HB
855

COMMITTEE REPORT

HOUSE

2/21/78

FURTHER: _____

_____

Date: 4-14-78

Mr. Speaker:

The Committee on C&RA has had HB 855
"An Act relating to public corporations or other municipal instrumentalities; eff. date."

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for _____

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

_____

_____

_____

_____

_____

_____

_____

_____

_____

OTHER RECOMMENDATIONS:

_____

_____

_____

_____

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_____

_____

_____

_____

_____
Chairman

H 60 (rev. 6/77)

AMENDMENT

OFFERED IN THE HOUSE: BY: H C E E A COMMITTEE

To: _____ HOUSE BILL No. 855

SENATE BILL No. _____

PAGE: 1 LINE: 19

Delete the period and add, which the municipality has the power to provide.

AMENDMENT #1

H C & E A COMMITTEE

OFFERED IN THE HOUSE: BY: _____

TO: _____ HOUSE BILL No. 855

SENATE BILL No. _____

PAGE: 1 LINE: 19

Delete: the period and add, "which the municipality has the power to provide."

FAIRBANKS NORTH STAR BOROUGH
Box 1267, Fairbanks, Alaska 99707

January 26, 1978

Repr. Sally Smith
Pouch V
Juneau, Alaska 99811

Re: House Bill 483

Dear Sally:

This is to follow up my telephone conversation January 24th with your secretary concerning HB 483. You inquired concerning the bill generally, and particularly Sections 1 and 13. As you know, HB 483 was submitted strictly as a clarification or cleanup bill. Section 1, however, does add something new to the first class borough incorporation process. The addition is, however, designed only to eliminate what is now a cumbersome process. Since neither second or third class boroughs are now authorized to adopt home rule charters, this amendment is not and should not be applicable to them. There seems to be little reason why, if the residents of the area desire it, that the incorporation and home rule charter process should not be initiated at the same election. To require two elections simply adds to the time lag and cost. Since the incorporation process itself requires petition, review by Department of C&RA, and a hearing in the area by the Local Boundary Commission with its report prior to the election, it would seem highly unlikely that any resident would be unaware of the issues at the time of the election. I think that Section 1 is very worthwhile and in keeping with a policy of avoiding needless frustration and cost without jeopardizing adequate notice and communication to citizens.

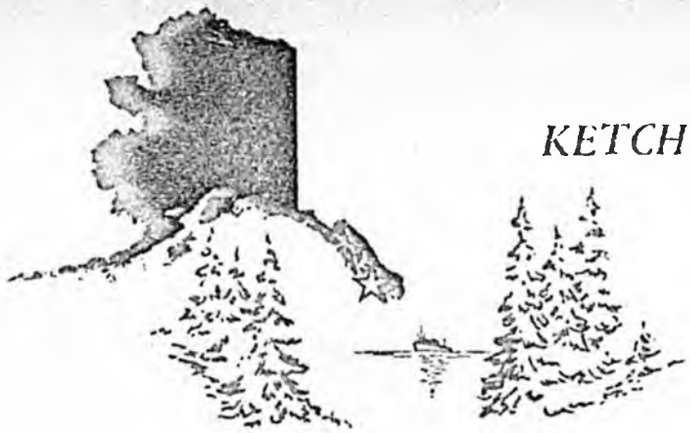
HB 483

As to Section 13, this simply extends to municipalities a device which the State has used considerably. It is included in HB 483 only because of the apparent violation of the one subject rule caused by its inclusion in Chapter 56 SLA 1976. This provision is of some interest in Fairbanks because of the possiblity of its use for funding of the Fairbanks Memorial Hospital. Without going into the discussion as to whether Section 13 could be better written to better serve its goals, since this is a curative bill I do not see any particular problem with including it. The mechanism of public corporations for financing is not uncommon throughout the United States and provides a desirable flexibility. To delete this section from the bill might indicate an intent of the Legislature not to permit the utilization of public corporations for community facilities and have a chilling effect on plans which might be in the evolution process. It would seem to me that there is little likelihood of a massive rush to make use of this provision and certainly if there were foreseeable problems, the Legislature could deal with them at a later time.

