HB
533

HB 533 file

Tanana Chiefs Conference, Inc.

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February 1, 1980

Judiciary Committee
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Committee Members:

Re: Testimony on H.B. 533

We would like to commend this committee for its initiative in proposing H.B. 533. We believe that the bill accurately focuses on a major problem in rural Alaska, i.e., the lack of local control over alcohol.

Recent public safety reports dramatize the health, economic and social problems caused by alcohol. Statistically, it is a major cause or contributing factor to death in northern Alaska. It is plain that alcohol abuse is not merely a social problem in rural Alaska, it is a threat to life and property.

Many afflicted communities have attempted to deal with the threat. Sometimes these efforts have been legally authorized, and sometimes not. When legal methods have been used, the solution fails because the options available under current statutes are politically unacceptable or otherwise inappropriate to the specific situation. If extra-legal methods are used, the respective local government's lack of authority becomes an issue which eventually undermines the effort. This situation vindicates the doomsayers who predict that nothing can be done. The major impediment to a local community's efforts to combat this problem is the lack of available options under current statutory laws.

The community of Allakaket is a case in point. On November 13, 1979, the Fairbanks Daily News-Miner carried a front page story covering the difficulties the village encountered when it attempted to deal with the issue. Between last August and November, the small community experienced three alcohol-related deaths. The municipal council declared that a state of emergency existed and passed an emergency ordinance banning liquor in the village for sixty days. The Attorney General's Office and the State Troopers agreed that the municipal government lacked the authority to pass such an ordinance. The community then turned to their Native village councils of Allakaket and Alatna. Oddly enough, these councils have greater options under federal law than the city council has under state law. The Native councils passed the same ordinance under the authority of 18 U.S.C. 1154.

A further problem occurred, however, when the ordinance was being processed by the B.I.A. The law has been used very seldom in Alaska. In spite of the fact that the United States Supreme Court has upheld this exercise of power by a tribal governing body, even as against non-Natives living on fee simple land in a Native community, the B.I.A. was reluctant to process the novel ordinance on a sixty-day basis. They preferred to wait until a permanent ordinance was worked out. The village has now passed a permanent ordinance and it is currently being processed in accordance with the federal statute (see attached).

H.B. 533 would help. Where existing state statute allows a municipality to prohibit the sale of liquor in the city, H.B. 533 would allow a municipality to ban either/or possession and/or importation of liquor. While we applaud and support the committee's efforts, we wish to urge the committee to expand upon its original version and create more options for different local controls. Attached you will find proposed legislation drafted prior to the introduction of H.B. 533. The basic concepts of the two proposed statute revisions are compatible. The two differ in that the attached proposal offers more options to a local community. We wish to take this opportunity to address these differences and urge this committee to incorporate into H.B. 533 the ideas contained in the attached proposal.

Concept of Regulation v. Prohibition

Section 1 of H.B. 533 offers only two options to a city. The city may vote for prohibition or turn it down. This type of hard choice prevents compromises. As a result, several rural communities fluctuate between wet and dry depending on the prevailing political winds. It is true that H.B. 533 offers three variations on this theme, but the underlying choice is between wet and dry. The options merely provide a choice in how to best achieve prohibition, if that is desired.

It is our experience that a local political compromise is attainable. The attached ordinance is a prime example. Current Alaska State Statutes do not authorize a municipal government to engage in this type of regulation. H.B. 533 does not change this. In contrast, Section 2 of the attached proposal does allow greater latitude in local regulation. To incorporate this idea in H.B. 533, Section 1 may be amended by inserting the words "or regulated" after the word "prohibited" found on lines 16, 18, 19, and 21 on page 1 of the bill.

This change would create two distinct roles for the voters and the municipal council. The voters would use the local option election as a means for expressing their general desire or opposition to doing something about alcohol. In contrast, the council, if authorized by the people, would have several options available to work out a politically acceptable, long-term solution which could be tailored to more accurately reflect local sentiment than the wet/dry choice now offered by the legislature.

Emergency Powers

Of major concern to us is the failure of H.B. 533 to give local government the authority to regulate alcohol in emergency situations. As Allakaket's problems illustrate, it is possible for an alcohol-related crisis to become so severe that a state of emergency may exist. General law municipalities are not currently authorized to deal with such a crisis. By adopting emergency alcohol regulation, a general law municipal council might diffuse a potentially dangerous situation, thereby averting potential threats to life and property. In the event of such a crisis, the local option mechanism is just too cumbersome to provide for an effective municipal reaction. It seems more desirable that a general law municipality should have the standing authority to react to such emergencies.

Of course, safeguards should exist to prevent abuse of these emergency powers. To this end, the safeguards of A.S. 29.48.160, i.e., an emergency must exist in fact, a sixty-day maximum duration, etc., should apply to emergency liquor ordinances as they now apply to other emergency ordinances.

Utilization of Village Councils

The problems addressed by H.B. 533 are not confined to those Alaskan communities which are incorporated as municipalities under State law. There are many well established "unincorporated" communities which suffer from the same alcohol-related problems. Some of these communities are not incorporated under State law because they see local government as inappropriate to their situation. On the other hand, there are many predominantly Native communities who, for cultural and social reasons, have chosen traditional Native councils, or reorganized Native governments (I.R.A's) as their form of local government.

As noted earlier, Congress has delegated authority to regulate liquor to these Native governments. 18 U.S.C. 1151. There are four restrictions related to the exercise of their authority. First, the ordinance may not be inconsistent with state law. For example, a village ordinance could not violate state law by requiring that all taverns in a village be located within 100 feet of a school. This creates no problem since local regulation is needed only when State regulation proves inadequate. Secondly, the Secretary of the Interior must certify that the ordinance was properly passed and publish it in the Federal Register. Again, this merely ensures the legal authority of the ordinance and legal notice. As noted above, this process is currently novel in Alaska. As federal officials become comfortable with this local authority, the mechanics of this certification process will be smoother.

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Thirdly, a Native government's authority over alcohol only extends over its respective "Indian country." Although a Native government's concurrent jurisdiction over Indian country is clear (especially concerning alcohol regulation), the definition of "Indian country" is not so clear in Alaska.

Federal statute defines Indian country in terms of reservation lands, Indian allotments, and "dependent Indian communities." 18 U.S.C. 1151. All Alaskan reservations, except Metlakatla, were revoked under ANCSA, but many of the "unincorporated" Native communities remain "dependent Indian communities" within the definition of this statute.* It is difficult to say which lands constitute Indian country and which do not. At a minimum, Native townsite lands would certainly constitute "Indian country." The purpose of that act was to identify Native communities and provide for the systematic planning and conveyance of lands within these communities. Since the Native townsite is dependent on the existence of a Native community, it seems safe to assume that the Native townsite is a minimum definition of the Native community's "Indian country."

Although the Native governments have the authority to regulate the introduction of alcohol into their villages, they must rely on federal enforcement to back them up. Federal enforcement capabilities are less than those available through the state. For this reason, villages must either perform these functions themselves or seek help from the state. State enforcement is clearly more practiced in major cases. Unfortunately, state enforcement agencies lack a clarified policy directive regarding their role in this area.

Section 2(c) of the attached draft legislation addresses this problem by tying existing village governmental authority into the state system. It further provides that this tie-in is dependent on the village council giving notice to the public and the state.

This would represent a benefit to the state in providing local control where no prior control was possible and state enforcement to ensure effective regulation.

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*Please note that the term "dependent" as used in the statute refers to the political relationship between the Native government and the federal government, i.e., the Native government is dependent on the federal government for such matters as international relations, military defense, exterior trade regulation, currency policy, and federal assistance to Native government in the operation of those governments' programs. This same characterization of "dependence" is commonly used to explain the federal-state relationship.

The Delegation of Authority Issue

These proposals were discussed earlier this year with state officials, some of whom expressed a concern over the constitutionality of these proposals. In brief, they felt that such legislation would constitute an unconstitutional delegation of authority to local municipalities and villages. Section 2(d) of the attached draft legislation is a response to this concern. Article X, Sec. 13 of the Alaska State constitution provides:

> "Agreement, including those for cooperative or joint administration of any functions or powers, may be made by any local government with any other local government, with the state, or with the United States, unless otherwise provided by law or charter."

Thus the constitution expressly authorizes the type of proposed state/municipal joint administration of regulatory power.

Since the villages are legally recognized Native governments, they can also enter into such agreements. These types of arrangements have been struck down in some states. White v. Califano, 437 F. Supp 543 (1977); Blackwolf v. District Court, 158 Mont. 523 (1973); Kennerly v. District Court, 400 U.S. 423 (1971). Those courts reasoned that such compacts enlarged on state jurisdiction over Indian country without congressional authorization. Alaska, however, is a P.L. 280 state, which means that the state and Native governments exercise concurrent jurisdiction over Indian country. Bryan v. Itasca County, 426 U.S. 373 (1976). In fact, P.L. 280 itself anticipates a concurrent exercise of authority in providing that Native government ordinances may be enforced in state court civil proceedings. 28 U.S.C. 1360(c).

We are not sure that the level of involvement for Native governments anticipated by the attached proposed legislation is sufficient in light of the limits of P.L. 280. This act is the basic authority which authorizes state jurisdiction over Indian country. The act, however, only authorizes enforcement of state "civil laws. . .that are of general application. . .within the state. . .," 18 U.S.C. 1360(a), and "the criminal laws of such state shall have the same force and effect within such Indian country as they have elsewhere within the state....." 18 U.S.C. 1362(a).

The court in Santa Rosa Band of Indians v. Kings County, 532 F2d 655 (9th Cir. 1975) held that P.L. 280 did not authorize county zoning authority over Indian country, because the county's ordinances did not equally apply throughout the state. Although that case dealt with a reservation, P.L. 280 deals with "Indian country." As noted above, the definition of "Indian country" may apply to Alaska 18 U.S.C. 1151(b). Therefore, the case raises grave questions about municipal regulatory authority in rural Native villages. By entering into joint operation agreements with Native governments, the state can clarify local regulatory authority.

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Local Judgment Boards

H.B. 533 makes violation of local option ordinances a criminal violation of state law. This is basically a good concept. In many cases rural local governments lack the capability to enforce these ordinances, especially when they are confronted with a sophisticated bootlegging operation. State enforcement in these cases is needed.

On the other hand, if the sole authority to enforce such ordinances rests with the state, the costs of enforcement and criminal prosecution will be so great that the state agencies might be justified in failing to respond to many minor local violations that may occur. If state statute only authorizes criminal designation for such ordinances, the local governments must extend full due process protections to suspected offenders. This means formal courts, right to an attorney, etc. This may be excessive in relation to the severity of the violation and tax the resources of the local community beyond their fiscal capability. By designating violations of ordinance which regulate possession, internal sale, or personal importation as civil violations, the local governments could process such violations by using local judgment boards, i.e., local administrative bodies. Administrative procedures could process the cases more efficiently and still offer a setting of fairness which due process seeks to protect. Appeals to state court could be a mechanism to assure this fairness.

Conclusion

We wish to again compliment the committee on its efforts. Hopefully, you will incorporate the above ideas into your legislation. Specifically, the legislation should allow local regulation and not merely local prohibition. Secondly, it should provide for emergency powers. Thirdly, it should seek to involve "unincorporated" communities by using existing Native governments. Finally, it should allow for effective local enforcement capability as well as state enforcement capability.

Thank you for this opportunity to comment.

Sincerely,

TANANA CHIEFS CONFERENCE, INC.

William C. Williams

William C. "Spud" Williams
President

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attachment
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* Sec. 1 a) A.S. 04.15.070 is amended to read:

Sec. 04.15.070. Municipal regulations. (a) A municipality may by ordinance provide rules and regulations governing the barter, sale and possession of intoxicating liquor within the municipality [necessary to the orderly conduct of the business of selling intoxicating liquor]. When under a local option election, the city clerk finds the majority of the voters are against the sale of intoxicating liquor, the municipality, by ordinance, may make the sale of intoxicating liquor within the municipality a misdemeanor or civil violation whether the sale is made pursuant to license or otherwise. The ordinance may not be inconsistent with the title or the rules and regulations promulgated under this title. No municipality may impose taxes other than property taxes on liquor inventories and sales taxes on liquor sales when these taxes are levied on other property and sales within the municipality.

b) The provisions of Sec. 100 [(b)] of this chapter relating to misdemeanor penalties for violation of this title apply also with respect to penalties for violations of municipal ordinances adopted under the authority of (a) of this section, or a civil fine of not more than $300 may apply for violations of such ordinances, PROVIDED that the ordinance clearly establishes whether violation of such ordinance is a civil or misdemeanor violation.

* Sec. 2 Section AS 04.15 is amended by adding a new section to read:

Section 04.15.071. Transportation and Importation of Intoxicating Liquor.

a) When, under a local option election, the city clerk finds the majority of the voters favor local regulation of transportation and importation of intoxicating liquor, a municipality may enact an ordinance prohibiting or regulating the transportation and importation of intoxicating liquor into the incorporated limits of such a municipality.

b) To meet a public emergency, a municipal council or assembly may enact an emergency ordinance to i) suspend sales of intoxicating liquor within the incorporated limits of such municipality, and/or ii) prohibit or regulate the transportation and importation of intoxicating liquor into the incorporated limits of such a municipality. Such emergency ordinances shall comply with the requirements of A.S. 29.48.160. Upon finding that an emergency

exists, the council or assembly may waive the requirement to conduct a local option election.

c) If a Native Village Council, recognized by the United States Secretary of Interior as the governing body of an Alaskan Native community which is not incorporated under A.S. 29.18, enacts an ordinance under 18 U.S.C. 1154, the Council may:

1) file notice with the Lieutenant Governor, and

2) publish notice in a newspaper of general circulation in the community, or post notice in three conspicuous public places in the community of such enactment.

d) The enactment of an ordinance in compliance with this section shall constitute a cooperative agreement between the state and local government for the administration of alcohol regulation. No person shall knowingly transport or import intoxicating liquor into a community in violation of an ordinance enacted under this chapter, and no person, corporation or organization shall knowingly allow a private or commercial conveyance to be used to transport or import intoxicating liquor in violation of such ordinance.

e) Intoxicating liquor found to have been imported or transported in violation of an ordinance enacted under this chapter is declared a nuisance and shall be disposed of by court order.

f) A violation of an ordinance enacted in compliance with this section shall be considered a crime under state law and is punishable by imprisonment in jail for not more than one year or by a fine of not more than $5,000 or by both.

ORDINANCE NO . 80-1

AN ORDINANCE OF
THE VILLAGE OF ALLAKAKET
REGULATING LIQUOR

BE IT ORDAINED AND ENACTED BY THE V ILLAGE COUNCIL OF ALLAKAKET AS FOLLOWS:

Section 1. IMPORTING LIQUOR. It shall be unlawful for any carrier to transport liquor into Allakaket except as provided in Section 2 of this ordinance.

Section 2. HOLIDAY ORDERS. a) During a holiday period a carrier may transport liquor into Allakaket, and any individual may order liquor, PROVIDED that no individual's order may exceed the amount specified in subsection b of this section. Any member of the Village Council may from time to time inspect liquor deliveries so as to ensure compliance with this ordinance. No carrier shall be held responsible for delivery of an order in excess of the amount allowed. b) Individual orders placed in accordance with this section shall not exceed 576 ounces of beer, or 750 milliliters of other intoxicating liquor for each day within a holiday period.

Section 3. SALE OF LIQUOR. It shall be unlawful for any individual, partnership, corporation, or other entity to sell liquor within Allakaket,regardless of whether such liquor was imported into Allakaket in compliance with this ordinance.

Section 4. FALSE ORDERS. It shall be unlawful for any individual to place an order for liquor under Section 2 of this ordinance in the name of another individual.

Section 5. AGE RESTRICTIONS. It shall be unlawful for any person under the age of nineteen (19) years to possess any liquor.

Section 6. DEFINITIONS. As used in this ordinance:

a) "Allakaket" shall mean all Indian country adjacent or appertaining to the Native Village of Allakaket, including, but not limited to, lands within the exterior boundary of U.S.Survey No. 5071. Alaska (the Allakaket townsite), Native Allotments of residents, and lands owned by theNative Village of Allakaket or AalaKaaK'a Corporation.

b) "Carrier" shall mean any person, firm, partnership or corporation owning or operating conveyances of any kind either in a commercial or private capacity.

c) "Holiday period" shall mean those days within the following inclusive dates:

1) from Decenber 26th to January 1st
2) from July 3rd to July 4th
3) from the fourth Thursday in November (known as Thanksgiving Day) to the following day
4) In those years in which the Koyukuk River Championship Spring Carnival is held in Allakaket, from the first day of the Carnival to the last day of the Carnival as determined by the Allakaket Dog Mushers Association.

d) "Liquor" shall include whiskey brandy, rum, gin, wine, ale porter, beer, and all other spiritous, vinous,malt, and other fermented or distilled beverages intended for human consumption and containing more than one percent alcohol by volume.

e) "Sale" shall mean all exchange transactions including sale, barter, purchase or trade.

