

Sec. 6.201. This Part applies to a person making in this State consumer credit sales, consumer leases, or consumer loans and to a person having an office or place of business in this State who takes assignments of and undertakes direct collection of payments from or enforcement of rights against debtors arising from these sales, leases, or loans.

[¶ 986] Notification

Sec. 6.202. (1) Persons subject to this Part shall file notification with the Administrator within 30 days after commencing business in this State, and, thereafter, on or before January 31 of each year. The notification shall state:

(a) name of the person;

(b) name in which business is transacted if different from (1);

(c) address of principal office, which may be outside this State;

(d) address of all offices or retail stores, if any, in this State at which consumer credit sales, consumer leases, or consumer loans are made, or in the case of a person taking assignments of obligations, the offices or places of business within this State at which business is transacted;

(e) if consumer credit sales, consumer leases, or consumer loans are made otherwise than at an office or retail store in this State, a brief description of the manner in which they are made;

(f) address of designated agent upon whom service of process may be made in this State (Section 1.203); and

(g) whether regulated or supervised loans or both are made.

(2) If information in a notification becomes inaccurate after filing, no further notification is required until the following January 31.

[¶ 987] **Fees**

Sec. 6.203. (1) A person required to file notification shall on or before January 31 of each year pay to the [Administrator] an annual fee of $10 for that year.

(2) Persons required to file notification who are sellers, lessors, or lenders shall pay an additional fee at the time and in the manner stated in subsection (1) of $10 for each $100,000, or part thereof, in excess of $100,000, of the original unpaid balances arising from consumer credit sales, consumer leases, and consumer loans made in this State within the preceding calendar year and held either by the seller, lessor, or lender for more than 30 days after the inception of the sale, lease, or loan giving rise to the obligations, or by an assignee who has not filed notification. A refinancing of a sale, lease, or loan resulting in an increase in the amount of an obligation is considered a new sale, lease, or loan to the extent of the amount of the increase.

(3) Persons required to file notification who are assignees shall pay an additional fee at the time and in the manner stated in subsection (1) of $10 for each $100,000, or part thereof, of the unpaid balances at the time of the assignment of obligations arising from consumer credit sales, consumer leases, and consumer loans made in this State taken by assignment during the preceding calendar year, but an assignee need not pay a fee with respect to an obligation on which the assignor or other person has already paid a fee.

PART 3—COUNCIL OF ADVISORS ON CONSUMER CREDIT

[¶ 988] **Council of Advisors on Consumer Credit**

Sec. 6.301. (1) There is hereby created the Council of Advisors on Consumer Credit consisting of [16] members, who shall be appointed by the Governor. One of the Advisors shall be designated by the Governor as Chairman. In appointing members of the Council, the Governor shall seek to achieve a fair representation from the various segments of the consumer credit industry and the public.

(2) The term of office of each member of the Council is [4] years. Of those members first appointed, [four] shall be appointed for a term of [1] year, [four] for a term of [2] years, [four] for a term of [3] years, and [four] for a term of [4] years. A member chosen to fill a vacancy arising otherwise than by expiration of term shall be appointed for the unexpired term of the member whom he is to succeed. A member of the Council is eligible for reappointment.

(3) Members of the Council shall serve without compensation but are entitled to reimbursement of expenses incurred in the performance of their duties.

[¶ 989] **Function of Council; Conflict of Interest**

Sec. 6.302. The Council shall advise and consult with the Administrator concerning the exercise of his powers under this Act and may make recommendations to him. Members of the Council may assist the Administrator in obtaining compliance with this Act. Since it is an objective of this Part to obtain competent representatives of creditors and the public to serve on the Council and to assist and cooperate with the Administrator in achieving the objectives of this Act, service on the Council shall not in itself constitute a conflict of interest regardless of the occupations or associations of the members.

[¶ 990] **Meetings**

Sec. 6.303. The Council and the Administrator shall meet together at a time and place designated by the Chairman at least twice each year. The Council may hold additional meetings when called by the Chairman.

[PART 4—ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW]

[¶ 991] **[Applicability and Scope]**

[Sec. 6.401. This Part applies to the Administrator, prescribes the procedures to be observed by him in exercising his powers under this Act, and supplements the provisions of the Part on Powers and Functions of Administrator (Part 1) of this Article and of the Part on Regulated and Supervised Loans (Part 5) of the Article on Loans (Article 3).]

[¶ 992] **[Definitions in Part]**

[Sec. 6.402. In this Part (1) "Contested case" means a proceeding, including but not restricted to one pursuant to the provisions on administrative enforcement orders (subsection (1) of Section 6.108) and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by the Administrator after an opportunity for hearing.

(2) "License" means a license authorizing a person to make supervised loans pursuant to the provisions on authority to make supervised loans (Section 3.502).

(3) "Licensing" includes the Administrator's process respecting the grant, denial, revocation, suspension, annulment, withdrawal, or amendment of a license.

(4) "Party" means the Administrator and each person named or admitted as a party, or who is aggrieved by action taken and seeks to be admitted as a party.

(5) "Rule" means each rule specifically authorized by this Act that applies generally and implements, interprets or prescribes law or policy, or each statement by the Administrator that applies generally and describes the Administrator's procedure or practice requirements or the organization of his office. The term includes the amendment or repeal of a prior rule but does not include

(a) statements concerning only the internal management of the Administrator's office and not affecting private rights or procedures available to the public;

(b) declaratory rulings issued pursuant to the provisions on declaratory rulings by Administrator (Section 6.409); or

(c) intra-office memoranda.]

COMMENT

These definitions are derived from Section 1 of the Uniform Law Commissioners' Revised Model State Administrative Procedure Act (hereinafter referred to as the "Revised Model Act").

[¶ 993] [Public Information; Adoption of Rules; Availability of Rules and Orders]

[Sec. 6.403. (1) In addition to other rule-making requirements imposed by law, the Administrator shall:

(a) adopt as a rule a description of the organization of his office, stating the general course and method of the operations of his office and the methods whereby the public may obtain information or make submissions or requests;

(b) adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the Administrator or his office;

(c) make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the Administrator in the discharge of his functions:

(d) make available for public inspection all final orders, decisions, and opinions.

(2) No rule, order, or decision of the Administrator is valid or effective against any person or party, nor may it be invoked by the Administrator for any purpose, until it has been made available for public inspection as herein required. This provision is not applicable in favor of any person or party who has actual knowledge thereof.]

COMMENT

This Section is derived from Section 2 of the Revised Model Act.

[¶ 994] [Procedure for Adoption of Rules]

[Sec. 6.404. (1) Prior to the adoption, amendment, or repeal of any rule, the Administrator shall

(a) give at least 20 days' notice of his intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made timely request of the Administrator for advance notice of his rule-making proceedings and shall be published in [here insert the medium of publication appropriate for the adopting State],

(b) afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In case of substantive rules, opportunity for oral hearing must be granted if requested by 25 persons, by a governmental subdivision or agency, or by an association having not less than 25 members. The Administrator shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule the Administrator, if requested to do so by an interested person either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein his reasons for overruling the considerations urged against its adoption.

(2) No rule is valid unless adopted in substantial compliance with this section. A proceeding to contest any rule on the ground of non-compliance with the procedural requirements of this section must be commenced within 2 years from the effective date of the rule.]

COMMENT

This Section is derived from Section 3 of the Revised Model Act.

[¶ 995] [Filing and Taking Effect of Rules]

[Sec. 6.405. (1) The Administrator shall file in the office of the [Secretary of State] a certified copy of each rule adopted by him. The [Secretary of State] shall keep a permanent register of the rules open to public inspection.

(2) Each rule hereafter adopted is effective 20 days after filing, except that, if a later date is specified in the rule, the later date is the effective date.]

COMMENT

This Section is derived from Section 4 of the Revised Model Act.

[¶ 996] [Publication of Rules]

[Sec. 6.406. (1) The [Secretary of State] shall compile, index, and publish all effective rules adopted by the Administrator. Compilations shall be supplemented or revised as often as necessary.

(2) Compilations shall be made available upon request to [agencies and officials of this State] free of charge and to other persons at prices fixed by the [Secretary of State] to cover mailing and publication costs.]

COMMENT

This Section is derived from Section 5 of the Revised Model Act.

[¶ 997] [Petition for Adoption of Rules]

[Sec. 6.407. An interested person may petition the Administrator requesting the promulgation amendment, or repeal of a rule. The Administrator shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 30 days after submission of a petition, the Administrator either shall deny the petition in writing (stating his reasons for the denials) or shall initiate rule-making proceedings in accordance with the provisions on procedure for adoption of rules (Section 6.404).]

COMMENT

This Section is derived from Section 6 of the Revised Model Act.

[¶ 998] [Declaratory Judgment on Validity or Applicability of Rules]

[Sec. 6.408. The validity or applicability of a rule may be determined in an action for declaratory judgment in the [. . . court], if it is alleged

that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The Administrator shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the Administrator to pass upon the validity or applicability of the rule in question.]

COMMENT

This Section is derived from Section 7 of the Revised Model Act.

[¶ 999] [Declaratory Rulings by Administrator]

[**Sec. 6.409.** The Administrator shall provide by rule for the filing and prompt disposition of petitions or declaratory rulings as to the applicability of any statutory provision or of any rule of the Administrator. Rulings disposing of petitions have the same status as decisions or orders in contested cases.]

COMMENT

This Section is derived from Section 8 of the Revised Model Act.

[¶ 1000] [Contested Cases; Notice; Hearing; Records]

[**Sec. 6.410.** (1) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(2) The notice shall include:

(a) a statement of the time, place, and nature of the hearing;

(b) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(c) a reference to the particular provisions of the statutes and rules involved;

(d) a short and plain statement of the matters asserted. If the Administrator or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

(3) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

(4) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(5) The record in a contested case shall include:

(a) all pleadings, motions, intermediate rulings;

(b) evidence received or considered;

(c) a statement of matters officially noticed;

(d) questions and offers of proof, objections, and rulings thereon;

(e) proposed findings and exceptions;

(f) any decision, opinion, or report by the officer presiding at the hearing;

(g) all staff memoranda or data submitted to the hearing officer or members of the office of the Administrator in connection with their consideration of the case.

(6) Oral proceedings or any part thereof shall be transcribed on request of any party [, but at his expense].

(7) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.]

COMMENT

This Section is derived from Section 9 of the Revised Model Act.

[¶ 1001] [Rules of Evidence; Official Notice]

[**Sec. 6.411.** In contested cases:

(1) irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in [non-jury] civil cases in the [. . . court of this State] shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The Administrator shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

[(2) documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original;]

(3) a party may conduct cross-examinations required for a full and true disclosure of the facts;

(4) notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the Administrator's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The Administrator's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.]

COMMENT

This Section is derived from Section 10 of the Revised Model Act.

[¶ 1002] [Decisions and Orders]

[**Sec. 6.412.** A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with rules of the Administrator, a party submitted proposed findings of

fact, the decision shall include a ruling upon each proposed findings. Parties shall be notified either personally or by mail of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.]

COMMENT

This Section is derived from Section 12 of the Revised Model Act.

[¶ 1003] [Licenses]

[Sec. 6.413. (1) When the grant or denial of a license is required to be preceded by notice and opportunity for hearing, the provisions of this Part concerning contested cases apply.

(2) No revocation, suspension, annulment, or withdrawal of a license is lawful unless, prior to the institution of proceedings by the Administrator, he gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license.]

COMMENT

This Section is derived from Section 14 of the Revised Model Act.

[¶ 1004] [Judicial Review of Contested Cases]

[Sec. 6.414. (1) A person who has exhausted all administrative remedies available before the Administrator and who is aggrieved by a final decision in a contested case is entitled to judicial review under this Part. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate action or ruling of the Administrator is immediately reviewable if review of the final decision of the Administrator would not provide an adequate remedy.

(2) Proceedings for review are instituted by filing a petition in the [. . . court] within [30] days after [mailing notice of] the final decision of the Administrator or, if a rehearing is requested, within [30] days after the decision thereon. Copies of the petition shall be served upon the Administrator and all parties of record.

(3) The filing of the petition does not itself stay enforcement of the decision of the Administrator. The Administrator may grant, or the reviewing court may order, a stay upon appropriate terms.

(4) Within [30] days after the service of the petition, or within further time allowed by the court, the Administrator shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(5) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of

the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the Administrator, the court may order that the additional evidence be taken before the Administrator upon conditions determined by the court. The Administrator may modify his findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(6) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the Administrator, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(7) The court shall not substitute its judgment for that of the Administrator as to the weight of the evidence on questions of fact. The court may affirm the decision of the Administrator or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the Administrator;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.]

COMMENT

This Section is derived from Section 15 of the Revised Model Act.

[¶ 1005] [Appeals]

[**Sec. 6.415.** An aggrieved party may obtain a review of any final judgment of the [. . . court] under this Part by appeal to the [. . . court]. The appeal shall be taken as in other civil cases.]

Article 7.—Reserved for Future Use

Note: Provisions concerning consumer credit counseling agencies are being considered by the Special Committee and, if approved by the National Conference after 1968, will be proposed as Article 7 of the Uniform Consumer Credit Code.

Article 8.—Reserved for Future Use

Note: Provisions concerning wage earner receiverships are being considered by the Special Committee and, if approved by the National Conference after 1968, will be proposed as Article 8 of the Uniform Consumer Credit Code.

Article 9.—Effective Date and Repealer

[¶ 1006] Time of Taking Effect; Provisions for Transition

Sec. 9.101. (1) Except as otherwise provided in this section, this Act takes effect at 12:01 a. m. on [ ].

(2) To the extent appropriate to permit the Administrator to prepare for operation of this Act when it takes effect and to act on applications for licenses to make supervised loans under this Act (subsection (1) of Section 3.503), the Part on Regulated and Supervised Loans (Part 5) of the Article on Loans (Article 3) and the Article on Administration (Article 6) takes effect [ ].

Note: Insert in lieu of brackets at the end of subsection (2) either "immediately" or the earliest time possible under the constitutional or statutory requirements of the enacting State.

(3) Transactions entered into before this Act takes effect and the rights, duties, and interests flowing from them thereafter may be terminated, completed, consummated, or enforced as required or permitted by any statute, rule of law, or other law amended, repealed, or modified by this Act as though the repeal, amendment, or modification had not occurred, but this Act applies to

(a) refinancings, consolidations, and deferrals made after this Act takes effect of sales, leases, and loans whenever made;

(b) sales or loans made after this Act takes effect pursuant to revolving charge accounts (Section 2.108) and revolving loan accounts (Section 3.108) entered into, arranged, or contracted for before this Act takes effect; and

(c) all credit transactions made before this Act takes effect insofar as the article on remedies and penalties (Article 5) limits the remedies of creditors.

(4) With respect to revolving charge accounts (Section 2.108) and revolving loan accounts (Section 3.108) entered into, arranged, or contracted for before this Act takes effect, disclosure pursuant to the provisions on disclosure (Section 2.310 and Section 3.309), shall be made not later than 30 days after this Act takes effect.

COMMENT

The 30-day period in subsection (4) is derived from CCPA Section 127(c).

[¶ 1007] Continuation of Licensing

Sec. 9.102. All persons licensed or otherwise authorized under the provisions of [list statutes] on the effective date of this Act are licensed to make supervised loans under this Act pursuant to the Part on Regulated and Supervised Loans (Part 5) of the Article on Loans (Article 3), and all provisions of that Part apply to the persons so previously licensed or authorized. The Administrator may, but is not required to, deliver evidence of licensing to the persons so previously licensed or authorized.

COMMENT

This section provides automatic licensing under Article 3, Part 5, for all lenders previously licensed under the State's licensed lender statutes prior to the effective date.

No application or administrative action is required and the formal license under the prior statute, which will be repealed, will be a license under Part 5 of Article 3. The Administrator may, at such time as his new duties under the Code permit him an opportunity, substitute new licenses for those in the lenders' possession, but this is entirely a ministerial act.

[¶ 1008] Specific Repealer and Amendments

Sec. 9.103. (1) The following acts and parts of acts are repealed:

(a)

(b)

(c) [and so on]

(2) The following acts and parts of acts are amended:

(a)

(b)

(c) [and so on]

Note re Repealer and Amendatory Provisions

This Act is a comprehensive statute designed to regulate most aspects of consumer credit, maximum charges that may be made for consumer credit and rates of interest generally. Consumer credit covered includes sales credit related to the sale to consumers of goods or services, consumer loan credit, some credit related to the sale or financing of homes and some agricultural credit. All States have one or more acts regulating consumer credit and rates of interest and in many States additional provisions performing the same function appear in various other acts. To accommodate existing law to this Act, each State enacting this Act will need to repeal one or more existing acts or particular provisions in acts and may have to amend one or more other acts. The purpose of this Note is to suggest to the statutory revisor or other person preparing this Act for introduction into a particular State Legislature the acts which should be repealed or amended. To produce the uniformity which the Commissioners believe desirable, acts should be repealed or amended as recommended in this Note.

Acts to Be Totally or Substantially Repealed

Subject to other specific suggestions of this Note, certain existing acts devoted primarily to regulating consumer credit should be repealed in their entirety. The revisor or draftsman should insert in this section the appropriate statutes or provisions to be repealed. To help guide the search for these acts or provisions, a list of some of the common popular names of these acts follow, although there may be others in any particular jurisdiction:

Small loan acts, personal loan acts, consumer loan acts and acts licensing personal loan lenders, sales finance companies and consumer finance companies.

Instalment loan laws.

Retail instalment sales acts, motor vehicle instalment sales acts, all goods acts.

Revolving sales credit acts, revolving loan acts.

Truth-in-lending acts.

Home solicitation sales acts.

Home improvement sales and loan acts.

Insurance premium financing acts.

Acts Imposing Maximum Charges for Credit and General Usury Acts

Repeal of the above listed consumer credit regulatory acts will automatically repeal provisions in these acts imposing maximum charges for the types of credit dealt with in the acts. In addition, all general usury statutes and all other provisions in acts imposing maximum charges for loans, forbearance or the extension of credit should be repealed, excepting only provisions, if any, for maximum charges to be made by pawnbrokers.

Statutes providing for a "legal rate" of interest, that is, the rate to be applied for judgments, notes and other cases where

there is no agreed rate or no agreement is possible (as in a judgment) should not be repealed. If these statutes are so intertwined with maximum contract rates, *e.g.*, usury provisions, that it is difficult to separate the two types of provisions, total repeal of the usury and legal rate statute plus the addition of the following provision in this Act or elsewhere in the State statutes may be in order:

"If there is no agreement or provision of law for a different rate, the interest of money shall be at the rate of six percent per annum."

Provisions of Existing Statutes Affecting Powers of Organizations

In some States provisions relating to rates of interest are intertwined with provisions relating to powers of particular types of organizations, *e.g.*, small loan and sales finance companies, commercial banks and thrift institutions. In these cases provisions should be repealed, preserved or amended to comply with Section 1.108 of this Act. As indicated in Section 1.108, provisions relating to maximum charges should be repealed in all cases (subsection (1) of Section 1.108), provisions prescribing maximum amount or duration of any consumer credit sale or consumer loan should be repealed in statutes applicable to sellers, small loan companies consumer and sales finance companies, commercial banks and trust companies (subsection (2) of Section 1.108), and other provisions granting or limiting powers of organizations should be preserved (subsections (3) and (4) of Section 1.108).

Industrial Banks, Morris Plan Banks and the Like

As a result of evolutionary development industrial banks and Morris Plan banks made small loans at effective rates and in a manner similar to small loan companies but they also have power to receive deposits. In statutes providing for banks of this type, only those provisions prescribing maximum rates and regulations of the kind applied to small loan companies should be repealed. Provisions authorizing the organization of these banks and the receipt of deposits by them should be preserved.

THE IMPACT OF A CONSUMER CREDIT INTEREST LIMITATION LAW

WASHINGTON STATE: INITIATIVE 245

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CHAPTER I

INTRODUCTION

Purpose of the Study

This research was designed to determine the economic impacts of Initiative 245. The Initiative was passed by a vote of the people of the State of Washington in the general election of November 5, 1968. Its principal provision limited the interest rate (or "service charge") which could be assessed legally on various kinds of consumer credit to 12 per cent per year computed monthly at a rate of 1 per cent per month. It related to installment plans, revolving credit plans and credit cards whether these devices were used by retailers or financial institutions. The state has a basic usury law, limiting interest to 12 per cent annually, which had been amended earlier to permit a charge of 18 per cent per year (1 1/2 per cent per month) on retail credit contracts.[1] Bank credit cards were classified in an opinion by the Washington Attorney General as "retail contracts," making them eligible for the 18 per cent charge.[2] Initiative 245 reduced the maximum rate on retail credit from 18 to 12 per cent.

The Initiative did not affect the rates charged by small loan companies. They still may charge 3 per cent per month (36 per cent per year) on loans under $300, 1 1/2 per cent per month (18 per cent per year) on loans between $300 and $500, and 1 per cent per month (12 per cent per year) on loans over $500. Further, since state usury laws already limited banks to 12 per cent per year--except for credit cards which have a legal status similar to other forms of retail credit--the effect on banks was the removal of the retail credit exception to the usury laws.

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[1] R.C.W. 63.14.120.

[2] "Banks and Banking--Sale--Regulation of Bank Credit Card Transactions," Attorney General Opinion 1968, No. 6, State of Washington, Olympia, Washington, February, 1968.

Study Objectives

The study set out to determine:

1. What changes in credit policies, due to management decisions, have occurred as a result of the passage of the law.
2. What price changes, if any, are related to the new law.
3. What changes stemming from the new law have occurred in retail sales patterns (such as total retail sales and cash/credit sales relationships).
4. What effects on consumers can be inferred from the information obtained.

Procedure

There were five principal elements of the study. These were (1) a survey of the literature, (2) a field survey of retailers, banks and small-loan companies utilizing personal interviews, (3) a series of price-comparison studies in which identical items were priced in Seattle and Los Angeles to determine the extent of price movements during the second quarter of 1969 with the objective of relating price changes to the law, (4) a number of surveys of aggregative data sources as a check against questionnaire responses and intra-firm data of several kinds, and (5) certain special studies to see to what extent data on topics such as credit insurance, auto dealer pricing and gross margins, auto and appliance financing methods and sales contract registrations with county auditors could provide by way of evidence of the impact of the law.

Survey of the Literature. The literature was examined for both theoretical and empirical content.

Field Survey (personal interviews) of Retailers, Banks and Small Loan Companies. This was carried out during the third quarter of 1969. The questionnaires which were used are shown in the Appendix.

The business firms surveyed were as follows: (in some cases a complete census approach was used)

1. Census of banks.
2. Census of department stores.

3. Census of chain small loan institutions and a sample of smaller ones.
4. The largest furniture and appliance stores and a sample of smaller ones.
5. Sample of new auto dealers.
6. Sample of used auto dealers.

Responses to the questionnaires were obtained through personal interviews. The specific respondents selected, by institution, were:

1. Banks: Vice President (or other title designating chief officer) for consumer credit division
2. Department Stores: Credit Manager
3. Small Loan Companies: President or Manager
4. Large Furniture and Appliance Stores: Credit Manager
5. Small Furniture and Appliance Stores: Owner or Manager
6. Large Auto Dealers: Credit Manager
7. Small Auto Dealers: Owner or Manager

When data had been gathered from these questionnaires, they were tabulated and analyzed.

Pricing Studies of Credit Sensitive Items. Working from a list of brands (by specific model numbers) prices were recorded from price books and/or sales tags on refrigerators, washing machines, dryers, cooking ranges, and colored television sets in stores in Seattle and Los Angeles. The list was made up by the comparison shopping bureau of a large retailer. The list included descriptions, brand names, model numbers, pictures and additional identification materials. Items were "shopped" in conventional department stores, Sears Roebuck and J. C. Penney department stores, discount houses and appliance stores. This procedure, which was used in the first two price surveys (April 1969 and August 1969) was found to have the weakness that too few of specific model numbers appeared in both markets. Hence in the third price survey (January 1970) a new list of specific model numbers was prepared through field work in Seattle and which permitted the identification of 30 or more models of particular appliances in both Los Angeles and Seattle markets.

Survey of Aggregative Data Sources. To determine the extent to which published and unpublished data from secondary sources verified the survey results, data were collected, tabulated and analyzed. Relevant data were obtained from the following sources:

1. Federal Agencies. In addition to a variety of publications additional information was obtained through calls on the offices of the Federal Reserve Board and the Federal Deposit Insurance Corporation.
2. State Agencies. These included all of the agencies dealing with financial institutions, retailing institutions, insurance institutions, motor vehicles and general economic information. Existing publications of the agencies were supplemented with special tabulations available from computer storage but not yet published.
3. Relevant trade associations.

The kinds of data were quite varied and in addition to the verification purpose mentioned above, were used to determine changes in local economic conditions and, for purposes of comparison, the state economy with the national economy.

Special Studies. In addition to data from the State Insurance Commissioner and insurance trade associations, data were obtained from private insurance companies involved in credit insurance. We were thus provided with data on all of the credit insurance business done in the state for 1968 and 1969.

Since two large automobile dealers were willing to open their records, a detailed study of auto dealer sales contracts was made for the periods 1968 and 1969 to determine changes that had occurred in types of credit employed, credit criteria and the credit roles of the firms involved.

One large national manufacturer of automobiles provided complete records for the state necessary to determine dealer pricing and gross margin changes. It also provided similar information on the State of Oregon which does not have a credit limitation law.

A complete tabulation of installment sale registrations was made from the records of the King County (which includes Seattle) Auditor's records. The

periods covered were the twelve months prior to December 5, 1968 (before the law took effect) and the twelve months following. These data showed the types of financial institutions involved and the firms from which purchases were made This was followed by a re-survey of the institutions making the registrations to determine the extent to which management policies were responsible for observable trends.

Economic Environment of the Study

Ideally, for purposes of investigating the impacts of Initiative 245, the study would have been conducted in an environment in which all other economic factors would have remained somewhat equal. Unfortunately, this was not the case. Attempts to verify the statements of businessmen obtained in field interviews through analyzing external or aggregative data were made difficult by the changes in the economy other than the Initiative and its effects. The impacts which might have been expected from the change in the law were in the same direction as impacts which might be expected from the tightness and cost of money, economic recession in the area, and inflation. The first two (interest rates and recession) were strongly influenced by federal monetary policy, and the third--inflation--seemed beyond the reach of federal monetary policy during the period of the study. Hence, it is important at this point to describe the economic environment pertaining at the time of the research for this report.

There is ample evidence available on the behavior of the Washington state and the United States economies since January of 1968 to suggest that a number of highly adverse economic influences have prevailed. That is, from the point of view of the businesses in the state all costs of doing business have continued to spiral on the supply side and the growth of revenues has noticeably slackened in most sectors on the demand side.

The behavior of these elements in the economy is affected by many economic variables which add to the results from the reduction of business revenues with the imposition of a 12 per cent interest rate ceiling. Needless to say, it is difficult to sort out, quantify, and measure the pure effects of rate ceiling change when other economic factors introduce high degrees of variability.

It is the purpose of this section then to point out the behavior of several of the more indicative and influential macro-economic factors at work in the environment during the period in which this study analyzed the impacts from Initiative 245.

On the supply side the wholesale price index nationally for durables continued to climb. In January 1968 it was 103.0 for furniture and household durables and by January of 1969 it had risen to 105.3, up 2.3 points. As of June 1970, it was 108.6, up 5.6 from the beginning of the time period under study.

By the same token, the lowest possible cost of money to business (the prime rate) rose from 6.0 per cent in November 1967 to 7.0 per cent by January 1969, and to the high of 8.5 per cent on June 19, 1969. (See Table I-1.)

TABLE I-1

THE PRIME RATE

Date	Prime Rate
November 20, 1967	6.00%
April 19, 1968	6.50
September 25, 1968	6.00-6.25
November 13, 1968	6.25
December 18, 1968	6.75
January 7, 1969	7.00
March 17, 1969	7.50
June 19, 1969	8.50
March 25, 1970	8.00
September 25, 1970*	7.50

*Prediction as of September 23, 1970.

Source: Manufactures Hanover Trust Special Report, June 1970.

This represents an increase of at least 2.5 per cent in the cost to businesses of financing inventories, trade credit and consumer credit during the study period.

On the demand side the economic indicators are as equally bleak. Tables I-2, I-3 and I-4 clearly indicate a substantial decline in buying power both at the state and national level with above average increases in the unemployment rate occurring at the state level. While the unemployment rate increased through 1969 at the state level it remained quite stable through 1969 at the national level. When both 1968-1969 and 1969-1970 changes are compared for Washington state it is found that while the unemployment rate in 1969 was only 4.09 in January of 1968, it was 4.65 in 1969 and continued to rise to 5.29 in January of 1970.

There is evidence that unemployment rates might be worse if businessmen reacted more strongly to their problems. The Seattle-First National Bank Newsletter in mid-1970 stated:

> Everyone talks about higher costs (labor) and the squeeze on profits; inventories are being closely controlled and staff has been reduced here and there; quite a number of retail establishments have absorbed cost increases; the consumer is getting a break.[1]

Since the beginning of the study the state unemployment rate has always been higher and climbing at a faster rate than that of the national average. Hence, the impact on demand of goods and services could conceivably be quite large.

The Consumer Price Index (Tables I-5, I-6 and I-7) reflect the behavior of prices in the Seattle area when compared with the U.S. average. Traditionally, Seattle indices are higher than national averages. As demand slackens it is to be expected that the state and national indices will more nearly equate and that occurred in early 1970 (see Table I-5). Throughout the period of the study the Seattle consumer price index for all goods has declined relative to U.S. averages to reflect the depressed demand situation that faces state businesses.

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[1]Seattle-First National Bank, *Summary of Pacific Northwest Industries*, July, 1970, p. 4.

TABLE I-2

WAGE AND SALARY EMPLOYMENT
WASHINGTON AND UNITED STATES

Month	1968		1969			1970			
	Wash.	U.S.**	Wash.	Per Cent Change Over 1968	U.S.**	Per Cent Change Over 1968	Wash.	Per Cent Change Over 1969	U.S.**	Per Cent Change Over 1969
January	1086.5	66720	1113.8	+2.5	69199	+3.7	1138.7	+2.2	70992	+2.6
February	1088.6	67165	1114.4	+2.4	69487	+3.5	1131.8	+1.6	71135	+2.4
March	1089.9	67286	1123.6	+3.1	69710	+3.6	1114.3	-0.8	71256	+2.2
April	1086.8	67466	1125.2	+3.5	69992	+3.7	1108.0	-1.5	71163	+1.7
May	1092.0	67550	1128.5	+3.3	70172	+3.9	1097.4	-2.8	70852	+1.0
June	1094.6	67816	1128.8	+3.1	70347	+3.7	1086.8	-3.7	70598	+0.4
July	1102.7	67945	1126.2	+2.1	70400	+3.6	1082.3	-3.9	70455	+0.1
August	1108.6	68088	1123.9	+1.4	70497	+3.5	n.a.		n.a.	
September	1105.9	68195	1127.0	+1.9	70567	+3.5	n.a.		n.a.	
October	1109.7	68427	1129.0	+1.7	70836	+3.5	n.a.		n.a.	
November	1112.2	68664	1129.0	+1.5	70808	+3.1	n.a.		n.a.	
December	1116.1	68875	1128.8	+1.1	70842	+2.9	n.a.		n.a.	

*Thousands of persons

**Adjusted

Source: Washington: Washington State Employment Security Department. United States: *Economic Indicators*, Dates.

TABLE I-3

UNEMPLOYMENT*
WASHINGTON AND UNITED STATES

Month	1968		1969				1970			
	Wash.	U.S.	Wash.	Per Cent Change Over 1968	U.S.	Per Cent Change Over 1968	Wash.	Per Cent Change Over 1969	U.S.	Per Cent Change Over 1969
January	55.4	2795	64.7	+16.8	2645	-5.4	75.6	+16.8	3172	+19.9
February	55.2	2929	66.5	+20.5	2627	-10.3	80.6	+21.2	3427	+30.5
March	57.4	2881	62.0	+8.0	2728	-5.3	97.8	+57.7	3657	+34.1
April	59.4	2774	61.2	+3.0	2845	+2.6	98.2	+60.5	3948	+38.8
May	59.8	2810	62.7	+4.8	2809	+0.0	117.7	+87.7	4106	+46.2
June	61.4	2914	63.7	+3.7	2763	-5.2	119.3	+87.3	3900	+41.2
July	59.7	2897	65.1	+9.0	2858	-1.3	129.8	+99.4	n.a.	
August	58.8	2776	69.3	+17.9	2846	+2.5	n.a.		n.a.	
September	59.3	2847	72.4	+22.1	3131	+10.0	n.a.		n.a.	
October	59.4	2798	74.6	+25.6	3078	+10.0	n.a.		n.a.	
November	60.8	2654	77.8	+28.0	2851	+7.4	n.a.		n.a.	
December	59.0	2603	76.5	+29.7	2846	+9.3	n.a.		n.a.	

*Thousands of persons, seasonally adjusted.

Source: Washington: Washington State Employment Security Department. United States: *Economic Indicators*, Dates.

TABLE I-4

UNEMPLOYMENT RATE*
WASHINGTON AND UNITED STATES

	1968		1969				1970			
	Wash.	U.S.	Wash.	Change	U.S.	Change	Wash.	Change	U.S.	Change
January	4.09	3.5	4.65	+0.56	3.4	-0.1	5.29	+0.64	3.9	+0.5
February	4.06	3.8	4.77	+0.71	3.3	-0.5	5.64	+0.87	4.2	+0.9
March	4.21	3.7	4.43	+0.22	3.4	-0.3	6.86	+2.43	4.4	+1.0
April	4.35	3.5	4.35	+0.00	3.5	+0.0	6.95	+2.60	4.8	+1.3
May	4.38	3.6	4.47	+0.09	3.5	-0.1	8.36	+3.89	5.0	+1.5
June	4.46	3.7	4.55	+0.09	3.4	-0.3	8.53	+3.98	4.7	+1.3
July	4.36	3.7	4.66	+0.30	3.5	-0.2	9.19	+4.53	5.0	+1.5
August	4.29	3.5	4.93	+0.64	3.5	0.0	n.a.		5.1	+1.6
September	4.31	3.5	5.14	+0.83	3.8	+0.3	n.a.		n.a.	
October	4.31	3.5	5.29	+0.98	3.8	+0.3	n.a.		n.a.	
November	4.39	3.4	5.49	+1.10	3.5	+0.1	n.a.		n.a.	
December	4.26	3.3	5.39	+1.13	3.5	+0.2	n.a.		n.a.	

*Seasonally adjusted.

Source: Washington: State Employment Security Department. United States: Bureau of Labor Statistics.

TABLE I-5

CONSUMER PRICE INDEX--
WASHINGTON AND UNITED STATES

	1968		1969		1970	
	Seattle	U.S.	Seattle	U.S.	Seattle	U.S.
February	120.2	119.0	125.9	124.6	132.2	132.5
May	121.1	120.3	127.6	126.8	133.9	134.6
August	123.2	121.9	129.5	128.7	n.a.	n.a.
November	124.5	123.4	130.0	130.5	n.a.	n.a.

Source: U.S. Department of Labor, Bureau of Labor Statistics, The Consumer Price Index 1968, 1969, 1970.

TABLE I-6

CPI--HOUSEHOLD FURNISHINGS AND OPERATION*
SEATTLE AND UNITED STATES

	1968		1969		1970	
	Seattle	U.S.	Seattle	U.S.	Seattle	U.S.
February	109.4	111.2	112.7	115.8	116.3	120.8
May	110.9	112.5	113.3	117.4	117.4	122.5
August	110.5	113.3	113.2	118.5	n.a.	n.a.
November	112.0	114.8	114.5	119.6	n.a.	n.a.

*The household furnishings and operation category of the CPI includes the following items: Household furnishings (textiles, furniture and bedding, floor coverings, appliances, housekeeping supplies and services).

Source: U.S. Department of Labor, Bureau of Labor Statistics, The Consumer Price Index 1968, 1969, 1970.

TABLE I-7

CPI--PRIVATE TRANSPORTATION *
SEATTLE AND UNITED STATES

	1968		1969		1970	
	Seattle	U.S.	Seattle	U.S.	Seattle	U.S.
February	119.2	116.4	121.1	119.3	123.3	123.3
May	118.4	116.8	120.0	121.2	124.0	125.9
August	120.7	117.7	121.8	121.3	n.a.	n.a.
November	121.1	118.9	119.3	122.7	n.a.	n.a.

*The private transportation category of the C.P.I. includes new and used autos, gasoline, tires, oil, repairs, insurance, registration, parking fees.

Source: U.S. Department of Labor, Bureau of Labor Statistics, The Consumer Price Index 1968, 1969, 1970.

TABLE I-8

GENERAL ECONOMIC INDICATORS
WASHINGTON VS. UNITED STATES

		1968		1969		1968 vs. 1969 Per Cent Change		1970		1969 vs. 1970 Per Cent Change	
		Wash.	U.S.	Wash.	U.S.	Wash.	U.S.	Wash.	U.S.	Wash.	U.S.
Bank Loans	1st Qtr	2675	233570	3089	264970	+15.5	+13.4	3321	288230	+7.5	+8.8
(Millions $)	2nd Qtr	2759	244580	3179	283850	+15.2	+16.1	3314	293280	+4.2	+3.3
	3rd Qtr	2886	251920	3184	284300	+10.3	+12.9				
	4th Qtr	2972	265259	3222	295547	+8.4	+11.4				
Bank Debits	1st Qtr	58058.0	7218700	67446.3	8723500	+16.2	+20.8	69979.3	9842900	+3.8	+12.8
(Millions $)	2nd Qtr	57974.8	7948500	76666.7	9384800	+32.2	+18.1	69650.6	10143900	-9.2	+8.1
	3rd Qtr	62831.1	8368400	83657.8	9737200	+33.1	+16.4				
	4th Qtr	67118.1	8755800	73561.4	9560400	+ 9.6	+ 9.2				
Demand Deposits	1st Qtr	2091	168420	2139	180610	+ 2.3	+ 7.2	2209	189230	+3.3	+4.8
(Millions $)	2nd Qtr	2055	182807	2190	199426	+ 0.5	+ 9.1	2109	190110	-3.7	-4.7
	3rd Qtr	2111	179020	2137	188160	+ 1.2	+ 5.1				
	4th Qtr	2200	204911	2169	212760	- 1.4	+ 3.8				
Time Deposits	1st Qtr	2157	n.a.	2342	n.a.	+ 8.6		2340	n.a.	-0.1	
(Millions $)	2nd Qtr	2190	n.a.	2362	n.a.	+ 7.9		2439	n.a.	+3.3	
	3rd Qtr	2265	n.a.	2320	n.a.	+ 2.4					
	4th Qtr	2317	n.a.	2313	n.a.	- 0.2					
Personal	1st Qtr	968	55195	1062	59948	+ 9.7	+ 8.6	1120	64168	+5.5	+7.0
Income	2nd Qtr	1013	57236	1110	62263	+ 9.6	+ 8.8	1140	65000	+2.7	+4.4
(Millions $)									(est.)		(est.)
	3rd Qtr	1045	58455	1137	62290	+ 8.8	+ 6.6				
	4th Qtr	1058	59755	1136	64032	+ 7.4	+ 7.2				

TABLE I-8 (Continued)

		1968		1969				1970			
						1968 vs. 1969 Per Cent Change				1969 vs. 1970 Per Cent Change	
		Wash.	U.S.	Wash.	U.S.	Wash.	U.S.	Wash.	U.S.	Wash.	U.S.
Help Wanted	1st Qtr	208	194	218	231	+ 4.8		186	194	-14.7	
Index-Seattle	2nd Qtr	182	197	235	228	+29.1		186	175	-20.9	
vs. U.S.	3rd Qtr	207	218	204	235	- 1.4					
1957-59 = 100	4th Qtr	220	225	199	217	- 9.5					
Building Permit	1st Qtr	99.1		80.2		-19.1		68.2		-15.0	
Seattle-King	2nd Qtr	102.0		108.2		+ 6.1		64.5		-40.4	
County Only	3rd Qtr	99.4		78.6		-20.9					
(Millions $)	4th Qtr	98.6		79.7		-19.2					
Mortgages	1st Qtr	8698		7709		-11.4		4698		-39.1	
Recorded	2nd Qtr	10785		9013		-16.4		5127		-43.1	
King County	3rd Qtr	9688		7051		-27.2					
(by number)	4th Qtr	8864		6054		-31.7					
Deeds Recorded	1st Qtr	10601		12328		+16.3		10054		-18.4	
King County	2nd Qtr	11906		14613		+22.7		10526		-28.0	
(by number)	3rd Qtr	12771		13346		+ 4.5					
	4th Qtr	13950		11678		-16.3					

Source: Economic Research Department, Seattle First National Bank, Economic Indicators, Federal Reserve.

Table I-8, which lists a variety of indicators, further supports the decline in demand proposition and in a number of instances where the U.S. rates are up substantially the state rate is significantly declining. A case in point is demand deposits where in March of 1969 deposits had increased 2.3 per cent in Washington and 7.2 per cent for the U.S. In December of 1969 demand deposits had declined to 1.4 per cent below that of 1968 and the national figure remained 3.8 per cent above demand deposit levels in 1968.

A basic problem in utilizing financial data such as appear on Table I-8 is that some of the adjustments which have been made by businessmen have been in the form of what might be called "credit portfolio adjustments." That is, businessmen in many cases changed internally the relative proportions of various types of credit business (such as open book, installment credit, revolving credit, and credit card sales). Such changes may not be visible in general economic data. For example, the recorded figures for volumes of business done by banks and/or consumer finance companies might show little change in total, even though relatively drastic measures affecting consumers might have been taken by the financial institutions. Financial institutions have tightened up on credit-granting procedures, which has taken certain consumers out of the market for some intended purchases. At the same time, the efforts of retailers to decrease their credit costs might have shifted more credit business to the financial institutions, thus keeping up the volume of loans made by financial institutions. These counter-balancing actions on the part of the two groups of businessmen might result in a fairly stable aggregative figure for loans from financial institutions even though there may have been some serious effects on consumers who happened to be marginal credit risks. By the same token, an increase or a decline in aggregative volume would not necessarily warrant conclusions that any such changes resulted from Initiative 245, because:

1. The portfolio adjustments might be invisible,
2. The portfolio adjustments and other responses might have been in reaction to money supply or interest rate increases, or
3. The portfolio adjustments (which in the current period would tend to diminish volumes of loans by financial institutions)

might be counterbalanced by shifting of the credit burden from retailers to financial institutions or--to some extent--by the shifting of the credit burden from one financial institution to another (e.g., from banks to consumer finance companies).

Table I-8 points out many other such declines that are indicators of the behavior of the marketplace which directly or indirectly affect the ability of businessmen to perform in their economic environment. Further, the impacts of these economic changes are bound to be felt throughout the state economy.

In summary, the general economic environment has contributed many complexities and introduced a number of barriers to the drawing of firm conclusions from available external economic data concerning Initiative 245. Whereas, the nation moved into a recession during the period of the study, full-blown depression struck at the state of Washington. The anomaly of a depression at a time of inflation and high interest rates wiped out the neat condition of "all other things being equal" which economists like to see when studying specific issues.

