SCR

14

JOE

TO: Joe Orsini DATE: March 14, 1977

FROM: Paul Conger RE: SCR 13 & SCR 14

In an effort to gather information that was requested by the Committee at the last hearing regarding SCR 13 and SCR 14, I have completed the following:

1) I have contacted CRA and Lee McAnerney and Palmer will be here to testify. Palmer also mentioned that Rod Peques, Assistant A.G. will probably accompany them to make sure no sensitive information is released since this issue will no doubt reach litigation after the session has adjourned.

2) I contacted Lois Jund, Deputy Commissioner for Program Management, Dept. of HESS, and she said she will attend the hearing tomorrow to testify in behalf of HESS.

3) I have secured a copy of the earlier CRA Regulations, dated Oct. '74, per Senator Sumner's request. Subsequent revisions to the regulations have certainly expanded the portion pertaining to eligibility (19AAC 30.020) because in the earlier regulations, it reads as follows:

> 1^ AAC 30.020 ELIGIBILITY Eligibility for receipt of state aid to local governments provided by AS 43.18.010 shall be predicated upon the possession and exercise of a power set out in those statutory provisions by a unit of local government or volunteer fire department located in the unorganized borough. (Eff. 7/8/73, Register 47)

4) In response to the request to acquire a copy of the minutes regarding public input at the time these reguations ~~regarding public input at the time these regulations~~ were adopted, CRA says that the only public input regarding section (j) "construction" was a letter forwarded to the Dept. by Dr. Beirne. Palmer said that a copy of this letter should be in the A.G.'s office. I checked with Rod Peques and he doesn't have it in the "Lake Otis file" but he said he would secure it by hearing time.

5) I got Berrier's opinion regarding section (j). I had requested that he comment regarding the Asst. A.G.'s letter giving the go ahead to the Dept. of HESS to use Hill-Burton Regulations. He skirted this particular issue but addressed the question of the propriety of CRA adopting Hill-Burton Regulations as a standard for determining total project cost. Regarding the regulation he stated:

"Since discretion was left to the department and the department exercised that discretion in a reasonable manner apparently consistent with legislative intent, in my opinion the regulation is legally proper."

6) Additionally, I'm having copies of the audits that were conducted on the Anchorage and Fairbanks hospitals for the past two years forwarded to the Committee.

PC/js

(12)

TO: Senator Orsini
Chairman
Senate C&RA

DATE: March 9, 1977

FROM: Paul Conger
A.A.
Senate C&RA

RE: SCR 13, SCR 14
19AAC 30.020(9)(C)
19AAC 30.020(9)(D)
19AAC 30.140(3)

The concept to provide revenue sharing money to those constructing hospital facilities formally emanated in SB42, 1971. The following is a history of that bill and subsequent amendments to it.

SB 42 (See Attachment 1)
The Bill was originally intended to create a loan/grant fund to be established and administered in the Department of Health. It would create a revolving loan (5% interest) and grant funds to make payments to local governments, non profit corporations and non profit sponsors for the acquisition, construction, modernization, and other capital improvements of hospitals and related health facilities. A grant would be provided if it had been determined by the commissioner of health that a local government, non profit corporation, or non profit sponsor would have difficulty in paying back a loan.

CSSB 42 (See Attachment 2)
Local Government Committee dropped the original bill's suggestion of establishing a loan/grant fund to be administered by the Dept. of Health and transferred the issue of providing state assistance for hospital construction cost to Community and Regional Affairs. In their version of this bill, they adopted language that reflects section (j) which is currently at issue here.

At this stage, the provision dealing with revenue sharing for construction of hospitals was an "in addition" clause to section (h) which treats revenue sharing dollars for hospitals already in operation.

In this initial stage of the bill, only local governments were to be recipients of this revenue sharing money pertaining to construction cost assistance as indicated by the following:

AS 43.18.010(h) During each fiscal year the state shall pay to an organized borough or a city outside an organized borough, in which a health facility is operated.....

In addition, if construction of a facility was begun by a local government after January 1, 1968 and state matching aid for construction approved for payment to the local government constitutes less than 25 per cent of the total project cost, the state shall pay to the local government during each fiscal year a sum equal to $5,000 per bed for the maximum number of beds provided for in the construction design of the facility, until the local government has received from this aid an amount which, combined with state matching money for construction of the facility, equals 25 per cent of the total project cost. Sums received by a local government under this subsection shall be used for expenses of operation, maintenance or health services or facilities, as the local government determines.

As the language indicates, the key component thus far is local government. (Note that the next version of this bill (CSSB 42 HEW) which creates a section (j) which address the issue of revenue sharing for hospital construction, extends potential recipients of section (j) beyond local government to include "other sponsor facility". So we start moving away from the notion that this money is to be available only for local governments early in the makeup of this bill.

Attention should also be directed towards the term "total project cost". This phrase sustained itself through all the stages of revision and the word "total" was not substituted with any language that would suggest less than total project cost in computing the revenue sharing allowance to be provided. The only restraining language in this bill regarding construction cost states: "No funds received for construction shall be used for any other purpose."

CSSB 42 (HEW) 1971 (See Attachment 3)
HEW, recognizing that they were dealing with two separate issues, viz. hospitals in operation and hospitals under construction, amended this bill creating section (j) as a subsequent section to section (h). Section (h) continues to deal with providing revenue sharing money to an organized borough or a city outside an organized borough that has hospitals in operation. Then section (j) treats the issue of rendering revenue sharing money to offset cost relative to the construction of hospitals. The salient disparity between section (h) and section (j) (for our purposes) is that the committee did not rely on the same language that was used in sec (h) i.e. "during each fiscal year the state shall pay to an organized borough or a city outside an organized borough in which a health facility is operated"; or they did not limit the recipient of this money solely to a local government as was proposed in CSSB 42, but broadened the language in section (j) to state "If construction of a

facility began after Jan 1, 1968, and state matching aid for construction approved for payment to the local government or other facility sponsor ... of the total project cost ... the state shall pay to the local government or other facility sponsor ... State aid provided for in this subsection shall continue until the local government or other facility sponsor has received an amount which ... equals 25% of the total project cost.

It would appear that if the committee wanted the petitioner for construction money to be limited to an organized borough or a city outside an organized borough, they would have adopted this language and made it applicable to sec (j) as well as sec (h). However, the committee did not limit sec (j) (dealing with hospital construction) to these recipients but broadened it to include "local government or other facility sponsor." It was this language that remained through the life of the bill and became law.

Also section (j) retains the language "total project cost" and does not qualify this term by inserting any limitations on what "total project cost" entails. The only restrictive language in this section is "no funds received for construction shall be used for any other purpose".

The remainder of this bill amends section (i) (defining a health facility) to include sections(h) and (j) indicating that this meant a hospital (or facility) owned or operated or both by a local government or by a nonprofit corporation or other nonprofit sponsor.

CSSB 42 (Finance) (See Attachment 4)
Finance drops section (h) from this bill and just concentrates on section (j). The salient feature in this version of the bill is that the Senate Finance Committee approved the language that expanded those permitted to reap the benefits of the bill beyond local government to include other facility sponsor. (Remember in the first CSSB 42 only local governments were included to receive assistance with hospital construction cost, then in HEW's version, they included "other facility sponsor" in contrast to "an organized borough or a city outside an organized borough "that was used in sec (h). The Senate Finance Committee retained "other facility sponsor".)

In addition, the "total project cost" term is still retained in the bill. This has existed throughout the tenure of this bill and has not been diluted or pared at all.

The Senate Finance Committee dropped sec (i) dealing with the definition of a hospital facility but it is picked up again in HCS CSSB 42 discussed below:

HCS CSSB 42 (See Attachment 5)
No change was adopted in this revision that applies to "other facility sponsor" or "total project cost".

In the House HEW and Local Government Committees deliberations, sec (2) is brought back into this bill as sec (i) to include both secs (h) and (j).

CSSB 42 (Finance) amH (CH 127 SLA 1971)
This final version of the bill does not change the language referring to "other facility sponsor" or "total project costs" and is enclosed herewith as Attachment 6.

Subsequent amendments were made to this section, however, subsection (j) was untouched.

Nevertheless, section (h) and (i) became subjects of revision, and pertinent modifications in subsequent years regarding section (j) are listed below:

HCSSB 383 am H (Ch 71, SLA 72) (See Attachment 7)
Inserted the following language into sec (i) which became law: "(1) In (h) and (j) of this section "health facility" or "facility" includes hospitals ... which are licensed, when required by the state under AS 18.20.010 - 18.20.130 (Department of Health and Social Services dealing with hospital regulations) and are owned or operated or both by a local government or by a nonprofit corporation or other non profit sponsor; the term excludes facilities operated or wholly supported by the state or the federal government, and excludes nonprofit facilities leased from private profit-making groups or corporations". This became law in 1972 but was extracted in 1973 by CSHB 42 (Finance) am S discussed next:

HB 42 (Introduced 1973), (Attachment 8, p.2, line 14)
A bill designed to repeal and re-enact sec (h) and (i) of AS 43.18.010. In its original form, the bill omitted the language that became law in 1972 viz. "and excludes non-profit facilities leased from private profit-making groups or corporations". However, in the Local Government Committee's version of CSHB 42, (see Attachment 9, p.2, line 11), reinserts the above mentioned language. Subsequently, in CSHB 42 (HESS) affixed as Attachment 10, on p.2., line 13, they revised this section to read:

(B) excludes nonprofit facilities leased from private profit-making groups or corporations only as to use of shared revenue for capital improvements under (j) of this section, but not as to use of shared revenue for operating expenses under (h) of this section;

The Finance Committee (CSHB 42-Finance), (affixed as Attachment 11, p.2, line 8) in their version eliminated the above mentioned language and other language regarding "excludes nonprofit facilities leased from private, profit-making groups or corporations."

The bill was in this form, deleting the above language, when it passed the Senate as CSHB 42 (Finance) am S,(affixed hereto as Attachment 12, p.2, line 11) and became law, Ch 87, SLA 73.

Other provisions of Ch 87, SLA 73 of significance:

AS 43.18 is amended by adding new sections to read:

Sec. 43.18.040 REGULATIONS. The Department of Community and Regional Affairs shall adopt regulations necessary to carry out the purposes of this chapter.

Sec. 43.18.050 SPECIFIC EXPENDITURES. A municipality shall expend funds received for the operation and maintenance of hospitals and health facilities and services.

Subsequent changes to this bill are listed below. However none of the revisions pertain to AS 43.18.010(j).

Ch 127, SLA 1974 (Attachment 13)
Sec 44. AS 43.18.010(h)(4) is amended to read:

(4) funds received by a local government under (1), (2) or (3) of this subsection shall be used for expenses of operation maintenance, or health services or facilities, as the local government or hospital outside a municipality determines;

*Sec. 45. AS 43.18.040 is amended to read:

Sec. 43.18.040 REGULATIONS. The Department of Community and Regional Affairs shall adopt regulations necessary to carry out the purposes of secs. 10 - 99 of this chapter.

*Sec. 46 AS 43.18.050 SPECIFIC EXPENDITURES. A municipality shall expend funds received for the operation and maintenance of hospitals and health facilities and services under secs. 10 - 99 of this chapter only for those specific facilities and services.

Ch 265 SLA 1976 (See Attachment 14)
*Sec. 2 AS 43.18.010(h)(1), (2) and (4) are repealed and re-enacted to read:

(1) $2 per capita to a municipality which has the power to provide health facilities and services and in which a hospital is located;

(2) in addition to the payment made under (1) of this subsection

(A) The state shall make payments to a municipality which has the power to provide hospital facilities and services and which exercises the power on the basis of $1,000 per bed for each bed actually used for patient care limited to the number of beds provided for in the construction design of the hospital, or $75,000 for those hospitals with 10 or more beds, or $25,000 a hospital for those hospitals with less than 10 beds, as the municipality may elect; funds received under this subparagraph may be used only for hospitals and shall be apportioned among qualifying hospitals as the muncipality determines;

(B) the state shall make payments on the basis set out in (A) of this paragraph to a municipality for non profit hospitals not operated by a municipality if the municipality first certifies to the department that the hospital is in compliance with all standards for hospitals which have been adopted by the municipality; in the absence of this certification the funds which would have gone to the hospital lapse into the state general fund; payments to the municipality shall be transferred to the hospital in accord with the basis by which the entitlement was generated by the hospital and shall be applied to the annual cost of operation and maintenance of the hospital or for the provision of health care service at the hospital as the directors of the hospital determine;

(C) a hospital may not receive payment under both (A) and (B) of this paragraph;

(4) funds received by a municipality under (1) or (3) of this subsection shall be used for expenses of health services or operation and maintenance of facilities as the municipality determines;

*Sec. 3 AS 43.18.050 is repealed

*Sec 4 This act takes effect July 1, 1976.

MILES S. SCHLOSBERG, INC.
ATTORNEYS AT LAW
425 G STREET, SUITE 500, ANCHORAGE, ALASKA 99501
(907) 276-3125

MARK A. ERTISCHEK
MILES S. SCHLOSBERG

March 14, 1977

Honorable Joseph Orsini, Senator
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Orsini:

Representative Beirne has asked us to provide you with an analysis of the legality of Senate concurrent resolutions Nos. 13 and 14 which have been introduced in the legislature of the State of Alaska. In our opinion, it would be both legal and proper for the legislature of the State of Alaska to annul administrative regulation 19 AAC 30.020(9)(C) and (D). 19 AAC 30.020(9)(C) is intended to import the criteria used in the administration of the federal Hilburton Construction Program into A.S. 43.18.010(j).

A.S. 43.18.010(j) provides:

> "If construction of the facility began after January 1, 1968 and state matching aid for construction approved for payment to the local government or other facility sponsor constitutes less than 25% of the total project cost, the state shall pay to the local government or other facility sponsor each fiscal year a sum equal to $2,500 a bed for the maximum number of beds provided for in the construction design of the facility. State aid provided for in this subsection shall continue till the local government or other facility sponsor has received an amount which combined with the state matching money for construction of the facility equals 25% of the total project cost. No funds received for construction shall be used for any other purpose."

The Lake Otis Clinic, a non profit corporation, applied for funds under the provisions of this section. Its appli-

cation was approved after January 1, 1968. Some of the funds which are required to be transmitted to the Lake Otis Clinic pursuant to the provisions of this section were transmitted to the clinic. The majority of the funds have not yet been transmitted to the clinic. In addition, the creators of the Lake Otis Clinic have in reliance upon the provisions of this statute and the approval of their application for funds expended considerable amounts of their own funds in an effort to acquire and pay the financing costs for the property necessary to complete the proposed medical facility. The Department of Community and Regional Affairs has, after the fact, promulgated regulations which prohibit the state from expending money under this section for site acquisition costs. The exclusion of site acquisition costs is explicitly noted in the regulation 19 AAC 30.020(9)(C) as being based on a similar requirement of the federal Hilburton Construction Program. A brief review of the federal statutes in question shows that it would be totally inappropriate to take these federal criteria and apply them to the state statute.

The federal criteria are set out in the definition of the term "construction" in 42 U.S.C. 291(o)(i). In this section the term "construction" is defined to specifically exclude the cost of the acquisition of land. Alaska law is quite different, however. A.S. 43.18.010(j) refers not to construction costs, but to "total project cost". The term "total project cost" is not defined further in the statute nor does the Department of Community and Regional Affairs make any attempt to define it in the regulations. Nevertheless, a review of the way in which the term "construction cost" has been used in related sections of the statute is instructive. A.S. 43.18.100 and A.S. 43.18.460 provide for reimbursement to municipalities within the state of Alaska for school construction costs and sports facilities construction costs. In both cases statutory definitions are provided for the term "cost of construction". In both cases, this term is defined specifically to include the cost of site acquisition. Even though the term "total project cost" in A.S. 43.18.010(j) is not defined, it would be very strange if these words which appear a few short pages from the other terms previously defined could be read to embody a legislative intent to narrow the broad definition of construction costs used in the other sections.

In 19 AAC 30.020(9)(D) the Department has attempted to limit the eligibility of the "other facility sponsors" to those situations in which the facility lies outside the boundaries of a municipality. The statute is equally bare of any basis for this interpretation.

A.S. 43.18.010(j) uses the clause "local government or other facility sponsor" three times to refer to the eligible recipient of the funds. The use of the word "or" indicates that both local governments and "other facility sponsors" would be proper recipients of the funds. The statute does not define "other facility sponsors" further or mention any special condition which other facility sponsors have to meet. It certainly does not contain any words which even imply that an "other facility sponsor" within the boundaries of a municipality would not be eligible for aid under this section. In this regard it is significant that sections A.S. 43.18.010(i)(1) and (2) which define the terms "hospital" and "health facility" also make absolutely no mention of the distinction which the Department has imported into its regulations. As the Attorney General's office noted in a legal opinion issued on December 20, 1974, one of the problems contained in the statute was the fact that "it fails to distinguish between the governmental sponsors and the non-governmental sponsors". The opinion was ended with the suggestion that the Department seek legislative amendment. The Department has failed to do so and instead has attempted to amend the statute through the regulations process.

The purpose of permitting administrative agencies to adopt regulations is quite simple. The legislature recognizes that it cannot deal explicitly in every statute with every problem that may occur some time in the future and that it is necessary to explain the general provisions of legislative enactments, to provide procedures for implementing those enactments, and to make more specific the sometimes general language included in the statutes. This statute certainly cannot be broadened to allow the regulation making process to be used for the purpose of changing the scope or intent of a statute to accord with the desires of the executive branch of the government. The administrative regulation in question goes beyond the scope allowed to regulations and represents an attempt to amend a clear requirement of the statute. If the Department of Community

and Regional Affairs believes it desirable to remove the term "total project cost" from A.S. 43.18.010(j), or differentiate between government and non-government sponsors, it should follow the suggestion of the Attorney General's office and request the legislature to amend the statute to eliminate this provision and include the definition of cost used in the federal act. It cannot proceed to do this through the regulations process on its own.

The propriety of the legislature's acting to annul administration regulations which are not in compliance with the intent of the legislature cannot be doubted at this state. As Congressman Elliot Levitas of Georgia noted in remarks to the section of administrative law of the American Bar Association during their 1976 Bicentennial Institute on the Oversight in Review of Agency Decision-Making, "We have identified in my office approximately one hundred thirty different acts of the congress, almost two hundred separate provisions of this type which have been cast heretofore mandating or authorizing some type of congressional review of contemplated or pending executive actions." The Congressman also noted that provisions requiring or permitting the legislative review of administrative regulations are found in the laws of the states of Connecticut, Nebraska, Alaska, Kansas, Virginia, Michigan, and Oregon, as well as such foreign nations as Great Britain, Australia, and New Zealand. Speaking in regard to proposed legislation providing for congressional review of certain administrative regulations, he said, "It seems to me that the basic proposition is the one I started off with. Who has the ultimate responsibility for the laws of this nation, whether they are acts of congress or laws which masquerade as administrative rules. I think the answer under our Constitution is it is the elected congress of the United States." Here, it is the elected representatives of the State of Alaska who have the responsibility to annul regulations which do not conform to the requirements of the statutes on which they are based. As Justice White noted in the case of Buckley vs. Valeo, 424 U.S. 1, "In the light of history and modern reality, the provision of congressional disapproval of agency regulation does not appear to transgress the constitutional design ... "

We would conclude in line with this that it would be both legal and proper to annul 19 AAC 30.020(9)(C) and (D). This regulation is by its own terms contrary to the specific provisions included in the statute upon which it is based.

It is, therefore, invalid and should be annuled by the legislature. Finally, we would like to note that the terms of the statute seem mandatory in requiring that the full amount of the entitlement be paid to the Lake Otis Clinic. This seems not only clear but equitable considering the fact that the sponsors of the project, whether governmental or non-governmental, put up a substantial amount of the financing. Certainly, hospitals would never be built if the sponsors had to operate subject to the possibility that shifts in administration policies subsequent to the commencement of a project could endanger a portion of the financing needed for completing the project. The Lake Otis Clinic project was scrutinized by the administration at the time of its initiation. Substantial amounts of money and effort have been expended in reliance upon the state's obligation to fulfill the terms set out in the statute. The administration should certainly not be able to back out of the project at this late date.

Very truly yours,

MILES S. SCHLOSBERG, INC.

Mark A Ertischek

By Mark A. Ertischek

MAE:bmc

Sen Orsini (4)

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

JAY S. HAMMOND, GOVERNOR

OFFICE OF THE COMMISSIONER | POUCH B – JUNEAU 99811

March 10, 1977

Honorable Joseph L. Orsini
Chairman, Senate Community & Regional
Affairs Committee
Pouch V
Juneau, Alaska 99811

Re: State Aid to Local Government Municipal
Revenue Sharing for Hospital Construction
Matching Funds

Dear Senator Orsini:

Attached are copies of each annual report since 1972 with a summary sheet showing the hospital construction matching funds paid to applicants. Our records show that Lake Otis Clinic, Inc. is the only nonmunicipal sponsor to ever receive hospital construction matching funds since the enactment of the legislation in 1972.

Also attached is the correspondence pertaining to the denial of FY '75 redirected Revenue Sharing grant in the amount $100,000 for Lake Otis Hospital. You may be interested in reading the Attorney General's opinion dated January 27, 1976 which could relate the question whether the legislative intent written in the FY '75 Free Conference Committee Budget Report after adjournment could be construed to be legally binding.

Sincerely,

Lee McAnerney

Lee McAnerney
Commissioner

Attachments

LMcA:ES/pc

MEMORANDUM State of Alaska

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

TO: Lee McA rney
Commissioner

DATE: July 8, 1975

FILE NO:

TELEPHONE NO:

FROM: Jack Chenowe th
Director

SUBJECT:

Yesterday, in your absence, I took a call from Dr. Michael Beirne concerning the denial of $100,000 of redirected FY 75 shared revenue for the Lake Otis Hospital. Dr. Beirne is seeking to reverse the decision, as expeditiously as possible. He contends that the language of the statement of intent is sufficient to override the statute and Department-adopted regulations, the question of eligibility being eliminated by the legislative finding. He also thinks AS 37.25 inapplicable to the Lake Otis Hospital for the Legislature only determined that the amount "shall be considered applicable" to FY 74.

I explained that the matter had been reviewed with you and with Kent Dawson of Budget and Management.

Beirne will probably be in Juneau today and will likely contact you and officials of the Department of Administration to solicit review by the Attorney General.

JBC:ds
cc: Andy Warwick, Dept. of Administration
Avrum Gross, Dept. of Law

June 30, 1975

Dr. Michael Beirne
P.O. Box 4-1539
Anchorage, Alaska 99509

Dear Dr. Beirne:

The First Session of the Ninth Alaska Legislature adopted a statement of intent applicable to construction of the Lake Otis Hospital. The statement reads:

> It is the intent of the Legislature that an amount not to exceed $100,000 (the amount to be determined by eligibility standards established in law/regulations for payment of construction grants to hospitals) be paid as a grant to the Lake Otis Hospital facility from the FY-75 Municipal Service Revenue sharing account. This grant shall be considered applicable to the FY-74 entitlement for Municipal Service Revenue sharing.

The quoted statement was added to the FY-76 appropriation Free Conference Committee Report on the motion of Representative Keith Specking, a member of the second Free Conference Committee on that act, following my letter to you of June 5 and an explanation offered by Jay Hogan, Director of Legislative Finance, during the Committee's deliberations.

Subsequent review has led to a determination that no portion of the amount intended by the legislative statement for the Lake Otis Hospital facilities for FY-74 from the balance of the appropriation for the FY-75 Municipal Service Revenue Sharing program shall be paid.

The legislative statement sets an upper limit of $100,000 on the amount to be allocated adding, parenthetically, that the actual amount payable is "to be determined by eligibility standards established in law/regulations for payment of construction grants to hospital." You will well recall our discussions during the spring of 1974 when, in March, you transmitted a letter application requesting payment for the FY-74 appropriation for the Lake Otis Hospital. At that time, I advised that your application could not be honored for payment because (1) it was filed after the date established in Department-adopted regulations for timely filing of applications and (2) at the time your application was submitted, the FY-74 appropriation had been expended or encumbered to meet valid claims. At that time

(early spring of 1974), if memory serves, you indicated that construction of the facility had not been initiated by July 1, 1973, the first day of FY-74 and the index or benchmark date for all FY-74 applications. Because the legislative statement directs that the Department determine the amount payable, to the maximum limit of $100,000, with reference to applicable law and regulations, I find that the amount properly payable, applying 19 AAC 30.030, "Date for Determination," is $0.

A provision of state law relating to public finance appears to preclude payment of an FY-74 entitlement from the balance of the FY-75 appropriation. By AS 37.25.010(b)

> An indebtedness arising from a prior year for which the appropriation has lapsed shall be paid from the current year's appropriations, if (1) the expenditure does not exceed the balance lapsed and (2) the original obligation date is not more than two years from the regular date of disbursement.

Regrettably, the amount projected to be paid--a maximum of $100,000--exceeds the amount lapsed in FY-74--$3,700. The quoted statutory provision takes precedent over the statement of intent and no entitlement is, therefore, payable.

Though the construction project is to be denied the grant intended by the Legislature, please understand that, assuming no change of the current statute, AS 43.18.010(j) and continued construction of the facility over the anticipated time frame, the Lake Otis Hospital may reasonably expect to receive its share of funds appropriated for construction to the limit established in the general law provision. Our decision to override the statement of legislative assistant in the payment of FY-74 payment of construction support is, in one sense, not so much a denial of payment as it is a postponent.

Please advise if further information concerning disposition of the matter by the Department is required.

Sincerely,

Lee McAnerney
Commissioner

by: _____
John B. Chenoweth, Director

LMcA:JBC:ds

bcc: Bill Gordon
Andrew Warwick
Kent Dawson
Jay Hogan
David Freer

Free Conference Committee on the Budget
Intent, Municipal Services Revenue Sharing

It is the intent of the Legislature that an amount not to exceed $300,000 (the amount to be determined by eligibility standards established in law/regulations for payment of construction grants to hospitals) be paid as a grant to the Anchorage Community Hospital from the FY 75 Municipal Services Revenue Sharing Account. It is the intent of the Legislature that an amount not to exceed $100,000 (the amount to be determined by eligibility standards established in law/regulations for payment of construction grants to hospitals) be paid as a grant to the Lake Otis Hospital facility from the FY 75 Municipal Services Revenue Sharing account. This grant shall be considered applicable to the FY 1974 entitlement for Municipal Services Revenue Sharing.

