

SB

162

SB 162

9 April 1979

Representative Thelma Buchholdt
Capitol 110
Juneau, Alaska 99801

Dear Representative Buchholdt:

The undersigned respectfully solicit your support for passage in the House of Senator Don Bennett's Senate Bill 162 which recently passed in the Senate by a margin of 12 to 7. The bill amends the definition of "peace officer" to include probation officers who supervise adults, parole officers, and correctional officers.

Without elaboration I wish to refer you to the attached:

- (1) Copy of SB 162
- (2) Recent editorial in behalf of SB 162
- (3) Letter of support from the State President of the Alaska Peace Officers Association directed to Governor Hammond.
- (4) Letter of support from the President of the Fairbanks Chapter of the Peace Officers Association.
- (5) Letter of support from the President of the Juneau Chapter of the Peace Officers Association.

What better endorsement for passage of this bill to include Adult probation officers, parole officers and correctional officers than from the Peace Officers Association themselves. Other letters of support could have been attached but it is felt the ones selected here convey with logical reasoning the justification for passage of this bill.

Respectfully yours,

Curtis Masingill

CURTIS MASINGILL
Adult Parole/Probation Supervisor

Ronald A. Murray

RONALD A. MURRAY, Parole/Probation Officer

Donald H. Allen
DONALD H. ALLEN, Parole/Probation Officer

Joe L. Anderson
JOE L. ANDERSON, Parole/Probation Officer

Stephen D. Korenek
STEPHEN D. KORENEK, Parole/Probation Officer

Lawrence Calderone
LAWRENCE CALDERONE, Superintendent of
Fairbanks Correctional
Center.

P.S. Administration attempts to subvert SB 162 by amendment were rejected by the Senate. We support only the bill as presented in its original form.

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL 162

For an Act entitled: "An Act relating to peace officers."

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

* Section 1. AS 01.10.060(6) is amended to read:

(6) "peace officer" means any officer of the state troopers, members of the police force of any incorporated city or borough, United States marshals and their deputies, probation officers who supervise adults, parole officers, correctional officers, and other officers whose duty it is to enforce and preserve the public peace;

A Need for Firearms For Safety's Sake

Unfortunately state probation and parole officers have been forced between a rock and a hard place. They have been caught in the cross-fire of clashing political philosophies and petty jealousies in a matter that greatly affects their work and service to the state. At the crux is the need of probation and parole officers who supervise adult felons to carry concealed weapons.

In the past the probation and parole officers have carried concealed weapons either on the off-the-cuff interpretation of judges that they were peace officers and allowed to do so or on the basis of special permits issued by the Commissioner of Public Safety. But recently the new Commissioner of Public Safety William R. Nix moved to revoke the special permits issued just last fall by former Commissioner Richard Burton and the probation and parole officers have been forced to go to court to get the revocations blocked by restraining order or injunction. In the meantime, Senator Don Bennett has sponsored a bill, Senate Bill 162, which would make it perfectly clear that probation and parole officers are "peace officers" and are allowed to carry concealed weapons. The bill has passed the senate and is now being considered in the House.

But certain high officials in the state administration who reportedly believe "it's bad enough to have state troopers carrying concealed weapons, let alone probation and parole officers." These officials are attempting to lobby against Senate Bill 162 although they have been unsuccessful thus far in presenting a logical rationale of why probation and parole officers should not be able to carry concealed weapons. At first, opponents brought up the lack of firearms training as a reason. Then it was shown that the probation and parole officers have the same firearms training as troopers. One bubble popped. Next it was alleged that the probation and parole officers did not have occasion to use concealed weapons. Then it was shown that often these officers get into precarious situations where they were needed. In one case they foiled a bank robbery scheme. In another, they arrested a parolee who had a cache of high-powered weapons, even a bullet-proof vest. Another bubble popped. And so on down the line.

Still the Commissioner of Public Safety, the Commissioner of Health and Social Services, and the State Attorney General appear to be vehement in their opposition to the parole-probation officers being able to carry concealed weapons, despite the fact that the Peace Officers Associations are fully behind the latter, despite the fact that most judges are behind the latter, despite the fact that most rank and file police officers are behind the latter. Even the former Director of Corrections was behind them on this issue.

The probation and parole officers say this matter is very vital to them because it affects their quality of work. How can they adequately supervise probationers and parolees if they are afraid to make unannounced home or work visits? Are probation and parole officers indirectly being forced to slack off their supervision and be content to receive once-a-month written reports from those under their charge? Is this a move to force good probation and parole officers--those with integrity--to leave state employment? If this is the design of some state cabinet members, they may very well succeed but the real brunt will be felt in the long run by the people of Alaska. We urge State House members to pass SB 162 without delay.

