

HB

354

delete section 4
of HB 354



Senate did this
3743 Ret Kucera (after 10)
Track down
Senate version of the bill
Find out what they did -

EXPLANATION OF HB 354 AND SB 249
RELATING TO SUITS AGAINST LOCAL GOVERNMENTS

The Bill revises AS 09.65.070 in its entirety with nominal amendment of subsections (a) and (b), clarification of subsection (c), and primarily adding subsection (d) to amend the present statute which makes municipalities liable for all of their acts without regard to whether the act was discretionary or ministerial or was related to a governmental as opposed to a proprietary function. Definitional subsection (e) is added to clarify its application to municipalities and villages.

Subsection (d) prescribes limited exceptions to municipal liability. The municipality will not be subject to suit for acts falling within the exceptions. Employees and officers, while acting as such, will not be subject to suit for acts which are expected.

The first exception, which is in subparagraph (d) (a) (A)-(C) is similar, in part, to the language in SB 151 which would create an additional exception to the liability of the state pertaining to inspections. This exception is needed by the state's political subdivisions as well as the state itself. It would remove the threat of suit against the municipality

and its officers and employees for their failure to inspect property, their failure to discover violations or hazards and their failure to adequately abate violations and hazards discovered.

This exception is needed to limit the liability of municipalities which

1. adopt various safety and health codes (fire, building, health, sanitation, vehicle, etc.) which they are unable to vigorously enforce 100% of the time, or
2. conduct inspections for the purpose of enforcing safety and health codes, or
3. do not enforce safety and health codes

The alternative to having such statutory reassurance is the withdrawal of municipalities from the safety and health enforcement fields. The State of Alaska has already partially withdrawn from the fire inspection field as a result of the Adams and Jennings cases which imposed liability for failure to discover hazards and failure to abate discovered hazards. More injury will be done to the public by such a withdrawal than by granting the exception and allowing municipalities to proceed on a best efforts basis. The property owner, contractor, or other person responsible for an injury will be and remains liable to the injured person in either situation so the injured person is not without remedy under this exception.

The second exception, which appears in subparagraph (d)(2), confers to municipalities the same exception which the state already has under AS 09.50.250(1). Discretionary acts cover those acts which are essentially policy or planning in nature. They include such things as decisions to initiate or terminate a program, to stop maintenance of a road during the winter, to fund a program at a certain level, to concentrate on the enforcement of certain codes, etc. Municipalities do not now have the statutory protection the state has in this area and could be held liable for the exercise of their discretion in a situation where the state could not under identical circumstances. Municipalities, like the state, must be able to perform discretionary acts without fear of suit. This is not to say, however, that once the municipality has exercised its discretion to, say, build or maintain a road, it may build or maintain it in a negligent manner. It may not. Municipalities will, subject to the limitations of this section, remain liable for their ministerial torts.

The third exception, which appears in subparagraph (d)(3), covers an area in which municipalities are occasionally sued for damages. The threat of suit for damages should not play any part in the decision of a municipal official or body to issue, deny or suspend a permit or privilege of any nature. Also, this section would remove the possibility of liability

which is based on the theory that the issuance of a permit is a warranty that the plans, proposal, etc., upon which the permit was based met all applicable codes, ordinances, laws and constituted a reasonable method or proposal. The person responsible for the plans, etc., upon which the permit, etc is issued will still be liable for his work. This section would not limit the applicant's or permittee's right to go to court to force the issuance, grant, etc., if it is one to which the person is entitled.

The fourth exception, which appears in subparagraph (d)(4), is copied from the exception for the state which appears in AS 09.50.250(3) with the change here that the misrepresentation exception would be for only negligent misrepresentation, not all misrepresentation as in the case for the state. The municipality would be excepted from liability for the causes of action listed in the subparagraph. Officers and employees would be protected when the act complained of was done in the exercise of one of the actor's duties and was an act which was within his authority as an officer or employee. Thus, the zoning administrator could be held liable for falsely arresting someone while a policeman usually could not. The zoning administrator does not have the authority to arrest in the discharge of his duties so such an act would constitute an act outside his employment status, often known

in law as a frolic, and he would be personally liable. On the other hand, the policeman is not hired to administer the zoning code and could not, as a municipal official, make any statement to a citizen regarding the zoning of a particular parcel of land. The policeman would be personally liable for any misrepresentation in the course of making such a statement. The zoning administrator, and through him, the municipality would be liable for a misrepresentation if the misrepresentation was intentional. Again, this subparagraph extends to municipalities and its employees and officers most of what the state already has.

The fifth exception, which appears in subparagraph (d)(5), represents an application of the Good Samaritan principle to insulate the municipality from liability where it gratuitously responds to a need outside its limits. For example, a municipality could not be held liable for its acts in fighting a fire outside its limits. A municipality having no contractual duty to respond beyond its jurisdictional limits fears the consequences of liability and adverse insurance costs and is induced to abstain. It simply is not worth the added liability exposure. Yet, as with the inspection problem discussed above, even an occasional negligent response is more than likely far more beneficial than an across the board policy of non-response.

The sixth exception, which appears in subparagraph (d)(6), is needed for reasons which are basically the same as those relating to extra-territorial service exception

discussed immediately above. Commonly occurring examples are local police called to respond in the temporary absence of the Trooper, and mutual agreements respecting assistance at state airports.

In conclusion, municipal non-immunity will remain the rule. Judicially-recognized municipal liability respecting certain functions coupled with increasing difficulty in obtaining insurance to cover the risk compel local governments to re-examine and diminish the scope of their activities rather than suffer liability exposure and inability to respond in damages. This legislation is intended to afford limited liability with a view toward non-curtailement of certain traditional functions predicated on public policy favoring the municipalities to proceed on a best efforts basis.

Prepared and submitted by:

L.B. Jacobson, attorney for Petersburg, Kake, Hoonah, Skagway
and Craig

Lee Sharp, attorney for Juneau

Ted Berns, assistant attorney for Anchorage

SB 249 am

4/5/97 Passed S

Probably just easier to deal with
this bill rather than paddling HB 351
too.

Introduced: 3/14/77
Referred: Community & Regional
and Judiciary

BY RAY, BUTROVICH, COLLETTA,
FERGUSON, HOHMAN, KERTULA,
MFLAND, SUMNER, ZIEGLER

1 IN THE SENATE

2 SENATE BILL NO. 249

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to suits against local governments;
7 and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA .

