

HVB

398

HB 398 hasn't
been sent over
from Resources
as yet -

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
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All members
Jud Comm
HB 398 file

M E M O R A N D U M

April 2, 1979

SUBJECT: Constitutionality of HB 398
TO: Representative Charles H. Parr
Chairman, House Judiciary Committee
FROM: Richard A. Bradley, Legislative Counsel **B**

You have requested my opinion on the constitutionality of HB 398 under §§ 12 and 13 of Article XII of the Alaska Constitution.

The provisions of §500 of HB 398 constitute the premise for the operative sections of the bill. As such, analysis of the premises of that section will reflect the difficulties present in the bill.

Section 500 suggests that it was the intent of the framers of the United States Constitution to guarantee

"to each of the states sovereignty over all matters within state boundaries except for those powers specifically granted to the United States....."

The provisions continue by stating that the required disclaimer in the Alaska Statehood Act [§4] was beyond the power of Congress and that there is no basis for the ownership of the lands within the state by the United States.

Art. XII, Secs. 12 and 13 are the provisions which you seek my views on. Those provisions provide:

SECTION 12. The State of Alaska and its people forever disclaim all right and title in or to any property belonging to the United States or subject to its disposition, and not granted or confirmed to the state or its political subdivisions, by or under the act admitting Alaska to the Union. The state and its people further disclaim all right

Representative Charles H. Parr
Page 2
April 2, 1979

or title in or to any property, including fishing rights, the right or title to which may be held by for any Indian, Eskimo, or Aleut, or community thereof, as that right or title is defined in the act of admission. The state and its people agree that, unless otherwise provided by Congress, the property, as described in this section, shall remain subject to the absolute disposition of the United States. They further agree that no taxes will be imposed upon any such property, until otherwise provided by the Congress. This tax exemption shall not apply to property held by individuals in fee without restrictions on alienation.

SECTION 13. All provisions of the act admitting Alaska to the Union which reserve rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property, are consented to fully by the state and its people.

HB 398 is inconsistent with disclaimer set out in the first sentence of Sec. 12; under §510, the Department of Natural Resources will manage the lands; under §590, "lands" is defined to comprehend substantially all lands owned by the United States in Alaska.

HB 398 similarly violates the provisions of Sec. 13 of Art. XII; since Sec. 13 constituted a "full" "consent" to the provisions of the Statehood Act which reserve "rights or powers to the United States," any attempt by HB 398 to withdraw or countermand that consent is necessarily a violation of Sec. 13.

If I may assist further, please advise.

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