Hypotheses

Based on the theoretical knowledge of the researchers, supplemented with a consideration for theoretical and empirical research into credit limitation laws, the following hypotheses were developed for the original study. As a result of the credit limitation law it was hypothesized that:

Prices of merchandise frequently sold on a credit basis have gone up.

Leasing of similar merchandise has increased.

Banks and merchants are doing less business on a credit basis.

Lenders are diverting business to the most profitable types of loans or credit arrangements.

Small-loan companies are doing more business.

Credit losses have decreased.

Different products and businesses have been affected in different ways by the new laws.

More poor people have been affected by the new law than middle or upper income people.

Marginal credit standing has been redefined to exclude some higher risks.

Some people have not been able to buy such products as used cars because of the law (sales have been adversely affected).

Financing charges other than interest rates have increased.

Businessmen have become more strict in the application of rules on delinquent accounts.

Organization of the Report

The balance of this report is divided into four chapters. Chapter II is a summary of the findings. Chapter III presents the relevant prior research. Chapter IV deals with the credit implications of the law and Chapter V covers the product related impact of the law. Following a brief concluding chapter, the Appendix includes a definition of terms and the questionnaires used in the field interviewing program.

CHAPTER II

SUMMARY OF FINDINGS

Scope of This Summary

This summary reports on findings from the survey of retailers, financial institutions and secondary sources of information.

The retail survey included the sixty-five retailers in the State which do the vast majority of business in credit-sensitive ("big-ticket") merchandise. The survey also covered all of the chain banking units in the state, banks in cities of 10,000 or more population, a sample of single-unit banks in smaller towns, all chain consumer finance companies and a sample of smaller firms, a sample of other financial institutions, a sample of auto dealers selling both new and used cars, and a sample of auto dealers selling only used cars. The managements of these institutions were interviewed as to the actions that they had taken in response to Initiative 245.

The implications for consumers are drawn from the changes businessmen made. The feasibility of surveying consumers was tested, but the results indicated that useful information could not be readily or easily obtained from this source. An opportunity existed to determine the accuracy of the consumer responses that were obtained and it was found that these responses were grossly undependable.

In addition to the survey of businessmen, the research involved the study of secondary sources of information in an attempt to verify or negate the kinds of conclusions which might be drawn from the survey. Data were gathered from federal, state and local governments, national finance and merchandise firms operating in the state, individual firms which volunteered to provide information, and previous studies. The government data of course covered all units (for example, all commercial banks, all savings institutions, all credit unions, all consumer finance companies and all retailers including auto dealers).

Based on the field interview results, the verification studies, and the analysis of the information available from all sources, certain conclusions

seem warranted. For purposes of exposition, the brief statements of this summary are organized under the following headings:

Availability of credit

Price of credit

Price of products and services

The conclusions take the form of series of statements concerning impacts and changes occurring after the passage of Initiative 245 followed by selections from the research data which support the statements.

Availability of Credit

Since Initiative 245 reduced the income retailing and financial institutions could achieve from credit charges, they could be expected to make up their loss of income by either reducing costs related to retail credit transactions or by developing new sources of income to compensate for the loss--or some combination of these actions. A prime potential for reducing a retailer's costs is to reduce risk through restricting his own credit granting, by switching consumers from more expensive (for the retailer) to less costly types of credit, and by sending consumers to some other source of credit. There is evidence of all three forms of risk and cost reduction and the net effect of these actions appears to have been a reduction in the availability of retail credit.

Consumers considered "marginal" or "slow pay" credit risks are increasingly being rejected when they apply for retail credit financing

Sixty-six per cent of the sample of retailers report that they now must reject applicants whom they would have accepted prior to Initiative 245.

Credit application rejection rates of retailers increased by an average of 9 per cent in 1969 as compared with 1968.

The increase in rejection rates for bank credit card applicants was 4.1 per cent for 1969, but the increase was much higher in the last half of the year, averaging 8.6 per cent and reaching 13 per cent in December.

Forty-two per cent of the auto dealers reported an increase of 14 per cent in the rejection rate (on both new and used cars) of credit applications in 1969 over 1968.

New customers for bank credit cards are given lower credit lines than those granted prior to Initiative 245.

Credit lines represent lower percentages of consumers' incomes. Acceptance criteria (such as length of time on the job, or in the city) have also been strengthened.

Many customers, who might have obtained "open book" (or free) credit prior to Initiative 245 now are unable to get such credit and must use revolving or instalment forms of credit instead.

Of 47 retailers offering open book credit prior to Initiative 245, 17 per cent have eliminated this form of credit.

An additional 13 per cent have cut 60- and 90-day open-book accounts to 30 days, after which maximum interest is ch ed.

Of the total 65 retailers, 43 per cent have encouraged consumers to switch from one type of credit to another. Over 50 per cent of furniture and appliance dealers have encouraged consumers to switch from using their credit to cash sales.

Consumers are often being asked by retailers to get outside financing for their purchases of durables.

Financing from outside sources become cash sales for retailers. The sources to which consumers are turning include credit unions, banks, and small loan companies.

Among auto dealers, 13 per cent report advising consumers to arrange their own financing. They reported an increase in the practice of "mousing" (consumers putting together multiple small loans either to make a downpayment or pay in full to the dealers).

Retailers in the sample show an average decrease of 3.8 per cent in the ratio of credit to total sales in 1969 as compared with 1968 (first quarter). Changes in the ratio of credit to total sales were reported by 26.2 per cent of the retail merchants in the sample. Of these 7.7 per cent reported an average increase in the ratio of 6.8 per cent, with a range of +1 to +20 per cent increase. However, 18.5 per cent reported an average decline of 13.4 per cent, with a range of -1 to -30 per cent decline.

Some marginal credit risk consumers, formerly able to get credit, now must forego making purchases of products that require loans.

These consumers have been taken out of the market because of an inability to borrow from any source on terms that would permit them to handle repayments out of future income.

The Price of Credit

Some of the ways in which retailers can reduce their risks or recover the credit income losses incurred with the passage of Initiative 245 can involve higher costs to consumers. The switch from open book to revolving credit can mean a consumer pays interest charges which he did not pay before. If a consumer must go to a small loan company, he will pay as high as 36 per cent annual interest, as opposed to the 12 per cent he would pay if he received retail or bank credit, or the 18 per cent he might have paid for revolving credit prior to Initiative 245. If a consumer must pay a higher downpayment, and/or if loan maturities are shortened, he may be forced to forego purchases he otherwise could afford. If fees other than interest charges are raised, and if consumers must pay charges (such as filing fees and insurance premiums) not required prior to Initiative 245, the finance-related costs to him may increase despite the attempt of the law to reduce interest charges.

Some low risk consumers are paying more for purchases made on credit.

By means of switching customers from open book to revolving credit plans retailers have passed on higher credit costs to low-risk customers who were previously being subsidized by cash customers and users of other credit plans (instalment and revolving).

Consumers now pay an increased minimum service fee on revolving accounts.

In some cases consumers are charged the minimum revolving credit fee of one dollar on a purchase if their balances are less than $50 and greater than $2.

In a number of cases, retailers and banks have instituted minimum service fees or increased existing fees since passage of Initiative 245. (The law allows a service charge of $10 as an alternative to computing the 1 per cent per month on balances.)

Some creditworthy consumers who bought on credit before and after the passage of the Initiative may have benefited from the law.

To the extent that price adjustments on merchandise usually bought on credit may not have been large enough to balance the consumers' savings in interest payments due to the reduction from 18 per cent to 12 per cent per year in the cost of credit, credit customers may have gained.

Price adjustments which were made were not necessarily made on the specific merchandise sold on credit. In fact, the majority of

respondents to the interview survey reported that they raised prices on all merchandise. By this means they could recover losses in credit income without raising prices just on those items frequently sold on a credit basis. This could provide creditworthy customers a net reduction in total cost (including interest costs) for goods bought on credit.

To the extent that retailers may have become more efficient in response to credit income losses, consumers in general may have benefited.

The reduction in gross profit margins due to the reduction in interest rates has also probably worked to the advantage of consumers by encouraging businessmen to strive for greater efficiency in their operations.

Businessmen have to some extent improved procedures and reduced waste in order to achieve cost reductions and thereby re-establish the gross profit margins in effect prior to the passage of the law.

Cash customers of stores selling credit items are in all likelihood paying somewhat higher prices but receiving no benefits.

The actions of retailers to raise prices, to institute new or higher charges for ancillary services, and to increase gross margins through adjustments in merchandise offerings will increase net costs to cash customers. Those persons who were on open book accounts prior to the passage of the law and who are still in the same category have been effected in essentially the same manner as have cash customers.

Consumers considered to be marginal credit risks may now pay more for money that they borrow.

Banks and merchants will no longer grant credit or, in effect, lend to them at the new lower rates, hence they may have to obtain funds from small loan companies (at rates up to 36 per cent) or from illegal lenders (at unlimited rates).

Retailers have moved to shorten maturities to reduce risks and the costs of selling sales contracts.

In selling paper, retailers have had their situation change from 2 per cent participation to 2 per cent discount per year on the average. They shorten maturities to lessen discount costs.

Among auto dealers, 18 per cent reported shortening maturities by an average of six months.

Consumers are having to pay higher downpayments on durable goods purchases.

Sixty per cent of auto dealers reported an average increase of downpayments on new cars of 11 per cent and 15 per cent for marginal credit risk buyers.

Sixty-nine per cent of the used car dealers surveyed increased downpayments an average of 21 per cent, but downpayments for marginal risk buyers were raised 31 per cent.

More consumers who make instalment contracts are being asked to purchase credit life and credit health and accident insurance.

There was an increase of 20 per cent in the number of retailers requiring credit insurance.

Retailers and banks not only reduce their risk with credit insurance, but they derive revenue from premiums amounting to 40 per cent of the premium as well.

Thirty-five per cent of the auto dealers state they have been "pushing credit insurance harder" since Initiative 245 became law.

Price of Products

The most direct means for retailers to recover the credit earnings lost due to Initiative 245 is to raise prices on the products usually bought on credit. If the market permits, this approach probably also is easiest of the various alternatives open to them. Another approach is to raise the prices on all merchandise in a store. The effective net price of the product to the consumer may also be raised by raising the price for ancillary services, or instituting charges for services which formerly were free. A third method of raising the net price to the consumer is to lower the discounts given for trade-ins in businesses where trade-ins are appropriate. Evidence of all of these approaches to increasing revenue were found in the study.

In one form or another consumers are paying higher prices for merchandise as a result of Initiative 245.

The majority (56 per cent) of retailers said that they raised prices on all merchandise on the average of 5 per cent in response to the passage of Initiative 245.

Sixty-four per cent of furniture and appliance dealers said that they raised prices on "credit-sensitive" items. Thirty-one per cent of department stores said that they did the same.

Several retailers stated that they were adjusting their merchandise offerings to obtain higher ave age mark-ups than existed prior to Initiative 245.

Forty-three per cent of auto dealers reported raising prices (net realized price) on new cars. Those that reported the magnitude had increases averaging 5.3 per cent.

Forty-one per cent of used car dealers reported raising prices. The average increase of those reporting the magnitude of increase was 11 per cent. Checking auction prices showed that wholesale prices of one-year old cars increased by 5 per cent in 1969 compared with 1968 in both Seattle and Denver. Six-year-old cars, however, are significantly lower priced in Seattle than in 1968--and are significantly lower than prices in Denver. This suggests that dealer margins increased percentage-wise on older used cars.

A special compilation of dealer margins covering 15 per cent of used cars sold in Washington in 1968 and 1969 (entire years) showed an increase of dealer gross margins of 13 per cent in 1969 over margins received in 1968.

Some retailers have instituted fees for services which were given to the consumers free of charge prior to Initiative 245.

The product-related fees for services formerly furnished free of charge have been assessed on check cashing, wrapping and packaging, lay-away, parking (in some cases parking fees were simply increased), delivery and product installation.

Tentative Conclusions

On the basis of the evidence that we have gathered, a number of conclusions appear warranted.

The low-income people who are marginal credit risks seem to have suffered the most so far from the enactment of Initiative 245. Since prices have been raised, customers who pay cash have suffered. At the time of the surveys (summer, 1969), the burden of supplying a service (credit), the cost of which may exceed the price that can be charged for it, seemed to have fallen on the merchants and possibly the banks. The merchants and banks had taken some steps to maximize their revenue, given the constraints under which they must work,

but they did not have a great deal of leeway. They also appeared to have made efforts to reduce their costs, but once again there appear to be significant limits to what can be done along these lines. The merchants and banks seem to be placing their main hope in raising the rate that they can charge. If this does not materialize, it seems to us that the banks and merchants will have to take what might be called drastic actions and these actions would, in all likelihood, have an adverse affect on a significant number of borrowers and cash buyers. We anticipate that these drastic steps would involve price rises, tighter restrictions and decisions not to do business on a credit basis for small sums (i.e., something less than $200, $300 or $500 per transaction or per year). Buyers in this category would be encouraged to borrow directly from personal finance companies, credit unions or other financial institutions. In fact, merchants might very well decide to get into the small-loan business, since it can be handled profitably.

It seems unlikely that merchants will be able to institute dramatic price increases in order to make up for the revenues lost as a result of the imposition of the 12 per cent rate ceiling. If they were to do this, they would put themselves at a disadvantage on readily comparable merchandise vis-a-vis those merchants who stress cash sales, which, of course, could be consumated at lower prices. Rather, it is likely that merchants will opt for a combination of moves including some price raises, adjustment of credit portfolios and merchandise assortments, tightening credit-granting criteria and raising charges or instituting new charges on ancillary services.

It seems to come down to this: the resolution of the banks and merchants' dilemma calls for drastic action on their part in the face of the very substantial decline in the interest rates (service charges) that they are allowed to charge their customers. Banks and merchants have taken many of the small steps that can be taken but their basic problem is still unresolved because its solution requires more than that. Some consumers (notably, the credit-worthy) may be benefiting as a result of the inertia that banks and merchants have displayed since Initiative 245 became law. One of two things has to happen. The rate ceiling will have to be raised or banks and merchants will have to reduce costs and/or increase revenues from other sources.

CHAPTER III

RELEVANT PRIOR RESEARCH

The General Importance of Interest Rates

Economists always have favored a free market for money or credit as well as for products and services. As Milton Friedman has said: (commenting on the writings of Jeremy Bentham in 1787 in which Bentham opposed interest limitation laws)

> I know of no economist of any standing from that time to this who has favored a legal limit on the rate of interest that borrowers could pay or lenders receive--though there must have been some. I know of no country that does not limit by law the rates of interest--and I doubt that there are any.[1]

This quotation highlights a problem that is basic to this study. Economists regard interest rates as a regulating mechanism in a free market economy and think they should be free to respond to market forces; government bodies, on the other hand (even those which strive for free market prices in general), tend to set legal limits on the price (interest rate) which may be paid or received on money or credit. These limits are set for political and generally non-economic reasons although justification of such acts are usually couched in economic terms.

The theoretical essence of the economic issue involved in legal limitations on interest is rather simple and straightforward. It is that regulating the price of one key component in a market economy inevitably causes dislocations in the system and results in misallocations of resources.

The importance of the role of interest rates in an economy can be seen in macro economics (i.e., economics of the total economy) where there is general agreement that interest rates affect not only the monetary system, but the rest

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[1]Milton Friedman, "On Defense of Usury," *Newsweek*, April 6, 1970, p. 79.

of the economy as well. The usual measure of the status of a total economy is the Gross National Product for the nation. On the expenditure side, it includes consumption (which usually accounts for nearly two-thirds of GNP), business investment (plant and equipment plus net change in inventories--called "Gross Private Domestic Investment"), government expenditures (federal, state and local) and net exports (exports minus imports). The first "general theory" to describe the total economic system was that of J. M. Keynes. Although arguments have raged concerning Keynesian economics, if certain additional factors (such as stocks of money and real assets and varying employment levels) are added to the Keynesian system, it is quite compatible with classical economics. In simplified form, Keynes related key factors in an economy as follows:

With the supply of money given:

> Money Supply is equal to the Demand for Money (Liquidity Preference) applied to the Interest Rate and Income. (Money Supply and Demand for Money in relation to each other determine the Interest Rate.)
>
> Consumption is a function of Income and the Interest Rate.
>
> Investment is a function of the Interest Rate and Consumption.
>
> Consumption plus Investment equals Income.

In practical terms, this means that consumption expenditures can be increased by decreases in the rate of interest or decreased by increases in the rate of interest that consumers must pay, all other things being equal. Since the total economy really revolves around consumption expenditures, and business investment is derived from consumption spending (i.e., businessmen raise or lower investment according to their perceptions as to whether the markets for their goods and services are going up or down), it is clear that interest rates can affect the total economy through inducing gains or declines in consumer buying activity. Likewise, in a free market, declines in expenditures induced through high interest rates tend toward reducing interest rates. The lower interest rates then induce higher expenditures. Thus, interest rates can play an adjustment, or equilibrating, role in the economy.

In practical terms, low interest rates also induce business investment. A businessman who has determined that there is an additional market for his products will evaluate the desirability of additional investment to handle this market. He will try to estimate the "marginal efficiency of capital," or the return on investment, and if there is a chance that the estimated return will be negated or seriously reduced by the cost of the money necessary for making the investment, the investment will not be made.

The Purpose of Interest Limitation Laws

Each law or regulation on interest strives to favor one side of, or one party to, a financial transaction. For example, the typical usury law is intended to benefit the borrower (or, in the case of consumer credit, the purchaser of goods and services). Since such a law usually takes the form of setting a fixed interest percentage rate, or fixed scale of rates, it necessarily disregards the overall supply of, and demand for, money or credit. Further, it disregards the cost of money to the lenders and the non-interest costs (such as higher prices and extra charges) to borrowers. A usury law in one state cannot control rates in other states and, even more important, it does not control prices of goods and services. Since money is mobile, it can move to other states at the expense of businesses and consumers in the state with the usury law in question. And since prices of goods and services are, in general, not controlled, they can be adjusted to make up for the costs or losses due to limitations on interest on credit--again at the expense of businesses and consumers in the state with particular laws.

As in the case of laws, limits on interest which are set by regulation have similar weaknesses. The current Federal Reserve regulation which limits the interest commercial banks can pay for deposits to 4½ per cent for small savers and 7 per cent for $100,000 depositors disregards supply, demand and costs (although the higher rate for large deposits presumably is based on economies of scale). Such limits may tend to favor banks by restraining competition for funds, but a bank which needs funds and can afford to pay depositors higher rates is unable to do so. In a market where potential bank depositors can earn much more through other forms of employment of their funds, the Federal Reserve regulations may impair the banks' supply of money. Further,

the interest limitation on savings is at the expense of the depositor, particularly the small saver who does not have feasible alternatives for earning a better return on his funds, and contributes to inflation by discouraging saving. One economist has commented on this problem as follows:

> Controls on rates payable by financial agencies ignores the welfare of savers who invest through these agencies. Such savers perform a vital function in the economy. Rate controls deny many low income savers the right to a competitive loanable funds market. High income savers can bypass the controlled market by investing in equities, etc., but if rate controls cause them to divert funds or to lose interest income, their contribution to economic product is reduced.[1]

The Effectiveness of Interest Limitation

But the most serious limitation of the powers of interest limitation laws or regulations is that none of them, nor all of them together, really can control the price of money or credit. Taken individually, they control only a portion of particular transactions: the portion which formally states an interest rate. But in any such transaction, the true price of money or credit can exceed the legal limit one way or another. For example, in a mortgage transaction, the lender can capture a higher rate than specified by government regulation by means of "discounting" the loan. In a commercial loan, the bank can insist on a "reserve" (or compensating balance) on a loan which effectively raises the rate on the money actually received by the borrower. On a consumer credit purchase, the seller can raise the price of goods or services, he can increase the charges for peripheral services and/or add new charges, he can reduce the allowance on trade-ins where trade-ins are accepted, he can change his assortments of goods to increase his average gross margin, and he can insist on life and/or disability insurance which raises the cost of credit to the consumer and increases the "credit" earnings of the seller. If the interest limitation causes the seller to refuse any longer to deal in credit, or to refuse credit to increased proportions of "marginal credit risks,"

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[1]Clifton B. Luttrell, "Interest Rate Controls--Perspective, Purpose and Problems," Review-Federal Reserve Bank of St. Louis, September, 1968, Reprint Series No. 32.

consumers may be sent by suggestion or necessity to a financial institution to negotiate a direct loan. Since some of these institutions, for example, can legally charge up to 36 per cent annual interest, the consumer protection motive of the interest limitation law is thwarted and the consumer may end up paying higher interest than he paid prior to the interest limitation law or regulation.

Paul A. Samuelson has pointed out that in setting ceilings too low on small loan interest rates, funds for the poor may even become unavailable or are supplied by loan sharks at very high interest rates:

> The concern for the consumer and for the less affluent is well taken. But often it has been expressed in a form that has done the consumer more harm than good. For fifty years the Russel Sage Foundation and others have demonstrated that setting too low ceilings on small loan interest rates will result in drying up legitimate funds to the poor who need it most and will send them into the hands of the illegal loan sharks. History is replete with cases where loan sharks have lobbied in legislatures for unrealistic minimum rates, knowing that such meaningless ceilings would permit them to charge much higher rates.[1]

Since questions might be raised concerning the setting of a relatively high rate ceiling as would be the case under the Uniform Consumer Credit Code, or allowing the market to set its own rate, it is significant that a study of actual rates charged by two large finance companies operating in several states suggested that the high ceiling would not necessarily cause rates all to move to that ceiling. Robert Johnson reported that:

> In states where the ceiling rates were $6 per $100 of unpaid balance per year, almost 18 per cent of the contracts were at the ceiling. In contrast, where the ceiling was $9 per $100 per year, less than 2/10ths of one per cent of the contracts were at the ceiling.[2]

Blitz and Long point out that historically there have been three objectives of usury legislation: " . . . protecting the small borrower

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[1]Paul A. Samuelson, statement in *Major Statements in Support of the Uniform Credit Code Filed with the Massachusetts Committee on the Judiciary, January 29, 1969* (Boston: National Conference of Commissioners on Uniform State Laws, Chicago, Illinois, 1969), p. 32.

[2]Robert W. Johnson, "Why Rate Ceilings in the U.C.C.C.?" *Industrial Banker*, March, 1969, p. 18.

. . . curbing the monopoly power of the creditor . . . and regulating the allocation of resources. . ."[1] They conclude that on the first issue ". . . it is not possible to determine a priori which group of borrowers will be the main beneficiaries. . ." On the second, they argue that usury legislation is "not particularly effective" in control of a credit monpolist "when the monopolist is free to discriminate in a nonhomogeneous market."[2] On the allocation of resources issue, they feel that capital markets are affected by interest regulation in a manner that is "mostly other than intended and frequently adverse." On the question of resource allocation they point out:

> A well-functioning capital market is likely to promote change, while a capital market encumbered by an enforced interest rate of zero is more in keeping with stagnation. In the latter system there is no interest-rate differential to attract capital to the more dynamic sectors of the economy. . . Recognizing that usury legislation may be aimed toward other goals, we would still point out that, in periods of rapid change, restraints on the price system, such as a ceiling interest rate, are likely to be a barrier to the efficient allocation of resources and to growth.[3]

The nature of the inefficiency is brought out by Clifton B. Luttrell in this quotation from an article in the *Review* of the Federal Reserve Bank of St. Louis:

> All ceilings which alter normal flows of funds retard economic growth. Low usury ceilings prohibit the higher rates necessary to offset the higher risks of business and individual innovators. Credit tends to be channeled into well-established, low-risk functions. Low ceilings on rates payable by financial agencies tend to restrict the flow of funds through usual credit channels. Loan funds supplies are thereby reduced, affecting borrowers adversely. . .[4]

Michael Kawaja, in an analytical essay on the economics of statutory ceilings on consumer credit, dealt with fixed rates (which set the exact rate

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[1]Rudolph C. Blitz and Millard F. Long, "The Economics of Usury Legislation," *Journal of Political Economy*, December, 1965, p. 609.

[2]*Ibid.*

[3]*Ibid.*, p. 619.

[4]Luttrell, *op. cit.*

to be charged) and ceilings (which are set as outer limits to rates). He suggested that the usual goals of usury legislation can be better achieved by less direct methods:

> The main findings of this analysis follow. First, there are no demands or cost-entry conditions inherent in the consumer industry that would justify rate fixing. Second, rate ceilings may serve worthwhile purposes in those segments of the credit market in which there are entry restrictions, but even in these cases they have serious drawbacks. Third, the disadvantages of ceilings on finance rates in competitive credit markets outweigh their advantages. And, fourth, the goal of rate ceilings in competitive credit markets is ill-defined and does not provide a basis for selecting the level of the rate ceiling or judging its efficacy. These conclusions point to the possibility and desirability of making the consumer credit industry more competitive and substituting the market mechanism for price ceilings. Therefore, all regulatory efforts should now be focused upon bringing about the conditions requisite to the development of effective competition in the industry.[1]

Thus, the general conclusions from the literature on effectiveness of interest limitation are that it has certain noble purposes, that these purposes are not achieved, and that undesirable effects may be incurred by individual consumers and by society in general.

The Effects of Interest Limitations on Buyers and Sellers

To some extent the effects of interest limitation laws on buyers and sellers can be anticipated on a priori grounds. For example R. W. Johnson has pointed out the differences between cash credit and vendor credit:

> If legislation is properly drawn, the cash lender has no place to conceal his finance charge and no source of additional income for his credit services. In contrast, the vendor offering both a time price and a cash price may juggle these prices any way he chooses.[2]

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[1]Michael Kawaja, "The Economics of Statutory Ceilings on Consumer Credit Charges," *Western Economic Journal*, March, 1967, p. 167.

[2]Robert W. Johnson, "Regulation of Finance Charges on Consumer Installment Credit," *The Michigan Law Review*, Vol. 66, No. 81 (November 1967), p. 98.

In a footnote to this comment, he explains some of the implications of this relationship as follows:

> This adjustment, however, is not made without cost either to the retailer or his customers. The demand for credit is derived from the demand for goods and services financed. Since the finance charge is a relatively small portion of the total time price and monthly payment, consumers are probably not as sensitive to changes in the price of credit as they are to changes in the cash price of goods or services financed. In economic terminology, the demand for credit is probably less elastic than is the demand for the good or service.
>
> Assume that without rate ceilings a retailer has achieved his optimum market strategy by allocation of the total time price between the cash price and finance charge. An imposition of rate ceilings forces him to redistribute a portion of the finance charge to the cash price. Because the demand for the good is more elastic than the demand for credit, this shift will reduce the number of cash sales by an amount greater than any resultant increase in credit sales. Thus, not only are total sales likely to be less, but also the credit sales gained are more costly to service than the cash sales lost. The resultant reduction in profits will force some marginal retailers out of the market.[1]

Although the majority of the authors in the field of credit limitations favor either a free market for interest rates or a ceiling much above the market rates, proponents of credit limitation such as William Warren, point out that this relative insensitivity to credit costs poses a hazard for the consumer:

> The danger of ceding to the dealer the choice of financing agency lies in the fact that a dealer, in exercising his choice, is likely to be more influenced by the size of the finance-charge rebate accruing to him than by the reasonableness of the charge which the buyer will have to pay.[2]

Maurice B. Goudzwaard, in an article on the impact of rate ceilings on the availability of credit, provides empirical evidence that in states having the highest small loan rates, credit loss rates are higher than in states with intermediate or low small loan rates. He concludes as follows:

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[1] *Ibid.*, pp. 98-99.

[2] William D. Warren, "Regulation of Finance Charges in Retail Installment Sales," *The Yale Law Journal*, Vol. 68, No. 5 (April, 1959), p. 846.

> Lenders appear more willing to accept higher credit losses and more marginal credit risks if their rate is sufficient to compensate for bad debt, investigation, and collection expenses. In effect, higher rate ceilings enlarge credit availability to poorer risks and allow lenders to adjust credit standards to accommodate rate ceilings. Since lenders have no control over price, low ceilings force them to reduce costs and restrict lending to the better risk classes, thereby discriminating against the less creditworthy and significantly reducing their credit opportunities. . . But the analysis does demonstrate that any rate ceiling will very likely affect consumer credit allocation and that price controls have important economic and credit rationing effects on credit availability at consumer finance companies.[1]

Since a knowledge of theory and a minimum of observation would suggest a hypothesis that the incidence of impact from credit limitation laws would vary between classes of consumer borrowers, it is logical to anticipate differences based on the relative creditworthiness of consumers. It would seem reasonable to expect that a credit rate limitation set below the charges in existence before a law took effect would have a marked effect on persons at the margin of acceptable creditworthiness. The effect on the marginal credit risk would, of course, be negative. At the same time, it might be reasonable to expect that the initial effects of such a law on the fully creditworthy consumer would be positive--that, until the full impact of the law struck home with businessmen, and they adjusted to it, the creditworthy person would benefit from a reduced interest cost.

There are of course many facets of the question over and above the mere interest rate which can create benefit or injury to all classes of consumers. F. Thomas Juster presented the argument that consumers are not "economic men" in their use of credit, which leads to the inference that less creditworthy consumers may use monthly payments as the principal criterion regardless of interest rates. If such consumers do look principally to the monthly payment amount, then it follows that they could incur an unreasonably high rate of interest. On the other hand, the people who could obtain the credit they want could afford to select sources of credit on the basis of interest rates. Juster concludes that:

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[1]Maurice B. Goudzwaard, "Price Ceilings and Credit Rationing," *Journal of Finance*, March, 1968, pp. 183-185.

> Thus the model predicts that the minimum available monthly payment is a highly relevant proxy for the "real" cost of credit in an economy where all consumers are rationed [able to borrow less than they would prefer] in the sense just described. But in an economy where all consumers are unrationed [actual and preferred borrowings equal], monthly payments are irrelevant and finance rate is the relevant price. Thus the marginal borrowing cost model predicts that consumer response to finance rates will depend on the relative importance of unrationed consumers in the population.[1]

Although questions have been raised concerning the nature of Professor Juster's research, the concept of differing attitudes toward interest by different classes ("rationed" and "unrationed") of consumers is important because of its implications which are outlined in the following quotation:

> These results suggest the necessity for qualification of the widely held view that consumers are unresponsive to changes in the finance rates on installment credit contracts. Most consumers are in fact unresponsive, but only because they are constrained to accept shorter contract maturities than they would prefer. . . consumers appear to be unresponsive to finance rates because they do not have access to anything like a perfectly competitive capital market. The closer capital markets come to this analytical ideal, the more sensitive will consumers be to the cost of funds.[2]

On the business side, Paul Douglas points out that the apparent behavior of finance company lenders is such that raising and lowering finance rates may not bring about increases or declines in their profit:

> Higher or lower rate ceilings do not raise or lower finance company profits but rather, determine credit availability. The higher the ceiling, the more marginal risk borrowers can be accommodated. This is confirmed by data showing a high positive correlation between the rate ceiling and bad debt charge-offs. The higher the ceiling, the riskier the loans and the higher the incidence of bad debts.[3]

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[1]F. Thomas Juster, "Consumer Sensitivity to the Price of Credit," *Journal of Finance*, May, 1964, p. 227.

[2]*Ibid.*, p. 233.

[3]Paul H. Douglas, statement in *Major Statements in Support of the Uniform Consumer Credit Code Filed with the Massachusetts Committee on the Judiciary January 29, 1969* (Boston: National Conference of Commissioners on Uniform State Laws, Chicago, Illinois, 1969), p. 11. Douglas footnotes this comment

The real question to any business is the relationship between costs, revenues and volumes, so that for consumer credit institutions costs of money must be related to allowable interest rates. If the ceilings are relatively low, or the costs of money relatively high, consumer finance companies and others can adjust their profits by changing credit granting criteria. Profits could literally be increased as long as there is a margin between costs and revenues by making credit less available to people most likely to cause losses. Thus it is possible for finance companies to increase profits in the face of low interest rate ceilings and tight money.

Several other empirical studies have concluded that credit rate limitations create real problems for grantors of consumer credit and that these problems are passed along to the consumers.

Jan Robert Williams who studied the Arkansas situation found that the Arkansas constitutional 10 per cent limitation on credit charges has caused serious problems for both businessmen and consumers. From an examination of cost-revenue relationships of retailers, Williams concluded:

> Credit costs are greater than credit revenues generated by maximum legal service charges. This condition has a profound influence on the general store operations of retailers and the customers purchasing merchandise both on credit and for cash.[1]

Williams reports that retailers limited their credit business, even though they saw credit as a device to increase sales. One form of limiting credit business was to set rigid standards for credit granting which made it impossible for many marginal credit applicants to obtain credit. In this regard, he points out that:

> These would-be purchasers either are unable to purchase or they must seek borrowed funds under conditions which may allow lenders to take advantage of the borrower's situation.[2]

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with a reference to Robert P. Shay, "State Regulation and the Provision of Small Loans," in John M. Chapman and Robert P. Shay (eds.), *Consumer Finance Industry* (New York: Columbia University Press, 1967), p. 100.

[1]Jan Robert Williams, *An Analysis of Retail Credit Costs of Selected Retail Stores in Arkansas* (Unpublished Doctoral Dissertation, University of Arkansas, 1970), p. 125.

[2]*Ibid.*, p. 126.

The merchants were hurt by having to "receive undesirable terms in the financing of installment accounts with banks and other financial institutions. These terms included high rates of discount, large compensating balances, and full recourse arrangements."[1]

One of the worst effects of the Arkansas rate limitation was the "credit subsidy," described by Williams as follows:

> The credit subsidy is perhaps the greatest inequity caused by the 10 per cent limit on service charges in the State. Simply stated, the cash price of goods must be increased in order to cover losses on credit operations which result when credit costs exceed credit revenues. . . The credit subsidy, which is equal to the increase in the cash price to cover credit losses, is paid by the cash buyer and received by the credit customer.[2]

Williams also concludes that the credit limitation law had restrained economic development in the state, particularly in border areas. Firms were discouraged from entering business in Arkansas and the law also "hurt the further expansion of stores already located in Arkansas."

Gene C. Lynch also studied the Arkansas case and had similar conclusions relative to the retailers' costs of credit. He also discussed the problems of financial institutions and provided evidence that credit availability was restricted in Arkansas. In addition, he did a survey of prices on major appliances in Little Rock, Arkansas, and cities in states in the "Arkansas Region" (including Texarkana, Texas, Monroe, Louisiana, Greenville, Mississippi, Memphis, Springfield, Missouri, Tulsa and Denver). He found that if Little Rock were given an index of $100, the indexes of the other cities ranged from about $93 to $97.[3] Lynch suggests that these and other price data show the retailers' response to credit rate limitation:

> The only factor that can logically account for the higher cash prices in Arkansas is the ten per cent usury limitation. The cause of higher prices is not higher absolute costs, but

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[1] *Ibid.*

[2] Williams, *op. cit.*, pp. 126-127.

[3] Gene C. Lynch, *Consumer Credit at Ten Per Cent Simple: The Arkansas Case* (Fayetteville, Arkansas: College of Business, University of Arkansas, 1969), p. 16.

> lower revenues from credit sales. The legal finance charge differential between Arkansas and surrounding states is too great not to have an effect on store pricing policies.[1]

In the Lynch study, prices were found to be higher in the state (Arkansas) with the lowest limit on credit charges in the region, although questions might be raised as to whether a causal relationship between the interest rate limitation and product prices had been established.

A number of studies have been made of the credit cost-revenue relationships for retailers and financial institutions. The basic conclusion is that consumer credit is not a very profitable business even in the absence of low rate ceilings on credit charges. The Federal Reserve Bank studies show that there are economies of scale in loans and that breakeven loan sizes decrease with the length of maturity and increase as interest rates decline. It is rather obvious that as the cost of money rises the break-even size of loans increases considerably at any given rate of interest charged. When this situation is capped by a credit limitation law at a relatively low figure (12 per cent per year) as is true in Washington there is a cost-price squeeze on the credit-granting institutions.

The best-known study of retail credit costs and revenues is that sponsored by the National Retail Merchants Association, a department store trade group. In 1963 and again in 1968, the accounting firm of Touche, Ross, Bailey and Smart gathered credit operating data from department stores, and in the 1968 study an economic analysis of the data was provided by Robert W. Johnson.[2] The study showed that the stores lost money on all three forms of credit (30-day charge account, revolving credit and installment accounts). Conclusions included:

> Study findings indicate that providing credit in the department store field was a costly undertaking. . . It is clear, therefore, that credit must be justified economically by the department store

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[1] *Ibid.*, p. 26.

[2] Robert W. Johnson, "Economic Analysis of Credit Revenues and Costs in Department Stores," in Touche, Ross, Bailey and Smart, *Economic Characteristics of Department Store Credit* (New York: National Retail Merchants Association, 1969).

> as a selling tool--not as a separate business venture. . . The small stores had greater deficiencies of revenue over costs.[1]

An unpublished study by Touche, Ross, Bailey and Smart on costs in stores in the state of Washington for the fiscal year ending January 31, 1966 also found that there were losses in all forms of credit.[2]

The importance of credit to furniture and home appliance retailers was stressed in an empirical study which included the city of Spokane, Washington. The study, which covered Boise, Idaho as well, was published in 1963 and reported the following:

> All of the furniture and appliance retailers in the two cities granted credit to their customers. All of the retailers sold merchandise under conditional sales contracts. All but two retailers gave credit on open account. In approximately one-third of the establishments the credit business was a major enterprise both from the volume of credit and the income from the credit business, which was treated as a separate department in a few instances. An analysis of opinions expressed by retailers indicates that essentially all of the retailers realize that credit operations are very important to their overall operations and may be important even as a separate enterprise.[3]

The study was made at a time when the most common rates charged by the banks for short-term borrowings by retailers was 6 per cent and the range was from 5 to 8 per cent per annum. On paper carried by financial institutions, the rates charged by banks averaged 14.5 per cent and that carried by consumer finance companies averaged 22.3 per cent. Bank rates ranged from 8 to 23 per cent and finance company rates ranged from 11 to 40 per cent and "there were isolated cases beyond these limits."[4] If the average bank rate of 14.5 per cent, or 8½ per cent above the "most common" short-term rate to retailers, was

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[1] *Ibid.*, pp. 50-51.

[2] Touche, Ross, Bailey and Smart, "Study of Consumer Credit Costs in Retail Stores in Washington (Unpublished report to Washington Retail Council, 1966).

[3] Norman Nyhroten, Ralph H. Farmer, Russel L. Chrysler and Paul O. Groke, *Credit Practices of Retailers and Financers of Furniture and Home Appliances in Two Northwest Cities* (Moscow, Idaho: University of Idaho, May, 1963), p. 75.

[4] *Ibid.*, p. 82.

based on reasonable net earnings for the banks, then reasonable net earnings for banks in 1970 would require an average rate of at least 18 per cent or more. Hence, it is logical to assume that the rate ceiling of 12 per cent per year imposed by Initiative 245 provides additional evidence that it is unlikely that credit grantors in general can provide consumer credit without incurring operating losses.

Summary

In summarizing the concepts from extant literature, it should be kept in mind that the issue of rate ceilings, or any particular form of ceiling, is controversial. It seems to the researchers in this study, however, that the weight of opinion favors certain key concepts:

1. The objectives of credit rate limitation by law or regulation usually are to protect the small borrower (assumed to lack power and/or knowledge to handle his own financial affairs), to limit the monopoly power of creditors and lenders (assumed to have a bargaining advantage in dealing with borrowers), and to foster a more rational and equitable allocation of resources than would occur without regulation. The majority opinion seems to be that legal rate limitations fail in all three objectives.
2. Economists generally see the interest rate as an equilibrating mechanism which should function in a manner resembling the free markets preferred for goods and services. They consider restrictions on the free money market as a source of maladjustment and misallocation of economic resources.
3. Rate restrictions tend toward restrictions on the availability of credit, particularly for small, less creditworthy borrowers and also tend to lead to increases in rates for small borrowers when their only alternatives are consumer finance companies (with higher legal rates) or illegal lenders (who can charge what the traffic will bear).
4. Low rate ceilings cause creditors and lenders to try to make up for loss of interest income through other means. For example,

the retailer who is faced with rates too low to cover his costs (or with a decline in interest income whatever his cost) tends to recoup his losses by raising prices on merchandise, raising charges on ancillary services, or by shifting the consumer to outside sources of credit.

5. Where interest ceilings are to be used, economists favor setting the ceilings distinctly higher than ordinary market rates of interest, so that a relatively free market can operate without reaching the ceilings.

Empirically, it has been shown that retailers probably lose money (in terms of cost/revenue relationships) on all forms of credit, even where the rate charged is higher than 12 per cent per year. It is evident, moreover, that financial institutions suffer from a cost-price squeeze, particularly in this period of high interest rates and tight money. The break-even size of loans for banks is much above the amount needed for purchases of virtually any durables except housing and automobiles.

The cash customer may be forced to provide a subsidy for credit customers through paying higher prices on goods and services.

Creditworthy consumers who bought on credit before and after the passage of the Initiative may have benefited through a net reduction in interest costs. The benefits could derive from the possibility that the stores from which they made purchases may not have adjusted completely to the Initiative, or from the possibility that the stores may have been trying to recover credit income losses through a combination of reducing costs (including credit granting costs) or by raising prices on all items, or on items not ordinarily bought on credit. The raising of prices on all items, or on items not ordinarily bought on credit, would tend to subsidize the credit customers at the expense of cash customers by giving them a net reduction in total cost (including interest) on goods purchased.

CHAPTER IV

CREDIT RELATED EFFECTS

Credit Related Hypotheses

The credit related hypotheses established at the outset of this study were as follows:

Banks and merchants are doing less business on a credit basis.

Lenders are diverting business to the most profitable types of loans or credit arrangements.

Small loan companies are doing more business.

Credit losses have decreased.

More poor people have been affected by the new law than middle- or upper-income people and marginal standing from a credit standpoint has been redefined to exclude some individuals classified as higher risks.

Financing charges other than interest rates have increased.

Businessmen have become more strict in the application of rules on delinquent accounts.

The passage of Initiative 245 resulted in a number of changes in the manner in which a large number of firms do business on a credit basis with their customers. These effects were felt primarily in three major areas:

1. The volume of sales done on a credit basis by retailers and financial institutions.

2. The charges imposed by retailers and financial institutions as well as the costs of providing credit services for customers.

3. The credit-related effects of the new law on consumers generally.

Each of these three major headings will be discussed in this chapter.

The Volume of Business

The 12 per cent interest ceiling which became effective with the enactment of Initiative 245 does not apply to direct consumer loans obtained from consumer finance, or "small loan" companies, as they are sometimes called. Automobile finance companies such as GMAC are restricted to the 12 per cent interest limit. The latter organization and its counterparts in the auto and appliance fields are also sometimes called "captive" or sales finance companies.