I hope that this has been of some assistance to you.

Very truly yours,

J.D. Hardale
Borough Attorney
JDH:ds
cc: Repr. Lisa Rudd



KETCHIKAN GATEWAY BOROUGH
344 FRONT STREET
KETCHIKAN, ALASKA 99901

March 23, 1978

Ms. Lisa Rudd
Chairman
House Community Regional
Affairs Committee
Pouch Y
Juneau, Alaska 99811

Dear Mrs. Rudd:

On behalf of the Ketchikan Gateway Borough I would like to express our interest in passage of HB 855 relating to public corporations or other municipal instrumentalities.

The provisions of this bill were incorporated in another bill which was passed in the last session and as I understand there is a question of legality of these provisions because the bill passed covered two subjects.

The City of Ketchikan and the Ketchikan Gateway Borough have been discussing a joint Transportation Authority for the City ports and the Borough airport which is possible, as I understand, for a home rule municipality such as our City, however, the limitations of a second class borough do not enable us to create such an authority. Therefore, we would like to encourage re-passage of this enabling legislation in order that the legal avenues are available to us should we choose.

Thank you.

Sincerely,

KETCHIKAN GATEWAY BOROUGH

Judith A. Slajer
Borough Manager

JAS:jw

cc: Senator Robert Ziegler
Representative Oral Freeman
Representative Terry Gardiner
Jim Rolle, Exec. Director
Alaska Municipal League

HB855

MEMORANDUM

February 16, 1978

SUBJECT: Brief history of AS 29.59

TO: Representative Nels A. Anderson, Jr.

FROM: John B. Chenoweth
Legislative Counsel

My recollection of the circumstances relating to the adoption and taking effect of the bill embodying this provision is this:

In mid-session of 1976, Bob Dupere called to the attention of the Senate Community and Regional Affairs Committee the proposal by the IRS to tighten regulations defining the tax-exempt status of public corporations. Dupere has, of course, a working knowledge of municipal finance with respect to Alaska's local governments, and appreciated the potential problems that would have been presented under the particular changes then under consideration by the IRS. His suggestion to meet the problems was to make clear that municipalities had the authority to establish public corporations for carrying out specific municipal purposes, to protect the tax-exempt status (insofar as that was possible) of these creatures in the event local governments determined to make use of public corporations to meet public purposes or needs. At the time, as I recall, the possibility of establishment of a public corporation for hospital care was under active consideration, as, I think, was the proposal to use municipal authority to provide public services to major industrial users.

At any rate, the bill was drafted and presented. Committee members endorsed the attachment of the provision to a bill offered by the governor making technical amendments to the existing authority of the Alaska Municipal Bond Bank Authority. I do not recall whether the provision was added on to the governor's bill in anticipation of possible veto of the same provision standing alone, or whether it was added because, on that day, the governor's bill happened to present itself as a handy vehicle. That is where it was put — but in redrafting the bill to carry the amendment, the draftsman neglected to conform the title.

The governor signed the bill into law. However, in a most unusual move, his transmittal letter to the Legislature pointed out the problem posed by the failure to limit the bill to one subject and to conform the title to the substantive provisions of the amended bill:

> "I have signed the following bill and am transmitting the enrolled and engrossed copies to the Lieutenant Governor's Office for permanent filing:
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> SENATE COMMITTEE SUBSTITUTE FOR
> COMMITTEE SUBSTITUTE FOR
> HOUSE BILL NO. 674
> amended Senate (Chapter 56, SLA 1976)
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> Even though I have signed this bill into law, I have been advised by the Attorney General that the inclusion of Sec. 4 in the bill violates Article II, Section 13 of the Alaska Constitution. This provision requires that bills are to be confined to one subject and that the subject be expressed in the title. Accordingly, the Attorney General has advised that Sec. 4 of the bill is void and of no effect.
>
> I am bringing this matter of the Attorney General's advise (sic) to your attention so that those legislators who were relying on Sec. 4 to accomplish some objective may be notified as to its probable effect. Those legislators may then want to take appropriate action such as introducing new legislation to cover the subject set forth in Sec. 4 of the bill."

