

HB

941

Richard Burnham AQ's office



Oxford Pentastex

STOCK No. 753 1/3

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MADE IN USA

SENATE COMMUNITY AND REGIONAL AFFAIRS  
COMMITTEE MEETING

May 25, 1978

Present: Senators Orsini, Willis, Hackney and Sumner; Roger Allington, City and Borough of Juneau; Stuart H. Bowdoin, Bristol Bay Borough; Phil R. Holdsworth, S.E. Conference; Richard M. Burnham, Attorney, General's Office; Floyd Johnson, Division of Emergency Services, Jim Rolle, AML; Pat Conheady, Department of Natural Resources; Jack Chenoweth, LAA; Don Berry, Municipality of Anchorage; Annette Smith, H/C&RA; Royce Weller, Hugh Malone's Staff

Absent: Senator Ferguson

The meeting was called to order at 3:04. The bills before the Committee were HB 941 and CSHB 133.

HOUSE BILL 941

Richard Burnham, Assistant Attorney General representing the State in the litigation over the Highway complex in Anchorage, stated that that agreement may not have been entered into in good faith. He moved that there was an affidavit form filed in the AG's office giving the Municipality of Anchorage notice that it was doubtful that the Commissioner of the Department of Highways had the authority to dispose of the land on which the complex is located. He also stated that the Department of Administration appraised the land in 1973 at 3 1/2 million dollars. The next spring an appraiser, presumably hired by the Municipality and approved by the Commissioner, appraised the property at 1 million dollars. It was on the second appraisal that the lease purchase agreement was made. He stated that he did not feel that this was in the best interest of the state to lose 2 1/2 million dollars between two appraisals. Senator Orsini pointed out that he was assuming the first appraisal was correct and the second appraisal incorrect.

Floyd Johnson, Division of Emergency Services, Department of Military Affairs, stated that the division would need a supplemental appropriation for rent due to the Municipality of Anchorage if this bill were to pass. He stated that the supplemental would require \$92,467 and asked that the bill be amended to require the Municipality and his agency to sit down in good faith and negotiate a new 3 year rental sublease agreement. He told the Committee that his agency can get 50/50 matching monies from the federal government for construction of emergency operation center, that it would take about 2 to 3 years to get this money committed, and any relocation of his office would be complicated by the need to move the division's complex communication system. He stated that it would take around \$100,000 to make a move to another location, preferably to another downtown location, even if one were available.

Don Berry, Municipality of Anchorage, supplied the Committee with a letter from the Assistant Municipal Attorney.

Senator Willis moved to pass out HB 941 with "INDIVIDUAL RECOMMENDATIONS".

CS FOR HOUSE BILL 133

Roger Allington, City and Borough of Juneau, asked the Committee to take a second look at the 13,600 acreage allotment for Juneau and restore at least the amount of 19,584 acres which came out of the Senate Resources version. He stated that the city was in need of the land specifically in Juneau because of the need to relocate persons now living in hazardous downtown slide areas. Mr. Allington noted that an allotment of 24,000 acres for Juneau would be more appropriate for the Municipality's needs.

Stuart Bowdoin, Bristol Bay Borough, stated that his borough was in support of the bill. He stated that the Borough was in dire need of the land and would take about anything that becomes available.

Phil Holdsworth, Southeastern Conference, stressed the need for Southeastern communities such as Petersburg, Wrangell and Skagway to have access to trust lands which now hem them in and restrict any future growth.

Jim Rolle, Alaska Municipal League, stated that the League does not feel that access to trust lands should be based on population and urged that cities, as well as boroughs, also be eligible for trust lands and deficiency payments.

Pat Conheady, Department of Natural Resources, opposed the increase of the Anchorage allotment to 44,893 and referred to a letter of May 19 from the Director of the Division of Lands, Mike Smith. According to Mr. Conheady, a correct allotment figure for Anchorage would be 37,655 acres. He discussed the section of payment for land deficiency and supported the need for cities to have access to trust lands, particularly in Southeastern.

Mr. Conheady expressed concern regarding the January 1, 1980 deadline for determining land deficiency payments, the State was not sure when the 6A selections would be made and available for municipal selection.

Senator Sumner moved that the amendments be passed and pass out SCS for CSHB 133 with "INDIVIDUAL RECOMMENDATIONS".

The meeting was adjourned at 4:10 p.m.

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

TO: H. B. Wellman, Director  
 Division of General Services/Supply  
 Department of Administration

DATE: September 27, 1973

FROM: Tom E. Main, Area Supervisor  
 Division of General Services/Supply  
 Department of Administration

SUBJECT: Acquisition of Department of  
 Highways Buildings

Please refer to Mr. Don Lowell's August 29 memo, subject as above. You asked for my recommendation concerning the Alaska Disaster Offices' request to obtain the maintenance facility at 1305 East 4th Avenue, Anchorage.

The facility is approximately 20.0 acres in size, of which approximately 16.0 acres is within a 6' chain-link fence. It is on-grade with 4th Avenue and a small portion of the north boundary is on-grade with 3rd Avenue. The east and south boundaries abut embankments that make access impractical from those sides. The fenced area serves as a vehicle parking lot.

The fenced area has the following buildings:

a. Office building: Three stories of reinforced concrete having approximately 9300 gross square feet and approximately 7870 net square feet. This building houses the administrative offices of the Alaska Disaster Office which leases the space from the Department of Highway.

b. Maintenance building: Three stories of structural steel and metal siding. This building is approximately 66' x 150'.

A 60' x 66' section has three stories, each with 8' ceilings, served by a freight elevator. The first two floors are primarily shop and storage areas. The third floor is partitioned into offices.

The remaining 66' x 90' section has a shop with a 16' ceiling above which is another storage area.

c. Gas station: A wood frame building approximately 60' x 66' with 4 service bays. The station itself is approximately 20' x 40' and has offices on the second floor.

d. Paint storage area: Comprised of one wood frame building approximately 20' x 40' and 2 quonsets approximately 16' x 26' each.

e. Storage area: Comprised of 5 quonsets approximately 18' wide and from 25' to 34' long with a screen loading dock.

f. Soils Laboratory: (Leased to City of Anchorage) - A building approximately 66' x 150' consisting of a concrete structure and wood frame structure. The City uses this as their sign shop.

g. Open storage: Approximately 16.0 acres.

September 27, 1973

The Department of Highways reports their expenses to operate the maintenance building during FY 73 as follows:

Gas	\$ 5466.67	
Electricity	5173.42	
Water	1907.14	
Garbage	547.74	
Other	3289.76	
Personnel Services	53.52	568.62
Commodities	20.17	380.17
Overhead	3275.59	
TOTAL	\$19433.28	

Based on 23,760 gross square feet, this building costs 6.3¢ per square foot per month. Used as storage, the buildings costs should be less. This is cheap storage on an actual cost basis. However, on a rate of return based on an appraisal of the value of the facility, the real cost to the State is much greater. If the land is worth \$4.00 a square foot, the total value—exclusive of buildings—is \$3,444,800 for which a minimal 6% return is \$209,288 annually.

It has been suggested that this facility could be used to store USDA commodities and to be used for state surplus property sales. The available storage space is not ideally suited to food storage because of the 8' ceiling which restricts the use of equipment. Only 2500 square feet would be available for this use. The area could be used for state sales; however, the major attraction to buyers seems to be vehicles and construction equipment which are generated by the Department of Highways at 5700 Tudor Road. It appears more feasible to move the other miscellaneous sale items to that location.

There is always a need for miscellaneous storage by field offices in Anchorage. The quonsets and the maintenance building would be suitable for this purpose; however, control of access would be difficult and vacant storage areas have a way of becoming junk piles.

The Alaska Disaster Office does have storage problems and a facility adjacent to their present office seems to be practical; therefore, as the only outright expense for ADD to use this is the cost of transferring the property, I recommend that they be permitted to use the facility until permanent plans are made for either ADD or the facility.

Chief Commissioner Joseph R. ...  
Department of Administration

DATE August 29, 1973

FROM Donald Lovell, Director  
Alaska Disaster Office  
Department of Military Affairs

SUBJECT Acquisition of Department of  
Highways Building

The Department of Highways will be moving their equipment maintenance personnel from the old Department of Highways yard to their new facilities somewhere around November, 1973. The facilities they vacate will be empty, with the exception of a one-story building leased to the City of Anchorage for their sign shop and the building the Alaska Disaster Office occupies.

I request that the old Highway maintenance building (a three-story building) and five Quonset huts be assigned to the Alaska Disaster Office for storage of emergency supplies when Highways moves out. This is urgent, since equipment and supplies we now have are scattered around in several buildings, barns, and Quonsets, creating a waste in manpower and time in receiving and distributing these items.

We have storage in a warehouse in Seward, eight barns in Fairwood, a Quonset on Elmendorf, a basement of a fire station, etc.

We would, upon acquisition of the building and Quonsets, move in the emergency hospitals, emergency medical, sanitation, and water supplies, tents, cots, blankets, and other equipment as it is acquired through Excess and Surplus Property for distribution to the several communities we serve. Additionally, the building would house our emergency vehicles and our mobile communications center.

Also, there should be adequate room in the building to store surplus commodity foods for your Department.

We have been desperately short of adequate, secure storage ever since my predecessor relinquished his 30'x120' warehouse to the Department of Highways.

Your early approval of this request would be appreciated.

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

Since 1974

used for "people mover"

\$850K/yr  
for State

Lease: 100 K/yr

10 K/yr option to purchase

Div of Emer Svc - lease thru '84  
occupy 1 of 3 beds

"people" \$23 K/yr (now ~ \$93K)

value \$115 K/yr

state contests legality of lease

(contested into by D.H.)

verbal agreement between Sullivan & Egan

Good Faith

5/25

CSHB 941

AG's office

Good faith - ?

AG's office informed muni of ques of  
D of W Comm. authority to convey

In best interest of state? '73 appraisal \$ 3 1/2 M  
74 appraisal \$ 1 M (~~1.0~~) Sept of Admin  
(by appraiser under cont. to muni.)

no formal opinion on legality

Court decision 1-2 months

\$72K supplemental necessary

wants amendment for good faith negotiation  
muni & state for 3 year extension (from '79)

could get 50% matching funds from feds

\$ 1.20 log ft \$ 115K log \$ 23. K paying

\$ 74-78 \$ 90K owed

CSHB 941

5/18/78

Mitch Gravo - Muni of Anch

1974 - Anch leased bldg from Dept of Hqs w/option  
to purch  
Downtown space almost impossible to find - need to be downtown

'91 appraisal ~ \$1M  
option to purch \$10 K/yr for 10 yrs  
lease \$100 K/yr

'76 - state wanted to rescind lease, filed suit  
- lease under litigation; 1-2 yrs to settle  
1) C of Hqs lacked auth  
2) ~~no~~ no approp pub notice  
3) appraisal to state prior rather than 3 mos

This bill ratifies lease - directs DNR & DTPF to recognize

Pete Freylich - AG's of- (in Rich. Barnham absent)

Did state have a need for property? (bottom p.1 AG's letter)  
which agency? (apparently, not DOT)  
no communication agencies (?)