The volume of business that banks and consumer finance companies are doing in indirect loans to consumers that originate with retail merchants has, as might be expected, declined. Sixteen out of 23 retailers made changes tending to diminish indirect loans and Table 4 shows an overall decline in indirect loans. This decline is attributable primarily to a falling off in the volume of business done between financial institutions and furniture and home appliance retailers. A sample representing a substantial proportion of the total indirect dealer paper purchased by the state and national banks in Washington revealed a 41 per cent decline in the number of appliance and home furnishings contracts purchased in 1969 when compared to 1968. The total dollar volume decline amounted to 33 per cent. Indirect dealer paper in automobiles declined 10 per cent in the number of contracts and 5 per cent in dollar volume. Indirect marine (boat and motor) paper declined 6 per cent in number of contracts, but increased 25 per cent in dollar volume. In all three categories, the number of contracts declined by 15.5 per cent and the dollar volume by 5.8 per cent and the average size of contract increased. That these events can probably be attributed to Initiative 245 also seems to be indicated by the fact that the experience of the banks and finance companies in Washington State apparently runs counter to the experience of similar institutions in the rest of the country. The extent of this divergence is shown below in Tables 1, 2 and 3. A survey representing approximately 60 per cent of bank consumer loans in the State of Washington in 1968 and 1969 is summarized in Tables 4 and 5.

There was also a decline of 15 per cent in filings of retail installment contracts in King county in 1969 compared to 1968. Table 6 shows in the last six months of 1969 an even sharper 25 per cent decline in filings by retailers and 33 per cent by banks. Small loan companies, however, showed a decline of only 12 per cent, which was less than the total or average decline. This

TABLE IV-1

COMMERCIAL BANKS, CONSUMER FINANCE AND SALES FINANCE COMPANIES

INDIRECT LOANS -- 1968 and 1969
(millions of dollars)

	EXTENDED			OUTSTANDING (Dec. 31)		
	1968	1969	% Change	1968	1969	% Change
Washington	$203.9[a]	$192.3[a]	-5.7	$172.4	$182.0	+5.6
United States	$13,313*	$14,272*	+7.2	$39,907	$42,567	+6.7

[a]Does not include consumer finance company data for state.

*Includes all finance companies.
(Commercial banks are omitted--data unavailable)

Sources: Washington: Division of Banking, Sales Finance Companies, Commercial banks. United States: Federal Reserve

TABLE IV-2

ALL FINANCE COMPANIES

INDIRECT LOANS -- 1968 and 1969
(millions of dollars)

	EXTENDED			OUTSTANDING (Dec. 31)		
	1968	1969	% Change	1968	1969	% Change
Washington	n.a.	n.a.		$34.9	$35.6	+2.0
United States	$13,313	$14,272	+7.2	$15,794	$17,030	+7.8

Sources: Washington: Sales Finance Companies, Supervisor of Banking Report (Consumer Finance Companies). United States: Federal Reserve.

TABLE IV-3

SALES FINANCE COMPANIES

INDIRECT LOANS -- 1968 and 1969
(millions of dollars)

	1968	1969	% Change	1968	1969	% Change
Washington	$16.4	$15.8	-3.7	$14.0	$14.5	+3.7
United States	$12,011	$12,942	+7.8	$14,835	$16,049	+8.2

Sources: Washington: Sales Finance Companies. United States: Federal Reserve.

TABLE IV-4

NEW CONSUMER LOANS MADE BY SELECTED
BANKS IN THE STATE OF WASHINGTON
1968-1969

	1968		1969		Per Cent Change 1969 over 1968		
	No.	$ (000)	No.	$ (000)	No. (%)	$ Volume (%)	Average Loan Size (%)
Direct							
Auto	36,166	69,389	31,916	63,399	-11.8	-8.6	+3.5
Personal	62,753	54,577	47,061	47,558	-25.0	-12.9	+16.2
Total Direct	98,919	123,966	78,977	110,957	-20.2	-10.5	
Indirect							
Auto	78,514	170,826	70,781	161,900	-10.0	-5.0	+5.1
Appliance	18,334	10,688	10,837	7,157	-40.9	-33.0	+13.3
Marine	2,679	5,973	2,521	7,485	-6.0	+25.0	+33.1
Total Indirect	99,527	187,487	84,139	176,542	-15.5	-5.8	

Source: Survey of Banks in Washington State.

TABLE IV-5

CONSUMER LOANS OUTSTANDING IN SELECTED
BANKS IN THE STATE OF WASHINGTON
1968-1969

	1968		1969		Per Cent Change 1969 over 1968		
	No.	$ (000)	No.	$ (000)	No. (%)	$ Volume (%)	Average Loan Size (%)
Direct							
Auto	48,556	65,883	45,742	63,358	-5.8	-3.8	+2.1
Personal	50,182	50,063	40,784	45,314	-18.7	-9.5	+11.3
Total Direct	98,738	115,946	86,526	108,672	-12.4	-6.3	
Indirect							
Auto	80,994	123,023	84,725	131,546	+4.6	+6.9	+2.2
Appliance	17,771	7,908	14,098	6,620	-20.7	-16.3	+5.5
Marine	3,425	6,485	3,703	8,223	+8.1	+26.8	+17.3
Total Indirect	102,190	137,416	102,526	146,389	+.3	+6.5	

Source: Survey of Banks in Washington State.

TABLE IV-6

KING COUNTY U.C.C. FILINGS[a]
1968 vs. 1969

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total (Last 6 mos.)	Total (Annual)
Finance:														
1968	2690	2651	2441	2603	2690	2519	2772	2580	1791	2255	2026	3126	14550	30144
1969	2402	2402	2349	2349	2193	2240	2183	2132	1962	2065	1786	2717	12845	26780
													(-12%)	(-11%)
Banks:														
1968	210	206	244	286	310	244	329	213	221	254	195	167	1379	2879
1969	159	184	253	303	271	262	203	174	133	160	134	125	929	2361
													(-33%)	**(-18%)**
Retail:														
1968	843	706	781	738	754	800	883	841	777	926	773	884	5084	9706
1969:	602	763	719	860	820	729	691	562	597	708	659	604	3821	8314
													(-25%)	(-15%)
Credit Union:														
1968	132	145	150	129	163	158	170	159	157	147	105	143	881	1758
1969	91	129	121	139	140	159	115	126	150	99	96	105	691	1470
													(-22%)	(-17%)
Savings & Loan:														
1968	13	17	20	13	14	9	8	10	10	9	13	16	66	152
1969	29	18	19	13	26	18	12	13	16	20	10	16	87	210
													(+32%)	(+38%)
Other[b]														
1968	114	101	111	115	155	122	163	138	95	124	105	182	807	1525
1969	151	116	123	168	168	207	142	118	169	144	118	184	875	1808
													(+ 8%)	(+18%)
Total: 1968	4002	3826	3747	3884	4086	3852	4325	3941	3051	3715	3217	4518	22767	46164
1969	3434	3612	3584	3832	3618	3615	3346	3125	3027	3196	2803	3751	19248	40943
	-14%	-6%	-5%	-2%	-12%	-6%	-33%	-21%	-1%	-14%	-13%	-17%	-15.5%	-12%

[a]Contracts on sales of untitled goods--"FS" only. [b]Other category includes mortgage companies.
Source: King County Records.

combination of percentages suggests a relative shift of installment credit business from banks and retailers to small loan companies.

The decline in the total of installment credit financing, and particularly the greater decline in bank and retailer business in this field, appear related to Initiative 245. Since state records do not show a decline in retail sales for the 1969 period covered in Table IV-6, and since a resurvey of firms which filed contracts revealed no change in policy regarding filings in 1969 versus 1968, it is obvious that many purchases which might have been financed through installment credit in 1968 were financed by other means in 1969. Of the twenty-eight retailers who said that they encouraged consumers to switch from one form of credit to another, eleven reported that they now ask the customer to arrange his own financing. Another stopped granting extended credit and required his customers to pay cash in thirty days. In all twelve of these cases, some customers were undoubtedly getting direct loans from credit unions and small loan companies which had no connection with the merchandise purchases, and were using the loan proceeds to make "cash" purchases at the retail stores. In other cases, even where there was no effort to suggest alternative forms of credit, people considered marginal credit risks were turned down for credit by banks and retailers and had to obtain the funds for "cash" purchases from small loan companies. Further, although the interviews with retailers did not turn up a trend toward switching people from installment credit to bank credit cards, later research suggested that many retailers did shift other forms of credit to bank credit cards.

Further, the price that the banks and finance companies charge the dealers with whom they do business is not controlled by law and it has gone up, reflecting the rising cost of money to these financial institutions. (See Table IV-7.) Instead of paying dealers "participation," a practice which involved having the bank share the interest proceeds received from the consumer loan with the merchant, the financial institutions began instead to discount dealer paper. In the case of auto dealers, for example, 19 out of the 24 dealers who responded to a question on participation stated that at the time of the survey (summer, 1969) they had lost an average of two per cent in revenues on indirect paper. In other words, if they had been receiving one per cent participation (or "commission") on the business they took to banks and finance companies, by the

TABLE IV-7

MARKET INTEREST RATES AND THE PRIME RATES

	Prime Rate	3 Mos. Treasury Bill	Finance Paper (3-6 Mos.)	Daily Av. Bkers. Accepts. (90 Day)	Federal Funds
Jan., 1964	4.50	3.52	3.82	3.70	3.48
Dec. 6, 1965	5.00	4.37	4.60	4.55	4.32
Mar. 10, 1966	5.50	4.58	5.02	4.96	4.65
June 29, 1966	5.75	4.50	5.39	5.39	5.17
Aug. 16, 1966	6.00	4.95	5.63	5.67	5.53
Jan. 26-27, 1967	5.50-5.75	4.72	5.50	5.23	4.94
Mar. 27, 1967	5.50	4.26	5.01	4.68	4.53
Nov. 20, 1967	6.00	4.72	5.17	4.98	4.12
April 19, 1968	6.50	5.37	5.60	5.75	5.76
Sept. 25, 1968	6.00-6.25	5.20	5.61	5.63	5.78
Nov. 13, 1968	6.25	5.45	5.75	5.97	5.81
Dec. 18, 1968	6.75	5.94	5.86	6.20	6.02
Jan. 7, 1969	7.00	6.13	6.14	6.46	6.30
Mar. 17, 1969	7.50	6.01	6.38	6.66	6.79
June 19, 1969	8.50	6.43	7.25	7.99	8.90
Mar. 25-6, 1970	8.00	6.63	7.68	7.60	7.76

Source: "How Interest Rates Got So High," *Special Report* by Manufacturers' Hanover Trust Company, June, 1970.

summer of 1969 they were paying a 1 per cent discount on this indirect paper. Both the participation prior to Initiative 245 and the discounts charged after the Act took effect tended to vary between dealers. At the time of the survey, small used-car dealers reported paying discounts as high as 5 per cent.

The principal reason for this shift in policy on the part of the financial institutions was that the paper generated as a result of credit transactions between consumers and retail dealers now carried an interest rate of only 12 per cent. Prior to the enactment of Initiative 245 on December 5, 1968, retail credit contracts could have been written with up to 18 per cent per annum. Thus the dealers were being forced to assume the burden of the mandatory reduction through the discounting of the contracts. Understandably the net result has been a decline in the volume and number of new indirect loans through the consumer and sales finance companies and commercial banks.

In addition to the reluctance of retail merchants to pay so much for money that they suffer losses on credit, some of them have also been affected by changes in the lending policies of the banks with whom they do business. These modifications are not uniform throughout the banking system but, for example, many banks will no longer handle indirect loans for older model automobiles, particularly those five years of age and older. When older model cars are still financed on an indirect basis, it is because the automobile dealers involved are especially important customers of the bank. A small number of banks no longer make indirect loans for amounts of less than $500 average loan size. This particular policy change affects furniture and appliance dealers primarily. One large bank with several branches is no longer handling any indirect paper from any household goods dealer in the state and another bank no longer handles consumer paper emanating from any appliance dealer. A third bank has cut out indirect paper originating with the hospitals in its community. Still another will handle only indirect paper when it originates with an individual who is also a depositor of the banks as well as a customer of the merchants.

The foregoing observations imply that the volume of business that banks do, both directly and indirectly, with consumers has been adversely affected except perhaps for credit cards. As mentioned earlier, indirect loans primarily for furniture and home appliances declined significantly (40.9 per cent for appliances) even though such loans have risen substantially on the national

level. The total volume of automobile loans in 1969 handled by Washington banks through automobile dealers declined 10 per cent in number and 5 per cent in volume below the level that it was prior to the enactment of Initiative 245. At the national level, however, indirect bank auto loans outstanding rose by 5.6 per cent in volume. (See Table IV-1.)

Direct consumer loans made by major Washington banks declined in 1969 relative to 1968. Direct auto loans declined 11.8 per cent in number of contracts and 8.6 per cent in dollar volume. Personal loans declined 25 per cent in number and 12.9 per cent in dollar volume. The total of direct bank consumer loans declined 20.2 per cent in number of loans and 10.5 per cent in dollar volume in 1969 relative to 1968. There were similar, though less pronounced, declines in the amount of consumer loans outstanding in 1969 relative to 1968. The total outstanding consumer loans declined 12.4 per cent in number and 6.3 per cent in dollar volume. In all of the above categories of loans, there was an increase in the average loan size. Although the average size of auto loans increased only 3.5 per cent, the average size of personal loans increased 16.2 per cent due largely to the setting of higher minimum loan sizes and a shift toward more affluent customers.

The dollar volume of new indirect consumer loans made by commercial banks, consumer finance companies and sales finance companies combined in 1969 was 5.7 per cent less than in 1968. There was a slight increase in indirect loans by consumer finance companies, but not enough to materially affect the above figure.

Information obtained about the first quarter of 1969 from interviews with automobile dealers throughout the state during the third quarter of 1969 led us to believe that there had been a significant movement toward the financing of automobiles through consumer finance companies, especially in the case of older used cars because of the difficulty encountered in financing these automobiles through banks. Some corroborating evidence was uncovered when it was observed that a number of automobile dealers said that they had experienced an increase in the number of cars sold for cash. It would appear reasonable to assume that in those instances where this was observed or encouraged by the dealers, direct loans from small loan companies were the most probable source of funds, although credit unions and banks may have been involved.

TABLE IV-8

UNITED STATES CONSUMER INSTALMENT CREDIT OUTSTANDING BY TYPE AND BY HOLDER, 1969 BY MONTHS
(in millions of dollars)

	All Finance Companies Combined	Commercial Banks	Other Financial Institutions	Automobile Dealers	Total
Automobile Paper					
December (1968)	10,124	19,318	4,368	320	34,130
January (1969)	10,087	19,268	4,339	319	34,013
February	10,098	19,270	4,366	319	34,053
March	10,124	19,392	4,426	320	34,262
April	10,232	19,661	4,515	325	34,733
May	10,384	19,908	4,609	329	35,230
June	10,577	20,184	4,710	333	35,804
July	10,673	20,315	4,758	335	36,081
August	10,703	20,372	4,834	336	36,245
September	10,687	20,407	4,891	336	36,321
October	10,822	20,511	4,928	338	36,599
November	10,854	20,591	4,958	337	36,650
December	10,866	20,704	4,996	336	36,602

Source: National Consumer Finance Association, April 6, 1970, p. 49.

On the other hand, an examination of the operating results of small loan companies in the state for the entire year did not reveal any appreciable growth in the dollar total of loans made during the year. This was a somewhat surprising finding. There is, of course, evidence of a relative shift in available consumer credit business toward consumer finance companies as compared with retailer and bank financing. The installment contract filings referred to earlier in the chapter showed that total installment filings declined, but that the decline in consumer finance filings was less than the average decline and that the decline in retailer and bank filings were much above average. In the face of an increased opportunity it was expected there would be an increase in the volume of business that these small loan companies would transact. Instead, the small loan companies appear to have taken advantage of the opportunity to improve the risk quality of their loan portfolios. Net earnings before interest on borrowed funds was up by more than 10 times the average increase during the previous three years and the change in the number and amount of loans charged off was up by about 11 per cent and 14 per cent respectively. A five year summary of the small loan company operating results in Washington in shown in Table IV-9.

Charges and Costs

The retail businessmen and financial institutions have, as expected, tried to reduce the costs associated with credit transactions and loans and to the extent possible to maximize the potential revenue obtainable under the law. Since these affected businessmen have been unable to do much on the revenue producing side, they have understandably enough devoted their primary efforts to cost reduction, at least as far as the strictly financial side of the matter is concerned. The major emphasis in trying to achieve an upward revision of revenues has taken place in the area of product price adjustments. This activity is discussed in the following chapter.

One of the ways in which commercial banks have made an effort to reduce costs is in the handling of loans for small amounts, i.e. under $500. Such loans have been made on their credit card systems whenever possible. The main reason for this development appears to be the lower cost of handling loan transactions of that size in this manner. Service charges and other fees such

TABLE IV-9

FIVE-YEAR ANALYSIS OF SMALL LOAN COMPANIES

	1965	1966	1967	1968	1969
Number of Licensed Offices	252	258	265	271	286
Number of Offices Reporting	251	258	265	271	286
Total Loans Made	185,255	175,608	176,680	184,940	186,552
Amount of Loans Made	$ 98,648,377	$ 93,602,730	$ 97,139,667	$103,979,909	$109,101,461
Total Loans Outstanding	164,665	171,447	174,503	181,524	189,058
Amount of Loans Outstanding	$ 76,498,429	$ 79,276,833	$ 82,160,588	$ 87,557,136	$ 92,704,367
Number of Contracts (Indirect)	32,011	39,984	41,795	64,153	68,339
Amount of Contracts (Indirect)	$ 7,170,699	$ 11,252,947	$ 13,037,682	$ 20,994,248	$ 21,128,176
Number of Other Loans (Indirect)	5,899	7,288	8,683	8,487	7,023
Amount of Other Loans (Indirect) (12% loans, i.e., over $500)	$ 12,138,211	$ 13,529,029	$ 15,542,635	$ 15,499,419	$ 12,031,459
Total Assets	$119,244,126	$128,316,772	$135,970,123	$146,718,231	$149,694,907
Net Earnings Before Interest on Borrowed Funds	$ 5,154,839	$ 5,208,337	$ 5,273,576	$ 5,350,203	$ 6,124,868
Monthly Rate Collected	2.13%	2.08%	2.10%	2.13%	2.11%
Number of Loans Charged Off	5,819	6,074	6,286	6,719	7,440
Amount of Loans Charged Off	$ 2,138,160	$ 2,329,656	$ 2,463,840	$ 2,687,767	$ 3,059,731

Source: Supervisor of Banks, State of Washington.

as those for late payment have also b en either raised or instituted wherever they are allowed and have not heretofore been in effect.

Banks have also attempted to lower their costs of doing business by making qualitative changes in their consumer loan portfolio. Virtually all financial institutions and retailers have tightened their lending policies in one or more of the following areas:

1. Down payment requirements have been increased.
2. Maturities on loans have been shortened.
3. The discretion of local lending officers to waive requirements on consumer loans such as minimum uncommitted monthly income, minimum residence, and minimum length of time on the job has been substantially curtailed.

The impact of these policy changes has been reflected in operating results. One bank reported that their bad debt losses, for example, had been reduced by one-third.

Additional evidence concerning the efforts of businessmen to increase the monetary size of credit transactions is also furnished from a review of the installment sales contracts filed in King County. The average size of these contracts increased from $589 in 1968 to $670 in 1969. These data may also be an indication of the success that banks have had in switching consumers to bank cards which, as we pointed out before, appear to be a form of credit which is less expensive administratively from the lending institutions point of view.

Retailers as well as financial institutions appear to have made a serious attempt to reduce the time period over which they are willing to do business on a credit basis. Eight auto dealers reduced maturities by six months, and one reduced maturities for marginal buyers from a possible 36 months to spans of 2-6 months. By doing so they are able to reduce the dollar amount of the discount on the paper that they sell to financial institutions.

In addition to the reduction in the amount of interest permitted, retailers have also had to contend with a reduced service charge ceiling on consumer loans. The amount allowed prior to the enactment of the law was $15; this was reduced to $10 or 1 per cent per month on the unpaid balance. On the other hand, according to our survey, many banks and retailers have apparently

instituted such charges for the first time in their efforts to generate additional revenues. In this connection it may also be noted that some retailers have raised their interest charges to 12 per cent in those cases where they had been charging consumers less.

Most large-scale retailers have not found it feasible to eliminate the free credit granted to a significant portion of their retail customers as a result of a tradition of open-book accounts. What has happened, however, is that the time period granted to customers on open-book accounts has been reduced. Merchants who were offering 90-day open book accounts say they have cut this to 60 days and the 60-day accounts have been cut to 30. Regular accounts as well as slow pay accounts have been encouraged to switch to sales contracts, revolving accounts or bank cards.

Retailers, and particularly the automobile dealers, have also compensated for their decline in income on credit transactions by selling more of their customers credit life and credit health and accident insurance policies. Around one-third of the auto dealers reported that they were pushing much harder to sell credit insurance, and in some cases began to require customers to purchase the insurance after the passage of the Initiative. The consumer who purchases either a health and accident and/or life insurance contract incurs an additional cost to himself that is determined by the amount of the loan that he has negotiated and the applicable rate for the coverage involved. The maximum legal rate established for credit life insurance in Washington is 60 cents per $100 per year. The rate for health and accident insurance coverage on credit transactions varies with the benefits offered in the particular policy.

In addition to a desire to increase their revenues (through receiving 40 per cent of the premiums), there are other reasons why retailers have emphasized the sale of these types of insurance. First of all in the event of sickness or disability on the part of the consumer his payments are made by the insurance company. Second, the contract between the merchant and the consumer is also more salable if credit insurance is associated with it. Many finance companies will either reject the paper or discount it an additional point if the purchaser is not insured.

About one-third of the automobile dealers interviewed reported that they increased their emphasis on credit insurance in connection with the sale of automobiles. Secondary sources of information representing about 90 per cent of the auto credit insurance transactions in the state also substantiate these dealer responses. The evidence is even more convincing when Washington and the neighboring border states of Oregon and Idaho are compared. As may be seen from an examination of Table IV-10 the amount of life and health insurance premiums on automobile sales in Washington increased by 23 per cent in 1969 while there was only a negligible increase in both Oregon and Idaho. Table IV-11 shows the changes between 1968 and 1969 in total credit insurance. Table IV-12 provides data on northwest states and the United States for credit life insurance in force in the years 1958 through 1969.

TABLE IV-10

CREDIT LIFE AND HEALTH INSURANCE PREMIUMS ON AUTOS

(in thousands of dollars)

	1968	1969	Per Cent Change
Washington	$1666	$2056	23%
Oregon	$ 739	$ 741	0%
Idaho	$ 272	$ 273	0.4%

Source: Major insurance companies specializing in automobile credit insurance.

TABLE IV-11

NEW CREDIT INSURANCE BUSINESS
STATE OF WASHINGTON
1968 AND 1969

Type	1968	1969	Per Cent Change
Individual Life	$ 205,067	$ 135,534	-43.9%
Group Life	$8,902,190	$9,384,760	+ 5.4
Total Life	$9,107,257	$9,520,294	+ 4.5
Group A & H	$2,732,741	$3,438,749	+25.8
Other A & H	$ 141,097	$ 12,095	--
Total A & H	$2,873,838	$3,450,844	+20.0
Total Credit Insurance	$11,981,095	$12,971,138	+ 8.3

Source: Life insurance company annual reports.

TABLE IV-12

CREDIT LIFE INSURANCE IN FORCE
1958-1969

	1969	1968	1967	1966	1965	1964	1963	1962	1961	1960	1959	1958
Washington												
Number (000)	954	865	759	772	688	637	559	516	526	504	440	337
$ Amount (000,000)	927	855	740	717	583	526	443	391	364	337	286	212
Oregon												
Number (000)	793	707	582	697	646	505	443	413	389	441	377	326
$ Amount (000,000)	1202	1077	941	934	877	790	680	621	532	478	393	289
Idaho												
Number (000)	292	275	259	205	177	189	170	133	106	105	126	96
$ Amount (000,000)	326	304	267	231	205	204	191	154	121	116	113	80
United States												
Number (000)	79,372	75,860	71,183	70,090	63,178	58,017	52,856	47,620	45,262	43,479	39,422	35,004
$ Amount (000,000)	83,788	75,881	66,952	62,672	56,993	49,933	43,555	38,011	33,493	31,183	26,680	21,474
Per Cent Change in dollars		+13.3	+6.80	+10.0	+14.1	+14.6	+14.6			+17.0	+24.0	+9.0
Per Cent Change in number											+13.0	+13.0

Source: Life Insurance Factbook 1969-1958 (New York: Institute of Life Insurance).

At the time of the interviewing program, there was little indication of changes in other credit-related fees and charges.

One concluding remark on the behavior of the businessmen with reference to the issue of cost and revenue adjustments seems warranted. The evidence at hand suggests that their reaction to the passage of Initiative 245 did not necessarily take place immediately after the law went into effect, although there was a great deal of talk about it at the time. The adjustments which have taken place appear to have gone on throughout the year and it is quite possible that some adjustments still remain to be made. This seems to be due in part to the fact that many businessmen, particularly in the smaller firms, were unable to ascertain the precise effect of the law on their operations while others were unable to reach a decision about what to do in the face of the effect of the law on their operations. The survival of all of the firms studied however may well require an adjustment to the changed environment.

In spite of the imposition of fees and charges and the potential cost savings involved in the processing of loan transactions, personal loans for small amounts, no matter how small the risk associated with them, are not very profitable for banks in the face of current high money costs. The maximum rates the banks are allowed to charge under existing state laws is 12 per cent simple interest. The usury law has prevented banks from raising their interest rates above 12 per cent on direct merchandise loans and Initiative 245 holds bank credit cards to 12 per cent in the face of a rapid and substantial increase in their cost of money. Whether the banks actually would raise their rates if they had the opportunity to do so is a question. The evidence at hand strongly suggests that they would have raised their rates if they had been able to do so. If the present high cost of money persists and the 12 per cent revenue ceiling remains in effect, it is quite possible that some banks might drop bank credit cards if net income from this source of business is not forthcoming. One possibility for additional bank revenue would involve a direct annual charge to the consumer for the privilege of using the bank credit card services.

Credit cards are still in use because of the very substantial investment that the sponsoring banks have made in them, because of hopes that either the price of money will come down and/or the interest ceiling will be revised

upward and because of a feeling among bankers that credit cards are going to grow in importance in the future. In the long-run, however, banks may be unwilling to bear the burden of supplying a service the costs of which equal or almost equal and, which may ultimately exceed, the price that can be charged for it.

It is also reasonably apparent that the retail merchants are either not making money or actually losing money on that part of their business that they do on a credit rather than on a cash basis. However, it seems even less likely that the affected retailers will be able to dispense with loan arrangements between themselves and their customers, even in the face of this lack of profitability or outright loss. The merchants have by now done many of the things they can do to maximize their credit revenue and reduce their credit costs. Additional adjustments will have to be made in the area of product price increases or product cost and service reductions. The sale of automobiles and, to a slightly lesser extent, household furnishings and major appliances, depend heavily on purchasers who must borrow in order to buy. Borrowing money for a good reason is now a socially accepted practice in the United States; it is an absolute necessity for the survival for some types of businesses. It is no exaggeration to suggest that the whole American economy would be seriously shaken and many of the largest firms in the automotive, furniture, and appliance industries forced into bankruptcy along with thousands of retailers if no loans were available to consumers for the purpose of purchasing these items. The cost of credit sales will simply have to be absorbed in one way or another by the ultimate consumer. This is not to suggest that it is a matter of indifference how this burden is borne nor is it meant to suggest that it will be borne equally by all consumers.

Effects on Consumers

Positive effects. The primary effect of Initiative 245 insofar as individual consumers are concerned is that the cost of direct or indirect merchandise loans, the use of bank credit cards and interest charged by merchants has been either held at or reduced to 12 per cent per annum. In view of the rapid and substantial increase in the cost of money (the prime rate increased from 6.25 per cent in December, 1968 to 8.50 per cent in June, 1969) and the costs of

operating a credit card service and a credit department, it seems quite likely that the banks would have increased their charges above 12 per cent on direct merchandise loans and stayed at--or raised to--a charge of 18 per cent on bank credit cards. Further, most retail merchants would have kept finance charges at or raised them to 18 per cent. The evidence for this statement is, of course, largely circumstantial but it appears quite convincing.

The reduction in gross profit margins due to the reduction in interest rates has also probably worked to the advantage of consumers by encouraging businessmen to strive for greater efficiency in their operations in order to achieve cost reductions and thereby re-establish the gross profit margins in effect prior to the passage of Initiative 245. On the other hand, there is no assurance that if businessmen could achieve greater profitability through efficiencies that they would pass on the benefits to their customers.

Negative effects. The effect of the law is, however, uneven and there appear to be groups of consumers who have suffered adversely from the effects of the law. Cash customers, for example, have received no benefits and, on the other hand, they are in all likelihood paying somewhat higher prices. Those persons who were on open book accounts prior to the passage of the law and who are still in the same category have been affected in essentially the same manner a have cash customers although they are still being subsidized by cash customers to some extent.

There are those who must now pay more for the money that they borrow because banks and merchants will no longer lend to them at the new lower rates. Also included in the category of persons adversely affected are those who were on open book accounts prior to the passage of the law and who are now on revolving credit accounts or some other basis which requires them to pay 12 per cent interest.

Finally, there are those who must forego making purchases of products that require loans because of an inability to borrow from any source on terms that would permit the buyer to handle repayment of a loan out of future income.

Credit eligibility problems. After the passage of Initiative 245, retailers and financial institutions tightened up on the granting of credit to reduce potential losses in the form of bad debts and credit and collection expenses. First, there were some retailers who went out of the business of financing

their own customers. Eleven of the 63 general merchandise, furniture and appliance retailers who responded to the question stated that they changed to a policy of making the customer arrange his own financing. This meant essentially that none of their previous credit customers were eligible for credit. Similarly, of 37 retailers who offered 90-day open book credit prior to the initiative, 5 cancelled the plan entirely, 6 more reduced the time period from 90 to 30 days, and two others reduced the time period to 60 days.

Of the 30 auto dealers who sold new cars, 22 reported tightening the eligibility rules for credit, and of the 46 dealers handling used cars (including dealers selling both new and used) 36 tightened up on eligibility rules. For seven of the dealers this meant cancelling out whole categories of people who might have received credit prior to the Initiative. Two-thirds of the other retailers reported that they were rejecting applicants whom they would have accepted prior to the passage of the law. This was also borne out by the fact that all of the merchants interviewed showed a 9 per cent increase in credit application rejection rates during the second quarter of 1969. New and used auto dealers reported even higher rejection rates. Whether a credit eligibility criterion was income, length of residence, time on a job or repayment history, it was likely to be made tougher after passage of Initiative 245.

There are also indications that bank credit cards are being issued in a more discriminating manner. Based on a survey representing 95 per cent of the bank credit card business in the state, Table IV-13 shows that rejection rates on new applications for major bank cards were up sharply in the last six months of 1969. The rejection rate was significantly higher in each of these months over that of the same month in 1968. The increase in 1969 over 1968 was 2.2 per cent in July, 11.4 per cent in August, 8.4 per cent in September, 10.7 per cent in October, 6.1 per cent in November and 13.0 per cent in December. Although the rejection rates were lower in 1969 than 1968 for each of the first six months, the total rejection rate for the year was 4.1 per cent higher in 1969.

Shortened maturities. The specific effects of all of the policy changes that have been made by banks, retailers and finance companies in connection with indirect loans can be inferred from the nature of the changes that have been instituted. The effect of the shortening of the loan repayment time

TABLE IV-13

BANKCARD APPLICATIONS RECEIVED AND DECLINED--WASHINGTON, 1968 & 1969

	1968 Applications			1969 Applications		
	Number Received	Number Declined	Per Cent Declined	Number Received	Number Declined	Per Cent Declined
Total	60,860	23,758	39.0%	132,595	57,203	43.1
January	3917	1597	40.7	6612	2459	37.2
February	3140	1370	43.6	5387	2100	39.0
March	3074	1342	43.7	7525	2685	35.7
April	4435	1961	44.2	9160	3622	39.5
May	4103	1757	42.8	9982	4064	40.7
June	4512	1845	40.9	16770	6717	40.1
July	5084	2097	41.2	12801	5559	43.4
August	5372	2042	38.0	12132	5993	49.4
September	5997	2242	37.4	13108	6005	45.8
October	8831	2784	31.5	12857	5430	42.2
November	5931	2396	40.4	12126	5636	46.5
December	6464	2325	36.0	14135	6933	49.0

period, for example, has been to increase the size of the consumer's monthly payment. This means that most consumers are able to borrow less than they were able to prior to the enactment of the law. The reported increase in downpayment requirements also serves to inhibit the sale of products sold on credit in much the same way--by shortening maturities.

The question of the size of the consumer's monthly payment is important because it is one of the credit related variables that the consumer frequently determines by choice. As pointed out before, this choice is constrained by the consumer's ability to repay the loan. The size of the monthly payment on a given purchase has been shown to be the key decision variable considered by some classes of consumers. Juster and Shay point out that financial institutions establish normative maturity limitations and the tendency is for some consumers to seek the longest contract maturities.

Notwithstanding the desire for long maturities on the part of many consumers and the opportunity that it represents to increase borrowing power, the desire of the merchants to minimize their costs of doing business on a credit basis and the income constraint both work to the disadvantage of lower income members of the community.

A consumer faced with purchasing a product requiring higher monthly payments and if these monthly payments are more than he can manage, can seek an adjustment in product quality level that may effectively reduce the total price of the merchandise and loan with the objective of reducing his monthly payments.

Increased down payments. There are several forces at work expanding downpayment requirements. First, retailers have made a conscious attempt to shorten maturities in order to reduce the amount of the discount that they must contend with on indirect paper sold to financial institutions and to improve their credit turnover. Second, higher downpayments serve to minimize high risk customer transactions. While customers who can afford large downpayments are not always better credit risks than those who can afford only a small downpayment, merchants believe, with some justification, that by following this procedure their risks are minimized. Twenty five per cent of the non-automotive retailers indicated that they had increased their downpayment requirements on credit purchases by an average of 15 per cent subsequent to the enactment of Initiative 245. Many retailers no longer offer "no downpayment" credit

arrangements. A number of retailers indicated that they required an additional 15 to 20 per cent down from those buyers whom they regarded as marginal risks. It also seems inevitable under these circumstances that at least some consumers would try to meet the retailer's downpayment requirements as well as the financing of the balance from small loan companies at rates higher than those offered by the retail merchants prior to the enactment of the law.

"Mousing." An illustration of the manner in which these changes in lending policies affect low income consumers is the practice of "mousing." If the consumer does not have enough money to meet the downpayment requirements for an automobile, for example, he may be obliged to borrow from one or more consumer finance companies using such items as his furniture as collateral for the loan. Then, if he is unable to obtain financing from a bank directly or indirectly for the balance of the purchase price, he may go to a finance company and use the auto for collateral to obtain a loan to cover the balance. Since these small loan companies are not limited by the 12 per cent restriction, and since the rate of interest they charge the consumer is inversely related to the size of the loan, the buyer who has to go through this practice of mousing ends up paying a larger sum of interest than he would if he obtained the loan in a single transaction from the dealer, a bank or through a sales finance company.

Several automobile dealers in the field survey indicated that "mousing" was more frequent after the passage of Initiative 245 than it was before. The records of one of the dealers surveyed showed that in his case at least increased downpayment requirements had apparently led to an increase in mousing. While the proportion of automobile buyers in this category is still small, i.e. less than 5 per cent, the proportion of automobile purchasers utilizing small loan companies for at least a part of their loan requirements exceeded 50 per cent in the case of this particular dealer.

The following quotation suggests that this is not an isolated example. "The squeeze is especially apparent in used cars . . . auto dealers have to guarantee repayment of the loans they submit to lending agencies . . . dealers are now telling purchasers of older used cars that the customer must finance the cars through small loan companies."[1]

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[1]*Seattle Times*, December 18, 1969.

Role of banks. There has been, for a number of reasons, a definite reluctance on the part of banks to take over auto dealer paper in 1969 as compared with 1968. Banks typically had a policy of full recourse prior to the passage of Initiative 245, with some exceptions for "quality" paper. The banks might insist that dealers had to repurchase cars which were repossessed by banks. The losses to the bank were recovered from the dealers reserve account. Repurchase agreements are limited as to time (90 days, for example) so that if a bank fails to repossess within the time limit, the dealer is no longer obligated. Six dealers reported a tightening on recourse, usually by extending the time limit on repurchase agreements from 90 to 120 days. This, in turn has encouraged auto dealers to screen their credit sales customers more carefully. Naturally, some credit customers will suffer from this selective procedure. Although the volume of auto dealer paper decreased in 1969, the average value of each loan increased by about $100.

In comparing 1969 with 1968, it is seen that new direct bank auto loans decreased 11.8 per cent in number and 8.6 per cent in volume. Yet the average loan size increased by 3.5 per cent. New indirect bank auto loans declined 10 per cent in number and 5 per cent in volume. Average loan size increased 5.1 per cent. Personal secured and unsecured direct bank loans declined 25 per cent in number and 12.9 per cent in volume. Direct personal loans increased 16.2 per cent in average size. New indirect bank loans for appliance, home equipment and home furnishings purchases declined 40.9 per cent in number and 33 per cent in volume. The average size increased by 13.3 per cent. New indirect loans for marine boats and motors declined 6 per cent in number and increased 25 per cent in volume. The average size of bank loan for this purpose increased 33.1 per cent. This suggests that the decrease in the number of loans was not across the board but the cutoff was made at the lower tail of the distribution of loans by size resulting in a fewer number of loans but loans with a larger average size. This phenomenon is even more apparent in the case of direct loans.

Direct loans from banks to consumers for the purpose of an automobile purchase also decreased in number in 1969 when compared with 1968 while the average size of a loan in 1969 increased by almost $200. This indicates that banks have become even more selective in screening borrowers who come to them directly.

The rising cost of money to the lending institutions has undoubtedly intensified the effect of restricting the price that these same institutions can charge for the money that the lend.

In general, it is obvious that a low ceiling on the amount that can be charged for loans has encouraged lenders to reduce their risks by discriminating against those borrowers who are viewed as less creditworthy.

Summary

In sum it appears that people who are new in the community and are new on their jobs with relatively limited incomes and who wish to buy major appliances or older automobiles are being hit hardest by the law. In spite of what appear to be reasonable expectations to the contrary these people have also experienced difficulty borrowing money, at least in the short run, from relatively higher cost, higher risk-bearing financial institutions such as small loan companies.

The first hypothesis relative to credit was, "Banks and merchants are doing less business on a credit basis." All evidence is that credit declined both absolutely and relatively. Direct consumer loans declined and indirect consumer loans through banks and finance companies have declined because the financial institutions are less willing to loan at the new price ceiling. Increases in the lenders' cost of doing business, particularly in the cost of money, has intensified the problem. The net result has struck with special severity at furniture, appliance and used auto retailers.

The second hypothesis was, "Lenders are diverting business to the most profitable types of loans or credit arrangements." Banks have switched more credit to their bank credit cards, which are considered more profitable than instalment or direct merchandise loans, and have raised the minimum size of loan they will grant. Retailers have switched customers from instalment to revolving credit, they have shortened their open-book time periods and/or have divested themselves of some or all of their credit business by switching customers to bank credit cards or to other forms of outside credit.

The third hypothesis was "Small loan companies are doing more business." This does not appear to hold in absolute terms, since total volume has declined. In relative terms, however, there appears to be a shift toward

small-loan companies since in a totally declining market they declined less than the average whereas bank and retailer credit declined much more than the average. It is possible that they too became more selective in granting credit, because they showed a sharp increase in profitability in 1969 relative to any recent year.

The fourth hypothesis was, "Credit losses have decreased." Because businessmen's records on costs tend to be sketchy and because they often were reluctant to reveal what they regard as proprietary information about their operations, it was difficult to ascertain the extent to which lenders have been able to reduce their costs of transacting business on a credit basis. There were some cases of substantial reductions in costs, but their number was insufficient to warrant conclusions. The evidence gathered suggests that there are limits on the extent to which businessmen can seek relief from the loss in credit revenues by means of cost reductions. Most credit grantors, particularly large retailers and financial institutions, appear to have embarked on cost-cutting programs and have engaged in efforts to maximize credit income to the extent permitted by law.

A fifth hypothesis was, "More poor people have been affected by the new law than middle or upper-income people, and marginal standing from a credit standpoint has been redefined to exclude some individuals classified as higher risks." It is possible that creditworthy consumers have benefited from a decrease in allowable interest charges from 18 to 12 per cent per annum on consumer credit. The actions taken by financial institutions and retailers, however, tend to be at the expense of the lower income people, particularly those considered marginal credit risks. The tightening of credit granting criteria, the raising of the minimum amount eligible for credit, the increasing of downpayment requirements and the shortening of maturities all strike hardest at poor people. Those most affected are the people who were literally excluded from markets and those who were shunted off to small loan companies by retailers. The legal interest schedules of small loan companies, as high as 36 per cent per year, worked a hardship on consumers formerly able to get regular retail or bank credit.

The sixth hypothesis was, "Financing charges other than interest rates have increased." Although the new law reduced the basic service charge from

$15 to $10 or 1 per cent per month, some firms have instituted minimum service charges where before there were none. The charge for overdraft plans on credit cards has increased--in one case it was doubled. The increased requirement that consumers take out credit insurance has raised the effective costs of borrowing well above the 12 per cent prescribed by law. Retailers now pay a discount on indirect paper (cases were reported of discounts as high as 5 per cent) where before they received a commission ("participation"). Such costs must eventually be paid by the consumer in some way.

The final hypothesis was, "Businessmen have become more strict in the application of rules on delinquent accounts." Whereas these rules were often not utilized prior to the passage of the Initiative, they were brought to bear as a cost-cutting measure after the law took effect. Some consumers receiving credit, or eligible for credit, prior to the law were dropped. These effects were part of the result of the general tightening of credit availability in response to the law but the increases in levels of wholesale interest rates also contributed.

In sum, credit has become less available, it may cost less in terms of interest on revolving and instalment credit for creditworthy consumers, it costs more for creditworthy customers whose open-book privileges have been cancelled or reduced, it costs more for many low-income marginal-risk consumers, it has been denied to some poor people who formerly were eligible for credit and in retail stores it was being subsidized by cash customers at the time of the field work for this study.

CHAPTER V

PRODUCT RELATED IMPACTS

Product Related Hypotheses

The product-related hypotheses established at the outset of this study were as follows:

Prices of merchandise frequently sold on credit have gone up.

Different products and different businesses have been affected in different ways by the new law.

Leasing of merchandise frequently sold on credit has increased.

The passage of Initiative 245 imposed direct limitations upon the credit related policies of retailers. Secondary and somewhat indirect effects were also imposed upon the product related decisions of retailers. That is, the credit related policy restrictions were, in effect, imposed on the retailer by law, and he therefore adjusted his business operations to the new situation using the balance of his marketing options--his product related policies. For example, changes were made in pricing and service policies to compensate for changes in the credit area.