Senator Sackett moved to add intent to General Relief Medical that hospitals will absorb 20% of unpaid services as charity care. No objection, so ordered. Leg. Inten

Referring to a May 28, 1975 memo to Rep. Haughton from Jay Hogan, Representative Specking called attention to the fact that there is $400,000 in hospital construction revenue sharing money that will lapse unless otherwise appropriated. He explained that $300,000 of the FY 75 Municipal Services Revenue Sharing account was earmarked for the Anchorage Community Hospital; however, Anchorage failed to file an application for their share since they thought the grant would automatically be paid. Representative Specking moved to adopt legislative intent that an amount not to exceed $300.0 be paid as a grant to the Anchorage Community Hospital, and the remaining $100.0 be appropriated to the Lake Otis Hospital facility. Leg. Inte

Representative Bowman objected.. He asked if there are other hospitals that are available to receive these funds. Senator Kerttula remarked that he knows that GAAP has two facilities; however, they are fully funded. Jay Hogan explained that in the past it was the intent of the Legislature to include a sum of money for Lake Otis for reimbursement for construction costs, but this never took place; and last year it was the same thing for the community hospital in Anchorage--it never took place. This is an attempt to take money that will lapse and pay off these two past legislative intents.

Representative Bowman then removed his objection to the motion, and it was adopted.

Referring to the General Government category, Department of Law, Natural Gas FPC Representation, Senator Croft proposed that the following legislative intent be added to the existing intent which appears on page 122 of the computer run (The department shall not retain any legal firm where there appears to exist a conflict-of-interest situation. Information developed by the contract firm shall be made readily available to the legislative pipeline impact committee).

Legislative Intent: The department shall coordinate its activities in this regard with and cooperate with the legislative committee created by HB 258. Leg. Intent

No objection, this intent was adopted.

Referring to University of Alaska, Statewide Administration, Senator Croft stated that $300.0 was added by the previous FCC for management systems development. Senator Croft moved that prior to entering into a contract with the University, the firm that will be doing the work be approved by the Legislative Budget & Audit Committee.

6/6/75

PROGRAM CATEGORY: DEVELOPMENT PROGRAM: REVENUE SHARING

AGENCY: DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS SUB-PROGRAM:

REQUESTS FOR NEW POSITIONS

FOOT-NOTE	POSITION TITLE	NO.	PRIORITY	LOCATION	SAL & BENEF COST	TOTAL POSN COST	GENRL FUNDS	FED & OTHER FUNDS	GOV BUDGET	HOUSE BUDGET	SENATE BUDGET	F.C.C. BUDGET
(1)	LOCAL GOVT SPECIALIST IV	01	001	JUNEAU	22.8	27.0	27.0					
				TOTALS:	22.8	27.0	27.0					

(1) GOVERNOR RECOMMENDS TRANSFER LOCAL GOV'T SPEC IV FROM PLI DISCRETIONARY GRANT BRU. SAL & BEN 23.2; TOTAL COST 28.1

ANALYSIS OF GOVERNORS BUDGET

OBJECT GROUP	OBJECT GROUP DESCRIPTION	GOV - FY75 AUTH $ DIFFERENCE	GOV - FY75 AUTH % DIFFERENCE	DESCRIPTION OF DIFFERENCES
100	PERSONAL SERVICES	34.8		TRANSFER IN CLERK IV 11.6; GOV'S TRANSFER IN LGSIV, 23.2
200	TRAVEL	3.0		GOV NEW POSITION 3.0
300	CONTRACTUAL SERVICES	9.0		GOV NEW POSITION 1.7; OTHER 7.3
400	COMMODITIES	0.5		GOV NEW POSITIONS .5
700	GRANTS,CLAIMS,SHARED REVENUE	1,110.3	8.5	INCREASED COST OF GRANTS 1,110.3

ANALYSIS OF FREE CONFERENCE COMMITTEE BUDGET

DENY REQUESTED NEW POSITION; ALLOW TRANSFER-IN LOCAL GOVERNMENT SPECIALIST IV FROM PLI DISCRETIONARY GRANTS BRU; ALLOW INCREASE IN CODE 700.

LEGISLATIVE INTENT: IT IS THE INTENT OF THE LEGISLATURE THAT AN AMOUNT NOT TO EXCEED $300,000 (THE AMOUNT TO BE DETERMINED BY ELIGIBILITY STANDARDS ESTABLISHED IN LAW/REGULATIONS FOR PAYMENT OF CONSTRUCTION GRANTS TO HOSPITALS) BE PAID AS A GRANT TO THE ANCHORAGE COMMUNITY HOSPITAL FROM THE FY75 MUNICIPAL SERVICES REVENUE SHARING ACCOUNT.

IT IS THE INTENT OF THE LEGISLATURE THAT AN AMOUNT NOT TO EXCEED $100,000 (THE AMOUNT TO BE DETERMINED BY ELIGIBILITY STANDARDS ESTABLISHED IN LAW/REGULATIONS FOR PAYMENT OF CONSTRUCTION GRANTS TO HOSPITALS) BE PAID AS A GRANT TO THE LAKE OTIS HOSPITAL FACILITY FROM THE FY75 MUNICIPAL SERVICES REVENUE SHARING ACCOUNT. THIS GRANT SHALL BE CONSIDERED APPLICABLE TO THE FY74 ENTITLEMENT FOR MUNICIPAL SERVICES REVENUE SHARING.

Due to a revised request to increase the grants to provide funds for additional beds at Anchorage Community Hospital, the Free Conference Committee increased Line Item 700 by $163,100.

See Appendix for Municipal Services Revenue Sharing Table.

Hill-Burton Allowable and Non-Allowable Cost

Acquisition of Site	Non-Allowable *
Site Clearance	Allowable
Relocation of Utilities	Non-Allowable
Sidewalks	Allowable
Driveways	Allowable
Parking Areas	Allowable
Landscaping	Allowable
Underground Sprinkler System	Allowable
Connection to Utilities	Allowable
Off-Site Improvements	Non-Allowable
Advertising	Allowable
Insurance Coverage	Allowable
Architects' Fees	Allowable
Consultant Fees	Allowable *
Inspection	Allowable
Equipment	Allowable *
Surplus Property	Allowable
Donated Land, Equipment, Services	Non-Allowable *
Bonus Payments to Contractor	Non-Allowable

*(exceptions)

Hill-Burton Allowable and Non-Allowable Cost (2)

Damage Judgments Against Sponsor	Non-Allowable
Maintenance of Records	Allowable
Sales Tax	Allowable
Space for the Private Practice of Medicine	Non-Allowable
Space to be Leased to Radiologist or Pathologist	Allowable
Space for Revenue Purposes	Non-Allowable
Space and Equipment for Religious Activities	Allowable
Fund Raising Expenses--- Memorial Plaques	Non-Allowable
Public Health Facilities in Private Nonprofit Hospitals	Non-Allowable
Legal Council's Fees	Non-Allowable
Gift Shops Flower Shops Snack Bars	Allowable
Unfinished Space	Non-Allowable

*(exceptions)

Hill-Burton Allowable and Non-Allowable Cost (3)

Books	Allowable *
Television	Allowable
Short-term Care Facilities	May Be Allowed
Long-term Care Facilities	May Be Allowed
Nurses' Dormitory	May Be Allowed
Fallout Protection	Allowable
Housing Staff for Nursing Home	Non-Allowable *
Pictures and Murals	Non-Allowable *
Floor Finish Materials	Allowable *
Quarters for Residents and Interns	Allowable *
Costs Allowable and Not Allowable in Guaranteed Loan and Direct Loan Projects	Non-Allowable *

*(exceptions)

INDEX

(3)

REGULATIONS

GOVERNING
STATE AID TO LOCAL GOVERNMENTS
MUNICIPAL SERVICES REVENUE SHARING PROGRAM

COMMUNITY AND REGIONAL AFFAIRS

PART 2. MUNICIPAL SERVICES REVENUE SHARING PROGRAM

CHAPTER 30. STATE AID TO LOCAL GOVERNMENTS

Section

19 AAC 30.010. SCOPE OF REGULATIONS. The regulations in this chapter are prescribed for implementing, interpreting, and making specific the act providing state aid to local governments, AS 43.18.010 - 43.18.050. (Eff. 7/8/73, Register 47)

Authority: AS 43.18.040
44.47.050(14)
44.47.160

19 AAC 30.020. ELIGIBILITY. Eligibility for receipt of state aid to local governments provided by AS 43.18.010 - 43.18.050 shall be predicated upon the possession and exercise of a power set out in those statutory provisions by a unit of local government or volunteer fire department located in the unorganized borough. (Eff. 7/8/73, Register 47)

Authority: AS 43.18.040
44.47.050(14)
44.47.160

19 AAC 30.030. DATE FOR DETERMINATION. For the first entitlement period, determination of eligibility for receipt of state aid to local governments provided by AS 43.18.010 - 43.18.050 is July 1, 1973.

In subsequent entitlement periods, the annual date for determination of eligibility is July 1. (Eff. 7/8/73, Register 47)

Authority: AS 43.18.040
44.47.050(14)
44.47.160

19 AAC 30.040. APPLICATION. (a) Application for state aid to local governments under AS 43.18.010 - 43.18.050 shall be made on forms prescribed by the commissioner.

(b) Not later than July 10 of the entitlement period the department will forward application forms to each unit of local government and volunteer fire department located in the unorganized borough that received state aid to local governments in the previous entitlement period and to every other unit of local government incorporated before July 1 of the entitlement period.

(c) As a condition to participation in the program of state aid to local governments, applications for state aid to local governments under AS 43.18.010 - 43.18.050 shall be returned to the department postmarked not later than October 15 of the entitlement period. Based on information contained in the application submitted, the commissioner will prepare a determination of entitlements not later than the following November 30 and will mail notice of the amount of entitlement to each unit of local government and volunteer fire department located in the unorganized borough. (Eff. 7/8/73, Register 47; am 8/7/74, Register 51)

Authority: AS 43.18.040
44.47.050(14)
44.47.160

19 AAC 30.050. APPEAL. (a) Within 20 days of the date of mailing of notice of entitlement by the department, a unit of local government or volunteer fire department located in the unorganized borough may appeal a determination of final entitlement to the commissioner. The appeal shall be in writing and shall identify the particular category or categories for which application for state aid to local governments has been submitted, the determination of entitlement to which the unit of local government takes exception, and the reasons for its exception. The appeal shall include all relevant supporting evidence.

(b) The commissioner will review the record of appeal and enter the final determination of entitlement. The commissioner may affirm or modify the determination of entitlement previously entered, and will notify the unit of local government or volunteer fire department located in the unorganized borough of his decision.

(c) If the unit of local government or volunteer fire department located in the unorganized borough fails to file an exception within the

time set forth in subsection (a) of this section, the determination of entitlement entered pursuant to section 040(c) constitutes the final determination of the department.

(d) The manner of computation of population may not be made the subject of an appeal. (Eff. 7/8/73, Register 47)

Authority: AS 43.18.040
44.47.050(14)
44.47.160

19 AAC 30.060. POPULATION DATA. (a) The population data used in determination of allocations of state aid to local governments and adjustments to those allocations will be the official report of the United States Bureau of the Census. However, a unit of local government may substitute for the official report of the United States Bureau of the Census:

(1) an enumeration, certified as true and correct by the governing body of the unit of local government or chief administrative officer of a volunteer fire department located in the unorganized borough, specifying the names of residents of the unit of local government, service area, or area served by a fire department, prepared according to criteria established by the department;

(2) an estimate of population based upon other reliable data such as public school enrollment figures, public utility connection, registered voters, and certified employment payrolls; or

(3) the latest available population estimate prepared by the division of employment security, Alaska Department of Labor.

(b) The commissioner may require each unit of local government or volunteer fire department located in the unorganized borough which offers an estimate of its population to submit such evidence as may be necessary to review computation of the population estimate. He may notify the unit of local government or volunteer fire department located in the unorganized borough that if it fails to take action in response to the request within 30 days of the date of receipt of his notification, the estimate may be rejected and allocations will be made on the best data available to the department.

(c) Repealed, August 7, 1974. (Eff. 7/8/73, Register 47; am 8/7/74, Register 51)

Authority: AS 43.18.010(c)
43.18.040
44.47.050(14)
44.47.160

19 AAC 30.070. AUDIT OR STATEMENT OF INCOME AND

EXPENDITURES. (a) Each unified municipality, organized borough, home rule city, or city of the first class shall submit one copy of its annual audit prepared pursuant to AS 29.48.220 for the fiscal year preceding the entitlement period. Preparation of the audit shall be by a public accountant licensed under the provisions of AS 08.04.270 - 08.04.320.

(b) Each city of the second class shall submit an audit or statement of income and expenditures of the accounts and financial transactions of the second class city for the fiscal year of the second class city preceding the entitlement period on a form approved by the commissioner.

(c) Payment of the final entitlement of a unit of local government will not be made until an audit or statement of income and expenditures is filed with the department. (Eff. 7/8/73, Register 47; am 8/7/74, Register 51)

Authority: AS 43.18.010(c)
43.18.040
44.47.050(14)
44.47.160

19 AAC 30.080. FAILURE TO COMPLY WITH REQUIREMENTS. If the commissioner determines that a unit of local government or volunteer fire department located in the unorganized borough has failed to comply substantially with a provision of this chapter, after giving reasonable notice to the chief executive officer or chief administrative officer of the unit of local government or volunteer fire department located in the unorganized borough, he will notify the unit of local government or volunteer fire department located in the unorganized borough that if it fails to take action in response to the request within 30 days of the date of receipt of notification, further payments will be withheld for the entitlement period until the request for further information is fully complied with. (Eff. 7/8/73, Register 47)

Authority: AS 43.18.040
44.47.050(14)
44.47.160

19 AAC 30.090. PREPAYMENTS. (a) The commissioner may provide for prepayment to a unit of local government or volunteer fire department located in the unorganized borough of a sum not to exceed 50 percent of the entitlement computed without regard to any proration for the previous entitlement period.

(b) Prepayments will be allowed to a unit of local government or volunteer fire department located in the unorganized borough upon receipt by the department of a completed application.

(c) Repealed, August 7, 1974.

(d) Prepayments shall be deducted from the entitlement prior to transmittal of the balance of the entitlement due to a unit of local government or vol-

unteer fire department located in the unorganized borough determined to be eligible for receipt of state aid to local governments. (Eff. 7/8/73, Register 47; am 8/7/74, Register 51)

Authority: AS 43.18.040
44.47.050(14)
44.47.160

19 AAC 30.100. BOUNDARY ADJUSTMENTS. A unit of local government effecting a boundary change under AS 44.19.260 or through the local action process provided by 19 AAC 15 during the preceding entitlement period shall return with its application the following information:

(1) one copy of an ordinance or resolution effecting the boundary change;

(2) a map clearly showing areas annexed to or detached from the unit of local government submitting the application; and,

(3) an estimate of the population residing within the area annexed or detached and a detailed statement indicating the method used in determining the estimate. (Eff. 7/8/73, Register 47)

Authority: AS 43.18.040
44.47.050(14)
44.47.160

19 AAC 30.110. INCORPORATION OR DISSOLUTION OF UNITS OF LOCAL GOVERNMENT. (a) A unit of local government which is incorporated pursuant to AS 29.18.010 - 29.18.120 during the entitlement period is not eligible to receive state aid to local governments for the entitlement period during which it was incorporated.

(b) The department will pay to a unit of local government established by unification pursuant to AS 29.68.390 an entitlement prorated over the number of days in the entitlement period following the date of unification.

(c) The department will pay to a unit of local government established by consolidation pursuant to AS 29.68.090 an entitlement prorated over the number of days in the entitlement period following the date of consolidation.

(d) The department will pay to a unit of local government into which a city or borough is merged pursuant to AS 29.68.090 an entitlement prorated over the number of days in the entitlement period following the date of the merger.

(e) A unit of local government which is to be dissolved pursuant to AS 29.68.500 during the entitlement period will receive an entitlement payment prorated over the number of days in the entitlement period during which it has been in existence if that unit of local government has authority to expend

revenues. (Eff. 7/8/73, Register 47)

Authority: AS 43.18.040
44.47.050(14)
44.47.160

19 AAC 30.120. OVERPAYMENT AND ADJUSTMENT. (a) After mailing of prepayments, if the commissioner determines that the prepayment mailed to a unit of local government or volunteer fire department located in the unorganized borough exceeds the entitlement payable to a unit of local government or volunteer fire department located in the unorganized borough during the entitlement period, he may

(1) demand that the difference between the amount of prepayment and the proper entitlement be repaid to the department; or

(2) reduce, in the next entitlement period, the entitlement to the unit of local government or volunteer fire department located in the unorganized borough by the difference between the amount of prepayment and the proper entitlement.

(b) After mailing of the balance of the entitlement due to a unit of local government or a volunteer fire department located in the unorganized borough, if the commissioner determines that the sum of the prepayment and final payment exceeds the entitlement payable to the unit of local government or volunteer fire department located in the unorganized borough during an entitlement period, he may

(1) demand that the difference between the sum of the payments and the proper entitlement be repaid to the department; or

(2) reduce, in the next entitlement period, the entitlement to the unit of local government or volunteer fire department located in the unorganized borough by the difference between the sum of the payments and the proper entitlement. (Eff. 7/8/73, Register 47)

Authority: AS 43.18.040
44.47.050(14)
44.47.160

19 AAC 30.130. VIOLATION OF STATUTE GOVERNING EMPLOYMENT PREFERENCE. (a) Notwithstanding other provisions of this chapter, when there has been a finding of a violation by a unit of local government of the provisions of AS 36.10, the unit of local government may be denied state aid to local governments for a period not to exceed one year following the date of the final determination.

(b) Where denial of state aid to local governments under subsection (a) of this section is for less than one entitlement period, the entitlement will be prorated for the period during which the unit of local government is other-

wise qualified. (Eff. 7/8/73, Register 47)

Authority: AS 36.10.090(b)
43.18.040
44.47.050(14)
44.47.160

19 AAC 30.140. UNIFIED MUNICIPALITIES. For purposes of administration of the act providing state aid to local governments, a unified municipality shall be treated as an organized borough. (Eff. 7/8/73, Register 47)

Authority: AS 43.18.040
44.47.050(14)
44.47.160

19 AAC 30.150. DEFINITIONS OF TERMS IN AS 43.18.010. Unless the context indicates otherwise, in AS 43.18.010

(1) "airport" means a facility operated by a unit of local government at which aircraft arrive and depart on a regular basis; airports maintained exclusively by an agency of the state or federal government or by a private party, airports maintained by a unit of local government under agreement or contract with the Alaska Division of Aviation, airports maintained on a seasonal basis, heliports, sea dromes, and beach landing strips are excluded;

(2) "financial support" means

(A) a transfer of funds from a city, borough or unified municipality to a fire department;

(B) providing in-kind services, including but not necessarily limited to providing a building or other facility for the use of the fire department; utilities, including electricity, heat, water; labor to construct or maintain facilities or other equipment used by the fire department; or other services provided by the unit of local government for the fire department at no cost or at a reduced rate; and,

(C) the full faith and credit pledge of the unit of local government for bonded indebtedness incurred for the purpose of providing funds for the fire department;

(3) "parks and recreation" means a park or recreational facility owned and maintained by a unit of local government or recreation program operated and financially supported by a unit of local government; facilities and programs must be available to the general public;

(4) "port" means a permanent facility operated by a unit of local government which has the capability of receiving cargo from and discharging cargo to commercial vessels;

(5) "road" means a right-of-way across the land dedicated to public use and constructed and maintained for the use of automotive equipment; specifically excluded are

(A) roads maintained within a unit of local government by an agency of the federal or state governments or maintained by the unit of local government pursuant to an agreement with a federal or state agency;

(B) public ways on the surface of a river, lake or other body of water; and,

(C) trails;

(6) "small boat harbor" means a permanent facility operated by a unit of local government which provides deep water shelter, either natural or artificial, on the coast of a sea, lake or other body of water;

(7) "staff planner" means a full-time employee of a unit of local government whose primary responsibility is land use planning and plan implementation;

(8) "transit system" means the transportation of people over regular routes at specified times in accordance with fixed tariffs; the term is limited to transportation by rail and monorail or buses, specifically designed and constructed to accommodate the general public; and,

(9) "work program outline" shall include but is not necessarily limited to

(A) the name and address of the planning firm with which the unit of local government has an annual contract;

(B) a copy of the annual contract; and,

(C) an explanation of the planning tasks presently being undertaken.

(10) "police protection" means provision of police protection services made available by a unit of local government during the previous entitlement year with one or more police officers on duty or on call daily. (Eff. 7/8/73, Register 47; am 8/7/74, Register 51)

Authority: AS 43.18.040
44.47.050(14)
44.47.160

19 AAC 30.160. DEFINITIONS. Unless the context indicates otherwise, in this chapter

(1) "chief administrative officer or chief executive officer" means the official who has primary responsibility for the conduct of the governmental or financial affairs of the unit of local government or volunteer fire department;

(2) "commissioner" means the Commissioner of the Department of Community and Regional Affairs;

(3) "department" means the Department of Community and Regional Affairs;

(4) "entitlement" means the amount of payment of state aid to local governments to which a unit of local government is entitled as determined by the commissioner pursuant to the allocation specified in AS 43.18.010 - 43.18.050 providing state aid to local governments or established by these regulations;

(5) "entitlement period" means the calendar period beginning July 1 and ending June 30 of the following year;

(6) "facility" means a permanent improvement constructed, operated or maintained for the convenience of the public;

(7) "unit of local government" means a city, organized borough, or unified municipality incorporated under the laws of the State of Alaska.
(Eff. 7/8/73, Register 47)

Authority: AS 43.18.040
44.47.050(14)
44.47.160

(2)

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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

M E M O R A N D U M

March 14, 1977

SUBJECT: SCR 13

TO: Senate Community and Regional Affairs Committee

FROM: Billy G. Berrier BGB
Director
Division of Legal Services

You have asked whether the regulation adopted by the Department of Community and Regional Affairs as 19 AAC 30.020(9)(c) to determine project cost for hospital construction aid under AS 43.18.010(j) is a legally proper exercise of the power granted to the department to adopt regulations necessary to carry out the purposes of the program. In my opinion the regulation is legally proper.

AS 43.18.010(j) provides:

> "(j) If construction of a facility began after January 1968 and state matching aid for construction approved for payment to the local government or other facility sponsor constitutes less than 25 per cent of the total project cost, the state shall pay to the local government or other facility sponsor each fiscal year a sum equal to $2,500 a bed for the maximum number of beds provided for in the construction design of the facility. State aid provided for in this subsection shall continue until the local government or other facility sponsor has received an amount which, combined with state matching money for construction of the facility, equals 25 per cent of the total project cost. No funds received for construction shall be used for any other purpose."

The regulation under consideration, 19 AAC 30.020(a)(c) provides:

> "(C) project or construction costs shall be those contracted costs that are eligible for financial participation under the Hill-Burton Construction Program for construction of new buildings, including, but not limited

> to, the expansion, replacement and modernization of existing buildings and initial equipment of any such buildings; including architect and consultant fees, but not including the cost of land acquisition and off-site improvements;"

In this statute the term "total project cost" is very significant. A determination of the total project cost is necessary to initially determine eligibility for aid and to determine the total amount of aid to be given. The term is not free from ambiguity. Implementing regulations are therefore proper. Of course the regulations must in themselves be reasonable and must be in accord with the legislative intent since the power to adopt regulations confers only an authority or discretion as to execution of a law to be exercised under and in pursuance of the law. (Cinncinnati v. Clinton Co. 10 Ohio 77 at 88, 1852, which has been followed with approval in numerous cases).

The Hill-Burton program, (Title VI of the Public Health Service Act as amended, 42 USC 291 et seq.) is the program providing federal aid for hospital construction. This program has been used in Alaska and the state agency required under that program has been established under AS 18.25. It is reasonable to assume that in 1971 when the legislature enacted CSSB 42 am H which as Ch. 127 SLA 1971 became the law under consideration here, both the legislature and the executive branch were aware of the Hill-Burton Act and the fact that state matching aid for hospital construction was being granted as a partial match for Hill-Burton funds.

The Hill-Burton program had been functioning for many years and had dealt extensively with the question of what project costs were allowable. With no specific direction in the statute as to how the term "project cost" was to be defined, it was not unreasonable for the department to use a well-recognized definition in a directly parallel program

There is no evidence of legislative intent to use either this or another definition. The use of the term "total" as a modifier of project cost may evidence an intent that the term project cost be used broadly but a somewhat more persuasive case can be made that the intent of the modifier "total" was to establish that the project cost referred to was not to be construed as referring only to the non-federal share of the costs. It would not appear reasonable to assume the intent of the phrase "total project cost" was to allow any cost attributed to the project by the sponsor regardless of the remoteness of the connection or the propriety of the cost.

Since discretion was left to the department and the department exercised that discretion in a reasonable manner apparently consistent with legislative intent, in my opinion the regulation is legally proper.

Unlike a court, the legislature in its determination of whether to annul a regulation may consider the wisdom as well as the legality of the regulation. The question of whether a regulation is desirable or wise is not a legal question and is not addressed in this memorandum.

BGB:hjd

(1)

South Central Health Planning and Development, Inc.

1135 West Eighth Avenue Suite 1 Anchorage, Alaska 99501

(907) 278-3631

March 14, 1977

Joseph L. Orsini, Chairman
Community and Regional Affairs
Pouch V
Juneau, Alaska 99811
Mail Stop 3100

Dear Mr. Orsini:

The Executive Committee of South Central Health Planning and Development Inc reviewed SCR 13 and SCR 14 at their regular meeting on March 11, 1977. It was their position that the regulations requiring application through municipalities and restricting matching are appropriate. They therefore wish to inform the committee that they reaffirm their position supporting such regulations and therefore recommend against annullment.

Sincerely,

Ron Hammett

Ron Hammett
Administrator

RH/ls

(5)

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU 99811

January 27, 1976

Catherine M. Lloyd
Deputy Commissioner
Department of Health &
Social Services

Dear Ms. Lloyd:

You have requested an opinion from the Department of Law concerning the following fact situation:

1. By Chapter 209, SLA 1975, the legislature appropriated from the general fund the sum of $3,210,400 to the General Relief Medical Program (GR-Med) administered by the Department of Health and Social Services (DHSS).

2. Section 16(a) of the above appropriation bill states in part:

> . . . The expenditure of funds appropriated/ allocated by this Act shall be in accordance with the conditions and intent set out in the "Free Conference Committee Report, FY 76, Operating and Capitol Budget" as published by the legislative finance division.

3. At page 114 of the "Free Conference Committee Report, FY '76, Health Operating Budget," the following statement is found:

> Legislative Intent: Hospitals will absorb 20% of unpaid services as charity care.

With respect to the facts presented above, the question you have asked may be stated as follows:

1. Does the language quoted above of the Free Conference Committee Report have the effect of legally limiting the manner by which reimbursement can be made by DHSS to hospitals

providing medical assistance covered by the GR-Med program?

2. If a limitation has not been established, how can DHSS implement the quoted legislative intent statement?

The short answers to these questions are: (1) the statement of legislative intent in the Free Conference Committee Report does not have the force of law in limiting payments to hospitals; (2) DHSS must adopt regulations pursuant to the Administrative Procedure Act in order to give legal effect to the statement of legislative intent in question.