If bill passes have issue of ability of DOT to  
sell/lease land; don't know if particular  
issue will be settled

Admin not known if have a poem yet

Superior Ct should decide by mid-summer

CSHB 941 cont'd

Floyd Johnson - Atk Dir Emer Soc - Dept Mil Aff

'72 lease w/ dept of Hqs for 1 of 3 bldgs (waited 2)

'74 instructed by AG not to make rent payments

'75, '76 rent money lapsed

77 - still have (carried forward)

78 - " "

Total \$93,430 owed to muni

concern w/ impact on budget

don't have to be downtown

Rep. Kidd

good faith - even tho of legal liability

if this is overturned in court, then there may be other leases which will be voided also on same basis

supports bill

Dr. Bury - muni Arch

also verbal agreement between Mayor & Gov on this

base & it be used for mass. trans purposes (tho not city respons)

\$850 k/yr from state → muni for mass trans

Re CSRB 94

Audio. FEALS

X 3610

1579 April 15 -

\$ 90,000 less this  
           rent.

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only state agency at  
Center.

Original sponsor:

Offered:  
Referred:

IN THE HOUSE

BY THE COMMITTEE FOR COMMUNITY  
AND REGIONAL AFFAIRS

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act ratifying the lease-purchase agreement between the State and Municipality of Anchorage, concerning the former State Highway Complex at 4th and Post Roads in Anchorage."

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

Section 1.      PURPOSE.

(1) Whereas, the State of Alaska, acting through the Commissioner of Highways, entered into a lease-purchase agreement with the City of Anchorage on November 14, 1974 concerning the former State Highway Complex at 3rd and Post Roads in Anchorage, Alaska, described more particularly as:

Blocks 28-C, 28D, 29-A, 29-B, 29-C, 29-D, 30-A, and Lot 2, Block 30-B, all in the East Addition to the Anchorage Townsite, Anchorage, Alaska, with all fixtures and improvements except for the Northwesterly 90 feet of Block 28-C, East Addition, containing 32,930 square feet more or less; and the North 90 feet of Blocks 29-A, 29-B, and 30-A, East Addition, together containing 72,707 square feet, more or less.

Such agreement being recorded on November 20, 1974, in Book 232 at Page 317, Anchorage Recording District, Third Judicial District, State of Alaska; and

(2) Whereas, pursuant to the lease-purchase agreement the Municipality pays the State \$100,000 a year in rent plus \$10,000 a year in consideration for its option to purchase the property, such funds being applied to the purchase price of \$1,000,000 if the Municipality chooses to exercise the option; and

(3) Whereas, the complex has been used <sup>in the past</sup> by the Municipality as a maintenance and vehicular storage yard for the People Mover Mass Transit System; the Municipality intends to use the Complex as ~~the~~<sup>a</sup> future operations center of the People Mover mass transit system; and

(4) Whereas, it is in the public interest to encourage development of such mass transit system; and

(5) Whereas, the lease-purchase agreement was entered into by both the State and City in good faith; and

(6) Whereas, for many years the City and Municipality of Anchorage have provided the street lighting systems on the State Highway System within the City and Municipality at no cost to the State; and,

(7) Whereas, the City of Anchorage has leased 8.7 acres of valuable land at Lake Spenard to the State as a site for the National Guard at a lease rate of \$1 a year for 102 years, and in addition, the City has leased the State Division of Aviation 21 acres of valuable land adjacent to the shoreline of Lake Spenard at a nominal rate of \$1,800 a year; and

(8) Whereas, question has arisen concerning whether execution of the conveyance by the Commissioner of Highways on behalf of the State created a valid instrument; and

(9) Whereas, enactment of a general law would be inappropriate to correct the statutory confusion from which such dispute arises since the Department of Highways no longer exists as a separate entity, having been merged into the Department of Transportation and Public Facilities pursuant to Executive Order No. 39(1977); and

(10) Whereas, the Legislature finds it in the best interest to both the State and Municipality of Anchorage to declare the lease-purchase agreement to be a valid document binding on both parties;

Section 2. IT IS HEREBY ENACTED THAT:

(1) The action of the former Commissioner of Highways in enacting the lease-purchase agreement between the State and City of Anchorage which was recorded on November 20, 1974 in Book 232, Page 317, Anchorage Recording District, Third Judicial District, State of Alaska, is hereby ratified.

(2) The Commissioner of Natural Resources and Director of the Division of Lands are empowered and directed to approve the lease-purchase agreement, as written, pursuant to the authority vested in them by AS 38.05.315(A).

Section 3. This Act takes effect immediately in accordance with AS 01.10.070(C).

LEASE-PURCHASE AGREEMENT

THIS AGREEMENT is entered into this 13 day of November 1974, by and between the STATE OF ALASKA, DEPARTMENT OF HIGHWAYS, hereinafter referred to as the "STATE," and the CITY OF ANCHORAGE, a municipal corporation organized and existing under its charter and the laws of the State of Alaska, hereinafter referred to as the "CITY."

WHEREAS, the STATE is the owner of the following described real property:

Blocks 28-C, 28D, 29-A, 29-B, 29-C, 29-D, 30-A, and Lot 2, Block 30-B, all in the East Addition to the Anchorage Townsite, Anchorage, Alaska,

which has improvements and fixtures located upon it, such real property, improvements and fixtures being hereinafter referred to as the "Premises"; and

WHEREAS, the CITY desires to lease the premises, excluding the excepted parcels described below, and desires to have the option to purchase the Premises and a contingent option to purchase the excepted parcels described below.

NOW, THEREFORE, in consideration of the mutual covenants described below, the STATE and the CITY hereby agree as follows:

1. Subject Property.

The STATE leases to the CITY, and the CITY leases from the STATE, all of the Premises, with the exception of the following four parcels, which are hereinafter referred to as the "Excepted Parcels": the Northwesterly 90 feet of Block 28-C, East Addition, containing 32,930 square feet more or less; and the North 90 feet of Blocks 29-A, 29-B, and 30-A, East Addition, together containing 72,707 square feet, more or less.

2. Rent and Terms of Lease.

The lease will be for a period of ten (10) years, commencing on August 14, 1974. The rent shall be One Hundred

RECORDED NOV 30 1974 2007 232 PAGE 317

CC: Treasury  
Controller (Cloy Rodgers) 12/4/74  
Purchasing (for insurance purposes)

Thousand Dollars (\$100,000) per year. The first year's rent shall be payable on Dec-1, 1974. Each year's rent thereafter shall be payable, in advance, on August 14 of that year.

3. Option to Purchase Premises, Excluding Excepted Parcels.

A. Option, Price and Terms. At any time after one year of this lease has expired, the CITY shall have the right, at the CITY's option, to purchase the premises, excluding the Excepted Parcels, for the sum of One Million One Hundred Twenty-Six Thousand Dollars (\$1,126,000). No interest shall be paid on this purchase price. The purchase price shall be paid in cash on the closing date. The price to be paid by the CITY for this option shall be Ten Thousand Dollars (\$10,000) per year, commencing with the second year of this agreement, until the option is exercised or abandoned. This annual option price will be paid in advance on the same date on which the annual rent is to be paid (excluding the first rental payment date). If the CITY exercises this option, then the lease shall terminate and all of the payments of rent made by the CITY pursuant to paragraph 2, above, and all of the \$10,000 per year payments made by the CITY for this option, will be credited to the above \$1,126,000 purchase price.

B. Exercise of Option. The exercise of this option shall be accomplished by the CITY giving notice to the Commissioner of Highways, in writing, of the CITY's desire to exercise the option,

C. Closing Date. The sale transaction shall be closed within sixty (60) days of the exercise of this option.

D. Warranty Deed. Upon closing, the STATE will deliver to the CITY an executed warranty deed for the premises, excluding the Excepted Parcels, in favor of the CITY, subject only to encumbrances and restrictions of record as of August 14, 1974.

4. Contingent Option to Purchase Excepted Parcels.

A. Option, Price and Terms.

The Excepted Parcels, which have been described above, are being withheld from the present lease of the premises, and from the option described in paragraph 3, above, for possible use by the STATE for street or highway right-of-way expansion purposes. If the STATE decides that it does not need all or a portion of the Excepted Parcels for the above-described purpose, or upon the expiration of fifteen (15) years from the date of execution of this agreement without use for the above-described purpose being accomplished by the STATE, whichever is earlier, then the STATE will immediately offer the Excepted Parcels, or the portions of the Excepted Parcels not used for the above-described purpose, for sale to the CITY. The CITY shall have until August 14, 1984, or one year from the date of the above-described offer by the STATE, whichever is later, to decide whether to accept such offer. The purchase price of the Excepted Parcels, or portion thereof, shall be \$2.00 per square foot, and shall be paid in cash on the closing date. No interest shall be paid on this purchase price.

B. Exercise of Option. The exercise of this option shall be accomplished by the CITY giving notice to the Commissioner of Highways, in writing, of the CITY's desire to exercise the option.

C. Closing Date. The sale transaction shall be closed within sixty (60) days of the exercise of this option.

D. Warranty Deed. Upon closing, the STATE will deliver to the CITY an executed warranty deed for the Excepted Parcels, or portion thereof, in favor of the CITY, subject only to encumbrances and restrictions of record as of August 14, 1974.

E. If the CITY has exercised the option described in paragraph 3, above, then the STATE will give the CITY one year's

notice of any right-of-way expansion upon any portions of the Excepted Parcels which have structures located upon them, so that such structures may be salvaged if the CITY so desires.

5. Possession.

The CITY has the right to possession of the Premises, excluding the Excepted Parcels, as of August 14, 1974. Commencing on August 14, 1974, the CITY will be responsible for all maintenance and utility costs.

6. Replat.

The CITY will prepare and submit a replat of the Premises to the appropriate platting authority. The replat will separate the Excepted Parcels from the remainder of the Premises.

7. Clean-up of Premises.

The STATE will clean up the Premises by November 1, 1974. Such clean-up will include the removal of all items which the CITY designates for removal. Such items will include, but will not be limited to, designated equipment, lumber, metal objects, barrels, drums, damaged pipe and culvert. Further, such clean-up will include the removal of all rubbish and refuse from the premises, and the removal of all spilled creosote, tar, and other chemical compounds. This clean-up will meet the standards of the City Department of Public Works, the Greater Anchorage Area Borough Department of Environmental Quality, and the State Department of Environmental Conservation. If the above-described clean-up is not completed by the date specified above, the CITY may perform such clean-up and deduct the costs of the clean-up from the next rental payment.

8. Termination.

The City may terminate this Lease-Purchase Agreement at any time by giving sixty (60) days notice. Rent and option payments shall be pro-rated to the date of termination.

9. Sub-Leases to Greater Anchorage Area Borough and Alaska Disaster Office.

The CITY will execute the sub-leases, which have been attached to this agreement and have been designated Exhibits A and B, to the above entities, for the portions of the Premises described in the sub-leases, pursuant to the terms and conditions contained in those sub-leases.

In the event of termination of this Lease-Purchase Agreement prior to the expiration of the terms of the sub-leases, such sub-leases shall be binding on the STATE for the remainder of the terms.

IN WITNESS WHEREOF, the parties have executed this agreement on the date first written above.