9 * Section 1. AS 09.65.070(a) and (b) are amended to read:

10 (a) Except as provided in this section, an [AN] action may be
11 maintained against a municipality [AN INCORPORATED BOROUGH, CITY, OR
12 OTHER PUBLIC CORPORATION OF LIKE CHARACTER] in its corporate character
13 and within the scope of its authority [, OR FOR AN INJURY TO THE RIGHTS
14 OF THE PLAINTIFF ARISING FROM SOME ACT OR OMISSION OF THE UNIT OF LOCAL
15 GOVERNMENT].

16 (b) A municipality [AN INCORPORATED BOROUGH, CITY OR OTHER POLITI-
17 CAL SUBDIVISION] may not require a person to post bond as a condition to
18 bringing a cause of action against it [THE INCORPORATED BOROUGH, CITY OR
19 OTHER POLITICAL SUBDIVISION].

20 * Sec. 2. AS 09.65.070(c) is repealed and re-enacted to read:

21 (c) No action may be maintained against an employee or member of a
22 fire department operated and maintained by a municipality or village if
23 the claim is an action for tort or breach of a contractual duty and is
24 based upon the act or omission of the employee or member of the fire
25 department in the execution of a function for which the department is
26 established.

27 * Sec. 3. AS 09.65.070 is amended by adding new subsections to read:

28 (d) No action for damages may be brought against a municipality or
29 any of its agents, officers or employees if the claim

1 general law borough or city of any class, a unified municipality estab-
2 lished under AS 29.68.240 - 29.68.440, or a municipality established by
3 merger or consolidation under AS 29.68.030 - 29.68.110; the term in-
4 cludes a public corporation established by a municipality;

5 (2) "village" means an unincorporated community where at
6 least 25 people reside as a social unit.

7 * Sec. 4. This Act applies to all legal actions filed after the effective
8 date of this Act.

9 *Sec. 5. This Act takes effect immediately in accordance with AS 01.10.-
10 070(c).

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Municipality
of
Anchorage



POUCH 6-650
ANCHORAGE, ALASKA 99502
(907) 274-2525

GEORGE M. SULLIVAN,
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

A CASE FOR LIMITED
MUNICIPAL TORT IMMUNITY IN ALASKA

Municipal tort immunity refers to the legal doctrine by which a state legislature, as a matter of public policy, has defined specific types of municipal activities for which municipalities may not be held liable for damages. At the outset, it is important to state that no one would argue for total immunity from suit for local governments in Alaska. If a municipal vehicle injures a pedestrian or if a city fails to correct a dangerous condition on publicly owned property the local government should be held liable to pay damages to injured parties. However, for many other activities undertaken by municipalities, it is less clear whether government should be under the threat of multi-million dollar damage judgments which could devastate the operation of both large and small municipalities in Alaska.

The case for limited municipal tort immunity in Alaska is perhaps best illustrated by the so-called "Good Samaritan" doctrine. As an example of this principle, consider a physician who, returning home from his office, comes upon a man lying severely injured at the side of the road. At early common law, the physician had no legal duty to stop and attempt to aid the injured man. Moreover, if the doctor did attempt to aid the victim and, because he did not have the necessary medicines, equipment, etc., accidentally caused some additional injury, the physician could find himself the defendant in a lawsuit brought by the very person he had attempted to aid.

To avoid the undesirable consequences described above, states began to offer statutory protection from lawsuits to physicians and other health care providers who voluntarily rendered aid to persons in need of medical attention. In Alaska, the Legislature has adopted AS 09.65.090 which provides that persons attempting to administer aid in certain emergency circumstances need not fear the threat of a lawsuit if, in the course of their efforts, an accident



occurs. The public policy supporting limited tort immunity for persons rendering emergency aid is the belief that it is important to encourage such voluntary actions as essentially a public service. This is to say that we, the people, want the assurance that physicians and other persons will voluntarily attempt to render aid to those in need and that we are willing to provide a limited measure of tort immunity to encourage such actions.

Municipal governments, in undertaking many of their activities, are often acting essentially as "good samaritans". No rule of law states that a community must provide, for example, a fire inspection program designed to reduce threats to the health and safety of its citizens. Municipalities do not conduct such programs for pecuniary gain or other financial benefit. Rather, the people have in many cases decided to voluntarily provide this service to individual property owners for the common good.

No one contends that municipal officers or employees are perfectly efficient or that mistakes and accidents in the operation of, for example, fire inspection programs will not occur. If the operation of local fire inspection programs is threatened by the possibility of huge damage judgments, the people, and in turn their elected legislators, are faced with circumstances similar to the "good samaritan" situation discussed above. The uncomfortable choice for many local governments in Alaska is between maintaining, for example, the best possible fire inspection program at the risk of devastating lawsuits should a mistake be made, and simply eliminating any inspection program at the risk of allowing serious health and safety hazards to exist in the community. Faced with this untenable situation, Alaskan municipalities are asking the Tenth Legislature to provide a limited measure of tort immunity to cover situations in which local governments voluntarily undertake programs designed to protect the health and safety of their citizens.

The danger that Alaska's local governments will be forced to discontinue or severely limit programs such as building code inspections, enforcement of housing codes, fire inspections, planning and zoning functions, and various public health programs is imminent. In all of the activities listed above, municipalities are, in essence, acting as volunteers or "good samaritans" by extending services to their citizens for the protection of the public health, safety and general welfare. In the case of fire inspection activities, recent decisions by the Alaska Supreme Court indicate that if a municipality undertakes an inspection program it may be held liable for (possibly) millions of dollars in damages in the event that a mistake is made. See,

for example, Adams v. State, 555 P.2d 235 (Alas. 1976), and City of Fairbanks v. Nordale Hotel, Inc., 555 P.2d 248 (Alas. 1976).

In response to these cases, some local governments in Alaska have already considered the possibility of discontinuing fire inspection activities. In addition, it appears that the reasoning advanced by the Supreme Court in the Adams and Nordale cases could be expanded to cover building, housing, and public health inspection programs and, perhaps, damages allegedly caused by the issuance of various permits which are later discovered to contain error. For example, the Supreme Court of Washington has upheld a \$2.8 million dollar judgment against the City of Seattle based on the allegedly negligent issuance of a building permit. See, Haslund v. City of Seattle, 547 P.2d 1221.

In conclusion, it is important to stress that the goal of local governments is not to leave injured parties without a remedy in the event of an accident. As noted above, the proposed legislation does not relieve municipalities from liability based on actions that are proprietary in nature such as the operation of municipal vehicles or the maintenance and operation of municipal property. In most other situations, a municipality will be only one of several possible defendants. For example, if a building in a municipality is destroyed by fire, the injured party may have an action against (1) the person or persons directly responsible for the blaze, (2) the person's employer (and his insurance company), and (3) possibly against the manufacturer of any materials and equipment which are discovered to have been negligently constructed or improperly installed. However, given the absence of any municipal immunity, any plaintiff's attorney will also join the municipality as a defendant if it can be alleged that there has been any failure to properly inspect or certify the building or equipment as part of a municipal fire inspection program.

