

HB

302

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

POUCH B
JUNEAU, ALASKA 99811

April 27, 1979

The Honorable Bill Parker
Chairman
House Community and Regional
Affairs Committee
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Mr. Chairman:

RE: HOUSE BILL NO. 302

At the request of your staff, we have reviewed House Bill No. 302. We have four major concerns with the concepts contained in this legislation.

1) The idea of taxpayers residing in an area of a borough receiving few services, helping pay for a higher level of service in another area of the borough, appears to be unfair. It is difficult to justify a system requiring these taxpayers to finance services provided to others, even though this bill requires voter approval. High millage service areas, generally speaking, are those with concentrated populations and, therefore, concentrated voter power. It would not be difficult to obtain voter approval for an ordinance reducing the millage in highly populated areas at the expense of less populated areas receiving only minimal services. As the bill is drafted, only an areawide vote is required.

2) In order for a borough to provide the same level of service areawide, and fund service areas as contemplated by this proposed legislation, substantial millage increases would be required on an areawide basis or, ultimately, the tax base would have to be significantly increased. Again voter approval would not necessarily be an obstacle because the concentrated population centers would more than likely receive an actual decrease in millage, again at the expense of residents in the less populated areas receiving few services.

3) There could be a fiscal impact on the State if those boroughs that collect substantial oil and gas revenues and have substantial numbers of service areas were to fund those service areas by an areawide millage. The two boroughs with the greatest ability to impact State revenue collections would be the Kenai Peninsula Borough and Fairbanks North Star Borough. The following examples assume total conversion to areawide millages and are based on 1978 millage rates and values.

Example #1 - The Kenai Peninsula Borough currently levies an areawide millage of 4.50 mills; additionally, it levies additional service area millages of as much as 16.5 mills more in some areas. State assessed oil and gas properties (AS 43.56) are in areas with low millage. If this bill were to pass and one areawide rate were levied to maintain the current level of services, we estimate that rate would have to be raised to be 6.22 mills. The State of Alaska currently levies 20 mills on all state assessed oil and gas property and credits owners of this property for local property taxes paid. Any increase in local taxes on State assessed oil and gas property results in an equal decrease in State revenue. Therefore, the provision that would provide a boroughwide levy for local services could, we estimate, decrease State revenue \$518,827.

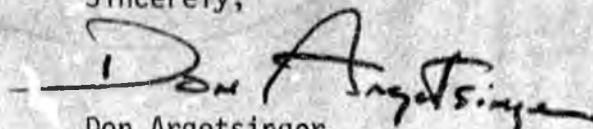
Example #2 - Fairbanks North Star Borough currently levies 7.20 mills areawide and has service areas that levy as much as 8.50 mills more. Again, assuming an areawide levy to maintain current service levels, an areawide millage rate of 10.13 would be required. Applying this new millage rate to State assessed oil and gas property in this borough results in an estimated increase in local taxes from this source in the amount of \$1,655,816. This, of course, would be a direct reduction in State revenues.

4) There have been several bills introduced this session that will either create or extend exemptions from property taxes (HB 103, HB 314, and SB 64, etc.). The impact of these decreases in tax base would be magnified. To illustrate this concern, assume passage of one of those bills. If the optional \$10,000 residential exemption were increased to \$50,000 and opted for by the Kenai Peninsula Borough and also assuming complete funding of all services at the current level by areawide levy, then the following would occur. An areawide levy of 7.22 mills and a reduction of millage from current rates of approximately 60% in cities and increase of approximately 60% in many areas outside of cities. As an example of the tax increase in low service areas under these conditions; currently the local oil and gas property owners pay \$2,289,026 to the borough. Under the assumed conditions they would pay \$3,269,724. Again, the difference of \$971,698 is a loss of revenue to the State. This same relationship could be transferred to every non-residential property located in less populated areas of the borough.

Although expression of these concerns necessitated some assumptions, we feel these assumptions are a realistic analysis of the possible results of implementation of this legislation.

The Department appreciates the opportunity to comment.

Sincerely,



Don Argetsinger
Deputy Commissioner

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 19, 1979

SUBJECT: HB 302 - Appropriations and grants to service areas

TO: Representative Bill Parker

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

As you requested, I have reviewed the letter from Mr. Hartig relating to this bill. Art. X, sec. 5 of the constitution is a grant of power, not a limitation of power. Under the uniformity of taxation, principle courts have frequently held that differential taxation based on difference in service rendered is unconstitutional. The effect, and intended effect as the Constitutional Convention minutes make clear, is to allow differential taxation which is not otherwise allowed. There is no limitation expressed in the section nor do I think a limitation that no method of funding special services other than from taxes, charges or assessments within the service area may be implied.

He also cites Concerned Citizens of South Kenai Peninsula v. Kenai Peninsula Borough, 527 P.2d 447 (Alaska 1974). That case upheld the creation of a hospital service area by the borough. The court does hold that:

Substantive due process is denied when a legislative enactment has no reasonable relationship to a legitimate governmental purpose. It is not a court's role to decide whether a particular statute or ordinance is a wise one; the choice between competing notions of public policy is to be made by elected representatives of the people. The constitutional guarantee of substantive due process assures only that a legislative body's decision is not arbitrary but instead based upon some rational policy.