ATTEST:

CITY OF ANCHORAGE

Jean H. Nielsen  
City Clerk

By: A. G. Weisford  
City Manager

APPROVED AS TO FORM:

STATE OF ALASKA, DEPARTMENT OF  
HIGHWAYS

David G. Skiffel  
City Attorney

By: B. A. Campbell  
B. A. ~~Bureau~~ Campbell  
Commissioner of Highways

STATE OF ALASKA )  
 ) ss:  
THIRD JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this 13 day of November 1974, before me, the undersigned, a Notary Public in and for the State of Alaska, duly sworn and commissioned as such, personally appeared DOUGLAS G. WEIFORD, known to me and to me known to be the City Manager of the CITY OF ANCHORAGE, Alaska, the municipal corporation that executed the foregoing instrument, and he acknowledged that he signed the foregoing instrument freely and voluntarily for the uses and purposes therein mentioned and acknowledged that he is authorized to execute said instrument on behalf of said municipal corporation, and that the seal affixed is the corporate seal of said municipal corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year in this certificate first above written.

Alice Laursen  
Notary Public in and for Alaska  
My Commission Expires: 11-26-77

STATE OF ALASKA )  
~~FIRST~~ ) ss:  
~~FIRST~~ JUDICIAL DISTRICT )

THIS IS TO CERTIFY that on this 28 day of Oct. 1974, before me, the undersigned, a Notary Public in and for the State of Alaska, duly sworn and commissioned as such, personally appeared B.A. ~~Campbell~~ Campbell, known to me and to me known to be the Commissioner of Highways, of the STATE OF ALASKA, DEPARTMENT OF HIGHWAYS, and he acknowledged that he is authorized to execute said instrument on behalf of said Alaska Disaster Office, that he signed said instrument freely and voluntarily for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Mary J. Hall  
Notary Public in and for Alaska  
My Commission Expires: \_\_\_\_\_

My Commission Expires  
November 13, 1977

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

STATE OF ALASKA,	)
	)
Plaintiff,	)
	)
vs.	)
	)
CITY AND BOROUGH OF ANCHORAGE	)
a/k/a MUNICIPALITY OF	)
ANCHORAGE,	)
	)
Defendant.	)
	)

No. 76-7012 E. Civ.

AFFIDAVT OF DALE P. TUBBS

STATE OF ALASKA	)	
	)	ss.
THIRD JUDICIAL DISTRICT	)	

I, Dale P. Tubbs, being first duly sworn, deposes and says:

1. I have been retained by the Municipality of Anchorage to research and obtain past practice evidence of land disposal procedures used by the Alaska Division of Lands and other Alaska state agencies, particularly the former Department of Highways and the Department of Public Works, Division of Aviation.

2. My knowledge and experience with state agency land disposal practices is predicated on 14 years and 4 months employment with the Alaska Division of Lands in the following capacities:

January, 1962 - February, 1963: District Forester - Duties included state timber sales.

February, 1963 - March, 1967: Area Forester - Duties included state timber sales and planning report preparation for state land management.

March, 1967 - January, 1969: Realty Officer II - Duties included coordination of state land disposal program for Southcentral Alaska, prepare right-of-way permits, lease agreements, and material sale contracts.

January, 1969 - December, 1973: Southcentral District Land Manager - Duties included supervision of the district land management planning, and disposal through sale, lease, and grants of state land.

MUNICIPALITY  
OF  
ANCHORAGE

OFFICE OF THE  
MUNICIPAL ATTORNEY  
POUCH 6650  
630 WEST FIFTH AVENUE  
ANCHORAGE, ALASKA  
274-2525

December, 1973 - November, 1974: Acting Chief of Land Section - Duties included supervision of state land appraisal activities and the land disposal section for the division. This included the signing of state leases, permits, and sale contracts.

November, 1974 - April, 1976: Deputy Director of the Division of Lands - Duties included land disposal policy making and signing of state land permits in the absence of the director.

May, 1976 - Present: Land Management Consultant employed by Moening-Grey & Associates, Inc.

3. The information shown in Attachment I and II is derived through my research of the State Division of Lands records and case files. The material is a matter of public record.

Attachment I summarizes the type of land and resource disposal activity, approximate minimum number of transactions involved, the past practice treatment in regard to providing an appraisal as required by AS 38.05.310, and the past practice treatment of giving public notice as prescribed in AS 38.05.345. The treatment of disposals by public auction follow the prescribed appraisal and notice. Negotiated transactions did not include an appraisal when the legislation prescribed a land grant, such as borough selections, and in all instances except for some coal, oil, gas, and shore fishery offerings no public notice was given. This policy was derived from the belief of the Division of Lands that statutory authorized negotiated transactions did not require public notice.

Pages 5 and 6 of Attachment I summarizes the types of cases by recipient categories that have received land without public notice and in instances of AS 38.05.315(a) without appraisal.

Attachment II is a sampling of case files showing actual recipients of leases, sales, or grants of state land found within the Division of Lands case files. This table depicts the type of recipients involving negotiated transactions without public notice. Land appraisals were made for these parcels when trust lands were involved or the statute

authorizing the conveyance required a fair market value return.

4. Contact was made with the land leasing and right-of-way sections within the Alaska Department of Transportation to reconfirm known past practices used by them. Ted Richards, an employee for the highways right-of-way section, confirmed that excess state lands, from highway projects, are commonly conveyed to abutting owners with a commissioners deed. No public notice is given for these transactions when the land was originally purchased with state money. Most of these transactions involve remnant land parcels.

Mr. Steve Parish, chief of airport leasing, confirmed the former division of aviation conducted all of its leasing activities without public notice. This policy was changed in November of 1976 when a directive was received to subject the leases being offered to public notice. The directive exempts the public notice requirement when a lease is being offered to another state agency.

5. A decision to void the negotiated lease transaction between the State and Anchorage for the former highway maintenance site on East Third Avenue because of the lack of public notice would put a cloud on the validity of all the existing negotiated lease, sale, and grant transactions entered into by the various state agencies conveying land or interest in land. These agencies include: Alaska Division of Lands, former Department of Highways, Alaska State Housing Authority, Division of Waters and Harbors, Division of Buildings (school sites), and the Division of Aviation.

Specific sites or types of facilities particularly impacted by such a decision would include:

- a. Borough and municipal land selections - 350,000 acres.
- b. Five schools in the Anchorage Municipality.

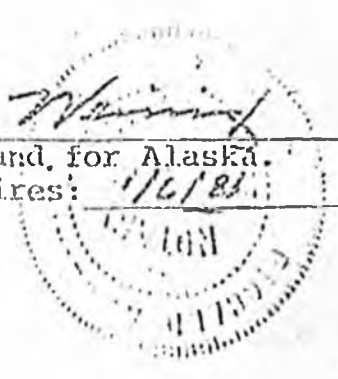
- c. Department of Highway sites in Glennallen and Fairbanks.
- d. The prison facilities in Eagle River and Palmer.
- e. All of the earthquake grant transactions at Port Lions and in the Anchorage vicinity.
- f. Booth Memorial Home and the Alaska Crippled Childrens Treatment Center in Anchorage.
- g. The Anchorage Ski Club lease for the Arctic Valley Ski site.
- h. The only authorized solid waste sanitary fill site in the Anchorage Municipality.
- i. The Nike site at Goose Bay.
- j. Chugach Electric Association, Inc. power plant site at Beluga.
- k. All sewer, telephone, water, electric power, and road easements issued to municipalities and boroughs.

Dated this 23<sup>rd</sup> day of September, 1977.

*Dale P. Tubbs*  
 \_\_\_\_\_  
 DALE P. TUBBS

Subscribed and sworn to before me this 23<sup>rd</sup> day of September, 1977.

*Richard A. Weisinger*  
 \_\_\_\_\_  
 Notary Public in and for Alaska.  
 My commission expires: 1/6/81



ATTACHMENT I

Division of Lands Land Disposal Practices Prior to 1976

Land disposal actions by the Alaska Division of Lands fall within definite patterns with little variation. These procedures remained essentially unchanged until about February-March, 1976. By that time disposal activity decreased to almost zero and new procedures were being implemented. Reasons for the procedural change include:

1. The court case involving the sale of state land on the Aleutian Islands and Alaska Peninsula - Aleut Corp vs State, Superior Court, 3rd Jud Dist GA 72-2893(1973).
2. Questions raised in the sale of oil and gas leases in Kachemack Bay.
3. Procedures used for lease and sale of lands to Alyeska Pipeline Service Company as provided in AS 38.35.

At the time of my resignation from the Division of Lands, I was working on a check sheet to outline which procedures must be followed to consummate a disposal. New legislation has since cleared up questionable areas as to review and public notice. The remaining decisions are administrative.

Prior to the 1976 legislation and the almost halting of disposals, the past practices of the Division of Lands can be documented as follows:

Past Practice

AS 38.05.310	AS 38.05.345
Appraisal within	Public Notice
90 Days	

Advertised Disposals -  
Public Auction

	(Number of Cases)		
Land Sales (AS 38.05.045)	(3500+)	Yes	Yes

Past Practice

		AS 38.05.310 Appraisal within 90 Days	AS 38.05.345 Public Notice
	(Number of Cases)		
Land leases (AS 38.05.070)	(4000+)	Yes	Yes
Material Sales (AS 38.05.110) Upland & tide	(50+)	Informal	Yes
Timber Sales (AS 38.05.110)	(100)	Yes	Yes
Grazing leases (AS 38.05.070)	(50+)	-	Yes
Oil and Gas (AS 38.05.180)	(1600+)	-	Yes
Tidal leases (AS 38.05.070)	(25+)	Yes	Yes
<u>Negotiated Disposals or Grants</u>			
Transfer of State Land to Cities (AS 38.05.347)	(?)	No	No
1. Agricultural Preference (AS 38.05.069)	(30)	Yes	No
2. Forest Service Preference (AS 38.05.068)	(200+)	Yes	No
3. Preference Grazing leases (AS 38.05.075)	(20)	No	No
4. Upland Shore Fishery Sites Sale (AS 38.05.66)	(45)	Yes	No
5. Open to Entry (AS 38.05.077)	(4200)	Yes	No
6. State, Federal and Political Subdivisions (AS 38.05.315(a))	(hundreds)	Grantland No Trustland Yes	No No No

Past Practice

		AS 38.05.310 Appraisal within 90 Days	AS 38.05.345 Public Notice
	(Number of Cases)		
7.	Non profit Organizations (AS 38.05.315(b-d)) (42)	Yes	No
8.	Earthquake Grants (Chapter 116 SLA 1964) (200+) Statute Limit	No	No
9.	Material Sales (Tideland & Upland) (AS 38.05.110) 150	Informal	No
10.	Timber Sales (AS 38.05.110) (400+)	Informal	No
11.	Preference right lease or sale (AS 38.05.035(b)(2)) (10)	Depends on Circumstance	No
12.	Preference right sale (AS 38.05.035(b)(3)) (20)	Back dated Yes	No
13.	Preference right sale (Nigh bill) (AS 38.05.035(b)(5)) (50)	Back dated Yes	No
14.	Shore Fishery Lease (AS 38.05.082) (275)	Administrative minimum	Yes
15.	Negotiated lease (AS 38.05.070(b)) (100-200)	Minimum with clause for adjust. or appraisal	No
16.	Off Shore Prospecting Permits (Several thousand)	No	No
17.	Tideland leases (AS 38.05.070(b)) (225)	Yes	No

Past Practice

AS 38.05.310  
Appraisal within  
90 Days

AS 38.05.345  
Public Notice

(Number of  
Cases)

18. Coal Prospecting Permits	(760)	No	Yes
19. Land exchanges (except Cook Inlet)	(20)	Yes	No
20. Occupied tidelands and Submerged lands (AS 38.05.320)	(382)	Grant	No
21. Oil and Gas leases - Noncompetitive	(2000+)	No	Yes
22. Right-of-way Permits	(1000+)	No	No
23. Inter-Agency Land Management transfers			
Tidelands	(200+)	No	No
Uplands	(hundreds)	No	No
Municipal Selections			
AS 29		No	No

The above mentioned information can be summarized into several categories. Disposals that were offered at public auction were appraised within 90 days of the auction date and public notice was published 3 times and or posted.