By extending a limited degree of tort immunity to municipalities to cover activities such as fire inspection programs, the injured party in a situation such as the one described above is not left without a remedy. Rather, the burden of liability is merely shifted from municipalities to others who, in most cases, are more directly responsible for the accident. Viewed in another light, the choice for the individual property owner is to (1) look to his private insurance carrier or to other responsible parties, not including a municipality, in the event of, for example, a fire and be assured that he will have the benefit of a local fire inspection program or (2) risk the loss of local fire prevention/inspection services due to the threat of tort

liability. Faced with such a choice, municipalities in Alaska have turned to their state legislators to ask for limited tort immunity to ensure the continuation of essential local services, such as fire, building and health programs, at a cost which is within the reach of local government taxpayers.

TDB:kh

Members files



CITY OF VALDEZ

P. O. BOX 506
PHONE: (907) 835-4313

ZIP CODE: 99686

March 25, 1977

Representative Terry Gardiner
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Subject: HB 354 and SB 249

Dear Representative Gardiner:

The subject bills provide tort liability protection for municipalities. We urge you to support these bills.

Because of two recent court decisions, i.e. the Gold Rush fire and Nordale Hotel fire, municipalities are now confronted with liability they never had before. As a result, the municipalities are confronted with two major problems. One, the cities are finding they can no longer obtain insurance; or, if they are fortunate enough to get insurance, the premium costs are prohibitive.

With the constant increase in the cost of providing even minimal services, the addition of this type of liability and its attendant costs is rapidly forcing many communities to the brink of bankruptcy.

When government becomes so expensive that no one can afford it, our whole system will break down. It is vital that municipalities be held responsible for only those acts which are willful, negligent or malicious.

Very truly yours,


Herbert W. Lehfeldt
City Manager

HWL:ss

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

POUCH D - JUNEAU 99811

April 11, 1977

The Honorable Terry Gardiner
Chairman, Judicial Committee
State House Of Representatives
Pouch V
Juneau, Alaska 99811

Dear Mr. Gardiner:

In response to your letter of April 4, I am pleased to give you some observations concerning HB 354.

Unfortunately, I cannot predict what the cost saving impact would be to municipalities by reason of adoption of the bill. As you know, rates are predicated upon anticipated experience and it is quite fair to assume that a substantial reduction in liability exposure will result from the adoption of the bill and that it will have a substantially favorable impact on the rates charged municipalities for their liability coverage. However, I am not able to predict with precision the dollar value of the impact.

I think perhaps the more important effect of the adoption of the bill will be the availability of the coverage.

Currently, insurance carriers have expressed extreme reluctance in writing liability coverage for municipalities because of the varied kinds of exposures which this bill will exclude. By excluding these exposures, the carriers will then be able to provide general liability coverage that is not now being provided.

I believe that the bill is a very necessary adjunct to the proper functioning of our municipalities in this State and ought to be favorably considered by your committee.

Yours cordially,



Richard L. Block
Director

RLB/wj/1/3

Members file



Alaska Society of Professional Engineers

DONALD R. DENT JR. P.E.
National Director
4135 Hood Court
Anchorage, Alaska 99503

Tel. (907) 277-8027
(907) 272-5451

March 23, 1977

Representative Gardiner
Chairman
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Ref: HB 354, Act Relating to Suits Against Local Governments.

Dear Representative Gardiner:

Upon reading HB 354 Section 1, the intent appears to clean up the language of the existing statute.

Section 2 appears reasonable because of the emergency nature of action by Fire Departments.

Section 3 seems to be the crux of the whole act. It removes all courses of action which would be a cause of action granted under Section 1. Specific paragraphs, AS 9.65.070(d),(2),(3) and (4), are presently the basis for actions against a government entity. I'm not an attorney, but as I remember there is, under common law, a doctrine called Respondeat Superior, in which a "master" is liable for the torts of his "servants", if the servant is acting within the scope of his employment. Also under common law every person who commits a tort is personally liable to the individual whose person or property is injured or damaged by the wrongful act, and is not relieved of tort liability by establishment that the act was committed under the direction of someone else or in the course of employment by another. It appears that the paragraphs (d),(2),(3) and (4) are removing the Municipality and its employees from liability for any wrongful acts, literally, putting them above the law. Societies which have an extra - legal elite group of people or entities who can act wrongfully, with impunity, are usually termed Fascist. I can't believe that this is really what was intended when the Bill was introduced.

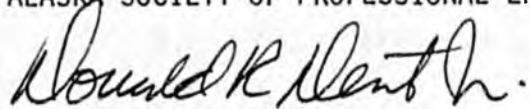
Representative Gardiner
Juneau, Alaska
March 23, 1977

Page 2

Everyone is bemoaning the fact that the bureaucracy at all levels of government is growing with seemingly no abatement. I believe that this Bill in its present form removes the last vestiges of containment and control at the local level. The rights of the citizenry of access to the courts for redress would be terminated. In Anchorage only one in ten municipal employees I know really thinks of themselves as public servants, certainly a minority in the massive municipal machine.

Very truly yours,

ALASKA SOCIETY OF PROFESSIONAL ENGINEERS



Donald R. Dent, Jr., P.E.
National Director
Legislative Chairman

DRD/ssm

3/31/77

Introduced: 3/15/77
Referred: Judiciary

BY NAKAK, HAUGEN, DUNCAN,
ELIASON, FREEMAN AND SNIDER

1 IN THE HOUSE

2 HOUSE BILL NO. 354
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

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18 bringing a cause of action against it [THE INCORPORATED BOROUGH, CITY OR
19 OTHER POLITICAL SUBDIVISION].

20 * Sec. 2. AS 09.65.070(c) is repealed and re-enacted to read:

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22 fire department operated and maintained by a municipality or village if
23 the claim is an action for tort or breach of a contractual duty and is
24 based upon the act or omission of the employee or member of the fire
25 department in the execution of a function for which the department is
26 established.