Section 7. SEVERABILITY. If any provision of this ordinance, or the application thereof to any person or circumstance is held to be invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 8. VIOLATIONS. Violators of any of the sections of this ordinance except section 3 shall be fined fifty ($50) dollars for a first offence, and for a second offence two hundred ($200) dollars. A third offence shall constitute an offence under Title 18 U.S.C., Sec. 1154(a) for which a violator shall be fined not more than two thousand ($2000) dollars or imprisoned not more than five (5)years or both. Any violation of Section 3 of this ordinance shall for the first or any offense be fined not more than two thousand ($2000) dollars or imprisoned not more than five (5) years or both under Title 18 U.S.C. Sec.1154(a).

PASSED AND APPROVED THIS 24th DAY OF JANUARY, 1980 BY THE VILLAGE COUNCIL OF ALLAKAKET, ALASKA.

Pollock Simon Sr. Chief

Johnson Moses Sr. Second Chief

Andy Simon Sr.

Samson Henry

Irene Henry

Rhea Williams

(absent)
Caroline Bergman

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM March 21, 1980

SUBJECT: Analysis of amendments to HB 533 proposed by Tanana Chiefs

TO: Representative Charles H. Parr, Chairman
House Judiciary Committee

FROM: Joseph A. Guthrie
Legislative Counsel

CIVIL FINES ADMINISTRATIVELY IMPOSED

The Tanana Chiefs propose to add language to AS 04.15.070(b) which would make ordinances adopted by municipalities punishable by a "civil fine" if the ordinance indicates by its terms that its violation constitutes a civil offense. Moreover, the Chiefs intend to delegate to local administrative boards designated "local judgment boards" the responsibility of determining, within a range from $0 to $300, the size of the penalties imposed.

The courts are split on whether power may be delegated to administrative agencies to establish the size of penalties. As a general rule, these delegations are considered to be unconstitutional; however, the application of this rule may be relaxed where certain factors are present. Cooper 1/ states that the administrative determination of penalties is generally sustained if a standard is fixed by the legislature within which an administrative tribunal may act. Moreover, sanctions which can be regarded as "administrative" in the sense of being calculated to secure compliance or to redress the consequences of noncompliance with prescribed norms have a better chance of being sustained than sanctions which are "punitive" in character.

1/ Cooper, State Administrative Law, The Bobbs-Merrill Company, 1965, p. 88.

Davis 2/ defines the problem as distinguishing between criminal penalties and civil or remedial penalties, noting that various results designated penalties are frequently imposed by administrative agencies. He says that courts have upheld as a civil penalty monetary penalties when paid over to an injured complainant but otherwise have held that an agency may not be authorized to determine the extent of a monetary penalty, finding that only courts imposing punishment for a crime have this discretion. Davis 3/ notes, however, that grants of power to an agency to determine the length of suspension of a license would no doubt be upheld, and that the difference between money and other interests seems an extremely unsatisfactory place to draw the line.

In light of the foregoing, it seems to me that delegating authority to "local judgment boards" to fix the size of a "civil fine" would be likely found punitive and therefore unconstitutional, since the civil fine is presented as an alternative to referring the conviction to the ABC board for possible license suspension or revocation. Moreover, no standard is provided for fixing the size of the penalty.

I should also like to point out that designating a penalty a "civil fine" and imposing it administratively will not negate the constitutional requirements of a trial by jury or right to counsel if the offense for which the penalty is imposed connotes criminal conduct in the traditional sense of the term or may result in a fine heavy enough to indicate criminality. (See, Baker v. City of Fairbanks, 471 P.2d 386 and Alexander v. City of Anchorage, 490 P.2d 910.)

LOCAL OPTION

The Tanana Chiefs also propose to authorize municipalities to adopt ordinances regulating or prohibiting the transportation or importation of intoxicating liquor into the

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2/ Davis, Administrative Law Treatise, West Publishing Company, 1958, sec. 2.13, p. 138)

3/ Davis, Ibid., p. 137

municipality, contingent upon voter approval of a proposition authorizing the municipality to regulate or prohibit transportation or importation of intoxicating liquor into the municipality. Insofar as existing law (AS 04.15.070 and AS 29.48.035(10)) only allows municipalities to adopt ordinances governing the barter, sale, possession, and (when all licenses in a community have expired as a result of a local option election) sale of intoxicating liquor, this amendment is necessary to enable municipalities to regulate or prohibit transportation or importation of intoxicating liquor into the municipality. However, the Chiefs' characterization of the process by which voter approval is to be obtained of the proposition authorizing a municipality to regulate or prohibit importation or transportation as a "local option" election is incorrect. The term "local option" is commonly used to refer to a law which by its terms must be approved by the voters of a particular municipality in order to be effective within the boundaries of the municipality. If voter approval is obtained, no further legislative action need occur before the law becomes effective. Parenthetically, while the authorization provided a city in AS 04.15.070 to adopt an ordinance prohibiting the sale of alcoholic beverages results from a vote in a local option election, it is not properly characterized as part of the local option statute since the city has discretion whether or not to adopt the ordinance and must adopt the ordinance before it becomes effective. On the other hand, the prohibition on the renewal, transfer, or new issuance of liquor licenses in a municipality, which is required by AS 04.10.430 if the majority of voters are against the sale of intoxicating liquor, occurs without further legislative action. The Chiefs' amendment, on the other hand, would allow a municipality to regulate or prohibit transportation and importation of intoxicating liquor only after the voters had approved that acquisition of the power by the municipality. While not unconstitutional, the approach proposed by the Chiefs is novel. The closest analogue conceptually is the procedure provided at AS 29.33.250 - 29.33.290 whereby first and second class boroughs acquire area-wide functions through election.

Anyway, should you wish to go with the Chiefs' suggestion to make municipalities' acquisition of power to regulate or prohibit the transportation or importation of intoxicating liquor into the municipality contingent on prior voter approval, a procedure will have to be developed separate from the procedure provided for local option elections.

Moreover, authorizing municipalities to regulate or prohibit the transportation or importation of alcohol into the area of a municipality raises the issue of the extraterritorial application of the ordinance. In other words, would a retail liquor store in Anchorage violate an ordinance adopted by the City of Bethel prohibiting the importation of intoxicating liquor by shipping an order to Bethel? This question might be answered by amending AS 29.48.037 to add ordinances which regulate or prohibit the transportation or importation of alcohol to the list of types of ordinances which may be enforced extraterritorially. However, there is some question whether such an approach would be constitutional. The problem of extraterritorial enforcement of a statute could also be solved by enacting a state statute prohibiting the transportation or importation of intoxicating liquor into a municipality which has adopted an ordinance prohibiting the transportation or importation of intoxicating liquor. However, the latter approach could not be used if the municipal ordinance only regulated, but did not prohibit, the importation of intoxicating liquor because of the constitutional problem of delegating legislative authority to the municipality (to be discussed below). However, I must say that if you decide to adopt the Chiefs' suggestion to authorize municipalities to regulate or prohibit transportation or importation of intoxicating liquor into a municipality, the question of extraterritorial enforcement would have to be investigated further.

The Chiefs also propose to provide in the event of an emergency for a waiver of the requirement of voter approval before a municipality may assume power to regulate or prohibit transportation or importation of intoxicating liquor into a municipality. Obviously, some such provision is necessary if the provision for emergency ordinances (AS 29.48.160) is to be applicable to ordinances regulating or prohibiting the transportation or importation of intoxicating liquor into the municipality.

ENFORCEMENT

The Chiefs maintain that local governments adopting ordinances regulating or prohibiting the transportation or importation of intoxicating liquor lack the necessary resources to enforce the ordinances. The Chiefs propose to involve the state in the enforcement of these ordinances in two ways:

(1) by making violation of the ordinance a state offense; and

(2) by making the state a party to a joint agreement to enforce the local ordinance.

I. Providing that violation of an ordinance is a state offense

Presumably, the rationale behind (1), supra, is that making violation of an ordinance a state offense will force the state to enforce the ordinance. Whether this is reasonable to assume is beyond the scope of this memo; however, such an approach could constitute an unconstitutional delegation of legislative authority. As you may know, Article II, sec. 1 of the Alaska Constitution and the common law impose limits on the extent to which legislative power may be delegated. One might argue that the Chiefs' proposed language appearing in section 04.15.071(d) and (f) delegating to municipal governments authority to determine the content of a state offense constitutes an impermissible delegation. Alaskan authority on this point is nonexistent, however, inferences can be drawn from the way in which the courts in this state and other states have treated enactments which have adopted by reference a code or set of standards from another state, the federal government, or a private organization. The decisions in these cases have often depended on whether the enactments providing for the adoption by reference of a code or set of standards provide that they shall be adopted as of a certain date, or whether they provide that future amendments are adopted as they become effective.

The Alaska Supreme Court has been confronted with this issue three times. In Area Dispatch, Inc. v. City of Anchorage, 544 P.2d 1024, and Northern Lights Motel, Inc. v. Sweaney, 561 P.2d 1176, the court declined to decide the question, and in Kingery v. Chapple, 504 P.2d 831, 836-37&n.13, the court, in upholding a regulation incorporating the motorcycle helmet and facewear quality standards of the United States Standards Institute Safety Code, seemingly

indicated that, had the Institute been empowered to adopt standards in the future, the provisions would have been invalid. Sands4/ states, citing many cases:

> The adoption of the statues of another state or of Congress is frequently attacked as being a delegation of legislative power. Such adoption, however, is almost universally sustained when the foreign law as then existing is adopted as the law of the adopting state. Where the operative effect of legislation is contingent upon the enactment of a statute of another state or of Congress, some courts have held the statutes invalid. And more have held the adoption of prospective legislation in other states and in Congress an unconstitutional delegation.

In light of the foregoing, one may see how the Chiefs' subsections (d) and (f), the operative effect of which are contingent upon the content of ordinances adopted and/or amended by municipalities in the future, might be found by a court to be an unconstitutional delegation of legislative authority. While declining to decide the issue, the Alaska Supreme Court gave some indication of what factors would be considered in a decision on this issue when it stated the following in Northern Lights Motel, Inc., supra:

> One reason for the prohibition against delegation to private groups is that when amendments are adopted by these groups the public does not necessarily receive notice of, or have an opportunity to comment on or criticize the amendments, as it does when they are adopted by the legislature or promulgated under the Administrative Procedure Act.

While the procedure prescribed in AS 29.48.130 - 29.48.220 provides the public ample notice and opportunity to comment on ordinances prior to their adoption by local governments incorporated under state law, I have been unable to ascertain what, if any, notice and opportunity for public imput must be provided prior to the adoption of a tribal ordinance under 18 U.S.C. 1161.

Another factor which might be considered by the Alaska Supreme Court in determining whether the Chiefs' subsections (d) and (f) constitute an unconstitutional

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4/ Sutherland Statutory Construction, 4th Ed., Callaghan & Co., Volume 1

delegation of legislative authority formed the basis of a decision in Washington State. In State v. Dougall, 570 P.2d 135, the Supreme Court of Washington held that a statute providing for the designation of drugs as controlled substances under state law, automatically following its designation as a controlled substance under federal law, violated due process because the only notice provided the public that the drug was henceforward a controlled substance was a notice that appeared in the Federal Register. The court said:

> Procedural due process requires that citizens be given fair notice of conduct forbidden by a penal statute . . . Where, as here, the Board (State Board of Pharmacy) does not object to the federal act of designating or rescheduling a substance, it becomes controlled after 30 days by reason of the Board's inaction or acquiescence in the final publication in the Federal Register. Once a substance has become controlled, a legislatively prescribed criminal penalty is imposed for its misuse. Consequently, a substance that is newly designated or rescheduled as a controlled substance by publication in the Federal Register becomes the criminal law of this state without appearing in either a state statute or in the state administrative code. The only way one can determine the current status of a drug as a possible controlled substance is by reference to the Federal Register, a publication not readily available even to many lawyers.

While under AS 29.48.180 local governments incorporated under state law would be required to codify an ordinance regulating the importation and transportation of liquor, the state law incorporating the ordinance would include no reference or statement of the local ordinance incorporated. Ordinances adopted by tribal authorities, moreover, would only have to be published in the Federal Register under 18 U.S.C. 1161. As State v. Dougall, supra, indicates, such notice is not sufficient notice to satisfy due proces. However, the court might consider the notice provided for by the Chiefs in subsection (c) sufficient to make up for this deficiency.

II. Intergovernmental Agreement

While the foregoing would seem to disfavor making violations of ordinances adopted local governments a state offense, the Chiefs' proposal for agreements between the state and local

government under which the state would agree to enforce local government ordinances would appear to be feasible if the tribal government participation is made optional.

The Chiefs propose a statute which would create such an intergovernmental agreement whenever a local government adopts an ordinance. While no constitutional problems would be engendered by the operation of such a statute in relation to local governments incorporated by state law, federal law might prohibit a mandatory assumption of state responsibility of enforcement on the ground that such an assumption would be in derogation of the native government's sovereignty.

Congress, by the enactment of the Indian Reorganization Act, authorized the adoption of tribal constitutions for the exercise of tribal self government over, inter alia, "Indian country." In the light of the historical background of tribal sovereignty, the courts have generally proceeded from the notion that Congress has intended that states have no power to regulate the Indians governance of Indian country, except as Congress chooses to grant them power.

While PL 83-280 (18 U.S.C. 1151, 18 U.S.C. 1162, and 28 U.S.C. 1360), which granted Alaska criminal or civil jurisdiction over Indian country, provides that "those civil laws of such state . . . that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State," the U. S. Supreme Court in Bryan v. Itasca County, 426 U.S. 373, LEd2d 710, 96 S.Ct 2102 held that such an extention of jurisdiction only authorizes application by the state courts of their rules of decision to decide civil or criminal matters and does not confer general state civil regulatory control over Indian Country. This is significant in light of the statements in the Chiefs' letter implying that PL 280 (PL 83 280) grants the power to undertake a mandatory assumption of the enforcement of the ordinances adopted by tribal authorities. On the contrary, a recurring theme in the cases is protection of tribal authorities sovereignty. The following is representative of court expressions on the subject:

> "Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory, Worcester v. Georgia, 6 Pet. (31 U.S.)

> 515, 557, 8 LEd 483) (1932); they are 'a separate people' possessing 'the power of regulating their internal and social relations. . . . ' United States v. Kagama, 118 U.S. 375, 381 - 382 (6 S.Ct. 1109, 1113, 30 L.Ed 228) (1886); McClanahan v. Arizona State Tax Comm'n, 411 U.S. 164, 173 (93 S.Ct 1257, 1261 - 1262, 36 L.Ed2d 129) (1973).
>
> "Cases such as Worcester, supra, and Kagama, supra, surely establish the proposition that Indian tribes within 'Indian country' are a good deal more than 'private, voluntary organizations', . . . These same cases in addition make clear that . . . [Indian tribes are] . . . entities which possess a certain degree of independent authority over matters that affect the internal and social relations of tribal life . . " United States v. Mazurie, 419 U.S. 544, 95 S.Ct. 710, 717, 42 L.Ed.2d 706, 716 - 717 (1975).

The Chiefs' proposal, by providing for mandatory assumption of enforcement responsibility, might be found to be an impermissible interference with tribal sovereignty. In White v. Califano, 437 F.Supp 543 (1977) the court enunciated a two fold test for determining the limits imposed on a state's exercise of power in Indian country absent a federal statute authorizing the exercise of the power. First, a state cannot exercise its powers in Indian country if the federal government has preempted the particular field of activity over which the state attempts to extend its power. Since there is no federal statute dealing with state assumption of responsibility for the enforcement of tribal ordinances, this part of the test would not appear to forbid the adoption of the Chiefs' suggestion. However, the second part of the test enunciated by the court in White, supra, provides that a state cannot extend its powers into Indian country if it will thereby infringe upon the right of the Indian people to govern themselves. A court would have to judge whether involuntary state involvement in the enforcement of the native council's ordinances would infringe upon the right of the people to govern themselves. It seems to me that control of security forces is a basic attribute of sovereignty and self government. In White, supra, the court considered, among other things, the involvement of sheriff's officers in finding that application of a state's involuntary commitment

procedure for the mentally ill to an Indian person in Indian country would undermine the authority of the tribal courts over reservation affairs and hence would infringe on the right of Indians to govern themselves. Therefore, decision on this question would turn on whether the court felt that state involvement in the enforcement of local ordinances would be in derogation of local sovereignty. However, in reaching its decision, the court would take into consideration a canon of statutory construction recently reaffirmed by the U.S. Supreme Court in Bryan, supra, that "statutes passed for the benefit of dependent Indian tribes . . . are to be liberally construed, doubtful expression being resolved in favor of the Indians." Invocation of this rule might be used to uphold the statute that the Chiefs' propose, if a court considers it to be beneficial to Indians.