Negotiated transactions, except for shore fishery leases and openings of mineral lands were not given public notice. The statutes were interpreted to mean that if the transaction was within negotiable limits or as directed by statute, public notice was not necessary. Appraisals for the disposals was dependant on the type of action. Disposals to governmental agencies are for \$1.00 if they involved general grant land. When trust lands were involved - (after about 1970) the market value was charged.

Cases of particular interest that have special color are:

1. Earthquake grants - (Chapter 116 SLA 1964)  
Allowed for granting land to those that lost land in the earthquake. Only administrative cost were to be charged.
2. Preference sales - AS 38.05.035(b). This section provides for negotiating a sale to a party that lost his land through administrative error. Appraisal is back dated to the claimants entry on the land.
3. Shore Fishery Sites - (AS 38.05.66). This section provided for a negotiated sale to certain persons that had a BLM special use permit. Appraisal was current market value but no public notice was made.
4. U.S. Forest Service Preference rights. (AS38.05.068). Provides for negotiated sale to valid U.S.F.S. permit holders. Appraisal is at current market value but no public notice is given.
5. Disposals to Governmental entities (AS 38.05.315(a)). Lands are conveyed by sale or lease for \$1.00 if the lands are used for public purposes. Market value for trust land, no public notice was given. Particular disposals of interest.
  - a. Lease to City of Anchorage for \$1.00/yr. at Pt. Woronzof.
  - b. Reconveyance of State land back to the BLM:
    - (1) 2 townships - 46,000 acres - Tangle Lakes.
    - (2) Camoground with improvements at Lake Louise.
    - (3) 10 acre site at Delta for BLM adm. site.
  - c. QCD's to BIA for school facilities.
  - d. Leases to the Military - such as Nike site at Goose Bay.
  - e. QCD's or leases to cities.
    - (1) Homer
    - (2) Anchorage
    - (3) Ketchikan
    - (4) Kenai
    - (5) Juneau
    - (6) Hydaburg
    - (7) Hoonah
    - (8) Haines
    - (9) Girdwood
    - (10) Fairbanks
    - (11) Delta Junction
    - (12) Craig
    - (13) Cordovia
    - (14) Bethel

- (15) Fort Yukon
- (16) Soldotna
- (17) Kodiak

6. Transfer of State land to cities. AS 38.05.347. Surplus state lands made available to cities for the asking. This is a land grant so no appraisal was made and no notice was given. Kenai and Anchorage were recipients of this grant.
7. Assoc. for Retarded Children - - Chapt 167 SLA 1960 Provided for a 75 year lease at \$1.00 per year. No reappraisal. No public notice.
8. None of the \$1.00 leases to governmental entities are reappraised at 5 year intervals as provided in AS 38.05.105.
9. No transactions transferring state public domain lands from ADL to another state agency was addressed in this report.
10. The Commissioner of Hwys. (Walt Parker) gave away the down stream side of the Yukon Bridge to Alyeska Pipeline Service Co. See agreement in court case file. State of Alaska vs Alyeska -- Civil.

Statutes that govern disposals by Dept. of Hwys.

- AS 38.05.030(b)
- AS 19.05.040(2)
- AS 19.05.080-120

Federal Statutes

- 23 USC 317(c)
- 48 USC 364(a)

Omnibus act - section 21 (Hwys) found in 48 USC page 9031.  
QCD conveying the Hwy site to the State.

PEO that set the Hwy sites aside for BPR use.

## ATTACHMENT II

State Case File Number	Purchaser or Lessee	Type of Transaction	Effective Date of Contract	Remarks
58031	Dept. of Air Force	15 Yr. Lease	5/25/73	60 acres AS 38.05.315
58033	Dept. of Air Force	15 Yr. Lease	5/25/73	AS 38.05.315
34810	Salvation Army	55 Yr. Lease	10/2/68	Booth Memorial Home AS 38.05.315
56400	Greater Anch. Area Borough	55 Yr. Lease	2/24/72	AS 38.05.315
52379	Hope Cottage, Inc.	55 Yr. Lease	8/20/70	
02130	Assoc. for Retarded Children	75 Yr. Lease	9/1/60	Chapter 167 SLA 1960
242	Alaska Crippled Children Assoc.	55 Yr. Lease	8/6/68	AS 38.05.315
24054	BIA	QCD	8/6/64	17.5 acres Nome Vocational School Site
24123	BIA	QCD	7/27/64	At Nome
50451	BIA	QCD	4/9/70	Tok Dormitory Site
51232	BIA	QCD	9/17/70	Kenai Area
51937	BIA	QCD	8/7/70	Fort Yukon
52337	BLM-Dept. of Interior	QCD	8/20/70	45,818 acres Tangle Lakes- reconveyance to BLM
55555	BLM	QCD	8/19/71	2 acres
55556	BLM	QCD	8/19/71	4.38 acres Fbx
59592	BLM	QCD	1/30/73	10 acres Delta
32594	BLM	QCD	7/13/66	Campground at Lake Louise
22412	City of Anchorage	55 Yr. Lease	1/28/64	At Int'l. Airport 500 acres
00273	City of Anchorage	55 Yr. Lease	7/26/61	Willow Crest School Site
02384	U.S. Army	25 Yr. Lease	5/1/62	Nike Site at Goose Bay
112	City of Haines	55 Yr. Lease	7/2/75	AS 38.05.315
2564	City of Haines	55 Yr. Lease	4/7/66	
24338	City of Homer	QCD	8/3/64	Small boat harbor
47370	City of Homer	QCD	8/28/69	
51066	City of Homer	QCD	4/24/70	
37483	City of Hydaburg	QCD		School site. Deed issued by Div. of Bldg. AS 38.05.315
20649	City of Juneau	55 Yr. Lease	4/17/63	
38738	City of Juneau	Patent #751	7/1/68	Land exchange
22694	Juneau-Douglas Ind. School Dist.	QCD	5/21/64	
51056	City of Kenai	5 Yr. Lease	7/27/70	AS 38.05.315
55120	Kenai Peninsula Racing Assoc.	5 Yr. Lease	4/24/72	AS 38.05.315
22469	Kenai Pen. Public Utilities Dist.	QCD	2/26/64	

## ATTACHMENT II

Case Number	Purchaser or Lessee	Type of Transaction	Effective Date of Contract	Remarks
0249	Kenai PUD #1	QCD	12/15/58	
7906	City of Ketchikan.	QCD		
0111	City of Ketchikan	QCD	5/15/63	
732	City Of Ketchikan	55 Yr. Lease	7/22/64	
780	City of Ketchikan	QCD		
746	USA-Air Force Corps of Eng.	25 Yr. Lease	5/16/64	Seward Recreation Camp
354-30380			11/1/65	Chap. 116 SLA 1964 Sec. 5
others		Grants for Earthquake Loss	11/1/67 Vari	89 grants in Zodiak Manor Alaska Subd.
057	Abbott Loop Community Chapel Inc.	55 Yr. Lease	7/9/64	
+Leases	Varicus	5 Yr. Leases	Various	North Slope Lease Tracts
956	Polar Oil Field Services	5 Yr. Lease	9/3/70	
954	U.S. Forest Service	55 Yr. Lease	8/2/71	Girdwood area
036	Chugach Electric	55 Yr. Lease	5/19/66	Power Plant site at Beluga
094	Chugach Electric Assoc.	55 Yr. Lease	1/29/73	
462	Golden Valley Electric Assoc.	55 Yr. Lease	9/23/64	AS 38.05.315
148	Golden Valley Electric Assoc.	55 Yr. Lease	12/7/64	
593	Golden Valley Electric Assoc.	55 Yr. Lease	3/29/66	
947	Golden Valley Electric Assoc.	55 Yr. Lease	10/3/74	
018	Anchorage Sk. Corp.	55 Yr. Lease	11/20/67	
134	W. S. Jones	Sale Contract	1/13/71	Ag. preference right AS 38.05.069
304	Tanana Valley State Fair Assoc.	55 Yr. Lease	1/25/67	AS 38.05.315
37	Curtis Hoxworth	Sale Contract	2/21/75	
473	City of Girdwood	55 Yr. Lease	5/26/67	AS 38.05.315
649	City of Juneau	55 Yr. Lease	4/17/63	AS 38.05.315
831	The Salvation Army.	55 Yr. Lease	4/21/72	AS 38.05.315
011	City of Kenai	Land Sale-St. Pat. 1924	5/7/74	AS 38.05.315(a)
398	Wm. & Eleanor Grediagin	Land Sale	5/30/74	Cordova AS 38.05.068
382	George & Kathryn Anderson	Land Sale	5/30/74	Cordova AS 38.05.068
394	James Johnson	Land Sale	5/30/74	Cordova AS 38.05.068
395	Keith & Ernestine Hawley	Land Sale + 27 more like it	5/30/74	Cordova AS 38.05.068
186	Bachner & Assoc.	Sale Contract	9/21/70	Agricultural Preference
278	Clayton Beard		9/9/68	
113	Berman Packing Co.		9/28/68	
295	City of Bethel	QCD	6/21/68	
742	City of Bethel	Patent	9/25/68	School Site
144	Better Concrete Products, Inc.	5 Yr. Lease	8/21/70	
460	Douglas Blossom	Sale	4/5/66	Pref. sale AS 38.05.036(b)(5)

CHAPTER 142

AN ACT

Relating to the Ferries, Roads and Highways Construction Fund; appropriating \$1,000,000 therefrom for highway construction; and providing for an effective date.

(C.S.S.B. 175)

Be it enacted by the Legislature of the State of Alaska:

Section 1. There is hereby appropriated from the Ferries, Roads and Highways Construction Fund to the Department of Public Works the sum of \$1,000,000 contingent on the availability of federal aid

highway matching funds for new road construction. Emphasis is to be placed on connecting centers of population to the state highway system that are not connected to the system by ferry or road.

Sec. 2. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

Approved April 25, 1961

CHAPTER 143

AN ACT

Relating to pre-session meetings of the finance committees; amending Sec. 20, Ch. 157, SLA 1959.

(H.B. 279)

Be it enacted by the Legislature of the State of Alaska:

Section 1. Sec. 20, Ch. 157, SLA 1959, is amended to read:

Sec. 20. Committees. a. Each house shall have standing committees to facilitate the transaction of business in accordance with the provisions of the rules of the legislature. Provisions may also be made in the rules for the appointment of special committees, as needed, by the presiding officer of each house. The legislature shall provide for the utilization

of joint committees to facilitate and expedite business.

b. The finance committees of the house and senate shall convene at the capital for a joint meeting during the ten-day period preceding the convening of the second regular session of the legislature. The pre-session meeting shall be devoted to consultation with the executive budget committee, review of revenue and expenditures, and such other business which the finance committees determine will expedite their work and that of the legislature in the ensuing session.