I. FACTUAL BACKGROUND

The statutory authority for the GR-Med program is found in AS 47.25.120 et seq.

The mechanics of the program are quite simple. A person seeking GR-Med assistance completes an application provided by DHSS. If the applicant is found eligible for GR-Med assistance, the applicant is issued a coupon card. If that person should thereafter require hospital care, he/she need only present this card upon admission. The hospital then completes a medical invoice showing the services provided to the patient and sends the invoice and a copy of the person's GR-Med card to DHSS for payment.

To finance the GR-Med program in FY '76, DHSS, Division of Medical Assistance, initially submitted to the Department of Administration, Division of Budget and Management (DBM), a budget request for FY '76 in the amount of $3,533,200. Indications at the time were that this amount would be necessary to maintain the 1975 level of GR-Med care in 1976. DBM then suggested that DHSS reconsider its budget request. After doing so, DHSS raised its request to $3.6 million and resubmitted it to DBM. In the interim, DBM had reduced the original budget request to $3,210,400.

In response to that reduction, the Division of Medical Assistance sent a memorandum to DBM explaining and documenting the necessity for funding GR-Med at the $3.6 million figure. DBM concurred with the contents of the memorandum and agreed to the $3.6 million figure. However, prior to the receipt and consideration of these memoranda, the Governor's official budget document was printed and sent to the legislature, showing the $3,210,400 figure.

By letter of April 8, 1975 to Representative Malone, Chairman of the House Finance Committee, Commissioner Andrew Warwick, Chairman of the Governor's Budget Review Committee, requested, inter alia, that the proposed GR-Med budget figure be changed to read $3,640,400.

On May 22, 1975, Governor Hammond sent a letter to both Senator Ray, Chairman of the Senate Finance Committee, and Representative Malone, Chairman of the House Finance Committee. Attached to this letter was another request by DHSS that the $3.6 million budget figure requested for the GR-Med program be substituted for the $3,210,400 figure.

Following the adoption by the Senate and House of their respective finance committee reports, each containing the $3,210,400 figure, a free conference committee was appointed. At its meeting of May 25, 1975, the first Free Conference Committee (FCC) on the budget adopted the House and Senate figure of $3,210,400 for the GR-Med program. (Page 38, First Free Conference Committee Minutes, 1975). At the same time, on the motion of Representative Malone, the statement of legislative intent in question was also adopted. (Page 38, First Free Conference Committee Minutes, 1975).

When the first FCC was unable to resolve differences between the Senate and House versions of the budget bill, the committee disbanded and a second FCC was appointed. This committee, upon the explanation and motion of Senator Sackett, chose to adopt the same statement of legislative intent. (Pages 143-144, Second Free Conference Committee Minutes, 1975). In addition, in "an attempt to formalize the legislative intent that the FCC adopts," the second FCC adopted what is now section 16(a) of the general budget bill for 1975. (Page 140, Second Free Conference Committee Minutes, 1975). This section reads in part:

> . . . [T]he expenditure of funds appropriated/ allocated by this Act shall be in accordance with the conditions and intent set out in the "Free Conference Committee Report, FY '76, Operating and Capitol Budget" as published by the legislative finance division. (Chapter 209, SLA 1975, sec. 16(a)).

Shortly after the second FCC completed its business Lawrence Sullivan, Director of the Division of Medical Assistance,

DHSS, verbally requested of the Legislative Finance Division a clarification of the meaning of the intent statement incorporated by reference into the appropriation for the GR-Med program.

The answer to Mr. Sullivan's inquiry stated that the "legislative intent" statement in question "means that the Division's reimbursement to hospitals is to be reduced 20% from the level that would otherwise prevail." (Letter of 6/16/75 from Milton Barker, Fiscal Analyst, to Larry Sullivan). This answer further stated that "the Intent (sic) was stated to signal a change in [the legislature's] policy."

Upon receipt of this clarification, DHSS proceeded to carry out the stated intent of the second FCC. Hospitals were notified by DHSS that, henceforth, reimbursement or GR-Med services would be at the rate of 80%. The response of the hospitals was predictable. Objections were voiced, discussions ensued and finally litigation against DHSS was threatened. In response to this threat, DHSS requested this opinion from the Department of Law.

II. LEGAL ANALYSIS

A. "Legislative Intent"

The statement which has given rise to this opinion is labeled "Legislative Intent" in the second FCC's report on the budget. In fact, this statement is not one of "legislative intent", but rather a statement of a condition attached to the GR-Med appropriation.

"Legislative intent" is a term of art in law. It refers to the meaning of a statute as intended by the legislature and is discerned by an examination of the statute's terms and the context within which it was enacted, i.e., committee reports, studies, and debates, collectively referred to as the legislative history, involving the questioned legislation. The examination of the context becomes a factor, however, only when the meaning of a statute cannot be discovered by an examination of the statute's terms and the application of intrinsic interpretation aids. The general rule is that when a statute is found to be clear and unambiguous by an examination of its contents, resort will not be had to extrinsic evidence of the legislature's intent. United States v. Donruss Co., 393 U.S. 297 (1969). Though the circumstances of a case may lead to a different result, United States v. Kelley, 328 F.2d 227 (CA 6th, 1964); Willmeth v. Harris, 195 Kan. 322, 403 P.2d 973 (1965), it is the general rule that when the terms of a statute are clear,

its meaning must be derived therefrom, notwithstanding that the meaning therein conflicts with the purpose of the statute as set forth in committee reports. Helvering v. City Bank Farmers Trust Co., 296 U.S. 85 (1935).

With regard to the Health-Operating budget (Ch 209, SLA 1975), the specificity of its terms makes it inconceivable that an ambiguity in its provisions could be argued to exist. The provision of that budget to which the statement at issue applies reads:

General Relief Medical	3,210,400	3,210,400

The first figure refers to the amount appropriated to the GR-Med program, and the second figure refers to the amount of the appropriation which is to be taken from the General Fund. It would be quite difficult to conjure up a more unambiguous provision. Therefore, if the free conference committee report was wholly separate from the budget bill, the absence of any ambiguity in the GR-Med provision of the bill would probably preclude giving any legal effect to the "legislative intent" statement in question. 1/

In the present case, however, we are not actually faced with a "legislative intent" problem, as that phrase is used in law. The reason we are not is that in section 16(a) of the budget bill, the legislature made the free conference committee report "intent" statements a part of the law by incorporating them by reference into the budget bill. As a result, these statements are not "legislative intent" at all, but would, if valid, be conditions on or additional terms of, the particular appropriations to which they apply. The question then is may the legislature attach these conditions or terms to appropriations by incorporating them by reference into the budget bill.

1/ Were an ambiguity to be found in the GR-Med provision of the budget bill, the "legislative intent" statements in the final second FCC report prepared by the Legislative Finance Division would still be of no legal effect.

The documents to which a court may refer for legal legislative intent are those which can reasonably be presumed to contain or indicate the legislature's understanding of a particular provision of a statute at the time the vote on its passage was taken. Statements clarified, edited, and even added, by non-legislators and contained in a document prepared subsequent to the passage of an ambiguous statute do not conform to this requirement. They therefore would not be a part of the legal legislative history to which a court would turn for interpretive assistance.

B. Ambiguous Conditions

An initial difficulty with the "legislative intent" statement in question is its inherent ambiguity. It is phrased in terms of a directive to hospitals to absorb 20% of unpaid services rather than as a limitation on DHSS's rate of reimbursement to hospitals under GR-Med. Clearly, the legislature cannot mandate action on the part of hospitals in a bill appropriating funds for the operation of state government. Alaska Const., art II, §13.

In defense of the "intent" statement, one might argue that its meaning is that DHSS is to reimburse hospitals for GR-Med assistance at the rate of 80% of costs incurred. This interpretation does not, however, logically follow from the language used. "Unpaid services" would include not only services rendered to GR-Med enrollees, but also services rendered to anyone unable or unwilling to pay. As a result, it is conceivable that hospitals could absorb 20% of "unpaid services" and yet leave 100% of GR-Med costs to be reimbursed by DHSS.

We view this problem of ambiguity as being of a serious and substantial nature. However, because of the existence of factors permitting a more conclusive answer to the question presented here, we assume for purposes of this opinion only that the statement in question means DHSS is to reimburse hospitals providing GR-Med assistance at the rate of 80% of costs incurred in providing such assistance. We turn now to the three factors we consider decisive of the question presented.

C. Incorporation by Reference

The statement of "legislative intent" in question did not appear in the budget bill passed by the legislature. Instead, the legislature chose to incorporate by reference the "intent" statement of the second FCC report into the budget bill. (Sec. 16(a), Ch. 209, SLA 1975, quoted supra.)

Research into the question of whether an incorporation by reference of non-statutory material into a budget bill is legally permissible indicates that it may be. Courts have held that state statutes may incorporate by reference federal law "now in effect," Alaska S.S. Co. v. Mullaney, 180 F.2d 805 (9th Cir. 1950); prior statutes of that jurisdiction, Young v. United States, 178 F.2d 78 (9th Cir. 1950); existing statutes, rules or regulations of another state, and publications of United States boards and commissions, People v. International Steel Corp. et al., 226 P.2d 587, 590 (Cal. App. 1951) and cases cited

therein; existing ordinances of that or another state and provisions of a treaty, Palermo v. Stockton Theaters, 172 P.2d 103 (Cal. 1946), subs opinion 195 P.2d 1, 32 Cal. 2d 55 (1948); existing federal rules or regulations, People v. Urban, 206 N.W.2d 511, 45 Mich. App. 255 (1973); and future statutes of the incorporating jurisdication, Robertson v. Langford, 273 P. 150 (Cal. App. 1928).

The paramount consideration in the area of incorporation by reference appears to be not so much what the document to be incorporated is, but rather whether it is in existence at the time the incorporating act is passed. In re Forsstrum et ux., 38 P.2d 878 (Ariz. 1934). As shown by the following facts, we are faced here with a situation in which the material to be incorporated by reference was not in existence at the time the incorporating act was passed.

Shortly after the start of the 1975 legislative session, a computer printout of the Governor's proposed budget for fiscal year 1976 was prepared. This document did not contain "legislative intent" statements and was used as a workbook by the finance committees and the legislature as a whole.

Upon the completion of its review of the Governor's proposed budget, the House Finance Committee prepared a second computer printout of the proposed budget, containing the "intent" statements of that committee. A limited number of copies of this report were placed in the offices of key members of the House for use by them and other interested members. Approximately two weeks after this "distribution", the House voted to adopt the finance committee's report and "intent" statements and the finance committee's substitute for House Bill No. 70 (budget bill). (1975 H. Jour., p. 1227)

During the time, or shortly thereafter, that the Governor's proposed budget was moving through the House, the same procedure was taking place in the Senate. When both the House and Senate had voted to adopt the report of their respective finance committees, a free conference committee was appointed to resolve the differences between them. A second free conference committee was appointed when the first FCC was unable to reach a compromise.

The report of the second FCC was adopted by the Senate on June 6, 1975, (1975 S. Jour., p. 1518). However, we have been informed by the Director of the Legislative Finance Division

that the second FCC met for the final time at noon on June 7, the last day of the 1975 legislative session. This meeting resulted in the addition of a number of statements of "legislative intent" which had not appeared in prior computer printouts. As a result of computer breakdowns and the normal exigencies that existed as the end of the session approached, these later statements of "intent", along with those inadvertently omitted from prior computer printouts, were typed onto the most recent printout then available. Apparently, one copy of this final report was then sent to each house sometime during the late afternoon of the final day of the session. (Neither the Department of Law nor the Legislative Finance Division have located either copy of this report.) A few hours after the arrival of this final report in the House, the House adopted the second FCC substitute for the Governor's original budget bill. (1975 H. Jour., p. 1688) It appears that the Senate never voted to adopt the statements of "intent" that were added during the last day of the session in as much as the Senate Journal indicates the Senate adopted the second FCC report on June 6, 1975, and the last meeting of the second FCC, at which "intent" statements were added to the report, occurred on June 7, 1975.

Following the adjournment of the legislature on June 7, the legislature's support staff began editing and clarifying the "intent" statements of the second FCC report. This process was completed in mid-June. During the week of June 23, a portion of the final version of the second FCC report was prepared by the Legislative Finance Division and sent to each legislator. This first portion contained the DHSS Health-Operating budget. On June 30, the remainder of the final report was sent. (Memo of 6/30/75 from Jay Hogan to Members of the Legislature) Some parts of this final report were the same as the report that emerged from the second FCC. Other portions did not appear in any version of the report but the final one. (See for example, "intent" statements at p. 169 of final FCC report, FY '76, Education-Operating Budget.)

It is these "intent" statements -- statements that were contained in some printouts and omitted from others, statements in documents containing hundreds of pages and available for perusal by legislators for but a matter of hours prior to voting thereon, statements that were subject to editing and clarification by staff members subsequent to the adjournment of the legislature, statements that apparently were not a part of the report passed by the Senate -- that are purported to have the force of law.

The document containing the intent statements which the legislature incorporated by reference into Chapter 209 is described in Section 16(a) of the law as ". . . the 'Free Conference Committee Report, FY '76, Operating and Capitol Budget' as published by the legislative finance division". Since there were a number of different FCC reports on the budget bill, the contents of which were not uniform, we must first ascertain to which report the quoted language refers.

The term "published" means to make known to people in general, to place in general circulation or to distribute or make available to the general public. Planned Parenthood Committee of Phoenix, Inc. v. Maricopa County, 375 P.2d 719, 722 (Ariz. 1962). It has been held to have the same significance as "circulate", State v. Elder, 143 P. 482 (N.M. 1914), and to possess connotations of wider distribution than that implied by words such as "communicate", "make known", or "divulge". U.S. v. Baltimore Post Co., 2 F.2d 761, 764 (D.C. Md. 1924).

It seems likely that the legislature did not have reference to the "final" report which was limited to a single copy for each house and furnished to them during the closing hours of the session. While this "final" report was prepared by the Legislative Finance Division, it was not, in fact, the final report which was subsequently published, after editing and clarification, and widely distributed. This latter report is what is generally known as and understood to be, the ". . . 'Free Conference Committee Report, FY '76, Operating and Capitol Budget' . . . ." This interpretation of the legislature's reference is consistent both with apparent legislative intent and also with common understanding. Whether this incorporation by reference of future non-statutory material is lawful is the subject of the next section of this opinion.

D. Delegation of Legislative Powers

The primary legal question concerning the incorporation by reference of future non-statutory materials into present law is whether such a procedure constitutes an unlawful delegation of a legislative power.

Because of the complexity of the issues a legislature must address, the delegation of legislative powers has become a common tool for the implementation of the legislature's will. Probably the most common type of delegation is that which occurs

when the legislature authorizes the promulgation of rules and regulations by an agency charged with the administration of a law. (See for example, AS 16.43.110, a section of Alaska's Limited Entry Act.) Courts have had little difficulty in upholding such delegations, so long as the legislature provides adequate standards for the agency's exercise of the delegated authority. See generally, Cooper, State Administration Law, vol. 1 ch. III, sec. 3.

A second common type of legislative delegation is a delegation of the authority to determine when a fact exists which is necessary to bring a law into effect. Some courts have approved such a delegation. Field v. Clark, 143 U.S. 649, 12 S. Ct. 495 (1891) (delegation by Congress to the President of power to determine when it is in the public interest to suspend provisions of law allowing free imports); Natural Milk Producer's Assn. v. City and County of San Francisco, 124 P.2d 25 (Cal. 1942) (standards for certified milk to be set by national and local dairy assoc's); Ex Parte Gerino, 77 P. 166 (Cal. 1904) (state medical school standards to be those set by an association of Medical colleges). Foeller v. Housing Authority of Portland, 256 P.2d 752 (Oregon, 1953) (authority to determine what areas are "blighted" given to housing authority). Other courts have not been so inclined. Agnew v. City of Culver, 304 P.2d 788 (Cal. App. 1957) (incorporation by reference of National Electrical Code held to be unlawful delegation); State v. Crawford, 177 P 360 (Kan. 1919) (to same effect). The only meaningful difference between the cases upholding this type of delegation and those in which the delegation was declared unlawful appears to be in the philosophy of the courts rendering the decisions.

A third type of lawful delegation by the legislature is a delegation of the authority to carry out activities ancillary to the legislative function, such as the ascertainment of facts and the making of recommendations to the legislature. Vita-Pharmacals, Inc. v. Board of Pharmacy, 243 P.2d 890 (Cal. App. 1952).

The drawing of a distinction between lawful and unlawful delegation of authority by the legislature is not always an easy task. The most-often-quoted statement of the distinction is found in Field v. Clark, supra, in which the United States Supreme Court, quoting the Supreme Court of Ohio, stated:

> The true distinction . . . is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made. Id. at 693, 694.

Subsequent cases have reaffirmed the proposition that a legislature may not delegate its constitutional power to legislate i.e., the power to determine what the law shall be. Peters v. Frye, 223 P.2d 176 (Ariz. 1950); Tillotson v. Frohmiller, 271 P. 867 (Ariz. 1928); Dixon v. Zick, 500 P.2d 130 (Colo. 1972); Smithberger v. Banning, 262 N.W. 493 (Neb. 1935); State v. Davis, 296 P.2d 240 (Oregon, 1956); Foeller v. Housing Authority of Portland, 256 P.2d 752 (Oregon, 1953); State ex rel O'Connell v. Yelle, 320 P.2d 1086 (Wash. 1958).

In the present case, the legislature passed a bill which provides that all "intent" statements that may appear in the final second FCC report on the budget are to be a part of the law. (Ch. 209, sec. 16(a), SLA 1975). The legislature then adjourned, leaving to its support staff the task of preparing these statements with no subsequent review by the legislature. This procedure amounts to the legislature passing a law stating "contents to follow", and then turning over to its staff, without legislative review, the function of preparing the contents.

It is our opinion that this procedure for giving legal effect to "legislative intent" statements constitutes a delegation of the legislature's power to legislate in violation of Alaska Const., art. II, sec. 1.

As a further indication of the invalidity of the legislature's action here, the following very real possibility is presented. The final budget bill was sent to the Governor on June 12, 1975 (1975 H. Jour., p. 1690). The Governor then had 20 days within which to veto the bill or it would become law without his signature. (Alaska Const., art. II, §17) Yet, there was no assurance that the FCC report containing a part of that bill would be completed prior to the end of the 20 day period. The Governor's alternatives could well have been: (1) allow to become law or sign into law a bill, some of the contents of which were unknown to him; or (2) veto the entire appropriation for state government to avoid the risk.

In fact, the Legislative Finance Division's report was not sent out until June 30, the day the Governor chose to sign the bill and only two days before the bill would have become law without his signature. (1975 H. Jour., p. 1707) The Governor's constitutional powers are hollow indeed if he is to be expected to sign or veto laws before their contents are presented to him.

E. Amendment of Existing Law

To this point, this opinion has addressed the legality of the procedure by which the legislature attempted to give legal effect to statements of "legislative intent". Assuming, however, that the legislature had proceeded (or were to proceed) in the manner required to incorporate by reference, the result would still be the same, because whether or not there was a proper incorporation by reference, the legislature still may not use an appropriations bill to make or amend substantive law.

AS 47.25.130 and AS 47.25.170 provide that DHSS is to determine the amount of assistance to be granted eligible persons under the GR-Med program. This statutory authority necessarily requires that DHSS make the determination of reimbursement rates for hospitals providing GR-Med care.

The legislative intent statement in question is in conflict with the provisions of AS 47.25.130 and AS 47.25.170 insofar as it purports to affect the power to determine rates which it had delegated by statute to DHSS. By the standard cannons of statutory construction, this later expression of the will of the legislature, were it valid, would constitute an implied repeal of the above statutory provisions to the extent that they conflict with the "legislative intent" statement in question.

The question that arises is, can the legislature amend statutory law by incorporating into the general appropriations bill an as yet unpublished committee report containing the amending language?

There is no doubt that the legislature could amend the two statutory provisions cited above, either in accordance with the amending rules of the Uniform Rules of the Alaska State Legislature or by enacting legislation containing the terms of the intent statement and thereby amend by implication. The legislature cannot, however, amend substantive law by an appropriations bill.

Article II, section 13 of the Alaska Constitution provides that appropriation bills "shall be confined to appropriations". The Alaska Supreme Court has never addressed the question of what elements constitute "appropriations". Courts of other jurisdictions having similar constitutional provisions have held that certain conditions or limitations may properly be attached to appropriations in a budget bill. State ex rel. Sego v. Kirkpatrick, 524 P.2d 975 (N.M. 1974); State ex rel. Holmes v. State Board of Finance, 367 P.2d 925 (N.M. 1961); State ex rel. Lucero v. Marron, 128 P. 480 (N.M., 1912). The holding of each of these cases is that such conditions or limitations are acceptable so long as they are germane to the appropriation to which they are attached. There is, however, a limit to such conditions. Faced with an appropriation bill containing a condition fixing salaries, the Missouri Supreme Court stated:

> An appropriation bill is just what the terminology imports, and no more. Its sole purpose is to set aside moneys for specified purposes, and the lawmaker is not directed to expect or look for anything else in an appropriation bill except appropriations. As to these he is charged by the Constitution to look and watch for two things: (a) The various subjects of the bill; and (b) the account or accounts for which the payment of the State's moneys are being set apart . . . Here we have an appropriation act which not only appropriates money for the various subjects embraced therein, but which attempts to fix and regulate all salaries affected by the act which either have not been fixed by any statute, or not definitely fixed, which would include all salaries where the maximum alone was named. That the legislature has the right by general statute to fix salaries is beyond question, but has it the right to do so by means of an appropriation act? We think not. State ex rel. Hueller v. Thompson, 289 S.W. 338, 340-41 (Mo., 1926).

Article 4, section 25 of the Missouri Constitution is substantially the same as article II, section 13 of the Alaska Constitution, quoted supra, in that it limits appropriation bills to appropriations. The reason for such a provision was succinctly addressed by the Thompson court:

> As has been observed in well-reasoned cases, if the practice of incorporating legislation of general character in an appropriation bill should be allowed, then all sorts of ill conceived, questionable, if not viscious, legislation could be proposed with the threat, too, that, if not assented to and passed, the appropriations would be defeated. Id., at 341.

A second factor, present in the instant case but not in Thompson, lends additional support to the result reached by the Missouri Supreme Court. By incorporating the "intent" statement of the FCC report into the budget bill, the legislature has in effect amended AS 47.25.130 and AS 47.25.170, and changed DHSS policy of 100% reimbursement to hospitals, without any notice to the institutions which are affected by such a change. In the absence of such notice, required as to subject in the title to each bill, Alaska Const., art II, §13, hospitals were given no opportunity to express their position or to present to their representatives in the legislature their views as to the wisdom of such legislation. This notice, both to members and the affected public, is, of course, the very purpose of the requirement contained in article II, section 13, of the Alaska Constitution. United States v. Hardcastle, 10 Alaska 254 (1942); Industrial Development Authority of Pinal County v. Nelson, 509 P.2d 705 (Ariz. 1973); Bensakey Tp. School Dist. v. County Com'rs of Bucks County, 303 A.2d 258 (Pa. 1973).

F. Effect on Governor's Veto Powers

We believe that the above more than suffices to answer the question you have presented. Should any doubts remain, we raise an additional problem engendered by the legislature's action in this matter.

Article II, section 15 of the Alaska Constitution provides:

> The governor may veto bills passed by the legislature. He may, by veto, strike or reduce items in appropriation bills. He shall return any vetoed bill, with a statement of his objections, to the house of origin.

Prior case law has established that the Governor cannot veto conditions attached to an appropriation and leave only

the appropriation standing. Weldon et al. v. Ray et al., Op. No. 202-57321 (Iowa, May 12, 1975); State ex rel. Sego v. Kirkpatrick, supra at 981. In the normal situation, the Governor must decide whether the conditions attached to a particular appropriation are so onerous as to necessitate a veto of the entire appropriation. Given such a situation, the Governor is most apt to allow an appropriation to stand, notwithstanding attached conditions with which he disagrees, in order to assure the funding of the subject of the appropriation. The situation in the present case is somewhat different.

The Governor is here presented with two alternatives: (1) veto the appropriation and thereby jeopardize the existence of the GR-Med program; or (2) allow existing law to be amended by a provision which, were it in a separate bill, he would veto. This presents the very situation which the single-subject rule, Alaska Const. art. II, §13, was intended to prevent, that is, where a legislator or governor is compelled to accept a provision he does not favor in order to get one that he does favor. It is also, unquestionably, one of the reasons for the rule that an appropriations bill may include only appropriations. Alaska Const., art. II, §13. See, Suber v. Alaska State Bond Comm., 414 P.2d 548 (Alaska, 1966); Washington State School Director's Ass'n v. Department of Labor and Industries, 510 P.2d 818 (Wash. 1973).

We are, therefore, of the opinion that the "legislative intent" statement in question, as well as all other such statements of the second FCC report on the budget bill, do not possess any legal force or effect. The court's statement in State v. Culver, supra, involving the attempted incorporation by reference of the National Electrical Code, is equally applicable to the incorporation by reference of "legislative intent" statements.

> . . . If the Legislature desires to adopt a rule of the National Electrical Code as a law of this state, it should copy that rule, and give it a title and an enacting clause, and pass it through the Senate and the House of Representatives by a constitutional majority, and give the Governor a chance to approve or veto it, and then hand it over to the secretary of state for publication. Id. at 361.

The purpose of this opinion has been to examine the legal force of a statement of "legislative intent" and thereby

assist your department in assessing the strength of its position in the face of a threatened law suit. Though it is our opinion that the statement in question has no legal force, we do not mean to imply, nor should it be inferred, that your department should not comply with it. Because the "legislative intent" statement is not legally cognizable as an expression of the legislature's will, it does not mean that the statement is not in fact an expression of that will.

Should you choose to implement a policy of 80% reimbursement to hospitals providing GR-Med assistance, you must adopt a regulation to that effect pursuant to the Administrative Procedure Act. You may also wish to resolve the matter by asking the legislature to set the policy by amending the basic GR-Med statute. We will be pleased to have such legislation drafted and introduced if that is your wish.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By:
Richard M. Burnham
Assistant Attorney General

RMB:jf

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June 28, 1976

Mr. Palmer McCarter
Director
Department of Community & Regional Affairs
Division of Local Government Assistance
State of Alaska
Pouch B
Juneau, Alaska 99811

Re: Revenue Sharing Regulations

Dear Mr. McCarter:

The material you forwarded to me concerning the Revenue Sharing regulations proposed was received on June 24, and I thank you for it.

Comments concerning the regulations are as follows:

(9) HOSPITAL CONSTRUCTION AID:

(9) - (C) : The law calls for total project costs, but this regulation (C) would change that to some project costs. I don't think this is the legislative intent, nor would it appear from reading the statute that the Department was authorized to change the law. We would of course appreciate attention to this point.