The foregoing problems would not be presented if the native council's participation in the intergovernmental agreement was made optional, not mandatory. The decisions cited by the Chiefs which disapproved a voluntary relinquishment of sovereignty on the part of the Indians in favor of the exercise by the state on civil or criminal jurisdiction in Indian country (White v. Califano, supra, and Kennerly v. District Court, 400 U.S. 423 (1971)) were based on the failure of the states to comply with the procedures prescribed by the states of jurisdiction over Indian country. However, the state's assumption of responsibility for enforcement of ordinances would not involve an extension of the state's jurisdiction. Therefore, providing for the voluntary, not mandatory, participation by native councils in intergovernmental agreements obliging the state to enforce ordinances adopted by native councils would seem to be indicated.

POWER OF VILLAGE COUNCILS TO ADOPT CRIMINAL ORDINANCES

Attached you will find a memorandum from the Office of the Solicitor in the United States Department of the Interior which takes the position that an Indian tribe may exercise criminal jurisdiction over its members concurrently with a state where a state has assumed jurisdiction over the tribe's reservation pursuant to Public Law 280. Applied to Alaska, it means that native village councils could adopt criminal ordinances enforceable within Indian country, assuming Indian country, as defined in 18 USC 1151, exists in Alaska.

JAG:ljb

Enclosure

Reported at 6 ILR 11-1

M-36907 November 14, 1978

Criminal Jurisdiction on the Seminole Reservations in Florida

Indians: Criminal Jurisdiction -- Indian Tribes: Jurisdiction -- Indian Tribes: Sovereign Powers

An Indian tribe may exercise criminal jurisdiction over its members concurrently with a state where the state has assumed jurisdiction over the tribe's reservation pursuant to Public Law 280.

The letter of the Assistant Secretary to the Minneapolis Area Director, dated June 4, 1954; Solicitor's Opinion M-36241, September 22, 1954; and the Solicitor's Memorandum of February 13, 1961, to the Regional Solicitor, Portland, are overruled as far as inconsistent with this opinion.

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D. 20240

NOV 14 1978

Memorandum

To: Assistant Secretary—Indian Affairs

Attn: Chief, Division of Law Enforcement Services

From: Solicitor

Subject: Criminal Jurisdiction on the Seminole Reservations in Florida

This responds to your request of March 31, 1978, for an opinion on the jurisdictional status of the three Seminole reservations in Florida: Big Cypress, Brighton and Hollywood. Since the attachments to your memorandum indicate that the tribe and the state are concerned with development of a law enforcement program, I will limit this discussion to criminal jurisdiction.

Florida has assumed criminal jurisdiction over the Seminole reservations pursuant to Public Law 280, 67 Stat. 588, 18 U.S.C. § 1162. See Florida Statutes § 285.16. Also, by § 285.061, Florida authorized the transfer of certain state reservation lands to the United States in trust for the Seminole Tribe, reserving criminal jurisdiction over them in accordance with § 285.16. Thus, Florida clearly has authority to exercise criminal jurisdiction over the Seminole reservations.

Florida has, by Florida Statutes § 285.17 and § 285.18, created a special improvement district within the Seminole reservations, designated the governing body of the Seminole Tribe as the governing body of the special improvement district, and vested the tribal governing body with certain law enforcement powers under state law, particularly the power to plan and implement law enforcement programs for the benefit of tribal members and the power to employ personnel to exercise law enforcement powers, including the investigation of violations of any of the criminal laws of the state occurring within the reservations. Section 285.18 further provides that all law enforcement personnel employed shall be considered peace officers for all purposes and shall have the authority to bear arms, make arrests, and apply for, serve, and execute search warrants, arrest warrants, capias, and other process of court, within the reservations. It also requires, however, that all law enforcement officers employed meet certain state

standards, which are enumerated in § 943.13. In exercise of the powers delegated to it by the state, the tribe is, of course, subject to the superior authority of the state.

The question whether the tribe may, apart from its state-delegated powers and in exercise of its sovereign authority, enact its own law and order code, establish a tribal court and authorize tribal police to enforce tribal law depends upon whether the tribe possesses criminal jurisdiction, by virtue of its sovereignty, concurrently with the Public Law 280 jurisdiction exercised by the state. As you know, this office has already expressed the view that Public Law 280 did not divest Indian tribes of their part of the previously-existing concurrent federal-tribal jurisdiction but transferred only federal jurisdiction to the states. See Memorandum of the Acting Associate Solicitor for Indian Affairs, July 13, 1976. Similarly, in response to an analogous question, that office concluded, on April 11, 1978, that the Kickapoo Tribe of Kansas retained the power to exercise criminal jurisdiction over Indians on its lands concurrently with the state and the federal government after passage of the Act of June 8, 1940, 54 Stat. 249, 18 U.S.C. § 3243, which conferred on the State of Kansas criminal jurisdiction over offenses committed by or against Indians on Indian reservations.

Since you have again raised the question, and since the Department has, in the past, taken a position contrary to the current one, we will attempt to address the issue in more detail.

The earlier position of the Department was that Public Law 280 vested exclusive criminal jurisdiction in the states, and this position found expression as late as 1970. See the Department's letter on the Metlakatla Amendment to Public Law 280, 84 Stat. 1358, in House Report 1545, 91st Cong. 2nd Sess. (1970). The Department did not always act consistently with that position, however, even prior to the 1976 memorandum from this office.

Several tribes in Public Law 280 states, including the Miccosukee Tribe in Florida, 1/ were certified in 1973 as performing law and order functions for purposes of the Omnibus Crime Control and Safe Streets Act of 1968, 82 Stat. 197. See 38 Fed. Reg. 13758-13759. The Seminole Tribe of Florida was certified in 1975. 40 Fed. Reg. 22152.

1/ An amendment to the Miccosukee Constitution authorizing the Miccosukee Business Council to enact a law and order code was approved by the Acting Commissioner of Indian Affairs on March 31, 1977.

The Department's former position was apparently first enunciated in a letter, dated June 4, 1954, from Assistant Secretary Lewis to the Area Director in Minneapolis. That letter stated:

> "Although there has been no interpretation of the act of August 15, 1953 (Public Law 280 - 83d Cong.), by the Federal courts, it is our view that the act, by providing that the State shall have jurisdiction over crimes and offenses committed by or against Indians in the Indian country to the same extent that the State has jurisdiction over crimes and offenses committed elsewhere within the State, except as limited in Section 2(b), made such jurisdiction of the State exclusive. The extent of the State's jurisdiction is full and complete and permits of no such jurisdiction by any other body save the Federal Government and subordinate agencies of the state itself. The act also explicitly states that the criminal laws shall have the same force and effect within Indian country as they have elsewhere within the State. The effect of this provision clearly is to extend both the substantive and procedural laws of the State to crimes committed by Indians. Thus, State law defines not only the criminal offenses against the State and the penalties therefor, but it also defines the courts in which and the manner in which persons accused of committing such offenses are to be tried." (Emphasis in original)

That view was adhered to, without further analysis, in later documents. 2/ However, the position seems never to have been the subject of any considered legal analysis and now appears to be in conflict with principles enunciated in recent decisions of the Supreme Court.

2/ Solicitor's Opinion M-36241, September 22, 1954; Memorandum of the Solicitor, February 13, 1961.

The apparent rationale of the view set forth in the 1954 letter does not, in fact, withstand analysis. That view appears to rest entirely on an assumption that the exercise of tribal jurisdiction would in some way lessen the states' jurisdiction. The exercise of tribal jurisdiction, however, would not and could not deprive the states of any jurisdiction. It is well established that exercise by one sovereign of jurisdiction over criminal offenses is not a bar to exercise of jurisdiction over the same offenses by another sovereign, and it is now clear that Indian tribes are sovereigns separate, not only from the states, but from the federal government as well. See, United States v. Wheeler, (U.S. Supreme Court, No. 76-1629, March 22, 1978) and cases cited therein. Thus, the fact that an Indian tribe exercised jurisdiction over certain offenses would not affect the right of the state to exercise jurisdiction over the same offenses. The state would continue to have, within the tribe's reservation, that jurisdiction which Public Law 280 conferred, i.e., jurisdiction "to the same extent that such State has jurisdiction over offenses committed elsewhere within the State."

The ultimate question, of course, is whether the sovereign power of Indian tribes in Public Law 280 states to exercise criminal jurisdiction over Indians within their reservations has been withdrawn. The Supreme Court held, in Oliphant v. Suquamish Indian Tribe (No. 76-5729, March 6, 1978), that sovereign tribal powers could be withdrawn expressly by treaty or statute or by implication as a necessary result of the dependent status of Indian tribes. Oliphant at p. 17; Wheeler, supra, at p. 10. In Wheeler, the Court held that the power to prosecute members for tribal offenses did not fall within the part of sovereignty which could be lost implicitly by virtue of dependent status. Wheeler at p. 12. It follows then that only by express act of Congress may this power be terminated.

Public Law 280 explicitly withdrew federal jurisdiction in Section 2(c) of the act; it did not, however, explicitly withdraw tribal jurisdiction. A withdrawal of tribal jurisdiction by necessary implication might reasonably be inferred if continued tribal jurisdiction were inconsistent with state jurisdiction. Yet, as discussed above, there is no inherent inconsistency in the concurrent exercise of criminal jurisdiction by the tribes and the states.

Rather than conflicting with the Congressional purpose in conferring jurisdiction on the states, in fact, the establishment of viable tribal law enforcement systems would further that purpose. The legislative history of Public Law 280 makes abundantly clear that the overriding intent of Congress was to overcome the "problem of lawlessness on Indian

reservations and the absence of adequate tribal institutions for law enforcement." Bryan v. Itasca County, 426 U.S. 373, 379 (1976). 3/ Tribal law enforcement programs conducted in addition to, or in conjunction with, state programs would even more effectively carry out the purpose of the statute. Since continued tribal jurisdiction would not be inconsistent with, and in fact would further, the purpose of Public Law 280, it cannot be said that tribal jurisdiction was expressly or by necessary implication withdrawn by that statute.

Moreover, construction of the jurisdiction conferred on the states by P. L. 280 as exclusive of tribal jurisdiction would have an incidental, but not insignificant, anomolous result with respect to the disparate treatment of tribes in the "mandatory" states (those listed in the statute) and tribes in the "optional" states (other states given permission to assume jurisdiction). Congress excepted from the grant of jurisdiction to the mandatory states those reservations which this Department had reported as having reasonably satisfactory law and order systems and which objected to state jurisdiction. 4/ (The effect of these exceptions, of course, was to preserve the existing federal-tribal jurisdictional scheme.) The optional states were authorized to assume jurisdiction without regard to the adequacy of tribal law enforcement systems. If the assumption of jurisdiction by these optional states is construed as ousting tribal jurisdiction, then Congress must be seen as having conferred upon those states the power to do what it declined to do itself with respect to tribes in the mandatory states, i.e., disband satisfactory tribal law and order programs. If, however, state jurisdiction is construed as concurrent with tribal jurisdiction, such an anomolous result is avoided.

In Bryan v. Itasca County, supra, the Supreme Court construed the civil jurisdiction provisions of Public Law 280, holding that these provisions did not impliedly authorize state taxation of Indian property. The Court found that Public Law 280 was not meant to effect total assimilation or to undermine tribal governments. 426 U.S. at 387-388. The right to enact and enforce criminal laws against members has always been recognized as a fundamental aspect of tribal self-government, as the Supreme Court has recently reaffirmed. United States v. Wheeler, supra at p. 8. The removal of this power would clearly have the effect of undermining tribal self-government, and such a result should not, consistent with the Supreme Court's interpretation of Public Law 280 in Bryan and with the principles enunciated in that case, be inferred.

3/ See also S. Rep. 699, 83rd Cong. 1st Sess. (1953); Hearings on H.R. 459, et al., before the Subcomm. on Indian Affairs of the House Comm. on Interior and Insular Affairs, 82nd Cong., 2nd Sess., p. 14 et seq. (Statement of Rep. D'Ewart).

4/ S. Rep. 699, supra, note 3, at 6.

Another recent decision of the Supreme Court gives added weight to our reluctance to read into Public Law 280 an implied withdrawal of tribal criminal jurisdiction. In Santa Clara Pueblo v. Martinez (No. 76-682, May 15, 1978), the Court declined to find in the Indian Civil Rights Act, 25 U.S.C. §§ 1301-1303, an implied federal remedy beyond the habeas corpus remedy provided in the statute. The Court found, inter alia, that an implied remedy, which would constitute an intrusion into tribal sovereignty, was not plainly required to give effect to Congress' objective in the statute. (Slip opinion at pp. 11-12, 15). In like manner, an implied withdrawal of tribal criminal jurisdiction, a clear intrusion into tribal sovereignty, is not required to give effect to Congress' objective in Public Law 280.

The recent decisions of the Supreme Court, taken together, indicate that such a fundamental sovereign power as law enforcement authority may not be withdrawn by statutory implication when such an implication is not necessary to the objective of the statute. I conclude therefore that the Seminole Tribe of Florida retains the sovereign power to enact its own law and order code, establish a tribal court and authorize tribal police to enforce tribal law.

The letter of the Assistant Secretary dated June 4, 1954; Solicitor's Opinion M-36241, September 22, 1954; and the Solicitor's Memorandum of February 13, 1961, are overruled as far as they are inconsistent with this opinion.

LEO M. KRULITZ

FROM: JUDY O'BRIEN
GENERAL DELIVERY
HOOPER BAY ALASKA
-99604-

TO: VERN HUELBERT
STATE REPRESENTATIVE
POUCH V
JUNEAU. ALASKA
-99802-

DEAR VERN HURLBERT,

HI! THE REASON I'M WRITING TO YOU IS I DON'T FEEL TOO GOOD ABOUT BOOZE AND DRUGS. I DON'T WANT ANYMORE BOOZE AND DRUGS HERE IN OUR VILLAGE, BECAUSE IT HAS TAKEN TWO OF OUR STUDENTS ALREADY! SO I WOULD LIKE TO LET YOU STOP THE LIQUOR COMPANY TO QUIT SENDING IN BOOZE TO THE VILLAGES ON THE PLANES.

THANK YOU FOR YOUR HELP
JUDY A. O'BRIEN
Judy A. O'Brien

P.O. Box 178
Hooper Bay AK
99604

March. 13, 1980

Mr. Vern Hurlbert
State Representative
Pouch V.
Juneau Alaska - 99802 -

Dear Sir:
hello! I am writing a brief letter to you, the reason may be setting a law concerning alochol (booze) here in our village. or stopping it at once!
please do the best you can as a representative. It will great approve youre attention by being patient. and also thank you for youre concern.

Sincerely Yours
Nicky Smith

Beverly Bell
Box 934
Hooper Bay Ak
99604

Mr. Vern Hurlburt
State Represenitive
Pouch V
JUNEAU, Alaska 99802

Dear Sir

why am I writing this letter? Because we need your help. Things have been happening here in Hooper Bay. They happen Because people get drunk or they eat drugs. Weve had two students died. One of them was drunk. P.S. Help us Stop alcohol!!

We need Help!

Thank you
Sincerly
Beverly Bell

Mr Vern Hurlbert
State Representative
Pouch V
Juneau Alaska
-99802

Dear Sir:

Why am I writing to you? Because we really need your help to make a law Saying "It is Illegal to send booze on the Plane to Hooper Bay!" I want you to stop this. The reason is that two people have died from booze and pills. One got to drunk and shot himself with a big rifle and One with pills. Please stop this!

Thank You for your Help!