"Good, the more communicated, the more abundant grows."
John Milton



State APOA Office
P.O. Box 3520 DT
Anchorage, AK 99510
Phone 337-7712

February 9, 1979

Governor Jay S. Hammond
Pouch "A"
Juneau, Alaska 99811

Dear Governor Hammond:

It has come to my attention that the Acting Commissioner of Public Safety has recently attempted to rescind the Special Commissions that had been extended to the Adult Probation/Parole Officers of the State. I observe that Commissioner Nix's opinion is inconsistent with the decision that had been previously made by Commissioner Burton. Commissioner Burton and previous representatives of the Department of Public Safety were so convinced of the Probation/Parole Officers' need to protect themselves, that to resolve the dispute between the Attorney General and the Probation/Parole Officers, Commissioner Burton, as others have done in the past, issued Special Officer status pursuant to AS 18.65.010. Probation/Parole Officers have not changed their role or function. Their job, if anything, has become tougher in recent years.

The zealous attempt of the Attorney General to strip the Adult Probation/Parole Officer of the concealed firearm is beyond comprehension. I understand the Attorney General has focused on the definition of peace officer and has argued that the legislature's failure to specifically include the Probation/Parole Officer meant that the legislature must have meant to exclude the class from the coverage of the definition. It is observed that in the Criminal Code, which recently passed the legislature and which will go into effect January 1, 1980, the legislature specifically defined a peace officer as: "a public servant vested by law with a duty to maintain order or to make arrests, whether the duty extends to all offenses or is limited to a specific class of offenses or offenders." This new definition of "peace officer" includes Probation/Parole Officers. I have also been apprised that the Attorney General has taken issue with a court order issued by Superior Court Judge Gerald J. VanHoomissen. The court order specifically orders that the Adult Probation/Parole Officer of the Fourth Judicial District is authorized to carry a concealed firearm.

Court action to resolve the Special Commission issue is pending in the Third Judicial District. Action to resolve the Attorney General's question concerning Superior Court Judge Gerald J. VanHoomissen's court order is pending a Supreme Court Hearing in Fairbanks. A great deal of effort is being expended by the Attorney General in opposing judicial and executive efforts in trying to disarm the State's Adult Probation/Parole Officers.

Governor Jay S. Hammond
February 9, 1979
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It is difficult to understand why the Attorney General has taken such a fanatic position in attempting to disarm the Adult Probation/Parole Officer of this critically needed tool. It would appear that the Attorney General's motivations for taking issue with such a trivial matter is motivated by something other than a fact of law.

It has been my personal observation that on numerous occasions, the Adult Probation/Parole Officer, while acting within his authority, has initiated and assisted in investigations and the arrests of dangerous and armed felons. I, as a supervisor of a narcotics unit over the past four years, have had occasion to work closely with the Adult Probation/Parole Officers in Fairbanks and have found their actions to be of the highest quality and professionalism. I have participated in investigations where the presence of an armed Probation/Parole Officer was of a great advantage to the safety of all concerned.

Why such tunnel-visioned focus on this issue is not yet understood.

I understand that one area frequently argued by the Attorney General is that a State Trooper or other police officer could be called upon to accompany an Adult Probation/Parole Officer when violence is expected. It would be a serious waste of manpower to require an additional police officer to assist when the Adult Probation/Parole Officer is more than capable of handling the situation at hand. It should be noted that the most dangerous situations are not always the most obvious situations.

When the State sends out an Adult Probation/Parole Officer to effect an arrest of a felon (all arrests made by the Adult Probation/Parole Officers are felonies), it will be done peaceably if possible or forcibly if necessary. It is beyond my comprehension how the Attorney General and the Acting Commissioner of Public Safety can rationalize their attempts to disarm these officers. We should be careful not to make their jobs so dangerous to perform that they might shrink from their duties and hesitate from the action which the proper protection of society demands.

I submit that the continued arming of our Adult Probation/Parole Officers is in the best interest of the citizens of this state. I am writing you in an effort to keep you informed of law enforcement's position in this important issue. I simply seek to make our position known and sincerely hope it will not create any animosities.

Your attention to this important issue would be greatly appreciated.