(9) - (D) : On reading the statute , there certainly is no lack of clarity that the Revenue Sharing funds could flow directly to a facility sponsor whether in municipality or outside a municipality . The statute appears to very clearly permit a choice. The regulation proposed would eliminate that choice and require all revenue sharing funds to go to the municipality. That would not appear to be legislative intent.

It would please me a great deal if the Department would take these observations into consideration prior to adopting the regulations.

Sincerely,

mfb:bp

RECEIVED
JUL 2 1976
DEPT. OF COMMUNITY
& REGIONAL AFFAIRS

Michael F. Beirne, M.D.
President

ORSINI

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#13 Ch 127, SLA 1974
#14 Ch 265, SLA 1976

Hill-Burton Allowable and Non-Allowable Cost

Acquisition of Site	Non-Allowable *
Site Clearance	Allowable
Relocation of Utilities	Non-Allowable
Sidewalks	Allowable
Driveways	Allowable
Parking Areas	Allowable
Landscaping	Allowable
Underground Sprinkler System	Allowable
Connection to Utilities	Allowable
Off-Site Improvements	Non-Allowable
Advertising	Allowable
Insurance Coverage	Allowable
Architects' Fees	Allowable
Consultant Fees	Allowable *
Inspection	Allowable
Equipment	Allowable *
Surplus Property	Allowable
Donated Land, Equipment, Services	Non-Allowable *
Bonus Payments to Contractor	Non-Allowable

*(exceptions)

Hill-Burton Allowable and Non-Allowable Cost (2)

Damage Judgments Against Sponsor	Non-Allowable
Maintenance of Records	Allowable
Sales Tax	Allowable
Space for the Private Practice of Medicine	Non-Allowable
Space to be Leased to Radiologist or Pathologist	Allowable
Space for Revenue Purposes	Non-Allowable
Space and Equipment for Religious Activities	Allowable
Fund Raising Expenses--- Memorial Plaques	Non-Allowable
Public Health Facilities in Private Nonprofit Hospitals	Non-Allowable
Legal Council's Fees	Non-Allowable
Gift Shops Flower Shops Snack Bars	Allowable
Unfinished Space	Non-Allowable

*(exceptions)

Hill-Burton Allowable and Non-Allowable Cost (3)

Books	Allowable *
Television	Allowable
Short-term Care Facilities	May Be Allowed
Long-term Care Facilities	May Be Allowed
Nurses' Dormitory	May Be Allowed
Fallout Protection	Allowable
Housing Staff for Nursing Home	Non-Allowable *
Pictures and Murals	Non-Allowable *
Floor Finish Materials	Allowable *
Quarters for Residents and Interns	Allowable *
Costs Allowable and Not Allowable in Guaranteed Loan and Direct Loan Projects	Non-Allowable *

*(exceptions)

HOSPITAL CONSTRUCTION AID at $2500 per bed

Applicant Approved	Grant Entitlement	Cost of Services	Total Entitlement	Prorated Entitlement
Fiscal Year 1977				
Municipality of Anchorage	810,000	-0-	810,000	775,477
City of Fairbanks	70,000	10,500	80,500	77,069
Fiscal Year 1976				
Greater Anchorage Area Borough before unification	194,685	-0-	194,685	194,685
Municipality of Anchorage after unification	740,315	-0-	740,315	740,315
Petersburg	4,116	-0-	4,116	4,116
Fiscal Year 1975				
Greater Anchorage Area Borough	319,596	-0-	319,596	319.596
Lake Otis Clinic	312,500	-0-	312,500	312,500
Kenai Peninsula Borough	29,243	3,071	32,314	32,314
City & Borough of Juneau	545	41	586	586
Fairbanks North Star Borough	12,328	925	13,253	13,253
Fiscal Year 1974				
City & Borough of Juneau	6,751	-0-	6,751	6,206
Fairbanks North Star Borough	152,708	-0-	152,708	142,380
Greater Anchorage Area Borough	343,446	-0-	343,446	315,719
Kenai Peninsula Borough	52,921	-0-	52,921	48,649

HOSPITAL CONSTRUCTION AID at $2500 per bed

Applicants Approved	Grant Entitlement	Cost of Services	Total Entitlement	Prorated Entitlement
Fiscal Year 1973				
City & Borough of Juneau	86,994	-0-	86,994	80,243
Fairbanks North Star Borough	290,000	-0-	290,000	267,496
Greater Anchorage Area Borough	100,000	-0-	100,000	92,240
Kenai Peninsula Borough	75,000	-0-	75,000	69,180
Fiscal Year 1972				
Fairbanks North Star Borough	290,000	-0-	290,000	289,796
Kenai Peninsula Borough	79,175	-0-	79,175	79,119
City & Borough of Juneau	167,500	-0-	167,500	167,382

(1) A.G. G.C

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WILLIAM A. EGAN, GOVERNOR

POUCH K — STATE CAPITOL
JUNEAU 99801

DATE	ROUTE TO:	✓
	JF	✓
	FILE	

August 28, 1972

The Honorable Frederick McGinnis
Commissioner
Department of Health and Social
Services
Juneau, Alaska 99801

Office of the Commissioner
SEP 11 1972
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Dear Commissioner McGinnis:

You have asked our opinion of whether your present method of determining "total project costs" of eligible medical construction by relying on promulgations of the Department of Health, Education and Welfare pursuant to Title VI of the Public Health Services Act as amended, meets the requirements of AS 43.18.010(j). It is our opinion that the use of these promulgations is within the scope of your discretion in the administration of this program.

AS 43.18.010(j) states as follows:

> If construction of a facility began after January 1, 1968 and state matching aid for construction approved for payment to the local government or other facility sponsor constitutes less than 25 per cent of the total project cost, the state shall pay to the local goverment or other facility sponsor each fiscal year a sum equal to $2,500 a bed for the maximum number of beds provided for in the construction design of the facility. State aid provided for in this subsection shall continue until the local government or other facility sponsor has received an amount which, combined with state matching money for construction of the facility, equals 25 per cent of the total project cost. No funds received for construction shall be used for any other purpose. (Emphasis added)

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Comprehensive Health Planning Office

As AS 43.18.010(j) is the state counterpart of Title VI of the Public Health Services Act, 42 USCA 201 et seq., it is appropriate that you may follow standards promulgated in interpretation of that Act. To read the term "total project costs"

as used in AS 43.18.010(j) literally would mean allowing all costs even if lavish, wasteful or illegal. Since clearly that could not have been what was intended when the legislature enacted this section, your department has the implied duty to allow only those costs which are in line with the statutory purpose of this section. In this case, since no statutory guidelines are set out, you have broad discretion to define the meaning of such terms in accordance with the statutory purpose. Naturally then, these rules of the Department of Health, Education and Welfare, interpreting 42 USCA 201 et seq., may be used to assist you in defining the meaning of these statutory terms. In this case, however even more evidence of the legislature's intention in passing AS 43.18.010(j) can be seen by looking at similar state grants for other purposes.

AS 43.18.100 granting aid for school construction goes into great detail to specifically provide for the meaning of "costs of school construction." AS 43.18.100(f)(2). Since no mention of these items is made in AS 43.18.010(j) it is reasonable to assume that they were not intended to be included in the computation of "total cost" under that section and this is the general effect of following the Federal regulations.

Similarly in AS 43.18.300 providing grants for the construction of Community Facilities, express allowance is made for the cost of "feasibility studies". This term is unnecessary if "cost of construction" were to be read literally. Again, since no similar language is included in AS 43.18.010(j) it can be assumed that these costs were also not to be included.

Finally, in AS 46.03.030(b) providing funds for the cost of water systems, it is provided that the amount received is computed on the basis of those costs "not borne by the federal government". In this case, the regulations you are relying on in effect specifies those costs which will not be borne by the federal government. If it were the legislature's intention in passing AS 43.18.010(j) to pick up those costs not borne by the federal government, it would have added a similar phrase to that in AS 46.03.030(b), particularly as these two sections were before the legislature during the same session and were passed within a few days of one another.

In conclusion, it is within the scope of your administrative discretion to utilize the guidelines promulgated by the Department of Health, Education and Welfare in defining the term "total project cost" of eligible medical facilities under the provisions of AS 43.18.010(j).

Very truly yours,

JOHN E. HAVELOCK
ATTORNEY GENERAL

By: Peter A. Michalski
Peter A. Michalski
Assistant Attorney General

PAM:ss

(11)

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
Public Health Service
Rockville, Maryland 20852

August 12, 1971

HEALTH GRANTS MANUAL NOTICE
S-110 FOR TITLE 2, CONSTRUCTION AND MODERNIZATION
OF HOSPITALS AND MEDICAL FACILITIES

To: Department of Health, Education, and Welfare Regional Offices and State Agencies Concerned with the Administration of Title VI of the Public Health Service Act, as amended

Subject: Transmittal of Part 24-2, Project Costs in Which the Federal Government Can and Cannot Participate

Attached is Part 24-2 of the Health Grants Manual. This revision supersedes Part 24-2 dated April 11, 1967.

Filing Suggestion

Remove Part 24-2 dated April 11, 1967 and replace it with the attached Part 24-2 dated August 12, 1971.

Harold M. Graning, M.D.
Assistant Surgeon General
Director, Health Care
Facilities Service

24-2.1
Purpose

The purpose of this Part is to define necessary costs and establish principles for determining costs which are and are not allowable for Federal participation or which may or may not be included in guaranteed loans or direct loans in the construction and modernization of projects under Title VI of the Public Health Service Act, as amended. This Part does not treat other factors which affect the approvability of applications.

24-2.2
Definitions

Necessary Costs

A. Only costs which are determined to be necessary costs of construction or modernization can be approved for Federal participation. Costs resulting from construction or modernization which are excessive, elaborate, or not appropriate to the specific needs of the facility are not allowable.

Pick-up Projects

B. For pick-up projects, Federal participation is limited to the cost of completing the facility. (Phased construction does not connote a pick-up project). The uncompleted portion consists of the following:

1. Actual construction work to be completed which includes building materials and fixed equipment delivered to the site but not yet incorporated in the building;

24-2.2 Definitions (cont'd)

Pick-up Projects (cont'd)

2. Movable equipment to be delivered;

3. Services to be rendered in connection with the uncompleted construction and equipping of the project.

Incurrence of Costs

4. Project construction costs have been incurred when there is an unconditional obligation to pay for work which has been performed or services rendered. An unconditional obligation to pay arises when work has been performed or services have been rendered in accordance with the terms of the contract. In the case of equipment costs, fixed equipment costs are incurred when such equipment has been installed, and movable equipment costs are incurred when such equipment has been delivered to the possession and control of the applicant.

24-2.3
Costs Allowable and Not Allowable for Federal Participation

The following are project costs in which Federal participation may and may not be allowed. This list is not exhaustive but includes costs which will be most frequently encountered:

Definition of Site

A. Site is the tract or plot of land on which the facility is or will be located and which is required for the construction and operation of the facility and which is defined in the approved application.

24-2.3 Costs Allowable and Not Allowable for Federal Participation (cont'd)

Acquisition of Site

B. The cost of the site, including acquisition costs such as title search, title clearance and settlement fees, is not allowable, except that the portion of the site on which a public health center is located is allowable. (The cost of the site survey and soil investigation for a public health center or other project is allowable).

Site Clearance

C. It will not be necessary to clear the site of encumbrances, such as easements and rights-of-way, provided they do not interfere with the building or its appurtenances. If the site is to be cleared of existing buildings and improvements, such as overhead power transmission lines and underground water, gas or sewerage lines, the cost is allowable, provided an allowance for salvage is reflected in the bid of the contractor who performs the work.

Relocation of Utilities

D. The cost of relocating utilities and services including acquiring rights-of-way, easements or other interest in land at either the new or old location of the utilities is not allowable.

Sidewalks

E. The cost of sidewalks necessary for the use and operation of the facility and those necessary to connect sidewalks on the site with adjacent public facilities, such as roads and sidewalks, is allowable even though such connecting links extend beyond the site line.

Driveways

F. The cost of driveways located on the site and those necessary to connect with public roads which are contiguous to the site is allowable. (See "J" below)

24-2.3 Costs Allowable and Not Allowable for Federal Participation (cont'd)

Parking Areas

G. The cost of constructing parking areas on the site, including multistory and subterranean parking which is essential to the operation of the facility, is allowable. In the case of multistory and subterreanean parking, the sponsor must clearly indicate in the application (1) that the size and the nature of the area are necessary to serve the project under construction, and (2) that other suitable parking areas are not available or that the cost of acquiring such areas is prohibitive.

Landscaping

H. The cost of landscaping, including architectural service, seeding, sprigging or sodding of the site and the planting of trees and shrubs is allowable to the extent that the cost is reasonable. The cost of such service is to be reviewed on an individual basis.

Underground Sprinkler System

I. The cost of installing an underground lawn sprinkler system is allowable.

Connections to Utilities

J. The cost of connecting to utilities is allowable, provided such utilities are located in streets, roads, or alleys contiguous to the site. If the building site is distantly located with respect to public roads or streets so that excessively long utility and driveway connections are required between the building site and the public road, the cost of the excessive utility and driveway connections will not be allowable for Federal participation.

24-2.3 Costs Allowable and Not Allowable for Federal Participation (cont'd)

Off-Site Improvements

K. The cost of off-site improvements such as roads, sidewalks, and utilities including sewer lines extending beyond the public streets immediately adjacent to the project, is not allowable.

Advertising

L. Advertising costs incurred in obtaining competitive bids are allowable.

Insurance Coverage

M. The cost to the project sponsor of insurance coverage during construction is allowable.

Allowable insurance costs include the following:

1. The cost of the sponsor's liability insurance.

2. The cost of insurance covering construction in the event the insurance is carried by the sponsor rather than the contractor.

3. The cost of insurance carried by the sponsor to protect equipment purchased by the sponsor against loss or damage.

Architects' Fees

N. The cost of architectural services rendered in connection with the project as approved is allowable. This includes the cost of plans and specifications prepared by State or political subdivisions in cases where such agencies are the sponsors of approved projects.

The architect's fee may be based on a contract between the architect and the sponsor setting forth the services to be provided and the manner in

24-2.3 Costs Allowable and Not Allowable for Federal Participation (cont'd)

Architects' Fees (cont'd)

which the total fee will be determined. The architect may also be engaged on a payroll basis. In those cases where plans and specifications are prepared by a public agency, the cost may be established by fee or by computation of actual cost to the agency concerned.

Regardless of the manner in which the fee is determined, Federal participation is limited to an amount which is commensurate with accepted fees within the area.

Payments to the architect for work which is not a part of the approved project, abandoned work, or work not put under contract and any payment to the architect which is not provided for in the architectural contract are not allowable.

Consultant Fees

O. Consultant fees are allowable for financial feasibility studies and to the extent that they relate to the construction or equipping of the project. The cost of conducting feasibility studies to determine need for construction or modernization of a facility is not allowable.

Any portion of a consultant's fee which involves services performed in developing operational procedures, staffing the facility, or other functions not related to the construction and equipping of the facility is not allowable.

24-2.3 Costs Allowable and Not Allowable for Federal Participation (cont'd)

Inspection

P. The cost of supervision and inspection provided by the architect or an employee of the applicant at the site to insure that the completed work conforms with approved plans and specifications is allowable.

In those cases where the State or political subdivision is the approved applicant and supervision and inspection services are performed by such State or political subdivision, reasonable costs of such services are allowable.

Equipment

Q. The actual cost of all essential initial equipment, and equipment for the purpose of providing a service not previously provided in the community, purchased (delivered to the control of the applicant) for the approved project after the filing of the initial part of the application with the regional office is allowable. Such costs include the cost of transportation, storage and placement of equipment. The cost of reconditioning equipment which will be used in the project is allowable. The cost of donated equipment is not allowable.

24-2.3 Costs Allowable and Not Allowable for Federal Participation (cont'd)

Equipment (cont'd)

Essential initial equipment may include equipment made necessary by the expansion, remodeling, alteration, and modernization of an existing building, even though the equipment may not be located in expanded, remodeled, altered or modernized areas, except that equipment may not be located in areas that do not comply with the safety requirements of Appendix A of the Regulations.

The cost of equipment which is being purchased through a conditional sales contract is not allowable. If the hospital can demonstrate that the contract has been completed and title transferred to the applicant, the cost of the equipment is allowable. Purchases under other installment sales contracts where the applicant is owner of the equipment including those in which there is a chattel mortgage are allowable. The determining factor is whether the applicant owns the equipment or whether the vendor owns the equipment.

Surplus Property

R. Costs incurred by the sponsor in packing, handling, and transporting Federal surplus equipment are allowable.

24-2.3 Costs Allowable and Not Allowable for Federal Participation (cont'd)

Donated Land, Equipment, Services	S.	The value of donated land, material, equipment, or services including donated labor is not allowable. If a rebate or refund is received from a firm or individual from whom the material, equipment, land or service was purchased, only the net cost to the sponsor may be allowed. This does not mean that individuals, business firms, or other organizations from whom a sponsor makes purchases may not make a donation to the building fund. However, such a donation may not be related to the sale or rendering of a service if the sponsor claims such costs for Federal participation.
Bonus Payments to Contractor	T.	Bonus payments made by the sponsor to the contractor for completing work in advance of a specified time are not allowable.
Liquidated Damages	U.	Any amounts collected by sponsors on bid bonds of defaulting bidders or as liquidated damages for failure of a contractor to complete the work on time shall be disregarded in determining the cost of construction for the purpose of calculating the Federal share.
Damage Judgments Against Sponsor	V.	Expenses incurred as damages arising out of the construction or equipping of the project, whether established by judicial determination, arbitration, negotiation, or otherwise, are not allowable.

24-2.3 Costs Allowable and Not Allowable for Federal Participation (cont'd)

Maintenance of Records	W.	Costs incurred by the project sponsor in the preparation and maintenance of administrative, technical, fiscal and accounting records in connection with the approved project are allowable.
Sales Tax	X.	The nonrefundable sales tax and Federal excise tax which a project sponsor pays in connection with constructing and equipping an approved project are allowable.
Space for the Private Practice of Medicine	Y.	The cost of office space intended solely for the conduct of the private practice of medicine or dentistry is not allowable.
Space to be Leased to Radiologist or Pathologist	Z.	The cost of space to house the radiology and pathology services of the hospital and the equipment therein which is to be leased for operation to a radiologist or pathologist is allowable provided the hospital retains authority to control the purposes for which the space is utilized in order to insure that services to be provided in such space are consistent with the needs and requirements of the hospital and the community which it serves.
Space for Revenue Purposes	AA.	Costs for office and other space constructed solely for revenue purposes or for the convenience of the occupants as contrasted with the operation of the facility are not allowable.
Space and Equipment for Religious Activities	BB.	The cost of space and equipment for the provision of spiritual or religious services to patients and staff in eligible medical facilities is allowable where appropriate to the type of facility involved and reasonable in amount.

24-2.3 Costs Allowable and Not Allowable for Federal Participation (cont'd)

Space and Equipment for Religious Activities (cont'd)

Costs of any distinctly sectarian or denominational features of construction or the cost of equipment characteristic of, or peculiar to, any sect or denomination are not allowable.

Fund Raising Expenses -- Memorial Plaques

CC. Costs incurred by the sponsor in raising the non-Federal share of the cost of the project are not allowable. This includes memorial plaques inscribed with the names of persons, business firms or other organizations, or book of remembrances used to give recognition to contributors.

Public Health Facilities in Private Nonprofit Hospitals

DD. The cost of constructing and equipping facilities in a private nonprofit hospital which are intended for the provision of public health services by State or local health departments is not allowable. (Comptroller General's opinion).

Legal Counsel's Fees

EE. Costs of legal services are not allowable other than those incidental to the acquisition of sites for public health centers. (See 24-2.3B).

Gift Shops
Flower Shops
Snack Bars

FF. The cost of space and equipment providing gift shop, flower shop, and snack bar services is allowable. The need for and size of such space is to be reviewed in the light of patient needs and operation of the facility.

Unfinished Space

GG. The cost of any unfinished or partially finished space is not allowable. This does not include space in a basement, unfinished or partially finished, resulting from excavation work necessary for the construction of the building in conformance with the approved plans and specifications.

24-2.3 Costs Allowable and Not Allowable for Federal Participation (cont'd)

Books	HH.	The cost of reference books to be used by the professional and technical staff is allowable. Purchase of these books is restricted to those which are essential and necessary to the need and operation of the facility. The cost of other books, periodicals and subscriptions to journals and magazines for either patients or staff is not allowable.
Television	II	The cost of purchasing and installing television systems, including the antenna system, is allowable. A closed television system is allowable where the program of the facility justifies such a system.
Short-term Care Facilities		1. Federal participation may be allowed in the cost of television sets for day rooms and patient rooms.
Long-term Care Facilities		2. Federal participation may be allowed in the cost of television sets for day rooms and patient rooms.
Nurses' Dormitory		3. Federal participation may be allowed in the cost of a television set for the main lounge.
Fallout Protection	JJ.	Costs in providing reasonable radiation fallout protection including the cost of space necessary to the establishment of a radiation monitoring station are allowable.
Housing Staff for Nursing Home	KK.	The cost of quarters to house staff of a nursing home is not allowable. The cost of limited quarters for a nurse on 24-hour duty may be allowed in an approved project.

24-2.3 Costs Allowable and Not Allowable for Federal Participation (cont'd)

Pictures and Murals

LL. The cost of the painting of murals is not allowable. The cost of pictures is allowable to the extent that the number and cost are reasonable.

Floor Finish Materials

MM. The cost of only one type of floor finish material is allowable in any room or area. Thus the cost of carpeting installed on a bare concrete slab is allowable while the cost of carpeting installed on a resilient tile surface is not allowable. Decorative rugs of less than room size are exempted from this requirement. (Soft flooring material such as carpeting and resilient tile must have a flame spread rating as required by Public Health Service publication No. 930A-7).

Quarters for Residents and Interns

NN. The cost of quarters for residents and interns whether located in the hospital building or in a separate building is allowable. The cost of quarters to house families of residents and interns is not allowable. (Housing for the nursing staff of a hospital is also allowable. See Part 24-1).

24-2.4 Costs Allowable and Not Allowable in Guaranteed Loan and Direct Loan Projects

A. The guidelines set forth in 24-2.1 through 24-2.3 of this Part apply to projects involving guaranteed loans or direct loans.

B. Costs incident to the loan such as legal fees, financing fees, or interest during construction are not allowable.

C. Loans guaranteed by HEW or direct loans made by HEW cannot be used to refinance an existing indebtedness.

24-2.4 Costs Allowable and Not Allowable in Guaranteed Loan and Direct Loan Projects (cont'd)

NOTE:

Applicants who seek guaranteed loans or direct loans must arrange for financing during construction (short term financing including interest). While a commitment will be made by HEW upon initial approval of an application to guarantee a loan or to make a direct loan, as the case may be, the actual guarantee or purchase of bonds with payment of interest subsidy will not be effected until construction of the project is completed.

federal register

THURSDAY, JANUARY 6, 1972
WASHINGTON, D.C.

Volume 37 ■ Number 3

PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

■

Grants, Loans, and Loan Guarantees for Construction and Modernization of Hospitals and Medical Facilities

Title 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health, Education, and Welfare

SUBCHAPTER D—GRANTS

PART 53—GRANTS, LOANS AND LOAN GUARANTEES FOR CONSTRUCTION AND MODERNIZATION OF HOSPITALS AND MEDICAL FACILITIES

On July 29, 1971, a notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 14016) proposing a revision of 42 CFR Part 53, relating to grants, loans and loan guarantees for the construction and modernization of hospitals and medical facilities under Title VI of the Public Health Service Act (42 U.S.C. 291 et seq.).

Interested persons were invited to submit, within 30 days, written comments, suggestions or objections regarding the proposed regulations.

A number of responses were received. The substance of these comments, and the Department's response thereto, is summarized below.

Changes have been made in the final regulations as a result of the following comments on the proposal:

1. *Allotment of direct loan and loan guarantee funds.* It was pointed out that the proposed formula for allotment of loan and loan guarantee funds to States did not include the element "need for construction", which is required by statute (sec. 622(a), Public Health Service Act).

The omission of the element "need for construction" was inadvertent. It has now been included in the formula (§ 53.92).

2. *Size criteria for mental and tuberculosis hospitals.* It was suggested that the 3,000-bed maximum size for mental hospital projects is contrary to the Federal policy of encouraging a trend away from large State or municipal "warehouses" for the mentally ill; and that the 100-bed minimum size for tuberculosis hospitals is contrary to the policy of the program to include necessary TB beds as units of general hospitals, rather than as separate entities.

The size criteria for both mental health and TB hospitals (§§ 53.102 and 53.103 of the proposal) have been deleted.

3. *Review of State plans by areawide health planning agencies.* It was suggested that, in addition to the review of individual projects by areawide health planning agencies required by statute, the State plan itself should be submitted in draft form to such agencies for review and comment.

Although this suggested addition has been program policy since January 1971, it constitutes a step in the plan review process which should more logically be included in the regulations. Accordingly, a provision has been added (§ 53.121(b)) requiring that the State Hill-Burton agency submit the State plan and any modifications thereof in final draft, before submission to the Secretary, to each agency which has developed an areawide health plan pursuant to section 314(b) of the Public Health Service Act with respect to an area in the State and, with respect to any area in which there is no such agency, to the agency administering the State plan under section 314(a) of the Act.

4. *Assurance of reasonable volume of services to persons unable to pay therefor.* Several comments related to the assurance which has been authorized by statute (section 603(e)(2), PHS Act) and required by regulation since the program's inception, and which was restated in § 53.111(b) of the proposal, with respect to the provision of a reasonable volume of services for persons unable to pay therefor.

That assurance is currently the subject of litigation in a number of suits in which the Secretary has been named or joined as a defendant. A new regulation designed to define the scope of the assurance more clearly and to govern its enforcement is under preparation in the Department and will be published separately in the near future as a notice of proposed rule making with invitation for public comment. In the interim, the assurance of a reasonable volume of services for persons unable to pay therefor has been revised so as to restate the statutory language, and has been placed in a separate section (§ 53.111). In addition, the provisions relating to community service (§ 53.111(a) of the proposal), nondiscrimination on account of creed (§ 53.111(c)), Title VI of the Civil Rights Act of 1964 (§ 53.112), and nondiscrimination in construction contracts (§ 53.113) have been placed in a new § 53.112, as paragraphs (a)(1), (a)(2), (c), and (b), respectively.

5. *Use of 1960 data in determining poverty areas.* Objection was raised to the fact that "the latest available published data from the Bureau of the Census", which State agencies are required to use in determining rural and urban poverty areas under § 53.129 of the proposal, is currently the data from the 1960 census—1970 census data will not be available until at least February 1972.