Approved April 26, 1961

CHAPTER 144

AN ACT

Empowering and directing the director of the division of lands of the Department of Natural Resources to lease certain real property to Alyeska Ski Corporation, an Alaska corporation, for a limited use; and providing for an effective date.

(S.B. 141)

Be it enacted by the Legislature of the State of Alaska:

Section 1. The director of the division of lands of the Department of Natural

Resources is empowered and directed to offer, by noncompetitive lease, to Alyeska Ski Corporation, an Alaska corporation, the following described real property lying in

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oval or on the  
such approval.  
April 25, 1961  
  
(C.S.S.B. 73)  
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public meeting  
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citizens and in-  
  
initial board  
two and three  
ereafter, board  
ed to three-year  
members shall fill  
regular elec-  
election will be  
portion of the  
  
ed April 25, 1961  
  
sec. (1), Sec. 4,  
providing for an  
  
(S.B. 131)  
  
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or other transfer  
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be used on the  
transferee for a  
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proval or on the  
at such approval.  
ved April 25, 1961

the vicinity of Girdwood, in the Anchorage Recording District:

Beginning at a point being the southwest corner, Cor. #4, of U. S. Survey 3569, thence West 20 chs., North 60 chs., East 65 1/2 chs. m/1 to the Chugach National Forest boundary line, thence South 60 chs. along the Chugach National Forest boundary line, thence West 5 1/2 chs. m/1, to the southeast corner, Cor. #3, of U. S. Survey 3569, thence North 40 chs. along the east boundary of U. S. Survey 3569 to the northeast corner of the survey, Cor. #2, thence West 40 chs. along northern boundary of U. S. Survey 3569 to the northwest corner of the survey, Cor. #1, thence South 40 chs. along western border of U. S. Survey 3569 to point of beginning, containing approximately 233 acres.

Sec. 2. The lease shall be for a term of 55 years, conditioned upon the use of the land for the development and maintenance

of a year-around resort area, such use including, but not being limited to, skiing, eating, airplane landing and other associated recreational facilities, and lodgings for the public and for employees of the lessee. Rent based on fair market value of the land shall be paid by the lessee and shall be subject to adjustment at five year intervals in accordance with Ch. 169, SLA 1959, as amended, and regulations pursuant thereto. The director, with the consent of the commissioner of the Department of Natural Resources, may impose such additional conditions or limitations in the lease as he determines will best serve the interests of Alaska. The director will make such limited conveyance within a reasonable time after said land has been conveyed to the State of Alaska by the United States of America.

Sec. 3. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

Became law without signature April 27, 1961

CHAPTER 145

AN ACT

Relating to penalties under the provisions of the Uniform Narcotic Drug Act; amending Sec. 40-3-20, ACLA 1949 as amended by Ch. 26, SLA 1951 and Ch. 106, SLA 1953; and providing for an effective date.

(S.B. 99)

Be it enacted by the Legislature of the State of Alaska:

Section 1. Sec. 40-3-20, ACLA 1949 as amended by Ch. 26, SLA 1951 and Ch. 106, SLA 1953 is amended to read:

Sec. 40-3-20. Penalties. Whoever violates any provision of this Act except that relating to the keeping of records by persons authorized to administer or professionally use narcotic drugs shall upon conviction be fined not more than \$5,000.00 and be imprisoned not less than two nor more than 10 years. For a second offense, or if, in case of a first conviction of violation of any provision of this Act, the offender shall previously have been convicted of any violation of the laws of the United States or of any other state, territory or district relating to narcotic drugs, the offender shall be fined not more than \$7,500.00 and be imprisoned not less than 10 nor more

than 20 years. For a third or subsequent offense, or if the offender shall previously have been convicted two or more times in the aggregate of any violation of the laws of the United States or of any other state, territory or district relating to narcotic drugs, the offender shall be fined not more than \$10,000.00 and be imprisoned not less than 20 nor more than 40 years.

Whoever violates any provision of this Act relating to the keeping of records by persons authorized to administer or professionally use narcotic drugs shall, upon conviction, be punished by a fine of not less than \$500.00 nor more than \$5,000.00 or by imprisonment for not more than five years, or both.

Whoever is convicted of illegally selling, giving or supplying narcotic drugs to a person under the age of twenty-one years shall be punished as follows:

(1) tion, by ten nor fine of n than \$10,  
(2) tion, or tion, the been cor Act or o or of a: trict rel: prisonme more th of not n  
(3) tion, or

Article I.

Sec. 1.0  
Sec. 1.0  
Sec. 1.0

Article II

Sec. 2.0

Sec. 2.  
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the City of Seward for expenses incurred by the state through the Department of Public Safety for prisoner care during the fiscal year ending June 30, 1961.

Sec. 8. The sum of \$475.00 is appropriated from the general fund to reimburse the Frontier Flying Service for expenses incurred by the state through the Department of Public Safety for transportation of personnel during the fiscal year ending June 30, 1960.

Sec. 9. The sum of \$250.00 is appropriated from the general fund to reimburse the Wien Alaska Airlines for expenses incurred by the state through the Department of Public Safety for search and rescue during the fiscal year ending June 30, 1961.

Sec. 10. The sum of \$116.67 is appropriated from the general fund to reimburse the Del-Air Flying Service for expenses incurred by the state through the Department of Public Safety for search and rescue during the fiscal year ending June 30, 1961.

Sec. 11. The sum of \$823.38 is appropriated from the general fund to the Ellis Air Lines for expenses incurred by the state through the Department of Public Works, Division of Aviation, for repair of the Craig float during the fiscal year ending June 30, 1961.

Sec. 12. The sum of \$300.00 is appropriated from the general fund to the Trading Union, Inc. for expenses incurred by the state through the Magistrate Courts for office rental during the fiscal year ending June 30, 1960.

Sec. 13. The sum of \$2,052.65 is appropriated from the general fund to the General Services Administration for expenses incurred by the state through the Magistrate Courts for remodeling of rooms during the fiscal year ending June 30, 1960.

Sec. 14. The sum of \$857.01 is appropriated from the general fund to the Alaska Airlines, Inc. for expenses incurred by the state through the Department of Law for transportation of witnesses during the fiscal year ending June 30, 1960.

Sec. 15. The sum of \$21.00 is appropriated from the general fund to Ellis Airlines for expenses incurred by the state through the Department of Commerce for the transportation of a member of the Public Service Commission during the fiscal year ending June 30, 1961.

Sec. 16. The sum of \$255.00 is appropriated from the general fund to Walter Muller, Kodiak Mortuary, for expenses incurred by the state through the Department of Health and Welfare for burial costs during the fiscal year ending June 30, 1961.

Sec. 17. The sum of \$00.23 is appropriated from the general fund to reimburse the Pacific Northern Airlines for expenses incurred by the state through the Department of Public Works for transportation furnished during the fiscal year ending June 30, 1961.

Sec. 18. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

Approved March 2, 1962

## CHAPTER 20 AN ACT

Empowering and directing the director of the division of lands of the Department of Natural Resources to issue a patent to Lot 3, Section 36, Township 20 North, Range 5 East, Seward Meridian, Alaska.

(H.B. 96)

Be it enacted by the Legislature of the State of Alaska:

Section 1. The director of the division of lands of the Department of Natural Resources is hereby empowered and directed to convey fee title to the following

described state lands to John J. Corey:

Lot 3, Section 36, Township 20 North, Range 5 East, Seward Meridian, Alaska.

Sec. 2. Said conveyance shall only be

made on condition that the land be classified as "Residential" under the division of lands classification system and that John J. Corey reimburse the state for all costs in connection with the transfer but not to exceed \$10 per acre.

Became law without signature March 8, 1962

## CHAPTER 21

### AN ACT

Transferring between appropriations made to the Department of Public Works for the fiscal year ending June 30, 1962; and providing for an effective date.

(S.B. 236)

Be it enacted by the Legislature of the State of Alaska:

Section 1. The sum of \$1,000 is transferred from the line item appropriation for Commodities, Construction and Engineering Branch, Division of Aviation, Department of Public Works for the fiscal year ending June 30, 1962, to the line item for Contractual Services, Construction and Engineering Branch, Division of Aviation, Department of Public Works, for the fiscal year ending June 30, 1962.

Sec. 2. The sum of \$1,000 is transferred from the line item appropriation for Travel, Construction and Engineering Branch, Division of Aviation, Department of Public Works, for the fiscal year ending June 30, 1962, to the line item for Contractual Services, Construction and Engineering Branch, Division of Aviation, Department of Public Works, for the fiscal year ending June 30, 1962.

Sec. 3. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

Approved March 12, 1962

## CHAPTER 22

### AN ACT

Providing for the designation of another officer to perform the authenticating functions of the secretary of state in his absence; and providing for an effective date.

(H.B. 358)

Be it enacted by the Legislature of the State of Alaska:

Section 1. The secretary of state may designate a head of a principal executive department, or more than one such officer in the alternative, who shall temporarily be custodian of the state seal and perform the authenticating functions of the secretary of state during such time as the secretary of state shall succeed to the office of governor, act as governor, be absent from

the state, or otherwise not be available at the state capital to perform the above authenticating functions. The designation shall be in writing, signed by the secretary of state, and filed in the office of the secretary of state. The designation shall be effective until revoked by a later designation executed and filed in the same manner.

Sec. 2. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

Approved March 13, 1962

## CHAPTER 23

### AN ACT

Relating to the penalty for putting or throwing rubbish, garbage, or material on Alaska

merce; provided however, notwithstanding any other provisions of this Act, any domestic bank holding company, as defined by Subsec. b, organized pursuant to Ch. 126, SLA 1957, which shall maintain its principal office and place of business in this state and conduct its principal operations in this state may acquire and own all or any portion of the voting shares or other capital stock of, or all or substantially all of the assets of, any corporation which is subject to the regulations of the Commissioner of Commerce under the provisions of this Act; provided further, any such holding company may be required to post a bond in an amount equal to the par value of the stock held by it with the Commissioner of Commerce under such conditions as may be prescribed by him to assure full protection to the public; provided, any such holding company shall be subject to an examination by the Commissioner of Commerce or a competent person designated by him whenever he deems it necessary, but not less than once each year, and that the actual cost of each examination shall be paid to the Commissioner by every holding company so examined, and the Commissioner may maintain an action for the recovery of such costs in any court of competent jurisdiction.

b. "Domestic bank holding company"

means any domestic corporation, business trust, association, or other similar organization which on the effective date of this Act or hereafter is designated a holding company affiliate by the Board of Governors of the Federal Reserve System rather than a bank holding company per se because such company is an owner or holder of shares of stock in a single banking corporation rather than of two or more banking corporations.

c. The Commissioner of Commerce is empowered to promulgate rules and regulations regulating domestic bank holding companies to insure financially sound banking organization and practice.

d. Any person or persons, company, or corporation, or any of the officers, servants, agents, or employees of any such person, company, or corporation who shall violate any of the rules and regulations promulgated pursuant to Subsec. c. shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than \$5,000, or by imprisonment for a period of not more than one year, or by both; and in the case of a corporation, by a fine of not more than \$5,000.

Sec. 2. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

Approved April 4, 1962

CHAPTER 54

AN ACT

Empowering and directing the director of the division of lands of the Department of Natural Resources to issue a patent to a portion of Lot 20, Section 1, Township 7 South, Range 13 West, Seward Meridian, Alaska; and providing for an effective date.