Sincerely Yours
Al Gump
Al Gump
P.O. Box 158
Hooper Bay Alaska
-99604-

Proposed amendment to file copy

SB 365 am

Sec 1 AS 04.15.035 (c) is repealed

Sec 2. AS 04.15.050 is repealed and re enacted to read

Sec. 04.~~16.220~~ 15.050. FORFEITURES. (a) The following are subject to forfeiture:

(1) alcoholic beverages manufactured, sold, offered for sale or possessed for sale, bartered or exchanged for goods and services in this state in violation of AS 04.11.010; alcoholic beverages stocked, warehoused, or otherwise stored in violation of AS ~~04.21.060~~ 04.15.035; alcoholic beverages sold or offered for sale in an area where a local option election has made the sale illegal; alcoholic beverages transported into the state ~~(and sold to persons not licensed under this chapter in violation of AS 04.16.170(b))~~

(2) materials and equipment used in the manufacture, sale, possession for sale, barter or exchange of alcoholic beverages for goods

and services in this state in violation of AS 04.11.010; materials and equipment used in the stocking, warehousing, or storage of alcoholic beverages in violation of AS ~~04.21.060~~ 04.15.035; materials and equipment used in the sale or offering for sale of an alcoholic beverage in an area where a local option election has made the sale illegal;

(3) aircraft, vehicles, or vessels used to transport, or facilitate the transportation of

(A) alcoholic beverages manufactured, sold, offered for sale or possessed for sale, bartered or exchanged for goods and services in this state in violation of AS 04.11.010;

(B) property stocked, warehoused, or otherwise stored in violation of AS ~~04.21.060~~ 04.15.035;

(C) alcoholic beverages sold or offered for sale in an area where a local option election has made these sales illegal;

(4) alcoholic beverages found on licensed premises which do not bear federal excise stamps.

(b) Property subject to forfeiture under this section may be actually or constructively seized under an order issued by the superior court upon a showing of probable cause that the property is subject to forfeiture under this section. Constructive seizure is effected upon posting a signed notice of seizure on the item to be forfeited, stating the violation and the date and place of seizure. Seizure without a court order may be made if

(1) the seizure is incident to a valid arrest or search;

(2) the property subject to seizure is the subject of a prior judgment in favor of the state; or

(3) there is probable cause to believe that the property is subject to forfeiture under (a) of this section; property seized under this paragraph may not be held over 48 hours or until an order of for-

feiture is issued by the court, whichever is earlier.

(c) Within 30 days of a seizure under this section the Department of Law shall make reasonable efforts to ascertain the identity and whereabouts of any person holding an interest or an assignee of a person holding an interest in the property seized, including a right to possession, a lien, mortgage, or conditional sales contract. The Department of Law shall notify any person ascertained to have an interest in property seized of the impending forfeiture, and before forfeiture the Department of Law shall publish, once a week for four consecutive calendar weeks, a notice of the impending forfeiture in a newspaper of general circulation in the judicial district in which the seizure was made, or if no newspaper is published in that judicial district, in a newspaper published in the state and distributed in that judicial district.

(d) Property subject to forfeiture under (a) of this section may be forfeited

(1) upon conviction of a person under AS 04.11.010, ~~AS 04.16.190~~ or AS ~~04.21.060~~ 04.15.035;

(2) upon judgment by the superior court in a proceeding in rem that the property was used in a manner subjecting it to forfeiture under (a) of this section.

(e) The owner of property subject to forfeiture under (a) of this section is entitled to relief from the forfeiture in the nature of remission of the forfeiture if in an action under (d) of this section the owner shows that he was not a party to the violation and had no actual knowledge that the property was used or was to be used in violation of the law.

(f) A person, other than the owner, holding or the assignee of a lien, mortgage, conditional sales contract on, or the right to posses-

sion to property subject to forfeiture under (a) of this section is entitled to relief from the forfeiture in the nature of remission of the forfeiture if in an action under (d) of this section the person shows that he was not a party to the violation subjecting the property to forfeiture and had no actual knowledge that the property was used or was to be used in violation of the law.

(g) It is no defense in an in rem forfeiture action brought by the Department of Law under (d)(2) of this section that a criminal proceeding is pending or has resulted in conviction or acquittal of a person charged with violating AS 04.11.010, ~~AS 04.16.190~~ Local option election, or AS ~~04.21.060~~ 04.15.035.

(h) A bona fide wholesaler's bill of lading describing the property may be asserted in defense to forfeiture of property subject to forfeiture under (a)(4) of this section.

(i) Property forfeited under this section shall be placed in the custody of the commissioner of public safety for disposition according to an order entered by the court. The court shall order destroyed any property forfeited under this section which is harmful to the public. Other property shall be ordered sold and the proceeds used for payment of expenses of the proceedings for forfeiture and sale, including expenses of seizure, custody and court costs. The remainder of the proceeds shall be deposited in the general fund.

intoxicating liquor for the preceding year were less than $5,000 the club license fee is $200. For purposes of this section the term "member" as it applies to patriotic organizations includes military personnel on active duty in uniform upon special occasions. (§ 35-4-21(D) ACLA 1949; am § 2 ch 131 SLA 1957; am § 2 ch 197 SLA 1959; am § 1 ch 9 SLA 1960; am § 1 ch 32 SLA 1977)

Effect of amendment. — The 1977 amendment added the third sentence.

Sec. 04.10.095. Winery license. The holder of a winery license may operate a winery where wine may be produced, prepared and bottled or barreled for sale. The holder of a winery license may sell wine to any person holding a license authorizing the sale of wine. The holder of a winery license may also sell wine produced by him on his licensed premises for consumption on or off his licensed premises. The winery license fee is $100. (§ 2 ch 41 SLA 1976)

Sec. 04.10.139. Community liquor licenses. The holder of a community liquor license must be a first or second class city. A city which has within its municipal boundaries a liquor license coming under § 20(a) or (g) of this chapter and issued to a private person within the city before June 1, 1970 is not eligible for a community liquor license, except that a city having held a liquor license through a local corporation or otherwise before June 1, 1970 is eligible for the license. Community liquor licenses issued under this section are restricted to the types of licenses authorized under § 20(a) and (g) of this chapter. This section does not change the provisions of § 430 of this chapter providing for local option elections. (§ 8 ch 108 SLA 1971; am § 2 ch 127 SLA 1974)

Effect of amendment. — The 1974 amendment inserted "first or second class" in the first sentence and deleted "of any class" following "city" once in that sentence and twice in the second sentence.

Legislative committee report. — For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

Sec. 04.10.146. Pub license. The holder of a pub license may sell beer and wine for consumption at a designated location on the premises of a campus of an accredited university or college. Only one pub license may be issued for each university or college campus in the state and then only upon the approval of the governing body of the university or college. The pub license is subject to the applicable provisions of this title and the regulations promulgated under it governing the control and sale of alcoholic beverages. The annual fee for a pub license is $300. In this section, an "accredited university or college" means a college or university accredited by the Northwest Association of Secondary and Higher Schools. (§ 4 ch 139 SLA 1974)

April 25, 1960, shall be renewed irrespective of this ratio, unless the application is denied for reason other than that contained in this section. (§ 35-4-13 ACLA 1949; am § 1 ch 131 SLA 1953; am § 2 ch 131 SLA 1957; am § 2 ch 197 SLA 1959; am § 4 ch 183 SLA 1960)

Transferability of liquor licenses. — Liquor licenses, in absence of a statute permitting transfer, are not transferable, either voluntarily or involuntarily. In re Application of Harris, 15 Alaska 250 (1954).

Section applies to voluntary inter vivos transfer. — The application of this section and AS 04.10.330 is restricted to a voluntary inter vivos transfer. In re Application of Harris, 15 Alaska 250 (1954).

And not to transfer by operation of law.—This section does not abrogate the general rule and permit the transfer of a liquor license from a decedent to his estate by operation of law. In re Application of Harris, 15 Alaska 250 (1954).

As license expires with licensee.— A license, being a personal privilege, expires with the licensee. In re Application of Harris, 15 Alaska 250 (1954).

A liquor license is not a property right but merely a personal privilege. 1967 Op. Att'y Gen., No. 4.

And, as such, it is not subject to attachment or execution. 1967 Op. Att'y Gen., No. 4.

Sec. 04.10.250. Limitation on number of beverage dispensary licenses.

Repealed by § 1 ch 40 SLA 1970.

Editor's note.—The repealed section derived from § 35-4-13 ACLA 1949; § 1, ch. 131, SLA 1953; § 2, ch. 131, SLA 1957; § 2, ch 197, SLA 1959; § 4, ch. 183, SLA 1960.

Sec. 04.10.255. Regulations against monopolies. The board shall adopt regulations which prohibit the formation of monopolies of alcoholic beverage dispensary and retail liquor store licenses and shall by regulation define "monopoly," as used in this section. (§ 10 ch 108 SLA 1971)

Sec. 04.10.260. Licensing to encourage tourist trade. (a) The board may, in its discretion, approve the issuance or transfer of a license without regard to the quota provisions of §§ 210—290 of this chapter when it appears that the issuance or transfer will encourage the construction or improvement of a hotel, motel, resort or similar business related to the tourist trade having a minimum accommodation of 10 rooms and a dining facility. The dining facility requirement may be waived if the majority of rooms have kitchen facilities.

(b) The accommodations and dining facilities provisions in (a) of this section are not applicable if the facility for which a license is sought is an airport terminal otherwise meeting the requirements of this section. (§ 35-4-13 ACLA 1949; am § 1 ch 131 SLA 1953; am § 2 ch 131 SLA 1957; am § 2 ch 197 SLA 1959; am § 4 ch 183 SLA 1960; am § 3 ch 108 SLA 1971; am § 1 ch 196 SLA 1972)

Effect of amendments. — The 1971 amendment, in subsection (a), deleted "into an area outside an incorporated municipality" following "li-

cense" in the first sentence, substituted "when" for "where" in that sentence, and added "and a dining facility" at the end thereof. The amendment also added the second sentence in subsection (a).

The 1972 amendment added subsection (b).

Sec. 04.10.270. Hearing on protest of local governing body. An application for a transfer, renewal or new license coming from within an incorporated municipality shall be transmitted directly to the board and need not bear a recommendation of the governing body of the municipality. Upon deciding to approve an application, the board shall transmit written notice of its intent to approve the transfer, renewal or new license requested to the city governing body, if the application is for premises within an incorporated city, or to the borough assembly, if the application is for premises within the area of an organized borough outside the boundaries of an incorporated city. If the local governing body wishes to protest approval, it shall furnish the board with a notice of protest within 30 days of receipt of the board notice of intent to approve the application. Upon receipt of a protest by the local governing body, the board may not take final action on the application until it has provided for a hearing on the protest in accordance with the requirements of the Administrative Procedure Act (AS 44.62). (§ 35-4-13 ACLA 1949; am § 1 ch 131 SLA 1953; am § 2 ch 131 SLA 1957; am § 2 ch 197 SLA 1959; am § 4 ch 183 SLA 1960; am § 1 ch 93 SLA 1969; am § 4 ch 108 SLA 1971)

Effect of amendments. — The 1971 amendment rewrote this section as previously amended in 1969.

Former law construed.—See In re Alaska Labor Trades Ass'n, 10 Alaska 472 (1945); Application of Wakefield, 10 Alaska 599 (1945); In re Kaye, 11 Alaska 556 (1948); In re Martin's Retail Liquor License No. 1517, 15 Alaska 225 (1954).

Sec. 04.10.280. Hearing on application; refund of fees. At the time set for the hearing, the board shall consider the application and any protests that may be filed against it, and shall hear the applicant or others appearing in connection with the matter, and give judgment upon the application. If the application is rejected, the board shall refund the application fee less the sum of $25. No license fee may be refunded after the license has been issued. (§ 35-4-13 ACLA 1949; am § 1 ch 131 SLA 1953; am § 2 ch 131 SLA 1957; am § 2 ch 197 SLA 1959; am § 4 ch 183 SLA 1960)

Cross reference.—As to refunds, see note to AS 04.10.100.

Discretion.—That lawful and sound, and not arbitrary, discretion must be exercised in granting or refusing licenses under this section is beyond question. In re Alaska Labor Trades Ass'n, 10 Alaska 472 (1945).

Quoted in Application of L.B. & W. 4217, 16 Alaska 277, 238 F.2d 163 (9th Cir. 1956).

Sec. 04.10.290. Posting of license. The licensee shall post the license conspicuously in his place of business, so that anyone entering the premises may easily read it. (§ 35-4-13 ACLA 1949; am §

security interest by virtue of a written agreement, which directed the bank to retain the executed transfer application until buyer default, it was the right to petition which the parties intended to serve as a security interest. Queen of N., Inc. v. Legrue, Sup. Ct. Op. No. 1670 (File No. 3512), 582 P.2d 144 (1978).

Authority of court to declare equitable lien and transfer license to preserve assets. — Where the trial court found that a creditor had a security interest in a liquor license in the nature of an equitable lien which was enforceable against the debtors and subject to foreclosure, and ordered the transfer of the license, noting that the matter was of some urgency because the license was by AS 04.10.350(b) required to be exercised for 30 days per year, under its general equity powers the court had the authority to declare an equitable lien and to order the transfer of the license, but only insofar as it was necessary to preserve the asset and the equitable lien should not have operated beyond the statutory minimum number of days in order to prevent its lapse. Queen of N., Inc. v. Legrue, Sup. Ct. Op. No. 1670 (File No. 3512), 582 P.2d 144 (1978).

Article 5. Local Option Election.

Section

Sec. 04.10.430. Election in incorporated cities. (a) Whenever 35 per cent of the total number of voters at the last general municipal election held in an incorporated city petition the city council to do so the city council shall place upon a separate ballot at the next municipal election the following question: "For the sale of intoxicating liquors . . . . . ." (yes or no). The regular election officers shall canvass the ballots and report the results to the city clerk, who shall publish the results. If, upon receipt of the certificate of election, the city clerk finds that a majority of the voters are against the sale of intoxicating liquor in the incorporated city, notice thereof shall be forwarded to the board and applications for licenses within the city shall thereafter be denied and no further licenses shall be issued in the city for a period of one year, nor may the board issue a new beverage dispensary or retail license for premises located within five miles of the city. If a majority of the voters at a subsequent election conducted for the purpose and in accordance with these provisions favor the sale of intoxicating liquor in the city, the board shall, upon application, issue the number and type and license to the same or other premises within the city as were in existence on the date of last election, at which a majority of the voters prohibited the sale of intoxicating liquor. Priority shall be given those applicants who were licensees and whose licenses were not reissued by reason of the last election conducted under the provisions of this title. The board shall issue the license notwithstanding any resulting restrictions which arose subsequent to the prohibiting election.

(b) No license may be suspended under the provisions of this section during the year for which it was issued except for cause.

(c) If the petition for a local option election is for a community liquor license under § 139 of this chapter, the board is precluded from issuing

additional new licenses of any other type within the boundaries of the city opting for the community liquor license. This section does not affect the provisions of § 260 of this chapter, or liquor licenses issued before September 10, 1972.

(d) A new license or permit for the sale of intoxicating liquor may not be issued within an incorporated city in which, on June 19, 1976 there is no licensed premise unless the city council has first conducted a local option referendum election on the sale of intoxicating liquor within the city as provided in (a) of this section. (§ 35-4-17(A) ACLA 1949; am § 2 ch 131 SLA 1957; am § 2 ch 197 SLA 1959; am § 2 ch 117 SLA 1972; am § 6 ch 53 SLA 1973; am § 6 ch 184 SLA 1976)

Effect of amendments.

The 1973 amendment deleted "or town" following "city" throughout subsections (a) through (c).

The 1976 amendment, effective June 19, 1976, added subsection (d).

Legislative committee reports. — For report on ch. 53, SLA 1973 (CSHB 382), see 1973 House Journal, pp. 793, 885. For report on ch. 184, SLA 1976 (SCS CSHB 246 am S), see 1976 House Journal, p. 944.

Local option election held legal exercise of power by city. — The local option election in the city of Ouzinkie under this section to determine if the city would be "wet" or "dry" was a legal exercise of power by the city and therefore the Alcoholic Beverage Control Board of Alaska could properly order the closure of the plaintiff's store. Rudick v. Alcoholic Beverage Control Board, Superior Court, 3rd Jud. Dist., C.A. 72-638 (1972).

Stated in Peter v. State, Sup. Ct. Op. No. 1112 (File No. 2185), 531 P.2d 1263 (1975).

Sec. 04.10.440. Consent of residents outside incorporated cities. No new license for the sale of intoxicating liquor may be issued under this title in areas outside incorporated cities unless a petition containing signatures of a majority of the bona fide residents residing within one mile of the place where intoxicating liquor is to be sold, and over the age of 19 years, is filed with the board asking that a license be issued within the said area. The board may not require the petition for a reissuance of the license. (§ 35-4-17(B) ACLA 1949; am § 1 ch 16 SLA 1951; am § 3 ch 131 SLA 1953; am § 2 ch 131 SLA 1957; am § 2 ch 197 SLA 1959; am § 2 ch 245 SLA 1970; am § 7 ch 53 SLA 1973)

Cross reference. — As to public approval for licenses in remote areas, see AS 04.10.310.