To alleviate this problem, a paragraph has been added providing that if States can demonstrate to the satisfaction of the Secretary that the income levels of families in particular areas have changed sufficiently since the date of the latest available census data to justify changes in the ranking of such areas, they may qualify as rural or urban poverty areas.

In addition, the following comments were received:

6. *Fifty-year title requirement.* Objection was raised to the requirement that an applicant provide assurance that he has or will have a fee simple or other interest in the construction site sufficient to assure undisturbed use of the facility for a period of 50 years (§ 53.128(a) of the proposal).

The 50-year title requirement is statutory (see section 15(1), PHS Act).

7. *Services in outpatient facilities.* It was suggested that a more specific list of minimum services to be provided in outpatient facilities be developed (§ 53.1(j) of the proposal).

It is the Department's judgment that no inclusion of specific types of outpatient services is necessary, since the emphasis is on the comprehensiveness of such facilities. Policy guidelines specify that single purpose outpatient facilities such as alcoholic or narcotic addiction centers are eligible where they serve one or more general hospitals within the same service area under formal written agreements. This same arrangement has been made for other types of single purpose facilities eligible in the past, such as laboratory or laundry facilities to be used by a number of general hospitals. Maintaining this concept strengthens the emphasis on shared services and reduction of duplication of functions.

8. *"Comprehensive health care".* It was suggested that the term "comprehensive" as used in § 53.81(a) of the proposal is too general, and that a list of basic minimum services should be included by way of definition.

"Comprehensive health care" is deliberately left undefined, since it is to be construed in relation to the need of a community/service area. To spell out a list of services invites duplication of those services by applicants in order to qualify for assistance. Priority judgment will be applied in favor of the applicant who presents the best program to meet the largest share of the defined needs.

In addition to the changes described in paragraphs 1–5 above, a number of editorial and technical changes have been included.

After consideration of all the comments and suggestions received, the revision as proposed is hereby adopted, subject to the following changes:

1. The first sentence of § 53.42 is revised to read as set forth below.

2. Paragraph (c) of § 53.84 is changed by inserting ")" immediately after the word "section".

3. Subparagraph (2) of § 53.92(a) is revised to read as set forth below.

4. Paragraph (b) of § 53.94 is revised to read as set forth below.

5. Sections 53.102 and 53.103 are deleted, and § 53.104 is renumbered as § 53.102.

6. Subpart L is revised to read as set forth below.

7. Section 53.121 is revised to read as set forth below.

8. Subdivision (1) of § 53.128(1)(2) is revised to read as set forth below.

9. Paragraph (c) of § 53.129 is redesignated as paragraph (d) of such section, and a new paragraph (c) is inserted.

Effective date. These regulations shall be effective upon publication in the FEDERAL REGISTER (1-6-72).

Dated: December 6, 1971.

VERNON E. WILSON,
Administrator, Health Services and Mental Health Administration.

Approved: December 30, 1971.

ELLIOT L. RICHARDSON,
Secretary.

AUTHORITY: The provisions of this Part 53 issued under secs. 215, 603, 623(b), Public Health Service Act as amended, 58 Stat. 690, 78 Stat. 451, 84 Stat. 340; 42 U.S.C. 216, 291o, 291j-3(b).

Subpart A—Definitions

§ 53.1 Definitions.

All terms not defined herein shall have the same meanings as given them in the Act. As used in this part:

(a) "Act" means title VI of the Public Health Service Act, as amended (42 U.S.C. 291 et seq.).

(b) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

(c) "State agency" means the agency designated by a State pursuant to section 604(a)(1) of the Act.

(d) "Service area" means the geographic territory from which patients come or are expected to come to existing or proposed hospitals or existing or proposed public health centers, or existing or proposed medical facilities (i.e., facilities for long-term care, outpatient facilities, rehabilitation facilities), the delineation of which is based on such factors as population distributon, natural geographic boundaries, and transportation and trade patterns, and all parts of which are reasonably accessible to existing or proposed hospitals, public health centers, or medical facilities. When appropriate, interstate areas may be formed with the mutual agreement of the States concerned.

(e) "Hospital" means general, tuberculosis, mental, and other types of hospitals, and related facilities such as laboratories, outpatient departments, nurses' home facilities, extended care facilities, facilities related to programs for home health services, self-care units, education or training facilities for health professions personnel operated as an integral part of a hospital, and central service facilities operated in connection with hospitals, but does not include any hospital providing primarily domiciliary care.

(f) "General hospital" means any hospital for short-term inpatient medical or surgical care of illness or injury, which may include obstetrical care.

(g) "Mental hospital" means a hospital (including long-term care, intensive care, or both) for the diagnosis and treatment of mental illness.

(h) "Tuberculosis hospital" means a hospital for the diagnosis and treatment of tuberculosis.

(i) "Facility for long-term care" means a facility (including an extended care facility) providing community service for inpatient care for convalescent or chronic disease patients who require skilled nursing care and related medical services

(1) Which is a hospital (other than a hospital primarily for the care and treatment of mentally ill or tuberculosis patients) or is operated in connection with a hospital, or

(2) In which such nursing care and medical services are prescribed by, or are performed under the general direction of, persons licensed to practice medicine or surgery in the State. Institutions furnishing primarily domiciliary care are not included.

"Chronic disease hospitals" and "nursing homes" as used in the document "General Standards of Construction and Equipment for Hospital and Medical Facilities," incorporated by reference in § 53.101(a), constitute "facilities for long-term care."

(j) "Outpatient facility" means a facility, located in or apart from a hospital, providing community service for the diagnosis or diagnosis and treatment of ambulatory patients (including ambulatory inpatients) in need of physical and/or mental care

(1) Which is operated in connection with a hospital; or

(2) In which patient care is under the professional supervision of persons licensed to practice medicine or surgery in the State or, in the case of dental diagnosis or treatment, under the professional supervision of persons licensed to practice dentistry in the State; or

(3) Which offers to patients not requiring hospitalization the services of licensed physicians in various medical specialities, and which makes provision for its patients to receive a reasonably full range of diagnostic and treatment services.

(k) "Rehabilitation facility" means a facility providing community service which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program under competent professional supervision of: Medical evaluation and services; and psychological, social, or vocational evaluation and services. The major portion of the required evaluation and services must be furnished within the facility; and the facility must be operated either in connection with a hospital or as a facility in which all medical and related health services are prescribed by, or are under the general direction of, persons licensed to practice medicine or surgery in the State. For purposes of this paragraph:

(1) An integrated program brings together as a team specialized personnel from the (i) medical, and (ii) psychological, social, or vocational areas for the purpose of pooling information, interpretations and opinions for the development of a rehabilitation plan of services in which the disabled individual is viewed as a whole. When members of the team contribute to the diagnosis and treatment of illness, their contributions must be coordinated under medical responsibility.

(2) A disabled person is an individual who has a physical or mental condition which, to a material degree, limits, contributes to limiting, or if not corrected, will probably result in limiting, the individual's performance or activities to the extent of constituting a substantial physical, mental, or vocational handicap.

(3) Medical service, in the case of a rehabilitation facility operated in connection with a hospital, means a service under the direct personal supervision of a medical director, varied and extensive availability of specialized consultants, physical and occupational therapy department and occupation therapy services, and medical evaluation.

(4) Medical service, in the case of a rehabilitation facility not operated in connection with a hospital, means medical supervision, availability by agreement of medical consultants, and evaluation and services suitable to the needs of the disabled persons to be served.

(5) Social service means evaluation and services by a qualified social worker in amounts and variety appropriate to the rehabilitation needs of the disabled persons to be served.

(6) Psychological service means evaluation and services by a qualified psychologist in amounts and variety appropriate to the rehabilitation needs of the disabled persons to be served.

(7) Vocational service, in the case of a rehabilitation facility operated in connection with a hospital, means evaluation and services by a qualified vocational rehabilitation counselor in amounts and variety appropriate to the rehabilitation needs of the disabled persons to be served.

(8) Vocational service, in the case of a rehabilitation facility not operated in connection with a hospital, means those vocational services required in hospitals, plus a variety of vocational services appropriate to the program and the persons to be served, such as prevocational exploration, work evaluation and vocational training.

(l) "Public health center" means a publicly owned facility utilized by a local health unit for the provision of public health services, including related publicly owned facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers.

(m) "Local health unit" means a single county, city, county-city, or local district health unit, as well as a State health district unit where the primary function of the State district unit is the direct provision of public health services to the population under its jurisdiction.

(n) "Public health services" means services provided through organized community effort in the endeavor to prevent disease, prolong life, and maintain a high degree of physical and mental efficiency.

(o) "Hospital bed" means a bed for an adult or child patient. Bassinets for the newborn in a maternity unit nursery, beds in labor rooms, recovery rooms, and other beds used exclusively for emergency purposes are not included in this definition.

(p) "Population", with respect to any State or any area thereof, means the latest figures of civilian population certified by the U.S. Department of Commerce.

(q) "Projected population" means the projected State population estimates obtained from the U.S. Department of Commerce and provided to the State agency by the Secretary. The State agency shall distribute such population among the various areas, provided that the sum of the projected populations distributed among the various areas shall not exceed the figures provided by the Secretary.

(r) "Nonprofit hospital," "nonprofit outpatient facility," "nonprofit rehabilitation facility," and "nonprofit facility for long-term care" means any hospital, outpatient facility, rehabilitation facility, or facility for long-term care, as the case may be, owned and operated by one or more nonprofit corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(s) "Community service", when applied to any facility, means that (1) the services furnished are available to the general public, or (2) admission is limited only on the basis of age, medical indigency, or type or kind of medical or mental disability, or (3) the facility constitutes a medical or nursing care unit of a home or other institution which home or other institution is available in accordance with subparagraph (1) or (2) of this paragraph.

(t) "Modernization" includes alteration, major repair, remodeling, replacement, and renovation of existing buildings (including initial equipment thereof), and replacement of obsolete, built-in equipment of existing buildings. It does not include the replacement of a facility or a portion of a facility to an inpatient capacity greater than the capacity of the existing facility.

(u) "Equipment" includes those items which are necessary for the functioning of the facility but does not include items of current operating expense such as food, fuel, drugs, dressings, paper, printed forms, and soap.

(v) "Built-in equipment" means that equipment which is affixed to the facility, and usually included in the construction contract.

(w) "Major repair" means those repairs to an existing building excluding routine maintenance which restore the building to a sound state, the cost of which is no less than $100,000.

(x) "State" means the 50 States, Puerto Rico, Guam, the Virgin Islands, American Samoa, the District of Columbia, and the Trust Territories of the Pacific Islands.

Subpart B—Distribution of Beds for Acute and Long-Term Illness (Excluding Mental and Tuberculosis)

§ 53.11 State need (standards of adequacy).

The total number of beds for acute and long-term illness required to provide adequate service to the people residing an any State shall be the total of such beds required for individual service areas within the State. The number of beds required for each service area shall be determined by the State agency as follows:

(a) For general hospitals,

(1) Step (i): Multiply the current area use rate (area patient days per 1,000 current area population per year) by the projected area population (in thousands) and divide by 365 to obtain a projected area average daily census; Step (ii): Divide the projected area average daily census by 0.85 (occupancy factor) and add 10 to obtain the number of beds needed in the area, or

(2) By a different method which shall (i) incorporate, as a minimum, area utilization experience, projected area population and a desirable occupancy factor, and (ii) be submitted to the Secretary for approval prior to its use in the State plan.

(3) State agencies may adjust the bed need, as determined by one of the above methods, for specific areas with unusual circumstances or conditions; any such adjustment must be fully explained and justified in the State plan.

(b) For facilities for long-term care,

(1) Step (i): Multiply the current area use rate (area patient days per 1,000 current area population per year) by the projected area population (in thousands) and divide by 365 to obtain a projected area average daily census; Step (ii) Divide the projected area average daily census by 0.90 (occupancy factor) and add 10 to obtain the number of beds needed in the area, or

(2) By a different method which shall (i) incorporate, as a minimum, area utilization experience, projected area population and a desirable occupancy factor, and (ii) be submitted to the Secretary for approval prior to its use in the State plan.

(3) State agencies shall take into consideration (i) adjustment of bed need, as determined by one of the above methods, for areas in which a change in use rate is anticipated, and (ii) the use of area population age 65 and over, where appropriate, in place of total area population in determining bed need for long-term care.

§ 53.12 Service areas.

(a) The same service areas shall be used for planning general hospital facilities and facilities for long-term care, except that State agencies may use different areas for planning facilities for long-term care when this is consistent with effective relationships between the location of facilities and the need for services.

(b) Each service area shall have sufficient population that it may have general hospital or long-term care services appropriately planned in one or more facilities.

(c) The State agency shall describe in the State plan the population characteristics of each service area and outline a program for the distribution of beds and facilities for general hospital and long-term care.

§ 53.13 Existing general hospital beds and long-term care beds.

(a) The count of existing general hospital beds shall include the beds in the hospitals of this category as defined in Subpart A, which are not included in the count of beds for any other category under this part, and beds in any mental hospital, tuberculosis hospital or facility for long-term care which are specifically assigned for general hospital care, provided the beds so assigned in any such facility number 10 or more.

(b) The count of existing beds in facilities for long-term care shall include the beds in the facilities of this category as defined in Subpart A, which are not included in the count of beds in any other category under this part, and beds in any general, mental or tuberculosis hospital which are specifically assigned to long-term care other than mental or tuberculosis, provided the beds so assigned to any such facility number 10 or more.

(c) The count of existing beds described in paragraphs (a) and (b) of this section shall: (1) Include beds in all nursing units, including those currently closed or assigned to easily convertible nonpatient use, and bed space under construction, and (2) exclude beds in labor rooms, recovery rooms, emergency rooms, beds used intermittently for diagnosis or treatment, beds set up for temporary use, bassinets in new-born nurseries in maternity units, and unfinished bed space not under construction.

(d) The number of existing facilities in each category referred to in this subpart shall be counted.

(e) Existing beds described in paragraphs (a) and (b) of this section shall be classified as conforming or nonconforming according to specific standards of plant evaluation. Such standards shall include:

(1) Fire-resistivity of each building;

(2) Fire and other safety factors of each building;

(3) Design and structural factors affecting the function of nursing units;

(4) Design and structural factors affecting the function of service departments.

Subpart C—Distribution of Tuberculosis Hospital Beds

§ 53.21 State need (standards of adequacy).

The number of beds required to provide adequate hospital services for tuberculosis patients in any State or service area shall be determined by the following method: Divide the current average daily census of each hospital by 0.90 (occupancy factor).

§ 53.22 Distribution.

Tuberculosis hospitals receiving grants under the Act shall be built in centers of population, in proximity to general hospitals, with a view to developing community based inpatient and outpatient programs rather than isolated inpatient programs.

§ 53.23 Existing tuberculosis hospital beds.

(a) The count of existing tuberculosis hospital beds shall include the beds in tuberculosis hospitals, which are not included in the count of beds for any other category, and also beds in any general hospital which are specifically assigned for the care of patients with tuberculosis, provided the beds so assigned in any such general hospital number 10 or more.

(b) Existing tuberculosis hospital beds shall be classified as conforming or nonconforming according to plant evaluation standards as set forth in Subpart B of this part.

Subpart D—Eligibility, Distribution and Priority of Beds for the Mentally Ill

§ 53.31 Mental health services principally for persons residing in the community.

(a) For the purpose of determining need and priority, the State plan approved or approvable under the Community Mental Health Centers Act (42 U.S.C. 2681 et seq.) shall constitute that portion of the plan under the Act for construction of facilities for providing services principally for persons residing in a particular community or communities in or near which the facility is situated for the prevention or diagnosis of mental illness, or care and treatment of mentally ill patients, or rehabilitation of such persons.

(b) Special consideration shall be given to those projects for which the applicant sets forth in his application a reasonable and feasible proposal for the development, within a reasonable period of time, of a program for the provision of those essential elements of comprehensive mental health services prescribed in § 54.212 of this chapter relating to community mental health centers.

(c) An application for the construction of facilities specified in paragraph (a) of this section may be approved under this part only if the Secretary determines that funds are not available under the Community Mental Health Centers construction grant program (Part 54, Subpart C, of this chapter).

§ 53.32 Mental health services not principally for persons residing in the community.

(a) With respect to facilities for the mentally ill which do not provide services principally for persons residing in a particular community in or near which the facility is situated, special consideration shall be given to those projects for remodeling or replacing services and facilities which do not increase bed capacity, or if services are being expanded, the applicant demonstrates that no alternative plan for provision of such expanded services is feasible.

(b) An application for construction of facilities specified in paragraph (a) of this section may be approved only if it conforms with the State plan approved under the Act.

§ 53.33 Distribution.

Mental hospitals receiving grants under the Act shall be built in centers of population, as a part of or in proximity to general hospitals, with a view to developing community based inpatient and outpatient programs rather than isolated inpatient programs.

§ 53.34 Existing mental hospital beds.

(a) The count of existing mental hospital beds shall include the beds in mental hospitals, which are not included in the count of beds in any other category, and also beds in any general hospital which are specifically assigned for the comprehensive inpatient care of patients with mental illness.

(b) Existing mental hospital beds shall be classified as conforming or nonconforming according to plant evaluation standards as set forth in Subpart B of this part.

Subpart E—Distribution of Public Health Centers

§ 53.41 State need (standards of adequacy).

(a) The number of public health centers to be planned in a State shall be adequate to meet the needs of the people of that State.

(b) The need shall be determined after consultation with the State health authority (where the State agency is not the State health authority) and with local health departments where such departments are independent operating units.

§ 53.42 Distribution.

The general method of distribution of public health centers throughout the State shall conform to the plan of organization of local health units within the State. In instances where the State agency is not the State health authority, the method of distribution shall be determined after consultation with the State health authority.

§ 53.43 Existing public health centers.

(a) Where the State agency is not the State health authority, the number of existing public health centers shall be determined after consultation with the State health authority.

(b) Existing public health centers shall be classified as conforming or nonconforming according to plant evaluation standards, which shall include:

(1) Fire-resistivity of each building;

(2) Fire and other safety factors of each building;

(3) Design and structural factors affecting the function of the center.

Subpart F—Distribution of Outpatient Facilities

§ 53.51 State need (standards of adequacy).

Outpatient facilities shall be planned in sufficient number to make at least the basic minimum services readily available to all persons in the State. Provision of the basic minimum services requires facilities for examination of patients by a physician or a dentist, and the provision of clinical laboratory and diagnostic X-ray services.

§ 53.52 Distribution (service areas).

In determining the need for additional outpatient facilities in an area as a basis for distribution of such facilities, special consideration shall be given to areas in which there is a shortage of services provided by private physicians and dentists. Outpatient facilities should be planned in the same service areas used for planning hospitals except that more than one outpatient facility service area may be planned in such hospital service area, resulting in a subdivision of the hospital service area into a number of outpatient facility service areas.

§ 53.53 Existing outpatient facilities.

(a) The count of existing outpatient facilities shall exclude:

(1) Offices of private physicians and dentists, whether for individual or group practice;

(2) Industrial clinics for employees only, first aid clinics, and similar facilities not furnishing a community service.

(b) Existing outpatient facilities shall be classified as conforming or nonconforming according to plant evaluation standards as set forth in Subpart E of this part.

Subpart G—Distribution of Rehabilitation Facilities

§ 53.61 State need (standards of adequacy).

Rehabilitation facilities shall be planned by each State so that all persons in the State shall have access to integrated rehabilitation services for all types of disabilities. The facility or facilities may be programmed in the State or by joint planning with one or more other States to serve the residents of such States. In determining the number of rehabilitation facilities and services needed, the State shall consider such factors as the particular needs of the population to be served and the scope and nature of service of the existing and proposed facilities.

§ 53.62 Distribution.

In determining the need for additional rehabilitation services as a basis for distribution of rehabilitation facilities, consideration shall be given to (a) rehabilitation services provided in existing facilities, avoiding duplication and overlapping of services; and (b) availability of rehabilitation services to people in all geographical areas.

§ 53.63 Existing rehabilitation facilities.

The count of existing rehabilitation facilities shall include existing beds in such facilities. Such beds shall be classified in accordance with the procedures set forth in Subpart B of this part.

Subpart H—Distribution of Modernization Projects for All Categories of Facilities

§ 53.71 Determination of need.

(a) The need for modernization shall be determined for each category of facilities by evaluation of existing facilities and with initial consideration being given to the most densely populated areas of the State. The evaluation shall be based on specific standards of plant evaluation, which shall include:

(1) Fire-resistivity of each building;

(2) Fire and other safety factors of each building;

(3) Design and structural factors affecting the function of the facility.

(b) Based on the evaluation, beds or facilities shall be classified as conforming or nonconforming. Those beds or facilities which are classified as nonconforming shall represent the beds and facilities in need of modernization.

(c) In the event that a service area has a total of existing conforming beds or facilities and existing nonconforming beds or facilities needing modernization which exceeds the total need for the service area, the number of beds or facilities to be modernized shall be reduced accordingly. At no time shall the beds or facilities to be modernized, when added to the existing conforming beds or facilities, be greater than the total beds or facilities needed in any one category.

§ 53.72 Distribution.

Modernization shall be planned for general hospitals, facilities for long-term care, and outpatient facilities in the service areas used for planning new construction. For other categories of facilities, modernization may be planned on a statewide basis.

Subpart I—Priority of Projects

§ 53.81 General.

The general manner in which the State agency shall determine the priority of projects included in the State construction program shall be based on the relative need of different service areas lacking adequate facilities and shall conform to the principles set out in this subpart. In addition to the specific considerations set forth in this subpart with respect to particular types of projects, special consideration shall be given.

(a) To facilities which, alone or in conjunction with other facilities, will provide comprehensive health care, including outpatient and preventive care as well as hospitalization;

(b) To facilities which will provide training in health or allied health professions; and

(c) To facilities which will provide to a significant extent for the treatment of alcoholism.

§ 53.82 Hospitals (new construction).

In determining the priority of projects for new construction of hospitals, special consideration shall be given to hospitals serving areas with relatively small financial resources and, at the option of each State, to hospitals serving rural communities. Relative need for new construction of hospitals shall be expressed in terms of the ratio of existing beds to total beds needed in the service area.

§ 53.83 Facilities for long-term care (new construction).

Priority shall be determined on the basis of the relative need for beds in facilities for long-term care in the area to be served by the project taking into account the utilization of existing beds and giving special consideration to projects operated by or affiliated with hospitals. Relative need for new construction shall be expressed in terms of the ratio of existing beds to total beds needed in each service area.

§ 53.84 Outpatient facilities (new construction and modernization).

(a) In determining the priority of projects for construction or modernization of outpatient facilities, special consideration shall be given to any outpatient facility that will be located in, and provide services for residents of, an area determined by the Secretary pursuant to § 53.120 to be a rural or urban poverty area.

(b) Subject to the provisions of paragraph (a) of this section priority of projects for new construction of outpatient facilities shall be determined on the basis of the relative need for additional outpatient facilities in the area to be served by the facility, taking into account existing services available and their utilization.

(c) In determining the priority of projects for modernization of outpatient facilities, special consideration shall be given (in addition to that specified in paragraph (a) of this section) to facilities serving areas of high population density.

§ 53.85 Rehabilitation facilities (new construction).

Priority shall be given to rehabilitation facility projects in the order of importance as given below, taking into consideration existing rehabilitation services in the community and the need for additional services in the community.

(a) Facilities operated in connection with a university teaching hospital which will provide an integrated program of medical, psychological, social, and vocational evaluation and services under competent supervision.

(b) Facilities offering rehabilitation services for multiple disabilities in hospitals and medical facilities capable of sustaining an organized department of physical medicine and rehabilitation.

(c) All other rehabilitation facilities.

§ 53.86 Public health centers (new construction).

Highest priority in this category shall be given to the provision of facilities for local health units serving rural communities and communities with relatively small financial resources. Where the State agency is not the State health authority, the State agency shall determine the relative priorities to be established after consultation with the State health authority.

§ 53.87 Modernization.

In determining the priority of projects for modernization, special consideration shall be given to facilities serving areas of high population density. With respect to each category, relative need shall be expressed

(a) For facilities for inpatient care, in terms of the ratio of existing conforming beds in each service area to (1) total existing beds in such area or (2) total beds needed in such area, whichever is less; and

(b) For facilities for outpatient care, in terms of the ratio of existing conforming facilities for outpatient care in each service area to (1) total existing facilities for outpatient care in such area or (2) total facilities for outpatient care needed in such area, whichever is less.

Subpart J—Allotments for Modernization Grants and for Loans and Loan Guarantees, and Transfer of State Allotments

§ 53.91 Allotments for modernization grants.

The allotments to the several States under section 602(a)(2) of the Act for grants for modernization shall be computed as follows:

(a) 33⅓ percent will be allotted to each State on the basis of population weighted by per capita income; and

(b) 66⅔ percent will be allotted to each State on the basis of the extent of the need for modernization of the facilities.

§ 53.92 Allotments for direct loans and loan guarantees.

(a) *Allotment formula.* The total of the amount of principal of loans to nonprofit private agencies which may be guaranteed and loans to public agencies which may be directly made under Part B of the Act with respect to any fiscal year shall be allotted among the several States as follows:

(1) A portion of such total which bears the same ratio to such total as the number of general hospital beds which the Secretary determines will be modernized in all States bears to the sum of the general hospital beds in all States which the Secretary determines will be modernized and added through new construction will be allotted to the States on the basis of the formula set forth in § 53.91 for allotments for modernization grants. The Secretary's determinations under this paragraph will be made on the basis of State plans for the latest year for which all States desiring to participate under Part B of the Act have submitted approved State plans.

(2) The remainder of such total will be allotted to the States on the basis of each State's relative population weighted by (i) the square of such State's allotment percentage, as determined in accordance with sec. 602(c) of the Act, and (ii) the relative need of such State for construction of general hospital beds.

(b) *Period of availability.* Subject to the provisions of § 53.93(b) (relating to transfers of allotments to another State), any amount allotted under paragraph (a) of this section to a State for a fiscal year ending before July 1, 1973, and remaining unobligated at the end of such fiscal year shall remain available to such State, for the purpose for which made, for the next 2 fiscal years, and any such amount shall be in addition to the amounts allotted to such State for such purpose for each of such next 2 fiscal years.

§ 53.93 Transfer of allotments to another State.

(a) With respect to allotments under Part A of the Act, a State may submit a request in writing to the Secretary that a specified portion of its allotment for the construction of hospitals and public health centers, facilities for long-term care, outpatient facilities, rehabilitation facilities, or for modernization, be added to the corresponding allotment of another State for the purpose of meeting a portion of the Federal share of the cost of a project for the construction or modernization of a facility of the type authorized under the allotments in such other State. In determining whether the facility with respect to which the request is made will meet the needs of the State making the request and that use of the specified portion of such State's allotment as requested by it will assist in carrying out the purposes of the Act, the Secretary shall consider the accessibility of the facility and the extent to which services will be made available to the residents of the State making the request for the transfer.