(C.S.S.B. 284)

Be it enacted by the Legislature of the State of Alaska:

Section 1. The director of the division of lands of the Department of Natural Resources is empowered and directed to convey fee title to certain state land described as a portion of Lot 20, Section 1, Township 7 South, Range 13 West, Seward Meridian, Alaska, to Charles B. Abbott, according to the following legal description:

Commencing at a G.L.O. Brass monu-

ment, which is the Southwest corner of Lot 14, said section, township, and range; thence due East 1560.00 feet to a point; thence South 0 degrees 01 minutes East 60.00 feet to a point; thence due East 90 feet to point of intersection to West line of said Lot 20; thence South 0 degrees 01 minutes East 79.00 feet on the West line of Lot 20 to a point designated as Corner Number 1 and POINT OF BEGINNING; thence South 54 degrees 05 minutes East 220.00 feet to a point

designated as Corner Number 2; thence North 35 degrees 55 minutes East 162 feet, more or less, to point of intersection with G.L.O. meander line of Kachemak Bay, which point is Corner Number 3; thence along the meander line in a north-west direction 220 feet, more or less, to a point from which the Point of Beginning bears South 35 degrees 55 minutes West, said point designated as Corner Number 4; thence South 35 degrees 55 minutes West 146 feet, more or less, to Corner Number 1 and POINT OF BE-

GINNING. The land thus described aggregates 0.79 acres, more or less.

Sec. 2. The conveyance provided for in this Act is in consideration of the voluntary relinquishment by Charles B. Abbott of a claim to this and several other contiguous lots in order to permit state selection and prompt development thereof. The conveyance is made at no cost to the patentee.

Sec. 3. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

Approved April 4, 1962

CHAPTER 55

AN ACT

Relating to land preference rights; amending Subsec. (16), Sec. 5, Art. II, Ch. 169, SLA 1959, as amended by Sec. 4, Ch. 61, SLA 1960; and providing for an effective date.

(H.B. 440)

Be it enacted by the Legislature of the State of Alaska:

Section 1. Subsec. (16), Sec. 5, Art. II, Ch. 169, SLA 1959, as amended by Sec. 4, Ch. 61, SLA 1960, is amended to read:

(16) The Director may grant preference rights for the lease or purchase of Alaska lands in order to correct the past or future errors or omissions of any state or federal administrative agency where inequitable detriment would otherwise result to a diligent claimant or applicant due to situations over which the claimant or applicant had no control. The exercise of this discretionary power shall operate only to divest Alaska of its title to or interests in lands, and shall be exercised only with the express ap-

proval of the Commissioner. Any claimant who shows bona fide improvement of Alaska lands made prior to March 31, 1960, and who has in good faith sought to obtain title to such lands, but who through error or omission of others has been denied title thereto may, on a showing satisfactory to the Commissioner, be accorded a preference right to lease or purchase same at an appraised price determined by the Division. Error or omission of a predecessor in interest or an agent, administrator, or executor which has clearly prejudiced the claimant may be the basis for granting a preference right.

Sec. 2. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

Approved April 4, 1962

CHAPTER 56

AN ACT

Relating to the fish and game resources of Alaska; amending Sec. 8, Art. II, Ch. 91, SLA 1959, as amended by Sec. 17, Ch. 131, SLA 1960; and providing for an effective date.

(H.C.S.C.S.S.B. 21)

Be it enacted by the Legislature of the State of Alaska:

Section 1. Sec. 8, Art. II, Ch. 91, SLA

1959, as amended by Sec. 17, Ch. 131, SLA 1960, is amended to read as follows:

Sec. 8. License Forfeiture. Upon con-

viction of any provision of federal or protection Alaska. t the penal license of conviction violation or of any tion for t and gam revoke t no perso revoked of the sar than two from the

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CHAPTER 91

AN ACT

Relating to the licensing of chiropractors; and providing for an effective date.

(H.B. 230)

Be It Enacted by the Legislature of the State of Alaska:

Section 1. AS 08.20.120 is amended to read:

Sec. 08.20.120. Qualifications for License. An applicant shall be issued a license to practice chiropractic if he

- (1) is at least 21 years of age;
- (2) has had a high school education or its equivalent;
- (3) has successfully completed at least two academic years of study in a college of liberal arts or sciences;
- (4) is a graduate of a legally chartered accredited school or college of chiropractic, approved by the board, which requires for graduation a residence course of instruction of not less than four years of nine months each;
- (5) passes an examination given by the board;

(6) has a certificate of registration in the basic sciences as provided by AS 08.16.200.

Sec. 2. AS 08.20.130(c) is amended to read:

(c) A general average rating of 75 per cent is a passing grade on the examination.

Sec. 3. AS 08.20 is amended by adding a new section to read:

Sec. 08.20.135. Associate. A person who complies with sec. 120(1), (2), (4), (5), and (6) of this chapter shall, pending compliance with sec. 120(3) of this chapter, be licensed to serve as an associate in an existing chiropractic clinic or office under the direct supervision of a licensed chiropractor for a period not to exceed three years.

Sec. 4. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

Approved April 22, 1965

CHAPTER 92

AN ACT

Empowering and directing the director of the division of lands, Department of Natural Resources, to lease certain real property to Pioneer Memorial Park, Inc., an Alaska nonprofit corporation, for a limited use; and providing for an effective date.

(C.S.H.B. 238)

Be It Enacted by the Legislature of the State of Alaska:

Section 1. The Legislature finds that it is in the best interests of the state to convey certain lands in the Fairbanks Recording District to Pioneer Memorial Park, Inc., under certain unique conditions.

Sec. 2. The Legislature further finds that a conveyance which would be satisfactory in this situation could not be made under the existing general sale or leasing laws, and that any reasonable general

sale and leasing laws which the Legislature might enact, and which would be acceptable in the vast majority of sale or leasing situations, would necessarily be, like the existing general laws, too restrictive or inapplicable in this situation, and would not provide for the multiple and special uses which are present in this situation.

Sec. 3. The Legislature further finds that the instant situation is of a rare and unique nature, and that the necessary and desirable conveyance can be accomplished only by a special act of the Legislature.

(H.B. 189)  
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April 22, 1965

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(C.S.H.B. 193)

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April 22, 1965

Sec. 4. The director of the division of lands of the Department of Natural Resources shall offer, by noncompetitive lease, to Pioneer Memorial Park, Inc., an Alaska nonprofit corporation, the following described real property in the Fairbanks Recording District:

A parcel of land located within section 9, T. 1 S., R. 1. W., Fairbanks Meridian, consisting of: all and the whole of section Lot 12, of said section 9, and that portion of the SW 1/4 SW 1/4 of said section 9 which lies north of the north right-of-way line of Airport Road, said right-of-way being 50 feet on either side of said road center line, all of the above said land containing 44.85 acres, more or less.

Sec. 5. The lease shall be for a term of 55 years and for a nominal rental, conditioned upon the use of the land as a site of a pioneer park which is to include a facility for the preservation and display of historical items for the benefit of all Alaskans, students and tourists. The director may impose limitations in the lease which will ensure that the use of the land will be consistent with this basic purpose and in the best interest of the state. The lease may provide for a limited number of profit-making concessions, which will not detract from the primary use of the land as a pioneer park, and for subleases.

Sec. 6. The lease shall be granted only on the condition that Pioneer Memorial Park, Inc., immediately sublease the property to 67 North, a nonprofit Alaska corporation, or its successor, for use as a site for the 1967 centennial exposition and celebration. The term of the sublease shall be for as long as is necessary to accom-

plish this purpose, but not to exceed five years. The sublease may provide for a rental not to exceed one per cent annually of the fair market value of the property, excluding improvements, as determined by the director, and shall provide for construction, at no expense to Pioneer Memorial Park, Inc., of at least one structure suitable for use as a permanent exhibit hall for the pioneer park. The sublease shall provide that the property be returned to Pioneer Memorial Park, Inc., in a condition suitable for its use as a pioneer park. The sublease shall be subject to approval by the director, who may require other provisions which are in the best interest of the state.

Sec. 7. (a) Nothing in this Act shall prevent the director from including any provision in the lease or requiring any provision in a sublease which he considers to be in the best interest of the state.

(b) The director may agree with the Board of Regents of the University of Alaska that the Board of Regents may exercise any or all of the powers vested in the director by the lease.

Sec. 8. All transfers and management agreements concerning the property described in sec. 4 of this Act, made by or between state agencies, including the University of Alaska, are revoked and terminated.

Sec. 9. The director shall offer the lease within a reasonable time after this Act takes effect.

Sec. 10. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

Approved April 22, 1965

CHAPTER 93

AN ACT

Permitting treatment of residents in isolated areas by Public Health Service dentists and physicians.

(H.B. 244)

Be It Enacted by the Legislature of the State of Alaska:

Section 1. AS 08.36 is amended by adding a new section to read:

Sec. 08.36.271. Permits for Isolated

Areas. (a) The Department of Health and Welfare shall designate as isolated areas those specific places and regions remote from major population centers which are not served by dentists licensed under this chapter and which have a

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Alaska Division of Emergency Services

Financial Impact (HB-941)

Monies owed City of Anchorage (Sub Lease)

FY-75 - \$ 23,116.80

FY-76 - 23,116.80

FY-77 - Encumbered 23,116.80

FY-78 - 23,116.80

FY-79 - 23,116.80

\$ 92,467.20 Required Supplemental (Total Lease)

Sub lease runs through June, 1979.

In addition to above, impact is as follows:

Commercial Rental in Anchorage \$100,000.00 per year (if available)  
commencing in FY-80.

Removal and re-installation of communications equipment \$109,000.00,  
in FY-80.

THE FOLLOWING DOCUMENT(S) MAY NOT FILM  
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ORIGINAL.

*Lawrence / Darden /  
Smith*

7-17-74

11:30 AM

D.C.

Sent by Highway

Teletype:

274-1321

"Rm"

BRUCE CAMPBELL, COMMISSIONER OF HIGHWAYS

ATTENTION FRANK BAKTER, DEPUTY DIRECTOR, ADMINISTRATION

THIS IS TO CONFIRM THE CONTINUANCE OF THE DEPARTMENT OF HIGHWAYS, DEPARTMENT OF MILITARY AFFAIRS AGREEMENT, EFFECTIVE APRIL 17, 1972, THROUGH JUNE 30, 1973, FOR THE ALASKA DISASTER OFFICE HEADQUARTER SPACE IN THE OLD ANCHORAGE HIGHWAY COMPLEX. IN ANY SALE AGREEMENT WITH THE CITY OF ANCHORAGE, PLEASE PROVIDE CONTINUED HEATED GARAGE SPACE FOR OUR EMERGENCY COMMUNICATIONS VAN VALUED AT \$150,000. ALSO, IF POSSIBLE, ALLOW CONTINUED USE OF THE QUONSET HUTS UNTIL OTHER WAREHOUSING CAN BE PROVIDED.

DONALD LOWELL/DIRECTOR/ALASKA DISASTER OFFICE.

AGREEMENT

*Agreement for the location of the Alaska Disaster Office*

Between: DEPARTMENT OF HIGHWAYS and DEPARTMENT OF MILITARY AFFAIRS

The Alaska Disaster Office, Department of Military Affairs, is located in Department of Highways Building #400-140-701 (T-07559) at 1305 East 4th Avenue, Anchorage, Alaska.