The imposition of a price ceiling on all credit customers had two important effects on retailers. First, it represented a potential 33 1/3 per cent decrease in finance income in some transactions. In many cases this represented a substantial portion of the firm's total gross and net profits. Second, with such a decrease in income it became imperative for the retailers to attempt to reduce costs, increase total revenues, or both.

Product Related Decisions: Prices

Essentially a retailer places a price on his service, product and credit terms. Each represents a revenue-generating and cost-incurring activity. When the contribution of one component is restricted, the burden of adjustment rests

on the other components. When credit income is significantly reduced by legislation the businessman's response can be expected to be in the form of cost reductions and an attempt to increase the revenue-generating capacity of the other activities in his business. Hence, prices may be increased on products and services. Within the context of such adjustments, attempts may also be made to reduce costs as well. In the matter of product price, per se, prices may be raised on items usually sold on a credit basis, on all items, or on some selection of credit-sensitive and/or non-credit-sensitive items.

In this study, retailers are divided into two major groups: auto dealers and others. The "others" include general merchandise retailers (department stores), and furniture and appliance retailers. The "other" retailers are covered first in this report.

The majority (56 per cent) of retailers (other than auto dealers) included in the sample of Washington retailers indicated that they raised prices on all merchandise on the average of 5 per cent in response to the passage of Initiative 245. A somewhat larger majority (64 per cent) of furniture and appliance dealers stated that they raised prices on items usually sold on credit. Thirty-one per cent of the department stores also raised prices for products usually sold on credit.

In a response which was less direct, but which had the net effect of raising prices to consumers, retailers stated that they were adjusting their merchandise offerings to obtain higher average mark-ups than existed prior to Initiative 245. Such adjustments can be brought about by changing to suppliers whose suggested retail prices include a higher percentage of gross margin for retailers, by obtaining suppliers whose wholesale prices permit a higher gross margin at accepted local retail price lines, or by replacing stocks with items whose unit prices are higher than those of prior offerings. This last approach will increase the gross margin per unit in dollars without raising the percentage of gross margin realized. Gross margins, of course, are affected by both cost and revenue factors. For example, increased efficiency in buying brought about by tighter controls, better inventory information, or more accurate selection can increase realized gross margin with no change in initial price mark-on rates. The greater efficiency in buying reduces losses from

markdowns in price that are made necessary by slow rates of turnover such as occur from overbuying or from errors in the selection of merchandise.

In general, it appears that there was no single pattern of response among retailers but price increases came mostly in the form of general price increases rather than singling out specific products. A retail sale may now require a trade-in whereas prior to Initiative 245 no trade-in was required. Or, in the case of pricing trade-ins, the retailer may now offer less for the used item. A few of the price increases noted above were in the form of changes in such product related charges.

Some retailers instituted charges for services which were provided for consumers free of charge prior to Initiative 245. Product-related charges for services formerly furnished free of charge have been assessed on check cashing, wrapping and packaging, lay-away, delivery, product installation, product service contracts and parking. In some cases, where charges had existed on such services, the charges were increased. In parking, for example, some stores ceased validating parking tickets so that the consumer had to pay the regular parking charge rather than obtaining it free through validation. In other cases, the charges for parking which was under the control of retailers were increased. Some stores placed substantial charges on product installation, where this service had been free. The new charges may not actually have covered the installation costs to the store, but they represented net price increases to consumers.

Implications for the Consumer. If price increases in product and product related services just compensate for the revenue cost by reducing the interest ceiling on credit extension then the typical credit customer has not been affected appreciably. However, those who pay cash for their products and services may now pay more.

The consumer who trades in a used appliance may well expect to receive less for it because of a change in trade-in policies by retailers. As mentioned above some consumers can now expect to pay for services that were provided by the retailer without charge prior to Initiative 245. Quite probably all consumers are paying totally a higher price for products and services as the passage of the Initiative appears to have encouraged price increases.

These price changes were also very probably facilitated by the then recent growth in the state's economy and the generally high level of employment prevailing at the time the law was enacted.

Product Price Decision Verification: Appliances

In an attempt to gather concrete evidence on whether or not retailers were raising prices as they said they were in response to Initiative 245, three surveys of prices on major appliances were conducted. They took place in April and August 1969, and January, 1970. Stores in Seattle, Spokane, Portland and Los Angeles were included in the first two surveys, but the January survey covered only Los Angeles and Seattle. Seattle was considered sufficiently representative of the state of Washington that it was deemed unnecessary to include Spokane. Portland, Oregon was included initially on the theory that its location in another state and at some distance (around 170 miles) from Seattle would provide an independent market for comparison purposes. Executives of chain retailing organizations were of the opinion, however, that Portland prices were strongly influenced by Seattle prices and that they might tend to follow Seattle trends regardless of the reason for the Seattle price trends.

The surveys were made in eight to ten large department and appliance stores in each of the cities visited, and the same stores were used in all surveys. The purpose of the surveys was to obtain the prices on six types of major appliances in order to compare the trends of these prices during the 9-month period in question. Working from a list of model numbers and descriptions provided by the comparison shopping bureaus of large stores, the prices were obtained by inspecting price books of major appliance departments and checking price tags on the merchandise or, in the few cases where price books were not made available, by inspecting the price tags alone. This method was modified for the third survey as described below.

Important difficulties were encountered because of several uncontrollable variables facing the price shoppers which made the task of locating identical models difficult. One major difference in the Seattle and Los Angeles markets was the dominance of electric appliances in some categories (cooking ranges and clothes dryers) in the former, and gas appliances in the latter. Another major

problem was that of model changes. Some appliances that were priced in April, for instance, did not exist in August, or if they did exist, they were placed on sale because of newer models in the market. This limited the usefulness of price comparisons from quarter to quarter, and reduced the number of identical models to a point where no statistical tests for price changes could be applied.

The initial survey in April used the comparison shopping list as a guide in the selection of appliance models. In August, an attempt was made to duplicate exactly the April survey by visiting the same stores and pricing the same models. However, because of the obstacles mentioned above, this met with only partial success. In an attempt to overcome this weakness in January, as many appliance models as possible were obtained in both Seattle and Los Angeles. This "shotgun" approach proved much bett r than the use of the comparison shopping list with respect to the number of comparable models in both cities. In the last survey, the number of identical models for most appliances was increased significantly. However, since most of the January models were different from the two earlier surveys, no statistically significant price trend analysis of particular appliances is possible with the available data.

In analyzing the available prices of identical models that could be found during each survey, the average price of each type of appliance is shown for Los Angeles and Seattle in Table V-1.

The models recorded in each appliance category for Los Angeles and Seattle were exactly the same for the first two surveys. Unfortunately, although in the January survey it was possible to obt in a much larger number of identical models in the two cities, these models were not the same as thos obtained during the April and August surveys. This hampers comparing price trends for the 9-month period.

Since the trends of retail sales volumes might be expected to influence price trends, retail sales data are provided here as economic background. In a declining market, price competition might be expected to lower prices, and vice versa. The retail furniture and appliance sales trends from 1968 to 1969 in the state of Washington and the United States are shown in Table V-2. Table V-3 presents a month-by-month comparison of department store sales in selected western cities.

TABLE V-1

AVERAGE PRICES OF MAJOR APPLIANCES
LOS ANGELES AND SEATTLE

Item	April, 1969			August, 1969			January, 1970		
	N	L.A.	Seattle	N	L.A.	Seattle	N	L.A.	Seattle
Dishwashers	4	$197	$198	4	$193	$194	9	$209	$218
Ranges	1	200	210	1	190	198	4	262	265
Washers	4	210	223	4	213	228	26	227	236
Dryers	2	182	162	2	183	173	12	194	204
T.V.	2	400	415	2	410	425	30	353	375
Refrigerator	6	363	371	6	362	372	34	354	359

Source: Field surveys.

TABLE V-2

FURNITURE AND APPLIANCE GROUP SALES[a]
WASHINGTON STATE vs. NATIONAL
(in millions of dollars)

	United States			Washington		
	1968	1969	Per Cent Change	1968	1969	Per Cent Change
1st Quarter	3663	3774	+3.0	62.8	62.5	- .6
2nd Quarter	3884	4084	+5.1	61.9	64.9	+5.0
3rd Quarter	4284	4144	-3.3	69.1	67.7	-2.0
4th Quarter	4709	4712	+.06	77.7	75.4	-3.0
Totals	16540	16714	+1.1	271.5	270.5	- .4

[a]Unadjusted for seasonal variation.

Source: Washington: Department of Revenue, Olympia. United States: Department of Commerce, "Survey of Monthly Retail Trade."

TABLE V-3

DEPARTMENT STORE SALES IN SELECTED AREAS (TABLE 10-UNADJUSTED
(Department of Commerce Monthly Sample Data)
(all numbers in thousands)

SMSA's	12 months 68 vs. 67	Dec. 68 Dec. 67	Jan. 68 Jan. 69	Feb. 68 Feb. 69	6 months Jan.-June 1968-1969	(1st Qtr.) Mar. 68 Mar. 69	April 68 April 69	May 68 May 69	(2nd Qtr.) June 68 June 69	July 68 July 69	Aug. 68 Aug. 69	(3rd Qtr.) Sept. 68 Sept. 69	Oct. 68 Oct. 69	(4th Qtr.) Nov. 68 Nov. 69	Dec. 68 Dec. 69	1968 vs. ANNUAL 1969
1. Los Angeles-Long Beach (Los Angeles County)	+5%	+6%	102260 106239 (+4%)	93174 96550 (+4%)	+6%	108874 116192	118717 127107	123908 130884	121142 130024 (+7%)	124955 137946	127015 139714	119502 131508	124276 134192	150256 160657	241784 269542	+8%
2. Eugene, Oregon (Lane County)	+7%	-3%	1777 1587 (-11%)	1745 1691 (-3%)	-2%	2183 2094	2137 2231	2287 2357	2357 2317 (-2%)	2390 2365	3015 2746	2541 2499	2268 2350	2556 2436	4137 4308	-1%
3. Salem, Oregon (Marion & Polk Counties)	+5%	-5%	1759 (+3%)	1648 (-4%)		2018 2064	2234 2259	2235 2313	2258 2260 (0)	2442 2405	3134 2847	2411 2429	2377 2486	2509 2533	4065 4228	+1%
4. Portland, Ore.-Wash. (3 Oregon Counties Clark County, Wn.)	+6%	+1%	10511 10806 (+3%)	10326 10204 (-1%)	+5%	12241 13212	12766 13957	13509 14659	13812 14115 (+2%)	13065 13752	16166 15888	13329 14297	14075 15378	16547 16523	25739 27813	+5%
5. Seattle-Everett, Wash. (King & Snohomish Counties)	+17%	+6%	21601 23166 (+7%)	20394 22753 (+7%)	+8%	25297 27604	26080 27839	28871 30859	27431 29793 (+9%)	27073 29397	35067	28891 30503	31128 32267	35816 36935	56398 62822	+7%
6. Spokane, Wash. (Spokane, County)	+10%	+19%	4426 4866 (+4%)	5016 4982 (-7%)	+9%	5693 6264	5795 6601	5996 7141	6583 6900 (+5%)	6160 6688	7676 7802	6797 6967	7789 8061	7734 7884	12578 13283	+6%
7. Tacoma, Wash. (Pierce County)	+19%	+1%	5661 5849 (+3%)	5956 5893 (-1%)	+6%	6790 7290	6954 7319	7925 8333	7233 8178 (+13%)	7484 7923	9059 9627	7704 8023	7957 8013	9527 9731	14966 15971	+5%
II. CITIES																
1. Bellingham, Wash.	+29%	+72%	(+40%) 390 545	(+31%) 391 511	+53%	487 744	525 757	558 910	510 907 (+78%)	529 848	663 1068	542 904	565 915	1069 1051	1522 1794	+41%
2. Seattle, Wash.	+11%	-4%	(+2%) 14001 14235	(-4%) 13177 12997	0	15676 15801	15739 15782	17482 17399	16242 16446 (+1%)	16404 16719	19964	16997 17562	18480 18602	20715 20580	31910 34196	+2%
3. Walla Walla, Wash.	+3%	-8%	(-2%) 309 302	(-5%) 322 306	+1%	433 406	425 441	439 458	420 431 (+7%)	432 420	489 484	412 406	428 423	460 412	687 701	-1%
4. Yakima, Wash.	+5%	(-2%)	(-4%) 1285 1239	(-7%) 1363 1266	+2%	1681 1736	1641 1725	1876 1875	1794 1913 (+8%)	1781 1834	2217 2174	1802 1957	2047 2136	2240 2178	3243 3430	+2%

Source: U.S. Department of Commerce: Current Business Reports--Monthly Retail Trade
(1968 and 1969—monthly issue)

As a general rule, price levels in the Seattle area seem to be somewhat higher than the Los Angeles area. This holds fairly consistently for all three periods, but it would be difficult to conclude increases have been more pronounced in Seattle during the 9-month period than in Los Angeles. One exception to this is dryers. There was about 1.5 per cent increase in August from April in Seattle, while the price remained unchanged in Los Angeles. Another exception is that dryers are the only appliance that showed a lower price level in the Seattle area during April and August. However, with only two identical models to compare, very little can be said about this difference. The January, 1970 survey conveys a greater confidence in the average price levels because of the larger number of identical appliances. Here, the price level still shows a trend similar to the two earlier surveys for all appliances.

Since our interest is in the general price level, a second approach to the collected data was the use of some kind of an aggregate price index of all appliances for the two cities. In combining all appliances, we obtained the following:

TABLE V-4

AGGREGATE PRICES OF MAJOR APPLIANCES
LOS ANGELES AND SEATTLE

	April		August		January	
	L.A.	Seattle	L.A.	Seattle	L.A.	Seattle
Total Price	$5166	$5274	$5172	$5314	$32785	$34062
Number of identical models	19	19	19	19	115	115
Average price per model	$ 273	$ 277	$ 273	$ 280	$ 285	$ 296
Seattle price as a percentage using L.A. as a base, each period	100	101	100	102.5	100	104
Percentage price change, using both cities as base	0%	0%	0%	1%	4%	7%
CPI--all items, nationally		126.4		128.7		131.3
CPI for household furnishings, nationally		116.9		118.5		120.0

Source: Field surveys.

The table above shows that prices in the Seattle area for appliances in general have increased at a somewhat higher rate than Los Angeles and the national average. This may be a matter of speculation, but there is no economic reason that would suggest a higher rate. In fact, economic conditions in Seattle should force an opposite trend since there was substantial unemployment in the Puget Sound area in January 1970. But with this type of limited information, we cannot conclude that Initiative 245 has been the cause of the price increase in the Seattle area. The difference is not significantly large enough for drawing such a conclusion. On the other hand, the relatively higher prices for appliances in Seattle does tend to corroborate the survey responses of the appliance retailers.

Auto Retailer Pricing

Since there are some characteristics of auto retailing which differ from those of other types of retailing, and because auto purchases are usually the second-largest single purchase items for consumers (purchase of a house is larger, of course, and for non-home-owners rent payments are normally higher than car payments), auto prices are considered separately. Further, it was possible to obtain certain kinds of data on autos not available for other forms of merchandise.

Tables V-5 and V-6 summarize the findings relative to auto price changes by dealers interviewed in our sample. These reflect changes that were said to have taken place during the first three months of 1969.

TABLE V-5

NEW CAR PRICE CHANGES
WASHINGTON STATE, FIRST QUARTER 1969

Type of Dealer	Amount Given	Average Increase of 5.3%	Average Increase of $56.-	Total Dealers	Per Cent
New car dealers				30	100%
Increased price	3	6	4	13	43
No price increase				17	57

TABLE V-6

USED CAR PRICE CHANGES
WASHINGTON STATE, FIRST QUARTER 1969

Type of Dealer	No Specific Amount Given	Average Increase of 11%	Average Increase of $64.0	Total Dealers	Per Cent
Used car dealers				46	100%
Increased price	5	9	5	19	41
No price change				27	59

Note: A new-and-used car dealer's response is recorded in Table V-5 with respect to his new cars, and in Table V-6 with respect to his used cars.

Almost one-half of the dealers in each category indicated price increases on the autos that were sold. The dealers apparently did not attempt to increase their revenue by means of increasing prices on other products or services. Only 4 out of 39 respondents indicated that they had done so. Three new-car dealers increased delivery charges by an average of $30 and one dealer increased his service contract charge by $2. For used cars, the change was primarily a price increase in the car purchased because some of the services offered to new car buyers are not usually offered to used car buyers. Four used car dealers (10 per cent) did reduce their warranty liability on service contracts by shortening their commitment time period or by changing service terms. However, an indirect price increase for both categories was levied by means of offering the prospective buyer a lower trade-in allowance for his old car. This practice was expressly mentioned by 4 or 5 dealers in our sample.

A more comprehensive investigation of price changes was made using secondary source data. Data were recorded for all the Chevrolet, Ford, and Plymouth models that were sold at the Seattle Auction during the periods January through August of 1968 and 1969. For purposes of comparison the same kind of data were secured from Denver, Colorado, where the 12 per cent interest restriction does not exist. These are wholesale prices which the dealers pay

for the cars they buy at the auction. The results are shown in Table V-7 which follows.

TABLE V-7

WHOLESALE AUCTION AVERAGE AUTO PRICES
SEATTLE AND DENVER
1968 and 1969

		Seattle		Denver	
Age	Model	Number Sold	Price	Number Sold	Price
1969					
0	69	543	$2554	198	$2570
1	68	1741	2179	503	1963
2	67	759	1493	842	1551
3	66	345	1140	453	1170
4	65	243	932	371	942
5	64	158	707	228	675
6	63	100	475	180	471
1968					
0	68	262	2497	69	2653
1	67	931	2164	384	1974
2	66	862	1506	547	1557
3	65	656	1193	393	1216
4	64	385	981	181	937
5	63	284	707	164	691
6	62	137	544	132	483

There seemed to be slightly lower wholesale prices in Seattle for older used cars in 1969 when compared to Denver. Although this sample covers a sufficiently large number of automobiles, no conclusions can be made about the behavior of these prices except that, in general, used car prices at the wholesale level are lower in 1969 than they were in 1968 in both cities. However, it will be recalled that 41 per cent of the Washington used car dealers interviewed stated that their prices increased at the retail level. When dealers pay less for their purchases, they might be expected to keep retail prices unchanged, or even to lower them and pass some of the benefit on to the consumer. Initiative 245 forced upon the dealer a loss of revenue from interest

income. Viewed in this light, his behavior may be more understandable. A price increase at the retail level, or even no price change for that matter, is one possible way of recouping interest income losses.

Although no average retail prices on these autos were available, this higher retail margin on used cars was substantiated from another sample that covered about 15 per cent of all used cars sold in the state of Washington. These unpublished statistics become more impressive when they are compared with similar retail prices in Oregon which does not have the 12 per cent interest limitation. The data show the dealers in Washington were making an average of $18 more on each used car sold in 1969 than in 1968. This represents a 13 per cent increase in 1969 over 1968. Dealers in Oregon were only making an average of $13 more, or 9 per cent. On new cars, dealers in Washington were making only $11 more (2.7 per cent), compared to Oregon's $23 (7.9 per cent). The reader will recall that of those dealers interviewed (Tables V-5 and V-6) 43 per cent of the new car dealers stated that they had raised prices by 5.3 per cent, whereas 41 per cent of the used car dealers raised prices by 11 per cent. These two samples are not strictly comparable since the interview survey covered the first quarter changes, whereas the second sample covered the whole of 1968 and 1969; however, the evidence in both takes the same direction.

This is not surprising. This phenomenon will be discussed more fully under the section on "Credit Availability." A brief explanation is that banks in 1969 were still willing to finance new or newer cars at 12 per cent. However, pressure was building on used-car financing. The results of this pressure in terms of the losses in finance income reported in our survey appear in Table V-8 below.

TABLE V-8

FINANCE INCOME FROM AUTOS

	% Increase or Decrease in 1969 from 1968	
	Used Cars	New Cars
Seattle	-41.7%	- 7.0%
Washington	-51.1	-13.7
Oregon	- 2.9	- 1.0

Several dealers expressed the opinion that this lack of financing availability was the cause of depressed prices at the wholesale level, especially, for older used cars. On the basis of such remarks, Table V-9 was revised in the following fashion:

TABLE V-9

AVERAGE WHOLESALE AUTO PRICES
SEATTLE AND DENVER, 1968 AND 1969

	1969		1968	
	Number of Cars	Average Price	Number of Cars	Average Price
Late model used cars (0,1,2,3 yr. olds)	3388 (1996)	$1980 ($1669)	2711 (1393)	$1752 ($1630)
Old model used cars (4,5,6 yrs. olds)	501 (779)	$ 770 ($ 755)	806 (479)	$ 810 ($ 724)

Note: Prices and number of cars enclosed in brackets are for Denver, Colorado.

The implications here seem fairly obvious. The older model car which a consumer purchases in Seattle costs him a relatively higher price than if he were to buy a later-model used car. One can safely assume that the majority of buyers of older used cars belong to lower income groups than those who can purchase newer model cars. If this is correct, the impact of Initiative 245 does not seem equally distributed, and its adverse effects are being borne by the lower-income consumer to a greater extent than by more affluent consumers.

Auto Sales Volumes

Published data that directly relates to the behavior of auto sales in Washington for purposes of a scientific analysis are scarce, and what is available leaves something to be desired for purposes of comparison with other state and national figures. Nevertheless, an attempt was made to assemble available information that is of some benefit in the presentation of an overall automobile market picture.

Few dealers in the survey volunteered information on their sales volumes. Of those few, five reported no change in the sale of new cars and nine reported that sales of used cars dropped by about 8 per cent in the first quarter of 1969 when compared with the same period in 1968, but no inferences can be drawn from figures obtained from such a limited response for purposes of analysis. The data obtained from the Department of Revenue for the State of Washington shows only a slight gain of 0.2 per cent in auto dealers' sales (unadjusted) for the year of 1969 over 1968 while the United States automotive retail sales grew 2.5 per cent.

TABLE V-10

AUTOMOTIVE RETAIL SALES[a]
WASHINGTON vs. UNITED STATES
(in millions of dollars)

	1967	1968	% Change Over 1967	1969	% Change Over 1968
Washington					
First Quarter	--	$222.592	--	$225.482	+1.3%
Second Quarter	--	$242.423	--	$256.619	+5.8%
Third Quarter	--	$238.536	--	$233.933	-1.9%
Fourth Quarter	--	$221.718	--	$210.942	-4.9%
Total Annual	$918.926	$925.269	+ 0.7%	$926.976	+0.2%
United States	$ 58,273	$ 65,261	+12.0%	$ 66,922	+2.5%

[a]Seasonally unadjusted sales include new and used car dealers plus tire, battery and accessory dealers.

Source: Washington: State Department of Revenue. United States: Automobile Manufacturers Association, "Annual Automobile Facts and Figures."

Table V-10 shows a substantial sales decline in the third and fourth quarters of 1969 that virtually wiped out any annual sales growth in Washington.

Numerically, the number of used cars reportedly sold in Spokane in the first quarter of 1969 was 12 per cent less than the same period in 1968, which

in magnitude agrees with published figures of 10.5 per cent decrease found for the three Spokane dealers included in this survey. However, Seattle showed a 5.5 per cent increase in the number of used cars sold at the auction for the first half of 1969 over the same period in 1968. Overall, this may suggest a slight depression of used auto sales in Washington. However, any depression may just as easily be in response to general economic conditions nationally. For instance, according to "Automotive News" sales of used cars in 1969 dropped 100,000 units below the 1968 total, but new car registrations were about 43,000 units above the 1968 level. It is not possible, therefore, statistically to isolate the effects of the passage of 245 from other economic variables when potentially the degree of change is this small, when subscribing to the assumption that the trend of auto sales in Washington should more or less follow the national trend.

Dealership Terminations

Information gathered from dealers during last summer's survey shows that in an effort to cut costs and to survive, one new and used car dealer mentioned that he had to release eight salesmen. Another used-car dealer reported that both cash and credit sales were down, and the only way he was able to stay in business was by terminating the services of one full-time and two part-time salesmen. A third new and used auto dealer advertised close-out sales and mentioned specifically in his advertisements that one of the main reasons for going out of business was Initiative 245. A manager of a new and used car dealership said that his former used car business had to be terminated, and that now he was working on a salary for another dealer. He also mentioned the names of five dealerships that had gone out of business. These and a few others were brought to our attention during interviews with automobile dealers. A fifth used car dealer confided that he expected to be forced out of business in a few months because of Initiative 245. Since the interview period in the summer of 1969 some other dealerships were terminated.

Opinions expressed in the press by businessmen blamed Initiative 245 for auto industry problems. For example, during a panel discussion in a statewide press conference, Mr. Jenkins, Chairman of the Board of Seattle-First National Bank stated, "Washington State's Initiative 245 has made credit card business

unprofitable, is forcing auto dealers out of business, is damaging the real-estate industry, and must result in higher prices."[1] There was disagreement with the above contentions from another source. Joe Davis, President of the Washington State Labor Council responded by listing several factors that have influenced business, "Boeing has reduced its work force by almost 17,000; the national administration has deliberately set out to increase unemployment as an anti-inflationary weapon; construction starts have declined some 30 per cent, and inflation has cut into the wage gains received by the working men and women of the state."[2]

The president of the Seattle Automobile Dealers Association, Pat Goodfellow, has indicated several possible reasons for the closure of three or four major dealerships in the Seattle area in the past year, the reorganization or regrouping of seven or eight more and the failure of "countless" used-car dealers: high inventories; a cost of financing those inventories that "is out of sight"; increasing overhead; growing size of dealerships; a sluggish response to rapidly changing economic conditions; the credit squeeze created by rising interest rates charged dealers while Initiative 245 limits dealer interest charges to buyers to 12 per cent per year; the area's economic slowdown. "Initiative 245 would have been more tolerable under the interest rates we had three or four years ago," Goodfellow said.[3]

In reviewing the records of the Department of Motor Vehicles in Olympia during the months of June through December (no records were available for earlier months in 1968), it was learned that there were 171 new dealership applications in 1968 and 174 in 1969. In looking at the number of cancellations of dealer licenses for the same period, there were only 119 terminations in 1968 compared to 201 in 1969. (These data appear below in Table V-11.) One would suppose that the bulk of these are used car dealers. Usually, a business that deals with new cars has stronger financial backing.

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[1] *Seattle Times*, October 8, 1969.

[2] *Seattle Times*, January 11, 1970.

[3] *Seattle Times*, December 18, 1969.

TABLE V-11

NEW LICENSES AND TERMINATIONS OF AUTO DEALERSHIPS
JUNE TO DECEMBER, 1968 AND 1969

	1968	1969	Total
New Applications	171	174	345
Terminations	119	201	320

As far as the consumer is concerned, this may be a healthy sign if these businesses are terminated because of inefficiencies and high operating costs. But if Initiative 245 is the cause of such an adverse impact in this area, the consumer, in the long run, will have fewer alternatives and choices. His bargaining power may be reduced, and he may become "captive" to fewer competitors. The passage of time will be required to determine whether this decrease in competition injures consumers.

A Chi-square test was run on this data to determine whether there was a significant difference in the proportion of terminations between 1968 and 1969. The results give us a value of Chi-square equal to 11.03. This is significant at the 0.01 level.

The reader is cautioned that no claim is made that this significant increase in dealership terminations is due to Initiative 245 alone. Economic conditions in Seattle, high interest rates, and the general auto market can also be considered as contributing factors.

The reporting of dealership cancellations and new applications in Olympia is made on a monthly basis. As mentioned earlier, only the last seven months of 1968 were available, but all twelve months of 1969 could be obtained. These were as follows in Table V-12.

These monthly data present an interesting phenomenon. We suggest that a market which is in equilibrium, or which is in a reasonable position profitwise, will show a positive reaction manifested by new entries in response to exits out of the market. If the industry is in equilibrium, we should theoretically expect the number of new entries to correspond to the number of terminations

TABLE V-12

NEW LICENSES AND TERMINATIONS OF AUTO DEALERSHIPS
JANUARY TO DECEMBER, 1968 AND 1969

	1968		1969	
Month	Terminations	Applications	Terminations	Applications
January	--	--	19	37
February	--	--	34	32
March	--	--	36	31
April	--	--	20	32
May	--	--	31	41
June	0	36	27	20
July	14	19	27	41
August	0	34	27	34
September	42	16	43	23
October	20	29	32	22
November	37	17	35	23
December	6	20	10	11

Source: Washington State Department of Motor Vehicles

and, in fact, in a profitable market, new entries should even exceed exits until an equilibrium is reached. This suggested the application of a rank correlation test between the number of cancellations and the number of entries. After consideration of several alternatives, it was found that using a one-month lag in new applications for both 1968 and 1969 gave the best fit. This can be justified in terms of the real world situation. We cannot realistically expect new applications to respond to terminations spontaneously. Some such

cases may exist, but the majority of new entries would reasonably lag behind terminations. Not only does the process involve search and investigation on the part of the new applicant, but also the administrative procedures of licensing consume some time. On the basis of a one-month lag, the correlation coefficient for the last seven months of 1968 was a positive 0.56, and for the twelve months of 1969 was a negative 0.62.

The correlation coefficient for 1968 is not significant at the 0.05 level (it would have become significant if its value was 0.67, or if we had all 12 months of 1968), but it should not be completely disregarded. Actually it is the sign of the coefficient rather than the magnitude which is of most interest. The positive value in 1968 suggests that a high number of cancellations was associated with a similar number of new applications. And when cancellations were low, new applications were likewise. Such response is likely to happen in an equilibrium market.

Turning to the negative correlation coefficient in 1969, we find it significant at the 0.05 level. The negative sign can have two possible explanations with respect to the magnitude of exits and new entries. If low exits are accompanied by high new entries, the market would have to be highly profitable for such behavior to manifest itself. But the lack of increase in new applications in 1969 over 1968 (for the last 7 months of both years where a comparison can be made) does not support such an assumption. On the other hand, the negative sign can also mean that high cancellations are accompanied by low new entries, an indication of a depressed market. Such an assumption would have more support when we recall that for the last seven months of 1968 terminations amounted to 119, and in 1969 for the same period they were 201.

Again, no implication can be made that the depressed market is solely due to the effect of Initiative 245. It is necessary to remain aware of other economic factors in 1969 both on the national and local levels.

The standard deviation from regression shows a value of about 0.24. If the residuals from the true regression line are normally distributed, then b is normally distributed also with mean B and standard deviation equal to 0.24

To test the hypothesis that $B = B_o$, i.e. to see if the value of the coefficient is significant and makes a contribution in explaining new applications, we can use the t ratio:

$$t = \frac{b - B_o}{s_b} \qquad \text{with } n - 2 = 10 \text{ degrees of freedom}$$

$$t = \frac{0.58 - 0}{0.24} = 2.41$$

This value of t is significant at the 0.05 level. ($t_{.05(n-2)} = 2.23$) The coefficient of determination (R^2) is only 0.36. In other words we can attribute only 36 per cent of the variation in applications to cancellations. This value suggests the presence of other variables such as disposable income, employment, . . . etc. that may help explain the remainder of this behavior. It is proposed, therefore, that if further work is done in this area, a more comprehensive analysis of other economic variables may shed further light on this situation.

Leasing. At the time of the field interviewing program, it was not possible to discern any significant shift toward leasing programs in response to Initiative 245. There were only four automobile dealers who indicated that they were attempting to promote leasing, and two additional dealers expressed plans to promote leasing in the future. It seems logical that more dealers might move to leasing programs since the law does not regulate this activity. Of the dealers interested in leasing, however, several mentioned that they were interested in leasing for "its own sake" and not because of Initiative 245.

Data from a number of banks which finance dealer leasing of automobiles (Table V-13) show that in 1969 the number of leases financed increased by about one-sixth, and the dollar volume of lease financing increased by one-third over 1968. The average dollar size of the leasing finance contracts increased by about one-sixth.

In early 1970, there was an increase in the number of auto dealer advertisements which stressed leasing. Several of these presented two options: a long-term lease at a relatively low rate with no mileage charge, and a lease-purchase plan with higher rates and a mileage charge and specific purchase prices consumers would pay on conversion of the lease to a purchase. At this juncture, the lease plans appear more as positive sales devices than as defensive responses to financing problems created by the interest limitation law.

TABLE V-13

AUTOMOBILE LEASING
A SAMPLE OF BANKS FINANCING LEASING PLANS
STATE OF WASHINGTON
(thousands of dollars)

	1968		1969		Percentage Change	
	Number	Dollar Volume	Number	Dollar Volume	Number	Dollar
New	3503	13,093	4040	17,439	+15.3%	+33.2%
Outstanding	7310	19,698	8571	24,727	+17.2%	+25.5%

Average Dollar Size of Contracts

New:	1968	$3738	Percentage Change = +15.5%
	1969	$4317	
Outstanding:	1968	$2732	Percentage Change = +5.6%
	1969	$2885	

For consumers, the main attraction of the leasing plans appears to be the opportunity to start driving a new car without a downpayment. The long-term lease plans have the additional advantage that the rental costs are as low as, or lower than, normal monthly payments on outright purchase. Perhaps the most significant change observable is that leasing formerly seemed aimed at business and professional customers, whereas the current advertising is aimed at consumers. With available evidence, it is not possible to attribute increases in leasing to Initiative 245.

Summary

In this chapter on product related responses of retailers, it has been pointed out that retailers who have suffered losses in credit income or who have seen credit revenues turn into credit losses can be expected to make up these

losses in other ways. Some of the ways relate directly and indirectly to the handling of credit itself and are discussed elsewhere. This chapter concerns itself with product related policies and decisions such as pricing, pricing of ancillary services, adjusting assortments, changing gross margin rates and/or generally improving merchandising efficiency.

The first product-related hypothesis posited in this study was, "Prices of merchandise frequently sold on credit have gone up." The majority of retailers responded that they had raised prices on all merchandise to make up for their losses on Initiative 245. Others raised prices on specific items usually sold on credit. In either case, the price rises negated the proposed benefits of the law, which were to lower the cost of credit and provide a net saving to consumers. Where prices were raised only on credit-sensitive items, the credit customer paid more for the goods. Where all prices were increased, the credit customer had to pay more for everything he bought in the store, whether he in fact charged everything he bought. The cash customer, of course, subsidized the credit customer by paying all of the price increases and receiving none of the benefits of interest limitation.

In addition to direct price changes, retailers sought to lower costs and increase revenues by instituting charges, or raising the level of charges, on ancillary services such as check cashing, wrapping and packaging, delivery, product installation, product service contracts, lay-away and parking.

In auto retailing, it was possible to get some external verification of the respondents assertions that prices had gone up on both new and used cars, but that they had gone up relatively more on older used cars. Even where prices may have remained stable, auto dealers were able to raise their gross margins on these older cars because their wholesale prices had declined. Further, higher gross margins were achieved by allowing relatively low trade-in allowances.

The second hypothesis was: "Different products and different businesses have been affected in different ways by the new laws." It can be seen in this chapter that items usually or frequently bought on credit, particularly autos, furniture and appliances, have been affected differently than items normally purchased for cash. Considerable adjustments were in evidence in the sale and financing of "credit-sensitive" items. In many cases, the actions of

respondents to raise prices to make up for lost interest revenue fell equally on all products in retail stores; i.e., the majority of the respondents raised prices on all merchandise. Other businesses raised prices on the credit types of items themselves. Still other merchants felt that the nature of competition on items such as major appliances prevented raising prices on these items. They were concerned that consumers could compare prices too readily, and that sales would be lost. In the auto retailing industry, there were differences between dealers and between products. Prices were raised proportionately more on used cars than on new cars, and gross margins were increased more on the used cars. In the sections of this report on financing, it is pointed out that banks quit financing cars older than a specified number of years, and this created special problems for businesses and consumers. The incidence of retailer mortality fell most heavily on used car dealers, and there were cases of new car dealers blaming Initiative 245 as one cause of going out of business. There were no cases reported of retailers other than auto dealers who failed in business as a result of Initiative 245, although there may have been some.

A third hypothesis was, "Leasing of merchandise frequently sold on credit has increased." The provision of leasing options by new car dealers appeared to increase, but it was not possible to attribute this to Initiative 245. There was no apparent increase in leasing of other consumer products.

The auto data supports conclusions in other parts of this study that the impacts of the Initiative fall more heavily on the lower income consumers. Other portions of the study show that credit became less available to lower income people and that they were likely to pay a much higher interest rate if they were able to get credit at all. The analysis of auto pricing demonstrated that prices on older autos have increased proportionately more than prices on newer autos. Since it is logical to assume that older autos are bought principally by lower income, less creditworthy consumers, the consumers at the bottom of the scale suffer on both the price of autos and on their costs of credit.

The increase in dealer mortality and the apparent decline in new business formations to replace failing businesses may not seem of immediate concern to consumers. Yet, for whatever effect this has on consumer welfare, the trend definitely represents a diminution of competition in auto retailing.

CHAPTER VI

GENERAL CONCLUSIONS

The conclusions are summarized in the Summary of Findings at the beginning of this report (Chapter II). In general, it can be stated that the impacts of Initiative 245 reached consumers primarily through the medium of business responses to the law. Businesses which dealt in consumer credit tended to lose revenues and profits because of the 12 per cent per year limit on the charge they could make for credit. The defensive measures taken by businesses involved increasing costs for some or all consumers and making credit more difficult for some to obtain. The law provided a rationale for raising prices, tightening upon credit, and other practices detrimental to consumers. Those who expected benefits from the Initiative probably did not foresee such effects on consumers.

Poor people were hurt most by the effects of the law. Some of them formerly able to obtain credit from certain sources were shut off from these sources. Some were unable to make purchases because their credit applications were refused. Some auto customers probably were shut out of the market because they could not make the increased downpayments or the monthly payments on shortened maturities. Some who obtained credit paid more for it than they would have paid for it before the law was passed.

Some cash customers were forced to subsidize credit customers through paying relatively higher prices for goods purchased. Some creditworthy customers pay more interest than before the law because their free credit time periods have been reduced. Some creditworthy customers of stores which, on the goods these customers bought did not raise prices enough to counterbalance losses in credit revenue, may have received a net reduction in the total cost of buying on credit. Those who benefited most were those who could buy merchandise on credit at less of a price increase than the drop in credit revenues and who did not buy anything in credit-granting stores for cash.

There were, of course, significant changes occurring in other economic factors during the period of the study. Many of the actions taken by retailers and financial institutions might have been influenced to some extent by tight

money, the increasing prime rate of interest, deteriorating economic conditions and inflation. The fact that a recession was developing in the state of Washington affected the external data used to verify the impacts of Initiative 245. The unemployment rate which was rising, particularly in the Seattle area, and the consequent weakening in incomes and demand, undoubtedly induced some measures quite the opposite of initial responses to the Initiative--and some measures which took the directions to be expected in response to the Initiative.

Additional research which might provide useful information would be to follow up on price movements over extended periods of time. Toward the end of this study it was found that certain sources of price information might be available for periods of several years. The same sources could provide data on downpayments and maturities. Further, although tests involving consumer interviews proved a failure in this study because of the inaccuracy of consumer answers, some means might be devised to derive meaningful information from consumer interviews.

If additional time and resources were available, relevant information might be obtained from a more detailed study of automobile data. For example, studies of the legal ownership of autos might show changes in financing patterns. Consumer interviews of persons whose cars were recorded as purchased through consumer finance companies might provide data on the practice of "mooring" (the use of multiple personal loans not formally connected with the auto purchase to put together auto downpayments).

Finally, if the law is changed again to allow higher interest or service charges on consumer credit, a follow-up study could more fully determine the relationships between rate limitation and its impacts.

APPENDIX

EXPLANATION OF TERMS*

Consumer finance company (or "small loan company"). Consumer finance companies are firms set up under special legislation to make it easier for people with relatively poor credit standings to borrow money. In the state of Washington, these firms are permitted to charge three per cent per month (36 per cent annual interest) on loans up to $300, one and one-half per cent (18 per cent annual) on loans between $300 and $500, and one per cent per month (12 per cent annual interest) on loans over $500. Loans may be made directly to consumers or may be made indirectly through retailers.

Sales finance companies. Sales finance companies (also called "captive finance companies") are set up by manufacturers to provide indirect financing for retailers of their products, although they may finance the sale of products other than their own. Examples include General Motors Acceptance Corporation and General Electric Credit Corporation.

Direct loan. The terms "direct loan," "personal loan" and "consumer loan" are generally used interchangeably in this report to apply to a loan having the following characteristics:

1. it is made to a consumer;
2. it is made by a specialized financial institution, such as a bank or small loan company;
3. it is made for a designated purpose;
4. the maximum amount is limited by the policy of the lender and, in most states, by statute; and
5. it is to be repaid in installments.

For a more detailed explanation of terms, see: Robert H. Cole, *Consumer and Commercial Credit Management*, Third edition (Homewood, Illinois: Richard D. Irwin, 1968); Elvin F. Donaldson and John K. Pfahl, *Personal Finance*, Fourth edition (New York: The Ronald Press, 1965); and Richard P. Ettinger and David E. Golieb, *Credits and Collections*, Fifth edition (Englewood Cliffs, New Jersey: Prentice Hall, 1962).

Indirect loan. "Indirect loans" are loans made by financial institutions to finance merchants' sales of durable goods--such as automobiles and household appliances--on the installment plan. The operation is, in effect, "indirect lending" by the financing agency to the consumer.

In "indirect" financing of installment sales, the prospective customer makes application for credit to the dealer or merchant, not the financing agency. The dealer interviews the customer and collects the basic credit information. He then clears the application with the financing agency, which usually makes a credit investigation, although the dealer may himself perform this task.

The customer has no contact with the financing agency until after the sale is made--the merchant handles all the details of the transaction in much the same way that an installment sale is made in a department store. The customer usually makes a downpayment, and agrees to pay the balance of the sale price, plus credit costs, in equal installments. He signs a promissory note and a conditional sales contract, chattel mortgage,* or bailment lease.*

The indirect lending activities of small loan companies are generally referred to as the purchase of conditional sales contracts, while indirect lending activities of banks are generally designated as indirect loans.

Recourse plans. Sales finance companies and banks finance retail instalment sales under several different "recourse" plans.

(a) No-recourse or non-recourse plans place all the risk on the financing institution. If the customer (debtor) defaults, the agency repossesses the goods and stands any loss. Dealers operating under no-recourse plans are generally inclined to submit to their financing agency the credit applications of all prospective customers except obviously impossible risks. Consequently, financing agencies generally limit no-recourse plans to dealers and retail customers with

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*When one purchases goods and executes a chattel mortgage as security for the purchase price, title to the goods passes from the seller to the buyer as a consequence of the sale and back to the seller by virtue of the chattel mortgage. The seller thus holds legal title until final payment is made. In the bailment lease, title to the goods remains with the seller until the final payment has been made and then it is purchased for a nominal sum which is usually waived by the seller. When the conditional sales agreement is used, title to the goods remains with the seller until the last payment has been made.

good credit ratings. (As a general rule, finance companies handle retail instalment sales under this plan.)

(b) Limited recourse plans divide the credit risk between the retail dealer and the financing agency.