1976 House Journal, at p. 1280.

I have to question why the Attorney General determined that only section 4 of the legislation, that section adding what is now AS 29.59, was "void and of no effect" -- why, in fact, the entire bill was not tainted with the same objection -- and whether, for that reason, the opinion rendered to the governor is correct. Nevertheless, it is the closing paragraph of the governor's transmittal letter which the provision designated "*Sec. 13" in the original version of HB 483 is intended to address.

Assuming that the governor's statement, based on the attorney general's advice, is correct, then it seems that you have two courses open: Repeal AS 29.59 or re-enact it, with or without substantive amendment. At least as to any municipality which may have acted in reliance on the section, or which may in the future, I think it desirable, in response to the governor's invitation, that the legislature act, for inaction only maintains the "cloud" on AS 29.59 first pointed out in the above-cited transmittal letter.

JEC:jpd

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Box 1267, Fairbanks, Alaska 99707

January 26, 1978

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Pouch V
Juneau, Alaska 99811

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I hope that this has been of some assistance to you.

Very truly yours,

J.D. Nordale
Borough Attorney
JDN:ds
cc: Repr. Lisa Rudd

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 17, 1978

SUBJECT: HB 855: relating to public corporations and other instrumentalities of municipal government. (Work Order No. 5187)

TO: Representative Lisa Rudd, Chairperson
House Community and Regional Affairs Committee

FROM: John B. Chenoweth
Legislative Counsel

You have posed four questions with reference to HB 855 which bear upon the use by local governments of public agencies as a means by which to issue obligations on a tax-exempt basis. HB 855 would re-enact provisions of AS 29.59, specifically authorizing public corporations or like instrumentalities established by municipal governments to issue obligations in order to fund the costs of construction of public facilities. The reasons favoring re-enactment of AS 29.59 are alluded to in my memorandum to Representative Nels Anderson of February 16, attached to this memorandum.

The statutory provision which eventually was enacted into law as AS 29.59 was first drafted during the 1976 session in response to proposed additions to and amendments of regulations by the US Treasury. The changes proposed, incorporated into regulations relating to definition and administration of the Internal Revenue Code, would have defined limits which public agencies established by local governments would have been required to satisfy in order to gain or retain the benefit of tax-exempt interest on the agent's obligations to the extent enjoyed by the obligations of the municipality which were directly issued. The purpose of the proposed rule change was, at least in the view of the Treasury, that public agencies which were issuing the obligations be in actual fact substantially controlled and directed by the local government unit or units in whose behalf they were issuing obligations. In the language of the Treasury-prepared synopsis of the regulations

> In general, the proposed amendments [to IRS regulations] provide that only a constituted authority of a state or local government unit may issue obligations on behalf of the unit. The authority must be specifically authorized pursuant to state law to issue obligations on behalf of the unit to accomplish a public purpose of the unit. The authorization must specify the public purpose of the governmental unit on behalf of which the authority is authorized to issue obligations and also must create the authority or provide that the governmental unit may create the authority. The authority must be created and operated solely to accomplish a public purpose of the governmental unit.
>
> The proposed amendment requires a closer connection between the authority and the governmental unit including control of the authority's board and organizational or supervisory control over the authority of the governmental unit.

AS 29.59 was drafted to respond to the threshhold requirements of the then-proposed federal regulation changes, namely, the requirement that the public agencies be specifically authorized in applicable state law, that they be authorized to undertake or fulfill a public purpose, that the public purpose for which authorized be specified, and that the grant of authority represent a grant for only the accomplishment of that public purpose.

The stringent requirements of the regulations proposed by the Treasury were not adopted. Rather, former provisions of the Code of Federal Regulations relating to tax-exempt interest paying obligations were substantially continued.