Effect of amendment.

The 1973 amendment deleted "or towns" following "incorporated cities" in the first sentence.

Legislative committee report.

For report on ch. 53, SLA 1973 (CSHB 382), see 1973 House Journal, pp. 793, 885.

Chapter 15. Regulation of Sales and Distribution.

And there is no requirement of formal accusation or hearing. — The board is not required by the Administrative Procedure Act to file a formal accusation or to hold a formal hearing before the power to revoke or suspend a liquor license can be exercised. 1963 Op. Att'y Gen., No. 10.

A liquor licensee is not entitled to a formal accusation and hearing by the board before his license can be suspended or revoked under this section on the ground that "a case of reinstatement or reduction of penalty" is involved under AS 44.62.330(d). 1963 Op. Att'y Gen., No. 10.

The accusation and hearing procedure set forth in the Administrative Procedure Act is not applicable to the suspension or revocation of liquor licenses by the Alcoholic Beverage Control Board after a conviction of a licensee of certain offenses as set forth in subsection (b) 1963 Op Att'y Gen., No. 10.

Since suspension or revocation is a statutory penalty within AS 44.62.330 (d)(3).—The provisions of this section authorizing the suspension or revocation of the liquor license upon conviction by a licensee of certain offenses fall clearly within the scope of AS 44.62.330(d)(3) as a statutory penalty provision relating to the suspension and revocation of licenses 1963 Op. Att'y Gen., No. 10.

The suspension and revocation of liquor licenses by the Alcoholic Beverage Control Board under this section is clearly exempted by AS 44.62.330(d) from a requirement of filing a formal accusation followed by a formal hearing. 1963 Op. Att'y Gen., No 10.

Causes for revocation.—Where the causes for revocation are enumerated by statute a license may be revoked for these causes only, unless the statute also authorizes a revocation for other good and sufficient cause. In re Martin's Retail Liquor License, No. 1517, 15 Alaska 171 (1954).

Board should consider statements offered by licensee in mitigation of penalties.—As a matter of practice, the Alcoholic Beverage Control Board should consider any statement offered by the licensee in mitigation of the penalties prescribed by this section. 1963 Op. Att'y Gen., No. 10.

But they may be considered informally since no hearing is required.—Statements offered by the licensee in mitigation of the penalties prescribed by this section may be considered informally and there is no requirement in the law that a hearing be held for this purpose. 1963 Op. Att'y Gen., No. 10.

The province of a court is not to exercise the power of granting or revoking licenses to sell intoxicating liquor, but to hear and determine constitutional or legal questions as to the grant or refusal of such a privilege to a designated person. Bordenelli v. United States, 16 Alaska 185, 233 F.2d 120 (9th Cir. 1956).

ALR references. — Right of one charged with unlawful sale of intoxicating liquor to be informed of name or identity of purchaser before trial, 5 ALR 409.

Criminal responsibility of purchaser of liquor sold in violation of law, 5 ALR 786; 74 ALR 113; 131 ALR 1326.

Revocation of license in exercise of police power, 124 ALR 541.

Revocation of liquor license of one person as ground for refusal of license to another, 153 ALR 836.

Sec. 04.15.110. Sale in violation of local option. Notwithstanding any other provision of this chapter, a person who unlawfully sells or offers for sale an intoxicating liquor in an area where the local option election has made these activities illegal is, upon conviction, guilty of a misdemeanor and punishable by imprisonment for a period not to exceed one year, or by a fine not to exceed $5,000, or by both. (§ 1 ch 84 SLA 1968)

Legislative committee report.—For report on ch. 84, SLA 1968 (CSSB 344), see 1968 House Journal, p. 672.

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January 11, 1980

M E M O R A N D U M

TO: Michael Rubinstein

FROM: Nick Maroules

RE: Relationship of Drug and Alcohol Use to Crime

Our new felony sentencing data, which includes most felony convictions in all ten Superior Court locations from July, 1976 to July, 1979, contains information from presentence reports about drug and alcohol use. The information includes (1) indications of past (or ongoing) drug and/or alcohol addiction, (2) drug and/or alcohol use at the time of the offense, and (3) the defendant's record of previous (or current) treatment for drug and/or alcohol problems. This memorandum outlines some preliminary findings regarding relationships between drug and alcohol use and crime.

Table I below indicates that a significant positive relationship exists between drug or alcohol addiction and severity of the defendant's prior record. Specifically, those defendants identified by the presentence reporter as having had alcohol or drug problems also had substantially more serious criminal histories than those without such problems.

TABLE I

Severity of Prior Record By Drug/Alcohol Addiction (N=1669)

	Drug Addiction History	Alcohol Addiction History	Neither	
No Prior Record	12.8%	14.0%	49.6%	
Misdem. Only	37.6%	52.0%	30.7%	
One Prior Felony	25.2%	21.1%	13.7%	significant at .001 (missing cases=232)
Two/more Felonies	24.3%	12.9%	6.1%	
	100.0% (218)	100.0% (450)	100.0% (1001)	

The above contingency distributions indicate that defendants with no histories of drug or alcohol problems were four times more likely to have been first offenders than those with a history of drug/alcohol abuse. Nearly half (49.6%) of those with no histories of substance abuse were first offenders, compared to 12.8% and 14.0%, respectively, for those with drug and alcohol problems. At the other end of the scale, those with a drug or alcohol problem were substantially more likley to have prior felony convictions than those with no such history. These observed differences are statistically significant at the .001 level which means that there is only one chance in a thousand that the differences were due to chance.

Table I indicates the overall relationship between prior record and drug/alcohol use for all defendants without regard to the type (or class) of their offense. Table A, in the appendix to this memorandum sets forth the relationship between these two variables for each of five broad classes of offense -- violent felonies, property felonies (burglary, larceny, etc.), frauds/forgeries/embezzlements, drug crimes, and "morals" offenses. An examination of these tables reveals that the relationship observed in Table I persists among all offense classes.

As noted above, our data also includes information on drug or alcohol use at the time of the offense. Table II, below, indicates the proportion of cases in which the defendant was reported to have used drugs, drugs in combination with alcohol, or alcohol alone at the time of his offense, for each of four classes of offenses (drug offenses are eliminated from this aspect of the analysis).

TABLE II

Frequency of Use of Drugs and Alcohol
At Time of Offense for Four Offense Classes

	Used Drugs	Used Drugs & Alcohol	Used Alcohol
Violent Offenses	3.2% (19)	4.9%(29)	56.3% (330)
Property Offenses	4.0%(29)	4.4%(32)	39.2%(286)
Forgery/Fraud Offenses	2.7%(7)	0.8%(2)	9.1%(24)
"Morals" Offenses	1.1%(1)	9.9%(9)	46.2%(42)

Table II shows that a defendant was much more likely to have been under the influence of alcohol than drugs at the time of the offense. The magnitude of alcohol use is staggering in comparison with drugs. It should be mentioned, however, that the relative difficulty in detecting drug intoxication as compared with alcohol use probably accounts for at least a portion of the difference.

APPENDIX

TABLE A

SEVERITY OF PRIOR RECORD BY PAST
DRUG/ALCOHOL USE FOR EACH OFFENSE CLASS

I. Violent Felonies (N=586)

	Past Drug Problem	Past Alcohol Problem	Neither
No Priors	9.3%	16.0%	47.1%
Misdmrs. Only	40.0%	53.1%	28.6%
One Felony	16.0%	17.8%	16.8%
Two/More Felonies	34.7%	13.1%	7.6%
	100.0%	100.0%	100.0%
	(75)	(213)	(238)

(60 Missing Cases)*
Significant at .001

II. Burglary, Larceny Offenses (N=729)

	Past Drug Problem	Past Alcohol Problem	Neither
No Priors	7.1%	10.9%	54.8%
Misdmrs. Only	27.1%	52.4%	28.5%
One Felony	40.0%	23.8%	11.4%
Two/More Felonies	25.7%	12.9%	5.3%
	100.0%	100.0%	100.0%
	(70)	(147)	(376)

(136 Missing Cases)*
Significant at .001

TABLE A, (Cont.)

III. Fraud, Forgery, Embezzlement Offenses (N=264)

	Past Drug Problem	Past Alcohol Problem	Neither
No Priors	26.1%	10.3%	49.2%
Misdmrs. Only	39.1%	35.9%	26.0%
One Felony	26.1%	35.9%	17.7%
Two/More Felonies	8.7%	17.9%	7.2%
	100.0%	100.0%	100.0%
	(23)	(39)	(181)

(21 Missing Cases)*
Significant at .001

IV. Drug Offenses (N=231)

	Past Drug Problem	Past Alcohol Problem	Neither
No Priors	23.8%	7.1%	41.3%
Misdmrs. Only	50.0%	64.3%	41.9%
One Felony	11.9%	21.4%	12.0%
Two/More Felonies	14.3%	7.1%	4.8%
	100.0%	100.0%	100.0%
	(42)	(14)	(167)

(8 Missing Cases)*
Significant at .05

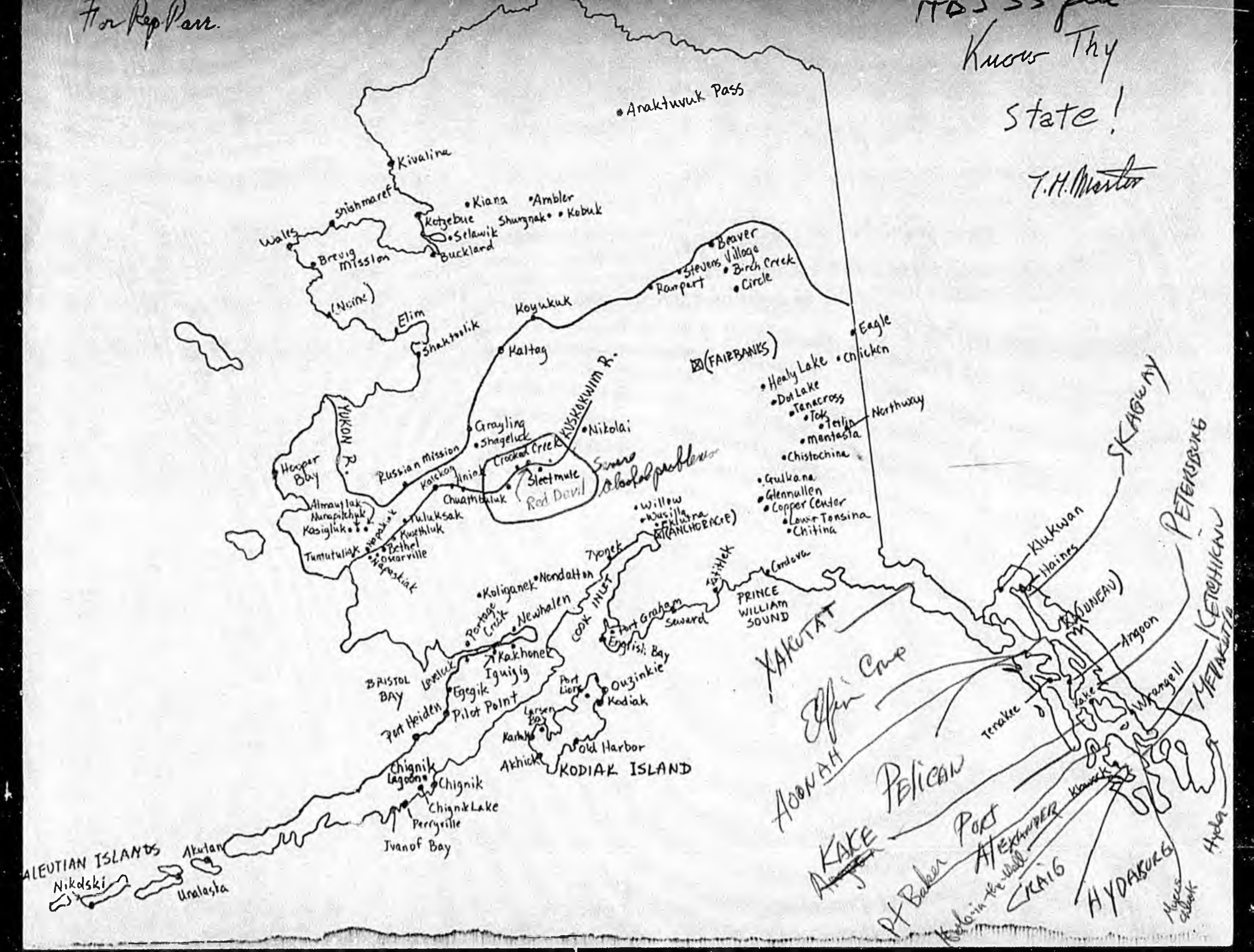
TABLE A, (Cont.)

V. "Morals" Offenses (N=91)

	Past Drug Problem	Past Alcohol Problem	Neither
No Priors	0%	21.6%	51.3%
Misdmrs. Only	37.5%	56.8%	38.5%
One Felony	50.0%	13.5%	5.1%
Two/More Felonies	12.5%	8.1%	5.1%
	100.0%	100.0%	100.0%
	(8)	(37)	(39)

Significant at .01

* Cases noted as missing from the breakdown analysis concern theft for which past drug/alcohol histories or prior record information was unascertainable.



For Rep Parr.
Know Thy State!
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Anaktuvuk Pass
Kivalina
Shishmaref
Wales
Brevig Mission
Kotzebue
Kiana
Ambler
Shungnak
Kobuk
Selawik
Buckland
(Nome)
Elim
Shaktoolik
Koyukuk
Kaltag
Rampart
Stevens Village
Beaver
Birch Creek
Circle
Eagle
Chicken
(FAIRBANKS)
Healy Lake
Dot Lake
Tanacross
Tok
Tetlin
Northway
Mentasta
Chistochina
Gulkana
Glennallen
Copper Center
Lower Tonsina
Chitina
KUSKOKWIM R.
YUKON R.
Hooper Bay
Grayling
Shageluck
Russian Mission
Kalskag
Aniak
Crooked Creek
Nikolai
Sleetmute
Red Devil
Severe alcohol problems
Chuathbaluk
Tuluksak
Akiachak
Kwethluk
Bethel
Oscarville
Napaskiak
Tuntutuliak
Alakanuk
Nunapitchuk
Kasigluk
Willow
Wasilla
Eklutna
(ANCHORAGE)
Tyonek
Koliganek
Nondalton
Portage Creek
Newhalen
COOK INLET
Tatitlek
Cordova
PRINCE WILLIAM SOUND
Port Graham
Seward
English Bay
Kakhonak
Iguigig
Levelock
BRISTOL BAY
Egegik
Pilot Point
Port Heiden
Port Lions
Ouzinkie
Kodiak
Larsen Bay
Karluk
Old Harbor
Akhiok
KODIAK ISLAND
Chignik Lagoon
Chignik
Chignik Lake
Perryville
Ivanof Bay
Akutan
ALEUTIAN ISLANDS
Nikolski
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SKAGWAY
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FINAL REPORT

ALCOHOL IN VILLAGE ALASKA

Pincipal investigator - Stephen Conn

Introduction

Each facet of our project to study the historical and modern roles of local and territorial (or state) institutions in defining and implementing alcohol control among the rural Alaska Native population is now complete. Data has been gathered by each subinvestigator and has been analyzed.

Work remaining is the preparation of final reports and their dissemination to all interested parties.

It is fair to say that our study (and the continuing study of Dorothy Jones under the auspices of a companion grant) occurs at a most significant time in the reformulation of alcohol policy in our state. As the enclosed report by Peter Ring will indicate, the very existence of the Alcohol Beverage Control Board is now open for legislative debate under Alaska's sunset review laws. Title 4, the statutory section which includes most state alcohol control laws, is now in revision. The review commission has directed the 1979-1980 legislature to our study and its results on matters that pertain to rural Alaska.

Preliminary results of our study, particularly the correlation between in-patient accident rates and alcohol practices in the towns of Bethel and Barrow have been communicated to policy makers at each local level. Public Broadcasting inter-

views have been scheduled to communicate our findings to both urban and rural populations.

Finally, we have been able to share population data, historical records and data on the precise relationship that individual villages have had with liquor supplies in towns, treatment centers and local and state police over time with Dorothy Jones and her research assistant in order to weld our studies together as we have long contemplated.

We hope that both studies will be published either through the University Center for Alcohol and Addiction Studies of the University's Institute for Social and Economic Research.