Sincerely,



Craig A. Forster, President
Alaska Peace Officers Association
656 7th Avenue
Fairbanks, Alaska 99701



**ALASKA PEACE OFFICERS ASSOCIATION
FARTHEST NORTH CHAPTER**

AFZT-PM-W

9 February 1979

Mr. Wayne Anthony Ross
Attorney at Law

Dear Sir,

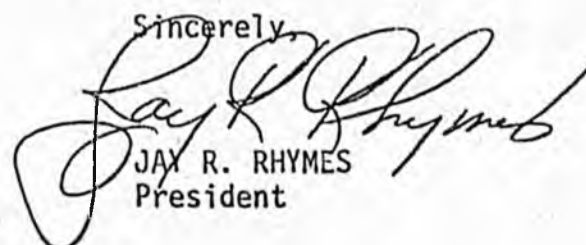
Information concerning the recent objection for Removal of Commissions for Adult Parole and Probation Officers to carry concealed weapons in the performance of their duties has been brought to our attention. This alarming objection comes as a grave disappointment and extreme concern for our fellow Law Enforcement Officers. The reasoning for this action considering their role in the Criminal Justice System is baffling to say the least. These Officers confront on a daily basis known felons who without question have little or no respect for law and order and even less for representatives of Law Enforcement.

These Officers have all met the Police Standards Council and are fully qualified. Additionally a vast majority have previous Law Enforcement background which include the attendance of Police Academies and various Law Enforcement Seminars. Many Law Enforcement Officers were personally contacted and expressed their concern over this action.

The Farthest North chapter of APOA gave their vote of confidence in addressing Former Commissioner Burton's Task Force report in 1976 for commissioning these officers. Our position is unchanged and speaking for the largest chapter of APOA we fully support and indorse the Parole and Probation Officers of Fairbanks Office. They are without question true professionals and exhibit the highest standards of any parole and probation office I have worked with.

Having been associated with Law Enforcement work over the last nineteen (19) years there is little question in my mind that these Officers of the Adult Parole and Probation Office are fully qualified and warrant the commission to carry weapons, by virtue of their extreme high potential of encountering a felon who has little regard for Law Enforcement representatives. The decision of this action impacts greatly upon their mission. It is our sincere wish that in the final analysis that these Officers be permitted to retain their Commissions.

Sincerely,


JAY R. RHYMES
President

cc: Adult Parole/Probation
Executive Board APOA

ALASKA PEACE OFFICERS ASSOCIATION



Capital City Chapter
P. O. Box 751
Juneau, Alaska 99802

27 February 1979

Mr. Wayne Anthony Ross
Attorney at Law

Dear Mr. Ross:

The Capital City chapter of the Alaska Peace Officers Association has recently been advised of an effort to prevent select probation officers handling adult caseloads from carrying a concealed weapon (hand gun) in the performance of their official duties.

This has been an on-again, off-again situation for a considerable number of years, to the point that many members of our association have been concerned about the extent State government is willing to go in providing avenues of legal and administrative relief for criminal offenders and, at the same time, fail to recognize the need of those Justice System personnel who are hired and sworn to uphold the law.

In our opinion, government is supposed to represent the best interests of the people and, in doing so, ensure that the probation officers in this case, who are public servants, have the necessary equipment to properly discharge their duties in the safest manner possible.

This most recent action directed against probation officers who exercise, by law, their authority to arrest with or without a warrant, the very same criminal element as police, many of which the police would not even think of apprehending, if unarmed and expected to do so, only tends to reinforce our concern about the criminal element's welfare and rights being placed above the safety and welfare of those government employees charge with enforcing the law.

No one can argue philosophy with any degree of success in the face of cold facts and reality concerning this matter. When a probation officers happens upon a probation or parole violator, there are two thing he will know for sure if he is prohibited from carrying a firearm in the performance of his duties.

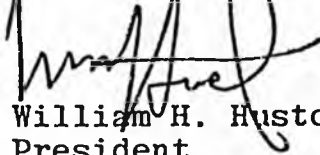
- A. He will know for sure that he is not armed.
- B. He will have no way of knowing whether the violator is armed or not.

Mr. Wayne Anthony Ross
Attorney at Law
February 27, 1979
Page Two

In view of such facts, it would appear an easy decision to make: allowing probation officers to carry firearms in the performance of their duties.

Thank you.

Very truly yours,



William H. Huston
President
Capital City Chapter
Alaska Peace Officers Association

P. O. Box 751
Juneau, Alaska 99802

From the Desk of
SENATOR DON BENNETT

3 May 1979

Dear Thelma,

Thought you might find this interesting,
as it directly supports my SB 162 which
seems to be bogged down.