The space assigned to the Alaska Disaster Office consists of a total of 9,633 square feet.

The Department of Military Affairs will be charged 20 cents a square foot, or \$1,926.40 a month, \$23,116.80 a year for office and shop area space.

This charge will be the proportionate share of expenses for heat and utilities for the building. Maintenance and janitorial services for space assigned to the Alaska Disaster Office will be the responsibility of the Department of Military Affairs. All costs incurred in performing same will be paid by them.

It is understood and accepted that the duration of this space rental agreement may be terminated upon a sixty (60) day notice whenever disposal of land and buildings at 1305 East 4th Avenue becomes required. Otherwise, the duration of this lease will be from April 17, 1972, through June 30, 1973.

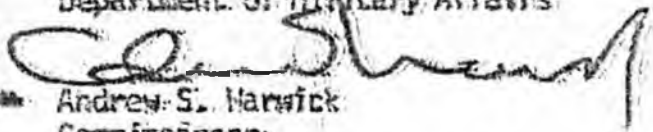
*B. A. Campbell*  
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B. A. Campbell  
Commissioner  
Department of Highways  
State of Alaska

*William S. Elmore*  
\_\_\_\_\_  
Major General William S. Elmore  
Adjutant General  
Department of Military Affairs  
State of Alaska

# MEMORANDUM

TO: Donald Lowell, Director  
Alaska Disaster Office  
Department of Military Affairs

DATE: April 4, 1975

FROM:   
Andrew S. Narwick  
Commissioner  
Department of Administration

SUBJECT: Old Anchorage Highway Complex

Thank you for your letter regarding the requested sublease for the subject.

I have forwarded copies of the Lease Purchase and proposed Sublease for the complex to the Attorney General and requested that he make a determination of the legality of the Lease Purchase Agreement. Prior to further action on the proposed Sublease, we must have the Attorney General's decision on the Lease Purchase Agreement.

Your previous correspondence concerning this complex indicates that you are somewhat familiar with the circumstances of the Lease Purchase, therefore, I will not explain further. However, I must request your patience until we can obtain further word from the Attorney General.

By copy of this memorandum, Mr. Avram Gross is requested to provide a decision relative to the above at the earliest convenience.

Thank you, and we will advise you of the outcome.

ANCHORAGE AK JULY 17, 1974 172245Z ADG

B CAMPBELL  
COMMISSIONER HWYS  
354-2121 EXT 111

ATTN FRANK BAXTER/DEPUTY DIRECTOR, ADG

THIS IS TO CONFIRM THE CONTINUOUS OF THE DEPARTMENT OF HIGHWAYS,  
DEPARTMENT OF MILITARY AFFAIRS, AGREEMENT EFFECTIVE APRIL 17, 1972,  
JUNE 30, 1973, FOR THE ALASKA DISASTER OFFICE HEADQUARTERS SPACE IN THE  
OLD ANCHORAGE HIGHWAYS COMPLEX. IN ANY SALE AGREEMENT WITH THE CITY OF  
ANCHORAGE PLEASE PROVIDE CONTINUE HEATED GARAGE SPACE FOR OUR  
EMERGENCY COMMUNICATIONS VAN VALUED AT \$150,000. ALSO, IF  
POSSIBLE, ALLOW CONTINUE USE OF THE QUONSET HUTS UNTIL OTHER WARE-  
HOUSING CAN BE PROVIDED.

DONALD LOWELL  
DIRECTOR/DISASTER OFFICE

172245Z ADG

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STATE OF ALASKA  
DEPARTMENT OF HIGHWAYS

SECTION ADMINISTRATIVE SERVICES

DATE JULY 17, 1974

FILE NO. 11-20-1003

TELETYPE

DONALD LOWELL  
DIRECTOR/DISASTER OFFICE  
ANCHORAGE

RE YOUR TEL OF JULY 17, 1974, WE AGREE TO CONFIRM THE LEASE BETWEEN THE  
DEPARTMENT OF HIGHWAYS AND THE DEPARTMENT OF MILITARY AFFAIRS UNDER THE  
TERMS OF THE ORIGINAL CONTRACT. YOUR ADDITIONAL REQUESTS WILL BE TRANSMITTED  
TO THE CITY OF ANCHORAGE.

FRANK BAXTER  
DEPUTY ADMINISTRATIVE DIRECTOR  
DEPARTMENT OF HIGHWAYS  
GENERAL

FV/k

TO: Donald Lowell, Director  
Alaska Disaster Office  
Department of Military Affairs

DATE: August 22, 1975

FROM: A. H. Saylor, Director  
Division of General Services & Supply  
Department of Administration

SUBJECT: Old Anchorage High

*Handwritten initials*

Complex

we are  
Anchorage  
& kept  
entire

you

Pursuant to my recent discussion with the Attorney General's office, I have herby advised to immediately terminate rent payments to the City for space occupied in the subject facility. The rent monies should be in a pending status until the Attorney General's office resolves the situation.

Your patience and cooperation in this matter are appreciated. If you have further questions don't hesitate to ask.

cc: Andrew S. Warwick, Commissioner  
Rodger Pegues  
Lois Richardson  
Leasing & Facilities

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# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL  
JUNEAU 99811

May 15, 1978

Honorable Chancy Croft  
Alaska State Senate  
Pouch V, State Capitol  
Juneau, AK 99811

Re: CS HB 941

Dear Senator Croft:

I am writing this letter to you at the request of Representative Rudd. It is my understanding from her that the free conference committee wishes to know the State's side of the case involving what is commonly referred to as the "Old Anchorage Highway complex" located at Third and Post Road in Anchorage. You should be aware that this letter expresses no view on the question of the legality of CS HB 941. Frankly, I have serious doubts that the legislature can "ratify" an illegal transaction.

The litigation involving the Old Anchorage Highway complex began in the summer of 1976 with the filing of a complaint by the State. In July of 1977, the State moved for summary judgment and oral argument on the State's motion was held on September 26, 1977. Additional oral argument was held in the fall of 1977 and final oral argument was heard on April 25, 1978. We are now awaiting the court's decision.

### I. Facts of the Case

The land referred to as the Old Anchorage Highway complex came to the State pursuant to the Alaska Omnibus Act of June 25, 1959 and was accepted by the Governor on behalf of the State on July 2, 1959. From that date until late 1973, the property and buildings located thereon were utilized by the Department of Highways as a maintenance yard and office compound.

The Department of Highways discontinued use of the property in 1973 and the property remained virtually unused until late 1974. During this period of inactivity, discussions ensued among various State departments concerning the best use to be made of the property. It was definitely conceded by all that the State did have a need for the property.

Honorable Chancy Croft  
May 15, 1978  
Page Two

On October 21, 1974, during the course of the discussions concerning use of the property, it came to the attention of the Department of Law that the Commissioner of the Department of Highways was engaged in negotiations with the Municipality of Anchorage for the property's lease and possible sale. The Department of Law examined the issue and wrote a memo concluding that the Commissioner of the Department of Highways did not have the authority to enter into a lease-purchase agreement concerning the subject property.

Prior to writing that memorandum, David Shaftel, an attorney representing the Municipality in the negotiations, contacted Richard Bradley of the Department of Law. He advised Mr. Bradley that he was reviewing the purchase of the property by the Municipality and had certain misgivings about the legal aspects of the purchase. Mr. Bradley and Mr. Shaftel discussed the legality of the lease-purchase and Mr. Bradley informed Mr. Shaftel at the time that his conclusion was that the Commissioner of the Department of Highways did not have the authority and he specified which statutes he based his decision on.

Despite having knowledge that the Department of Law believed the Commissioner of the Department of Highways did not have the authority to enter into the lease-purchase agreement, the Municipality entered into the agreement on November 13, 1974. The agreement provides that the Municipality of Anchorage will pay \$100,000 a year rent for ten years and \$10,000 per year, starting the second year for ten years, for an option to purchase. The purchase price is set in the agreement at \$1,126,000. The agreement does not provide for the payment of any interest whatsoever. In other words, at the end of ten years, the Municipality will have paid \$1,000,000 in rent and \$90,000 for the option to purchase, making a total of \$1,090,000. By paying \$36,000 at the end of ten years, the Municipality would be the owner of the property under the agreement. What the agreement really amounts to is nothing more than a ten-year interest-free loan in the amount of \$1,126,000. The end result would be that despite tremendous inflation having occurred during the life of the agreement, and despite the continuously rising property costs in the Anchorage area, the Municipality will be in a position to purchase the property in 1984 at its 1974 value. The difference between the two amounts in this particular case could be as much as \$3-4,000,000.

## II. Legal Issues

Three major legal issues are involved in the litigation:

A. Which State agency first obtained jurisdiction over the subject property?

Under AS 38.05.030(b), all lands assigned by the Division of Lands to the Department of Highways are required to be returned to the Division of Lands when no longer needed by the Department of Highways. It is therefore important to determine whether the subject property constitutes property assigned by the Division of Lands to the Department of Highways. It is the State's position in the lawsuit that the subject property first came within the jurisdiction of the Division of Lands for the reason that AS 37.20.030(b) provides all Omnibus lands received from the federal government fall within the jurisdiction of the Department of Natural Resources.

The Municipality has taken the position that the property first came within the jurisdiction of the predecessor of the Department of Highways under AS 37.20.030(c), which provides that all public buildings accepted from the federal government under the Omnibus Act are subject to the jurisdiction of the Department of Public Works. Given the fact that the 1974 appraisal of the subject property found the buildings to be of no value while the land was valued in excess of \$1,000,000, we believe the Municipality's assertion that public buildings, and not land, are at issue has no basis in fact.

B. Whether the Commissioner of the Department of Highways possessed the authority to sell State property of the type at issue?

The State has taken the position that even if the subject property is found to have first come within the jurisdiction of the predecessor of the Department of Highways, the Commissioner of the Department of Highways had no authority to sell the property, based upon AS 38.05.030(d) which specifically mandates that the Department of Highways turn over to the Division of Lands jurisdiction over all property it no longer needs except for property acquired by eminent domain or purchase. The subject land not having been acquired by eminent domain or purchase, the Commissioner of the Department of Highways had no choice but to turn the land over to the Division of Lands when it was no longer needed by his Department.

Honorable Chancy Croft  
May 15, 1978  
Page Four

The Municipality has argued that under AS 19.05.070, the Commissioner of the Department of Highways had the authority to dispose of the property for it constituted property "no longer necessary for highway purposes." Again, in the State's view the Municipality's argument is without merit. What AS 19.05.070 was intended to do was to authorize the Commissioner of the Department of Highways to dispose of essentially remnant pieces of property. For example, if the Department of Highways had condemned a portion of property only to find after construction of the highway that a small piece of the property was unnecessarily condemned, the Department under AS 19.05.070 could return the land to its prior owner or an adjacent landowner or sell the land outright. This interpretation is borne out by the committee report on Ch. 35 SLA 1971 which appears at 1971 House Journal, page 776.

If the court were to side with the Municipality, the result would be an ad hoc land acquisition and land disposal system for the State with various departments acting as entirely independent entities in purchasing and disposing of property. What the State has sought from the court is a determination that there exists but one department responsible for disposing of all State property and that department is the Department of Natural Resources. We believe this is what the Legislature intended when it enacted AS 38.05 et seq., the Alaska Land Act, which states at AS 38.05.035(a)(7) that the Director of the Division of Lands is to have jurisdiction over all State lands.