(c) Full recourse plans place all the credit risk on the retail dealer. If the customer (debtor) defaults, the financing agency reassigns the contract to the dealer, who bears whatever losses are involved. (As a general rule, banks finance retail installment sales under this arrangement.)

Credit life insurance. While there are several variations of credit life insurance, the basic objective is always the same--it is meant to assure full payment of a loan in the event of the death of the buyer. Health and/or accident provisions are sometimes included in the policies or else in separate insurance policies.

Participation. The term "participation" refers to the practice whereby a financial institution shares the interest proceeds from an indirect loan or a conditional sales contract with the retail dealer. Thus, on an indirect loan of $100, the dealer receives from the financial institution $100 plus a certain percentage, generally called "participation rate," of the interest on the loan.

Discount. The term "discount" refers to the practice whereby a financial institution charges the dealer a certain rate per annum for making an indirect loan or purchasing a conditional sales contract. Thus if a small loan company buys a $100 conditional sales contract, it will pay the dealer not the face amount of the contract, but rather $100 less whatever annual rate of discount it is charging at that particular time. (If a 3 per cent annual discount is charged, the dealer will receive $97, assuming the contract has a one year maturity. If the contract has a two year maturity, the dealer will receive $94.)

Flipping. The term "flipping" refers to the practice among loan companies of converting a conditional sales contract to a direct loan. While a maximum simple interest rate of 1 per cent per month can be charged on a conditional sales contract as a result of Initiative 245, a simple interest rate of 3 per cent per month can be charged on direct loans of amounts less than $300, 1½ per cent per month on amounts between $300 and $500, and 1 per cent per month on amounts over $500.

Mousing. The term "mousing" is used in the retail auto industry to denote the practice of dealing with consumers who are unable to make downpayments. The consumers are sent to two or more consumer finance companies to obtain a series of small personal loans. These loans are not connected formally with the auto purchase, and the auto is used as collateral only on the balance remaining after the downpayment is made. In the state of Washington, the remaining balance--as a retail purchase--incurs a maximum interest rate of 12 per cent per year, but the series of personal loans used to put together the downpayment may cost the consumer as much as 36 per cent annual interest.

Questionnaires

ECONOMIC IMPACT OF INITIATIVE 245 - SURVEY

AUTO DEALERS

1. Type of Dealer: Please check category which best describes your operation.

   a. _____New and used vehicles

   b. _____Used vehicles

Firm: _____

Name of Person(s) interviewed: _____

Position: _____

Address: _____

Phone: _____ _____

Date of Interview: _____

No. _____

ECONOMIC IMPACT OF INITIATIVE 245

QUESTIONNAIRE FOR AUTO DEALERS

This group of questions will deal with changes you may have made in direct response to Initiative 245 (either the passage of the initiative or its taking affect on 12/5/68) when dealing with consumers.

Circle Response

1. Have you increased the average selling prices on

   a) new vehicles — Yes No

   b) used vehicles — Yes No

   If yes, by how much?* _____
   (*trade-in price change?)

2. Have you increased prices on other items in response to Initiative 245 (i.e., parts, service, TBA)? Yes No

   If yes, identify _____

   _____

3. With respect to the following product related charges, do you charge for

	No Change	Prior to Initiative 245 (before 12/5/68)		Amount	In Response to Initiative 245 (since 12/5/68)		Amount
a) product delivery	_____	Yes	No	$_____	Yes	No	$_____
b) service contracts	_____	Yes	No	$_____	Yes	No	$_____
c) product guarantees (warranties)	_____	Yes	No	$_____	Yes	No	$_____

   d) other product related services

   Identify _____
   (handling, check cashing, make ready, etc.)

   Comment:

4. With respect to the following credit related fees and policies, do you require

	No Change	Prior to Initiative 245 (before 12/5/68)			In Response to Initiative 245 (since 12/5/68)		
				Amount			Amount
a) a service fee (minimum)	_____	Yes	No	$_____	Yes	No	$_____
b) a loan fee	_____	Yes	No	$_____	Yes	No	$_____
c) an investigation and credit report fee	_____	Yes	No	$_____	Yes	No	$_____
d) credit insurance	_____	Yes	No	$_____	Yes	No	$_____
e) cash/credit differential	_____	Yes	No	$_____	Yes	No	$_____
f) late payment fee	_____	Yes	No	$_____	Yes	No	$_____

g) other? Identify _____

_____

Comment:

5. In response to Initiative 245 do you now promote auto leasing instead of purchasing?

Circle Response

Yes No

Comment:

6. Do you intend to promote more auto leasing in response to Initiative 245?

Yes No

If yes, why?

7. What is your policy with respect to recourse on credit paper.

Before passage of Initiative 245:

If yes, to what extent _____

In response to Initiative 245:

If yes, to what extent _____
(repurchase agreements)

8. When selling paper to banks, what was the participation rate or discount rate

   Prior to Initiative 245? _____

   In response to Initiative 245? _____

   Comment:

9. Have you changed the credit eligibility rules for consumers in order to reduce expected losses in response to Initiative 245?

   Yes No

   Specify rules changed: New: _____

   Used: _____

10. Do you now reject applicants for credit whom you would have accepted before Initiative 245 took affect?

	Prior to Initiative 245 (before 12/5/68)	In Response to Initiative 245 (since 12/5/68)
Yes____ No____ Rejection rate:	_____	_____

   If yes, why?

11. Do you now advertise or promote the availability of credit (same____ more____ less____) in response to Initiative 245?

   What have you done?

12. As far as you can determine, what has been the impact of Initiative 245 upon consumers?

13. For border cities

   a) To your knowledge, have local customers increased their purchases from out of state

      in response to Initiative 245: Yes____ No____

      in response to Initiative 245: Yes____ No____

14. Would you please give us a sample of the type of consumers you rejected as marginal credit risks? (names)

   Prior to Initiative 245

   In Response to Initiative 245

15. What is the minimum downpayment as a percent of price you require from credit buyers in the following situations?

		Prior to Initiative 245	In Response to Initiative 245
superior credit risk:	new vehicles	_____%	_____%
	used vehicles	_____%	_____%
average credit risk:	new vehicles	_____%	_____%
	used vehicles	_____%	_____%
below average credit risk:	new vehicles	_____%	_____%
	used vehicles	_____%	_____%

16. Capacity to pay at time of application: What were the monthly payments as a percentage of monthly take-home pay which best describe your marginal consumer credit applicant?

Prior to Initiative 245

In Response to Initiative 245

17. What per cent of your consumer auto financing is done by:

	Prior to Initiative 245		In Response to Initiative 245	
	New	Used	New	Used
Your firm	____	____	____	____
Banks	____	____	____	____
Finance Companies	____	____	____	____

18. What is your average credit turnover?

	1st Qtr. 1968	1st Qtr. 1969
Credit sales	_____	_____
Accounts Receivable	_____	_____

Comment:

19. Number of Loan Payments: What was the percentage of loans with the following maturities?

	Prior to Initiative 245		In Response to Initiative 245	
	New	Used	New	Used
Single payment	____	____	____	____
6 months	____	____	____	____
12 months	____	____	____	____
24 months	____	____	____	____
36 months	____	____	____	____
More than 36 months	____	____	____	____

20. What dollar volume of your business was done:

	1st Qtr. 1968		1st Qtr. 1969	
	New	Used	New	Used
on cash basis	____	____	____	____
on leave basis	____	____	____	____
on credit basis	____	____	____	____
total sales	____	____	____	____

21. Has your finance income changed?

	1st Qtr. 1968	1st Qtr. 1969
a) Gross finance income	____	____
b) Bank or finance company discounts (costs)	____	____
c) Net finance income	____	____

Comment:

ECONOMIC IMPACT OF INITIATIVE 245

RETAIL ESTABLISHMENTS

I. Type of Retailer: Please check the one category and sub-category(s), where appropriate, which best describes your operation.

a. _____ general merchandise store
   _____ department store
   _____ limited price variety store
   _____ miscellaneous general merchandise store

b. _____ apparel, accessory store
   _____ men's clothing, accessories
   _____ women's clothing, accessories
   _____ family clothing, accessories
   _____ shoe store
   _____ other apparel, accessories

c. _____ furniture, home furnishings
   _____ furniture, home furnishings
   _____ household appliance, radio, television, music store

d. _____ retail hardware

e. _____ home and auto supply

f. _____ other (please list the three most important items.)

   _____

   _____

   _____

Firm: _____

Name of Person(s) interviewed: _____

Position: _____

Address: _____

Phone: _____

Date of Interview: _____

No. _____

ECONOMIC IMPACT OF INITIATIVE 245

QUESTIONNAIRE FOR RETAILERS

1. What kinds of credit do you extend to consumers?

	Prior to Initiative 245 (before 12/5/68)		After Initiative 245 (since 12/5/68)	
a) installment credit	Yes	No	Yes	No
b) revolving credit	Yes	No	Yes	No
c) open book credit	Yes	No	Yes	No
d) bank credit cards	Yes	No	Yes	No
e) other _____				

2. Since the passage of Initiative 245 (11/68) have you encouraged the consumer to switch from one form of credit to another? Circle One: Yes No

If yes, switch from _____ to _____

_____ to _____

Comment:

3. Have you in response to Initiative 245 selectively increased prices Circle One

a) on credit sensitive items (those usually bought on credit)? Yes No

b) on all merchandise? Yes No

c) Other _____
(specific items for example)

d) comment:

4. With respect to the following product related charges, do you charge for:

	Prior to Initiative 245 (before 12/5/68)			After Initiative 245 (since 12/5/68)			No Change
			Amount			Amount	
a) product delivery	Yes	No	_____	Yes	No	_____	_____
b) product installation	Yes	No	_____	Yes	No	_____	_____
c) product returns	Yes	No	_____	Yes	No	_____	_____
d) service contracts	Yes	No	_____	Yes	No	_____	_____
e) product guarantees (warranties)	Yes	No	_____	Yes	No	_____	_____
f) other product related services							

Identify _____

(handling, packaging, wrapping, check cashing, etc.)

Comment:

5. With respect to the following credit related fees and policies, do you require

	Prior to Initiative 245 (before 12/5/68)			In Response to Initiative 245 (since 12/5/68)			No Change
			Amount			Amount	
a) a service fee (minimum)	Yes	No	_____	Yes	No	_____	_____
b) a loan fee	Yes	No	_____	Yes	No	_____	_____
c) an investigation and credit report fee	Yes	No	_____	Yes	No	_____	_____
d) credit insurance	Yes	No	_____	Yes	No	_____	_____
e) cash/credit differential	Yes	No	_____	Yes	No	_____	_____
f) a one-time set up fee for new accounts	Yes	No	_____	Yes	No	_____	_____
g) late payment fee	Yes	No	_____	Yes	No	_____	_____
h) changed loan maturities	Yes	No	_____	Yes	No	_____	_____
i) other? Identify							

_____

(e.g., filing fee)

Comment:

6. Have you changed the average down payment/sales price ratio <u>in response to Initiative 245</u>?

		From	To
Yes	Increase	_____%	_____%
	Decrease	_____%	_____%
No, remains unchanged			

Comment:

7. Have you <u>in response to Initiative 245</u> reduced the actual time period of

a) service contracts Yes No

b) merchandise guarantees and warranties Yes No

Comment:

Do you carry your own retail sales financing? Yes No

If no, go to question 11.

8. Have you <u>in response to Initiative 245</u> changed the average time periods over which you are willing to extend credit?

		From	To
Yes	Increase	_____ mos.	_____ mos.
	Decrease	_____ mos.	_____ mos.
No, remains unchanged.			

Comment:

9. Do you now reject applicants for credit whom you would have accepted before Initiative 245 took affect?

			Prior to Initiative 245 <u>(before 12/5/68)</u>	In Response to Initiative 245 <u>(since 12/5/68)</u>
Yes	No	Rejection Rate	_____	_____

If yes, specify rules changed _____

_____

Comment:

10. What proportion of your total consumer credit sales is financed through

	Prior to Initiative 245 (1st qtr. 1968)	After Initiative 245 (1st qtr. 1969)
a) your firm	_____%	_____%
b) bank loans	_____%	_____%
c) bank cards	_____%	_____%
d) finance companies	_____%	_____%

Comment:

11. Has your total volume of sales changed? Compare the first quarter of 1968 with the first quarter of 1969.

	1st Qtr. 1968	1st Qtr. 1969
a) volume of total sales	$_____	$_____
b) volume of credit sales	$_____	$_____
c) ratio of credit/total sales	_____%	_____%

Comment:

12. Has your finance income changed? Compare the first quarter of 1968 with the first quarter of 1969?

	1st Qtr. 1968	1st Qtr. 1969
a) Gross finance income	$_____	$_____
b) Bank or finance company discounts (costs)	$_____	$_____
c) Net finance income	$_____	$_____

Comment:

13. What is your average credit turnover?

	No Change	1st Qtr. 1968	1st Qtr. 1969
Credit Sales	_____	_____	_____
Accounts Receivable (As of March 30)	_____	_____	_____

Comment:

14. To your knowledge, have local customers increased their purchases from out of state

    In response to Initiative 245: Yes_____ No_____

    In response to other factors: Yes_____ No_____

15. As far as you can determine what has been the impact of Initiative 245 upon

    a) consumers? _____

    _____

    b) your own business? _____

    _____

16. Please give us a sample of the type of consumers you rejected as <u>marginal credit risks</u>? (Names)

    <u>Since the passage of Initiative 245</u>

17. Capacity to Repay: What were the monthly payments, <u>at time of application</u>, as a percentage of monthly takehome pay which best describes your <u>marginal</u> consumer credit applicant?

    <u>Prior to Initiative 245</u>

    <u>In response to Initiative 245</u>

ECONOMIC IMPACT OF INITIATIVE 245 - SURVEY

CONSUMERS

(Note: This questionnaire was used experimentally but was found to be unproductive.)

Hello. I am _____. I am a Research Assistant in the Graduate School of Business Administration at the University of Washington. We are conducting a study to determine what the impact of Initiative 245 has been upon the consumers in our state. You may recall that this Initiative reduced the maximum allowable interest rate charged for consumer credit from 18 per cent (1½ per cent per month) to 12 per cent (1 per cent per month). We are interviewing consumers like yourself and we need your help in answering a few questions to see how this new law is working out.

ECONOMIC IMPACT OF INITIATIVE 245 - SURVEY

CONSUMERS

Since the passage of Initiative 245 in December 1968:

Circle Response

1. Have you attempted to purchase an appliance, furniture, or car? Yes No

2. Did you finally purchase the item? Yes No

   a) If no, was it because you could not obtain financing? Yes No
   Please explain. _____

   _____
   (fine out avenues he attempted)

   b) If yes, what was the item(s)? _____ new____
   used ____

   (1) If used, did you first intend to purchase a new item? Yes No

   (2) Explain (could obtain lesser financing) _____

   _____

3. How did you pay for the item?

   a) cash_____ If cash, savings_____ cash on hand_____

   b) why cash?

   c) credit_____ Who financed it? _____
   (retailer?)

   d) If not financed by retailer, was it your first choice? Yes No

   e) If no, explain _____

   _____

4. Do you have a revolving charge account? Yes____ No____

   If no, have you recently applied for one? Yes____ No____

   Comment:

5. Have you had any credit privileges denied? Yes____ No____

   By retailer? _____

   Bank _____

   Finance company _____

   Were you given a reason? Yes____ No____

   What was the reason?

6. Have retailers encouraged you to lease the item rather than purchase it?

   Yes____ No____

7. If a retailer refused you credit, were you encouraged to obtain the whole _____ or part _____ of the amount from another source? Yes____ No____

   If yes, who? Bank____ Finance Company____ Other____

8. This time last year, was it easier for you to get credit before passage of Initiative 245? Yes____ No____

ECONOMIC IMPACT OF INITIATIVE 245 - SURVEY

FINANCIAL INSTITUTIONS - FINANCE COMPANIES

I. Type of financial institution: Please check the one category and sub-category, where appropriate, which best describes your operatio:

a. _____bank

_____federal charter

_____ branch

_____state charter

_____branch

_____mutual savings

b. _____finance company

_____branch

c. _____credit union

d. _____savings and loan

Firm: _____

Name of Person(s) interviewed: _____

Position: _____

Address: _____

Phone: _____

Date of Interview: _____

No. _____

ECONOMIC IMPACT OF INITIATIVE 245

QUESTIONNAIRE FOR FINANCIAL INSTITUTIONS

1. What were the monthly payments, at time of application, as a percentage of monthly takehome pay which best describes your marginal consumer credit applicant?

	Prior to Initiative 245	In Response to Initiative 245
a) direct loans:	_____	_____
b) indirect loans:	_____	_____

2. What is your overall rejection rate for:

	Prior to Initiative 245	In Response to Initiative 245
a) direct loans:	_____ %	_____ %
b) indirect loans:	_____ %	_____ %
c) credit cards:	_____ %	_____ %

3. In response to Initiative 245, have you changed your policies with respect to:

	No Change	Prior to Initiative 245 (before 12/5/68)		Amount	In Response to Initiative 245 (since 12/5/68)		Amount
a) a minimum service fee - direct loans	_____	Yes	No	_____	Yes	No	_____
- credit cards	_____	Yes	No	_____	Yes	No	_____
b) a loan fee - direct loans	_____	Yes	No	_____	Yes	No	_____
- credit cards	_____	Yes	No	_____	Yes	No	_____
c) an investigation and credit report fee - direct loans	_____	Yes	No	_____	Yes	No	_____
- credit cards	_____	Yes	No	_____	Yes	No	_____
d) credit insurance - direct loans	_____	Yes	No	_____	Yes	No	_____
- credit cards	_____	Yes	No	_____	Yes	No	_____

	No Change	Prior to Initiative 245 (before 12/5/68)		Amount	In Response to Initiative 245 (since 12/5/68)		Amount
e) a one-time set up fee for new accounts							
- direct loans	_____	Yes	No	_____	Yes	No	_____
- indirect loans	_____	Yes	No	_____	Yes	No	_____
f) late payment fee							
- direct loans	_____	Yes	No	_____	Yes	No	_____
- indirect loans	_____	Yes	No	_____	Yes	No	_____

g) Others? Identify (filing fee) _____

_____

4. When you buy credit paper from retailers, do you discount? Yes____ No____
   If yes: (a) what was the rate prior to Initiative 245? _____
   (b) what is the rate in response to Initiative 245? _____

   Comment:

5. In response to Initiative 245, have you changed your policies regarding recourse on indirect loans?

   _____

   _____

6. As far as you can determine what has been the impact of Initiative 245 upon:

   a) Consumers? _____

   _____

   b) Retailers? _____

   _____

   c) Financial Institutions? _____

   _____

7. What was the volume of consumer loans in each of the following loan categories?

	1st Qtr. 1968	1st Qtr. 1969	No Change
a) new car purchases:			
direct loans	$_____	$_____	_____
indirect loans	$_____	$_____	_____
b) used car purchases:			
direct loans	$_____	$_____	_____
indirect loans	$_____	$_____	_____
c) appliances and household goods			
direct loans	$_____	$_____	_____
indirect loans	$_____	$_____	_____
d) boats and marine goods			
direct loans	$_____	$_____	_____
indirect loans	$_____	$_____	_____
e) travel and vacation			
direct loans	$_____	$_____	_____
f) consolidated debt			
direct loans	$_____	$_____	_____
g) total direct loans	$_____	$_____	_____
h) total indirect loans	$_____	$_____	_____

ECONOMIC IMPACT OF INITIATIVE 245 - SURVEY

FINANCIAL INSTITUTIONS - COMMERCIAL BANKS

I. Type of financial institution: Please check the one category and sub-category, where appropriate, which best describes your operation.

a. _____bank
   _____federal charter
      _____branch
   _____state charter
      _____branch
   _____mutual savings

b. _____finance company
   _____branch

c. _____credit union

d. _____savings and loan

Firm: _____

Name of Person(s) interviewed: _____

Position: _____

Address: _____

Phone: _____

Date of Interview: _____

No. _____

ECONOMIC IMPACT OF INITIATIVE 245

QUESTIONNAIRE FOR FINANCIAL INSTITUTIONS - COMMERCIAL BANKS

1. What were the monthly payments, at time of application, as a percentage of monthly takehome pay which best describes your marginal consumer credit applicant?

	Prior to Initiative 245	In Response to Initiative 245
a) direct loans:	_____	_____
b) indirect loans	_____	_____

2. What is your overall rejection rate for:

	Prior to Initiative 245	In Response to Initiative 245
a) direct loans:	_____%	_____%
b) indirect loans:	_____%	_____%
c) credit cards:	_____%	_____%

3. In response to Initiative 245, have you changed your policies with respect to:

	No Change	Prior to Initiative 245 (before 12/5/68)			In Response to Initiative 245 (since 12/5/68)		
a) a minimum service fee				Amount			Amount
- direct loans	_____	Yes	No	_____	Yes	No	_____
- credit cards	_____	Yes	No	_____	Yes	No	_____
b) a loan fee							
- direct loans	_____	Yes	No	_____	Yes	No	_____
- credit cards	_____	Yes	No	_____	Yes	No	_____
c) an investigation and credit report fee							
- direct loans	_____	Yes	No	_____	Yes	No	_____
- credit cards	_____	Yes	No	_____	Yes	No	_____

	No Change	Prior to Initiative 245 (before 12/5/68)		Amount	In Response to Initiative 245 (since 12/5/68)		Amount
d) credit [illegible]e							
- dire[illegible]ans	_____	Yes	No	_____	Yes	No	_____
- credit cards	_____	Yes	No	_____	Yes	No	_____
e) a one-time set up fee for new accounts							
- direct loans	_____	Yes	No	_____	Yes	No	_____
- indirect loans	_____	Yes	No	_____	Yes	No	_____
f) late payment fee							
- direct loans	_____	Yes	No	_____	Yes	No	_____
- indirect loans	_____	Yes	No	_____	Yes	No	_____

g) Others? Identify (filing fee) _____

_____

4. When you buy credit paper from retailers, do you discount? Yes___ No___

If yes: (a) what was the rate prior to Initiative 245? _____

(b) what is the rate in response to Initiative 245? _____

Comment:

5. In response to Initiative 245, have you changed your policies regarding recourse on indirect loans?

_____

_____

6. As far as you can determine what has been the impact of Initiative 245 upon:

a) Consumers? _____

_____

b) Retailers? _____

_____

c) Financial Institutions? _____

_____

7. What was the volume of consumer loans in each of the following loan categories?

	1st Qtr. 1968	1st Qtr. 1969	No Change
a) new car purchases			
direct loans	$_____	$_____	_____
indirect loans	$_____	$_____	_____
b) used car purchases:			
direct loans	$_____	$_____	_____
indirect loans	$_____	$_____	_____
c) appliance and household goods			
direct loans	$_____	$_____	_____
indirect loans	$_____	$_____	_____
d) boats and marine goods			
direct loans	$_____	$_____	_____
indirect loans	$_____	$_____	_____
e) travel and vacation			
direct loans	$_____	$_____	_____
f) consolidate debt			
direct loans	$_____	$_____	_____
g) total direct loans	$_____	$_____	_____
h) total indirect loans	$_____	$_____	_____

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1/27/72

Representative Bill Moran:

All the members of the Senate Commerce Committee will be out of town tomorrow and therefore will not be able to attend your Joint Judiciary and Commerce Committee meeting on HB 174 and HB 453. Thanks for the invitation.

Sen. Ron Rettig

File
HB 174

Cliff, Will you please handle this for our committee. I'd like to be in Juneau Thanks Ron

Alaska State Legislature

House

JUDICIARY COMMITTEE
Pouch V
Juneau, Alaska 99801

JUNEAU ALASKA

January 26, 1972

Honorable Robert H. Ziegler, Sr.
Senate Judiciary Chairman
Pouch V - Capitol Building
Juneau, Alaska 99801

Re: HB 174 - Uniform Consumer Credit Code
HB 453 - Relating to Consumer Credit

Dear Senator Ziegler:

The House Commerce and Judiciary Committees are sponsoring a joint public hearing on House Bill 174 (Uniform Consumer Credit Code) and House Bill 453 (Relating to Consumer Credit). As the title of House Bill 174 suggests, it is the draft prepared by the National Conference of Commissioners on Uniform Laws. I have been informed that House Bill 453 was drafted at the Boston College Law Center pursuant to a grant from the Office of Economic Opportunity.

The hearings will be held in the House Conference Room, beginning at 1:30 p.m. on Friday, January 28, and will continue over into Saturday as need may require.

The National Conference has made available Neil Butler, Esquire, of Denver, Colorado, and Richard Wheatley, Esquire, of Stillwater, Oklahoma. I understand that these members of the bar are particularly qualified to discuss House Bill 174.

Norm Banfield will be leaving for Europe this weekend. As a courtesy to him, Jay Kerttula and I have agreed to convene our respective committees immediately upon adjournment of the House on Thursday, January 27. It is my understanding that Mr. Banfield wishes to testify in favor of House Bill 174 and in opposition to House Bill 453. We hope to have Mr. Banfield's testimony taken also in the House Conference Room.

On the assumption that the Senate Commerce and Judiciary Committees will have some bill under consideration pursuant to House action, Mr. Kerttula and I invite the attendance and participation of your committee members at the above session. We also request that you make the fact of such hearings known to other members of the Senate by announcement on the Floor.

In the interest of time, I am designating a copy of this letter for Senator Rettig. I hope he will not be offended that I have not written to him separately.

Sincerely,

William J. Moran
Chairman

cc: Honorable Ron Rettig
Senate Commerce Chairman

Alaska Retail Association

HB 174
HB 453

Box 1727 Anchorage, Alaska 99510
Phone: 272-4222

January 14, 1972

President:
John W. Walls
Barb's Florists
Anchorage, Alaska

Vice-President:
S. G. "Jerry" Nerland
Nerland's Home Furnishings
Anchorage, Alaska

Secretary-Executive Director
Caroleen Darrow
Anchorage, Alaska

Legislative Agent
Dean Ehrich
Anchorage, Alaska

BOARD OF DIRECTORS

Anchorage:
John W. Walls
Barb's Florists

S. G. "Jerry" Nerland
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Frank Harris
Alaska Cleaners

Jerry Wolf
Wolf's Home Furnishings

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Borealis Book & Gift

Juneau:
Martha Edwards
Baranof Gift Shop

Bill Copenhauer
Jewel Box

Nome:
Frank A. Couch
Northern Commercial Co.

Rep. William J. Moran
Alaska State House
Pouch V State Capitol Bldg.
Juneau, Alaska

Dear Representative:

We are once again recommending the passage of the Uniform Consumer Credit Code which has been introduced in the House as HB 174.

This proposal, which was drafted by the National Conference of Commissioners on Uniform State Laws, would serve to eliminate the vast majority of problems extant in the area of consumer credit law. It provides for concise regulation of the consumer credit industry, has consumer protection provisions which go well beyond those available under present Federal or State law and would provide for healthy competition among credit grantors. This increased competition will serve to insure an adequate supply of credit to all segments of our society.

We would appreciate you taking a few minutes from your very busy schedule to read the enclosed booklet, entitled "Questions & Answers on UNIFORM CONSUMER CREDIT CODE". We are certain you will find that UCCC answers many of the problems related to consumer credit.

Sincerely,

Dean Ehrich
Legislative Agent

DE:kt
Enclosure

HOUSEHOLD FINANCE CORPORATION
RESULTS OF SMALL LOAN OPERATIONS IN ALASKA
1968 - 1969 - 1970
(Exclusive of Income from Contracts Purchased)

	1968	1969	1970
Loans outstanding at begir ing of year	$1,512,601	$1,838,691	$2,453,776
Loans outstanding at end of year	1,838,690	2,453,776	2,409,209
Average loans outstanding	1,675,645	2,146,233	2,431,493

Expenses of Operations

Classification	Amount			Percentage of Average Loans Outstanding		
	1968	1969	1970	1968	1969	1970
Advertising	$16,576	$17,176	$11,730	0.99	0.80	0.50
Bad Debts	30,490	30,452	53,217	1.82	1.42	2.19
Rent	38,314	34,891	36,940	2.35	1.63	1.52
Salaries	100,748	111,737	121,334	6.01	5.21	5.00
Supervision	39,058	43,195	50,481	2.33	2.00	2.12
State and Local Taxes	29,470	28,027	29,026	1.76	1.30	1.20
Federal Income Taxes	134,774	162,333	130,301	8.00	7.56	5.77
Telephone and Telegraph	27,800	32,394	26,583	1.66	1.50	1.09
Legal, Postage, Supplies, etc.	28,815	30,104	30,635	1.72	1.40	1.26
	$446,050	$490,310	$490,250			
Interest rate required on loans to pay expenses, exclusive of interest on borrowed funds				26.64%	22.82%	20.65%

Average Assets Used Each Year

	1968	1969	1970
Average assets used in business	$1,787,706	$2,280,363	$2,569.106

Net Profit Percentage

1968 Net profit of $128,275 ÷ assets used of $1,787,706 = 7.18% return on investment
1969 Net profit of $157,686.30 ÷ assets used of $2,280,363 = 6.91% return on investment
1970 Net profit of $134,538 ÷ assets used of ~~$134,538~~ $2,569,106 = 5.24% return on investment

HOUSEHOLD FINANCE CORPORATION

1968 Operating Statistics

	Average Amt. Loaned Per State	Percent of Average Loan Balance Spent for: Salaries	Rent	Adv.	Admin.	Taxes	Deprec.	Bad Debts	Other Exp.	Total
Alaska	$ 1,732,164	5.79	1.87	1.01	2.27	2.22	.34	1.43	2.78	17.71
Washington	$ 21,110,000	3.37	.69	.72	1.92	.48	.19	1.75	1.46	10.58
Oregon	$ 4,627,000	3.47	.85	.75	1.86	.58	.10	2.81	1.82	12.24
California	$162,429,000	3.59	.73	.55	1.92	.97	.19	1.73	1.43	11.11
U. S. Average	$ 6,512,000	3.53	2.07	1.04	1.72	.35	.13	.81	2.19	11.84

HB-174

JUDICIARY COMMITTEE
Pouch V
Juneau, Alaska 99801

January 26, 1972

Honorable Robert H. Ziegler, Sr.
Senate Judiciary Chairman
Pouch V - Capitol Building
Juneau, Alaska 99801

Re: HB 174 - Uniform Consumer Credit Code
HB 453 - Relating to Consumer Credit

Dear Senator Ziegler:

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Sincerely,

William J. Moran
Chairman

cc: Honorable Ron Rettig
Senate Commerce Chairman

Pouch V
Juneau, Alaska 99801

January 21, 1972

Richard Wheatley, Esquire
University Bank
Post Office Box 1067
Stillwater, Oklahoma 74074

Re: HB 174 - Uniform Consumer Credit Code
HB 453 - Relating to Consumer Transactions

Dear Mr. Wheatley:

This letter will confirm our telegraphic invitation and request of this date for your appearance before a joint meeting of the House Commerce and Judiciary Committees of the Alaska Legislature on January 28 and 29 to testify and otherwise participate in the consideration of the above-named bills, now before the House Commerce Committee. Both bills have a second referral to the House Judiciary Committee. HB 174 is the Uniform Consumer Credit Code as prepared by the National Conference of Commissioners on Uniform State Laws; HB 453 is a proposal in the same area of legislative concern which was prepared at the Boston College Law Center pursuant, as we understand, to a grant from the Office of Economic Opportunity. Copies of both bills are enclosed.

The joint meeting will convene at 1:30 p.m. on January 28 in the House Conference Room, Second Floor, Capitol Building, and will continue into the following day as may be required. Because of the interest in the subject, as well as its complicated nature, a second day of testimony will undoubtedly be necessary. (Norman C. Banfield, Esquire, of the Juneau Bar, will appear on January 27 to permit him to meet a commitment elsewhere; a sponsor of HB 453 has requested that witnesses for his bill also be heard approximately one week later.) All members of the Legislature will be invited to attend and to participate in the hearings. The Senate Commerce and Judiciary Committees will undoubtedly be present.

We are grateful to you for your willingness to participate in these important hearings and to give us the benefit of your expertise; we are grateful to the National Conference for their support of your attendance; and, we are grateful to Frederick O. Eastaugh, Esquire, Alaska's Commissioner to the Conference, for his, as always, generous assistance.

Please let us know if we can be of help with respect to your accommodations or other amenities while you are in Juneau. Our addresses are as above; we can be reached telephonically at (AC 907) 586-5288 (Chief Clerk); 586-6614 (Commerce); or 586-6795 (Judiciary). Please note that Juneau is on Pacific Standard Time, that is, Oklahoma is two hours earlier.

Please again accept our thanks for your kind assistance.

Sincerely,

William J. Moran
Chairman, Judiciary Committee

Jalmar M. Kerttula
Chairman, Commerce Committee

Enclosures - Copies of HB 174
and HB 453

cc: Frederick O. Eastaugh, Esquire
Post Office Box 1211
Juneau, Alaska 99801

WJM:JMK:mm

Pouch V
Juneau, Alaska 99801

January 21, 1972

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Sincerely,

William J. Moran
Chairman, Judiciary Committee

Jalmar M. Kerttula
Chairman, Commerce Committee

Enclosures - Copies of HB 174
and HB 453

cc: Frederick O. Eastaugh, Esquire
Post Office Box 1211
Juneau, Alaska 99801

WJM:JMK:mm

Pouch V
Juneau, Alaska 99801

January 21, 1972

Neil Butler, Esquire
2450 Colorado State Bank Building
16th & Broadway
Denver, Colorado 80202

Re: ✓HB 174 - Uniform Consumer Credit Code
HB 453 - Relating to Consumer Transactions

Dear Mr. Butler:

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Sincerely,

William J. Moran
Chairman, Judiciary Committee

Jalmar M. Kerttula
Chairman, Commerce Committee

Enclosures - Copies of HB 174
and HB 453

cc: Frederick O. Eastaugh, Esquire
Post Office Box 1211
Juneau, Alaska 99801

WJM:JMK:mm

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

January 18, 1972

Norman C. Banfield, Esquire
Faulkner, Banfield, Doochever
& Doogan, Attorneys
Suite 201 - 311 Franklin Street
Juneau, Alaska 99801

Re: SB 42 - Amending Retail Installment Sales Act
SB 242 - Interest on Loans
SB 174 - Uniform Consumer Credit Code
SB 353 - Consumer Transactions

Dear Norm:

Confirming our conversation today concerning your letter to me of January 10, it is my intention to delay further action on SB 242 and SB 42 pending consideration of SB 174 and SB 353. The latter two bills are scheduled for joint public hearing before the House Commerce and Judiciary Committees on January 26, at 1:30 p.m., in the House Conference Room. It is expected that these hearings may continue into January 27. I know also that Representative Farrell, co-sponsor of SB 353, may request that additional hearings be held the following week, probably on February 4.

Mr. Karttula is scheduled to testify on SB 174 and SB 353 a bit earlier to accommodate your departure from Alaska. Since our present plan is not to have a calendar on Thursday, a meeting with you immediately on adjournment on January 27 seems the most practical. I should think that you could conclude your presentation by noon that day. Please let me know.

Sincerely,

William J. Moran

cc: Rep. Karttula
Rep. Farrell
Mr. Eastaugh

File HB 174

LAW OFFICES OF
FAULKNER, BANFIELD, BOOCHEVER & DOOGAN
SUITE 201, 31 FRANKLIN STREET
JUNEAU, ALASKA 99801
TEL. 586-2210
AREA CODE 907

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

January 20, 1972

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

Re: HB 42 - Amending Retail Installment Sales Act
HB 242- Interest on Loans
HB 174 - Uniform Consumer Credit Code
HB 453- Consumer Transactions

Dear Bill:

Thanks for your letter of January 18, 1972, regarding the above bills. I will be ready after the House adjourns on January 27th and will give you a summary of the contents and purposes of HB 174. It is possible that more qualified persons may appear later but I will give you a resume of the bill which will help you to understand a more detailed analysis which may be made by others as you will have a picture of the scheme developed by the Code.

At the present time I have inquired as to whether Household Finance Corporation can have one or more persons present who have followed the development of the Code much more closely than I have. I will let you know if they can be present for the hearings on January 28th and 29th.

Yours very truly,

N. C. Banfield

NCB:db

cc: Jalmar M. Kerttula
Marty Farrell
F. O. Eastaugh

HB453

SB239

HB-453

ALASKA RETAIL ASSOCIATION, INC.
P.O. BOX 1727
ANCHORAGE, ALASKA

POSITION STATEMENT - NATIONAL CONSUMER ACT, H.B. 453

The Alaska Consumer Act, (H.B. 453 and S.B. 239) is modeled after the National Consumer Act (NCA). The NCA was promulgated by the National Consumer Law Center located at the Boston College Law School in Brighten, Massachusetts. The NCA is reputed to be the consumer movement "answer" to the Uniform Consumer Credit Code (UCCC), a statute drafted by the National Conference on Uniform State Laws and under consideration by this same committee as H.B. 174. The UCCC has been adopted in six states and has been introduced in several other states, including Hawaii and, of course, Alaska. The NCA has not been adopted by any state.

The Alaska Retail Association has already testified in support of the UCCC (H.B. 174). We are here today to register our opposition to the NCA (H.B. 453). Basically, we support the UCCC because we feel that it is a balanced piece of legislation which gives due consideration to the interests of consumers and to the need for regulation which will not substantially impede the operations of legitimate businesses. Furthermore, the remedies contained in the UCCC would add significant consumer protection not found in existing Alaska law. We oppose the NCA (H.B. 453) because, in our view, it fails to strike such a healthy balance and in fact, is extremely unrealistic in some of its proposals to correct alleged abuses.

The NCA (H.B. 453) would set up an elaborate administrative machinery with unprecedented powers to interfere in consumer transactions of every conceivable nature regardless of their significance. The NCA purports to cure every imaginable abuse against consumers and totally ignores the needs of legitimate business interests. The Alaska Retail Association certainly agrees that consumer abuses should be stopped and that those responsible should pay the penalty. However, the proposed Act simply would have a regressive effect upon Alaska's economy by overburdening and stifling legitimate business in this State. Moreover, considering only its credit features, we believe that rather than encouraging fair and economically sound consumer credit practices, the NCA (H.B. 453) could well result in limiting the availability of legitimate consumer credit in the State of Alaska.

At the outset, we think it is important to recognize that the UCCC (H.B. 174) and the NCA (H.B. 453) are considerably different in their scope. Unlike the UCCC, which deals only with consumer credit transactions, the NCA goes considerably beyond credit transactions and would also regulate many other types of consumer transactions, including cash sales. If enacted, the National Consumer Act, would also bring about substantial changes in many existing laws and, in fact, would substantially revise several Alaska laws just enacted after consideration in great detail by the 1970 Alaska Legislature. We believe that the UCCC is a more reasonable and well-balanced approach to consumer credit transactions. Presently existing federal and Alaskan laws more effectively and realistically cover the other areas which the NCA (H.B. 453) would seek to change.

This statement does not attempt to comment on each and every section of the NCA (H.B. 453). There are, however, a few sections of the Act on which we believe comment is appropriate to emphasize its short-sightedness and unfair aspects.

CONTRACT CANCELLATION:

The Act distinguishes between "inside" and "outside" consumer approval transactions. An "inside" consumer approval transaction means a sale made at the merchant's place of business for which the price is over $50, whether the sale is for cash or for credit. An "outside" consumer approval transaction is a sale in any amount, whether by cash or by credit, consummated outside of a merchant's place of business.

In both the "inside" and "outside" transaction, the sale is not final until certain conditions are satisfied. If it is an "outside" transaction, the consumer must send a notice, the notice to be provided by the merchant, within three days after receipt of the notice, stating that he is affirming the transaction. If the transaction is "inside," the consumer has three days to send a notice to the seller cancelling the transaction.

These provisions, we feel, are not in the best interests of either the consumer or the merchant. We question, for example, whether consumers want to have a duty imposed on them of sending an affirmation notice on every "outside" transaction, especially in cases where the sale is for cash. This does not mean that we are opposed to a three-day "cooling off" period when the sale occurs in the consumer's home, on the contrary, we support the provisions

of the UCCC which permit the consumer to send a cancellation notice to the seller within three days of the purchase as good protection to the consumer.

Under the provisions of the NCA (H.B. 453), there would no doubt be many instances in which the consumer has no desire to cancel the contract, but through simple oversight forgets to send the affirmation notice to the seller. The seller, thinking the consumer has cancelled the sale, sends someone to the consumer's home to pick up the goods. The consumer says it is all a mistake, that he forgot to send the notice and that he really wants the goods. But can the seller accept this explanation? Under other provisions of the Act, the consumer cannot waive his rights. Thus, even though he wants to affirm the contract, he cannot waive his right to get back his money and return the purchased property. No doubt the matter could be resolved by entering into a new contract, but this seems to be a burden that is neither satisfactory to the seller nor to the consumer. Surely it is not asking too much to require a consumer to send a cancellation notice if he desires to cancel the transaction. In this way consumers are protected and the many problems that would result from the provisions of the Act would be avoided.

Even more questionable is the right of the consumer to cancel "inside" transactions. In this regard, one glaring defect of the Act as it is presently drafted is the lack of any section dealing with what happens when the consumer cancels an "inside" transaction.

There is a section which provides that if the "outside" transaction is not affirmed, the seller must return the money received from the consumer at his home and pick up the purchased property. There is no similar provision dealing with the "inside" cancellation, unless the Act is to be interpreted in such a way that the same provision applies to both "inside" and "outside" transactions. If this is true, it would, we feel, impose a most unfair burden on the seller. It would mean that even though the transaction resulted from the consumer voluntarily going into the seller's place of business, the seller, upon cancellation, has a duty to seek out the consumer at his residence, return his money, and pick up the merchandise.

Perhaps even more important is the concept of allowing a person to cancel an "inside" transaction. Why, for example, should a person be able to buy an expensive dress at the seller's store, use it for one day, and then cancel the sale? The fact that the dress has been used would not seem to make any difference, since there are no provisions that the property must be returned in an unused or even satisfactory condition. Moreover, the seller will not be able to sell the dress as a new item again since the Act (and the existing Alaska Consumer Protection Act) also has provisions that make it unlawful to represent an item as new when it is used or secondhand.

It is well known that most reputable merchants will accept returned merchandise where it has not been used or damaged in any way by the customer. But, this Act would require the merchant to accept any returned merchandise if the transaction is cancelled

within three days, even if the merchandise has been used or damaged by the consumer.

The UCCC recognizes that the consumer currently has a need for a period of time within which to reflect and off-set the high pressure tactics of door to door salesmen. However, the NCA's method of dealing with the problem is a classic illustration of its many "overhill" features for the purported benefit of consumers. It is submitted that their method would substantially nullify the certainty of business transactions in the State of Alaska.

CREDITOR'S REMEDIES:

Another major area in which the Act is unrealistic and unfair to the merchant is that of creditor's remedies. The Act provides that a consumer is not in default until he misses three successive monthly payments. Moreover, if the seller has a security interest in the property, the consumer may surrender the property to the seller in full satisfaction of the obligation without regard to the condition or current value of the property in relation to the balance due. The seller is not entitled to any deficiency judgment if the unpaid balance is under $2,000. The seller may not repossess the property until after the three months have lapsed, and then only through a lengthy and costly court procedure.