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Gurn
have knowledge or host-1-ability
To acquire " and did not abate problem then liable.
HB 354

1 (1) is based on a failure of the municipality, or its agents,
2 officers, or employees, when the state is neither owner nor lessee of
3 the property involved,

4 (A) to inspect property for a violation of any statute,
5 regulation or ordinance, or a hazard to health or safety;

6 (B) to discover a violation of any statute, regulation,
7 or ordinance, or a hazard to health or safety if an inspection of
8 property is made; or

9 (C) to abate a violation of any statute, regulation or
10 ordinance, or a hazard to health or safety discovered on property
11 inspected;

12 (2) is based upon the exercise or performance or the failure
13 to exercise or perform a discretionary function or duty by a munici-
14 pality or its agents, officers, or employees, whether or not the dis-
15 cretion involved is abused;

16 (3) is based upon the grant, issuance, refusal, suspension,
17 delay or denial of a license, permit, appeal, approval, exception,
18 variance, or other entitlement, or a rezoning;

19 (4) arises out of assault, battery, false imprisonment, false
20 arrest, malicious prosecution, abuse of process, libel, slander, negli-
21 gent misrepresentation, deceit or interference with contract rights;

22 (5) is based on the exercise or performance during the course
23 of gratuitous extension of municipal services on an extraterritorial
24 basis; or

25 (6) is based upon the exercise or performance of a duty or
26 function upon the request of, or by the terms of an agreement or con-
27 tract with, the state to meet emergency public safety requirements.

28 (e) In this section

29 (1) "municipality" means a home rule borough or city, a

has been taken out of Senate version

state exemption language

1 general law borough or city of any class, a unified municipality estab-
2 lished under AS 29.68.240 - 29.68.440, or a municipality established by
3 merger or consolidation under AS 29.68.030 - 29.68.110; the term in-
4 cludes a public corporation established by a municipality;

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6 least 25 people reside as a social unit.

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8 date of this Act.

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Members files



CITY OF VALDEZ

P. O. BOX 506
PHONE: (907) 835-4313

ZIP CODE: 99686

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Representative Terry Gardiner
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

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Very truly yours,

Herbert W. Lehfeldt
Herbert W. Lehfeldt
City Manager

HWE:ss

M E M O R A N D U M

TO: File: Petersburg - attn: City Mgr.
FROM: L.B. Jacobson LEBT
DATE: March 4, 1977
RE: City of Petersburg/Limited Liability Legislation

RELEVANT LITIGATION - during the last five years the City of Petersburg was actively involved in three judicial matters designated as a party defendant which would have been eliminated altogether by the legislative adoption of the proposed bill conferring limited liability to local governments. The first one was Bell vs. Petersburg and 3 arresting police officers and involved a suit for \$3,000, plus \$25,000 in punitive damages predicated on an allegedly false arrest and assault and battery of Mr. Bell who was picking up marijuana at the post office. Petersburg prevailed on summary judgment, but only after the expenditure of approximately \$2,500 in attorney's fees in defending the action. The next one was Rosi v. Petersburg General Hospital and involved an allegation of slander to the professional reputation of Dr. Peter Rosi by reason of the hospital board's failure to admit to practice at the local hospital. The case was settled out at \$5,500 plus attorney's fees in the approximate amount of \$2,000 incurred in defending the action. The last one was Musewski vs. Cornelius and the City of Petersburg, involving the City of Petersburg's alleged negligence in failing to enforce its local building inspection code when a building on tidelands' pilings collapsed. The case is currently in litigation and Petersburg has liability exposure in the amount of approximately \$10,000 and has expended approximately \$2,500 in its own attorney's fees defense costs to-date.

In the wake of the Adams and Jennings cases, the City of Petersburg will probably opt for repeal of its Uniform Building Code, plumbing code, and National Electrical Code rather than go to the expense of hiring at least one additional person to cover the inspection duties. The cost of such person would be in the magnitude of \$22,000 per year minimum with an estimated additional cost of approximately \$6,000 per year attributable to office space, inspection equipment, and clerical support.

What the City of Petersburg will do with respect to National Fire Prevention Code adopted by local ordinance remains to be seen. Since the City has a volunteer fire department with only one paid employee, a viable possibility

would be the discharge of the fire chief, donation of the fire equipment to the volunteer fire department and a simple annual contribution to the fire department scheduled as a matter of budget appropriation.

Because of the implications of the Adams and Jennings cases, the Petersburg City Council has resolved to discontinue its rendition of gratuitous fire protection service outside the City limits.

For the same reasons, the City of Petersburg has refused to sign a "Mutual Aid Agreement" proposed by the Alaska Division of Aviation which would, in part, require the City of Petersburg's personnel and equipment to respond to fires and other emergencies at the State-owned airport outside of the City limits.

LBJ:ss

M E M O R A N D U M

TO: File/Limited Liability for Municipalities

FROM: L.B. Jacobson

DATE: March 31, 1977

RE: Action in Other Communities

KAKE - instructed by legal counsel not to adopt fire prevention code, Uniform Building Code, National Plumbing Code, and National Electrical Code.

CRAIG - instructed by legal counsel to terminate enforcement of local fire prevention ordinance. Also instructed not to undertake courtesy Public Health Service fire inspection program under the auspices of the City, but the matter was partially resolved and the program revived on a basis limited to private residential dwellings by use of a waiver.

YAKUTAT-has no police department and doubtful if personnel will be hired for same under present circumstances. Repealed the local ordinance adopting the National Fire Prevention Code.

WRANGELL-began to implement a widespread condemnation program to abate dangerous structures in 1975 which program enjoyed only a limited degree of success and was rescinded altogether by reason of enforcement difficulties and uncertainties associated with the legal consequences for damages.

HOONAH- has fire prevention codes and building codes adopted by local ordinances, but they are not enforced.

SKAGWAY-has adopted housing, plumbing and electrical codes as well as fire prevention code by local ordinance but has spasmodic enforcement and, like other towns, cannot afford to staff with full-time qualified building inspector. Is presently in litigation over the issuance and revocation of a building permit where the damages are nominal and the relief sought is removal of a portion of a garage encroaching in the set-back, but attorney's fees are estimated at \$2,000. In Davis v. Skagway, the City suffered liability exposure in the amount of \$85,000 for slander and damage to the professional reputation of a superintendent fired during the second year of a three-year contract. City ended up paying for the third-year's salary, but primary issue was damage to reputation and it took an appeal to the Alaska Supreme Court to reverse the decision and well in excess of \$20,000 in attorney's fees were expended during the lengthy trial and protracted course of appeal.



CITY OF CRAIG

P.O. Box 23

CRAIG, ALASKA 99921

Phone: 826-3232



RESOLUTION NO. 77-8

WHEREAS, In light of recent Alaska Supreme Court decisions, municipalities will be liable for negligence respecting building code and fire safety standards if inspections are conducted, and

WHEREAS, The only realistic local alternative is for city government to not conduct inspections at all, and

WHEREAS, This would serve to perpetuate the growth of unsafe buildings in Alaskan communities, and

WHEREAS, Legislation has been proposed which would amend the Alaska statutes to grant cities a measure of immunity from liability in these areas,

THEREFORE, BE IT RESOLVED by the Council of the City of Craig that we hereby go on record as fully supporting said proposed legislation, and that we urge the Alaska State Legislature to take affirmative action towards its passage during this legislative session.