(b) With respect to allotments under Part B of the Act, any such allotment to a State for a fiscal year ending before July 1, 1973, and remaining unobligated at the end of such year may, with the consent of such State, be reallotted by the Secretary to other States which the Secretary determines have need therefor. Such reallotment shall be on such basis as the Secretary finds consistent with the purposes of Part B of the Act, and any amount so reallotted to another State shall be available for the purposes for which made until the close of the second fiscal year after the fiscal year for which such funds were initially allotted and shall be in addition to the amount allotted and available to such State for the same period.

§ 53.94 Transfer of grant allotments to another category within a State.

(a) For the purpose of transfer of allotments as authorized by section 602(e)(2) of the Act, the State agency shall, together with the certification required by that subsection, set forth the method by which a reasonable opportunity has been afforded applicants to submit applications for projects from the portion of the allotment to be transferred.

(b) A determination under section 602(e)(3) of the Act that the need for new public or other nonprofit hospitals and public health centers is substantially greater than the need for modernization projects shall be made only after completion of the determination of the State's need for modernization projects pursuant to Subpart H of this part and in accordance with the approved State plan.

Subpart K—General Standards of Construction and Equipment

§ 53.101 General.

(a) Plans and specifications for each project submitted to the Secretary for approval shall be prepared in accordance with "General Standards of Construction and Equipment for Hospital and Medical Facilities" (PHS No. 930-A-7), and any amendments or revisions thereof, which document is hereby incorporated by reference and deemed published herein. Said document will be provided to all applicants for assistance under this part, and is available to any interested person, whether or not affected by the provisions of this part, upon request to the Health Care Facilities Service,[1] Health Services and Mental Health Administration, Department of Health, Education, and Welfare, or to the Health Services and Mental Health Information Center or Regional Office Information Center as listed in 45 CFR 5.31. The Secretary may approve plans and specifications which contain deviations from the requirements prescribed if he is satisfied that the purposes of such requirements have been fulfilled.

(b) The design and construction covered by the plans and specifications must conform with the applicable State and local laws, codes, and ordinances and with the approved State plan. The plans

[1] The Health Care Facilities Service also maintains an official historic file of PHS No. 930-A-7.

and specifications must be complete and adequate for contract purposes and have the approval and recommendation of the State agency.

(c) Equipment shall be provided in the kind and to the extent necessary for the proper functioning of the facility as planned.

§ 53.102 Size of facilities for long-term care.

No application shall be approved for construction of a facility for long-term care, not an addition to a hospital, with a capacity of less than 10 beds.

Subpart L—Services for Persons Unable To Pay; Community Service; Nondiscrimination

§ 53.111 Services for persons unable to pay.

Before an application under this part is recommended by a State agency to the Secretary for approval, the State agency shall obtain an assurance from the applicant that there will be made available in the facility or portion thereof to be constructed or modernized a reasonable volume of services to persons unable to pay therefor. The requirement of an assurance from an applicant shall be waived if the applicant demonstrates to the satisfaction of the State agency, subject to subsequent approval by the Secretary, that such a requirement is not feasible from a financial viewpoint.

§ 53.112 Community service; nondiscrimination.

(a) Before an application under this part is recommended by a State agency to the Secretary for approval, the State agency shall obtain assurances from the applicant that:

(1) The facility will furnish a community service; and

(2) All portions and services of the entire facility for the construction or modernization of which, or in connection with which, aid under the Act is sought will be made available without discrimination on account of creed, and no professionally qualified person will be discriminated against on account of creed with respect to the privilege of professional practice in the facility.

(b) Each construction contract is subject to the condition that the applicant shall comply with the requirements of Executive Order 11246, September 24, 1965 (30 F.R. 12319), relating to nondiscrimination in construction contract employment, and the applicable rules, regulations, and procedures prescribed pursuant thereto.

(c) Attention is called to the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d; 78 Stat. 252) which provides that no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. A regulation implementing such title VI, applicable to assistance under this part for construction and modernization of hospitals and medical facilities, has been issued by the Secretary of Health, Education, and Welfare with the approval of the President (45 CFR Part 80).

§ 53.121 General; review and comment by areawide health planning agencies.

(a) The State plan shall provide for general methods of administration which are in accord with the principles set out in this subpart.

(b) Prior to submission of the State plan or any modifications thereof to the Secretary, the State agency shall submit such plan or modifications for review and comment to each agency or organization which has developed an areawide health plan pursuant to section 314(b) of the Public Health Service Act with respect to any area in such State for which there is no such agency or organization, to the State agency administering or supervising the administration of the State plan approved under section 314(a) of the Public Health Service Act. Comments from any such agency received by the State agency within 30 days after such submission shall be considered by the State agency prior to submission of the State plan to the Secretary.

Subpart M—Methods of Administration of the State Plan

§ 53.122 Construction program.

The State programs for hospitals, facilities for long-term care, outpatient facilities, rehabilitation facilities, public health centers, and modernization shall be developed in the following manner:

(a) The State agency shall determine the need for additional hospital facilities of all types, facilities for long-term care, outpatient facilities, rehabilitation facilities, public health centers, and for modernization of such facilities in accordance with the provisions of Subpart B through Subpart H.

(b) The State agency shall determine through field investigation, and otherwise, the approximate locations in each area in which the various types of health facilities identified in paragraph (a) of this section should most appropriately be built and the locations at which modernization projects are needed.

(c) After having determined the hospital, long-term care facilities, outpatient facility, rehabilitation facilities, public health center and modernization needs, the State agency shall establish an overall construction program. This program shall set forth all such needs in accordance with the standards specified in Subpart B through Subpart H and shall show the relative need for each project included, irrespective of the availability of funds for construction and for maintenance and operation of such project.

(d) The State agency shall from time to time as necessary, but not less often than annually, review the State plan, including the overall program for the construction of hospitals, long-term care facilities, outpatient facilities, rehabilitation facilities, public health centers and for modernization, and shall submit to the Secretary any modifications of the plan and the construction program as the State agency considers necessary to administer the plan and the annual allotment.

(e) At least 30 days prior to the submission of the State plan or any modification thereof to the Secretary, the State agency shall publish in newspapers having general circulation throughout the State a general description of the proposed plan or any such modification, and the State plan shall be available for examination and comment by interested persons prior to submission to the Secretary.

(f) The State agency shall establish a separate construction schedule on such forms and for such periods as the Secretary may prescribe. Insofar as funds are available for construction and for maintenance and operation, construction shall be scheduled in the order of relative need.

§ 53.123 Personnel administration.

(a) *Merit system.* The State plan shall provide for the establishment and maintenance of personnel standards on a merit basis for persons employed in the administration of the State plan. Conformity with the Standards for a Merit System of Personnel Administration, 45 CFR Part 70, including any amendments thereto, and any standards prescribed by the U.S. Civil Service Commission pursuant to section 208 of the Intergovernmental Personnel Act of 1970 (Public Law 91-648; 84 Stat. 1915) modifying or superseding such Standards, will be deemed to meet this requirement as determined by said Commission.

(b) *Conflict of interest.* No full-time officer or employee of the State agency, or any firm, organization, corporation, or partnership which such officer or employee owns, controls, or directs, shall receive funds from the applicant, directly or indirectly, in payment for services provided in connection with the planning, design, construction or equipping of the project.

§ 53.124 Fair hearings.

The State agency shall establish such rules and regulations as will provide an opportunity for an appeal to and a fair hearing before the State agency to every applicant for a construction project who is dissatisfied with any action of the State agency regarding its application.

§ 53.125 Construction standards.

The State agency shall adopt general standards of construction and equipment for the various types of hospitals, facilities for long-term care, outpatient facilities, rehabilitation facilities, and public health centers assisted under this program. The standards adopted shall not be less than the general standards prescribed by the Public Health Service and set forth in the document "General Standards of Construction and Equipment for Hospital and Medical Facilities", as incorporated by reference in § 53.101(a).

§ 53.126 Minimum standards of maintenance and operation.

The State plan shall provide for minimum standards of maintenance and operation of facilities providing inpatient care which receive aid under the Act, and shall provide for enforcement of such standards.

§ 53.127 Application; submittal; amendment; processing.

(a) *Submittal of application.* Applications for grants, loan guarantees, and direct loans under the Act, including both detailed narrative descriptions and detailed estimates of the cost of the respective projects, shall be submitted to the Secretary through the State agency in such form as the Secretary may prescribe.

(b) *Amendment to application.* An amendment to any application approved by the Secretary shall be processed in the same manner as an original application, except that the original application's conformity with the priority regulations shall suffice for an amendment which does not modify the factors on which the priority was granted.

(c) *Processing of application.* The State agency shall approve, recommend, and forward applications received in the order of priority, except that the State agency may approve, recommend, and forward to the Secretary applications out of the order of priority if:

(1) The State agency has afforded reasonable opportunity for development and presentation of projects in the order of priority; and

(2) The State agency certifies to the Secretary that financial resources for the construction, maintenance, and operation of projects of higher priority are not then available.

§ 53.128 Assurances from applicant.

In addition to any other requirements imposed by law, each construction grant, loan guarantee, and direct loan shall be subject to the condition that the applicant will furnish and comply with the following assurances. The Secretary may at any time approve exceptions to those conditions and assurances where he finds that such exceptions are not inconsistent with the Act and the purposes of the program:

(a) That the applicant (or other public or nonprofit agency which is to operate the facility) has or will have a fee simple or such other estate or interest in the site, including necessary easements and rights-of-way, sufficient to assure for a period of not less than 50 years undisturbed use and possession for the purpose of the construction and operation of the facility;

(b) That the Secretary's approval of the final working drawings and specifications, which conform to the general standards of construction and equipment, will be obtained before the project is advertised or placed on the market for bidding;

(c) That applicant will perform actual construction work by the lump sum (fixed price) contract method; employ adequate methods of obtaining competitive bidding prior to awarding the construction contract, either by public advertising or circularizing three or more bidders, and award the contract to the responsible bidder submitting the lowest acceptable bid; and will purchase all fixed equipment by adequate methods of competitive bidding (including such fixed equipment as is not purchased through the construction contract) and award the contract to the responsible bidder submitting the lowest acceptable bid, except that competitive bidding procedures need not be employed for the purchase of specific fixed equipment items which are not included in the construction contract where such action is found by the State agency and the Secretary, upon written justification by the applicant, to be required by the needs of the program;

(d) That applicant will enter into no construction contract or contracts for the project or a part thereof, the cost of which is in excess of the estimated cost approved in the application for that portion of the work covered by the plans and specifications, without the prior approval of the Secretary;

(e) That applicant will submit to the Secretary for prior approval changes that substantially alter the scope of work, function, utilities, or safety of the facility;

(f) That applicant will construct the project, or cause it to be constructed, to final completion in accordance with the application and approved plans and specifications;

(g) That applicant will maintain adequate and separate accounting and fiscal records and accounts for all funds provided from any source to pay the cost of the project, and permit audit of such records and accounts at any reasonable times. All records shall be retained for 3 years after the close of the fiscal year in which construction is completed. Such records may be destroyed at the end of such 3-year period if the applicant has been notified of the completion of the Federal audit by such time. If the applicant has not been so notified by the end of such 3-year period, such records shall be retained (1) for 5 years after the close of the fiscal year in which construction is completed or (2) until the grantee is notified of the completion of the Federal audit, whichever comes first. In all cases where audit questions have arisen before the expiration of such 5-year period, records shall be retained until resolution of all such questions;

(h) That applicant will furnish progress reports and such other information as the Secretary may require;

(i) That applicant will provide and maintain competent and adequate architectural or engineering supervision and inspection at the construction site to insure that the completed work conforms with the approved plans and specifications;

(j) That sufficient funds will be available to meet the non-Federal share of the cost constructing the facility;

(k) That sufficient funds will be available when construction is completed for effective use of the facility for the purposes for which it is being constructed;

(l) (1) That any laborer or mechanic employed by any contractor or subcontractor in the performance of work on the construction of the facility will be paid wages at rates not less than those prevailing on similar construction in the locality as determined under the Davis-Bacon Act (40 U.S.C. 276 et seq.) and will receive compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in any workweek in excess of 8 hours in any calendar day or 40 hours in the workweek (40 U.S.C. 327–332); and

(2) That the following conditions and provisions will be included in all construction contracts:

(i) The provisions set forth in "DHEW Requirements for Federally Assisted Construction Contracts Regarding Labor Standards and Equal Employment Opportunities," Form DHEW 514 (April 1969) (issued by the Office of Grants Administration Policy, U.S. Department of Health, Education, and Welfare) pertaining to the Davis-Bacon Act, the Contract Work Hours Standards Act, and the Copeland Act (Anti-Kickback) Regulations, except in the case of contracts in the amount of $2,000 or less; and pertaining to Executive Order 11246, September 24, 1965 (30 F.R. 12319), relating to nondiscrimination in construction contract employment, except in the case of contracts in the amount of $10,000 or less;

(ii) The contractor shall furnish performance and payment bonds, each of which shall be in the full amount of the contract price, and shall maintain, during the life of the contract, adequate fire, workmen's compensation, public liability and property damage insurance;

(iii) Representatives of the Secretary and State agency will have access at all reasonable times to work wherever it is in preparation or progress, and the contractor shall provide proper facilities for such access and inspection;

(m) That a facility providing inpatient care will be operated and maintained in accordance with minimum standards prescribed by the State agency for the maintenance and operation of such facilities;

(n) (1) That, in the case of any project for construction or modernization of a general hospital, there will be adequate provision for extended care services to patients of such hospital when such services are medically appropriate for them. Subject to the provisions of subparagraph (2) of this paragraph, such services must be provided in facilities which—

(i) Are structurally part of, physically connected with, or in immediate proximity to, such hospital; and

(ii) Either are under the supervision of the professional staff of such hospital or have organized medical staffs and have in effect written transfer agreements with such hospital which provide for:

(a) The transfer of patients between the hospital and the long-term care facility(s) whenever such transfer is determined to be medically appropriate;

(b) The exchange between the facilities of appropriate medical and other information relating to the care and treatment of patients;

(c) Prompt initiation of transfer of the patient to the hospital for acute care should there be a reversal in the patient's medical condition requiring more intensive medical and nursing care;

(d) The amount and types of services offered in the long-term care facility(s) which correspond to those specified for reimbursement eligibility for the skilled nursing home care category under titles XVIII and XIX of the Social Security Act, as amended; and

(e) The general availability of the medical, diagnostic, and rehabilitative services of the hospital to any patient of the long-term care facility(s) who requires them.

(2) The Secretary may, at the request of the State agency, waive compliance with the requirements of subparagraph (1)(i) or (ii), or both of this paragraph, in the case of any project if the State agency has determined that compliance with such subsection or subsections would be inadvisable;

(o) That, in the case of any project for construction or modernization of an outpatient facility, the services of a general hospital will be available to patients of such outpatient facility who are in need of hospital care. Such assurance may be provided by a written transfer agreement with one or more general hospitals which provides for

(1) The transfer of patients from the outpatient facility to the general hospital where such transfer is determined to be medically appropriate;

(2) The exchange of appropriate medical and other information relating to the care and treatment of patients between the facilities; and

(3) The amount and types of services offered in the general hospital which correspond to those specified for reimbursement eligibility under Titles XVIII and XIX of the Social Security Act, as amended;

(p) That, in the case of any project solely for the purpose of the acquisition of equipment, other than initial equipment for new buildings or for existing buildings which are expanded, remodeled or altered, such project will help to provide a service not previously provided in the community. For purposes of this paragraph, "community" shall mean a geographic area encompassing one or more neighborhoods having a population and geographic size sufficiently large as normally to be served by and support the particular service to be provided;

(q) That the applicant will file at least annually with the State agency a statement, in such form and containing such information as the Secretary may require to show (1) the financial operations of the facility, and (2) the costs to the facility of providing health services in the facility and the charges made by the facility for providing such services during the period with respect to which the statement is filed;

(r) That the applicant will conform to all the applicable requirements of the State plan and the regulations of this part.

§ 53.129 Determination of rural or urban poverty areas.

For purposes of determining the priority of projects for construction or modernization of outpatient facilities pursuant to section 603(a)(4) of the Act and of establishing a Federal share of any project (not to exceed 90 per centum of the cost of construction) pursuant to section 645(b)(4) of the Act, the State plan shall include a designation of areas in the State which are proposed by the State agency, in accordance with this section, to be rural or urban poverty areas. For purposes of this section, "area" means a service area (or the nearest approximation thereto for which current census data are available, based on geographic boundaries such as counties or census tracts) or a subservice area which is designated in the State plan as providing the basis for the provision of outpatient services.

(a) The Secretary will determine to be a rural or urban poverty area any area which has been found by the State agency, on the basis of the latest available published data from the Bureau of the Census, to be an area in which the median annual family income ranks in or below the 20th percentile of the median family incomes for all areas in the State.

(b) The Secretary may determine to be a rural or urban poverty area any area which

(1) has been found by the State agency to be an area in which the median family income ranks above the 20th percentile of the median family incomes for all areas in the State but in or below the 30th percentile of the median family incomes for all areas in the State;

(2) has been designated by the State agency as a rural or urban poverty area, and

(3) has been determined by the Secretary, on the basis of information set forth in the State plan, to have special characteristics related to poverty which are not adequately reflected in its median family income percentile rank, such as (i) subareas of extreme poverty or (ii) high costs of obtaining hospital services when compared to other areas in the State.

(c) The Secretary may also determine to be a rural or urban poverty area any area in which, on the basis of the latest available published data from the Bureau of the Census, the median family income ranks above the 30th percentile of median family incomes for all areas in the State but with respect to which the State agency demonstrates to the satisfaction of the Secretary that the income level of families in such area has changed sufficiently since the date of such latest available published data to justify classification of the area as a rural or urban poverty area under the criteria set forth in paragraph (a) or (b) of this section.

(d) The State agency shall reevaluate its designation of proposed rural or urban poverty areas every 2 years, and will make such revisions in such designation as it finds necessary in accordance with the provisions of this section.

§ 53.130 Certification to the Secretary.

After the State agency has approved an application for a construction grant, it shall recommend it to the Secretary for approval and shall certify:

(a) That the application contains reasonable assurance as to the availability of funds for the cost of construction and the entire cost of maintenance and operation when completed:

(1) Availability of funds for the non-Federal share of construction costs shall mean (i) funds immediately available, placed in escrow, or acceptably pledged, or (ii) funds or fund sources specifically earmarked in a sum sufficient for that purpose, or (iii) other assurances acceptable to the Secretary;

(2) To assure the availability of funds for maintenance and operation the application for the construction of a new project must include a proposed operating budget, on a form prescribed by the Secretary, for the 2-year period immediately following its completion. In the case of an addition to an existing facility, the application must include a statement showing that funds are or will be available to meet any excess of proposed expenditures over anticipated income from the operation of the constructed addition for the 2-year period immediately following its completion.

(b) That the application is in conformity with and contains the assurances required by the State plan and these regulations.

§ 53.131 Requests for construction payments for grants.

(a) *Certification by State agency.* The State agency shall certify to the Secretary the amount of payments due an applicant for a construction grant under Part A of the Act for the cost of work performed and materials and equipment furnished.

(b) *Inspection by State agency.* As a basis for certification by the State agency in accordance with paragraph (a) of this section that payment of an installment is due an applicant, the State agency shall make adequate inspections to determine that the work has been performed upon a project, or purchases

have been made, in accordance with the approved plans and specifications.

§ 53.132 Fiscal and accounting requirements.

(a) *Construction allotments.* (1) The State agency shall be responsible for establishing and maintaining accounts and fiscal controls of all Federal and State funds allotted for construction projects. Federal and State funds shall be separately identified by maintaining separate fund accounts for this purpose.

(2) The fiscal records shall be so designed as to show at any given time the Federal funds allotted, encumbered, and unencumbered balances. If State contributions are made for construction, separate accounts, reflecting similar information, shall be maintained for State funds.

(b) *Construction payments.* (1) Where the State may receive Federal funds for applicants for construction project grants, or the State itself is an applicant, adequate records of account and fiscal controls shall be established and maintained by the State to assure proper accounting of all funds received and disbursed. Similar suitable accounts shall be maintained to show the receipt and disbursement of State, local or other funds used for matching purposes.

(2) The State agency shall require that applicants receiving Federal funds establish and maintain adequate accounting and fiscal records to reflect the receipt and expenditure of funds allotted and paid for construction projects.

(3) The States which by law are authorized to make payments to applicants shall promptly pay such applicants funds certified for payment by the Secretary for approved construction projects.

§ 53.133 Access by Comptroller General.

The State plan shall provide that the Comptroller General of the United States or his duly authorized representatives will have access for purposes of audit and examination to such records of the State agency as are required to be maintained by the Secretary.

§ 53.134 Notice of change of status of facility.

The State agency shall promptly notify the Secretary in writing if, at any time within 20 years after completion of construction, any facility which received funds under the Act is transferred to any person, agency or organization, not qualified to file an application under the Federal Act or not approved as a transferee by the State agency; or ceases to be a public health center or a public or other nonprofit hospital, outpatient facility, facility for long-term care or rehabilitation facility, as defined in the Federal Act.

§ 53.135 Good cause for other use of facility.

If within 20 years after completion of any construction for which a construction grant has been made the facility shall cease to be a public health center or a public or other nonprofit hospital, outpatient facility, facility for long-term care, or rehabilitation facility the Secretary, in determining whether there is good cause for releasing the applicant or other owner of the facility from its obligation shall take into consideration the extent to which:

(a) The facility will be devoted by the applicant or other owner to use for another public or nonprofit purpose which will promote the purpose of the Act;

(b) There are reasonable assurances that for the remainder of the 20-year period other public or nonprofit facilities not previously utilized for the purpose for which the facility was constructed will be so utilized and are substantially equivalent in nature and extent for such purposes; or

(c) The facility has been acquired from an agency of the United States (e.g., the Federal Housing Administration under its mortgage insurance commitment program) which has made a reasonable effort to dispose of it for operation as a public or nonprofit facility.

Subpart N—Loan Guarantees and Direct Loans

§ 53.141 Applicability.

In addition to the other provisions of this part, the following provisions of this Subpart N are also applicable to loans to public agencies and loan guarantees to nonprofit private agencies under part B of the Act.

§ 53.142 Definitions.

(a) All terms used in this subpart and defined in the Act or in § 53.1 shall have the same meaning as there given them.

(b) When used in this subpart, the term "public agency" shall include any private organization the income from whose bonds or other obligations issued as security for a loan with respect to a project under part B of the Act is exempt from Federal income taxation.

§ 53.143 Eligibility for loan guarantees and direct loans.

(a) *Loan guarantees.* The Secretary may, in accordance with part B of the Act and these regulations, guarantee to non-Federal lenders payment of principal of and interest on loans made to nonprofit private agencies to carry out projects for the construction or modernization of nonprofit private hospitals, facilities for long-term care, outpatient facilities and rehabilitation facilities.

(b) *Direct loans.* The Secretary may, in accordance with Part B of the Act and these regulations, make direct loans to public agencies to carry out projects for the construction or modernization of public health centers and public hospitals, facilities for long-term care, outpatient facilities, and rehabilitation facilities.

§ 53.144 Approval of applications.

(a) *Applications for loan guarantees.* An application for a loan guarantee submitted through the State agency and in accordance with the requirements of § 53.127 may be approved by the Secretary only if he makes each of the findings required pursuant to section 623(b) of the Act, and determines:

(1) That the applicant will have sufficient financial resources to enable him to comply with the terms and conditions of the loan with respect to which the guarantee is sought;

(2) That the applicant has the necessary legal authority to finance, construct, and maintain the proposed project, to apply for and receive the loan with respect to which the guarantee is sought, and to pledge or mortgage any assets or revenues to be given as security for such loan or against other satisfactory security specified in § 53.147;

(3) That the loan with respect to which the guarantee is sought will be secured by a first lien against the facility to be constructed or against other security satisfactory to the Secretary specified in § 53.147.

(4) That the loan with respect to which the guarantee is sought will be made only with respect to the initial permanent financing of the project;

(5) That the rate of interest on the loan with respect to which a guarantee is sought does not exceed such per centum per annum as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the United States; and

(6) Such additional determinations as the Secretary finds necessary with respect to particular applications in order to protect the financial interests of the United States.

(b) *Applications for direct loans.* An application for a direct loan submitted through the State agency and in accordance with the requirements of § 53.127 may be approved by the Secretary only if he makes each of the applicable findings required pursuant to sections 623(b) and 627(a)(2) of the Act, and determines:

(1) That the applicant will have sufficient financial resources to enable him to comply with the terms and conditions of the direct loan;

(2) That the applicant has the necessary legal authority to finance, construct, and maintain the proposed project, to apply for and receive the direct loan, and to pledge or mortgage any assets or reserves to be given as security for such direct loan;

(3) That the direct loan will be secured by a first lien against the facility to be constructed or against other security satisfactory to the Secretary specified in § 53.147;

(4) That the direct loan will be made only with respect to the initial permanent financing of the project; and

(5) Such additional determinations as the Secretary finds necessary with respect to the particular application in order to protect the financial interests of the United States.

§ 53.145 Maximum amount of direct loan or guaranteed loan.

No direct loan or loan with respect to which a guarantee is made for any project under Part B of the Act may be in an amount which, when added to the amount of any grant or loan under Part A of the Act with respect to such project, exceeds 90 per centum of the cost of such project: *Provided*, That, in determining the actual cost of the construction of the project, there shall be excluded from such cost all fees, interest, and other charges relating or attributable to the financing of the project.

§ 53.146 Forms of evidence of indebtedness.

The evidence of indebtedness with respect to direct loans with respect to which a guarantee is made shall be in such form as may be acceptable to the Secretary.

§ 53.147 Security for loans.

All direct loans and loans with respect to which a guarantee is made shall be secured in a manner which the Secretary finds reasonably sufficient to insure repayment. The security may be one or a combination of the following:

(a) A first mortgage on the facility and site thereof.

(b) Negotiable stocks or bonds of a quality and value acceptable to the Secretary.

(c) A pledge of unrestricted and unencumbered income from an endowment or other trust funds acceptable to the Secretary.

(d) A pledge of a specified portion of annual general or special revenues of the applicant, acceptable to the Secretary.

(e) Full faith and credit (tax supported) obligations of a State or local public body.

(f) Such other security as the Secretary may find acceptable in specific instances.

§ 53.148 Opinion of legal counsel.