The current law on the subject appears to be this --

The applicable statute is 26 USC 103(a):

> (a) GENERAL RULE. Gross income does not include interest on --
>
> (1) the obligations of a State, a Territory, or a possession of the United States, or any political subdivision of any of the foregoing, or of the District of Columbia;. . .

The statutory exemption embraces debt obligations of local governments, whether issued "directly" or "indirectly," that is, through the use of a public corporation as agent:

> Obligations issued by or on behalf of any State or local governmental unit by constituted authorities empowered to issue such obligations are the obligations of such a unit. . . .

and

> The term "political subdivision", for purposes of this section [26 CFR §1.103-1], denotes any division of any State or local governmental unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the unit. . . .

26 CFR §1.103-1(b).

I

Your first question -- whether the same concerns which prompted introduction and enactment of the legislation in 1976 are still of concern -- is probably better answered in the negative. The stringent requirements which the Treasury was suggesting in the amendments and changes mentioned earlier in this monograph have not been adopted and are not now under active consideration. Assuming that the principal factor motivating HB 674's introduction in the 1976 session was to obviate anticipated challenges to the authority of agencies or corporations established by local governments in Alaska to issue tax-exempt obligations for the benefit of the local government -- and I think it is a fairly good assumption -- the apparent urgency of the situation then does not control or affect events now.

II

The answer to the first part of your second question, insofar as it applies to tax-exempt obligations in general (exclusive of the problems of the use of industrial development bonds), is likewise "no." The Treasury, in 1976, did not adopt the regulations as contemplated at that time; the existing body of regulation -- including, of course, revenue rulings and the body of case law -- has been continued forward with few substantive changes.

III

Your third question departs from further examination of applicable regulations of the IRS. It presents the question of whether there is a state constitutional "check" on the establishment of public corporations or agencies by Alaska municipalities to undertake public purposes. Your question cites the general statement of policy contained in Article X, sec. 1 of the state constitution, which recounts the philosphy underlying the existing local government article:

> The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

The reference to "units" in this section is unusual -- the term appears nowhere else in the article. The next following section, section 2, describes the requirement that "all local government powers . . . be vested in boroughs and cities," to the exclusion of any other kind or species of local authority having the very important power of taxation. By virtue of the interposition of the phrase "powers of local government units" in section 1 and the requirement imposed by section 2 that full local government powers devolve only upon boroughs and cities, and based upon the transcript and record of proceedings of the constitutional convention, I conclude that the use of the word "units" in the first section was intended to embrace only the two general types of local government authorized. It was not thought that the limitation would apply to the establishment of mechanisms by the local government units themselves after they were incorporated. Quite the contrary: the powers of local government units were intended to be liberally construed (Art. X, sec. 1), and the authority of a political subdivision to establish a public enterprise or public corporation in furtherance of legitimate public purposes is at least alluded to in Article IX, sec. 11, and appears there and in commentary in the record of the constitutional convention without restriction as to number or kind of agency. In short, I believe that the state constitutional provision enunciating a policy of a "minimum of local government units" may not be understood to be a limitation on the use of public enterprises or corporations -- public agencies, generally -- to supplement direct provision of public services by local governments. Other circumstances or conditions may compel that conclusion: the constitutional provision cited, in my opinion, does not.