The net effect of these provisions is that a person could buy a colored television set, not make any payments for three months, and then simply surrender the set to the seller in full satisfaction of his obligation. The seller could not take any steps during that

three months to obtain the property and must accept the property at the end of the three months, regardless of its condition. Moreover, the seller would be stuck with a used television set, which as previously indicated, could not be sold as a new item. Thus, the merchant has lost both his profit from the sale and the set from his inventory, while the consumer has had the use of the set for three months free of charge. How much must the retailer raise his prices to others to give the freeloader his color television? It is hard to know, but certainly some considerable amount.

MISCELLANEOUS PROVISIONS:

The above sections are by no means exhaustive of the unfair measures of this proposal. There are other provisions in the Act which if enacted would greatly disrupt modern consumer transactions.

The Act, for example, places a maximum rate on consumer credit transactions at 18% per annum. This rate while in conformity with the present rate on retail installment revolving accounts, would also be applicable to the small loan business. In setting this rate, the Act completely ignores the specific needs of the small loan industry and the rates that are required in order to allow the less credit worthy a legitimate source of money.

Another problem with the Act is its failure to seek exemption from Federal Truth in Lending as provided in Section 123 of the Federal Consumer Credit Protection Act. This means that all consumer credit transactions in Alaska would be subject to both Federal and State regulations, a situation that is obviously more confusing and complicated than if consumer credit transactions were regulated solely by local law.

It should also be pointed out that the Act goes well beyond existing Alaska law regarding unfair and deceptive trade practices. The 1970 Alaska Legislature devoted much time and effort to drafting and enacting a law that effectively and justly governs unfair trade practices. The Act would now displace this law with broader and vaguer terms that by their very lack of precision can accomplish little but to create problems of interpretation and, thus, of compliance for the honest merchant. In short, Alaska already has effective legislation dealing with deceptive and unfair trade practices and this law should not be replaced with the provisions in this Act.

A similar objection to the Act is the fact that it provides as a remedy for violation of the unfair and deceptive trade practices section, as well as for other violations of the Act, the unlimited private class action. Again, we would point out that the private class action as a consumer remedy is one which was carefully considered by the 1970 Alaska Legislature. Recognizing that such actions are often used to harass legitimate retailers without accomplishing much toward eliminating the unconscionable practices of a small percentage of businesses responsible for consumer abuses, the 1970 legislature wisely imposed reasonable restrictions on such actions.

The Act would also substantially revise the present law under the Uniform Commercial Code in the area of warranties and representations. It is our feeling that the UCC, a statute that has been adopted by all but one of the 50 states, is an adequate statute as to the substance of consumer warranties. To the extent disclosure and minimum standards might be thougnt necessary, the NCA (H.B. 453)

offers little help. The Federal Congress, after several years of study appears on the verge of passing some such consumer warranty bill. It should be a good deal better, and probably would pre-empt some or all of any state effort.

Finally, we are also corcerned with the provisions of the Act which relate to credit reporting agencies. The Act goes well beyond the requirements of the Federal Fair Credit Reporting Act, which was implemented on April 25, 1971. A major difference is that the Act would require that derogatory information be deleted as obsolete after three years, while the Federal law sets the deletion period at seven years. This means that Alaska reporting agencies would be completely out of phase with the rest of the country. Consumer reporting agencies, by their very nature, are involved in interstate commerce and their contacts with agencies in other states are quite important. Should this Act be enacted, it would place Alaska consumer reporting agencies in the untenable position of reporting substandard information. This would affect the Alaska consumers' ability to obtain credit from national firms such as major oil companies and national credit card companies.

In summary, the NCA (H.B. 453) is not the type of legislation that is either necessary or proper for regulating consumer credit and consumer protection. The philosophy underlying the Act seems to be that all merchants are out to take advantage of the consumer, while consumers are always honest and always pay their bills. In fact, as we all know, neither side has a monopoly upon virtue. There are admittedly some unscrupulous merchants, but it is equally

true that there are a number of consumers who are not always honest and forthright in their commercial dealings. A law which purports to govern the area of consumer credit and protection must recognize the needs and problems of both the consumer and the merchant. The NCA (H.B. 453) certainly does not recognize the needs of the merchant, and it is questionnable whether in the long run it recognizes the needs of the average consumer since many of its provisions can only result in increasing the cost of goods to the consumer.

ALASKA RETAIL ASSOCIATION
P.O. BOX 1727
ANCHORAGE, ALASKA 99501

January 26, 1972

Honorable William Moran
Chairman
House Judiciary Committee
Alaska State House of Representatives
Juneau, Alaska 99801

Dear Mr. Moran:

Two acknowledged experts on the Uniform Consumer Credit Code have agreed to testify before the joint hearing which has been scheduled for Friday, January 28th. They are Mr. Richard Wheatley, former administrator of the Code in Oklahoma, and Mr. Neil Butler, Education Director of the National Conference of Commissioners on Uniform State Laws. Mr. Butler is also the former acting administrator of the Code in Colorado. We know that these gentlemen will be able to supply your committees with a great deal of valuable information on this comprehensive measure.

Subject to your approval, the Alaska Retail Association's portion of the testimony will be ordered in the following manner. Dean Ehrich -- To make a very brief introductory statement; Fred Eastaugh, who is a commissioner from Alaska -- To introduce Mr. Wheatley and Mr. Butler who will provide the bulk of our testimony and who will be available for specific questions by yourself and members of your committee.

We wish to thank you for this opportunity to comment on what we feel to be the best proposal ever drafted in the area of consumer credit. Passage would be of great benefit to all Alaskans.

Sincerely,

ALASKA RETAIL ASSOCIATION

Dean Ehrich
Legislative Agent

DE/kd

HB-453

JUDICIARY COMMITTEE
Pouch V
Juneau, Alaska 99801

January 26, 1972

Honorable Robert H. Ziegler, Sr.
Senate Judiciary Chairman
Pouch V - Capitol Building
Juneau, Alaska 99801

Re: HB 174 - Uniform Consumer Credit Code
HB 453 - Relating to Consumer Credit

Dear Senator Ziegler:

The House Commerce and Judiciary Committees are sponsoring a joint public hearing on House Bill 174 (Uniform Consumer Credit Code) and House Bill 453 (Relating to Consumer Credit). As the title of House Bill 174 suggests, it is the draft prepared by the National Conference of Commissioners on Uniform Laws. I have been informed that House Bill 453 was drafted at the Boston College Law Center pursuant to a grant from the Office of Economic Opportunity.

The hearings will be held in the House Conference Room, beginning at 1:30 p.m. on Friday, January 28, and will continue over into Saturday as need may require.

The National Conference has made available Neil Butler, Esquire, of Denver, Colorado, and Richard Wheatley, Esquire, of Stillwater, Oklahoma. I understand that those members of the bar are particularly qualified to discuss House Bill 174.

Norm Banfield will be leaving for Europe this weekend. As a courtesy to him, Jay Kerttula and I have agreed to convene our respective committees immediately upon adjournment of the House on Thursday, January 27. It is my understanding that Mr. Banfield wishes to testify in favor of House Bill 174 and in opposition to House Bill 453. We hope to have Mr. Banfield's testimony taken also in the House Conference Room.

On the assumption that the Senate Commerce and Judiciary Committees will have some bill under consideration pursuant to House action, Mr. Kerttula and I invite the attendance and participation of your committee members at the above session. We also request that you make the fact of such hearings known to other members of the Senate by announcement on the floor.

In the interest of time, I am designating a copy of this letter for Senator Rattig. I hope he will not be offended that I have not written to him separately.

Sincerely,

William J. Moran
Chairman

cc: Honorable Ron Rattig
Senate Commerce Chairman

Pouch V
Juneau, Alaska 99801

January 21, 1972

Richard Wheatley, Esquire
University Bank
Post Office Box 1067
Stillwater, Oklahoma 74074

Re: HB 174 - Uniform Consumer Credit Code
HB 453 - Relating to Consumer Transactions

Dear Mr. Wheatley:

This letter will confirm our telegraphic invitation and request of this date for your appearance before a joint meeting of the House Commerce and Judiciary Committees of the Alaska Legislature on January 28 and 29 to testify and otherwise participate in the consideration of the above-named bills, now before the House Commerce Committee. Both bills have a second referral to the House Judiciary Committee. HB 174 is the Uniform Consumer Credit Code as prepared by the National Conference of Commissioners on Uniform State Laws; HB 453 is a proposal in the same area of legislative concern which was prepared at the Boston College Law Center pursuant, as we understand, to a grant from the Office of Economic Opportunity. Copies of both bills are enclosed.

The joint meeting will convene at 1:30 p.m. on January 28 in the House Conference Room, Second Floor, Capitol Building, and will continue into the following day as may be required. Because of the interest in the subject, as well as its complicated nature, a second day of testimony will undoubtedly be necessary. (Norman C. Banfield, Esquire, of the Juneau Bar, will appear on January 27 to permit him to meet a commitment elsewhere; a sponsor of HB 453 has requested that witnesses for his bill also be heard approximately one week later.) All members of the Legislature will be invited to attend and to participate in the hearings. The Senate Commerce and Judiciary Committees will undoubtedly be present.

We are grateful to you for your willingness to participate in these important hearings and to give us the benefit of your expertise; we are grateful to the National Conference for their support of your attendance; and, we are grateful to Frederick O. Bestaugh, Esquire, Alaska's Commissioner to the Conference, for his, as always, generous assistance.

Please let us know if we can be of help with respect to your accommodations or other amenities while you are in Juneau. Our addresses are as above; we can be reached telephonically at (AC 907) 586-5260 (Chief Clerk); 586-6814 (Commerce); or 586-6795 (Judiciary). Please note that Juneau is on Pacific Standard Time, that is, Oklahoma is two hours earlier.

Please again accept our thanks for your kind assistance.

Sincerely,

William J. Moran
Chairman, Judiciary Committee

Jalmar M. Kerttula
Chairman, Commerce Committee

Enclosures - Copies of HB 174
and HB 453

cc: Frederick O. Eastaugh, Esquire
Post Office Box 1211
Juneau, Alaska 99801

WJM:JMK:mm

January 18, 1972

Norman C. Banfield, Esquire
Faulkner, Banfield, Boochever
& Doogan, Attorneys
Suite 201 - 311 Franklin Street
Juneau, Alaska 99801

Re: SB 42 - Amending Retail Installment Sales Act
SB 242 - Interest on Loans
HB 174 - Uniform Consumer Credit Code
HB 453 - Consumer Transactions

Dear Norm:

Confirming our conversation today concerning your letter to me of January 10, it is my intention to delay further action on SB 242 and SB 42 pending consideration of HB 174 and HB 453. The latter two bills are scheduled for joint public hearing before the House Commerce and Judiciary Committees on January 28, at 1:30 p.m., in the House Conference Room. It is expected that these hearings may continue into January 29. I know also that Representative Farrell, co-sponsor of HB 453, may request that additional hearings be held the following week, probably on February 4.

Mr. Kerttula is agreeable to hearing you on HB 174 and HB 453 a bit earlier to accommodate your departure from Alaska. Since the present plan is not to have a calendar on Thursdays, a meeting with you immediately on adjournment on January 27 seems the most promising. I should think that you could conclude your presentation by noon that day. Please let me know.

Sincerely,

William J. Moran

cc: Rep. Kerttula
Rep. Farrell
Mr. Eastaugh

MARRIAGE

[The excerpt from an article on Judicial Consent to Marry appearing below was taken from the December 1969 issue of the Family Law Quarterly, a law periodical published by the American Bar Association.]

Judicial Consent to Marry— Its Complex Demands†

WARREN W. WEISS*
Supervising Conciliation Counselor

HENRY B. COLLADA**
Conciliation Counselor

The Conciliation Court of the Superior Court of Santa Clara County, California

As early as 1926, social scientists were concluding that the risk of failure in marriages involving parties under age twenty was appreciably higher than those involving more mature partners.[1]

In 1953, Professor William G. Monahan of the University of Iowa published the results of an extensive investigation into the 52,722 marriages and the 3,040 divorces occurring in Iowa between 1945 and 1947.[2] His study revealed that 8.4% of the marriages under consideration involved males below age twenty and 33.3% involved females below twenty. In comparison, however, 15.1% of the divorces involved husbands under twenty and 50.9% of the divorces involved wives under twenty. Furthermore, Monahan found that where both parties

* A.B. 1955, M.A. 1956, San Jose State College.
** A.B. 1958, New York Univ.; M.S.U. 1966, Univ. of Calif. at Berkeley.

† The authors are indebted to Mr. David S. Murray, B.S.C. 1965, J.D. 1969, University of Santa Clara, for research assistance in the preparation of this paper.

1. Hart and Shields, *Happiness In Relation to Age at Marriage*, 12 J. Soc. Hygiene 403 (1926), reported that "Marriage in which either party is 19 or younger are from 10 to 100 times risky as are marriages at the ideal (24 to 29) ages."

2. Monahan, *Does Age at Marriage Matter in Divorce?* 32 Social Forces 18 (1953).

were sixteen years or under the divorce rate rose to four times that experienced by partners wed at the mean age, that is where the groom was twenty-five and the bride twenty-two. These statistics dramatically illustrate the disproportionate representation of youthful marriage in divorce actions.

More recent studies corroborate the earlier findings. In the first half of the present decade, the highest divorce rate involves parties married between the ages of fifteen and nineteen. The incidence of divorce appears two to three times higher among couples married in their teens than among those married at later ages.[3]

If we accept the seemingly inescapable premise that youthful marriages are particularly susceptible to divorce we must conclude that the state's interest in fostering the stability and permanence of a marriage is more than casually threatened by the youthful marriage.

This being the case, it is not surprising that many states have exercised their regulatory power over marriage with more proclivity in situations where minors are involved. Most states condition the issuance of a marriage license to minors on the written consent of their parents. If the minor is more than two years below majority, many states require that a member of the local judiciary give his approval to the proposed marriage. The latter procedure is normally referred to as requiring "judicial consent" to the marriage.

In considering the complex factors that must be dealt with in trying to determine whether a proposed marriage has the attributes of success or failure, it becomes apparent that a judge, sitting alone, is not equipped to do a complete and effective job. If state legislatures are sincerely concerned about stemming the ill-fated tide of the youthful marriage, they should seriously consider the Rhode Island plan which provides that a petitioner seeking judicial consent must make his application to

3. J. Landis and M. Landis, Personal Adjustment, Marriage and Family Living 151 (4th ed. 1966); *see also*, Health, Education and Welfare Indicators, Trends in Divorce and Family Disruption (Aug. 1963).

the Juvenile Court. The court is then required by statute[4] to request from the Social Welfare Department a complete investigation of and a report upon the advisability of the marriage. Subsequently, a hearing is held at which time the report and other evidence is heard. Upon a consideration of all the evidence, the judge will determine whether to grant or deny consent. A well-rounded staff of social workers and family counselors is placed at the judge's disposal. The court is thereby transformed from a rather ineffective team of one, forced to grant or deny consent on the basis of a highly subjective reaction, into a highly skilled decision making mechanism fully equipped to do a professional job.

Although Rhode Island is the only state that has codified such procedures, some states have enacted enabling statutes whereby their individual county courts can develop similar programs utilizing county social agencies if they desire. California, for example, has given its counties such power and one county in particular, Santa Clara County, has developed a very practical and effective plan to aid the judge in his decision to grant or deny consent.

The Santa Clara County Plan

Because no criteria are set forth under California law, presumably if one judge refused to give his consent to an underage marriage, another and more liberal judge could be sought by the couple. In 1966 the nineteen judges of the Superior Court of Santa Clara County established one department as a Family Court in 1966. By creating a Family Court, the policy making for consent was allocated to the Family Court Judge. This eliminated the *ex parte* applications to any judge. While this was an improvement, the Family Court Judge felt that he was not competent to alone determine the future success of such marriages. Knowing that most teen-age marriages fail and that those which take place when the girl is pregnant often are more

4. *See*, Laws of R.I. § 15-2-11 (1956).

ill-fated than any others, the Judge felt the need for appropriate professional help. Many states which allow and encourage judicial consent on the basis of pregnancy[5] fail to consider the effects of such a marriage. Merely giving the child a name may solve one problem, but socially and emotionally it gives rise to many others, not the least of which is the misery of marital failure with multiple children, the need for public assistance and the emotional destruction generated and perpetuated by the parties on all concerned.

Note: Underscoring added.

MEMORANDUM

TO: Senator Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Representative William J. Moran
Chairman, House Judiciary Committee
All Legislators
Chief Justice of Alaska Supreme Court
Administrative Director of Courts
Judges of the Superior Court

Date: February 3, 1971

Subject: Recommended Changes in Alaska Marriage Code

FROM: Harold J. Butcher
Superior Court Judge
Family Court Division

Enclosed with this memorandum is a draft of a proposed change in the Alaska Marriage Code, Title 25, Alaska Statutes.

Our purpose in recommending the change was formed from the alarming incidence of divorce occurring amongst teenage couples who enter into marriages.

Divorce amongst couples who marry while teenagers (under 21 years of age) occurs with far greater frequency than those amongst couples who marry between 21 and 25. There is an even greater increase in divorce amongst couples who marry under 18 years of age, and where the marriage occurred at 16 or under, the failures are four times greater than in cases where the couples were between 21 and 25.

Many states have provided judicial consent to marry, especially where premarital counseling by professional marriage counselors in court settings, or welfare agency investigation is available, and where recommendations as to the advisability of consenting to teenage marriages may be made to and considered by the court prior to judicial consent.

It has been the personal experience of this writer, after three years on the bench of the Family Court, that marriages contracted by high school students invariably fail. The parties appear in the divorce court for dissolution of marriages contracted while in high school, and unfortunately, in many cases, the children born to such marriages, and the mothers, end up on welfare rolls at a cost of several hundred dollars per month per family.

We have caused to be copied, for the benefit of your committee and other legislators, some excerpts from an article published in the Family Law Quarterly, a law periodical published by the American Bar Association, furnishing statistical data as to the frequency of divorce in the age groups mentioned and containing also other persuasive material supporting judicial consent to teenage marriage, which I hope will be read by all persons, and particularly the legislators who are concerned with the increase in divorce. It is not only the failure of the marriage that is

a cause of public concern, but it is the children born to such marriages who end up on welfare, that causes even greater concern. When teenage marriages occur, there is rarely present the financial responsibility essential to a successful marriage. Married teenagers have not had an opportunity to complete educational goals looking toward future financial responsibility, and such young couples, in appreciable numbers, handicapped by unsurmountable marriage problems and children, never attain either future financial responsibility or worthwhile career goals. The possibilities of a marriage surviving without a solid financial base and a high degree of responsibility is indeed remote.

Our marriage code, as it presently stands, permits males under 21 and over 18, and females under 18 and over 16, to marry with parental consent, however, if one or both such persons seek to marry and have no parents or other person capable of consent, the decision as to whether to waive consent and permit the marriage is left to the discretion of a marriage clerk in the Vital Statistics section who, in our opinion, has not the competency or special training to make far-reaching decisions as to whether or not a proposed marriage would be in the best interest of the teenage applicants, or of society. The present statute permits males under 18 and over 16 and females under 16 to marry if they have parental consent, but only if the female is pregnant and a certificate of a competent physician is presented to the licensing officer certifying to such pregnancy.

In our opinion, this particular provision of the law, i.e. that the female under 16 must be pregnant, is often an invitation to parents and the couples, themselves, to arrange marriages where pregnancy occurs, when the fact of pregnancy is, perhaps the least reason why a girl under 16 should marry, considering our rather broad and liberal statutes with respect to legitimacy.

Where the pregnancy prompted marriage occurs for the sake of the child's legitimacy, the couples may stay together for a few years, and nature being what it is, additional children may be born, adding substantially to the problem. Such marriages seem doomed from the beginning.

The article from the Family Law Quarterly attached hereto will show that pregnancy as a reason for marriage generally increases the hazards and does not contribute to a life-long union.

The present pregnancy requirement has other basic defects. As it now stands, for instance, if the pregnant condition is deemed a ground for marriage, it fails to provide for the girl who, while not pregnant at the time of the application, has just been pregnant and has recently given birth to a child whom the other applicant has fathered. The marriage

in the last case would seem as justifiable, if any marriage of that kind is justifiable, as in the case of a present pregnancy.

The proposals made in the attached draft will eliminate altogether the pregnancy feature of the law as a reason to marry, and put teenage marriage, i.e. males under 18 years of age and females under 16, under the authority of the Superior Court where either through a Court attached marriage counselor or a family counselor from the Welfare Division there could be a premarital study made with, perhaps, recommendations to the Court as to the chances for marriage success if a teenage marriage is to be permitted. In the absence of such premarital counseling, the Court, upon a proper showing, could make a far more intelligent decision as to whether a marriage should or should not occur, than the procedure now in effect.

Since dictating the foregoing, I had occasion to talk by long distance telephone with Warren W. Weiss, co-author of the Family Law Quarterly article, and he advised me that a majority of the states have statutes providing for judicial consent to marriages where the male is under 18 and the female under 16. He further advised me that the California Legislature, in 1970, amended the California judicial consent law to cover all teenage marriages where the applicants were under the age of 18 years. This amendment was prompted by the simple proposition that teenage persons, male and female, are not equipped from the point of view of maturity or economics to make the adjustments necessary to a permanent and harmonious marriage.

I had used the California Statute, as it stood prior to 1970, as a model for the proposed amendment to the Alaska Marriage Code, thus in the amendment we propose, judicial consent is required for the male under 18 and the female under 16, patterned after the <u>former</u> California law, and it now appears, as a result of the California experience with marriage and divorce in that age group, that that State has seen fit to provide judicial consent for all marriages where the parties are under 18 years. <u>The Alaska Legislature might, therefore, consider changing the Alaska law to correspond with the 1970 California amendment covering the age group under 18 years and not make a differentiation, age-wise, between male and female</u>.

Bvb
attach 2

cc Board of Governors
Judicial Council
Alaska Bar Association
Anchorage Bar Association
Fairbanks Bar Association
Juneau Bar Association
Ketchikan Bar Association

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

Josephson Legislature file

MEMORANDUM

TO: Senator Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Representative William J. Moran
Chairman, House Judiciary Committee
All Legislators
Chief Justice of Alaska Supreme Court
Administrative Director of Courts
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Family Court Division

HJB

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see Josephson file for copy of article

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Bvb
attach 2

cc Board of Governors
Judicial Council
Alaska Bar Association
Anchorage Bar Association
Fairbanks Bar Association
Juneau Bar Association
Ketchikan Bar Association

THIS ☑ BILL ☐ RESOLUTION

has been prepared by the staff of the Legislative Council in response to the request and at the direction of the sponsor. The staff has attempted to place it in proper legal and clerical form subject to any special limitations or instructions of the sponsor. Member requests are kept confidential by the staff and any announcement of intent to have a document drafted or introduced remains the prerogative and responsibility of the sponsoring member in dealing with colleagues and other persons. The Council or its staff may not endorse or comment on policy matters involved in a bill or resolution. The substance and merits of a bill or resolution are the responsibility of the sponsor.

Delivered to sponsor: 2-15-71

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

February 19, 1971

The Honorable Harold J. Butcher
Superior Court Judge
941 West Fourth Avenue
Anchorage, Alaska 99501

Dear Judge:

I enclose a copy of a house bill which I propose to introduce pursuant to your recent request.

Please review the text and advise me whether it is acceptable and meets your requirements.

Best personal wishes

Sincerely yours,

Representative William J. Moran

Enclosure

WJM:mm

MOTORCYCLE REGS

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

April 23, 1971

M E M O R A N D U M

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

FROM : Arthur H. Peterson, Revisor of Statutes

SUBJECT: Motorcycle regulations

During the 1970 legislative session, the House Judiciary Committee heard a good bit of testimony concerning the then recently adopted motorcycle regulations of the Department of Public Safety. Rather than introduce a bill or resolution on the subject, the committee sent a letter (dated May 29, 1970) to the commissioner of public safety, requesting him to "hold hearings and consider revision or repeal" of specified regulations (13 AAC 04.280, 285(b), 290, 295 and 300). One of the main problems was that these regulations were defended by the department on the basis of the requirements of the federal Highway Safety Program Standards (23 C.F.R., Part 204 -- specifically Standard 3), yet they contained provisions that went considerably beyond the federal requirements. The committee was not convinced of the necessity of some of the provisions, and was concerned about the type of enforcement they would receive.

A copy of the letter is attached; however, the only copy I could locate has three corrections noted on it, and I'm sure that these corrections were made before the letter was sent. The hearings, review and revision may have taken place, but I'm not aware of any of these actions being taken in response to the committee's request. It would probably be a good idea to follow up on this.

AHP:hg
Enclosure

April 27, 1971

Emery W. Chapple, Jr., Commissioner
Department of Public Safety
Pouch "N"
Juneau, Alaska 99801

Dear Commissioner Chapple:

During the 1970 legislative session, the House Judiciary Committee heard a good bit of testimony concerning the then recently adopted motorcycle regulations of the Department of Public Safety. Rather than introduce a bill or resolution on the subject, the committee sent a letter (dated May 29, 1970) to the commissioner of public safety, requesting him to "hold hearings and consider revision or repeal" of specified regulations (13 AAC 04.280, 285(b), 290, 295 and 300). One of the problems was that these regulations were defended by the department on the basis of the requirements of the federal Highway Safety Program Standards (23 C.F.R., Part 204 -- specifically Standard 3), yet they contained provisions that went considerably beyond the federal requirements. The committee was not convinced of the necessity of some of the provisions, and was concerned about the type of enforcement they would receive.

A copy of the letter is attached for your convenience; however, the only copy we could locate has three corrections noted on it, and I'm sure that these corrections were made before the letter was sent. The hearings, review and revision may have taken place, but I am not aware of any of these actions being taken in response to the committee's request. What is the status of these regulations?

Sincerely,

William J. Moran, Chairman
House Judiciary Committee

WJM:mm

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A

WORK DRAFT COPY WORK DRAFT COPY WORK DRAFT COPY

Emery W. Chapple, Jr., Commissioner
Department of Public Safety
Pouch X
Juneau, Alaska 99801

Dear Commissioner Chapple:

During the 1970 legislative session, the House Judiciary Committee heard a good bit of testimony concerning the then recently adopted motorcycle regulations of the Department of Public Safety. Rather than introduce a bill or resolution on the subject, the committee sent a letter (dated May 29, 1970) to the commissioner of public safety, requesting him to "hold hearings and consider revision or repeal" of specified regulations (13 AAC 04.280, 285(b), 290, 295 and 300). One of the [redacted] problems was that these regulations were defended by the department on the basis of the requirements of the federal Highway Safety Program Standards (23 C.F.R., Part 204 -- specifically Standard 3), yet they contained provisions that went considerably beyond the federal requirements. The committee was not convinced of the necessity of some of the provisions, and was concerned about the type of enforcement they would receive.

A copy of the letter is attached (for your convenience); however, the only copy I/we could locate has three corrections noted on it, and I'm sure that these corrections were made before the letter was sent. The hearings, review and revision may have taken place, but I am/~~I am~~ not aware of any of these actions being taken in response to the committee's request. ~~It would probably be a good idea to follow up on this.~~ → What is the status of these regulations?

Yours truly,

William J. Moran, Chairman
House Judiciary Committee

STATE OF ALASKA

WILLIAM A. EGAN, Governor

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

POUCH H, CAPITOL BUILDING
JUNEAU 99801

May 5, 1971

The Honorable William J. Moran
Representative
Alaska House of Representatives
Pouch V
Juneau, Alaska 99801

Dear Representative Moran:

In reply to your letter of April 27, 1971 concerning motorcycle regulations adapted by the Department of Public Safety, I submit the attached memorandum to me from Lieutenant H. J. Sydnam and the substantiating materials he has furnished.

I believe Lieutenant Sydnam lays out our position and the circumstances of that position very well, and I would suggest that if it is the desire of the legislators that changes be made, that those desires be specifically laid out.

Please note that both Lieutenant Sydnam and myself stand ready and willing to assist your committee in these matters at any time.

Very truly yours,

Emery W. Chapple, Jr.
Commissioner

Attachments

FORM NO. 02-18

MEMORANDUM State of Alaska

TO: Emery W. Chapple, Jr., Commissioner
Department of Public Safety

DATE : April 30, 1971

FROM: Lieutenant H. J. Sydnam, Director
Alaska Traffic Safety Bureau

SUBJECT: Motorcycle Regulations 13 AAC
File 362.7

The question of "holding hearings and consider revision or repeal" is addressed to the sections concerning 2 rear view mirrors, windshield-goggles-face shield, protective helmet, rental to unhelmeted person, maximum height for handlebars, and helmet-goggles-face shield standards.

The regulations were drawn up in consideration of the Uniform Vehicle Code, the National Highway Traffic Safety Administration Standards, adaptation of other state laws and with the active assistance of the Department of Law and the Legislative Affairs Agency. Publication of notice of hearings were made on October 13, 1969 in Anchorage; October 17, 1969 in Juneau; October 10, 1969 in Fairbanks. A notice of change was mailed to each legislator on October 7, 1969. The hearing was held in Juneau on November 17, 1969, as announced.

Former Commissioner Personett discussed Rep. Jackson's letter of June 1, 1970, with the Attorney General. It was their decision that as the letter constituted an opinion of request and not an order and concerned an issue that had become effective under compliance of law, that no further action be taken. Subsequently, and prior to the effective date of these sections, a suit was brought against Personett by a man in Anchorage which challenged these same points. The Commissioner and the Attorney General then felt that it would be much better to be guided by the judicial decision rather than another public hearing. The case in question has not yet been decided and I would suggest that we await that decision before iniating any administrative action.

To comment upon the regulations themselves, you will find from the attachments that the equipment regulations do follow NHSB (now NHTSA) recommendations, except for the second rear view mirror. We have no real objection to only one mirror, however the contention that any mirror is useless at speeds over "..." mph is no excuse for not requiring at least one. Where the mirror sees its greatest need and use is in urban driving where at reasonable speeds it permits knowledge of other traffic without turning the head.

As to the issue of constitutionality, I include the Wisconsin case of Bisenius vs Karns (1969). This case was appealed and the U.S. Supreme Court dismissed appeal attacking the constitutionality of the Wisconsin Statute "for want of a substantial Federal question." Local courts have ruled on the constitutional issue, but to date the U.S. Supreme Court has not questioned that helmet laws are legal measures. There will be a "split of judicial opinion" on any law and magistrates, judges and lawyers delight in issuing pronouncements of constitutionality which preempt the right of due process.

It is my understanding that the Deputy Commissioner and Assistant Attorney General Robert Mahoney are moving on the #2 mirror question at present.

Windshields and mirrors on trail bikes are not required - so long as they are operated off-highway.

Handlebar height is specified for the purpose of eliminating the need to quibble over what is and what is not "safe control."

The regulations are based upon valid safety measures and are not designed as "a means of harassing a particular segment of the population," unless such "harassment" could be construed as to mean trying to reduce injury to the bike rider and his loss of control which most likely to involve other motorists who, although they are (or should be) properly protected by weight of steel, safety glazing and occupant restraints, still have some right to assume the bike rider is qualified and equipped to operate his machine. That he will not ram them because a bee got in his eye, or his arm had to reach too high in gripping the bars to steer. That because the bike struck the car and the reason they have a manslaughter charge and civil suit was because the rider's bare head was not up to ASA Z 90.1.

Attachments

Alaska State Legislature

House

JUNEAU ALASKA

April 27, 1971

Emery W. Chapple, Jr., Commissioner
Department of Public Safety
Pouch "N"
Juneau, Alaska 99801

Dear Commissioner Chapple:

During the 1970 legislative session, the House Judiciary Committee heard a good bit of testimony concerning the then recently adopted motorcycle regulations of the Department of Public Safety. Rather than introduce a bill or resolution on the subject, the committee sent a letter (dated May 29, 1970) to the commissioner of public safety, requesting him to "hold hearings and consider revision or repeal" of specified regulations (13 AAC 04.280, 285(b), 290, 295 and 300). One of the problems was that these regulations were defended by the department on the basis of the requirements of the federal Highway Safety Program Standards (23 C.F.R., Part 204 -- specifically Standard 3), yet they contained provisions that went considerably beyond the federal requirements. The committee was not convinced of the necessity of some of the provisions, and was concerned about the type of enforcement they would receive.

A copy of the letter is attached for your convenience; however, the only copy we could locate has three corrections noted on it, and I'm sure that these corrections were made before the letter was sent. The hearings, review and revision may have taken place, but I am not aware of any of these actions being taken in response to the committee's request. What is the status of these regulations?

Sincerely,

William J. Moran

William J. Moran, Chairman
House Judiciary Committee

WJM:mm

Alaska State Legislature

REPRESENTATIVE
BARRY JACKSON
P. O. BOX 340
FAIRBANKS, ALASKA 99701

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99801

REPRESENTING FAIRBANKS
AND INTERIOR ALASKA

CHAIRMAN, JUDICIARY COMMITTEE
MEMBER, HEALTH, WELFARE
AND EDUCATION COMMITTEE

House of Representatives

May 29, 1970

Mel J. Personett, Commissioner
Department of Public Safety
Pouch N
Juneau, Alaska 99801

Dear Commissioner Personett:

After hearing testimony on both sides of the matter, and after reviewing the material you submitted, the House Judiciary Committee requests that the Department hold hearings and consider revision or repeal of the following regulations pertaining to motorcycles: 13 AAC 04.280, 285(b), 290, 295, and 300.

While not taking a position on the constitutionality of any of these regulations, the committee is aware that there is a split of judicial opinion and that in some states the helmet requirement has been held invalid as an invasion of the right to privacy. Moreover, during the recent hearings held on these regulations by this committee, no evidence was presented which conclusively established that these requirements promoted either individual safety or the public safety. To the contrary, although examples were given of situations in which a helmet or face shield might be helpful, other examples were given of when they would be a definite hazard; also, windshields and mirrors on "two-wheel bikes" appear to be hazards rather than safety features. There was testimony that a mirror on a motorcycle was of little utility because of vibration; and you agreed that the requirement of two mirrors in 13 AAC 04.280(a) (1) is unnecessary.

The regulation on the height of "handlebars or grips" (13 AAC 04.290) is ambiguous as well as being subject to ~~interpretation~~ as an undue restriction on design variation. If there is a certainty that a design variation will result in motorcycles with a steering arrangement that poses a clear threat to the public safety, a regulation something like the following would be more appropriate: "No person may operate a motorcycle or motor scooter on which the handlegrips are at a height which does not reasonably allow for safe control of the vehicle." When the present language is read in conjunction with the regulation on windshields (13 AAC 04.295) some ludicrous results can occur.

With regard to 13 AAC 04.300, the committee believes it is a good idea, and a proper action for the benefit of the public, to specify standards

for the construction of protective headgear, goggles, etc. When a person decides that he wants to wear a helmet, for example, he should be able to rely on the safety of those offered for sale or rent. Since this section refers to the requirement that these items be worn at all times and in all circumstances, this section should be re-written. Also, the reference to sec. 280(a) (3) in 13 AAC 04.285(a) should be deleted.

The committee notes that the federal safety standard on motorcycles (1) does not require a windshield, face shield or goggles--just "eye protection"; (2) does not specify handlebar height or windshield height; and (3) does not require two mirrors.

The committee is concerned about the fact that these regulations, of at least questionable validity, of questionable benefit to the safety of the public and even to the individual, may be selectively enforced to provide a means of harassing a particular segment of the population. We do not believe that this is sound state policy. We expect that the revised regulations will be clearly valid and protective of the public safety, and that to the extent they are designed to protect the individual, due consideration has been given to the right to privacy and the policy which underlies that constitutional right.

Yours truly,

Barry W. Jackson, Chairman
Judiciary Committee
Alaska House of Representatives

BWJ:tmc

Alaska State Legislature

REPRESENTATIVE
BARRY JACKSON
P. O. BOX 348
FAIRBANKS, ALASKA 99701

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99801

REPRESENTING FAIRBANKS
AND INTERIOR ALASKA

CHAIRMAN, JUDICIARY COMMITTEE
MEMBER, HEALTH, WELFARE,
AND EDUCATION COMMITTEE

House of Representatives

June 1, 1970

Mel J. Personett, Commissioner
Department of Public Safety
Pouch "N"
Juneau, Alaska 99801

Dear Commissioner Personett:

After hearing testimony on both sides of the matter, and after reviewing the material you submitted, the House Judiciary Committee requests that the department hold hearings and consider revision or repeal of the following regulations pertaining to motorcycles: 13 AAC 04.280, 285(b), 290, 295, and 300.

While not taking a position on the constitutionality of any of these regulations, the committee is aware that there is a split of judicial opinion and that in some states the helmet requirement has been held invalid as an invasion of the right to privacy. Moreover, during the recent hearings held on these regulations by this committee, no evidence was presented which conclusively established that these requirements promoted either individual safety or the public safety. To the contrary, although examples were given of situations in which a helmet or face shield might be helpful, other examples were given of when they would be a definite hazard; also, windshields and mirrors on "trail bikes" appear to be hazards rather than safety features. There was testimony that a mirror on a motorcycle was of little utility because of vibration; and you agreed that the requirement of two mirrors in 13 AAC 04.280(a) (1) is unnecessary.

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Yours truly,

Barry W. Jackson

Barry W. Jackson, Chairman
Judiciary Committee
Alaska House of Representatives

BWJ:tmc

Memorandum

SAFETY DEPARTMENT:

National Highway Safety Bureau
222 S. W. Morrison Street
Portland, Oregon 97204

TO : Lt. Harold J. Sydnar, Juneau, Alaska
Mr. Mark Gibson, Boise, Idaho
Mr. Robert A. Shea, Helena, Montana
Mr. Gil W. Bellamy, Salem, Oregon
Mr. Glenn L. Crawford (Acting), Olympia, Washington

DATE: September 25,

In reply refer to: 08-00.2

FROM : Wm. L. Hall, Director
Highway Safety Programs Office
Portland, Oregon

SUBJECT: Repeal of Motorcycle Safety Helmet Laws

This will supplement our memorandum of September 17, 1969, concerning the Repeal of Motorcycle Safety Helmet Laws. Attached is a copy of an article that appeared in the October 1969 issue of Cycle Magazine. Cycle has a circulation of about 250,000. This article serves well as an advance warning of the vigorous attacks on helmet laws that we can anticipate in the coming legislative session.

Attachment

BUY U.S. SAVINGS BONDS REGULARLY ON THE PAYROLL SAVINGS PLAN

WE CAN OWN THE WORLD!

What's a government but silly putty? It can be pushed any direction and spreads out where there's no resistance. Bike power advocates in Illinois proved that it can be done: here's their 3-step formula for helmet law repeal.

BY FRANK CONNER

KEVIN CALLAHAN

o Government is like Silly Putty: push against it hard enough at one point, and it will recede from that point, flabbing out someplace else where there is less resistance. A blueprint for the successful, lawful combat of motorcyclists against government can be drawn from the activities of Illinois riders to repeal the Mandatory Helmet law.

Illinois riders were less than enchanted with the helmet ruling. Several groups had been formed to work against restrictive legislation, and had done much valuable spadework to stir up the riders, so the climate was right for revolution, but nobody had been successful at focusing rider-discontent against the forces of government in Illinois. Then eight riders casually decided to get together to see what they could do to get the helmet law overturned. They called themselves the "Committee on Legislation," and they decided that if they wanted to succeed, they should run their campaign like a business. First they needed a product: organized enraged motorcyclists. Then they needed to get their product to the market, which was the Illinois Legislature. Finally, they needed a good sales-feature for their product. Since legislators need to get reelected periodically, the votes of the riders made the best-possible selling-feature.

How good was their product? Well, there were 110,000 registered motorcycles in Illinois, which meant that about 250,000 people (including friends, wives, or parents) were predisposed to like motorcycles and could possibly be enlisted into the fight. Potentially, the committee had a very strong product; even a tiny fraction of 250,000 votes is something that most state politicians regard with great care. How to get the product to the market? The committee didn't have enough money to contact all 110,000 riders in the state, so they decided to work through groups.

The eight members of the committee listed the various groups whose names and addresses were readily available. The committee then wrote to these groups and asked for the names of any groups or dealers who weren't as yet on the list. In such manner, the committee collected the names of about 600 dealers, AMA-affiliated clubs, outlaw clubs, dealer-associations, etc. Now the committee had enough contacts to reach a large percentage of the riders in Illinois.

As a next step, the committee put together a map of the state, showing each of the political districts, and listing the names and addresses of the three state representatives and the one state senator from each district. Thus, any rider receiving a copy of the map would know whom to write.

The committee sent quantities of these maps to each of the 600 groups, along with a request to distribute the maps to the riders in that area. Along with the map went a letter asking the rider to write to each of the three representatives and the senator from his district, requesting repeal of the helmet law. The letter to the riders suggested some reasons why the law was unsatisfactory, but the committee felt that the campaign would be successful only if the riders wrote their own letters, stating their own beliefs. In addition, the committee got as many of the 600 groups as possible to send two members each to visit all of the legislators from their respective districts. This would give the legislators an unmistakable indication as to the amount of voting power that Illinois riders could swing.

Having gotten this far, the Committee on Legislation found that they had all sorts of access to news media. At first, they began to make use of the media. But then they decided that they should leave it strictly alone, because they would be hurting—not helping—their enterprise by attracting the attention of the public to their cause. The general public either doesn't care about motorcycling, or is opposed to it; the committee decided to let sleeping dogs lie.

As the next step, the committee needed to get somebody in the legislature to introduce a bill to repeal the helmet law. Who better than the man who had originated the helmet law? That particular legislator happened to live in the same town as one of the eight committee members, so the committee went to work there right away, getting the local motorcycling groups to begin visiting and writing to their legislator to inform him of their displeasure (Continued on page 59)

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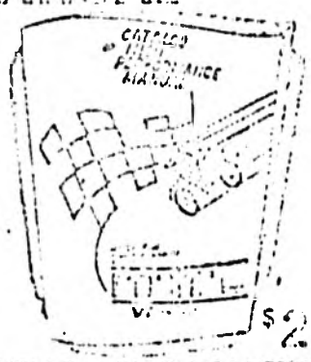

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World Continued from page 43

with his law. He saw the light of day and introduced a new bill to repeal his helmet law.

The committee than sent to each state legislator a rational list of reasons why the helmet law was unsatisfactory. The committee said, in effect: "We don't have our hands out for anything; all we want is not to be discriminated against. Repeal of the helmet law will have no adverse effect upon the state. We feel so strongly about this issue that if you disregard us, you will not like what happens at the next election."