At appropriate stages in the application and approval procedure for direct loans and loan guarantees, the applicant shall furnish to the Secretary a memorandum or opinion of legal counsel with respect to the legality of any proposed bond or note issue, the legal authority of the applicant to offer the issue and secure it by the proposed collateral, and the legality of the issue upon delivery. "Legal counsel" means either a law firm or individual lawyer, thoroughly experienced in the long-term financing of construction projects, and whose approving opinions have previously been accepted by lenders or lending institutions. In addition, in the case of a direct loan to a public agency, the legal counsel shall be a recognized bond counsel in the municipal field. The legal memorandum or opinion to be provided by legal counsel in each case shall be as follows:

(a) A memorandum, submitted with the application for a direct loan or loan guarantee, stating that there is or will be authority to finance, construct and maintain the project, and to issue the proposed obligations and to pledge or mortgage the assets and/or revenues offered to secure the direct loan or the loan with respect to which a guarantee is sought, as the case may be, citing the basis for such authority; and

(b) A final approving opinion, delivered to the Secretary at the same time as the delivery of the bonds to the Secretary (in the case of a direct loan) or to the lender (in the case of a loan guarantee), stating that the indebtedness of the applicant is duly authorized, sold, and delivered, and that such indebtedness is valid, binding and payable in accordance with the terms on which the direct loan or loan guarantee was approved by the Secretary.

§ 53.149 Length and maturity of loans.

The repayment period for direct loans and loans with respect to which a guarantee is made shall be limited to 25 years: *Provided*, That—

(a) The Secretary may, in particular cases where he determines that a repayment period of less than 25 years is more appropriate to an applicant's total financial plan, approve such shorter repayment period; and

(b) In no case shall a loan repayment period exceed the estimated useful life of the facility to be constructed with the assistance of the loan.

§ 53.150 Interest on direct loans.

Each direct loan shall require the borrower to pay to the Secretary, or as directed by him, interest thereon at a rate determined by the Secretary to be comparable to the current rate of interest prevailing with respect to loans to nonprofit private agencies which are guaranteed under part B of the Act, for the modernization on construction of similar facilities in the same or similar areas, minus 3 per centum per annum.

§ 53.151 Repayment.

Unless otherwise specifically authorized by the Secretary, each direct loan and loan with respect to which a guarantee is made shall be repayable in substantially level total annual installments of principal and interest, sufficient to amortize the loan through the final year of the life of the loan.

§ 53.152 Loan Guarantee Agreement and Direct Loan Agreement.

(a) *Loan Guarantee Agreement.* (1) For each application for a loan guarantee which is approved by the Secretary, an offer of a loan guarantee will be sent to the applicant, setting forth the pertinent terms and conditions for the loan guarantee, and will be conditioned upon the fulfillment of those terms and conditions. The accepted loan guarantee offer will constitute the Loan Guarantee Agreement between the Secretary and the applicant.

(2) Each Loan Guarantee Agreement shall include the following provisions:

(i) That the loan guarantee evidenced by the Agreement shall be incontestable (a) in the hands of the applicant on whose behalf such loan guarantee is made except for fraud or misrepresentation on the part of such applicant, and (b) as to any person who makes or contracts to make a loan to such applicant in reliance on such loan guarantee, except for fraud or misrepresentation on the part of such other person.

(ii) That if the applicant shall default in making payment, when due, of the principal and interest on the loan with respect to which the guarantee is made, and such default is not cured within 90 days after the happening thereof, the holder of such loan shall have the right to make demand in writing upon the Secretary for the purchase by the Secretary of such loan.

(iii) That each holder of a loan to an applicant on whose behalf the loan guarantee evidenced by such Agreement is made shall have a contractual right to receive from the United States interest payments in an amount sufficient to reduce by 3 per centum per annum the net effective interest rate determined by the Secretary to be otherwise payable on the loan with respect to which such guarantee is made.

(iv) That payments of interest pursuant to subdivision (iii) of this subparagraph will be made by the Secretary, in accordance with the terms of the loan with respect to which the guarantee is made, directly to the holder of such loan or to a trustee or agent designated in writing to the Secretary by such holder until such time as the Secretary is notified in writing by the holder that such loan has been transferred. Pursuant to such written notification of transfer, the Secretary will make such interest payments directly to the new holder (transferee) of the loan.

(v) That the applicant shall be permitted to prepay up to 15 per centum of the original principal amount of such loan in any calendar year without additional charge.

(vi) Such other provisions as the Secretary finds necessary in order to protect the financial interests of the United States.

(b) *Direct Loan Agreement.* (1) For each application for a direct loan which is approved by the Secretary, an offer of a direct loan will be sent to the applicant, setting forth the pertinent terms and conditions for the direct loan, and will be conditioned upon the fulfillment of those terms and conditions. The accepted direct loan offer will constitute the Direct Loan Agreement between the Secretary and the applicant.

(2) Each Direct Loan Agreement shall include such provisions as the Secretary finds necessary in order to protect the financial interests of the United States.

§ 53.153 Loan closing.

(a) *Loan guarantees.* Closing for any loan with respect to which a guarantee is made shall be accomplished at such time

as may be agreed upon by the parties to such loan and found acceptable by the Secretary.

(b) *Direct loans.* Closing for any direct loan shall be accomplished at such time as may be determined by the Secretary.

§ 53.154 Waiver of right of recovery.

In determining whether there is good cause for waiver of any right of recovery which he may have against a nonprofit private agency by reason of any payments made pursuant to a loan guarantee, or against a public agency by reason of the failure of such agency to make payments of principal and interest on a direct loan to such agency, the Secretary shall take into consideration the extent to which:

(a) The facility with respect to which the loan guarantee or direct loan was made will continue to be devoted by the applicant or other owner to use for the purpose for which it was constructed or another public or nonprofit purpose which will promote the purposes of the Act;

(b) There are reasonable assurances that for the remainder of the repayment period of the loan other public or nonprofit facilities not previously utilized for the purpose for which the facility was constructed will be so utilized and are substantially equivalent in nature and extent for such purposes; and

(c) Such recovery would seriously curtail the provision of medical services to persons in need of such services in the area.

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RE: SCP 13+14

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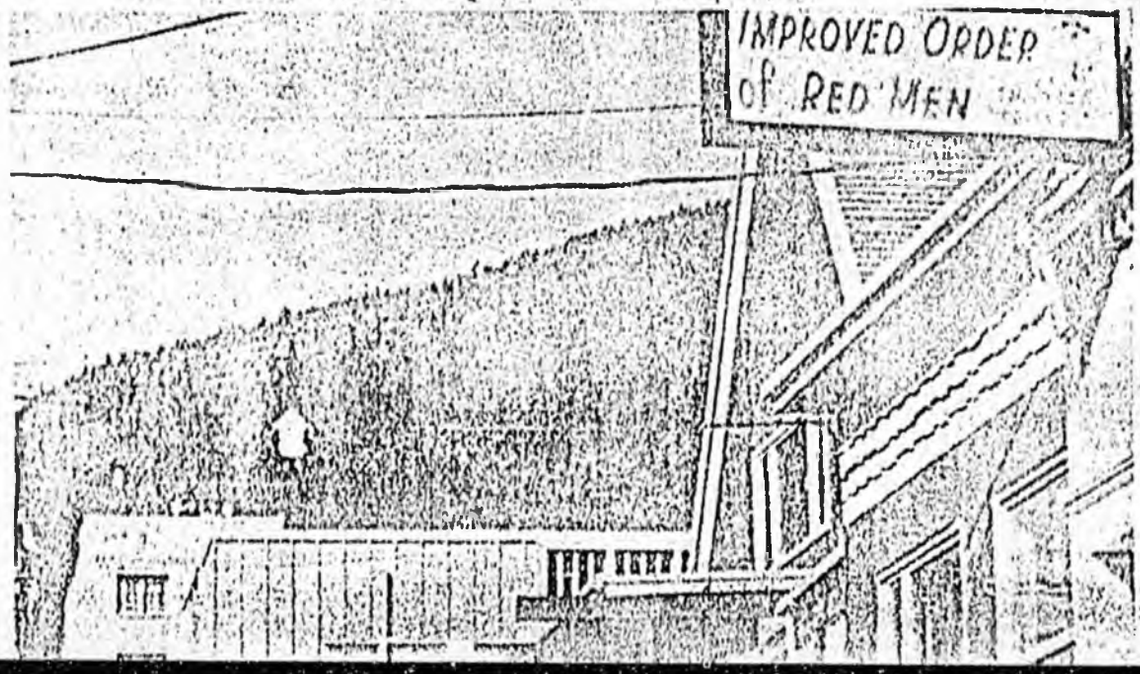
State May File Civil Suit Against Anchorage Legislator

$97,039 Overpaid Revenue-Sharing Funds Sought



Audit Focuses On Rep. Beirne, Lake Otis Clinic

By Brian Rogers

The State of Alaska may go to court against an Anchorage legislator to recover almost $100,000 in state revenue-sharing funds allegedly overpaid to the legislator's hospital corporation.

Assistant Attorney General Rodger Pegues said Friday that his office would go to court against Representative Michael F. Beirne (R-Anch.) and the Lake Otis Clinic, Inc. (LOC) unless Beirne repays $97,039 he was overpaid in 1975.

The funds in question are a part of $312,000 given by the state Department of Community and Regional Affairs (C&RA) to LOC in February 1975. LOC is a non-profit corporation, headed by Beirne, which is involved in the construction of an Anchorage acute-care hospital. Other directors of LOC are Corinne A. Beirne and Beverley L. Beirne.

In July of this year, a state audit of the funds was made

At the 60th Session Grand Igloo, Pioneers of Alaska, ladies are seen leaving the attractive Tlingit Tribe No. 4 Hall in Ketchikan bound for a business session. More photos on page 13.

—Alaska Linck Photo

Gov. Hammond Announces Sale of State Royalty Gas

By Joe LaRocca

Andy Warwick of Fairbanks, a newly-appointed member of the state's Royalty Oil and Gas Development Advisory Board told the All-Alaska Weekly Wednesday he hasn't had an opportunity to study the governor's recently announced proposal to sell the state's Prudhoe Bay royalty gas in depth yet, but said that at first blush it looks "very attractive."

Warwick said State Commissioner of Natural Resources Guy Martin, who negotiated the proposed agreements with three prospective purchasers, came to Fairbanks late Tuesday to brief him on their provisions.

Martin is also chairman of the five member Royalty Board which must approve the sale before it's submitted to the legislature for consideration.

Warwick said he'll want to take a closer look at the proposed agreements to determine what adverse effects, if any, the state might suffer if the agreements are finalized, and whether the advantages would outweigh them.

SUCCESSFUL BIDDERS

The governor's announcement of the agreements late last week climaxed months of negotiations with four major gas transmission companies, one of which — United Gas Transmission — was eliminated in the final stages.

The successful bidders are

—Continued on page 15

by State Internal Auditor George Elgee. The audit showed that of more than $3.1 million in costs claimed by LOC, almost $2.3 million were not allowable under applicable revenue-sharing standards, leaving only $861,843.89 in allowable costs. The state share, 25 per cent of the costs, came to only $. 15,460.97, leaving $97,039 unaccounted for.

The audit raised serious questions about several of the expenditures claimed by LOC. The report said "many costs were paid for by companies not directly related to the construction of the hospital. It would appear that at present these expenses are being claimed by both LOC and the facility that actually paid the expense."

"In every instance these other entities are tied closely to M.F. Beirne, Director of LOC," the report says. These corporations include:

—Kelly Supply Inc., Michael F. Beirne, Corinne Beirne and Beverley Beirne, directors.

—Raypath, Inc., Michael F. Beirne, Corinne Beirne and Beverley Beirne, directors.

—SPADA Feed and Seed Store, Inc., Michael F. Beirne, Corinne Beirne and Georgina Perritt, directors.

—Alaska Medical Laboratories, a professional corporation. Directors are Micheal F. Beirne and L.W. Mauman.

According to the audit report, "it appears that the expenses being claimed have been used for tax purposes by these corporations and are now being used to justify state revenue sharing funds."

'CAN'T WAIT FOREVER'

Pegues said Beirne was contesting the method of accounting done in the audit and was "trying to get more of the work accountable."

The audit was done using one of three currently acceptable standards of revenue sharing funds. Pegues said "there isn't any standard for those items to be accountable expenditures."

He said he had been expecting Beirne or Beirne's attorney, Miles Schlossberg, to contact

—Continued on page 3

NUGGETEER

ALL WEEK LONG OUR PHONES HAVE REALLY BEEN BUZZING — It appears that the local Borough Assembly has a heated controversy on its hands — over a new zoning ordinance that comes up for public hearing and final passage on Thursday evening shortly after our issue comes off the press.

Homesteaders and property owners outside the city in the borough are hopping mad about the ordinance which they say would have catastrophic consequences should it pass. They say the ordinance would impose such untenable restriction on the land they have worked and slaved and struggled so hard to hold onto, that they

—Continued on page 2

State May File Suit . . . .

–Continued from page 1

him, since Schlossberg had asked him to delay filing the suit until they could meet on the case. He said Schlossberg was supposed to call him last Wednesday, but had not called as of Friday afternoon.

"You can't wait forever," Pegues noted, "we'll just start preparing the case." He added, "Beirne obviously won't leave the state."

According to Pegues, his office is planning a civil action only, since "you have to show criminal intent for a fraud conviction."

The audit disallowed $537,111 due to lack of supporting documentation and $1,752,432 in costs not allowable under federal guidelines for revenue sharing, but the auditor "accepted $251,951 of expenditures supported by incomplete data . . . which reasonably appeared valid."

COSTS DISALLOWED

Expenditures disallowed by the state included:

–$722,500 claimed for land and land taxes, which the auditor said were not allowable under the guidelines. Though these costs were claimed by LOC, the 1975 annual report of LOC showed no land owned by the corporation. A statement filed by Beirne in May, 1976 said "title to property has been transferred to facility sponsor", but no record of the transfer was found in state files.

–$693,788.90 claimed for "interest on collateralized property – plus – salary of coordinator," which the auditor said was not allowable under the guidelines. The salary for the project director was $30,000 per year for a half-time position, while the assistant project director received a salary of $20,000 per year for a half-time position. Beirne claims the costs were "paid in part by M.F. Beirne, et al, and LOC/FHC" for a six-year period.

–$270,173 claimed for financing and interest fees, which are not allowable under the guidelines.

–$354,000 claimed for salaries and wages disallowed due to "lack of supporting documentation." Elgee said Monday "the expenditures that he was claiming appeared to be SPADA payroll, for people working for SPADA." He said the SPADA books showed no accounts receivable from LOC, which would indicate an apparent double-billing. According to the State Department of Commerce, SPADA was not incorporated until June 22, 1976, just eight days before the end of the audit period.

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FAIRBANKS NORTH STAR BOROUGH
REQUEST FOR PROPOSAL
PUBLIC TRANSIT SYSTEM

Notice is hereby given that the Fairbanks North Star Borough will receive bid proposals for a contractor to operate the Borough Public Transit System.

The proposed contract requires the contractor to provide all supervisory, clerical, operating, and maintenance personnel necessary for the proper and efficient operation of the public transit system.

The Borough intends to provide to the contractor all necessary properties and facilities of such a system, including (a) passenger and service vehicles, (b) gasoline, diesel, and other fuels, oils and lubricants, (c) tires and tubes, (d) repair and replacement parts and materials, (e) shop and repair facilities

State May File Suit . . .

–Continued from page 3

--$100,000 claimed for a 1976 design construction agreement, which was disallowed for lack of supporting documentation.

–$65,971.56 claimed for legal expenses, which are not allowable under the guidelines.

–$25,000 claimed for travel expenses, disallowed for lack of supporting documentation. According to Beirne's May 30 statement, the travel was during the period of 1969 through 1976, including $16,805 disallowed by HEW for years 1972-74, which he said was paid for by LOC/FIIC. Also included were trips by Beirne to Washington, D.C., Los Angeles, Seattle and San Francisco.

–$21,600 claimed for office rent, disallowed for lack of supporting documentation. Beirne claims that one of his other corporations, Raypath, provided $3600 per year in office and utility expense for six years of LOC.

–$14,400 claimed for telephone costs disallowed for lack of supporting documentation. Beirne claimed $200 per month in telephone costs for a period of six years.

–$10,000 in miscellaneous expenses disallowed for lack of supporting documentation. Beirne claimed that figure for "miscellaneous office supplies, entertainment, promotion, etc." for the years 1970-76.

NO FURTHER FUNDING

Community and Regional Affairs Commissioner Lee McAnerney, who originally approved the LOC revenue-sharing funds, said Beirne has twice approached her department for further spending. She said she would not approve any further funding for the project.

The Department of Revenue's field audit supervisor said he was "completely unaware" of the LOC audit. According to one source, who declined to be identified, a copy of the audit was given to a Department official late last month. The field audit supervisor appeared

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Organic Act . . .

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under certain guidelines. Previously, Congress had to expressly authorize the sale of mineral lands.

–Requires the owner of an unpatented lode or placer mining claim to file those claims with the BLM.

–Provides for loans to Alaska of 55 per cent of the mineral funds the state is entitled to receive, in advance of mineral development. Alaska gets 90 per cent of the mineral revenues derived by the federal government from sales, bonuses, royalties and rentals on public lands in the state. The loans made against these funds would be for the purpose of preparing for the impact of mineral development.

State May File Suit . . .

–Continued from page 11

surprised that he had not yet seen the audit and said he would investigate the matter.

BACKGROUND OF LOC

The background of LOC and its hospital is a long and tangled web of paperwork in state files. LOC was formed in 1970. Beirne began construction on the hospital in mid-1973, as a private project.

In April of 1974, Frederick McGinnis, then Commissioner of Health and Social Services, wrote to Bryon Mallot, then Commissioner of C&RA that the clinic might not be qualified to receive state funds since statutory provisions "specify that a health facility must be permanent and in operation by July 1 of any entitlement year." He noted that "it is highly unlikely that the Lake Otis Hospital will meet these requirements any earlier than July 1, 1975."

In July, 1974, construction was halted when additional financing became impossible, Beirne told the Anchorage Times last week. In 1974, though he denied that construction had stopped permanently, saying construction would resume later that month. He said the completion date would be no later than September 1975.

In December 1974, McGinnis certified the project for revenue sharing, just before he left office, following an opinion from the Attorney General.

A month later, Anchorage Borough Mayor Jack Roderick wrote to McAnerney, who had just been appointed C&RA Commissioner, protesting the granting of any revenue sharing funds for LOC. He wrote, "the cessation of construction activity at the site . . . has given us cause for concern about the appropriateness of revenue sharing funds for this purpose."

Roderick noted that the Borough's Comprehensive Health Planning Council (CHP) had "opposed the project for some time" because their projections showed that another acute health care facility was not needed. He said CHP felt the increased cost to the general public to support the "surplus acute care hospital" would be about $3.5 million annually.

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State May File Suit . . .

--Continued from page 16

PRONOUNCED RELUCTANCE

In her reply to Roderick on Jan. 31, 1975, McAnerney said that despite the objections of the Borough and the "pronounced reluctance" of the Department of Health and Social Services, she had determined that her department "cannot withhold payment . . . due the Lake Otis Hospital."

In a letter to Beirne the same say, McAnerney said the $312,500 revenue sharing grant had been issued. She noted the borough opposition, saying their objections were "beyond the scope of inquiry" of her department. She asked Beirne to provide C&RA with an accounting of the entitlement funds transmitted.

A 1974 financial statement for LOC, prepared by the CPA firm of Peat, Marwick, Mitchell and Co., showed liabilities on Dec. 31, 1974 of $1.2 million in excess of LOC's current assets, along with a $419,000 fund deficit. It noted the subsequent receipt of the revenue sharing grant, with the notation that "these funds were used to reduce the Company's current liabilities."

In April, 1975, Beirne was appointed to the State House of Representatives, replacing Tom Fink, who resigned at that time.

In June, 1975, Health and Social Services Commissioner Francis S.L. Williamson wrote a letter to D.D. Emmal, who was identified as vice president of LOC. He said LOC was not eligible to receive federal Hill-Burton funds, since the construction of LOC was disapproved by the Anchorage CHP in Feburary 1972 and since the Hill-Burton State Construction Plan showed a potential excess of hospital beds in Anchorage if Lake Otis Hospital were built.

"Until such time as the excess beds are utilized and a bed need exists," he wrote, "no Hill-Burton funds can be used for construction of additional beds in the Anchorage area.

Emmal's name has not appeared on any other paperwork connected with LOC. However, Emmal is a director of Lake Otis, Inc., a profit-making corporation. The other directors of Lake Otis, Inc. are Michael Beirne and Corinne Beirne. The All-Alaska Weekly has been unable to determine what relationship, if any, exists between Lake Otis, Inc. and Lake Otis Clinic, Inc.

AUDIT CONDUCTED

An October 1975 meeting between state officials concerning the Lake Otis project showed considerable discussion of the problems associated with its construction. The participants, including representatives from Health and Social Services, C&RA, the Department of Law and Anchorage CHP, agreed that an audit should be conducted.

Beirne told the Anchorage Times last week that he requested the July audit "to clear the record."

In February, 1976, Beirne testified before the House Community and Regional Affairs Committee when the committee was marking up a bill concerning revenue sharing for hospital. He asked for a change in dates in a section of the bill, which he said would save his corporation additional expenses associated with surety bonding. Beirne claimed his hospital was being "squeezed out by the big corporations."

In May, Beirne wrote to U.S. Sen. Ted Stevens that he "was able to prevail upon the (State Health) Department to revise its analysis of bed need in the Anchorage area." He said LOC would submit an application for federal funds under HEW, writing that "any assistance that

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Tunnel . . .

--Continued from page 12

observe permafrost phenomena in a natural, undisturbed state.

The older tunnel runs through silty soil, while

bridge railing: 360 linear feet of pre-stressed rock anchors and 65 linear feet of rock bolts; and miscellaneous items of work.

In accordance with requirements set-forth by the "Federal Highway Administration", the following provisions are made a part of all advertisements for highway construction contracts:

"bidders must submit certifications stating whether or not they intend to subcontract a portion of the work and, if so, that they have taken affirmative action to seek out and consider minority business enterprises as potential subcontractors. Each bidder intending to sublet part of the contract work shall make contact with potential minority business enterprise subcontractors to affirmatively solicit their interest, capability, and prices, and shall document the results of such contacts. A bidder's failure to submit this certification or submission of a false certification shall render his bid nonresponsive."

Certification form (14-60) and a Directory of Minority Business Enterprises will be included with the bidding documents.

Plans and specifications may be obtained by all who have a bona fide need for them for bidding purposes from the Chief Road Design Engineer, P.O. Box 1467, Juneau, Alaska 99802 at a charge of $10.00 (non-refundable) for each assembly. Checks or money orders should be made payable to: State of Alaska, Department of Highways. Plans may be examined at Department of Highway Offices in Anchorage, Fairbanks, Valdez.

H.D. Scougal
Commissioner of Highways

Pub: Nov. 12, 19 & 26, 1976

LEGAL NOTICE

INVITATION FOR BIDS
STATE OF ALASKA
DEPARTMENT OF HIGHWAYS

Sealed bids in single copy for furnishing all labor, materials and equipment, and performing all work on Project F-RF-031-1(13), Seward Highway, Mile Post 54.5 described herein, will be received until 2:00 p.m. prevailing time, December 9, 1976 in the Commissioner's Office, Department of Highways, Island Center Building, Douglas, Alaska.

This project will consist of grading, drainage and surfacing on 0.44 mile of roadway.

Principal items of work consist of the following: Maintenance and construction of traffic detour, lump sum, all required; clearing and grub-

Fairbanks, Alaska 99701, an answer to the complaint filed in the above-entitled action in this Court; If you fail to do so within twenty (20) days after personal service of this notice upon you, or within thirty (30) days after the last publication of this notice, if it be published, judgment by default may be rendered against you for the relief demanded by the plaintiff.

This is an action for divorce. The relief demanded by the plaintiff is:

(1) That he be granted an absolute decree of divorce from the defendant forever dissolving the bonds of matrimony heretofore existing between them.

(2) For such other and further relief as the Court may deem just and appropriate.

You have been made a party to this action because you are the wife of the plaintiff.

DATED at Fairbanks, Alaska this 10th day of November, 1976.
OLGA T. STEGER
Clerk of the Superior Court
BY Linda Yeager
Deputy Clerk

Pub: Nov. 12, 19, 26; Dec. 3, 1976

LEGAL NOTICE

INVITATION FOR BIDS
STATE OF ALASKA
DEPARTMENT OF HIGHWAYS

Sealed bids in single copy for furnishing all labor, materials and equipment, and performing all work on Project RS-M-0625(1), Peger Road Bridge and Approaches described herein, will be received until 2:00 p.m. prevailing time, Dec. 16, 1976 in the Commissioner's Office, Department of Highways, Island Center Building, Douglas, Alaska.

This project will consist of the construction of a 257 foot pre-stressed concrete bridge, grading, drainage and hot asphalt surfacing on 0.34 miles of roadway, and construction of a sound barrier and a bicycle path.

Principal items of work consist of the following: Unclassified excavation, 15,500 cubic yards; selected material 47,000 tons; aggregate base, grading "C", 2,400 tons; subbase, grading "A", 3,500 tons; hot asphalt pavement, 1,400 tons; asphalt cement, AC-5, 84 tons; beam type guard rail, 712 linear feet; seeding, 113,000 square feet; sound barrier, 1,840 linear feet; class A concrete, lump sum, all required; reinforcing steel, lump sum, all required; prestressed concrete structural members, 24 each; cast-in-place concrete piles, 1,500 linear feet; metal bridge

claim, begin action to quiet title in a court of competent jurisdiction in Alaska, and thereafter patent shall be issued in conformity with the final decree of the court.

Lloyd C. Miller
Acting Chief, Division of
Land Office

Pub: Nov. 12, 19, 26; Dec. 3 & 10, 1976

Suit . . .

—Continued from page 19

your office can give us will indeed be appreciated."

Five days later, Beirne wrote to McAnerney asking for further funds for LOC, which he said were appropriate under the new analysis of bed need. He said the State Plan for Hospital Construction showed a shortage of beds in the Anchorage area in 1981, "contrary to all the nonsense you have heard over the past six or seven years."

ADDITIONAL COSTS

He detailed his new program for construction, asking for "prompt transfer of grant funds to the Lake Otis Clinic, Inc." In June, he sent a further letter, detailing more of the project's costs. Beirne claimed that state matching funds should apply to all "project costs," even if some of the costs had been paid by other parties.

In a June letter, Beirne told McAnerney of "additional project costs" that were not included in the May letter. These included $63,000 paid to consultant Kingston Peters for his work in selling some of Beirne's assets to avoid a bank foreclosure on LOC.

In July, the State Internal

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that the accusations against him were false, why did you not then indict his lying accusers for violating federal laws by making wrong statements and reports? Perhaps this is a matter for the new U.S. Attorney, to be appointed by President CARTER, to look into, at the appropriate time . . .