A court's inquiry into arbitrariness begins with the presumption that the action of the legislature is proper. The party claiming a denial of substantive due process has the burden of demonstrating that no rational basis for the challenged legislation exists. This burden is a heavy one, for if any conceivable legitimate public policy for the enactment is apparent on its face or is offered by those defending the enactment, the opponents of the measure must disprove the factual basis for such a justification.

Although in later cases, most specifically in State v. Erickson, 574 P.2d 1 (Alaska 1978) our court has adopted a less deferential approach, a reasonable basis test will still be applied. Since grants from a unit of government with a broader tax base to a unit with a narrower base is today a commonplace feature of government, in my opinion a reasonable basis exists.

BGB:jdn

COLE, HARTIG, RHODES, NORMAN & MAHONEY

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March 23, 1979

REPLY TO:
Anchorage

OF COUNSEL:
G. KENT EDWARDS

Representative Bill Parker
Community & Regional
Affairs Committee, Chairman
Pouch V
Juneau, AK 99811

Re: H.B.-302 "An act relating
to appropriations and grants
from boroughs to service
areas and cities; and pro-
viding for an effective date."
Our Reference 844-19.3

Dear Representative Parker:

On behalf of my client, the City of Kodiak, Alaska, I want to express an opposition to the passage of H.B.-302 introduced on February 26, 1979 and sponsored by Representatives Hugh Malone and Margaret Branson.

The bill proposes to amend Chapter 29 of the Alaska Statutes to provide that boroughs may, by ordinance and after holding an areawide election on the question, authorize appropriations from areawide taxes or other areawide revenues to finance all or part of a special service.

The City's opposition to this proposed legislation is based upon several grounds. First, it is questionable that the legislation, if passed in its present form, is constitutional. Article X, Section 5, of the Constitution of Alaska provides:

" Service areas to provide special services within an organized borough may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. A new service area shall not be established if, consistent with the purposes of the article, the new

Representative Parker
March 23, 1979
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service can be provided by an existing service area, by incorporation as a city, or by annexation to a city. The assembly may authorize the levying of taxes, charges, or assessments within a service area to finance the special services." (Emphasis added.)

The language is clear that the assembly's taxing authority is limited to that area encompassed within the established special service area. (See also Concerned Citizens of South Kenai Peninsula v. Kenai Peninsula Borough et al. 527 P2d. 447).

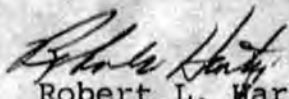
In addition to the constitutional prohibition against such taxing authority, it should be noted that the proposed authority if authorized, would not foster or encourage the contemplated substitution of city government for borough authority, when it would be proper to do so, but instead would continue to encourage competing and often overlapping and duplicate governmental services.

Also, such areawide taxation, because the tax base is often within the city, would have the effect of placing the tax burden on the city residents without providing accompanying benefits.

Your consideration of the City of Kodiak's opposition to this legislation will be appreciated and should any hearings on the legislation be scheduled, I would appreciate being notified so that I might have the opportunity to be present and to testify on behalf of my client.

Very truly yours,

COLE, HARTIG, RHODES,
NORMAN & MAHONEY

By: 
Robert L. Hartig

RLH:bjw

Article 2. Service Areas.

Section

90. Service areas

Sec. 29.63.090. Service Areas. (a) Service areas to provide special services within a borough may be established, operated, altered or abolished by the assembly by ordinance. Special services include services not provided on an areawide basis within the borough or the borough area outside cities or a higher or different level of service than that provided on an areawide basis or in the borough area outside cities. In a first class borough the assembly may exercise within a service area any power granted a first class city by general law; in a second class borough an exercise of the powers must be approved by a majority of the qualified voters residing within the service area and voting on the question at a regular or special election.

(b) The assembly may levy or authorize the levying of taxes, charges, or assessments in service areas to finance the special services.

(c) The assembly may provide for appointed or elected boards to supervise the furnishing of special services in service areas.

(d) A new service area may not be established if, consistent with the purposes of art. X of the state constitution, the new service can be provided by an existing service area, by annexation to a city, or by incorporation as a city.

(e) The assembly may exercise or delegate to a service area any powers which may be exercised by a first class borough in the area outside cities. In a second class borough, each exercised or delegated power must be approved by a majority vote at a regular or special election held within the service area. The rate of taxation and the issuance of bonds are subject to assembly approval. (§ 2 ch 118 SLA 1972)

Chapter 68. Alteration of Boundaries.

Article

1. Annexation and Exclusion (§ 29.68.010)
2. Merger and Consolidation (§§ 29.68.030—29.68.110)
3. Unification of Local Governments (§§ 29.68.240—29.68.440)
4. Dissolution (§§ 29.68.500—29.68.580)

Article 1. Annexation and Exclusion.

Section

10. Local boundary commission

Sec. 29.68.010. Local boundary commission. (a) The Local Boundary Commission may consider any proposed local government boundary change. It may present proposed changes to the

BILL NO. HB 302 re Grants to Boroughs to Service Areas

Received from _____
Referred to _____

Original Sponsor _____
Fiscal Note _____

LAA Legal Research Contact _____

CONTACTS: *Contacted re 4/18*

- ✓ Charles Conness (Area)
- ✓ Hartig 274-3576
- ✓ Municipal League
- ✓ CRA

*Hartig - expenses of grant can be financed.
Not right - Bureau*