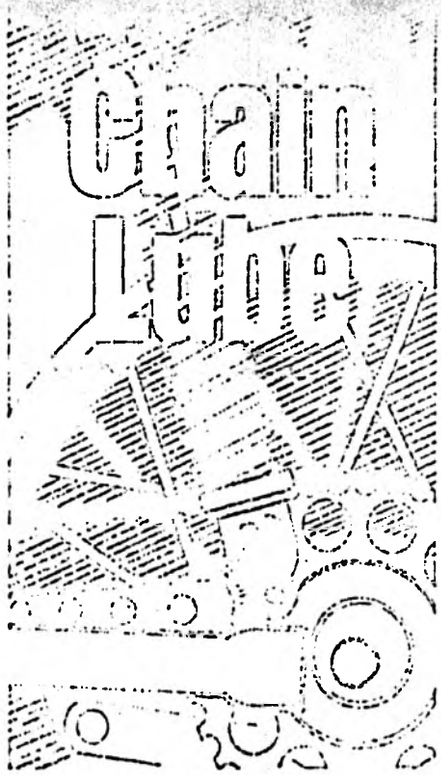
Then the letters from riders began to pour in. Some of the riders who wrote to their legislators made no attempt to mince words in expressing their dissatisfaction with the helmet law. The committee was not at all unhappy with that state of affairs; it gave the legislators a much better understanding of the riders' and voters' unhappiness. Then began the personal confrontations between riders and legislators. The committee felt that the outlaw groups were particularly effective in getting their message across. The legislators were amazed and appalled; they hadn't even been aware of the existence of motorcyclists before, except as scapegoats who could be put down with impunity. Now the scapegoats were threatening to bite them. Taking a leaf from the SDS handbook, various motorcycle groups were murmuring about putting 50,000 motorcyclists into Springfield during the summer if the helmet law were not repealed. It was not—apparently—an empty threat.

The repeal bill went first to the Illinois Senate. Forty-three voted "aye;" 11 voted "nay." In the House of Representatives, only eight of approximately 160 legislators voted against the bill.

The repeal bill was ready to be signed into law. Then, the state judiciary found in favor of Donald Freeze, who had brought suit previously to test the constitutionality of the helmet law, and the offending law was declared unconstitutional in Illinois.

However, courts in other states have upheld the helmet law, and some valuable lessons can be learned from the activities of the Committee on Legislation. Politicians respect organized voting-power (lots of loud voices). Reed Ehrlich, one of the eight members of the committee, has this to say about getting the repeal bill into and through the legislature: "It was so easy to do. It can be done anywhere else just as easily. All you have to do is organize carefully at the beginning. If we—the riders—are ever threatened seriously with restrictive national legislation, all we have to do is organize nationally the way the Illinois riders did regionally. We can own the United States."

That would be a change.



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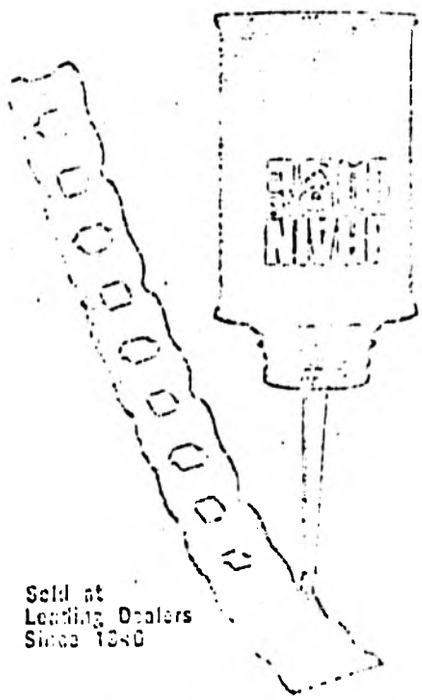

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CIRCLE NO. 45 ON READER SERVICE PAGE

On Regulations

1 New driving rules went into effect Jan. 1 throughout Alaska. Motorists were informed by the Alaska Department of Public Safety several hours before the rules became law.

2 But copies of the regulations are not available and won't be for several months.

3 In the meantime, we have not noticed any decrease in the number of hitchhikers along Water Street and Tongass Avenue in Ketchikan. The hitchhikers usually are high school kids bound to or from studies or activities up on The Hill.

4 The new road rules say that hitchhiking is illegal. Also declared illegal is Ketchikan Rotary Club's method of operating the Salvation Army Christmas kettle. It is illegal to ask any passing motorist for a donation.

5 Another habit we note Ketchikan motorists have has been declared illegal. That is driving with parking lights on. If lights are required at all headlights must be included.

6 Of interest to local motorists, too, is the requirement that parking lights be on at any time a vehicle is parked within six feet of the roadway. Along North and South Tongass there are few places a vehicle can get more than six feet from the roadway.

7 We can presume that the state troopers will be issuing warnings in the next few months instead of making arrests for violations of a code not yet generally available.

8 There are some good points in the new rules. There are some of doubtful value. There are some about which the public may have an opinion.

9 We believe the department failed the public in not advertising the proposed regulations before they went into effect. It is possible that a public hearing on the rules would have revealed better solutions to the problems.

10 We also believe it is possible that the validity of the department's rules may be questioned because of the procedure used to put them into effect. For example, members of the Alaska Legislative Council, a portion of the state's official lawmakers, were uninformed on the contents of the new driving regulations. Failure to properly advise the lawmakers of new rules is not good sense, even if it is legal.

11 This incident, together with the problems attending the emergency announcements of the fish and game department during the summer, leads us to believe that regulations should have a rider that they are not effective until some many days or hours after publication by a newspaper of general circulation in the area. This is a standard clause in a lot of city ordinances.

LMW, Jr.

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

TO: Captain Richard L. Burton

DATE : January 9, 1970

FROM: Captain James H. Dailey

SUBJECT: News Media - File 0052

This is in answer to your inquiry concerning the editorial which appeared in the January 6, 1970, edition of the Kaysville Daily News. The journalist could have checked each and every allegation by merely asking.

To acquaint you with the problem of answering the inquiries from the public which this editorial has generated, the following facts are documented:

Paragraph 1 - The enclosed copy of a news release issued to the AP on or about December 22, 1969, set out every regulation which was new. Few papers were interested enough to print any of the material, and those who did, printed minor excerpts.

Paragraph 2 - Copies of the regulations were mailed to law enforcement agencies, attorneys and courts and a limited number of copies are available to those who have a real need.

The Drivers' Manual, which is a summarization of the motor vehicle laws is currently being printed. The contract calls for a March 1, 1970, delivery date. This is the publication which is distributed to the public and which is written in non-legal terms.

Paragraph 3 - The hitchhiking law has been in effect since before 1959, and there is no reason to believe any great change is going to occur.

Paragraph 4 - This has also been a law since before 1959.

Paragraph 5 - This is a new provision and was promulgated in order that parking lights alone, means a parked vehicle to approaching drivers.

Paragraph 6 - This regulation is not new, but was revised to be less restrictive and more realistic than the previous wording. The six foot requirement is applicable only on highways outside cities or suburban districts.

Paragraph 7 - This assumption may be wrong depending on the violation and the circumstances. There are really only 14 new regulations.

Paragraph 8 - Profound statement!

Paragraph 9 - The regulations were published in newspapers in Juneau, Anchorage and Fairbanks. The law requires publication in only one paper.

Publication was made on October 13, 1969, in Anchorage; October 17, 1969, in Juneau; October 20, 1969, in Fairbanks, and public hearing was held on November 17, 1969, at Juneau, as was announced in the notice. Hearing was 30 days after the latest publication date, as is required by law.

Written comment was also solicited in the notice.

Paragraph 10 - Every legislator received a copy of the notice as is required by law. These were mailed on October 7, 1969.

The Legislative Affairs Agency, which is the executive branch of the Legislative Council, reviewed and re-reviewed the regulations and assisted with the drafting. This procedure began during July of 1969.

During the 1969 session of the legislature, numerous legislators were advised of the revisions taking place.

Paragraph 12 - A "filler" as he calls it is not necessary in view of the fact that the law does not become effective until 30 days after filing with the Secretary of State, and they cannot be filed until 30 days after publication.

So, if a regulation could go through the procedure without any delay, the minimum amount of time from publication to effective date is 60 days.

These regulations required 73 days from latest publication date.

It might be well to emphasize the fact that the new regulations are, in the large part, merely revision of regulations which have been in effect since 1953. The revisions, in fact, made many existing regulations less restrictive than they previously were. There are in fact only 37 new regulations out of a total number of 165. Of these 37, nine do not become effective until 1971; eight concern snow vehicles; ten maintain the actions of the police and other government agencies; four control the sale of equipment to the public. This leaves six which are new regulations directed at the individual driver. To these, of course, can be added those concerning snow vehicles which makes a total of 14.

Julie
Attachment

Copies to each Reg. mailed on Aug 7, 1969

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF PUBLIC SAFETY

Notice is hereby given that the Department of Public Safety, under authority vested by AS 28.05.030-050; 28.20.020; and 28.15.130, proposes to adopt, amend and repeal regulations in Title 13 of the Alaska Administrative Code as follows:

GENERAL: A complete revision of the regulations governing rules of the road; equipping of vehicles; inspection of vehicles; safety responsibility; definitions of words and phrases used in the traffic regulations; and adoption of a complete set of regulations governing the issuance or denial of school bus driver permits, is being made. Revisions include the deletion of various existing provisions, the addition of new provisions and the technical amendment of wording throughout the regulations. Adoption of these regulations will repeal 13 AAC 01.101; 103; 104; 105; and 106 and will adopt 13 AAC 02 (Rules of the road); 13 AAC 04 (Vehicle lighting, brakes and other equipment); 13 AAC 06 (Inspection of vehicles); 13 AAC 08 (Driver licensing and safety responsibility) and 13 AAC 10 (Definitions - traffic regulations). The provisions of these regulations concern the following:

A. RULES OF THE ROAD:

(1) Traffic signs, signals and markings;
(2) Use of the roadway;
(3) Right-of-way;
(4) Pedestrian rights and duties;
(5) Turning, starting and signals on stopping or turning;
(6) Special stops required;
(7) Speed restrictions;
(8) Stopping, standing or parking;
(9) Bicycles;
(10) Snow vehicles (equipment, restrictions on use, etc.);
(11) Miscellaneous provisions - governing leaving vehicles unattended, backing, riding on cycles and scooters, obstructing driver's view, opening and closing doors, livestock on roadway, riding in trailers, coasting, following emergency vehicles, crossing fire hose, littering, carrying or towing persons on outside of vehicle, embracing while driving, drinking while driving and leaving child in vehicle;

(12) General provisions - governing application of traffic regulations, obedience to police officer, riding animals or animal-drawn vehicles, fireman's private vehicle and emergency vehicles.

B. VEHICLE LIGHTING, BRAKES AND OTHER EQUIPMENT:

(1) Scope and effect of regulations;
(2) Lamps and other lighting equipment;
(3) Brakes;
(4) Other equipment - including horns, muffler, mirrors, windshield, tires, safety glazing material, flares and warning devices, air conditioning equipment, television viewers, anti-spray devices, seatbelts, safety chains, motorcycle and scooter requirements concerning goggles; face shields; helmets; handlebars, and standards for same, and required equipping of vehicles for sale, lease or rental.

C. INSPECTION OF VEHICLES:

(1) Vehicle equipment condition;
(2) Inspection by officer;
(3) Owner or driver to comply with inspection requirements;
(4) Roadside inspections;
(5) Inspection stickers;
(6) Prohibited practices - (repairs, etc.);
(7) Notice and approval of repair or adjustment.

D. DRIVER LICENSING AND SAFETY RESPONSIBILITY:

(1) School bus driver permits - (Article 1);

(a) Application of regulations;
(b) Denial of permit - (grounds)
(c) Application and examination requirements - (scores, composition and frequency);
(d) Medical standards;
(e) Permit to be carried;
(f) Restricted permit;
(g) Cancellation of permit - (grounds);
(h) Suspension or revocation of permit - (grounds and duration);
(j) Re-examination - (grounds).

(2) Safety Responsibility - (Article 2);

(a) Application of regulations;
(b) Reports required - (time limits);
(c) Security deposit - (form and beneficiary);
(d) Release from liability - (notarization required);
(e) Agreement for payment of damages - (Notarization required);
(f) Form of notice - (delivery and time limit).

E. DEFINITIONS - TRAFFIC REGULATIONS:

This chapter defines various words and phrases used in the traffic regulations and in certain sections of AS 28.

Since the regulations are so extensive as to preclude inclusion in this notice, interested persons may inspect them at a regional headquarters office of the Alaska State Troopers, Anchorage or Fairbanks, or obtain a reasonable number of copies by a written request addressed to the Department of Public Safety, Pouch N, Juneau, Alaska

Notice is also given that any person interested may present oral or written statements or arguments relevant to the action proposed at a hearing to be held at Room 423, Capitol Building, Juneau, Alaska, at 9:00 o'clock a.m. on November 17, 1969.

The Department of Public Safety, upon its own motion or at the instance of any interested person, may at the hearing or after it adopt the above proposals substantially as above set out without further notice.

DATE October 10, 1969

Commissioner
Department of Public Safety

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

(4) Motorcycle license renewal.

States should consider the following suggestions in the establishment of procedures for motorcycle license renewal:

(a) Renewal should be required at least once every four years.

(b) A motorcycle license reexamination, consisting of a vision screening and a knowledge test, should be part of the renewal.

(c) No renewal license should be granted unless the applicant has at some time passed a suitable motorcycle license examination.

4. MOTORCYCLE OPERATION

a. Introduction.

There are certain actions which should be instituted by the State to promote safe motorcycle operation and eliminate unsafe practices of motorcycle operators.

b. Unsafe practices.

There are several unsafe practices currently in widespread use by motorcycle operators, including:

(1) Carrying passengers or materials in front of the operator which interfere with operator control.

(2) Sidesaddle riding by passengers.

(3) Riding between lanes of moving traffic.

(4) Riding between the traffic lane and parked cars.

(5) Passing other vehicles in the same lane.

(6) Use of same traffic lane by more than two motorcycles abreast.

(7) Carrying more passengers than the motorcycle's capacity.

(8) Passing other motor vehicles on the right where prohibited.

See page 9-10-11-2-13

c. Implementation.

The following action should be considered by the State to encourage safer motorcycle operation:

(1) Enforce laws controlling unsafe practices.

(2) Educate operators and the public in proper vehicle operation procedures through training courses, public education, and community action programs.

(3) Emphasize proper operation of motorcycles in motorcycle license examinations.

(4) Ensure that highway warning signs are sufficient to cover the needs of motorcyclists, especially signs designating areas that may be particularly hazardous to motorcyclists.

(5) Permit renting of motorcycles by licensed operators only.

(6) Establish performance standards, such as minimum speed limits, for motorcycle operation on limited access highways.

5. MOTORCYCLE PERSONAL PROTECTIVE EQUIPMENT

a. Requirements.

Because of the high probability of injury resulting from motorcycle crashes the following requirements have been developed:

(1) Each motorcycle operator and passenger shall wear an approved safety helmet securely fastened on his head.

(2) Motorcycle operators shall wear approved eye protection devices.

b. Recommendations.

The Department of Transportation has not set performance specifications for safety helmets and eye protection devices. In the absence of Federal specifications, the State should set its own.

(1) Safety helmets.

(a) Safety helmet specifications.

The following specifications are recommended for consideration as a basis for State safety helmet performance specifications:

1 U. S. A. Standards Institute, Specification for Protective Headgear for Vehicle Users (Z90.1-1966).

2 The Z90.1-1966 specification modified to require only one impact per test site.

3 Motorcycle, Scooter and Allied Trades Association (MS&ATA), Specifications for Motorcycle Safety Helmets.

(b) Identification of approved helmets.

Helmets approved by the State should be labeled for identification by purchasers and enforcement officers. This label, indicating the helmet manufacturer's name or brand name and the model name or number, should be placed in a permanent manner at the outside lower rear of each helmet in letters of not less than one-quarter inch in height.

(c) Reflectorization.

While not required currently under the Motorcycle Safety Standard, it is recommended that each helmet have a reflectorized surface or have reflectorized material securely affixed on the left side, right side, and rear. This reflectorization should cover an area of at least 10 square inches at each of the specified sites and should preferably cover the entire helmet.

(2) Eye protection devices.

A satisfactory eye protection device can be goggles, a face shield, or safety glasses (excluding contact lenses).* Windshields are highly recommended as an additional measure. These eye protection devices should meet performance specifications established by the State.

(a) Eye protection approval.

1 State standard for motorcycle windshields should comply with the requirements of Federal Motor Vehicle Safety Standard 205:

* Whenever the motorcyclist wears corrective lenses, even though other eye protection devices may be worn, the use of safety glass or plastic lenses is recommended.

Glazing Materials - Passenger Cars, Multipurpose Passenger Vehicles, Motorcycles, Trucks, and Buses.*

2 Two standards developed under the auspices of the U. S. A. Standards Institute may be consulted for the development of performance specifications for other eye protection devices. These standards are:

a Standard Z26.1-1966: Safety Glazing Materials for Glazing Motor Vehicles Operated on Land Highways.

b Standard Z2.1-1959: Head, Eye and Respiratory Protection.

(b) Night use of eye protection.

Eye protection used at night should not be tinted.

(3) Other personal protective equipment.

Safety helmets and eye protection devices are the only personal protection equipment specified under the initial Motorcycle Safety Standard. Additional items, including protective footwear, gloves, jackets, and trousers should be encouraged in motorcycle operator education courses and public information programs.

6. MOTORCYCLE VEHICLE EQUIPMENT

a. Rearview mirror.

The State program should ensure that each motorcycle is equipped with at least one rearview mirror which provides the operator with an adequate field of vision at least 200 feet to the rear.

b. Passenger seat and footrests.

The State program should ensure that a passenger is carried only on a motorcycle designed to carry a passenger and that the motorcycle is equipped with a seat and footrests designed and located for use by the passenger.

* Excerpts from this Safety Standard, 23 C.F.R. 255.21, are reproduced as Appendix G of this volume.

c. Lamps and reflective devices.

State standards for lamps, reflective devices, and associated equipment should comply with the requirements of Federal Motor Vehicle Safety Standard 108: Lamps, Reflective Devices, and Associated Equipment -- Passenger Cars, Multipurpose Passenger Vehicles, Trucks, Buses, Trailers, and Motorcycles.*

d. Other.

Each motorcycle should be equipped with such other equipment as may be required by the State.

7. MOTORCYCLE VEHICLE INSPECTION

a. Introduction.

(1) Each motorcycle should successfully pass a safety inspection at the time the motorcycle is initially registered and at least annually thereafter, or at such other time as may be designated under an approved experimental, pilot, or demonstration program implemented by the State.

(2) Recommendations for implementing motorcycle vehicle inspection set forth in this volume are intended to supplement, not supersede, recommendations set forth in Volume 1, of this Manual, Periodic Motor Vehicle Inspection.

b. Implementation.

(1) General.

(a) U. S. A. Standards Institute, American Standard Inspection Requirements for Motor Vehicles, Trailers, and Semitrailers Operated on Public Highways (D7.1-1963) indicates inspection procedures which should be used as a guide whenever practical.

(b) Training given to motor vehicle inspectors should include training on motorcycle inspection procedures.

(c) The motorcycle inspector should have passed an examination demonstrating his knowledge of motorcycle inspection procedures.

* Excerpts from this Safety Standard, 23 C.F.R. 255.21, applicable to motorcycles manufactured after December 31, 1968, are presented as Appendix F of this volume.

(d) A licensed motorcycle operator should perform all motorcycle operations that may be required as part of the inspection.

(2) ~~Recommended inspection~~.

The items inspected in the State motorcycle inspection should include, but not be limited to, those listed below. It is not intended that this list require removal of wheels or disassembly of major components.

(a) Steering and wheel alinement.

1 Frame and front fork should not be bent or damaged.

2 Wheels should not be out of line.

3 Components should not be broken, loose, excessively worn, or missing.

4 Steering head bearing should not be loose, broken, or defective.

5 No portion of the handlebars may extend more than 15 inches higher than the level of the seat.

6 Handlebars should not be loose, bent, broken, or damaged.

(b) Suspension.

1 Motorcycle should not have broken, excessively worn, missing, defective, disconnected, or malfunctioning shock absorbers or other suspension components.

2 Motorcycle should not have broken or sagging springs.

(c) Tires, wheels, and rims.

1 Tires should not have less than 2/32 of an inch of the tread design remaining, or any part of the ply or cord exposed.

2 There should not be any tread cut or snag on the outside of the tire deep enough to expose the body cords.

3 Sidewalls should not be scuffed, cut, or snagged to the extent that body cords are damaged.

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

VOLUME 13, NUMBER 11, NOVEMBER, 197(

TRANSPORT

Published in the interest of greater traffic safety by the Ontario Department of Transport, Hon. Irwin Haskett, Minister

New Laws Will Affect Snowmobilers this Winter

From the time that first snowflake falls, and doesn't melt, thousands of Ontario residents start getting ready for the snowmobiling season.

If you're a snowmobiling enthusiast, there are some new laws you should brush up on before heading out this winter.

The scope of the laws regarding snowmobiling are outlined in a comprehensive new pamphlet now available from Department of Transport. "Motorized Snow Vehicles in Ontario" is a compact guide to the operation of your machine. The Motorized Snow Vehicles Act is also free upon request from the Highway Safety Branch, Ontario Department of Transport, Ferguson Block, Queen's Park, Toronto 182.

Here are some of the new laws you should know about in brief:

- Snowmobilers must now report any collisions on or off the highway which involve personal injury or damage exceeding $200 to property other than that of the owner or driver.
- The driver of a snowmobile must hold a driver's licence to take his machine on highways where snowmobile operation is permitted.
- The owner of a snowmobile is to be held responsible for any infractions committed by persons using his machine . . . . this owner responsibility is in addition to that of the operator.

Try to avoid driving your snowmobile on roads where the snow is hard-packed, icy, or where the roadway is dry and handling is difficult. Fully 78 percent of the 185 collisions which were reported on Ontario highways last year happened under these conditions. Drivers who mixed alcohol and snowmobiling accounted for 21 percent of the 185 collisions.

Forty percent of collisions occurred during the weekend in hours of darkness.

Don't venture out on ice-covered lakes until well into the winter months. Even then, currents from streams flowing in or out of the lake will make the ice thinner in some places. Another hazard for snowmobilers is barbed wire . . . . several cases were reported last year of snowmobilers who didn't see farmer's fences until it was too late.

New licence plates for motorized snow vehicles went on sale October 1st across Ontario. The new, chrome yellow and blue plates are good for two years and the registration fee is $4.00. •

Traffic Deaths Still Down From '69

The number of deaths due to traffic collisions took a sharp drop in Ontario during the first six months of 1970, showing a decrease of 14.7 percent over the previous year.

But at the end of August, the figures backslided a bit, with the over-all decrease for the eight months at 11.6 percent.

Ontario Traffic Safety asks motorists to take special care during the early winter months, a time of increased driving hazards. Help us beat the numbers. •

Motorcycle Deaths Down Since Helmet Law Passed

In Ontario, all motorcyclists have been required to wear crash helmets since September 1 of 1968.

Since that ruling went into effect, there's been a substantial reduction in the number of motorcyclists killed or injured in collisions.

There were 76 deaths in the 12 months before the law was passed. Those injured while drivers or passengers on motorcycles totalled 3,302.

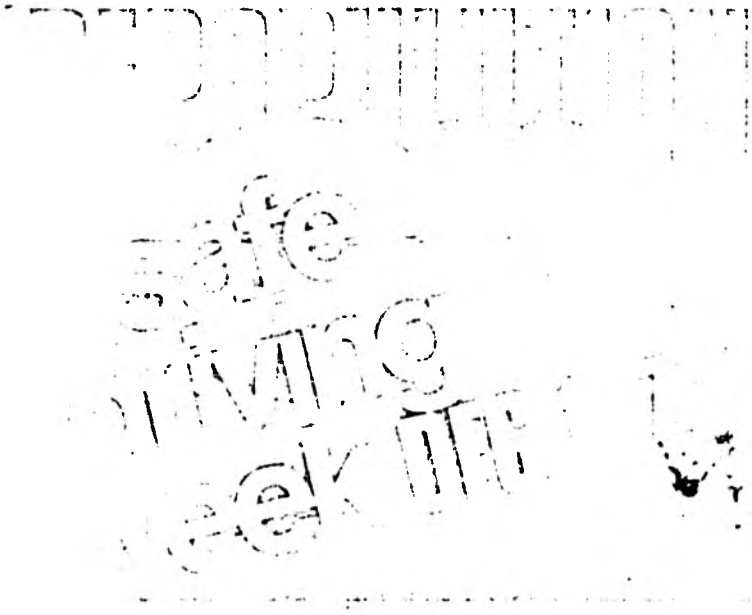
In the 12 months following the introduction of the new law, deaths decreased by 35.5 percent. There were 2,714 persons injured in motorcycle collisions — a reduction of 17.8 percent.

Figures for the following 12 months show that from September, 1969 to August 1970, deaths decreased by yet another 8.2 percent.

In comparison, the state of Michigan rescinded the law which required all motorcyclists to wear crash helmets in 1965 and deaths jumped 165 percent that year in comparison to the year 1967 when the helmet law was in force.

* * *

Ontario Traffic Safety reminds motorcyclists to look for the CSA sticker next time they're buying a helmet. Canadian Standards Association helmets are regulation helmets for Ontario motorcyclists. There's only one exception — helmets which conform to the requirements of the Snell Memorial Foundation or British Standards Institute are permitted, but only until December 31, 1971.



Safety experts say that if everyone spent a few seconds thinking about driving before starting up his car, we'd have a lot fewer traffic deaths.

That's exactly what the Canada Safety Council hopes you'll do during Safe Driving Week, December 1-7, and in the following weeks and months. Safe Driving Week represents a major attack on traffic collisions, the main cause of accidental death in Canada.

The work for Safe Driving Week begins now, involving hundreds of groups and individuals working for greater driving safety across Canada. They're counting on your support.

SYD

The State of Wisconsin

EXECUTIVE DEPARTMENT
DIVISION OF HIGHWAY SAFETY COORDINATION
26 S. CAPITOL BUILDING
MADISON 53702

WARREN P. KNOWLES
GOVERNOR

DEAN VAN GORDON
HIGHWAY SAFETY COORDINATOR

May 24, 1968

Mel J. Personett
Commissioner
Department of Public Safety
P.O. Box 2719
Juneau, Alaska 99801

Dear Mr. Personett:

The 1967 Wisconsin Legislature passed a law requiring motorcycle operators to wear helmets. This law was recently challenged.

You will notice from the enclosed decision that our Circuit Court in Dane County upheld the law. We thought you might be interested in this information.

Should it be appealed to the Supreme Court in Wisconsin, we will also forward the results of that action.

Sincerely,

DEAN VAN GORDEN

DVG:bdr

Enc.

STATE OF WISCONSIN | CIRCUIT COURT | DANE COUNTY

JAMES BISHIUS, Plaintiff, + 124423

v. +

JAMES L. HARRIS, Commissioner of Motor Vehicles, Defendant. +

Before: Hon. W. L. Jackman, Circuit Judge

Hearing May 13, 1968
Appearances: Plaintiff in person and by S. A. Schapiro
Defendant by Albert Harriman, Assistant Attorney General.

- - -

The plaintiff in this case challenges the validity of Section 64, Chapter 292, Laws 1967 which enacted, among other things, Sections 347.485, Stats. 1967. The challenge extends to subsections (1),(2) of Sec. 347.485 relating to requiring protective headgear and eye protection, and to Sec. 347.486 requiring handlebars to be not over 15 inches above the seat. Attack is also leveled against Section 45, Chapter 292, Laws 1967 enacting Sec. 346.595 (5) requiring motorcycles to have lights while being operated.

These statutes are attacked as violating the due process and equal protection clauses, presumably of both United States and state constitutions.

It is obvious that the purpose of requiring helmets is to protect against head injuries. It is likewise obvious that the reason eye protection is not only to protect the face from damage but to prevent foreign objects from getting in the eyes to affect eyesight and ability to control the motorcycle. The purpose of the handlebar requirement is not so obvious. It is a well known fact that a vehicle with its lights on is easier to see, even in the daytime.

I. Due Process - Protective devices - helmets and eye guards.

The purpose of the helmets and eyeguards being primarily to protect the motorcycle rider, is attacked as an unreasonable interference with the personal liberty of the individual to endanger himself. Motorcycles may be driven at high speeds, they afford no protection to the rider if he loses control or if he collides with another vehicle or object. We recognize that some cases do hold that helmets and similar safety devices designed to protect the individual against himself. Everhardt v. New Orleans, 203 So. 2d 423 (La.App.); People v. Carmichael, 278 N.Y.S. 2d 272; People v. Smallwood, 277 N.Y.S. 2d 272. These cases seem to proceed on the theory that everyone has a constitutional right to take any risks he wishes with his person and that self-destruction is not a matter of public concern.

In our modern day the state has a concern for the health and well being of each individual. The plaintiff argues that the regulation of personal conduct by use of the police power to be valid must affect the interests of the public at large, and the means used must be reasonably necessary to accomplish that purpose and not be unduly oppressive.

The inquiries to be solved in testing an enactment purporting to be for promotion of public health are these: Does a danger exist? Is it of sufficient magnitude? Does it concern the public? Does the proposed measure tend to remove it? Is the restraint or requirement in proportion to the danger? Is it possible to secure the object sought without impairing essential rights and principles? State v. Redmon, 134 Wis 89, 112.

There can be no question that as to the riders of motorcycles a danger does exist. We need go no further than to refer to the literature incorporated into the stipulation of the parties which is part of the record and which includes the conclusions of the U. S. Department of Health, Education and Welfare, Public Health Service. The recognition of the existence of the problem of head and face injuries to motorcyclists and of its magnitude is recognized by every authority that has made inquiry into the subject.

The incidence of vehicle accidents and the resulting injuries and the severity of such injuries does affect the public. It affects insurance rates, the requirements of public hospital service, lost manhours of employment with resulting loss of income tax revenues, public services to the disabled, and the widows and orphans of the deceased victims, and, since so many motorcyclists are young men, disability to serve in the armed forces. 16 Am Jur 605. The recognition of public interest in traffic accidents is manifest in Sec. 1, Chapter 292, Laws 1967. The plaintiff says that the interest of the public in the social consequences of injury to any one person or class is so indirect that the interest is not a true public interest. We do not consider the position of the plaintiff to be well taken. The consequences of head injuries to individuals do directly affect the public interest. The health and safety of individuals or groups of individuals are proper concerns of the legislature. Boden v. Milwaukee, 8 Wis 2d 318.

The provisions of Sec. 347.485 are calculated to, and, from the literature appended to the parties' stipulation, does tend to minimize the danger of head and face injuries, and in case of the eye protection in addition does tend to prevent interference with lookout due to dust, insects and debris being blown into the eyes. This is particularly true at the speeds motorcycles may be driven. The helmet is recognized by athletes, soldiers, and workmen in trades where the danger of head injuries from falling objects are a hazard, such as welders and operators of grinders, when safety glasses are required. We are of the opinion that the requirements of head and face protection are not disproportionate to the hazards to be guarded against. It is true that one of the hazards of motorcycling accidents

in the incidence of severe injuries to the limbs, especially the lower limbs. But the legislature in its wisdom need not provide a complete solution to every problem in order to make a partial solution to some of the problems valid legislation. Forest Home Dodge v. Kemp, 29 Wis 2d 78.

Just how one can protect himself against head and face injuries without some protective gear is not clear. On a motorcycle the rider has no protection whatever such as an automobile or truckdriver has from the construction of the vehicle. We do not see how protection can be furnished without either enclosing the vehicle or the driver and the helmet and face protection does exactly that.

The operation of vehicles on the highway is not an unlimited constitutional right. It is a privilege subject to reasonable regulations under the police power and the privilege may be withheld unless the driver complies with reasonable regulations. State v. Stehlek, 262 Wis 642; State v. Seraphine, 266 Wis 118. We see nothing unreasonable about the requirements of head and face protection required of motorcyclists.

But the plaintiff claims that since the requirements are solely for the protection of the rider and the rider has an inherent right to take any risks he wishes. While the protection afforded is for the rider, we do not accept this as for his benefit alone. As we have pointed out ante, the riders' welfare affects others. But accepting the contention at face value, the argument that the law must affect the public at large to be valid is not sound. The same may be said of every regulation to protect employees in the trades. The state has an interest in the health and welfare of each of its citizens, no matter how reckless he may be and has the power to enact legislation to protect the reckless citizen against himself, especially if he is a member of a substantial class of persons subjected to a similar hazard. Holden v. Hardy, 169 U.S. 366, 391-392; 42 L. Ed. 780; see also N.Y.C. RR Co. v. White, 243 U.S. 188, 61 L. Ed. 667. We see no difference in substance between requiring the use of protective devices by a class of persons, motorcyclists, and the requirement that certain tradesmen use protective devices. The persons affected are single individuals, but there is a large number of them; enough to constitute a substantial class of the persons who make up the public.

In conclusion we need only quote 16 Am Jur 605: "Protection of the safety of persons being one of the principal uses of the police power of the states, measures designed to protect and further safety of the individual are proper exercises of the power."

We find no justification for the plaintiff's complaint that the requirements of Sec. 347.485 are unreasonable or deny due process or unduly interfere with the freedom of the individual.

II. Equal Protection as Applied to Sec. 347.485.

The plaintiff attacks Sec. 347.485 as discriminating against motorcyclists, while not applying the same standards to bicycles and automobiles. The power-driven cycle is a unique machine. It is capable of maneuvre to high speeds by motor vehicle standards, with the hazards inherent in speeds at which the vehicle is driven. A bicycle is limited in its speed by the nature of the power which propels it. An automobile differs from a motorcycle in providing a shell surrounding the motorist. Both bicycles and automobiles can be dangerous to the riders, but the hazards of speed on the one hand and lack of an enclosure for the driver on the other hand do distinguish the motorcycle from both the bicycle and the automobile and make the hazard of operation distinguishable from both the bicycle and the automobile. Just because both the bicyclist and the motorist are subjected to hazards of head and face injuries does not mean that in order to make Sec. 347.485 valid it must apply to bicyclists and motorists. The degrees of hazard differ and therein lies the distinction. A classification is not unreasonable because it does not affect everyone who has any exposure to an evil. Forest Home Dodge v. Karns, 29 Wis 2d 78.

The rules governing classification are: It must be based on substantial distinctions which make real differences; it must be germane to the purposes of the law; it must not be limited to existing conditions only; and must apply equally to each member of the class. Borgnis v. Falk Co. 147 Wis 327, 354. "The question is not whether there may be some on one side of the line whose situation is practically the same as that on the other side, but whether there is a 'distinction between the classes as classes, whether there are characteristics which, in a greater degree, persist through the one class than in the other which justify legal discrimination between them.'" Borgnis v. Falk Co. 147 Wis 327, 356. State ex rel Boen v. Milwaukee, 33 Wis 2d 624. We are satisfied that the tests of what is proper discrimination between the classes suggested by the plaintiff is met in this case and that there is no unlawful discrimination in Sec. 347.485.

III. Vagueness of Section 347.485.

There is no vagueness of the statute. True the statute does not specify exactly what helmets or face guards are required, but delegates this duty to the Motor Vehicle Department. No complaint is raised by plaintiff's brief on this issue. The proposed regulations of the Motor Vehicle Department submitted with the parties' stipulation indicates that the requirements will be definite and certain with standards based upon tests to be made of the various headgear. The delegation of the making of such regulations has so long been considered proper as to afford no need for citation or argument. Verbeten v. Huettl, 253 Wis 510. We see nothing vague or indefinite about the statute. The regulations which will supplement the statute are not before us, but as proposed they are not vague or indefinite. We see no evidence presented that compliance with the statute will of necessity increase the hazard of motorcycle operation.

IV. Validity of Handlebar Statute - Section 347.486(1)

What we have previously said as to discrimination is applicable to Section 347.486 (1). There is no invalid classification.

The question of reasonableness of the statute does, however, raise a doubt. The burden is upon the plaintiff to demonstrate in what respect the law is unreasonable or arbitrary. We find no reference to this subject in plaintiff's brief. The complaint suggests that the matter of height of handlebars is not a proper subject of regulation and creates a hazard.

It is obvious that proper steering apparatus is essential equipment for any motor vehicle. 7 Am Jur 2d 706. Just what is proper equipment may be debatable and if it is it is for the legislature to make the choice in the absence of a showing that the choice is unreasonable or arbitrary.

The statute was enacted to prohibit the use of the high handlebars that are sometimes seen and which appear to be clumsy and to some extent obstruct peripheral vision when used by persons of ordinary height operating motorcycles. Just because in the case of riders of unusual height the high handlebar may not be inappropriate does not make the regulation invalid, especially in the absence of a showing that the extremely tall person cannot be accomodated in some other way as by longer handlebars. The objection voiced in the complaint is not to the law as it applies to one extraordinary person, but to all motorcyclists.

We are of the opinion that the plaintiff has not demonstrated that the regulation of the height of handlebars is arbitrary or unreasonable, nor is it discriminatory.

V. Headlights - Section 346.595 (5)

The statute requiring headlights of motorcycles to be lit at all times when the machine is in operation is attacked by the plaintiff "because it is arbitrary and invalid by imposing such restrictions on operators of motorcycles but not on operators of bicycles or automobiles."

Lighted headlamps do more than show the way at night. They are warnings at night and by day of the approach of a vehicle. It might very well be required of automobiles to have headlights lit in the daytime. However, by virtue of the size of automobiles alone, their presence should be obvious. A motorcycle is a small machine covered to a large degree by the rider and it is easy for the machine and rider to blend into the background and not be seen by other travelers. The statute is designed to prevent this. Anyone who has had experience in the trial of accident cases involving motorcycles with automobiles has heard the motorist in almost every case complain that he did not see the motorcycle. This is such a common complaint, even in the dayti

that it is almost universal. Here again, the bicycle is different in that it is slow-moving and hence more easily controlled by the cyclist. The automobile differs in size. So the classification is not unreasonable nor is the regulation one without a sound basis in experience, as well as reason.

VI. Conclusion

The court concludes that Sections 347.385, 347.486(1) and 346.595(5) are all valid enactments.

Therefore, it is

ORDERED: That the Attorney General will prepare the necessary findings of fact, conclusions of law and judgment declaring that Sections 347.485 (1)(2), 347.486, and 346.595 (5) are valid and enforceable and dismissing the complaint, and after submitting the same to opposing counsel for approval as to form, present them to the court for entry.

Dated May 14, 1968.

BY THE COURT:

W. L. JACKMAN

Judge

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DEC 2 10 46 AM '68

DEPT. OF PUBLIC SAFETY

Committee on Medical Aspects of Automotive Safety

Medical Aspects of Motorcycle Safety

In recent years physicians have seen more and more injuries and deaths as a result of the increase in motorcycling. Physicians with patients who drive motorcycles or who have children who drive, or plan to drive, have an unusual opportunity to practice preventive medicine by giving counsel concerning the safe operation of such vehicles. This guide has been compiled by the American Medical Association's Committee on Medical Aspects of Automotive Safety to give physicians general background information and suggestions which should be of help in cutting down the tragic and increasing toll of injury and death.

In the decade following 1956, the number of motorcycles registered in the United States has more than quadrupled, and the trend shows every indication that it will continue to rise. In 1956 there were 400,000 registered motorcycles, but by 1967, the figure reached 2 million. If the trend continues, by 1970 there will be more than 5 million such vehicles in use. The word "motorcycle" as used in this guide means all two-wheeled motor-powered vehicles. A number of three-wheeled (sidecar) motorcycles are used primarily by police departments and package-delivery firms, and the suggestions in this guide apply to these as well.

The rapid increase in motorcycle popularity can be traced to the introduction of the small, lightweight vehicle. The cost of these smaller vehicles has placed them within reach of hundreds of thousands of young adults. Motorcycling may seem to those not familiar with accident records to be merely a harmless sport and an efficient means of transportation, but statistics prove that it can be hazardous and that lives and limbs are being sacrificed at an increasing rate.

The Committee on Medical Aspects of Automotive Safety: H. A. Fenner, Jr., MD, *Chairman*, Hobbs, NM; Richard C. Dillihunt, MD, Portland, Me; Arthur H. Keeney, MD, Philadelphia; William K. Keller, MD, Louisville; Abraham J. Mirkin, MD, Cumberland, Md; Paul L. Weygandt, MD, Akron, Ohio; and Lee N. Hames, *Secretary*, Chicago.

Reprint requests to Secretary, Committee on Medical Aspects of Automotive Safety, 535 N Dearborn St, Chicago 60610.

Safety authorities are deeply concerned over the more than 2,000 persons who were killed in motorcycle crashes in 1966[1] and even more so by the predictions that about 5,000 will be killed yearly by 1970 if the present trend continues. In addition, the National Safety Council estimates that approximately 250,000 motorcyclists were injured in 1966. As with the fatalities, the number of injuries also undoubtedly will continue to increase. The medical profession is concerned not only with the number of injuries, but with the type of injury that often results. Severe head injury, with permanent brain damage, is all too common, and fractured extremities, while not ordinarily critical, often do result in permanent disability.

Although automobile crashes are of concern to all, the "packaged" automobile occupant has a much greater chance of not being injured or killed. Death rates from motorcycle crashes per 100,000 registered vehicles are more than double those for automobile crashes, and when in a crash, the motorcyclist is injured 80% to 90% of the time, often very seriously. This is due largely to the fact that when he loses control of his vehicle, he almost always is thrown onto the road or into surrounding solid objects, and when he collides with another vehicle, there is even a greater danger of serious injury or death. Although many collisions undoubtedly are the fault of an automobile driver, it is the cyclist who bears the brunt of the crash because he has very little protection.

During recent years there has been a growing interest in finding ways to reduce these deaths and injuries. The motorcycle problem is attacked in the highway and traffic safety legislation now being implemented. Many states are cooperating in searching for ways to reduce the unnecessary toll. The American Medical Association and many of the state and large county medical associations are devoting efforts to this problem. The motorcycle industry itself is concerned about safety in cycling.

To help reduce the alarming toll and to help

make motorcycling a safe means of transportation, as well as a safe and pleasurable sport, the following suggestions are given:

Concerning the Health of the Driver

1. The physical and mental condition of the motorcyclist must be at least as good as that of the automobile driver: regular medical examinations are advisable.
2. Known handicaps, such as those connected with vision, must be compensated. Patients with cardiac problems must be evaluated most carefully if they intend to drive a motorcycle.
3. A proper mental attitude must be developed by the driver: every effort must be made to avoid carelessness, recklessness, irresponsibility, and anger.
4. Drugs and narcotics must not be used before or while driving, unless under medical prescription, in which case, the physician should be informed that his patient intends to drive while using these prescriptions.
5. The use of alcohol adds tremendously to the normal hazards of motorcycling and should not be used if the individual intends to drive. If the driver does drink, a one-hour wait before driving for every drink consumed will help to keep the driver from becoming intoxicated.

Concerning the Vehicle

1. The driver should learn all he can about the motorcycle he intends to purchase.
2. Instructions in its operation should be obtained from a qualified instructor.
3. Different sizes and types have different handling qualities, and the driver should not switch to other machines without learning about their characteristics.
4. The importance of upkeep cannot be overemphasized: it can easily be difference between life and death.