Don

RECEIVED APR 23 1979

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA PUBLIC EMPLOYEES)
ASSOCIATION, et al.,)
))
Plaintiffs,)
))
vs.)
))
STATE OF ALASKA,)
))
Defendant.)
))

No. 3AN79-846 Civil

MEMORANDUM DECISION AND ORDER

The State of Alaska (State) and the Alaska Public Employees Association (APEA), together with the individual probation and parole officers, have filed cross motions for summary judgment. These motions came on for hearing on March 8, 1979.

The court finds that there are no genuine issues of material fact and that summary judgment is appropriate on the following issues raised in the summary judgment motions:

I. Whether probation and parole officers are peace officers within the immunity to prosecution for carrying concealed weapons offenses. See AS 11.55.010 and AS 11.55.020.

II. Whether the Commissioner of Public Safety was within his discretion to revoke the special officer appointments of the probation and parole officers.

III. Whether the subject of carrying weapons while on duty is a subject for grievance arbitration under the contract between APEA and the State.

I..

AS 11.55.010 makes it unlawful for a person to carry a concealed weapon. AS 11.55.020 makes this section inapplicable to "a peace officer whose duty it is to serve process or make arrest." Plaintiff probation and parole officers claim that they are peace officers with the duty to

make arrests within the contemplation of AS 11.55.020 so that they are immune to prosecution for carrying a concealed weapon. The duty of probation and parole officers to make arrests is clear. See AS 33.05.070 and AS 33.15.210.

The primary point of contention on this issue is whether parole and probation officers are "peace officers" within the contemplation of AS 11.55.020. Plaintiffs have offered several definitions for "peace officer" derived from the Alaska Statutes. The State correctly asserts that the applicable definition is the general definition found at AS 01.10.060(6):

"peace officer" means any officer of the state troopers, members of the police force of any incorporated city or borough, United States marshals and their deputies, and other officers whose duty it is to enforce and preserve the public peace.

(Emphasis added.) Plaintiffs argue that they fall within the emphasized language in that their duties as parole and probation officers require them to help enforce and preserve the public peace. The State relies on Alaska Attorney General's Opinion of September 18, 1977, Definition of "Peace Officer" under AS 01.10.060(6) and "Police Officer" under AS 18.65.290(2), which defines "peace officer" in a restrictive fashion:

. . . he or she must be empowered with a full range of police duties and authority and must be currently functioning on essentially a full time basis in that role.

Opinions of the Attorney General are usually accorded some persuasive weight by the courts. In this case, however, the court finds the opinion relied upon by the State to be most unpersuasive. The Attorney General's analysis depends on assumptions for which this court finds no basis, either in the opinion or the language of the statute construed.

This court finds that the duties of probation and parole officers in enforcing the parole and probation laws

clearly help preserve the public peace and are an integral part of Alaska's system of enforcement of its laws. Therefore, the court holds that probation and parole officers are "peace officers" within AS 01.10.060(6) and that they may not be prosecuted under AS 11.55.010 in accordance with AS 11.55.020.

NOTED
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Plaintiffs are not persuasive, however, in asserting that their status as peace officers mandates them to carry weapons while on duty. The power of peace officers to carry and use weapons while on duty is subject to limitation. See Figaro v. Ward, 383 N.Y.S.2d 529 (1976).

The Commissioner of Health and Social Services is charged with general supervision and control of probation and parole officers. See AS 33.05.010; 33.05.020; and 33.15.150. It is up to the commissioner to determine the methods and equipment to be used by probation and parole officers in carrying out their functions. Section 2210, Firearms Policy of the Department of Health and Social Services Manual, is an apparently well considered and admirable set of guidelines for implementing the policies of the commissioner as regards firearms use by probation and parole officers. This policy made the officer's ability to carry firearms contingent on training and obtaining a special officer commission from the Commissioner of Public Safety. Apparently, Dr. Beirne had decided to revise this firearms policy to deny the use of firearms to parole and probation officers. In the light of the court's holding, supra, that the legislature has determined that such officers may carry concealed weapons without being prosecuted, it is incumbent on the commissioner to articulate her reasoning and the underlying policies that led her to effectively reverse this legislative judgment.