Summary of basic findings

By combining several sources of data along with interviews, we have been able to analyze the differing relationships between small villages and towns which serve as sources of legal and social services as well as the most frequent sources of liquor.

We have drawn heavily on Public Health Services records to discover the precise nature of the interplay between town policy, state law and legal agents and local justice systems in small villages.

In the 57 village Bethel region, a 97,000 square mile area with 29,000 people, we have discovered three persistent clusters of satellite villages:

First, a group of coastal villages who have maintained rigid control practices during wet and dry periods in Bethel and despite a falling away of external legal support for liquor suppression after Alaska's statehood.

The conduct of these villages, reflected in trooper arrest records and in accident rates is at complete variance with Bethel accident rates and accident rates in villages sufficiently close to Bethel to permit year-round travel by air, boat and over land is also reflected in very limited individual contacts between Bethel police and the Bethel treatment (sleep-off) center during the entirety of the modern period under study (1971-1977).

In other words, the consensus regarding alcohol use appears to carry over in the conduct of individual villagers who come to the town to work, to play and to seek governmental services.

On the other end of the spectrum are a cluster of Athabascan villages northeast and upriver from Bethel. These villages were able to seek liquor from Red Devil, a small non-Native village. Residents did not seek liquor in Bethel nor did they travel there for social occasions. Bethel is, after all, a predominantly Yupik Eskimo village.

These upriver villages have consistently higher rates of accidents over the period of study, influenced not at all by Bethel's decision to be wet or dry or by the year-to-year police practices to control drinking in Bethel.

Directly influenced by Bethel's alcohol practices (e.g., Bethel's shift to dry after 1973, Bethel's year-to-year police practices, and the sleep-off center in Bethel) are a third cluster of villages around Bethel, called here its "suburbs".

Both serious accident rates for Bethel and the suburban villages follow the same year-to-year trend lines. Each was influenced by Bethel's decision to become dry and effectively

shift liquor sales to an illegal Bethel market and to purchase orders from distant cities.

Police practices also impacted on these trends. In 1977, for example, Bethel police used an open bottle ordinance (with a twenty-five dollar civil fine) and the treatment center as a transmission point for public drinkers.

We discovered that 29 percent of Bethel residents as individuals were picked up and taken to the sleep-off center at least once in 1977. Many suburban villages showed that 12.5 percent of its residents had a similar experience.

If one considers that town and village populations contain 60 to 70 percent minors, the dimensions of town policy policy as it pertains to the adult population can be shown to be truly staggering.

The North Slope Police Department of Barrow, Alaska, has used the legislatively sanctioned practice of protective custody to contain and jail public drinkers from five to twelve hours. In 1978, the Department jailed 450 individuals at least once, approximately half of the adult population of Barrow. (Barrow has fewer satellite villages.)

The chief of the department has advised us that his protective custody pick-ups continue to climb on a per month basis from 35-40 percent.

Town policies then continue to approach alcohol control by means of mass pick-ups of the adult Native population. They vary in terms of the destination of the constrained drinking person.

Town officials demonstrate reductions in alcohol-related crimes and suicides but at the price of continuing a relationship between law as an agent of prevention and suppression and the rural Native which has characterized alcohol control among Natives since Russian contact with the Native population.

It appears that drinkers among the largest number of suburban villages have shifted their drinking to the town. This shift from village to town is important since villages lack even elemental resources to deal with alcohol-related problems from a legal, treatment or medical perspective.

A fourth kind of "relationship" between town and village has been discovered which, we believe, is strongly suggestive of the future relationship of many villages to rural towns. It is not reflected in clusters of villages but rather in independent developments in single villages.

This fourth set occurs when wage earning opportunities arise in the village itself, therefore obviating the need to migrate to the town (or elsewhere) to earn money. In Fishnet, for example, one of our target villages for intensive study, new housing, a new school, a new waterplant and other building has generated short-term wage earning opportunities in a labor scarce environment.

With the emergence of wage earning opportunities we discovered that resident and non-resident bootleggers supplied liquor as a scarce commodity to the village. The relationship between the town and village changes because the relevance of the town as a source of income and of liquor diminishes.

What occurs then is a transfer of liquor-related problems to the village, on a scale in which they have historically occurred in the town. Villages, armed with scarce resources (e.g., no police, jail or even copies of state laws) must then confront town problems.

Historical Overview

Our project has undertaken several forms of historical analysis. The Ring study (enclosed) traces the development of the regulatory and taxation mechanisms. John Havelock is currently writing an historical analysis of liquor law and liquor control in rural Alaska.

The Havelock study demonstrates the persistence of legal control directed at the Alaska Native population, even during periods when Alaska was legally dry for the entirely of its population.

Coast Guard cutters, federal marshals, specially appointed officers for suppression of liquor among the Natives and territorial and state legal agents have acted as an external force to vigorously prosecute Native drinkers, hootch manufacturers, and those non-Natives who sold to whites.

Along with legal agents, missionaries and teachers socialized Natives to desist from drink entirely. On the other hand, whalers, sourdoughs, military men and others offered to Natives the kind of drunken comportment characterized by binge drinking and violence.

These strongly contrasting approaches to drinking, conveyed over time and even at the present time offer strong empirical

evidence for the thesis of McAndrew and Edgerton that drinking behavior is learned social behavior.

My own investigation has an important ethnohistorical dimension. I have traced through minutes, letters and interviews, the change that took place in the working relationship between villages and Outside legal authorities with the assumption of statehood in Alaska.

Briefly, representatives of village councils, the mainstay of institutionalized social control, throughout the territorial period, met in 1962 with state officials to discover their authority to curb alcohol use and abuse.

To their chagrin, councils discovered that the state legal structure did not endorse local restrictions on transportation of liquor into the villages, possession of liquor in the village, or the manufacture of hootch.

While state officials supported enforcement of local rules through councils capable of fining persons, this in itself extra-legal activity, state police and legal officials required that villages await drunken behavior in the village. State officials also refused to deal with persons who did not pay fines.

What the state did offer in 1963 were rules capable of reinforcement by the state as state law violations. The state suggested that it would react with state police intervention if village residents refused to abide by the warnings and fines of the village council.

In fact, the state's position had several negative effects. It sharply restricted the supported role of the council to

prevent liquor-related occurrences. It demanded of village councils that they act as police courts and not as conciliating bodies to deal with repeat offenders in their village. Finally, as letters from villages to the trooper reflected (letters reproduced representatively in our published report), the single Bethel trooper and the small detachment posted in Bethel in later years, was never able to deal with and respond to all of the reported instances of alcohol-related violence communicated to the trooper and Bethel court.

This narrowing of the options for dealing with liquor-related problems occurred in the Bethel region at the worst possible time for that region. The population rates of suburban villages grew during this epoch (the early 1960's). Transportation to and from town by motor boat and snow-go reflected the introduction of new technology into the region. Wage opportunities in Bethel, a town that doubled in population in the 1960's and tripled in the 1970's, increased.

In short, instances of accidents and crimes related to alcohol increased for social and economic reasons at the precise time when the state narrowed the tolerated role of village legal authority. Only those villages which would maintain a strong consensus against use of liquor and could expel deviants to other villages or towns withstood this removal of local authority with no practical replacement of state legal authority through trooper service.

John Angell, another project researcher, completed and published a 55 village survey of justice problems and resources.

This project was funded independently of the NIAAA project but was designed to complement it.

Angell's study (enclosed) portrays the situation of modern rural villages in 1978 from a sample that includes villages of many regions in Alaska.

His data confirms the general absence of elemental capacity to deal with alcohol-related problems by means of police and jails or sleep-off centers. More than twenty percent of the sample, a sample selected with an eye toward the presence of a resident magistrate, still looked to councils as a source of judicial authority.

Angell has selected from his data, materials relating to the role of alcohol, for villages under direct study by our project. This report will be ready shortly.

The portrait of village and town relationships has other dimensions to be explored in our final report. One of these is the role of a rural prosecutor who vigorously sought to prosecute bootleggers.

The bush prosecutor had to convince both urban police and regulatory agents and rural juries of the necessity to prosecute and convict bootleggers in order to keep the price of liquor high. He met with mixed success.

His view and that of nearly all town officials, was that continuation of the prohibitionist approach toward alcohol use was necessitated by the general absence of resources in either towns or villages to deal with that minority of persons who

commit crimes or suffer physical injury as a result of overconsumption.

In 1977, the state governor promoted a package of legislation which included the option for small communities to go dry. This legislation did not meet with a warm response from small villages. Small villages no longer believed themselves capable of restricting introduction of liquor. Instead, they requested Western law services to deal with the problems in much the manner of towns.

Treatment resources are severely lacking in rural Alaska. While deciminalization in the early 1970's has removed direct participation in daily alcohol control by judges and lawyers, police and rural jails are still the mainstay of resonses to alcohol control problems.

The Bethel approach, police transport to the treatment facility, has proven to be the approach that contains a far larger number of individual adults than police approaches in other places (such as Barrow) which result in the jailing of individuals while they sober up. We were able to discover this by tracking individuals over time through police booking sheets.

Of some tentative significance was our discovery that persons arrested for possessing an open bottle in public and transported to the treatment center were substantially older than the average town or village population. In fact, it appears that alcohol control measures, taken in their entirety, have their primary focus upon minors (who are jailed for consumption of alcoholic beverages or for curfew violations) and persons in their mid-30's.

Persons who commit serious crimes in the villages and towns

are usually males in their mid-twenties.

Literature now being generated from the Northwest territories on alcohol control in Frobisher Bay, a town not unlike Barrow or Bethel, describes a similar focus on young persons and somewhat older persons.

This suggests, albeit tentatively, that alcohol control measures introduced to discourage serious crime may be less efficient as they deal with the generation of the offender class. It may also suggest that this same portion of the drinking population may not drink in a social context that presents them for mass containment.

We explored a theory often suggested in Alaska, that other drugs may have replaced alcohol in rural Alaska. We found little or nothing to support this in the context of rural drinking and alcohol control.

While marijuana was readily available in villages we studied, alcohol was viewed as an avenue toward alternative behavior that was not symptomatic of other drugs. Alcohol was also perceived accurately as a scarce commodity to be consumed in its entirely while available.

Of course restrictive policies contributed to the identification of alcohol as a relatively more precious, scarce commodity.

Yet even officials who recognized that an active policy of open-ended containment of persons who drank along with a restrictive policy on purchase offered no opportunity to resocialize persons so that they might develop alternative styles of drunken comportment, few suggested eliminating this policy. Town persons

are not prepared to deal with what they perceive as a deadly period of transition from a prohibitionary stance to one of laissez-faire. Once again, the absence of resources to deal with accidents and crime once it occurs was the central issue.

To the extent that pressure for towns to legalize sources of liquor exists, the argument offered is that by capturing what is now estimated to be a million dollar illegal liquor trade, money could be generated to develop resources.

The situation of small villages located short distances from legal sources of liquor is made more severe because Alaska law does not generate revenue for villages that do not, themselves, become wet suppliers of liquor. Dry or damp villages (those which allow possession but not sale) must react to liquor without sharing in liquor-generated revenues.

The final dimension of our study focuses on corrections. As stated, jails (along with police) continue as the mainstays of alcohol policy in the state. The Angell study discovered that only a minority of villages have a jail in any condition for housing drunk persons. Only one village studied had a treatment center that offered treatment.

Thus the apparent direction of the written law from control to treatment, is not reflected in a shift in resources.

Treatment in an institutional or probationary context has been mandated by the state supreme court for persons convicted for alcohol-related crimes, deemed in need of such treatment.

This "right to treatment" decision will affect nearly all Alaska Natives incarcerated in state and out-of-state penal institutions.

Roger Endell, our corrections expert, analyzes the policy implications of both decriminalization and the right to treatment decision on the centralized state-operated correctional system.

Findings and Recommendations

Our staff continues to analyze our separate findings in order to present an integrated package of recommendations to the state agencies and the legislature.

Our study suggests that rural alcohol problems and the rural context demand legislation and regulation that may not be appropriate for urban Alaska. For example, it may be that a social impact statement should accompany issuance of a liquor license in an otherwise damp or dry cluster of villages. Further, town officials must, on the one hand live with the resources at hand and, on the other, not pursue a control policy that is so successful that drinking in town is totally discouraged. The end result of this will be to hasten a pattern already discovered in selected villages that have generated some independent economic development - development of town drinking patterns without town resources.

Ring's report demonstrates that the state's regulatory mechanism plays very little part in regulating either legal or illegal liquor supply. He offers recommendations for change.

The legislature will be told that rural persons directly impacted by liquor-related decisions are disenfranchised when these decisions are made. They are also left without resources to deal with these problems.

Secondary Findings

We have learned that where, as in the case of rural Alaska,

most criminal activity in the villages remains unreported and untreated, that one must seek alternate sources of statistical and substantive information.

Public health service accident rates offer a partial, but not complete solution. In-patient treatment data is capable of analysis on a village by village basis. Out-patient data is capable of analysis according to causation. Thus, while the in-patient data may be analyzed against changes in town and state practice, out-patient data offers a path to discover the significance of interpersonal violence as a causative factor in accidents.

Trooper and town arrest date reflects levels of police resources and levels of police response to at least as significant degree as it does actual occurrences. Thus, careful comparisons between arrest rates when active use of protective custody was the established policy of the North Slope Borough Police in 1977 with a previous (1976) year when the same police system was funded and established has been found to be less significant than the eight-fold increase of arrests of all types in these years when compared with earlier periods when a single trooper, and small municipal police force operated on the North Slope.

Throughout the rural study, our researchers were plagued by non-legal variables, even less capable of consistent analysis. Each of these non-legal variables have significant impacts upon levels of alcohol consumption throughout the period. Among these variables are:

A. Economic change in the region and changing economic opportunities in the state (e.g., construction of the TransAlaska Pipeline with consequent opportunities for employment).

B. Changing and ever-improving telephone communication and airplane transportation.

C. Dramatic shifts in population including high live birth rates, migration to towns and to suburban villages, and policy changes which resulted in year-round residence of young people for schooling in some but not all villages.

D. Perseverance of strong religious authority and cultural integrity in some villages.

It would be incorrect to view these changes as in one direction only. Much economic development in villages is of short-term duration and, more importantly, is perceived to be of short-term duration. Social controls generated from a wage earner perspective do not occur where drinking workers are rehired when they sober up because such labor is scarce and ongoing personal relationships predominate over short-term drinking episodes.

Similarly, while all villages experienced growth in the 1960's, the patterns of the 1970's reveal marked differences in growth with actual diminution of some villages where legal and social control is non-existent.

The role of the law as experienced by rural persons in towns and villages is, if anything, the most consistent thread throughout rural history. Manifested changes in the direction of the law (most notably decriminalization of drunken behavior in public and private and recent state supreme court decisions) had extremely limited impact on town practice. Prior to official law reforms, towns with resources had already substituted waiver-out procedures for arrests, treatment centers for jails, and civil fines for criminal fines.

Perhaps the most critical discovery of our project is the symbiotic relationship between the drinking Native and American law throughout Alaska's history. The persistence of this relationship is such that no person can now argue whether drunken comportment in rural Alaska is merely the target of law or is, to a substantial degree, the product of this legal relationship.

Courage and self-discovery must occur if Native villages, armed with resources, are not to replicate the role of white-directed law on resident Native populations.

It is our hope that the substance of our investigation will lay the basis for policy reassessment by the state but most importantly, community re-assessment by villages and towns where Native political power is predominant or, at least, significant.

Our evaluation of the law and practice, where we have been, where we are, and where we are going, should provide a long-needed data base for dispassionate evaluation of the relationship between law, alcohol and rural Natives.

IMPLICATIONS FOR PROTECTIVE CUSTODY LAWS

AN ANALYSIS OF OUTPATIENT ACCIDENT TRENDS
IN BARROW AND BETHEL

The residents of Barrow and Bethel, in addition to the villages surrounding them, are treated for outpatient accidents by the Native Health Service hospitals located within each town. A record is made of the cause and place of injury when individuals are treated for outpatient accidents, which consist of those accidents not requiring hospitalization. A small percentage of non-native individuals are treated by the same facilities in areas such as Barrow where no other medical facilities exist. The statewide data included in Table 1 respresents both the urban native population, such as Anchorage, and the rural native population, such as Barrow and Bethel. It is possible to compare statewide outpatient data to the same data from individual regions.