Adopted this 17th day of March, 1977.

Certified by: _____

Attested by: _____

Merrin L. Yode
Mayor

Roy Thomas
City Clerk

Kirk M. Thomas
Councilperson

Elizabeth Dennis
Councilperson

Walter H. Paul
Councilperson

James H. Sprague
Councilperson

~~Don~~
~~the map~~

Teel Burns - Anchorage, AT

Lee Sharp - JNU Attorney

Jake Todobsen - local Attorney - Craig

Sam Coxin

Tom Koester

A. I. Nakak

Teel Burns - AT Anchorage

Munc remain liable for prop. activities

Permissive - Build. codes

Zoning

Munc. are peripherally responsible

Jacobsen

Target's Schiuble case 1960

No insurance for liabilities available

Oct, 1976

Adams } Gold Rush

Jennings } Nordale

If you undertake inspection A, ascertain all disc. beyond

B Take all approp. actions
to abate

Conno. - Minority Opinion

House Judiciary
March 31, 1977

The meeting was called to order at 3:25 p.m. by Chairman, Gardiner. Members present were Gardiner, Miles, Eliason, Specking and Brown. Mr. Dankworth and Mrs. Rudd were absent..

HB 354 Suits against local governments

HB
354

Rep. Al Nakak, sponsor for the bill, was here to speak briefly about the bill.

Ted Burns, Assistant Attorney for the Municipality of Anchorage, was here to testify and speak in support of the bill (except for Section 4). They feel that law suits should be filed against the parties most directly responsible for injuries, not against municipalities just because they neglected to make a fire-safety inspection, etc.

L.B. Jacobson, an attorney from the firm of Robertson, Managle, Eastaugh and Bradley was here. His firm helps represent such communities as Klawock, Craig and Petersburg. He came today because he feels stongly about this legislation and because Petersburg had asked that he come to speak in support of the bill.

Lee Sharp, Attorney for the City and Borough of Juneau was here to give general support to the bill (except for section 4).

Tom Koester, from the Dept. of Law, was here. He indicated that the question is "How much government is going to insure for private wrongs?" The legislature needs to decide what government can be liable for. The Dept. of Law would be in the position of feeling that the wrong-doer should pay... not the government that is in some way distantly related to whatever accident.

The meeting was adjourned at 4:55 p.m.

House Judiciary
April 12, 1977

The meeting was called to order at 3:10 p.m. by Chairman, Gardiner. Members present were Gardiner, Miles, Eliason, and Dankworth. Mr. Speckingcame late. Mr. Brown and Mrs. Rudd were absent.

HB 354 Suits against local governments
SB 249am

HB
354

SB
249am

Jack Chenowith from LAA was here to explain what the Senate did to SB 249. Basically, they removed subsection 4. There was a general discussion about HB 354 and SB 249am, which are companion bills.

Mr. Eliason moved that SB 249am be moved out of committee. Since there was no objection, this was done.

HB 204 Children's Laws and Related Judicial Proceedings

HB
204

Andy Brown from LAA was here to explain the changes made to HB 204 at the request of the committee. There were general questions and other suggestions and amendments were discussed and made.

Mr. Eliason moved that CSHB 204 as amended be moved out of committee. The motion carried and this was done.

HB 347 Liability for the destruction of property by minors

HB
347

The committee took time to read and think over the committee substitute that had been drafted for HB 347.

Mr. Eliason moved that CSHB 347 be moved out of committee. There was no objection, so this was done.

The meeting was adjourned at 4:25 p.m.

BISS AND HOLMES

ATTORNEYS AT LAW
AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

BURTON C. BISS
ROGER F. HOLMES

FIRST NATIONAL BUILDING
425 G STREET
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 277-8564

WASILLA OFFICE
SR BOX 5111
WASILLA, ALASKA 99687
TELEPHONE (907) 376-5318

February 25, 1977

Mr. Don M. Berry
Executive Director
Alaska Municipal League
204 North Franklin
Juneau, AK 99811

Dear Don:

We have your letter and enclosures regarding proposed legislation relating to suits against local government. At the same time, we received a certified mail - return receipt requested letter from the State Fire Marshal "deferring" responsibilities for fire prevention inspections and enforcement of State Fire Safety regulations to the City of Palmer. For your more ready reference I am enclosing herewith a copy of Mr. Hendrie's letter and our reply.

The size of jury verdicts, and the ever-expanding areas of governmental liability which are being found by the Courts throughout the nation have created a situation where municipal government has become a target defendant. Palmer cannot afford all of the necessary insurance, even if it were available. Some type of curb on this raid on the taxpayers is absolutely essential. My only feeling is that the proposed legislation may not go far enough.

Our city administration feels that tax monies should be expended to effectuate the general public good and that programs, such as fire inspections, should not have to be abolished because we are unable to give sufficient budget for a 100% program.

Very truly yours,

BISS AND HOLMES
Wasilla Office

Burton C. Biss

Encs.

BCB:esp



CITY OF CRAIG

P.O. Box 23

CRAIG, ALASKA 99921

Phone: 826-3232

March 10, 1977

L.B. Jacobson, Attorney at Law
Robertson, Monagle, Eastaugh & Bradley
Box 1211
Juneau, Alaska 99801

Dear Mr. Jacobson:

Thank you for your letters regarding Senate Bill No. 89 and your proposed bill regarding suits against local government. These were read and discussed by the City Council, and we felt both were valuable pieces of legislation.

We did pass Resolution No. 77-7 in support of SB 89, sent it to our legislative delegation, and received favorable responses from all of them. I will enclose a copy of that resolution.

Another resolution has been prepared for action at our March 17 city council meeting dealing with the proposed bill limiting liability for municipalities. I will forward that to you and to the Alaska Municipal League as soon as possible.

In answer to your questions regarding Craig's problems with code enforcement, we have not yet been sued or threatened with suit because of a lack of enforcement following safety inspections. To be realistic, if inspections were conducted and violations enforced to the letter of the law in all health and safety areas, we would probably be without any businesses in Craig, which would involve the loss of all sales tax revenue. This amounted to \$47,224 in fiscal year 75/76. Furthermore, we have nobody in Craig qualified to conduct inspections of the thoroughness that would have to be involved in order to protect the city from liability; someone would have to be imported for this. It would surely involve at least one full-time position in Craig to regularly inspect all businesses and enforce compliance with all applicable codes. I would estimate paying a person with these

qualifications at least \$20,000 a year. Considering all the related administrative and legal expenses, I doubt if an increase of two mills in our property tax levy would cover the complete cost to Craig of enforcing the codes with the standards prescribed by the Alaska Supreme Court.