Or could this be a matter for the muckrakers at the Pulitzer-proud DAILY NEWS to look into — that is, if they can find time away from their kneejerk-reflex baiting of the Alaska Teamsters Union . . . And speaking of the DAILY NEWS, we understand that that grand old lady of Alaskan journalism has once again fallen upon hard times financially, despite her *mesalliance* with Alaska's prototype of the yellow press, the oil-spattered ANCHORAGE TIMES.

Could it be that one of the reasons for the decline in the economic fortunes of the once liberal and humanitarian NEWS (under the stewardship of the late LARRY FANNING), might be found in the fact that, beside the fact that its plant is now nestling cheek-to-jowl with BOB ATWOOD's affluent plaything, the editorial page of the first Alaskan morning paper, so proudly created by NORM BROWN and JACK KAPPON, has become virtually undistinguishable from the ATWOOD-TOBIN effluvium in the afternoon rag — especially when it comes to worship of the golden calf called "pipeline" and the making of public obeisances toward the moguls of Big Oil?

QUOTATION OF THE WEEK:

"No society can make a perpetual constitution, or even a perpetual law."

THOMAS JEFFERSON, (in a letter to Madison), 1789.

Royalty Gas . . .

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legislators prior to the convening of the 1977 session, in order to expedite legislative action on the agreements.

If either the Royalty Board or the legislature rejects the agreements, other alternatives will be pursued by the administration, he said.

Warwicks Parents Again

Andy and Judy Warwick of Fairbanks became parents for the second time Wednesday evening, when their nine pound, 14 ounce son was delivered at Fairbanks Memorial Hospital around 6 p.m. A name has not yet been selected. They also have a daughter, 2½.

State May File Suit . . .

—Continued from page 22

Audit was released, which disallowed most of Beirne's claimed expenditures. In a cover letter, Commissioner of Administration Andy Warwick said the claimed expenditures had been measured in compliance with Hill-Burton regulations. He said he expected LOC would pursue the matter, both on the overpayment and C&RA's refusal to grant further funds.

"Our support of the Hill-Burton position is that it is consistent with like sharing,' Warwick wrote, adding it "is authorized and confirmed in a 1972 Attorney General's position, and recognizes reasonableness."

On Sept. 21, Beirne was told the overpayment would have to be returned if his accountant was unable to satisfy the auditor that sufficient expenses had been incurred.

On Sept. 30, Beirne wrote to Pegues, stating "my understanding is that at this particular moment the State auditor has indicated that the records submitted by our accountant do reflect that more than sufficient funds were expended to qualify for the entire state grant."

Beirne said the law provides for matching funds for "total costs of the project, not certain costs."

FUNDS NOT REPAID

Since that time, the funds have not been repaid, nor has a satisfactory accounting been made, according to Pegues. A memo from Pegues to Attorney General Avrum Gross states that "Beirne has financial problems and has not proceeded. He has already received $97,039 more than he should have, and he has incurred no new eligible costs to make up the difference, let alone qualify for more funds."

The memo continues, "C&RA says that the transaction as entered into was not technically authorized by the law and that it was not open-ended. Beirne was to perform within a given period of time and has not . . . While these issues have yet to be explored, there may be something to them."

The All-Alaska Weekly repeatedly attempted to contact Beirne for comment on the LOC controversy, but Beirne failed to return any calls.

REPORT ON EXAMINATION

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

STATE REVENUE SHARING

LAKE OTIS HOSPITAL

Re: SCR 13+14

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

STATE INTERNAL AUDITOR

REPORT ON EXAMINATION OF

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

STATE REVENUE SHARING

LAKE OTIS HOSPITAL

We have examined the costs of land, interest and financing as reported by Lake Otis Clinic, Inc., (LOC), a nonprofit corporation presumably building a hospital in Anchorage, Alaska. By prior report, we previously examined costs as reported by LOC, using State imposed Hill-Burton Regulations. (Schedule A) Those regulations exclude expenditures for land, interest and financing, consequently, our initial report did not address those costs for validity or authenticity since they would have been disallowed by governing rules regardless of the findings. However, LOC expressed concern that those costs for land, interest and financing disallowed by Hill-Burton Regulations are reasonable and necessary costs of construction. This review was encouraged by the Department of Community and Regional Affairs and the Department of Law and applies to costs not reviewed earlier, and to events occurring subsequent to our prior examination, that measure the reasonableness of claimed expenditures and the probability of actual physical construction given current circumstances.

We remain firm in our belief that Hill-Burton Regulations are reasonable and that certain costs are disallowed for sound reasons.

We examined all supporting documentation presented by LOC as representing costs for land, interest and financing. In addition, we have consulted outside experts in certain areas of complexity.

INTEREST AND FINANCING

Interest and financing expenses charged to the hospital project as of June 30, 1976 amounted to $963,961.96. (Schedule B) These expenses were derived from two notes totaling $900,000. (Schedule D) The first note, for $750,000, was borrowed in installments over an eight month period from November 1, 1973 to June 17, 1974. (Schedule D) These funds were borrowed basically upon the strength of credit of a guarantor. LOC obtained the guarantor to the notes based upon the security of certain properties held by LOC and M. F. Beirne, the company's president.

The property used as security came from Raypath Inc., Kelly Supply Co., and Lake Otis Inc. These companies have the same corporate structure as LOC. The companies have the same board members and the president of each is M. F. Beirne.

LOC borrowed an additional $150,000 (Schedule D) on June 17, 1974, again based upon the credit strength of the guarantor. The first note became due on August 29, 1974 but LOC had no funds to make either the interest or principal payments and on September 16, 1974 the guarantor was forced to pay the interest to date on both the first and second notes. LOC received an extension at this time to correspond with the due date of the second note, November 28, 1974. But again LOC could not pay the notes and the guarantor was again forced to pay the interest to date. LOC received another extension to March 17, 1975 but again could not make payment and on that date the guarantor was forced to pay the full amount due on both the principal and interest.

LOC is currently trying to repay the $1,021,294.23 (See Schedule G) obligation to the guarantor of the notes by selling those properties which were used to secure the notes and turning over the net proceeds to the guarantor.

In addition to the obligation to the guarantor, LOC is also being charged by M. F. Beirne, 6% interest on the appraised value of the property used to secure the notes. The amount claimed for the use of this collateralized property, including interest, as of June 30, 1976 was $693,788.90. (See Schedule B)

The interest being charged to the costs of construction of the hospital all stem from the initial obligation of $900,000. (Schedule E) If the loans had been honored on the original due date there would have only been $61,617.19 (see Schedule E) in finance charges. Instead LOC has claimed as of June 30, 1976, $963,961.96 (Schedule B) in interest and financing expenses associated with these loans, and interest is still continuing to accummulate. (Schedule F)

INTEREST SUMMARY

LOC has claimed over $963,961.96 in financing expenses based upon loans of only $900,000. These costs claimed by LOC for interest and financing appear to us to be unreasonable. If LOC had paid those notes when originally due there would have been $61,617.19 in interest expenses. The State of Alaska is being asked to reimburse LOC's finance charges which were allowed to accumulate due to their own fiscal insolvency. In addition, the State has been asked to reimburse LOC for interest expenses due on the use of the collateralized property being used to secure the debt. These collateralized properties were supplied by M. F. Beirne, the president of

LOC. We believe Hill-Burton Regulations were created to specifically protect the government from situations of this type. We do not believe that the State should modify its position for the use of Hill-Burton Regulations, and we think it would be unwise for the State to set a precedent by reimbursing these expenses.

LAND

During our examination of the $710,500 claimed by LOC as the cost of land, a question of ownership arose. The Certified Public Accountant for LOC, produced a Statutory Warranty Deed and Quitclaim Deed dated September 28, 1973 showing the transfer of Tract 3 Medical Park Subdivision to Lake Otis Clinic, Inc. He also presented us with a document representing taxes paid on this property. The property description and legal owner of record was, however, omitted from the xerox copy.

Our inquiries to the borough assessor as to the legal owner of record, showed that GHS-Anchorage Hospital, Inc. is listed as the legal owner. In view of this apparent descrepancy regarding ownership of the property, we requested a title search from Transamerica Title Insurance Company. Their findings indicate that title is indeed vested in GHS-Anchorage Hospital, Inc., an Alaskan corporation. The corporation is wholly owned by General Health Services, Inc., (GHS), a Delaware registered corporation, with headquarters in Culver City, California.

GHS has been associated with LOC since early 1972, when an agreement was reached in which LOC would lease the hospital to GHS. GHS was to operate it on a 25 year lease and operating contract. The 25 year lease would provide for 100% amortization of the mortgage debt and all expenses associated with the construction and operation of the hospital. The land was to have been leased to LOC by M. F. Beirne.

Before construction began, GHS required an indemnification agreement from LOC which would protect GHS from any liability it might incurr in the construction of the hospital. Under this agreement construction was to begin immediately by using borrowed funds up to a maximum of $750,000. Further construction was to await permanent financing.

The $750,000 (Schedule D) was borrowed from Peoples Bank and Trust (PBT) and obtained basically on the strength of GHS credit. CHS was in turn, indeminified against any loss, by M. F. Beirne, should permanent financing not be available. Beirne secured the loan with various real estate properties including the hospital site and land adjacent thereto. PBT recorded Deeds of Trust on all properties used as security, as did GHS. During the same period, M. F. and

Corine A. Beirne, conveyed their ownership of Tract 3 Medical Park Subdivision to LOC. There was evidence to indicate that the land may have been given to LOC with an agreement to either Purchase or lease it from the Beirnes' at a later date. No sales price was established at the time of transfer. In May of 1975 the Board of LOC voted to pay $710,500 for the land. The Board, at that time, comprised of M. F. and Corine A. Beirne and Donald D. Emmal proceeded to draw up an 8% interest note to M. F. Beirne in the amount of $710,500. We found no indication of any payments being made by LOC on this note.

LOC expended the full $750,000 borrowed from PBT without obtaining permanent financing. Construction on the project was halted in Febraury of 1974. However, In June of 1974, LOC obtained another loan from PBT under the same conditions as the previous note, in the amount of $150,000. (Schedule D) This appears to have been to pay the costs prior to the halt of construction incurred over and above the $750,000. PBT recorded another deed of trust, as did GHS, in the amount of $150,000. LOC also obtained an extension of the due date on their first note. Permanent financing again was not obtained and consequently LOC asked for an extension on the due date of their notes. PBT granted the extension, but increased their interest rates on both notes.

During this time LOC applied for an in February of 1975, received $312,500, in hospital construction aid, from State revenue sharing funds. However, this did not remedy LOC's immediate financial situation. In March, 1975, PBT would no longer grant an extension on the notes. The guarantor, GHS, on March 17, 1975 paid off the notes obtaining from PBT through assignment their Deeds of Trust on the property. Shortly thereafter, GHS-Anchorage Hospital, Inc. obtained from LOC a Statuatory Warranty Deed, on Tract 3 Medical Park Subdivision, conveying title from LOC to GHS-Anchorage Hospital, Inc. LOC was initially given until May 31, 1975 to pay what then amounted to $900,000 payment on guarantee and $121,294.23 interest, payable to GHS, or GHS would foreclose on the secured property and sell it at public auction. It appears that LOC received an extension to the May 31, 1975 dead line, and on October 27, 1975 recorded a caveat on the secured property which claimed that the Warranty Deed was no more than a security arrangement and did not convey title.

On November 12, 1975, there was recorded a "Notice of Default and Sale" stating that the trustee of the Deed of Trust elects to sell the secured property." The property was to be sold on February 25, 1976. LOC obtained an extension of the foreclosure by giving additional collateral to GHS to secure LOC's promise to pay. It appears that M. F. Beirne, President of LOC, has been selling the collateralized properties and turning over the net proceeds to GHS. He has

tried repeatedly to sell the properties to interested parties and has incurred large expenses related to this activity. He is claiming these expenses as part of the construction costs, together with all interest accummulated on the original debt and subsequent financing arrangements. The amount owed as of December 31, 1976, was $675,815.37 comprised of $525,815.37 due GHS and $150,000 due National Bank of Alaska borrowed and paid by M. F. Beirne, to forestall foreclosure. (Schedule H and F)

LAND SUMMARY

The land was transferred to LOC by M. F. and Corine A. Beirne, both of whom sit on the Board of LOC, of which there are only three members. Two years after the transfer of the land to LOC, the Board voted to pay M. F. Beirne the current appraisal price for the land. M. F. Beirne, President of LOC drew up a note to himself for $710,500.

To date we have not been provided with any evidence that payments have been made by LOC for the land. Yet, LOC has claimed as eligible construction costs $710,500. (Schedule C) The dollar amount is arbritrary and questionable since M. F. Beirne is in a position to dictate corporate policy. The Certified Public Accountant for LOC asked reimbursement for only $400,000, the appraisal price at the time of transfer. The fact that both LOC's CPA and M. F. Beirne disagree upon the price to be reimbursed for the land, indicates that the price was not derived from an arms length transaction. The price for which LOC is claiming reimbursement could just have easily been lower, higher or somewhere in between.

LOC no longer has title to the land for which they claimed reimbursement, and on which the present construction rests. The State of Alaska gave money to LOC in the belief that a hospital would be built for public purpose. However, there now appears to be great doubt as to whether this will happen. The State of Alaska has paid $312,500 to LOC, supposedly for construction purposes. AS 43.18.010(j) is silent as to the legal protection to the State of Alaska to insure that construction will take place, or that in the event construction does not, or cannot take place, that the State will be returned those funds it has contributed toward the project.

CONCLUSION

LOC received State revenue sharing monies under AS 43.18.010. The intent of this statute is to provide funding support to local governments and other facility sponsors for the purpose of constructing facilities which will be utilized for a public purpose. This coincides with Article IX, Section 6 of the Alaska Constitution, which clearly states that no appropriation of public money shall be made except for a public purpose.

At the time Health and Social Services, (HSS) certified LOC to receive State revenue sharing monies, they did so under the premise that indeed a hospital would be built. However, at the time they certified LOC, construction had been halted for almost one year, LOC could not repay its notes from PBT, and there appeared to be no permanent financing available for the construction to continue. HSS was aware of the halt in construction but felt that it was bound by that part of AS 43.18.010(j) which states: If construction of a facility began after January 1, 1968....

Construction had begun in 1973, therefore this prerequisite of the statute had been met. The statute does not require that construction activity be continuing at the time of the application.

Construction of the facility has not continued since it stopped in early 1974. Financing for the project still appears to be unobtainable. The site of the construction has been conveyed to a party which at any time could foreclose on the notes due. The present wording of AS 43.18.010(j), when applied to a non-governmental facility sponsor does not address the protection to the State as far as getting a finished product for its revenue sharing dollars. As we have discussed, nothing assures the continued vitality of the construction project. The State may find that its revenue sharing money has gone to pay a past debt and no hospital will ever be fully constructed and in use by the people of Alaska. There must be good faith on the part of the grantee to fulfill his stated goals. The grantee in this case has voluntarily jeopardized the interest of the State as intended by AS 43.18.010(j).

We recommend that CRA ask for the return of those funds given to LOC, and that no subsequent payments be made until such time as LOC provides an accurate accounting of construction costs, obtains permanent financing, and has title to the land for the hospital site dedicated irrevocably to a public purpose.

21-05

George Elgee

SCHEDULE A

LOC

SCHEDULE OF REPORTED COSTS

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

STATE REVENUE SHARING PROGRAM

LAKE OTIS HOSPITAL PROJECT

STATEMENT OF TOTAL PROJECT COSTS AND AUDIT ADJUSTMENTS

AS OF 6/30/76

	Costs claimed by Lake Otis Clinic, Inc.	Costs disallowed from previous audit *
Construction Costs:	$575,175.00	$
Architectural Expenses:	206,392.74	
Legal Expenses:	65,971.56	(1) 65,971.56
Accounting & Feasibility Study:	44,770.63	
Engineering Expenses:	26,411.29	
Financing & Interest:	270,173.06	(2) 270,173.06
Land & Land Taxes:	722,500.00	(3) 722,500.00
Travel:	26,205.72	(4) 25,000.00
Telephone:	14,400.00	(5) 14,400.00
Salaries & Wages:	354,000.00	(6) 354,000.00
Office Rent:	21,600.00	(7) 21,600.00
1976 Design Construction Agreement:	100,000.00	(8) 100,000.00
Miscellaneous Expenses:	10,000.00	(9) 10,000.00
Expenses per Checking Account:	20,000.00	(10) 12,111.49
Interest on Collateralized Property - Plus - Salary of Coordinator:	693,788.90	(11) 693,788.90
	$3,151,388.90	$2,269,545.01

* See accompanying notes.

NOTES TO SCHEDULE A

Notes - Audit Adjustments

(1) Costs of legal services are not allowable other than those incidental to the acquisition of sites for public health centers - (* Health Grant Manual 24-2.3)

(2) Costs incident to the loan such as legal fees, financing fees, or interest during construction are not allowable - (Health Grant Manual 24-2.4B)

(3) The cost of the site, including acquisition costs such as title search, title clearance and settlement fees, is not allowable, . . .- (Health Grant Manual 24-2.3B)

(4) Disallowed due to lack of supporting documentation

(5) Disallowed due to lack of supporting documentation

(6) Disallowed due to lack of supporting documentation

(7) Disallowed due to lack of supporting documentation

(8) Disallowed due to lack of supporting documentation

(9) Disallowed due to lack of supporting documentation

(10) Disallowed due to lack of supporting documentation

(11) Costs incident to the loan such as legal fees, financing fees, or interest during construction are not allowable - (Health Grant Manual 24-2.4B)

* HEALTH GRANT MANUAL NOTICE 5-110 for TITLE 2, CONSTRUCTION AND MODERNIZATION OF HOSPITAL AND MEDICAL FACILITIES (August 12, 1971)

SCHEDULE OF

INTEREST AND FINANCING FEES

REPORTED BY LOC AS OF JUNE 30, 1976

DESCRIPTION[1&2]	LOC REPORTED COSTS	
FINANCING AND INTEREST:	$	$
Interest Expense Peoples Bank & Trust	44,009.35	
Estimated Interest & Financing	221,163.71	
Other Financing Costs Paid By Related Company	5,000.00	
		$270,173.06
Interest on Collateralized[2] Property - Plus - Salary of Coordinator	$	
Fee paid to Peters from Beirne Account 1975-76 TOTAL	17,538.90	
Commission Paid Through June 1, 1976 - Cook Inlet Sale Also To Be Paid Bonus on Completion	46,250.00	
Calculations of Project Costs- Lake Otis Hospital:		
Concerning the Use Rental of the specific collateralized properties identified in the corporate minutes of August 28, 1973. Based on appraised property values of $3,500,000. at 6% interest per annum.		
July 1, 1973 to July 1, 1974 $210,000.00		
July 1, 1974 to July 1, 1975 210,000.00		
July 1, 1975 to July 1, 1976 210,000.00		
	$630,000.00	
		$693,788.90
TOTAL INTEREST & FINANCE EXPENSE:		$963,961.96

1 Description comes from schedules of Reported Expenditures dated October 31, 1975.

2 Description of collateralized property come from Scheduled Expenditures dated June 23, 1976.

SCHEDULE C

SCHEDULE OF LAND COSTS CLAIMED BY LOC

DESCRIPTION [1]	COSTS CLAIMED BY LOC
Land for hospital site. (Title to property) has been transferred to facility sponsor, 203,000 sq. ft. at $3.50 sq. ft.	$ 710,500.00
Land taxes to GAAB paid by M. F. Beirne, 1969 to 1976	12,000.00
TOTAL LAND COSTS	$ 722,500.00

1) Description comes from schedule of reported costs, dated May 30, 1976, from LOC signed and sworn to by Michael F. Beirne.

SCHEDULE D

SCHEDULE OF NOTE(s)

FROM PEOPLES BANK & TRUST TO LOC

11/1/73 through 3/17/75

DATE	1ST NOTE AMOUNT BORROWED	(1) INTEREST PAID	DATE INTEREST PAID TO	1ST NOTE PRINCIPLE PAYMENTS	2ND NOTE AMOUNT BORROWED	(1) INTEREST PAID	DATE INTEREST PAID TO	(1) 2ND NOTE PRINCIPLE PAYMENTS	2ND NOTE INTEREST PAID TO ORIGINAL DUE DATE (8/29/74)	2ND NOTE INTEREST PAID TO ORIGINAL DUE DATE (11/28/74)
11/1/73	$207,381.5	$		$	$	$		$		
11/13/73	145,000.00									
12/6/73	225,000.00									
2/4/74	35,000.00									
2/14/74	10,000.00									
4/12/74	120,000.00									
6/17/74	7,618.50				150,000.00					
10/10/74		52,419.96	8/30/74			3,649.27	8/30/74		52,419.96	3,649.27
12/11/74		27,739.76	11/28/74			5,547.96	11/23/74			5,547.96
3/17/75		31,356.67	3/17/75	750,000.00		6,271.33	3/17/75	150,000.00		
	$750,000.00	$111,516.39		$(750,000.00)	$ 150,000.00	$15,468.56		$(150,000.00)	$52,419.96	$ 9,197.23

1) Note: Interest payments made by GHS See Schedule G Note (1)

SUMMARY OF SCHEDULE D

TOTAL BORROWED, TOTAL INTEREST PAID,

TOTAL INTEREST DUE & PAID AT NOTES ORIGINAL DUE DATE

	SCHEDULE (D)
Total Borrowed:	
Note 1	$ 750,000.00
Note 2	150,000.00
	$ 900,000.00
Total Interest Paid:	
Note 1	$ 111,516.39
Note 2	15,468.56
(Schedule G Breakdown)	$ 126,984.95
Total Interest Due and Paid At Notes Original Due Date	
(8/29/74) Note 1	$ 52,419.96
(11/28/74) Note 2	9,197.23
	$ 61,617.19

SCHEDULE F

GHS SCHEDULE OF GUARANTEE PAYMENTS AND RECEIPTS FROM DR. BEIRNE
GENERAL HEALTH SERVICES, INC. - ANCHORAGE
RECEIVABLE FROM DR. BEIRNE - PRINCIPAL AND INTEREST
AS OF DECEMBER 31, 1976

of ica e rate	Payment Terms	Number of Days	Amount of Payment (Receipt)	Application of Payments Principal	Application of Payments Interest	Interest	Accrued Interest	Principal Balance
	*10/04/74 to 12/09/74	66	$ 51,069.23 [2]			$ 1,200.48	$ 1,200.48	$ 51,069.23
	*12/09/74 to 01/01/75	22	33,287.72 [2]			660.99	1,861.47	84,356.95
	01/01/75 to 03/11/75	70				1,820.03	3,681.50	84,356.95
	*03/11/75 to 04/01/75	20	936,246.56 [2]			6,291.39	9,972.89	1,020,603.51
	04/01/75 to 05/07/75	37				8,793.97	18,766.86	1,020,603.51
	*05/07/75 to 07/01/75	54	690.72 [2]			12,843.12	31,609.98	1,021,294.23
	07/01/75 to 10/01/75	92				20,593.77	52,203.75	1,021,294.23
	10/01/75 to 01/01/76	92				23,167.99	75,371.74	1,021,294.23
	01/01/76 to 02/09/76	40				9,233.62	84,605.36	1,021,294.23
	02/09/76 to 02/18/76	9				2,077.56	86,682.92	1,021,294.23
	*02/18/76 to 04/01/76	43	(468,243.92)	$ 381,561.00	$ 86,682.92	6,217.68	6,217.68	639,733.23
	04/01/76 to 05/14/76	43				5,840.85	12,058.53	639,733.23
	*05/14/76 to 06/08/76	25	(12,463.80)	405.27	12,058.53	3,393.69	3,393.69	639,327.96
	*06/08/76 to 06/28/76	20	(15,563.52)	12,169.83	3,393.69	2,663.27	2,663.27	627,158.13
	*06/28/76 to 07/01/76	3	(327.72)		327.72	399.49	2,735.04	627,158.13
31/76	Sub-Total By GHS		$1,021,294.23					
	Total Payments from M. F. Beirne		(496,598.96)					
	Total Receipts		524,695.27	$ 394,136.10	$102,462.86	$105,197.90	$ 2,735.04	$ 627,158.13
	07/01/76 to 08/11/76	41				5,811.95	8,546.99	627,158.13
	*08/11/76 to 09/13/76	2	(13,745.58)	5,198.59	8,546.99	281.16	281.16	621,959.54
	08/13/76 to 09/14/76	32	(511.66)	230.50	281.16	4,496.89	4,496.89	621,729.04
	*09/14/76 to 10/01/76	17	(12,952.17)	8,455.28	4,496.89	2,356.48	2,356.48	613,273.76
	10/01/76 to 11/04/76	34				4,570.15	6,926.63	613,273.76
	*11/04/76 to 12/31/76	57	(150,000.00) [1]	143,073.37	6,926.63	5,874.28	5,874.28	470,200.39
		819	$ 347,485.86	$ 551,093.84	$122,714.53	$128,588.81	$ 5,874.28	$ 470,200.39
	Total Payments		$1,021,294.23					
	Total Receipts		(673,808.37)					
			$ 347,485.86					

* Date paid or received by General Health Services, Inc.
[1] New note from National Bank of Alaska
[2] Payment made by GHS on notes (Schedule D)

SCHEDULE G

SCHEDULE OF

GENERAL HEALTH SERVICES, INC. - ANCHORAGE

TOTAL AMOUNT RECEIVABLE DR. BEIRNE

AS OF JUNE 30, 1976

Payments on Guarantee:	$ 900,000.00
Interest Paid to Peoples Bank & Trust by Guarantee	$ 121,294.23[1]
Total Amount Paid by GHS on the Two Notes	$1,021,294.23
Interest Charged on Above Amount at 1% Over Prime as of 6/30/76	$ 105,197.90
Less Payments of Principal and Interest	$(496,598.96)
Principal and Interest 6/30/76 $627,158.13 and $2,735.04	$ 629,893.17

	Schedule E	
(1)	Total Interest	$ 126,984.95
	Total Paid by Guarantee	$ 121,294.23
	Paid by an LOC Related Company	5,690.72
		$ 126,984.95

SCHEDULE H

GENERAL HEALTH SERVICES, INC. - ANCHORAGE

TOTAL AMOUNT DUE FROM DR. BEIRNE

AS OF DECEMBER 31, 1976 (1)

Payment on Guarantee (2)	$ 900,000.00
Interest Paid to Peoples Bank & Trust (2)	121,294.23
	$1,021,294.23
Interest charged on the above at 1% over prime (3)	128,588.81
Less payments of principal and interest (3)	(673,808.37)
Principal and interest 12/31/76, $470,200.39 and $5,874.28 (3)	476,074.67
Legal Expense (Does not include all costs accrued or unbilled through 12/31/76)	43,344.70
Al Oaks - appraisal survey	2,748.00
Alaska Geological - paid to Chanen Construction Company	3,648.00
Total Receivable December 31, 1976	$ 525,815.37

(1) This Schedule was reproduced from GHS records.

(2) Schedule D

(3) Schedule F