C. Whether there was adequate public notice prior to entrance into the lease-purchase agreement?

Article VIII, Section 10, of Alaska's Constitution provides:

No disposals or leases of State lands, or interests therein, shall be made without prior public notice and other safeguards of the public interest as may be prescribed by law.

The only notice given prior to the signing of the lease-purchase agreement was the listing of the lease-purchase agreement as one of at least nineteen agenda items to be considered at an Anchorage City Assembly meeting. It is

Honorable Chancy Croft  
May 15, 1978  
Page Five

the State's view that the constitutionally required public notice means more than the mention of the transaction on a City Assembly agenda. It is just not reasonable to expect citizens to look to the agenda of an Anchorage City Assembly meeting to determine what is happening with the public's property.

The above is a succinct summary of the case and only briefly addresses the major legal issues. The facts of the case make it apparent that the Municipality of Anchorage saw a good deal and took it. And they did so with full knowledge that the Attorney General's office considered the transaction to be illegal. The arguments presented to the court by the Municipality are nothing more than attempts to justify ex post facto the Municipality's prior misconduct. Any ratification of the lease-purchase agreement would allow the Municipality to retain its outrageous bargain at the expense of the State and the public. It would also mean that two years of effort by the Department of Law have been wasted.

Sincerely,

AVRUM M. GROSS  
ATTORNEY GENERAL

By:  
Richard M. Burnham  
Assistant Attorney General

RMB/bl

# Municipality of Anchorage



F: Mur. 8/ ANC  
POUCH 6-650  
ANCHORAGE, ALASKA 99502  
(907) 274 2525

GEORGE M. SULLIVAN,  
MAYOR

OFFICE OF THE MUNICIPAL ATTORNEY

April 5, 1978

Senator Joseph Orsini  
Pouch V  
Juneau, Alaska 99811

Dear Senator:

On November 14, 1974, the City of Anchorage and the State of Alaska entered into a Lease Purchase Agreement whereby the City leased from the State the industrial complex situated at the intersection of Third Avenue and Post Road in Anchorage. During territorial days, the complex was utilized as a maintenance and operations center for equipment for the Federal Bureau of Public Roads in Southeast Alaska. It was conveyed to the State of Alaska under the Omnibus Act of 1959 and was utilized as the Southcentral office and maintenance center of the Department of Highways and its predecessors until the Department moved to the new complex on Tudor Road in 1974. The Lease Purchase Agreement, which was negotiated at arm's length between the City and Commissioner Campbell between 1971 and 1974, provided that the City would pay the State rent of \$100,000.00 per year plus \$10,000.00 per year for the option to purchase. The term of the lease was to run for 10 years from August 14, 1974, and the purchase price, if the City chose to exercise the option, was to be \$1,000,000. Prior rent and option payments were to be credited to the purchase price. Since August, 1974, the former highway complex has been used by the City and, for a time after the unification in 1975, by the Municipality of Anchorage, as a central maintenance center for city vehicles and, more importantly, as the maintenance center for the People Mover--a mass transit system which serves the needs of half the population of Alaska. If disputes surrounding this property can be resolved, the Municipality intends to utilize the former highway complex as a satellite operations center for the People Mover.

Shortly after the present administration took office, the State announced its intention to repudiate the Lease Purchase Agreement. It has subsequently filed a lawsuit to have the Agreement declared null and void and to have the Municipality ejected from the premises. The suit alleges that the Commissioner of Highways lacked authority to enter into the Lease Purchase Agreement, that the Director of the Division of Lands was the only official who could execute such an agreement, that appropriate public notice was lacking, and that the

property was appraised six, rather than three months prior to the effective date of the Agreement. The matter is still pending before the courts.

During the course of negotiations the Commissioner of Highways repeatedly assured City officials that he had full authority to execute the Agreement. The property was appraised by the State in February, 1974, six months prior to initiation of the Lease in August, 1974. The appraised value was a little over \$1,000,000.00, approximately the purchase price set forth in the Agreement. Yearly rent paid to the State by the City is approximately 10% of the appraised value.

If the state succeeds in its efforts to have the Lease invalidated, the Municipality will need to seek new quarters for the property maintenance and operations center for the People Mover. The property values in downtown Anchorage have been escalating at approximately 2% per month since 1974 when the Agreement was executed, the cost of such relocation would be extremely oppressive to the taxpayers and highly disruptive to the financial structure of the mass transit system. The spectacle of the State seeking to interfere with the future growth of the Municipality's mass transit system through invalidation of the Lease becomes even more ridiculous when one considers that the State pays the Municipality \$857,710 a year in state revenue sharing to promote mass transit.

The State's suit is even more ridiculous when one considers the past history of cooperation between local government in Anchorage and the State concerning matters affecting the public interest. For many years, the City of Anchorage provided the street light systems for the portion of the State Highway system within the City at no cost to the State. The Municipality has continued to do so. The City of Anchorage has leased 8.7 acres of valuable land at Lake Spenard to the State as a site for the National Guard at a lease rate of \$1 a year for 102 years. In addition, the City leased the State Division of Aviation 21 acres of valuable land adjacent to the shore line of Lake Spenard at the nominal rate of \$1,800 a year.

Basis of the State's Challenge  
to the Lease Purchase Agreement

The State contends that the Lease Purchase Agreement should be invalidated because the Commissioner of Highways lacked authority to execute it, that adequate public notice was not given, and that the property was appraised six months, rather than three months, prior to the effective date of the Agreement. The critical question is whether the Commissioner had such authority; unfortunately, that answer is masked in a bewildering tangle of statutes.

AS 38.05 (The Alaska Land Act) requires that most conveyances of state land be made by the Director of the Division of Lands, pursuant to the provisions of the Land Act. However, AS 38.05.030(B) of the

Alaska Land Act exempts certain conveyances by the Department of Highways from the procedural requirements of the Land Act. It provides:

(B) The provisions of this chapter do not apply to any power, duty or authority now or in the future granted to the Department of Public Works and the Department of Highways in the name of the state, to acquire, use, lease, dispose of, or exchange real property, or any interest in real property. Lands assigned by the Division of Lands to the Department of Public Works and the Department of Highways shall be returned to the management of the Division of Lands when they are no longer needed for the purposes assigned.

AS 38.05.030(d) provides:

(d) Real property acquired by, and under the management of, the agencies referred to in (a) and (b) of this section, which is no longer needed for its intended use, shall be returned to the jurisdiction of the Division of Lands, except that the Department of Highways may dispose of real property acquired by it under AS 19.05.040(2) and AS 19.05.080-19.05.120.

AS 19.05.070 gave the Commissioner of Highways the following powers to dispose of land:

19.05.070. Vacating and disposing of land and rights in land.

(a) The department may vacate land, or part of it, or rights in land acquired for highway purposes, by executing and filing a deed in the appropriate recording district. Upon filing, title to the vacated land or interest in land inures to the owners of the adjacent real property in the manner and proportion considered equitable by the commissioner and set out by him in the deed.

(b) If the department determines that land or rights in land acquired by the department are no longer necessary for highway purposes the department may:

(1) transfer the land or rights in land to the Department of Natural Resources for disposal, or

(2) sell, contract to sell, lease, or exchange land or rights in land according to terms, standards and conditions established by the commissioner.

(c) Proceeds received from disposal of land or rights in land as authorized by this section shall be credited to the

funds from which the purchase of the land was made originally. (§ 4 art IV title IV ch 152 SLA 1957; am § 4 ch 35 SLA 1971).

The key question is whether the highway complex was ever assigned to the Department of Highways by the Division of Lands. If there was an assignment, the property should be returned to the Division of Lands for conveyance. If not, the Commissioner of Highways had the authority to execute the Lease Purchase Agreement. The State concedes there was no express assignment by the Division of Lands; however, it argues that there was a constructive assignment by operation of law. Historically, the situation is very confused.

In 1959, the State received the highway complex from the United States under the Omnibus Act. Chapter 176 SLA 1959 provided that public lands were to fall into the jurisdiction of the Division of Lands or its successor and all public buildings were to be placed under the jurisdiction of the Alaska Highway and Public Works Department or its successor. In 1974 the Department of Highways was a direct successor in interest to the Alaska Highway and Public Works Department, being created from the Public Works Department by Executive Order No. 23 in 1962. The latter vested the Department of Highways with all highway powers and responsibilities formerly exercised by the previous department. The highway complex was used as the Anchorage headquarters for the Department until 1973. These factors indicate that the Commissioner of Highways had authority to execute the Lease Purchase Agreement, but it will probably take a Supreme Court ruling a year or two hence to decide the matter finally.

Public notice of the transaction was given in the Anchorage Daily Times concerning Anchorage City Council consideration of the Lease Purchase Agreement although it was not formally given by the State. If the transaction is not covered by the Alaska Land Act, as discussed above, Alaska Statutes did not require public notice.

The property was appraised by the State by Paul M. Dirksen in February, 1974, some six months prior to August 14, 1974, the date of the Agreement. The State alleges that the transaction is invalid because the appraisal was made six, rather than three months, prior to the effective date.

If the Agreement is invalidated as a consequence of lack of notice and deficiencies in appraisal, title to hundreds, if not thousands, of other land conveyances by the State could be affected. I have enclosed a copy of an Affidavit of Dale Tubbs, formerly of the Division of Lands, which indicates the effect that invalidation of this conveyance for want of notice and appraisal would have upon other conveyances if the same standards were applied.

Appropriate Remedy

The Municipality believes the Commissioner of Highways had authority to execute the Lease Purchase Agreement and that it was an entirely proper conveyance. However, because of the State's challenge, the issue will probably not be resolved for at least another year or two because of litigation. In the meantime, the future of the State's largest mass transit system is cast into doubt because of the hopeless ambiguity of statutes concerning the authority of the Commissioner of Highways to make the conveyance. The Municipality has put many thousands of dollars into improving the property to keep the building habitable and in conformity with OSHA standards. The Municipality believes that because of the confused statutory situation and because of the State's commitment to improving mass transit in urban Alaska, that the Legislature should resolve this impasse by enacting a bill doing two things:

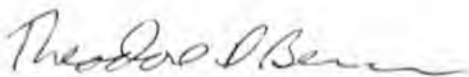
1. Ratifying the actions of the Commissioner of Highways in executing the Lease Purchase Agreement;
2. Directing the Commissioner of Natural Resources and the Director of the Division of Lands to approve the Lease Purchase Agreement as a conveyance to another government entity pursuant to AS 38.05.315(A). The following provision allows the Director of the Division of Lands to convey or lease to another government body for less than fair market value and without auction.

Such legislative action has been used frequently in the past. Examples are Chapter 144 SLA 1961; Chapter 20 SLA 1962; Chapter 54, SLA 1962; and Chapter 92, SLA 1965, copies of which are enclosed.

I have enclosed a copy of the draft bill which probably accomplishes these things. There is no pride in authorship, so please feel free to rework the draft as you see fit.

Thank you for considering this matter. Speedy resolution of the dispute could end an unseemly battle between government entities at the taxpayers' expense and remove a cloud from the future of mass transit in Anchorage.

Sincerely yours,



Theodore D. Berns  
Municipal Attorney

TDB/ckb

cc Rep Rudd