Again, thank you for keeping us informed about these pieces of legislation. Please let us know if there is anything further we can do.

Sincerely,

Marvin L. Yoder
Marvin L. Yoder
Mayor

Enclosure

↓ cc: Alaska Municipal League

MLY/kt



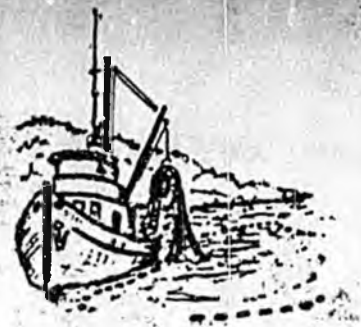
CITY OF CRAIG

P.O. Box 23

CRAIG, ALASKA 99921

Phone: 826-3232

March 18, 1977

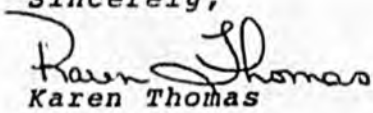


L.B. Jacobson, Attorney at Law
Robertson, Monagle, Eastaugh & Bradley
Box 1211
Juneau, Alaska 99801

Dear Mr. Jacobson:

Enclosed is a copy of Resolution No. 77-8 concerning municipal liability. This was passed at the City Council meeting last night, and copies have been forwarded to our area legislators. Wishing you luck with this one!

Sincerely,


Karen Thomas
City Clerk

✓cc: Alaska Municipal League

Terry Gardiner

Box 6092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

March 23, 1977

Marvin Yoder, Mayor
City of Craig
P.O. Box 23
Craig, Alaska 99921

Dear Mayor Yoder:

Thank you for the copy of Resolution No. 77-8 in regard to the liability of municipalities. Legislation concerning this topic has been introduced in the Legislature. Rep. Al Nakak of Nome has introduced this legislation in the House and is presently in the House Judiciary Committee.

This is a very complicated area both effecting municipalities liabilities and the rights of individuals recover for damages. I have not decided what I will do in voting on this legislation at this time. I consider it a very complicated area and will give it great scrutiny before making a decision.

As Chairman of the House Judiciary Committee, I have scheduled a meeting on the bill in order that everyone concerned can present testimony and information on the legislation. Regardless of my personal feelings on the bill one way or the other, it is incumbent on the Legislature to address problem areas of legislation.

I will give a copy of your Resolution to the Committee Members. I hope you will forward more specific information about how this legislation will benefit the community of Craig and what present problem the City is experiencing that this legislation will resolve. I think that information will go along ways towards gaining support for the legislation.

Sincerely,

Sake Jacobsen

Terry Gardiner

Terry Gardiner
State Representative
Alaska Legislature

Municipality
of
Anchorage



POUCH 6-650
ANCHORAGE, ALASKA 99502
(907) 274-2525

GEORGE M. SULLIVAN,
MAYOR

OFFICE OF THE MUNICIPAL MANAGER

March 16, 1977

Ronald A. Hendrie
State Fire Marshal
State of Alaska
Department of Public Safety
Division of Fire Prevention
Pouch N
Juneau, Alaska 99811

Re: Enforcement of State Fire Regulations; your letter of
February 14, 1977.

Dear Sir:

As Fire Chief Bennett has informed you by telephone, we cannot accept responsibility for enforcing the State fire safety regulations within the Municipality of Anchorage, or even within those portions of it where tax-supported fire suppression services are provided.

Under the former City of Anchorage Code, State fire safety regulations were incorporated into Municipal law, and were enforced by the City Fire Marshal. The Municipal Assembly, however, deleted that provision from the new Municipal Code. This amounts to a legislative policy decision to enforce only our own building and fire prevention codes in the areas in which such codes are effective.

At present, these codes are effective only within the Anchorage Bowl area. In locations such as Chugiak, Eagle River and Girdwood, although they have fire suppression services, the codes are not in effect, and our Fire Marshal is not authorized by Municipal law to engage in inspection and enforcement there, nor is he budgeted to do so.

At the next regular election, in the fall of 1977, the citizens of the Municipality will have an opportunity to vote on the question of expanding our building and fire



March 16, 1977

prevention codes areawide. If the voters approve, we will thereafter enforce the Municipal codes throughout Anchorage, but not the State regulations, since the Assembly did not incorporate them into our law.

We have no objection to your inspecting and enforcing State regulations upon State-owned and leased property within Anchorage, as you have said that you will do. For the reasons stated above, however, we must defer not only in those matters, but in all enforcement of State fire safety regulations, to your office.

Sincerely yours,

Douglas G. Weiford
Municipal Manager

DGW:SGD:kw

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

JAY S. HAMMOND, GOVERNOR

Richard L. Burton
Commissioner

DIVISION OF FIRE PREVENTION

POUCH N - JUNEAU 99811

February 14, 1977

CERTIFIED - RRR

M.B. Winegar, Manager
City and Borough of Juneau
155 South Seward Street
Juneau, Alaska 99801

Subject: City and Borough of Juneau
Fire Protection Districts
Fire Prevention Inspections
and Enforcement of Fire
Safety Regulations

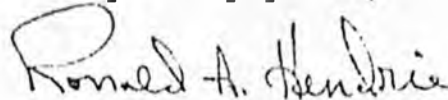
Dear Mr. Winegar:

This is to advise you that responsibilities for fire prevention inspections and enforcement of state fire safety regulations as provided by AS 18.70.090 and regulations promulgated under AS 18.70.080 i.e. specifically Alaska Administrative Code, Title 13 Public Safety Part 2 Fire Prevention, Chapter 50 - Codes and Standards including further revisions thereto, within the City and Borough of Juneau Fire Protection Districts, is deferred to your local jurisdiction. Copies of applicable statutes and regulations attached.

In keeping with our current policy, the Department of Public Safety will continue to inspect within the City and Borough of Juneau Fire Protection Districts (1) state-owned and state leased facilities and (2) state licensed facilities upon request of the licensing agency or the local entity. All inspections under (1) and (2) will be conducted jointly with local authorities whenever possible.

Should you desire clarification on any of the above please contact me at 465-4331 or write Pouch N, Juneau 99811.