Differences between the number of occurrences, causation, and place of outpatient alcohol-related accidents are apparent in comparing the Barrow region to the Bethel region and the state as a whole. Although a small portion of the differences might be attributed to idiosyncracies in recording practices between regions, certain trends in these data suggest that specifics of alcohol control mechanisms make an impact on how and where alcohol-related accidents occur in rural regions.

The cause of injury labeled: "Injury Purposefully Inflicted by Another" is of particular interest to us because it may indicate a violation of criminal law. Also, injury purposefully inflicted

by another accounted for a substantial percentage of alcohol-related accidents in both the Barrow region (40%) and the Bethel region (41%) compared to other causes including motor vehicle, environmental factors, accidental falls and poisoning. (Table 3).

We analyzed "Inside the Home" as a place of injury because of the magnitude of alcohol-related accidents that occur inside the home (Table 2), and because the home as a place of alcohol related accidents has an implication on the usefulness of protective custody laws in the State of Alaska which limit the police to public intervention of drunken comportment.

In the Barrow region, 42% of the alcohol related accidents occur inside the home. This is 14% higher than the statewide ratio of all alcohol related accidents that occur inside the home (Table 2). It is particularly higher than other places that set the scene for alcohol-related accidents including outside the home, highway and street, recreation and public building (Table 4).

Furthermore, outpatient data indicate that the home is frequently a setting for interpersonal violence, especially in Barrow. Within the statewide native population, 32% of all accidents purposefully inflicted by another occur inside the home. In the Barrow region, 56% of all outpatient accidents recorded as injury purposefully inflicted by another occur inside the home (Table 2). This may indicate that the Barrow region has a 24% higher ratio of interpersonal violence within the home than the statewide native population.

Alcohol abuse plays a major role in the occurrence of interpersonal violence inside the home. The percentage of all accidents purposefully inflicted by another, alcohol related, that occur inside the home is 21% higher in the Barrow region than the same ratio in the state as a whole (Table 2).

Several factors should be considered as making the home a setting for alcohol related accidents in the Barrow region. In the period covered by the preceding data, the local option in the town of Barrow prohibited the sale of alcoholic beverages, and no public drinking establishments existed.

In addition to the legally dry status of Barrow, the approach to alcohol control by town police may determine where drinking and violence occur. Liquor that is illegally purchased in the town of Barrow, or purchased legally from Fairbanks is received in bottles and can be safely consumed in private homes without fear of police intervention.

Thus, while broad-based use of protective custody serves to sweep the public areas of town clear of intoxicated persons in possession of bottles, police response to private, at-home drinking is limited to requests for assistance. Protective custody laws do not provide for police intervention into private homes, although in some cases police will respond to these requests in Barrow. The net result of protective custody pick-ups is that the individual is jailed from 5 - 12 hours.

In Bethel, the dry policy has a similar affect of causing citizens to purchase and consume bottles in private. The private domain is a haven for town residents and village residents with

town relatives or acquantances.

In short, state and town practice encourages private drinking from bottles obtained legally or illegally. The net result seems to be that serious violence that is alcohol related is more likely to occur at home, where fewer drinking controls exist.

Barrow and Bethel both employ the same dry local option that encourages drinking in the private sector. However, a comparison of Bethel region outpatient accidents to the Barrow data indicates that these two towns differ somewhat in accident trends. For Bethel, the percentage of all accidents that occur inside the home is 4% lower than the statewide ratio, and 14% lower than the Barrow ratio. Bethel alcohol-related accidents occurring inside the home indicate an average 9% lower than the Barrow average, but 5% higher than the statewide average. Similarly, in Bethel, the percentage of all injury purposefully inflicted by another, alcohol-related, that occur inside the home is 9% lower than the Barrow average, but 12% higher than the statewide average (Table 2).

Police practice in Bethel is similar to Barrow and yet different. Police confiscate open bottles in public and jail persons with bottles until civil fines are paid. Fines are usually paid immediately after confiscation of the bottle, and individuals are rarely jailed on this town ordinance. Bethel police do not use protective custody frequently. Instead, police convey persons to the sleep-off center.

The high level of transports of Bethel citizens to the sleep-off center (29 percent of all town residents were transported at least once in 1977) suggests that residents may be more inclined to solicit police intervention when domestic drinking occurs and where the end result is transport to a sleep-off center - not incarceration of a loved one in the local jail.

Because protective custody replaced criminal law charges for being drunk in private as well as drunk in public, it has severely narrowed alcohol control practice where protective custody is the mainstay of alcohol control practice as it is in Barrow.

Bethel's use of a second resource, a sleep-off center, may be one way to provide a useful avenue for increasing drinking controls within the home through acceptable police intervention into private drinking situations at the request of town residents.

Table 1

1978
NATIVE HEALTH SERVICE
ACCIDENTS TREATED ON AN OUTPATIENT BASIS

	TOTAL FIRST VISITS	OCCURRED INSIDE HOME
STATEWIDE: All Native Service Units		
Total All Accidents	15,827	2,751
Number of Alcohol Related Accidents	2,249	628
Total Accidents with Injury Purposefully Inflicted by Another	1,458	467
Number of Accidents with Injury Purposefully Inflicted that were Alcohol Related	858	305
BARROW SERVICE UNIT: Servicing the Town and Surrounding Villages		
Total All Accidents	1,471	391
Number of Alcohol Related Accidents	352	149
Total Accidents with Injury Purposefully Inflicted by Another	179	101
Number of Accidents with Injury Purposefully Inflicted that were Alcohol Related	141	81
BETHEL SERVICE UNIT: Servicing the Town and Surrounding Villages		
Total All Accidents	2,457	321
Number of Alcohol Related Accidents	251	82
Total Accidents with Injury Purposefully Inflicted by Another	162	74
Number of Accidents with Injury Purposefully Inflicted that were Alcohol Related	103	49

TABLE 2

1978
NATIVE HEALTH SERVICE
ACCIDENTS TREATED ON AN OUTPATIENT

	STATEWIDE*	BARROW**	BETHEL**
Percentage of all Accidents that were Alcohol Related	14%	24%	10%
Percentage of all Alcohol Related Accidents that were Injury Purposefully Inflicted by Another	38%	40%	41%
Percentage of All Accidents that Occur Inside the Home	17%	27%	13%
Alcohol Related Accidents that Occur Inside the Home	28%	42%	33%
Percentage of all Injury Purposefully Inflicted Accidents, Alcohol Related that Occur Inside the Home	36%	57%	48%
Percentage of all Purposefully Inflicted Accidents that Occur Inside the Home	32%	56%	46%

* This represents the statewide native population which includes all Native Health Service Units, Urban and Rural

** This represents the service unit region which includes the town and surrounding villages

Table 3

1978
NATIVE HEALTH SERVICE
BARROW REGION SERVICE UNIT

OUTPATIENT ALCOHOL RELATED ACCIDENTS
CAUSE OF INJURY

CAUSE	NUMBER	PERCENTAGE
Injury Purposefully Inflicted by Another	129	40%
Accidental Falls	56	17
Motor Vehicle	48	15
Cutting and Piercing Instruments	33	10
Undetermined	18	6
Other	16	5
Animal Related, Not Stings	8	3
Suicide	6	2
Environmental Factors	4	1
Firearms	2	-
Machinery	2	-
Accidental Poisoning	1	-
Fires	1	-
TOTAL:	324	

(Data from Alaska Area Native Health Service, Systems Development)

Table 4

1978
NATIVE HEALTH SERVICE
BARROW REGION SERVICE UNIT

OUTPATIENT ALCOHOL RELATED ACCIDENTS
PLACE OF INJURY

PLACE	NUMBER	PERCENTAGE
Home, Inside	139	42%
Home, Outside	75	23
Highway and Street	43	13
Not Specified	23	7
Recreation and Sport	17	5
Public Building	15	5
Other	5	2
Industrial Premise	4	1
School	1	-
Resident Institution	1	-
Farm, Ranch	1	-

TOTAL: 324

(Data from Alaska Area Native Health Service, Systems Development)

THE ALCOHOLIC BEVERAGE CONTROL BOARD IN ALASKA

I. BACKGROUND AND OBJECTIVES OF THE STUDY

This study of the Alcoholic Beverage Control (ABC) Board was conducted in connection with a larger research project dealing with "Alcohol Control in Village Alaska," sponsored by the National Institute on Alcohol Abuse and Alcoholism (NIAAA), which was directed by the Criminal Justice Center (Center), University of Alaska, Anchorage. Dr. Stephen Conn, Professor of Justice with the Center, served as the project's principal investigator. The project was designed to determine the impact, if any, of varying legalistic approaches to the control of alcohol use in rural Alaskan settings, focusing on two communities, Bethel and Barrow, and their satellite villages. The effects of those communities' efforts to regulate beverage alcohol consumption within their political boundaries by alternating between "wet" and "dry" status were also major areas of project inquiry.

State law provides that Alaskan communities may be wet or dry.[1] In short, communities may make legal or illegal the local sale of liquor.[2] Further, they may restrict legal liquor sales to community run liquor stores and may prosecute other sales of liquor or the possession or transportation of alcoholic beverages with the intent to sell them illegally.[3]

1/ AS 04.10.430

2/ AS 04.15.110

3/ AS 04.15.070

State law does not permit communities to make possession of beverage alcohol for private consumption illegal. Nor does state law permit dry communities to prohibit their residents from ordering liquor for personal use.

However, a significant number of villages, through ordinance or custom, attempt with varying degrees of success to prohibit the use of liquor in their village. Although such a community position is extralegal, or even illegal, it is bolstered by village councils which act in lieu of courts in some Eskimo villages, church groups, and community opinion translated into social pressure. Further, it has some wavering though indirect support in statements by legal officials (e.g., state policy) who support initial intervention into community problems by village councils without reflection as to the legality or illegality of the council as an institution or the legality or illegality of some village rules.[4]

In brief, and as used in this paper, local control may be described as one of three "types": (1) dry by local option; (2) wet by local option; and, (3) dry by village edict and procedure. Dry or wet by local option refers to the legality or illegality of sales in that place, but not to possession or sales for private consumption made to individuals in that place from sources outside of the community. Where state law only is at play, liquor may be legally consumed in private.

4/

Ironically, villages which have not exercised their option through the petition and referendum process[5] to become officially dry may prohibit through local ordinance mechanisms both the sale and possession of liquor.[6]

Table 1 presents a history of recent wet/dry periods in the two communities which were the focus of the project.

TABLE 1

Community	Wet	Dry
Barrow	1973-1975 1977	1970-1972 1976 1978-1979
Bethel	1970-1973	1974-1979

This study of the ABC Board paralleled those time frames and was designed to determine the extent to which statewide legalistic control mechanisms for beverage alcohol helped or hindered local option control efforts. Our conclusions are based primarily on analysis of ABC Board activities, interviews with Board members and staff, interviews with others associated with the liquor "industry" in Alaska, analysis of existing and proposed statutes

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5/ AS 04.10.430

6/ If they are incorporated municipalities and are aware of this potential. Unfortunately, few are.

and administrative regulations and analysis of legislative reviews of the Board and the laws under which it operates.

II. THE EXISTING SYSTEM OF ALCOHOL BEVERAGE CONTROL

A. Historical Development: A Brief Overview

In 1933 the territorial legislature, acting under authority granted to it by the Congress, created the Board of Liquor Control. The problems the Board was to deal with were not new to Alaska. From early territorial days, shortly after the purchase of Alaska from Russia in 1867, major enforcement problems surfaced with respect to liquor traffic and consumption. Early on, as a result of the Organic Law of 1884, all importation and sale was prohibited throughout the territory,[7] a consequence of the declaration of Alaska as Indian country by the attorney general.[8] Needless to say, in a land so vast such legislative efforts failed to have their intended effect: to dry up the consumption of hoochinoo and its western substitutes among the Indians of Alaska.

In 1899 Congress enacted a criminal code for the territory[9] which included among its miscellaneous provisions in chapter 44, sections 460-478 which dealt with the regulation, licensing and sale of liquor in Alaska. The 1899 federal licensing law did not provide specific authority for local units of government to add

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7/ See, Hinckley, Ted C., The Americanization of Alaska; 1867-1897, Palo Alto: Pacific Books Publishers, 1972, especially pp. 43-45, 70, 82-83, 93-95 and 161-162.

8/ Bancroft, Hubert Howe, History of Alaska 1730-1885, San Francisco: A.L. Bankcroft Co., 1886.

9/ 30 Stat. 1253, approved March 3, 1899.

to the established license fees or to enact ordinances to regulate liquor traffic. That federal jurisdiction was not to be shared with local government is reflected in the provision of an amendment to the 1899 law (Feb. 6, 1909, 35 Stat. L., 601) which provided that licenses would be issued only in towns and villages in which there was a United States Commissioner or Deputy Marshal.

With the passage of the Organic Act in 1912, congressional acts relating to liquor remained in full force and effect. Further, the Act severely limited the authority of the territorial legislature to alter, amend, modify or repeal those laws in force in Alaska relating to taxes on the liquor business and trade. Express authority was granted to enact other and additional taxes.

All the while, momentum was gaining across the country for total prohibition. In 1915 the territorial legislature provided for a referendum on the wet/dry issue. In record numbers Alaskans went to the polls.[10] They voted dry by a near two to one margin: 9,055 dry; 4,815 wet. The law which had authorized the referendum provided that in the event of a favorable vote (dry), no liquor would be sold within the territory after January 1, 1918.

Congressional action negated this provision. In 1917, Congress enacted legislation[11] which prohibited the manufacture or sale of intoxicating beverages in Alaska. Known as the

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10/

11/ 39 Stat. 903-909

"Alaska Bone-Dry Law," the legislation was deemed to have preempted regulation by Attorney General Grigsby, and thus, a 1917 territorial legislative enactment (Senate Bill 96) which sought to regulate "temperance" beverages -- those with one percent or more alcohol -- was declared null and void.

However, the "Alaska Bone-Dry Law" granted authority to the Alaska territorial legislature "[t]o enact further provisions for enforcement of the prohibition act."[12] The 1917 Act did not repeal sections 462-478 of the criminal code relating to the licensing and sale of intoxicating beverages, but its provisions made "nugatory" the licensing act of 1899.

Thereafter, there was no action by Congress regulating liquor traffic until 1934 when the Bone-Dry Law was repealed and the legislature was authorized to regulate sale of liquor in Alaska. Shortly before the repeal of the Bone-Dry Law and presumably in contemplation of repeal of the Eighteenth Amendment, the Alaska legislature in 1933 enacted a Beer and Wine Licensing Act.[13]

The 1933 Act created a Board of Liquor Control. Composed of the Governor, the attorney general, the treasurer, the auditor and the territorial highway engineer, the Act provided that they would have "full power, authority and control over the manufacture, barter, sale and possession of intoxicating liquors in the Territory of Alaska. . . ." However, the Act also provided that "the legislature of Alaska may enact laws that will provide for

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12/ 39 Stat. 903-909, approved Feb. 14, 1917.

13/ Ch. 71, SLA 1933.

and supersede the powers, duties, and functions hereby delegated to the Board of Liquor Control."[14]

Between 1933 and 1957, either by regulation of the Board of Liquor Control, or by action of the territorial legislature, a reasonably comprehensive scheme of beverage alcohol regulation emerged. In 1935, by regulation (and by legislation in 1937) incorporated municipalities were given authority to govern the sale of liquor within the municipality so long as the local scheme was consistent with state regulations. Similar porvisions were made for local input on the issuance of a license. And, in 1935, the Board by regulation adopted a license classification scheme provided for in the Wine and Beer Licensing Act of 1933.[15] This scheme, with minor modification, was enacted into law in 1937[16] and remained essentially intact until ...

Location and population restrictions we[illegible]art of the early regulatory provisions[17] as were provisions on local option (first enacted in 1935, amended in 1937, 1941, 1951 and 1953) and sales restrictions.

During this period, the issuance of licenses, their renewal and their enforcement had been delegated by the territorial legislature to U. S. District Court clerks who were to act in compliance "with the order of the Court or judge thereof duly made and

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14/ Sec. 2, ch. 109, SLA, 1933.

15/ Ch. 71, SLA, 1933.

16/ Ch. 78, SLA, 1937.

17/ Sec. 5(3), ch. 78, SLA, 1937.

and entered." [And, in 1953, the legislature abolished the Board of Liquor Control altogether.][18] In Bordenelli v. U. S., the Court of Appeals ruled that the territorial legislature had no authority to delegate licensing functions to the District Court and seemed to imply in its opinion that the legislature had no authroity to repeal the 1933 legislation which established the Liquor Control Board because the Congress had specifically ratified that legislation.[19] The Attorney General of Alaska reached a similar conclusions and on April 27, 1956, by memorandum, so informed the members of the Liquor Control Board.