The court will not substitute its judgment for that of the commissioner in formulating a firearms policy, in the absence of the commissioner's arbitrary abuse of her discretion. But the court feels that the firearms policy here in issue is of such fundamental concern to the plaintiff officers' safety, and the public welfare, that some explanation of the reasoning behind the new policy must be forthcoming before the court can rule on whether Dr. Beirne has abused her discretion. Accordingly, the temporary restraining order will remain in effect until Dr. Beirne fully articulates the basis for her policy decision with regards to firearms and her reasons for abrogating the policy of Section 2210. If such a policy determination is not forthcoming within 60 days from the date of this order, this court will enter its order permitting parole and probation officers to carry concealed weapons in performing their duties under appropriate guidelines formulated by this court after appropriate hearings.

II.

Even if this court could find an abuse of discretion by Dr. Beirne in revoking the earlier policy of the Department of Health and Social Services as embodied in Section 2210, Firearms Policy, it would not help the plaintiffs with regard to special officer permits. They have consistently maintained that they are properly subject to Section 2210. Section 2210 makes the ability of the parole and probation officers to carry concealed weapons subject, among other conditions, to the officer being appointed special officer by the Commissioner of Public Safety under AS 18.65.010. The Commissioner of Public Safety has revoked the special officer commissions of the plaintiffs, so that they no longer qualify under Section 2210.

Plaintiffs contend that the revocation of their permits was an abuse of the Commissioner of Public Safety's discretion. This court cannot agree. By its terms, AS 18.65.010 vests the power to make special officer commissions ". . . as he [the commissioner] considers necessary . . ." The statute is also quite clear that special officers serve at the pleasure of the commissioner. The court interprets this grant of discretion to be broad enough to permit the Commissioner of Public Safety to revoke special officer commissions when he no longer perceives the special officer to be necessary to aid and assist the state troopers. This court also finds persuasive the argument advanced by the State that AS 18.65.010 was enacted for the purpose of strengthening state trooper personnel in remote areas of Alaska rather than to those in the position of the plaintiffs. See Report of the Committee on State Affairs accompanying CSHB 48, Alaska State House of Representatives, House Journal, Alaska State Legislature, Second Legislature, First Session, p. 105 (1961) (quoted in Alaska Attorney General's Opinion of December 22, 1977, Special Police Commissions).

Accordingly, the court holds that the Commissioner of Public Safety was within his authority in exercising his discretion to revoke the special officer commissions of the plaintiff parole and probation officers. However, parole and probation officers' rights to carry concealed weapons are not dependent upon the special officer commission from the Commissioner of the Department of Public Safety. This procedure used by the two commissioners in authorizing weapons to the petitioning officers is commendable and consistent with insuring they were properly trained in use of the weapons before being permitted to carry them, but is not dispositive of their rights to carry concealed weapons.

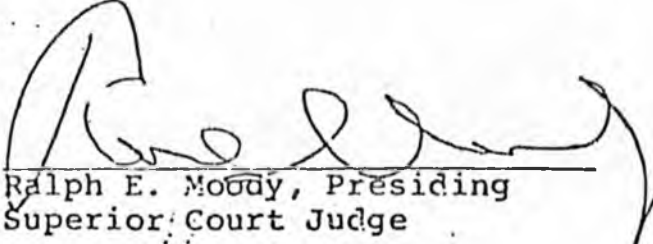
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III.

Plaintiffs also assert that the subject of carrying weapons is a subject for grievance arbitration under the contract between APEA and the State and that their special officer commissions cannot be revoked until the matter has been grieved. As discussed above, plaintiffs' rights to carry weapons are subject to the discretion of the Commissioner of Health and Social Services and their right to special officer permits is subject to the discretion of the Commissioner of Public Safety. This discretion is one of policy rather than "wages, hours and other terms and conditions of employment." See AS 23.40.070 and AS 28.40.250(1). This court cannot assume that the legislature has implicitly divested these executive departments of their power to determine policy matters. Kenai Peninsula Borough School District v. Kenai Education Association, 572 P.2d 416 (Alaska 1977). Additionally, firearms policy is generally regarded as a management decision outside the proper scope of collective bargaining. See San Jose Police Officer's Association v. City of San Jose, 144 Cal. Rptr. 538 (Cal. App. 1978).

Therefore, this court holds that the firearms policy of the Commissioner of Health and Social Services and the revocation of special officer commissions by the Commissioner of Public Safety are not subject to collective bargaining or the grievance and arbitration procedures of the contract between the APEA and the State.

DONE at Anchorage, Alaska, this 23rd day of April, 1979.


Ralph E. Moody, Presiding
Superior Court Judge