Very truly yours,



RONALD A. HENDRIE
State Fire Marshal

RAH:GRC:smb

c: Doug Boddy, Fire Coordinator (Certified - RRR)
City and Borough of Juneau
& Chief, Juneau Volunteer Fire Department

February 14, 1977

Subject: City and Borough of Juneau Fire Protection Districts
Fire Prevention Inspections and Enforcement of Fire
Safety Regulations

c: Jack Mason, Chief (Certified - RRR)
Glacier Volunteer Fire Department

John Ferro, Chief (Certified - RRR)
Douglas Volunteer Fire Department

Dick Keithahn, Chief (Certified - RRR)
Auke Bay Volunteer Fire Department

Allan R. Parce, Chief (Certified - RRR)
Lynn Canal Volunteer Fire Department

enclosures: AS 18.70.080
AS 18.70.090
13 AAC Chapter 50

c: Deputy Fire Marshal
Gordon E. Brunton
Southeastern Region

BISS AND HOLMES

ATTORNEYS AT LAW
AN ASSOCIATION OF PROFESSIONAL CORPORATIONS

BURTON C. BISS
ROGER F. HOLMES

FIRST NATIONAL BUILDING
425 G STREET
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TELEPHONE (907) 277-8564

WASILLA OFFICE
SR BOX 5111
WASILLA, ALASKA 99687
TELEPHONE (907) 378-5318

February 25, 1977

State of Alaska
Department of Public Safety
Division of Fire Prevention
Pouch N
Juneau, AK 99811

Attention: Ronald A. Hendrie, State Fire Marshal

Subject: City of Palmer Fire Prevention Inspections and
Enforcement of Fire Safety Regulations

Dear Sir:

Upon receipt of your letter of February 14, 1977 deferring to the City of Palmer the State's responsibilities for fire prevention inspections and enforcement of the State Fire Safety Regulations, the City Manager requested that I respond on behalf of the State.

We do not have the personnel nor the budget to undertake this program. We have not done this in the past nor do we plan to undertake this responsibility in the future. Some years ago when the question of the adoption of the State Fire Safety Regulations came up before the City Council, it is my recollection that State representatives were present. I pointed out to the City that if such responsibilities for inspection and enforcement were undertaken by the City, it would also be assuming the areas of liability. The Council declined to undertake inspections and enforcement at that time.

The City of Palmer isn't insured against this type of liability and cannot afford such insurance even if we had the personnel and budget to undertake the program. We must therefore defer responsibility for fire prevention inspections and enforcement

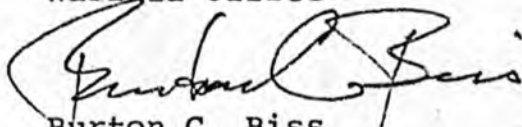
State Division of Fire Prevention
Page 2
February 25, 1977

of the State Fire Safety Regulations back to the State.

Should you desire clarification on any of the above please
contact me at 376-5318 or write me at the letterhead address.

Very truly yours,

BISS AND HOLMES
Wasilla Office



Burton C. Biss
City Attorney for the
City of Palmer, Alaska

Certified Mail No. 356167
Return Receipt Requested

BCB:esp

cc: William E. Curtis
Daniel M. Contini, Jr.

Terry Gardiner

Box 6092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

April 4, 1977

Dick Block
Commissioner of Insurance
Pouch D
Juneau, Alaska 99811

Dear Commissioner Block:

In relation to HB 354 the Committee has requested your analysis of the bill in terms of what effect it would have on insurance availability and cost to municipalities.

There has been testimony presented to the Committee that the insurance rates for municipalities have become extremely high if not impossible in some cases. The Committee is interested in some type of information which may reflect what the change in insurance policies or rates in issuance of policies would be if HB 354 or a similar bill were enacted into law.

Do to the lateness in the session I would appreciate your earliest return of some comment on this.

Sincerely,

Terry Gardiner

Terry Gardiner
State Representative
Alaska Legislature

enclosure

RESOLUTION 635 - R
CITY COUNCIL
CITY OF PETERSBURG, ALASKA

WHEREAS the City of Petersburg has suffered periodic judicial harassment from claims arising from or related to building inspections, enforcement of Ordinances and regulations, denials of licenses and permits, false imprisonment, and other interference with the policy decisions which are within the discretionary functions of the City; and

WHEREAS the City of Petersburg is encountering increased difficulty in obtaining liability insurance coverage adequate to provide for the scope of its' Municipal functions; and

WHEREAS the City of Petersburg provides extra-territorial police and rescue service on a gratuitous basis, and further, is being requested by the State of Alaska to enter into a mutual aid agreement of emergency Public Safety requirements at the State Airport and for back-up assistance from the Alaska State Troopers with respect to emergency response outside of Petersburgs Municipal limits.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Petersburg that;

the City of Petersburg endorses a concept of a legislative solution similar to the Federal Tort Claims Act and State Immunity as prescribed in AS 09.50.250 as may be amended by SB 151, and

the City of Petersburg unequivocally urges the Alaska legislature to adopt "An act relating to suits against local government" amending AS 09.65.070 to grant limited immunity to local governments respecting building inspections, enforcement of Ordinances, the exercise of discretionary functions, licenses and permits, false imprisonment and false arrest, extra-territorial services provided on a gratuitous basis, and services performed by the Municipality pursuant to request or contract with the State of Alaska.

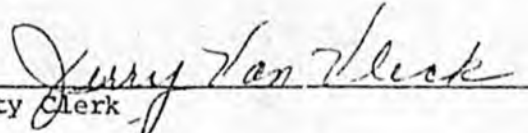
PASSED AND APPROVED by the City Council of the City of Petersburg, Alaska

This 7 day of March, 1977



Mayor

ATTEST:



City Clerk

CITY OF HAINES

PHONE 766-2571 — POST OFFICE BOX 239 — HAINES, ALASKA

March 16, 1977

Mr. L. B. Jacobson
Robertson, Monagle, Eastaugh
& Bradley
P.O. Box 1211
Juneau, Alaska 99802

Re: Proposed Legislation Limiting Municipal Liability
"An Act Relating To Suits Against Local Governments"

Dear Mr. Jacobson:

In response to your request for input on the above-entitled legislation, the Council of Haines strongly endorses the passage of most of its provisions, as indicated by the Resolution sent to you last week. We have several comments to offer concerning the effects of the City's exposure to liability in our community; firstly, I will attempt to answer the questions articulated on page four of your letter to Jim Eide.

(1) The City of Haines has not been sued in 20 years.

(2) Officials and employees of the City of Haines receive a frequent barrage of threats of litigation, particularly arising from both enforcement and non-enforcement of zoning laws, provisions concerning hazardous buildings, road conditions limiting access for emergency vehicles, charges of misrepresentation (usually because of poor or unclear communication). It is a rare week when somebody associated with the City is not reminded of the possibility of a lawsuit arising from some situation or another.