Concerning Vehicle Operation

1. All state and community motor vehicle laws, both as to licensing and operation, should be learned and observed.
2. New drivers have the most crashes. The operation of a motorcycle requires special skills, which are learned only through adequate instruction and extensive experience.
3. Public roads should not be used until the driver is completely familiar with the operation of his vehicle.
4. Night driving is extremely dangerous, even for the experienced driver, and alertness is especially necessary at dusk. Special care must be taken, also, when unfavorable road or weather conditions exist.
5. A safe distance must be kept between the motorcycle and any vehicle in front—at least twice the one-vehicle length for each 10 miles per hour, which is recommended for automobiles.
6. Since the automobile driver may not give the motorcycle adequate space, or may not even see it, the motorcyclist must always be alert.
7. Passengers should not be carried unless the motorcycle is equipped to do so, and never more than one.
8. Driving abreast should be avoided. Not only is it usually illegal, but it cuts down on the "safe maneuvering" area.
9. A "tailgating" vehicle should be encouraged to pass at the first safe opportunity.
10. Motorcyclists should be meticulous in signaling for slowing, stopping, or turning.
11. Brakes should be used before entering a curve—not after the vehicle is in it.
12. The motorcycle should *never* be driven between traffic lanes, or on the "shoulder," since a suddenly swerving automobile may be difficult or impossible to avoid.
13. Objects which prevent both hands from being on the handlebars at all times should not be carried.
14. Motorcyclists should slow down and be especially alert if dogs and other animals are in the vicinity. The same applies to pedestrians, especially children and older persons, who often do the unexpected.
15. Defensive driving can be successful in reducing the number of automobile crashes: it probably can be just as successful as far as motorcycle crashes are concerned. (The National Safety Council, Chicago, sponsors a national defensive-driving course.)

Concerning Clothing and Equipment

1. Approved protective headgear should always be worn by driver and passenger. (Helmets should meet the specifications [Z90.1-1966] set by the USA Standards Institute, New York.)
2. Eye protection should be used at all times.
3. Clothing should be heavy enough to protect—preferably of a highly visible color. Bare arms and legs are an invitation to unnecessary injury.

Concerning Courtesy

1. Noise should be kept to a minimum. The motor should never be revved up unnecessarily and original muffler equipment should not be removed or altered.
2. Special care should be taken in residential areas, especially at night.

Concerning Emergency Care.—Even if the above suggestions are followed, the motorcyclist may still become involved in a crash. Severity of the injuries may be minimized and lives may be saved by summoning emergency medical care immediately. However, when the victim is in obvious need of *immediate* care, as in the case of heavy bleeding, first-aid care should be provided on the spot. Injured persons should be kept warm and made as comfortable as possible, but should not be moved unless necessary for their safety.

Reference

1. *Accident Facts: 1967 Edition*, Chicago: National Safety Council, 1967, p 56.

24 Printed in U.S.A.

nome nugget 7.23.69

Child Without Crash Helmet Dies of Motorcycle Injuries

A novice motorcycle rider from Unalakleet died of her injuries here Saturday night after doctors fought unsuccessfully to save her life.

The victim was Gloria Millie Kayourkluk, 13, daughter of Mr. and Mrs. Lawrence Kayourkluk of Unalakleet.

Trooper Chuck Miller of the Nome post of the Alaska State Troopers, said the child was not wearing protective head gear and added that she had learned to ride the motorbike only the day before. The vehicle was the property of one of her brothers.

Riding tandem with Gloria at the time of the accident was a friend, Della Katchatag, who received minor injuries.

Della told Trooper Miller that just before the accident occurred at 9 o'clock in the evening she cried out to Gloria, asking her to slow the machine. The Trooper estimated the speed at 40-45 miles an hour at the time the vehicle left the road. It crashed into two upright four by four pieces of lumber used to mark the location of a utilador.

Trooper Miller said the girl apparently turned the throttle the wrong way when her passenger pleaded to slow down.

They had ridden past the school and were headed for the Federal Aviation Agency housing area when the fatal accident occurred.

The body was returned to Unalakleet today.

Man Dies When Hit On Cycle

ADT 11-2-70

An Anchorage man was killed about 2:30 a.m. Sunday when the motorcycle he was riding was struck from the rear as he was stopped for a red light.

Ronald Peter LaFramboise, 18, of 2603 29th Ave., received massive internal injuries, a brain concussion and hemmoraging of the brain in the accident. He died a few hours after the accident in Providence Hospital.

City police meanwhile arrested Larry Allen Austermual, 29, of Kasilof. He was charged with driving while intoxicated and with failure to remain and render assistance, a felony.

Police Sgt Ron Otte said LaFramboise was stopped for a red light at Spenard Road headed west on Northern Lights Boulevard when the incident occurred. The Austermual vehicle continued through the intersection after the impact.

Otte said witnesses followed the vehicle to the Minnesota Bypass, where it turned right. Austermual was apprehended at 36th Avenue and the bypass, Otte said.

The injured man was taken to Providence Hospital for treatment. He died a few hours later, Otte said. There was no indication that the motorcycle rider was wearing a safety helmet.

Austermual was lodged in state jail pending arraignment on the charges.

LaFramboise had attended West High School and was employed with a local car wash. He was born in Anchorage.

He is survived by his father, Philip J. LaFramboise, Anchorage; his mother, Mrs. Philomene Evans, Anchorage; five brothers, Anthony, Larry and Marcel, all of Anchorage, Philip J. Jr., Fairbanks, and Gregory, in the U.S. Marines in Australia, and nine sisters, Mrs. Shirle Schmidt, Mrs. Beverly Babbitt, Mrs. Linda Estabrook, Mrs. Diann Martin, Mrs. Charlotte Kendrick, Miss Therise LaFramboise, Miss Janice LaFramboise and Miss Patricia LaFramboise, all of Anchorage, and Mrs. Carol Williams, Amboy, Wash.

Funeral arrangements are pending at Green Funeral Chapel.

The death brought to 83 the number of motor vehicle deaths in Alaska this year, compared with 53 at this time in 1969.

It brought the number of traffic deaths in Anchorage to 10 this year.

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
NATIONAL HIGHWAY SAFETY BUREAU
WASHINGTON, D.C. 20591

JAN 22 1970
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JUNEAU, ALASKA

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DEPT. OF PUBLIC
SAFETY

Mr. Mel J. Personett
Commissioner, Department of
Public Safety
Pouch N
Juneau, Alaska 99801

Dear Mr. Personett:

We are aware that State motorcycle protective headgear requirements, enacted to implement the Department of Transportation's Safety Program Standard No. 3 entitled Motorcycle Safety, are being challenged in many jurisdictions. In May of last year I provided the Governor of your State with a memorandum prepared by the legal staff of the Federal Highway Administration supporting the constitutionality of headgear legislation.

Subsequently the U.S. Supreme Court in Bisenius v. Karns, 89 S. Ct. 2033 (1969) dismissed an appeal attacking the constitutionality of the Wisconsin statute "for want of a substantial federal question." This is highly significant because such a disposition means that the Supreme Court viewed the Wisconsin court decision upholding constitutionality to be correct.

I enclose for your information a revision of the legal memorandum provided your Governor which has been updated to include Bisenius and other cases which have come to our attention in the interim.

In addition to court challenges, many States will be facing increased attempts to create legislative opposition to their helmet requirements. As mentioned in my letter of May 16 to your Governor, there is substantial evidence that strongly supports these requirements and hence argues against repeal actions. If opposition to the statutory requirement is developing in your State, you might want to make available to legislators or legislative committees the

enclosed memorandum along with other material, such as the information we sent you last year showing a reduction in motorcycle fatalities of 30% in those States adopting the helmet requirement. Pertinent materials are enclosed for your use. We would be glad to help you in this regard, including making more copies available to you.

If I can be of any further assistance, please do not hesitate to call me.

Sincerely,

R Brenner

Robert Brenner
Acting Director

Enclosures

cc: Coordinator
State Attorney-General
Regional Highway Representative

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

National Highway Traffic Safety Administration
U.S. DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C. 20591

IN REPLY REFER TO:

42-13

January 13, 1971

AIRMAIL

Mr. Robert J. Mahoney
Assistant Attorney General
State of Alaska
360 K Street
Anchorage, Alaska 99501

Attention: Sanford Gibbs

Dear Mr. Mahoney:

Lt. H. J. Sydnam, Director of the Alaska Traffic Safety Bureau asked that I send you the enclosed staff memorandum on motorcycle helmet law constitutionality. The enclosed document dated January 1970 is the complete staff memo. The document dated November 1970 is the material needed to update the January 1970 memorandum. We are in the process of having the revised memorandum printed, but it won't be available for several weeks.

If the National Highway Traffic Safety Administration can be of further assistance, please let us know.

Sincerely,

Lewis S. Buchanan
Motorcycle Safety Specialist
Traffic Safety Programs

Enclosures

cc: Lt. Sydnam w/incs

STAFF MEMORANDUM

ON THE

CONSTITUTIONAL QUESTION PRESENTED BY

STATE MOTORCYCLE HEADGEAR REQUIREMENTS

JANUARY 1970

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
NATIONAL HIGHWAY SAFETY BUREAU

QUESTION PRESENTED

Whether a State requirement that any person riding upon or operating a motorcycle on the streets or highways of the State shall wear upon his head a protective head device of a type approved by the State is unconstitutional under the Fourteenth Amendment.

BACKGROUND

Twenty-three U.S.C. § 402(a) (P. L. 89-564, the Highway Safety Act of 1966) requires each State to have a highway safety program approved by the Secretary of Transportation and in accordance with uniform standards promulgated by him.

Highway Safety Program Standard 4.4.3 released by the Secretary on June 26, 1967, and entitled Motorcycle Safety, (23 C.F.R. Part 204) requires each State to have a motorcycle safety program providing as a minimum, inter alia, that when a motorcycle is being operated on streets and highways, each motorcycle operator and passenger shall wear an approved safety helmet. Latest available information [1/] indicates that as of September 1, 1969, 41 states had enacted motorcycle protective headgear statutes ("headgear legislation" hereafter) of this type providing criminal penalties upon violation. Additionally an unknown number of cities may have enacted similar municipal ordinances.

As of January 1, 1970, there have been decisions in response to 43 known separate court challenges of State and municipal headgear legislation. In 31 instances legislation has been upheld, and in 12 it has been declared unconstitutional. [2/] Headgear legislation has been upheld by 11 State Supreme Courts (Vermont, Missouri, Florida, Washington, Oregon, North Carolina, Rhode Island, Massachusetts, Louisiana, North Dakota, and Wisconsin), 12 appellate courts (three in New York, two in New Jersey, and one each in Hawaii, Pennsylvania, Texas, Maryland, Ohio, Washington, and Connecticut), and 8 trial courts (two each in Pennsylvania, Kansas and New York, one each in South Dakota and Minnesota). Headgear legislation has been declared unconstitutional by 1 State Supreme Court (Illinois), 3 appellate courts (one each in Idaho, Arizona and Michigan), and 8 trial courts (two in New York, and one each in Ohio, Florida, Missouri, Kentucky, Colorado, and Michigan).

1/ Insurance Institute of Highway Safety, Legislative Review 1970, p. 20.

2/ This figure is computed on the basis of the last known decision in each case. Such decision, of course, may represent an appellate reversal, or be subject to reversal on appeal.

Additionally, it is the opinion of the Attorney General of Oklahoma that the State's headgear legislation is unconstitutional and the opinion of the Attorney General of New Mexico that a proposed city ordinance would be invalid if applied to citizens over 18 years of age.

The Supreme Court has never agreed to review one of these cases on the merits. However, in June 1969 the Court in Bisenius v. Karns dismissed an appeal (89 S. Ct. 2033 (1969)) attacking the constitutionality of the Wisconsin statute "for want of a substantial federal question". Such a disposition means that the Court viewed the decision below, upholding constitutionality, to be correct.

I

THE UNITED STATES SUPREME COURT VIEWS A STATE SUPREME COURT DECISION UPHOLDING CONSTITUTIONALITY OF HEADGEAR LEGISLATION TO BE CORRECT

During its 1968-69 term, the United States Supreme Court denied two petitions for certiorari in cases upholding headgear legislation 1/ and dismissed an appeal in a third case "for want of a substantial federal question", Bisenius v. Karns, 165 N.W. 2d 377 (S. Ct. Wisc. 1969), appeal dismissed, 89 S. Ct. 2033 (1969). The appellant had attacked Wisconsin's headgear legislation (§ 347.485(1)(a) Stats.) as a restriction upon individual liberty and as exceeding the police power of the state, alleging that both violated the due process clause of the Fourteenth Amendment.

The Supreme Court's dismissal of appeal "for want of substantial federal question" means that the Court views the decision below to be correct, and that no substantial question on the merits was raised. 2/

The issues raised in Bisenius are essentially the same as those raised in other suits challenging the constitutionality of headgear legislation.

1/ Everhardt v. City of New Orleans, 217 So. 2d 400 (S. Ct. La. 1968) reversing 208 So. 2d 423 (La. App. 1968), cert. denied 89 S Ct. 1775 (1969); Mass. v. Howie, 238 N.E. 2d 373 (S. Jud. Ct. Mass. 1968), cert. denied 89 S. Ct. 485 (1968).

2/ Stern and Gressman, Supreme Court Practice 195 (3rd ed. 1962)

II

THE PRESUMPTION IN FAVOR OF THE CONSTITUTIONALITY OF A STATUTE IS ESPECIALLY APPOSITE WHEN A STATE STATUTE IMPLEMENTS THE EXPRESS COMMAND OF THE CONGRESS OF THE UNITED STATES.

There is a "long established presumption in favor of the constitutionality of a statute", Brandeis J., Ashwander v. Tennessee Valley Authority, 297 U.S. 288 at 354, (1936). This presumption has been recognized by the Supreme Court since the earliest days of the United States. Calder v. Bull, 3 Dall. 386, 399, (1798). In the words of Mr. Chief Justice Waite: "Every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt." Sinking-Fund Cases, 99 U.S. 700, 718, (1879). Accord: Marshall C.J., Dartmouth College v. Woodward, 4 Wheat. 518, 625 (1818); Washington, J., Ogden v. Saunders, 12 Wheat. 213, 270 (1827).

This presumption applies to an Act of a State legislature as well as an Act of Congress, and "all reasonable doubts will be resolved in favor of the lawful exercise of their powers by the representatives of the people." State of North Carolina v. Anderson, 164 S.E. 2d 48 (1968) upholding that State's helmet legislation. The presumption extends to a city ordinance as well. Everhardt v. City of New Orleans 217 So. 2d 400 (S. Ct. La. 1968), reversing 203 2d 423 (La. App. 1968) cert. denied 89 S. Ct. 1775 (1969).

The presumption of constitutionality seems especially apposite when a State enacts legislation as a complement to an Act of Congress. The Highway Safety Act of 1966 (P. L. 89-564) was enacted "To provide for a coordinated national highway safety program through financial assistance to the States to accelerate highway traffic safety programs . . . ." It requires that "Each State shall have a highway safety program . . . designed to reduce traffic accidents and deaths . . . ." These programs "shall be in accordance with uniform standards promulgated by the Secretary." 23 U.S.C. § 402(a)

Pursuant to the authority granted him by the Act the Secretary released Highway Safety Program Standard 4.4.3 (23 C.F.R. Part 204, Highway Safety Program Standard No. 3) title "Motorcycle Safety." The purpose of the Standard was

> "To assure that motorcycles, motorcycle operators, and their passengers meet standards which contribute to safe operation and protection against injuries."

The background of the Standard shows the imperative need for such a Standard:

> "Deaths and injuries from motorcycle accidents doubled between 1963 and 1965. This fact is particularly alarming when it is understood that most of those killed and injured were young people under the age of 25. Motorcycle registrations have jumped from 574,080 in 1960 to 1,914,700 in 1966. By 1970 the annual increase is expected to reach 1 million per year. Motorcycle safety takes on grave dimensions in view of the fact that since 1960 the rate of motorcycle fatalities has increased at about the same rate as the number of motorcycles."

The Standard requires that "Each State shall have a motorcycle safety program to insure . . . that protective safety equipment for driver and passengers will be worn," specifically, "as a minimum," that

> "B. Each motorcycle operator wears an approved safety helmet and eye protection when he is operating his vehicle on streets and highways.
>
> "C. Each motorcycle passenger wears an approved safety helmet . . . ."

This, then, is the Federal Standard that the State legislation was enacted to implement at the express command of the Congress.

III

THE POLICE POWER OF A STATE INCLUDES THE POWER TO REQUIRE A MOTORCYCLIST TO WEAR PROTECTIVE HEADGEAR.

Headgear legislation stems from the police power of a State. The police power includes the power to enact laws within constitutional limits to promote the public safety and health, but from its nature it is incapable of exact definition. See e.g. Berman v. Parker 348 U.S. 26 (1954). It is one of the least limitable of governmental powers, and a proper exercise thereof may involve limitation of the use and enjoyment of private property without violation of the due process clause of the Constitution. See e.g. Queenside Hills Realty Co. v. Saxl, 328 U.S. 80 (1945).

The public streets, roads, and highways of a State are the property of all the people of a State, and a State has plenary power over the regulation of the use of such for the safety and best interests of the public. The Supreme Court has recognized and given sanction to the State exercise of its police power over use of the public way for more than 40 years:

> "Motor vehicles are dangerous machines, and, even when skillfully and carefully operated, their use is attended by serious dangers to persons and property. In the public interest the state may make and enforce regulations reasonably calculated to promote care on the part of all . . . who use its highways."
> Hess v. Pawloski, 274 U.S. 352, at 356 (1927).

Protection of a motorcyclist and his passenger while on the public roads then is within the legitimate concern of the State and not an area reserved to the individual. Legislation requiring the use of protective headgear by both cyclist and passenger is reasonably related to the end envisioned of reducing deaths and injuries to cyclists and passengers upon the public roads. Therefore State headgear legislation is a valid exercise of the police power by a State. See Massachusetts v. Howie, 238 N.E. 2d 373 (S. Jud. Ct. Mass., 1968); 89 S. Ct. 485 cert. denied 1968); State v. Edwards, Case No. 583370, Mun. Ct. Hennepin Cty. Minn. (1968).

IV

A STATE STATUTE REQUIRING A MOTORCYCLIST AND PASSENGER TO WEAR PROTECTIVE HEADGEAR DOES NOT VIOLATE THE FOURTEENTH AMENDMENT.

A. EVEN IF THE PRIMARY OBJECT OF HEADGEAR LEGISLATION IS TO PROTECT AN INDIVIDUAL FROM HIMSELF, SUFFICIENT PUBLIC INTEREST EXISTS TO JUSTIFY THIS STATUTE AND THERE IS NO VIOLATION OF THE DUE PROCESS CLAUSE.

If headgear legislation bears no relationship to the general welfare but has the sole effect of requiring an individual to protect himself from himself, it will establish a restriction upon personal liberty such as to constitute a denial of due process.

But such legislation is based upon sufficient public interest to constitute a valid exercise of the State police power.

The unprotected motorist presents a potential traffic hazard to the public at large. Unlike the operator of an enclosed motor vehicle a cyclist without a helmet is unprotected against falling objects such as tree branches. He is also unprotected against flying stones or gravel from the wheels of other moving vehicles. If struck in the head an unprotected cyclist could be so affected as to lose control of the vehicle and be the cause of death or injury to himself and other users of the highway. Everhardt v. City of New Orleans, supra; State ex rel. Colvin v. Lombardi, 241 A. 2d 625 (S. Ct. R. I. 1968).

Further, once a cyclist, passenger, or other person is injured because of the action of an unprotected cyclist, there is a tangible effect upon the public. There is an effect upon insurance rates, public hospital services, income tax revenues because of lost manhours of employment, public services to the disabled, and national defense since many motorcyclists are young men.

Severe injuries may result in an individual becoming a public charge; his death may call into force the State's welfare responsibility for his widow and children. State v Lombardi, supra; People v. Newhouse, 287 N.Y.S. 2d 713 (1968).

The interdependence of the acts of an individual and the interest of the State has long been recognized. "The whole is no greater than the sum of all the parts, and when the individual health, safety, and welfare are sacrificed or neglected, the State must suffer." New York Central R. Co. v. White, 243 U.S. 188 at 206-07 (1916). Accordingly States have legislated in many situations where there is a demonstrable risk to an individual which can be substantially reduced by requiring himto take certain protective measures. State laws prohibiting self-maiming and attempted self-destruction are well known. Additionally many States require safety devices to be worn by window cleaners, eye protection for welders, hard hats for those involved in demolition work, life preservers to be worn while water skiing, and nets protecting aerial performers from the effects of accidental falls. Headgear legislation belongs to this class of legislation.

B. HEADGEAR LEGISLATION DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE SINCE THE DISTINCTION BETWEEN MOTORCYCLES AND OTHER VEHICLES IS BASED UPON SUBSTANTIAL DIFFERENCES AND THEREFORE REASONABLE IN LIGHT OF ITS PURPOSE.

Headgear legislation restricts the liberty of only one class of users of the public highway: motorcyclists and their passengers. There is no similar restriction upon the liberty of operators and passengers of other motor vehicles.

But headgear legislation does not violate the equal protection clause because the distinction between motorcycles and other vehicles such as bicycles and automobiles is based upon substantial differences and is reasonable in light of its purpose:

> "The power-driver cycle is a unique machine. It is capable of moderate to high speeds by motor vehicle standards, with the hazards inherent in speeds at which the vehicle is driven. A bicycle is limited in its speed by the nature of the power which propels it. An automobile differs from a motorcycle in

providing a shell surrounding the motorists. Both bicycles and automobiles can be dangerous to the riders, but the hazards of speed on the one hand and lack of an enclosure on the other hand do distinguish the motorcycle from both the bicycle and the automobile and make the hazard of operation distinguishable from both the bicycle and the automobile. Just because both the bicyclist and the motorist are subjected to hazards of head and face injuries does not mean that in order to make Sec. 347.485 valid it must apply to bicyclists and motorists. The degrees of hazards differ and therein lies the distinction. A classification is not unreasonable because it does not affect everyone who has any exposure to an evil." Bisenius v. Karns, Case No. 124423(Cty. Ct. Wisc. 1968).

C. HEADGEAR LEGISLATION DOES NOT VIOLATE THE DUE PROCESS CLAUSE SINCE IT IS CLEAR AND DEFINITE ENOUGH TO GIVE UNEQUIVOCAL WARNING OF THE RULE TO BE OBEYED.

Even though headgear legislation may require the wearing of a helmet of a type approved by a designated State official, such a statute is sufficiently definite, clear, and positive to give unequivocal warning to citizens of the rule which is to be obeyed.

A statute does not have to specify precise helmet performance requirements in order to be clear and definite, since the use and nature of protective helmets in industry, athletics, and the military service is known generally to the public. People v. Schmidt, 54 Misc. 2d 702, 283 NYS 2d 290 (1967). It is sufficient that the regulations, or proposed regulations of the designated State official "indicates that the requirements will be definite and certain with standards based upon tests to be made of the various headgear." Bisenius v. Karns, Case No. 124423 (Cty. Ct. Wisc. 1968).

D. HEADGEAR LEGISLATION DOES NOT VIOLATE THE DUE PROCESS CLAUSE SINCE IT LAWFULLY DELEGATES POLICE POWER TO AN ADMINISTRATIVE OFFICIAL.

The established rule is that the legislature may delegate to a subordinate body the discretionary power to execute and administer a law, provided a reasonably clear standard is formulated to govern the exercise of discretion by the subordinate body. The test is the completeness of the statute so that no part of the legislative function is left to the judgment of a delegate. People v. Carmichael, 288 NYS 2d 931 (1968) rev. 279 NYS 2d 272 (1967). Even though a standard by its nature is a general one it is valid if it is capable of reasonable application under the circumstances. Headgear legislation constitutes a lawful delegation of the police power since it describes the job to be done, who must do it, and the scope of his authority. Bowles v. Willingham, 321 U.S. 502, 575 (1944).

Numerous examples of legislative delegation of powers pertaining to vehicle and traffic standards can be found in State laws. In New York, for example, the Commissioner of Motor Vehicles may make rules and regulations prescribing standards of brake efficiency, brake linings, hydraulic brake fluid, commercial vehicle lighting, emergency equipment, school bus equipment, splash guards, safety belts and shoulder harnesses, and traffic hazard warning devices. 3/

3/ Subject to sec. 103(d) of P.L. 89-563 (The National Traffic and Motor Vehicle Safety Act of 1966).

APPENDIX
I

MOTORCYCLE PROTECTIVE HEADGEAR STATUTES

A typical statute requiring use of protective headgear by motorcycle operators and/or passengers might read:

> No person shall ride upon or operate a motorcycle on the streets or highways of this State (city) without wearing upon his head a protective head device (crash helmet, safety headgear, protective helmet) of a type approved by the Director of Public Safety (Commissioner, City Council Department of Health).[1]

The following 40 States have enacted statutes of this type:

Alabama	Kentucky	North Dakota
Arizona	Louisiana	Ohio
Arkansas	Maine	Oklahoma
Colorado	Maryland	Oregon
Connecticut	Massachusetts	Pennsylvania
Delaware	Minnesota	Rhode Island
Florida	Missouri	South Carolina
Georgia	Nebraska	South Dakota

---

[1] The legislature of Michigan, in response to a decision of the Court of Appeals on April 30, 1968, holding its protective headgear statute unconstitutional, enacted a new statute on June 12, 1968, which reads:

> A motorcycle or a motor driven cycle shall be equipped with, and carry when it is being operated, a number of crash helmets equal to the number of drivers and passengers carried during operation. Helmets shall be approved by the department of State police. The department shall promulgate rules for the implementation of this section in accordance with the provisions of [here follows appropriate citation]

Hawaii	New Hampshire	Tennessee
Idaho	New Jersey	Texas Utah
Illinois	New Mexico (under 18)	Vermont
Indiana	New York	Washington
Kansa	North Carolina	Wisconsin

The factual situations in the cases are virtually identical: the operator of a motorcycle was apprehended while operating a motorcycle upon the public streets without wearing on his head a protective head device as required by law.

APPENDIX

II

Courts and Cases

The following is a listing and citation of motorcycle protective headgear legislation opinions known as of January 1, 1970

I. United States Supreme Court

1. Krafft v. New York, 90 S. Ct. 198 (1969), certiorari denied.

2. Bisenius v. Karns, 89 S. Ct. 2033 (1969), appeal dismissed "for want of a substantial federal question."

3. Everhardt v. City of New Orleans, 89 S. Ct. 1775 (1969), certiorari denied.

4. Massachusetts v. Howie, 89 S. Ct. 485 (1968), certiorari denied.

II. State

A. Supreme or Highest Courts

1. State v. Solomon, _____ A. 2d _____ (S. Ct. Vt. 1969) upholding 23 V.S.A. § 1256.

2. State v. Darrah, _____ S.W. 2d _____ (S. Ct. Mo. 1969) upholding § 301.010 R.S. Mo. and reversing 1968 decision of Sedalia Mun. Ct.

3. State v. Eitel, 227 So. 2d 489 (S. Ct. Fla. 1969), reversing Small Claims - Magistrate Cts., Palm Beach Cases Nos. 68M-7013/14, 68M-7234 (1968) and upholding F. S. 317.981.

4. State v. Laitinen, 459 P. 2d 789 (S. Ct. Wash. 1969) holding constitutional RCW 46.37.530(3).

5. State v. Fetterly 456 P. 2d 996 (S. Ct. Oreg. 1969), holding constitutional ORS 483.443(1).

6. People v. Fries, 250 NE. 2d 149 (S. Ct. Ill., 1969) Docket No. 41624, holding unconstitutional Ill. Rev. Stat. 1967, ch. 971/2 Par. 189c(a).

7. State v. Anderson, 166 S.E. 2d 49 (S. Ct. N.C. 1969), affirming 164 S.E. 2d 48 (1968) reversing decision of Superior Ct., Guilford Cty., and upholding G.S. 20-140.2(b).

8. Bisenius v. Karns 165 N.W. 2d 377 (S. Ct. Wisc., 1969) upholding § 347.485 (1) and (2), Stats., 1967. Appeal dismissed, 89 S. Ct. 2033 (1969).

9. State v. Odegaard 165 N.W. 2d 677 (S. Ct., N.D., 1969), upholding N.D. C.C. § 39-21-48.

10. Everhardt v. City of New Orleans 217 So. 2d 400 (S. Ct. La. 1968), reversing 208 So. 2d 423 (La. App. 1968), upholds city ordinance which is similar to state statute, R.S. 32:190. Cert. denied 89 S. Ct. 1775 (1969).

11. Massachusetts v. Howie, 238 N.E. 2d 373 (S. Jud. Ct. Mass., 1968), Memorandum decision upholding Massachusetts statute. Cert. denied 39 S. Ct. 485 (1968).

12. State ex rel Colvin v. Lombardi 241 A. 2d 625 (S. Ct. R. I., 1968), upholding G. L. 1956, § 31-10.

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4. People v. Thoreson, (Maricopa Cty. Ct. 1969), holding Arizona law unconstitutional.

5. State v. _____ (Seneca Cty. Ct., Ohio, 1969) upholding § 4511.53 Revised Code (See Cycle News East, Nov. 4, 1967, p. 30).

6. People v. Albertson, Dist. Ct. (1969) holding Idaho statute unconstitutional, reversing Cty. Ct.

7. State v. Krammes, 252 A.2d 223 (1969) upholding N.J. S.A. 39: 3-76.7.

**** 8. Ex Parte Smith, 441 S.W. 2d 544 (1969) upholding Art. 6701c-3 V.A.C.S., Texas.

9. State v. Myers, (Balto. Cty. Ct. 1969), affirming 1968 decision of Magistrate Ct. upholding Md. headgear and goggle legislation.

10. State v. Burayeki, 37 Law Week 2448, Conn. Cir. Ct. App. Div. (1969) File No. MV 10-63528 AP upholding Conn. Gen Stat. § 14 [illegible](c), petition for appeal to S. Ct. Conn. denied, 252 A2d 812 (1969).

**** This case should be listed under Section A. Supreme or Highest Courts. The Texas Appellate Court serves as the Supreme Court in criminal matters.

11. State v. Male, 247 A. 2d 176 (1968) upholding N.J.S.A. 39: 3-76.7.

12. American Motorcycle Association and Farnum v. Davids and State Police, 158 N.W. 2d 72 (Mich. Ct. of Appeals, 1968), reversing 1967 decision of Circuit Ct., Ingham Cty., and holding unconstitutional PA 1949, No. 300, § 6581(d) as added by PA 1966, No. 207 (CL 1948 § 257, 658[d].

13. People v. Carmichael, 288 N.Y.S. 2d 931 (1968) reversing 279 N.Y.S. 2d 272 (1967) and upholding subdivision 6, section 381, of Vehicle and Traffic Law.

14. State v. Zektzer, Sup. Ct. King Cty. No. 47101 (Wash. 1967) upholding Ch. 232, Sec. 4 Sub 3, Laws of 1967, and reversing City of Seattle v. Zektzer, Seattle Mun. Ct. (1967).

15. People v. Schmidt, 283 N.Y.S. 2d 290 (Cty. Ct., Erie Cty. 1967) upholding subdivision 6, section 381 of Vehicle and Traffic Law. Appeal dismissed 295 N.Y.S. 2d 936 (1968).

C. Trial Courts

1. Sheneman v. Commonwealth (Dauphin Cty. Ct. Pa. 1969) upholding P. L. 58, section 625.1 as amended.

2. Commonwealth v. Molter, (Delaware Cty. Ct. Pa. 1969) No. S.A. #7, upholding P. L. 58, Section 625.1 as amended.

3. Colo. Motorcycle Ass'n v. Love, Hogan, (Denver Cty. Ct. 1969) holding Colo. law unconstitutional.

4. Commonwealth v. Coffman (Jefferson Cty. Ct., Ky. 1969) holding unconstitutional KRS 189.285.

5. City of Wichita v. White, Cases No. MC 150-151, (D. Ct. Sedgwick Cty. 1969) upholding city ordinance; on appeal Kansas Supr. Ct. (Case No. 45676).

6. S.D. Motorcycle Dealers Ass'n and Haight v. Parker, (S. D. Cir. Ct. 1968) upholding Section 4 of Chapter 215 of the 1967 Session Laws.

7. State v. Babbs, (Martin Cty. Ct., Fla. 1968) holding unconstitutional F.S. 317.981.

8. State v. Edwards, Case No. 582370 (Mun. Ct. Hennepin Cty., 1968) upholding Minn. Stat. 169.974, subd. (4)a.

9. People v. Newhouse, 287 N.Y.S. 2d 713 (City Ct. of Ithaca, N.Y. 1968) upholding subdivision 6, section 381 of Vehicle and Traffic Law.

10. People v. Daugherty, (West Plains Mun. Ct. 1968) holding Missouri Law unconstitutional.

11. People v. Wattle, (Buffalo City Ct. 1967) holding unconstitutional subdivision 6, section 381 of Vehicle and Traffic Law.

12. City of Hutchinson v. Silvey, Case No. CR 8081 (D. Ct. Reno City., Kansas 1967) upholding city ordinance.

13. People v. Bielmeyer 282 N.Y.S. 2d 797 (Buffalo City Ct. 1967) upholding subdivision 6, section 381 of Vehicle and Traffic Law.

14. State v. Duncan, No. 44835 (Wayne Cty. 1967) holding Michigan statute unconstitutional.

15. People v. Smallwood, 277 NYS. 2d 429 (Ct. Spec. Sess., Irondequoit, Monroe Cty. 1967), holding unconstitutional subdivision 6, section 381 of Vehicle and Traffic Law.

III. Opinions of States Attorneys - General

1. Opinion of Attorney - General of New Mexico, No. 69-14 Feb. 25, 1969. In response to an Attorney for the New Mexico legislative Counsel, the opinion notes cases contra position taken in No. 66-15 but states "we are unwilling to completely abandon our past position."

2. Opinion of Attorney - General of Oklahoma No. 68-267, December 31, 1968, that 470. S. Supp. 1967, § 40-105(b), is unconstitutional.

3. Opinion of Attorney - General of New Mexico, No. 66-15, Feb. 1, 1966. Proposed city ordinance unconstitutional as to citizens over 18.

IV. Law Review Notes and Articles

1. Constitutional Law - Validity of Safety Helmet Requirements, 71 W.Va. L. Rev. 191 (1969).

2. Constitutional Law - Police Power - Motorcycle Crash Helmet Laws' Relation to Public Welfare, 1969 Wisc. L. Rev. 320 (1969).

3. Constitutionality of Mandatory Motorcycle Helmet Legislation, 73 Dick. L. Rev. 100 (1968).

4. Constitutional Law - Due Process - Statute Requiring Motorcyclist to Wear Crash Helmet is Unconstitutional, (American Motorcycle Ass'n. v. Davids), 82 Harv. L. Rev. 469 (1968).

Mr. Buchanan

STAFF MEMORANDUM

ON THE

CONSTITUTIONAL QUESTION PRESENTED BY

STATE MOTORCYCLE HEADGEAR REQUIREMENTS

NOVEMBER 1970

U.S. DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY SAFETY BUREAU

QUESTION PRESENTED

Whether a State requirement that any person riding upon or operating a motorcycle on the streets or highways of the State shall wear upon his head a protective head device of a type approved by the State is unconstitutional under the Fourteenth Amendment.

BACKGROUND

Twenty-three U.S.C. § 402(a) (P.L. 89-564, the Highway Safety Act of 1966) requires each State to have a highway safety program approved by the Secretary of Transportation and in accordance with uniform standards promulgated by him.

Highway Safety Program Standard 4.4.3 released by the Secretary on June 26, 1967, and entitled Motorcycle Safety, (23 C.F.R. Part 204) requires each State to have a motorcycle safety program providing as a minimum, inter alia, that when a motorcycle is being operated on streets and highways, each motorcycle operator and passenger shall wear an approved safety helmet. Latest available information indicates that as of November 1, 1970, 42 States and the District of Columbia had enacted motorcycle protective headgear statutes ("headgear legislation" hereafter) of this type providing criminal penalties upon violation. Additionally an unknown number of cities may have enacted similar municipal ordinances.

As of November 1, 1970, there have been decisions in response to 48 known separate court challenges of State and municipal headgear legislation. In 38 instances legislation has been upheld, and in 10 it has been declared unconstitutional. 1/ Headgear legislation has been upheld 20 times by Supreme or highest Courts 2/ in 19 States (Arkansas, Minnesota, Idaho, Kentucky, Oklahoma, Hawaii, Colorado, Vermont, Missouri (twice), Florida, Texas, Washington, Oregon, North Carolina, Rhode Island, Massachusetts, Louisiana, North Dakota, and Wisconsin), 12 appellate courts (three in New York, two in New Jersey, and one each in Utah, Pennsylvania, Texas, Maryland, Ohio, Washington, and Connecticut), and 7 trial courts (two each in Pennsylvania, Kansas and New York, and one in South Dakota). Headgear legislation has been declared unconstitutional by 1 State Supreme Court (Illinois), 2 appellate courts (Arizona and Michigan), and 7 trial courts (two each in New York and Ohio, and one each in Florida, Missouri, and Michigan).

1/ This figure is computed on the basis of the last known decision in each case. Such decision, of course, may represent an appellate reversal, or be subject to reversal on appeal.

2/ In addition, the Supreme Court of Ohio has refused to consider an appeal from a decision upholding constitutionally of State legislation.

APPENDIX

I

MOTORCYCLE PROTECTIVE HEADGEAR STATUTES

A typical statute requiring use of protective headgear by motorcycle operators and/or passengers might read:

> No person shall ride upon or operate a motorcycle on the streets or highways of this State (city) without wearing upon his head a protective head device (crash helmet, safety headgear, protective helmet) of a type approved by the Director of Public Safety (Commissioner, City Council Department of Health). 1/

The following 42 States and the District of Columbia have enacted statutes of this type:

Alabama	Louisiana	Ohio
Alaska	Maine	Oklahoma
Arkansas	Maryland	Oregon
Colorado	Massachusetts	Pennsylvania
Connecticut	Minnesota	Rhode Island
Delaware	Missouri	South Carolina
Florida	Nebraska	South Dakota
Georgia	North Dakota	
Kentucky		

1/ The legislature of Michigan, in response to a decision of the Court of Appeals on April 30, 1968, holding its protective headgear statute unconstitutional, enacted a new statute of June 12, 1968, which reads:

> A motorcycle and a motor driven cycle shall be equipped with, and carry when it is being operated, a number of crash helmets equal to the number of drivers and passengers carried during operation. Helmets shall be approved by the department of State police. The department shall promulgate rules for the implementation of this section in accordance with the provisions of [here follows a lengthy citation]

Hawaii	New Hampshire	Tennessee
Idaho	New Jersey	Texas
Illinois	New Mexico (under 18)	Utah 2/
Indiana	New York	Vermont
Kansas	North Carolina	Virginia
		Washington
		Wisconsin

The factual situations in the cases are virtually identical: the operator of a motorcycle was apprehended while operating a motorcycle upon the public streets without wearing on his head a protective head device as required by law.

2/ The Utah statute, however, does not require cycle riders to wear protective headgear while traveling on streets zoned below 35 miles per hour.

APPENDIX

II

Courts and Cases

The following is a listing and citation of motorcycle protective headgear legislation opinions known as of November 1, 1970.

I. United States Supreme Court

1. Krafft v. New York, 90 S. Ct. 198 (1969), certiorari denied.

2. Bisenius v. Karns, 89 S. Ct. 2033 (1969), appeal dismissed "for want of a substantial federal question."

3. Everhardt v. City of New Orleans, 89 S. Ct. 1775 (1969), certiorari denied.

4. Massachusetts v. Howie, 89 S. Ct. 485 (1968), certiorari denied.

II. State

A. Supreme or Highest Courts

1. Penney v. City of North Little Rock, 455 S.W. 2d 132 (S. Ct. Ark. 1970), upholding Ark. Stat. Ann. § 75-1703 [Supp. 1969].

2. State v. Edwards, 177 N.W. 2d 40 (S. Ct. Minn. 1970), upholding Minn. Stat. 169-974, subd. (4)a.

3. State v. Cushman, 451 S.W. 2d 17 (S. Ct. Mo. 1970), upholding § 301-010 R.S. Mo.

4. State v. Albertson, 470 P. 2d 300 (S. Ct. Idaho 1970), upholding I.C. § 49-761A and reversing Dist. Ct. which had reversed Cty. Ct.

5. Commonwealth v. Coffman, 453 S.W. 2d 759 (Ky. Ct. of Appeals, 1[illegible]), upholding KRS 189.285 and reversing Jefferson Cty. Ct.

6. Elliott v. Oklahoma City, 471 P. 2d 944 (Ct. of Crim. Appeals 1970), upholding Okla. City Ord. 12,071.

7. State v. Lee, 465 P. 2d 573 (S. Ct. Hawaii 1970), upholding HRS § 286-81(1)(A).

8. People v. Ball, ____ P. 2d ____ (S. Ct. Colo. 1970), upholding CRS 1963, 13-5-159 and reversing Colorado Motorcycle Ass'n. v. Love, Horan (Denver Cty. Ct. 1969).

9. State v. Solomon, 260 A. 2d 377 (S. Ct. Vt. 1969), upholding 23 V.S.A. § 1256.

10. State v. Darrah, 446 S.W. 2d 745 (S. Ct. Mo. 1969), upholding § 301.010 R.S. Mo. and reversing 1968 decision of Sedalia Mun. Ct.

11. State v. Hitel, 227 So. 2d 489 (S. Ct. Fla. 1969), reversing Small Claims - Magistrate Cts., Palm Beach Cases Nos. 68M-7013/14, 68M-7234 (1968) and upholding F. S. 317.981.

12. State v. Laitinen, 459 P. 2d 789 (S. Ct. Wash. 1969), holding constitutional RCW 46.37.530(3).

13. State v. Fetterly, 456 P. 2d 996 (S. Ct. Oreg. 1969), holding constitutional O.R.S. 483.443(1).

14. People v. Fries, 250 N.E. 2d 149 (S. Ct. Ill., 1969), holding unconstitutional Ill. Rev. Stat. 1967, ch. 971/2 Par. 189c(a).

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16. Disenius v. Kerns, 165 N.W. 2d 377 (S. Ct. Misc., 1969), upholding § 347.485 (1) and (2), Stats., 1967. Appeal dismissed, 89 S. Ct. 2033 (1969).

17. State v. Odegaard, 165 N.W. 2d 677 (S. Ct., N.D., 1969), upholding N.D.C.C. § 39-21-48.

18. Ex. Parte Smith, 411 S.W. 2d 544 (1969), upholding Art. 6701c-3 V.A.C.S., Texas.

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2. Constitutional Law - Police Power - Motorcycle Crash Helmet Laws' Relation to Public Welfare, 1969 Wisc. L. Rev. 320 (1969).

3. Note, 37 U. Mo. K.C. L. Rev. 385 (1969).

4. Constitutionality of Mandatory Motorcycle Helmet Legislation, 73 Dick. L. Rev. 100 (1968).

5. Constitutional Law - Due Process - Statute Requiring Motorcyclist to Wear Crash Helmet is Unconstitutional, (American Motorcycle Ass'n. v. Davids), 82 Harv. L. Rev. 469 (1968).