IV

Your concluding query requires examination of tax-levying authority under AS 29.59 and existing limitations on the authority of local governments to levy property taxes. The tax limitations of AS 29.53.050 appear to be inapplicable to taxes of a public corporation or similar public agency established by a municipality under authority granted by AS 29.59. There is no direct relationship between the two statutory provisions mentioned such that the limitations section of AS 29.53.050 need be extended and made applicable to public agencies. The grant of authority set out in AS 29.59 does not extend to the public corporation or similar instrumentality the right to levy taxes. That right is limited, by the state constitution, to the levy and collection by cities and boroughs only. Thus, the right of the public corporation to issue obligations on behalf of the municipality for public purposes, if understood as having the effect of using the public corporation as a "front" for the municipality, cannot circumvent the limitation on delegation of taxing authority only to cities and boroughs, requiring the municipality to raise necessary revenues to pay off obligations of the corporation within the general limitation of AS 29.53. Similarly, if the right granted be seen as one by which a public corporation is authorized to issue <u>its</u> obligations for public purposes in furtherance of the responsibilities of municipalities, the grant of authority does not carry with it the right to levy and collect taxes for the purpose, and concern about conflict with AS 29.53 is unfounded. (The latter is analogous, at the local level, to the relationship between the State and ASHA, a public corporation: ASHA bonds are strictly revenue bonds; ASHA is not authorized to offer obligations on the strength of the full faith and credit of the people of Alaska, nor is the State legally obliged to bail ASHA out of any financial embarrassments.) In summary, in no instance can I conceive of a public corporation established under AS 29.59 having a valid argument on which to enforce a levy in excess of that provided for generally in statute.

V

I do not want to leave points 1 and 2 of this paper without mentioning two other matters:

While it is true, of course, that the failure of the IRS to adopt the regulations proposed in early 1976 constitutes a change of circumstance over the intervening two-year period,

it is equally true that, apart from AS 29.59, there is no generally applicable provision by which a city or borough is granted authority to establish a corporation or instrumentality to use as an agent in the issuance of debt obligations on its behalf. I am not aware that any Alaska municipality has placed reliance on the provision in the two years it has appeared in the statutes. Repeal of the provision, or even non-alteration, probably poses no problem. However, though AS 29.59 was drafted and enacted under circumstances quite different than those presently known, to the extent that a clear statement of authority for the establishment of a corporation for the purposes indicated is desirable, the provision does serve that purpose. The committee will, of course, enunciate the policy: I did not want to leave the impression that, because circumstances have changed, the statute no longer serves a useful role.

Secondly, I want to caution that this memo is not intended to address or suggest disposition of the issues which surround the very complicated subject of tax treatment of the interest earned on industrial development bonds. (In requesting your questions in writing, I wanted to try to assure that the questions could be answered in a manner which did not require extended treatment of the handling of industrial development bonds, a relatively more common means of involving public purpose financing through the intermediary of a public corporation, but one which is, in terms of tax-exempt eligibility, far more complicated.) The tax-exempt status of industrial development bonds -- defined, generally, as bonds whose proceeds are used in an activity engaged in for profit by other than a governmental unit or other than an organization exempt from tax (i.e. corporations with nonprofit status under §501(c)(3)) and on which either the payment of the principal and interest is secured in whole or in part by property to the payments received from the property are pledged for the payment of principal and interest -- is subject to far more extended and extensive limitations that those of bonds which would be issued by public corporations or instrumentalities whose existence is authorized under AS 29.59.

I trust that this fully responds to your questions.

JBC:jpd

Attachment

M E M O R A N D U M

February 16, 1978

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TO: Representative Nels A. Anderson, Jr.

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Legislative Counsel

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JEC:jpd

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

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> The proposed amendment requires a closer connection between the authority and the governmental unit including control of the authority's board and organizational or supervisory control over the authority of the governmental unit.

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> The term "political subdivision", for purposes of this section [26 CFR §1.103-1], denotes any division of any State or local governmental unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the unit. . . .

26 CFR §1.103-1(b).

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II

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III

Your third question departs from further examination of applicable regulations of the IRS. It presents the question of whether there is a state constitutional "check" on the establishment of public corporations or agencies by Alaska municipalities to undertake public purposes. Your question cites the general statement of policy contained in Article X, sec. 1 of the state constitution, which recounts the philosphy underlying the existing local government article:

> The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

The reference to "units" in this section is unusual -- the term appears nowhere else in the article. The next following section, section 2, describes the requirement that "all local government powers . . . be vested in boroughs and cities," to the exclusion of any other kind or species of local authority having the very important power of taxation. By virtue of the interposition of the phrase "powers of local government units" in section 1 and the requirement imposed by section 2 that full local government powers devolve only upon boroughs and cities, and based upon the transcript and record of proceedings of the constitutional convention, I conclude that the use of the word "units" in the first section was intended to embrace only the two general types of local government authorized. It was not thought that the limitation would apply to the establishment of mechanisms by the local government units themselves after they were incorporated. Quite the contrary: the powers of local government units were intended to be liberally construed (Art. X, sec. 1), and the authority of a political subdivision to establish a public enterprise or public corporation in furtherance of legitimate public purposes is at least alluded to in Article IX, sec. 11, and appears there and in commentary in the record of the constitutional convention without restriction as to number or kind of agency. In short, I believe that the state constitutional provision enunciating a policy of a "minimum of local government units" may not be understood to be a limitation on the use of public enterprises or corporations -- public agencies, generally -- to supplement direct provision of public services by local governments. Other circumstances or conditions may compel that conclusion: the constitutional provision cited, in my opinion, does not.

IV

Your concluding query requires examination of tax-levying authority under AS 29.59 and existing limitations on the authority of local governments to levy property taxes. The tax limitations of AS 29.53.050 appear to be inapplicable to taxes of a public corporation or similar public agency established by a municipality under authority granted by AS 29.59. There is no direct relationship between the two statutory provisions mentioned such that the limitations section of AS 29.53.050 need be extended and made applicable to public agencies. The grant of authority set out in AS 29.59 does not extend to the public corporation or similar instrumentality the right to levy taxes. That right is limited, by the state constitution, to the levy and collection by cities and boroughs only. Thus, the right of the public corporation to issue obligations on behalf of the municipality for public purposes, if understood as having the effect of using the public corporation as a "front" for the municipality, cannot circumvent the limitation on delegation of taxing authority only to cities and boroughs, requiring the municipality to raise necessary revenues to pay off obligations of the corporation within the general limitation of AS 29.53. Similarly, if the right granted be seen as one by which a public corporation is authorized to issue its obligations for public purposes in furtherance of the responsibilities of municipalities, the grant of authority does not carry with it the right to levy and collect taxes for the purpose, and concern about conflict with AS 29.53 is unfounded. (The latter is analogous, at the local level, to the relationship between the State and ASHA, a public corporation: ASHA bonds are strictly revenue bonds; ASHA is not authorized to offer obligations on the strength of the full faith and credit of the people of Alaska, nor is the State legally obliged to bail ASHA out of any financial embarrassments.) In summary, in no instance can I conceive of a public corporation established under AS 29.59 having a valid argument on which to enforce a levy in excess of that provided for generally in statute.

V

I do not want to leave points 1 and 2 of this paper without mentioning two other matters:

While it is true, of course, that the failure of the IRS to adopt the regulations proposed in early 1976 constitutes a change of circumstance over the intervening two-year period,

it is equally true that, apart from AS 29.59, there is no generally applicable provision by which a city or borough is granted authority to establish a corporation or instrumentality to use as an agent in the issuance of debt obligations on its behalf. I am not aware that any Alaska municipality has placed reliance on the provision in the two years it has appeared in the statutes. Repeal of the provision, or even non-alteration, probably poses no problem. However, though AS 29.59 was drafted and enacted under circumstances quite different than those presently known, to the extent that a clear statement of authority for the establishment of a corporation for the purposes indicated is desirable, the provision does serve that purpose. The committee will, of course, enunciate the policy: I did not want to leave the impression that, because circumstances have changed, the statute no longer serves a useful role.

Secondly, I want to caution that this memo is not intended to address or suggest disposition of the issues which surround the very complicated subject of tax treatment of the interest earned on industrial development bonds. (In requesting your questions in writing, I wanted to try to assure that the questions could be answered in a manner which did not require extended treatment of the handling of industrial development bonds, a relatively more common means of involving public purpose financing through the intermediary of a public corporation, but one which is, in terms of tax-exempt eligibility, far more complicated.) The tax-exempt status of industrial development bonds -- defined, generally, as bonds whose proceeds are used in an activity engaged in for profit by other than a governmental unit or other than an organization exempt from tax (i.e. corporations with nonprofit status under §501(c)(3)) and on which either the payment of the principal and interest is secured in whole or in part by property to the payments received from the property are pledged for the payment of principal and interest -- is subject to far more extended and extensive limitations that those of bonds which would be issued by public corporations or instrumentalities whose existence is authorized under AS 29.59.