(3) In July, 1976, the Superintendent of Public Works redflagged four structures as hazardous buildings. The owners of the buildings were sent letters notifying them that they should either repair or demolish the building or request a Council hearing after which the Council could order demolition. However, to date, nothing has been done to enforce these requests, chiefly because of uncertainty as to whether present City employees would be considered qualified to undertake building inspection duties. By City Ordinance, the Superintendent of Public Works is authorized to condemn hazardous buildings. However, there has been considerable discussion about the advisability of having a Superintendent of Public Works undertake this duty, since he is otherwise not expected to have any expertise in structural engineering. It seems clear that in case a decision or order were to be challenged, it must be possible to demonstrate the inspector's qualifications, but the

State is apparently reluctant to define minimum qualifications for a building inspector.

Because of the same uncertainty, the City of Haines has yet to adopt any building code. We do not wish to have laws on our books which we are not equipped to enforce. We have joined the "Small Towns Institute" in the hope that other communities of comparable size might have ideas for a less stringent code than either the National Building Code or the Uniform Building Code. Even if we were to adopt a code, it is doubtful whether we would find a single individual in Haines of sufficient expertise to undertake structural, plumbing and electrical inspections. In a town this size, the most qualified individuals are likely to be those in business in these fields, who would have a conflict of interest if they were to become inspectors. In addition, the Council is understandably reluctant to incur the expense of an inspector because of Haines' well known financial limitations. However, probably the most important factor in considering the adoption of a building code has been uncertainty over the increased liability associated with its adoption, not only because of possible challenges to the inspector's qualifications, but because of possible liability for failing to discover or disclose a violation of the code. Obviously, in a town which has had no building code, the adjustments involved in following a code would be considerable, and feelings among the citizens are likely to be volatile unless it were done absolutely consistently and by individuals whose authority would be difficult to question. The City adopted the Uniform Fire Code several years ago, but it is not systematically enforced.

In summary, the City of Haines has never taken a strong stand in enforcing codes intended to promote public safety, in spite of some rather flagrant examples of hazardous conditions, because it simply cannot afford the risk of losing a suit for damages. Necessary precautions which municipalities could undertake as well as limitations on possible awards for damages arising from negligent enforcement are all too ambiguous. It is unrealistic to expect a small town City Council, whose members are burdened with many other issues, to achieve enough sophistication in the field of code enforcement to be able to confidently direct a reasonable course of consistent enforcement in the face of the extremely high risk imposed by the attitude of the Supreme Court, when accompanied by the lack of positive direction from the law itself concerning inspections and authority therefor. The resultant loss to public safety and aesthetics is apparent to anyone walking through the streets of Haines.

(4) It is almost impossible to estimate added costs necessary for the insurance and activities required to insure an unquestioned standard of code enforcement, but it would be considerable even if a building code were not adopted. If a building code were adopted and building inspectors hired, the cost would be a minimum of \$20,000 per year.

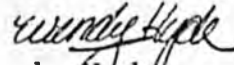
In addition, the City has hesitated to offer certain community services because of the risk of liability associated with them. This winter, citizens requested that a street be closed to motor vehicles and dedicated to sledding, so that kids would be less likely to be found careening down the center of a street, where it is difficult for drivers to see them. Based on experiences of municipalities

in Juneau and Ketchikan and on the possibility of a suit because of increased response time required by emergency vehicles having to use an alternate route because of the blocked-off street, the Council ultimately declined to allow a City street to become a sledding hill.

In regard to the proposed Section AS 09.65.070 (d) (5), there has been some concern that if the volunteer fire department were fighting a fire outside city limits when a fire occurred inside, the property owner inside city limits could sue the department for delayed response time in arriving at his property. In that case, the City taxpayer in essence, supports the department through property taxes and the property owner outside the City does not (although he does, through sales tax whenever he shops within city limits). Since we are a Third Class Borough, the State will not allow a fire district to be formed outside the City.

If you have additional questions or would like additional input, please do not hesitate to ask.

Sincerely,


Wendy Hyde
City Clerk

WH

cc: Mr. Don Berry, Municipal League
Mr. Norman C. Banfield

CITY OF HAINES

TELEPHONE (907) 766-2231 - POST OFFICE BOX 239 - HAINES, ALASKA 99827

RESOLUTION NO. 3777

A RESOLUTION ENDORSING "AN ACT RELATING TO SUITS AGAINST LOCAL GOVERNMENT"

WHEREAS, the cases of Adams v. State and State v. Jennings have demonstrated that the Supreme Court of the State of Alaska will hold government entities to common law standards of liability for negligence in enforcing codes intended to promote public safety; and

WHEREAS, the reasoning behind the judgments in these cases indicates that government bodies may be exposed to increased liability in carrying out all discretionary functions including the granting of licenses and permits, including zoning permits and variances; and

WHEREAS, such liability discourages local governments from undertaking functions intended to promote general welfare, such as inspections for the promotion of public safety; and

WHEREAS, such liability will dramatically increase both the cost of liability insurance for municipalities and the necessity of their maintaining it; and

WHEREAS, the interpretation of local government codes and inspections to mean that the government is totally responsible for the implementation of safety standards, rather than that the government may contribute to the process of insuring conditions of general safety places an inordinate financial responsibility on already-overburdened local governments; and

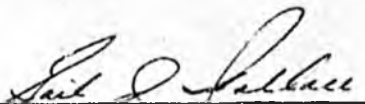
WHEREAS, the effect of such liability in a municipality continuing to enforce building, fire and safety codes is to place an inordinate financial burden on the taxpayer in order to benefit a very specialized class of persons, namely those injured as a result of unsafe conditions in a structure inspected or under the jurisdiction of inspection by an agent of the municipality; and

WHEREAS, in consideration of the aforementioned fact, proposed legislation has been drafted which would afford immunity to municipalities from actions for damages related to certain activities;

THEREFORE, BE IT RESOLVED BY THE HAINES COMMON COUNCIL that we fully endorse the proposed "Act Relating to Suits Against Local Governments" with the exception of Section AS 09.65.07 (d) (4);

BE IT FURTHER RESOLVED that in consideration of the possibly disastrous effects of total immunity from suits arising from assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, intentional or negligent misrepresentation, deceit, or interference with contract rights; we recommend that suits based on the aforementioned charges be allowed against local governments or their agents, but that damages therefor be limited to an absolute maximum of \$20,000.

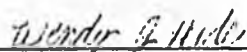
DATED: March 7, 1977



Gail J. Wallace, Mayor

CERTIFICATE

I, Wendy J. Hyde, being the duly appointed and acting City Clerk of the City of Haines, Alaska certify that the foregoing is a true and correct copy of a resolution adopted by the Common Council at a regular meeting held March 7, 1977. Said meeting was duly called and held with a quorum at all times.



Wendy J. Hyde, City Clerk

SEAL