I trust that this fully responds to your questions.

JBC:jpd

Attachment

MEMORANDUM February 16, 1978

SUBJECT: Brief history of AS 29.59

TO: Representative Nels A. Anderson, Jr.

FROM: John B. Chenoweth
Legislative Counsel

My recollection of the circumstances relating to the adoption and taking effect of the bill embodying this provision is this:

In mid-session of 1976, Bob Dupere called to the attention of the Senate Community and Regional Affairs Committee the proposal by the IRS to tighten regulations defining the tax-exempt status of public corporations. Dupere has, of course, a working knowledge of municipal finance with respect to Alaska's local governments, and appreciated the potential problems that would have been presented under the particular changes then under consideration by the IRS. His suggestion to meet the problems was to make clear that municipalities had the authority to establish public corporations for carrying out specific municipal purposes, to protect the tax-exempt status (insofar as that was possible) of these creatures in the event local governments determined to make use of public corporations to meet public purposes or needs. At the time, as I recall, the possibility of establishment of a public corporation for hospital care was under active consideration, as, I think, was the proposal to use municipal authority to provide public services to major industrial users.

At any rate, the bill was drafted and presented. Committee members endorsed the attachment of the provision to a bill offered by the governor making technical amendments to the existing authority of the Alaska Municipal Bond Bank Authority. I do not recall whether the provision was added on to the governor's bill in anticipation of possible veto of the same provision standing alone, or whether it was added because, on that day, the governor's bill happened to present itself as a handy vehicle. That is where it was put -- but in redrafting the bill to carry the amendment, the draftsman neglected to conform the title.

The governor signed the bill into law. However, in a most unusual move, his transmittal letter to the Legislature pointed out the problem posed by the failure to limit the bill to one subject and to conform the title to the substantive provisions of the amended bill:

> "I have signed the following bill and am transmitting the enrolled and engrossed copies to the Lieutenant Governor's Office for permanent filing:
>
> SENATE COMMITTEE SUBSTITUTE FOR
> COMMITTEE SUBSTITUTE FOR
> HOUSE BILL NO. 674
> amended Senate (Chapter 56, SLA 1976)
>
> Even though I have signed this bill into law, I have been advised by the Attorney General that the inclusion of Sec. 4 in the bill violates Article II, Section 13 of the Alaska Constitution. This provision requires that bills are to be confined to one subject and that the subject be expressed in the title. Accordingly, the Attorney General has advised that Sec. 4 of the bill is void and of no effect.
>
> I am bringing this matter of the Attorney General's advise (sic) to your attention so that those legislators who were relying on Sec. 4 to accomplish some objective may be notified as to its probable effect. Those legislators may then want to take appropriate action such as introducing new legislation to cover the subject set forth in Sec. 4 of the bill."

1976 House Journal, at p. 1280.

I have to question why the Attorney General determined that only section 4 of the legislation, that section adding what is now AS 29.59, was "void and of no effect" -- why, in fact, the entire bill was not tainted with the same objection -- and whether, for that reason, the opinion rendered to the governor is correct. Nevertheless, it is the closing paragraph of the governor's transmittal letter which the provision designated "*Sec. 13" in the original version of HB 483 is intended to address.

Assuming that the governor's statement, based on the attorney general's advice, is correct, then it seems that you have two courses open. Repeal AS 29.59 or re-enact it, with or without substantive amendment. At least as to any municipality which may have acted in reliance on the section, or which may in the future, I think it desirable, in response to the governor's invitation, that the legislature act, for inaction only maintains the "cloud" on AS 29.59 first pointed out in the above-cited transmittal letter.

JEC:jpd