Thereafter, in 1957, the legislature enacted a series of provisions based on earlier legislative efforts but within the constraints imposed by the Bordenelli decision and Attorney General

B. Current Statutory Scheme

Alaska falls within that class of states which have chosen a license system of alcoholic beverage regulation. (The other system -- the control model -- results in a state monopoly on alcohol wholesale and retail sales.) Under the license system the state avoids the normal problems associated with running a business while still retaining the right to collect certain revenues from those engaged in the business. In so doing, it is presumed to lose some amount of control over the regulation of alcohol consumption among the general populace.

18/ 16 Alaska 185, 230 F.2d 120 (9th Cir., 1956).

19/ 48 USC section 292-293, 48 Stat. 583.

Alaska's statutory scheme can be readily broken down into three basic categories: (a) administrative structure, (b) licensing, and (c) regulation of sales and distribution. The analysis of the major elements of the statutory scheme which follows will parallel that trichotomy.

1. Administrative Structure

The ABC Board, by legislative mandate, has been established within the Department of Revenue.[20] By statute it is composed of five members, two of whom must be actively engaged in a facet of the alcoholic beverage industry other than a wholesale enterprise. No member of the Board may hold any other state or federal office, elective or appointive, nor may the other three members be engaged in the same business, occupation or profession.[21]

Members of the Board are appointed by the Governor, subject to legislative confirmation, for three year overlapping terms. In addition, the Governor also appoints the Board's executive director, again subject to legislative confirmation, although as a consequence of the decision in Bradner v. Hammond, 533 P.2d 1 (Alaska 1976) confirmation has apparently not been offered nor required. The executive director serves as the executive officer of the Board -- but not as chairperson; and, while not a member of the Board, may vote to break a tie.[22]

20/ AS 04.05.010(a).

21/ AS 04.05.010(a).

22/ AS 04.05.010(b).

The Board is "vested with the duties, powers, and responsibilities involved in the control of alcoholic beverages, including the promulgation of rules and regulations and the hearing of appeals from the action of officers and employees charged with enforcing the alcoholic beverage control law, rules and regulations.[23] AS 04.05.020 provides that such rules and regulations shall govern "the manufacture, barter, sale and possession of intoxicating liquors in the state and shall prescribe application fees." The provisions of AS 04.05.040 broadly define the scope of the Board's regulatory powers to include, among others, the regulation of employment, conduct and duties of Board employees to the issuance, renewal, reissuance, revocation and suspension of licenses and permits.

Both AS 04.05.040(5) and AS 04.05.050 authorize the Board to delegate its duties -- except those involving rule and regulation making -- to the director. In addition, AS 04.05.010(b) empowers the director to issue all licenses provided for under the title.

Provisions of chapter 5 also require that the Board establish a system for the holding of local option elections[24] and make violations of the Board's rules and regulations punishable as misdemeanors.

23/ AS 04.05.010(a)

24/ AS 04.05.060

2. Licensing

Article 1, chapter 10 of title 4 of the Alaska Statutes states that "no person" may engage in the sale, transfer, or barter of alcoholic beverages in the state without an appropriate license. Currently, sixteen (16) distinct types of licenses are provided for and defined by statute.[25] They include, among others: beverage dispensary,[26] roadhouses,[27] clubs,[28] retail,[29] wholesale,[30] community,[31] and pub.[32]

The provisions of AS 04.10.150-180 define who may qualify for a liquor license,[33] limits the involvement of wholesalers, brewers, distillers, etc., or their owners, officers or representatives in beverage dispensary or retail liquor store operations,[34] and require non-resident wholesalers and distillers, among others, to obtain licenses and designate a principle place of business within the state and therein maintain an agent and locate its records. The article also prohibits undisclosed and unauthorized

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25/ AS 04.10.020 and AS 04.10.040-146.

26/ Bars; AS 04.10.020(a), 040.

27/ AS 04.10.020(c).

28/ AS 04.10.020(d).

29/ AS 04.10.020(9).

30/ AS 04.10.020(h)(1)(2) and 110.

31/ AS 04.10.020(u) and 139.

32/ AS 04.10.020(n) and 146.

33/ AS 04.10.130.

34/ AS 04.10.160.

financial interests in licenses and makes the licensee solely responsible for the lawful conduct of the business except as otherwise provided.[35]

An applicant for a new liquor license is required by AS 04.10.190 to file with the director an application as well as the appropriate license fee. Public notice of the application must be given by the Board and a new applicant may be required by the Board to make paid notice.[36] As a general rule, new applications will not be approved where issuance would result in two licenses of the same type serving fewer than 1,500 people.[37] Further, title 4 requires compliance with city zoning regulations in cases involving beverage dispensary and retail liquor stores[38] although the Board is interpreting this provision as applying to all classes of license. Local governing bodies are also authorized to protest the issuance, transfer or renewal of a license.[39] In remote areas of the state, public approval is required prior to the issuance of a new license.[40] Similarly, residents of areas outside an incorporated municipality can also protest the issuance of a license, and if it appears that a majority of the adult residents voted against the issuance of the license in a special

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35/ AS 04.10.180.

36/ AS 04.10.200.

37/ AS 04.10.210.

38/ AS 04.10.230.

39/ AS 04.10.270.

40/ AS 04.10.310.

election the license shall not be issued.[41] No new license for the sale of liquor may be issued in areas outside incorporated cities unless accompanied by a petition containing signatures of a majority of the bona fide adult residents within one mile of the place where the liquor is to be sold.[42]

The statutory scheme also provides for the regulation of existing licenses. They expire on December 31st,[43] may only be transferred upon written approval of the Board[44] and are renewable automatically if the appropriate fees are paid and there have been no convictions of the licensee under AS 04.15.100 nor any other lawful revocation of the license.[45]

One intriguing provision of title 4, and one which has caused the Board some problems, permits the issuance of a licensee without regard to population limitations "when it appears that the issuance or transfer of the license will encourage the construction or improvement of a hotel, motel, resort or similar business related to the tourist trade having a minimum accommodation of 10 rooms and a dining facility. The dining facility requirement may be waived if the majority of rooms have kitchen facilities.[46]

Article 5 of chapter 10 provides the legal mechanism for local option elections, the effects of which are a major research

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41/ AS 04.10.300.

42/ AS 04.10.440.

43/ AS 04.10.320.

44/ AS 04.10.330.

45/ AS 04.10.350.

46/ AS 04.10.260.

focus of this project. AS 04.10.430(a) authorizes a local option election when 35 percent of the total number of voters in the last general municipal election petition the city council to do so. If the vote is to go "dry," the Board must be so notified and for a period of one year thereafter no further licenses shall be issued for the city nor shall a new beverage dispensary or retail license be issued within five miles of the city. A new license or permit for the sale of beverage alcohol may not be issued by the Board within an incorporated city in which, on June 30, 1976, there was no licensed premise unless the city council has first conducted a local option election.[47]

The same election procedures can be employed to establish a community liquor license. If the local community votes for that option, the Board is precluded from issuing any additional type of license other than a "hotel" license. The outcome of the election does not affect licenses issued prior to September 10, 1972.[48]

3. Regulation of Sales and Distribution

The provisions of chapter 15 ostensibly provide the means by which the excesses and evils associated with alcohol consumption are to be controlled. AS 04.15.010 requires closure between the hours of 5:00 a.m. and 8:00 a.m. unless otherwise provided

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47/ AS 04.10.430(d).

48/ AS 04.10.430(c).

for by municipal ordinance.[49] Sale and/or delivery to persons under the age of 19 is prohibited[50] and such persons may not enter or remain on licensed premises unless the premises are recognized as a restaurant and the minor is accompanied by a parent, guardian or spouse who has attained the age of 19.[51] Sales are prohibited within 200 feet of churches or schools.[52] Credit sales are also prohibited.[53]

In addition to these and other provisions of chapter 15, AS 04.15.070 authorizes municipalities to regulate the barter, sale or possession of alcohol within their boundaries by ordinance so long as they are not inconsistent with the provisions of title 4. Violations of the provisions of title 4 are considered to be misdemeanors and, upon conviction, persons are subject to imprisonment of up to one year or by a fine not to exceed $100. Furthermore, the Board is empowered to order suspensions of licenses or to revoke a license after three violations.[54] Sales

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49/ This is clearly an important provision. The community of Juneau recently moved closing hours back to 2:00 a.m. and former District Attorney Larry Weeks reported that it had, from his perspective, a significant positive impact on levels of social disorder in that community.

50/ AS 04.15.020(a).

51/ AS 04.15.020(d).

52/ AS 04.15.020(e).

53/ AS 04.15.085.

54/ AS 04.15.100.

in violation of local option are subject to imprisonment of up to a year and/or a fine not to exceed $5,000.[55]

C. Current Regulatory Scheme

As authorized by statute, the Board has enacted a series of regulations which are contained in title 15, chapter 20 of the Alaska Administrative Code. They have not been added to or amended since 1963. While some of the regulations merely provide greater clarification of the statute from whcih they flow (e.g., 15 ACC 20.070 -- standard closing hours), others establish a permit system which authorizes the sale of liquor over a short time span and/or in a specific location (e.g., 15 AAC 20.230 -- special events permit). Authority for the issuance of these permits is derived from AS 04.05.030 and 040.

By far the most important of the regulations, however, is 15 AAC 20.010 which sets forth the grounds for suspension and/or revocation of licenses. They include:

> SUSPENSION AND REVOCATION OF LICENSES. The following are the grounds which constitute a basis for the possible suspension or the revocation of licenses:
>
> (1) when the continuance of a license would be contrary to the best interest of the public; but proceedings under this section upon this ground are not a limitation on the Alcoholic Beverage Control Board to proceed under provisions of AS 04.05.030;
>
> (2) a violation of any Alcoholic Beverage Control Board rule or regulation by a licensee, his agent or employee;
>
> (3) the misrepresentation of a material fact by an applicant in obtaining any license;

55/ AS 04.15.110.

(4) the plea, verdict, or judgment of guilty to any public offense involving moral turpitude or vilation of any law concerning the manufacture, barter, sale and possession of intoxicating liquors;

(5) where the portion of the premises of the licensee upon which the activities permitted by the license are conducted are a resort for illegal possessors or users of narcotics, prostitutes, pimps, panderers or sexual perverts; in addition to any other legally competent evidence, the character of the premises may be proved by the general reputation of the premises in the community as a resort for illegal possessors or users of narcotics, prostitutes, pimps, panderers or sexual perverts;

(6) failure to correct objectionable conditions within a prescribed time or reasonable time after receipt of notice to make such correction issued by the Alcoholic Beverage Control Board or agent thereof;

(7) disciplinary action by military or naval authorities against any licensed premises;

(8) any failure to comply with the laws, rules and regulations pertaining to public health in Alaska;

(9) conviction of a charge of gambling within the limits of any licensed premises (eff. 10/31/59; am 6/6/63, Reg. 10).

D. Organizational Scheme

The composition of the Board has been previously described.[56] As noted, the Board is administratively situated within the Department of Revenue.

In its activities the Board is supported by a staff of 12 whose functions can be divided into three basic areas generally paralleling the statutory trichotomy set out above: administration, licensing and enforcement. Headquartered in Anchorage,

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56/ Supra, p.

the staff is led by the Board's executive director whose responsibilities and duties have been partially noted previously in this report.[57] In addition to those duties prescribed by statute, the director prepares the Board's annual budget, sets the agenda for and provides input to the Board at regular and special meetings and directs all other staff functions.

The staff of the licensing division is currently made up of three full-time employees. It issues and receives license application forms, collects fees, issues all licenses and permits approved by the Board and deals with the general public on all matters related to licensing.

Enforcement activities of the Board are carried out by six investigators, three of whom are located in Anchorage. Two of the remaining staff operate out of Fairbanks and one is located in Juneau. They are supported by a clerical person. These investigators are charged by statute and by regulation with the enforcement of the provisions of title 4 of the Alaska Statutes and title 15 of the Administrative Code. Their activities include licensed premises inspections, investigations in support of civil and criminal proceedings and assistance to the licensing staff.

III. THE ABC LAWS: THE ACTUAL AND POTENTIAL USES

In this section of the report we will focus on views of the ABC Board held by various individuals or organizations. In

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57/ Supra, p. ...

developing these views we have used two approaches: (1) an analysis of very recent studies of the ABC Board, and (2) interviews with a number of individuals connected with the Board, including current and former Board and staff members.

A. Legislative Views

In late 1978 the Division of Legislative Audit, a creature of the legislature reporting to the Legislative Budget and Audit Committee, completed "A Performance Review of the Alcoholic Beverage Control Board"[58] in accordance with the provisions of AS 24.20.271(1) and AS 44.66.050 -- Alaska's "Sunset Laws." AS 44.66.010(1) decreed that the Board would terminate on June 30, 1979, although a twelve-month period was provided within which it would wrap up its affairs. The report was prepared to assist the legislature in determining what course of action to follow with respect to the Board's future.

The auditor's major conclusions were that the Board "should continue to regulate and license those persons engaged in the liquor industry. . . . However, . . . [e]nforcement responsibilities of the Board should be transferred to a special investigative unit with the Department of Public Safety."[59] The auditors further recommended transfer of licensing responsibilities to the

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58/ Division of Legislative Audit, Juneau, AK, November 3, 1978 (hereinafter referred to as the Auditor's Report).

59/ Id., at p. 7. (Emphasis added)

Department of Commerce, Division of Occupational Licensing[60] and elimination of two administrative staff positions resulting in a savings to the state of approximately $54,000.

Other recommendations included:

> The Alcohol Beverage Control Board should adopt a regulation delegating authority to the director of the Division of Occupational Licensing for the routine issuance, transfer and renewal of unprotested licenses.
>
> No two members of the Alcoholic Beverage Control Board should be engaged in the same business, occupation or profession.
>
> Renewals of licenses should be made in a timely manner.
>
> The requirement for a $2,500 cash or surety bond for a beverage dispensary license should be eliminated from AS 04.10.040.
>
> The Office of the Governor should keep appointments of members of the Alcoholic Beverage Control Board current and stagger them as required by AS 30.05.060.[61]

The Department of Revenue, responding through its Commissioner, Sterling Gallagher, disagreed with the auditor's major recommendations. And the current chairman of the Board concluded that what was really needed was a complete and sensible rewrite of title 4 and that if the only action taken by the legislature was adoption of the auditor's recommendations, "the problem of enforcement of ABC laws will be exacerbated, because there will be a feeling that the problem is solved."[62]

60/ Id., at p. 8.

61/ Id., at pp.

62/ Id., at p. 44c.

While the report is not overly detailed and lacks reliable data in support of its major conclusions, its biggest fault is its failure to address the question of what role, if any, the Board should play in dealing with the significant social problems associated with the sale and consumption of beverage alcohol in Alaska[63]

A more definitive statement of legislative views on the role of the Board might be inferred from legislation introduced in the First Session of the Eleventh Legislature. The most comprehensive and thoroughly researched analysis of title 4 to date was produced by the Code Revision Commission, another creature of the legislature. The Commission solicited views from across the state and from all quarters and those views were maintained in a well organized file which was kindly provided to the Center by the Commission.

As noted in their statement of transmittal, dated April 18, 1979, the Commission had "been working towards a technical redraft of existing law." They attempted to "clarify and simplify" that which was already in title 4.

In an undated supplement to the Commission Transmittal Statement, the Commission provided an in-depth comparison between existing law and their proposed changes. They recommended transfer of the Board to the Department of Commerce and would require that

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63/ Although, arguably, this function is outside the scope of a "Sunset" review.

one of the five members be from the public health and alcoholism treatment field. Further, they proposed an appellate role for the Board, giving the director the authority to issue or reissue licenses.

Few significant changes were proposed with respect to restrictions on licenses and licensees. The $2,500 surety bond requirement was eliminated in keeping with the auditor's report.

Population limitations on licensing were continued as was the tourist facility license exception to those quotas. However, the facility would have to have a ten room minimum guest accommodation in order to qualify for the exemption. Notice requirements of existing law remained substantially unchanged, although they were clarified and any party to the initial hearing was given appeal rights, not just municipalities as is the case under current law.

In the licensing area, the most significant change recommended involved creating a distinction between the "license" and a "certificate to operate." The former was seen as a property right while the latter was viewed as a privilege. Thus, a license could be transferred even though the person holding the license had had his certificate to operate suspended or revoked. Of course, the new licensee would still have to qualify for a certificate to operate.

Few changes, if any, were proposed with respect to license classifications, fees, terms, and application procedures. One notable exception was the inclusion of proposed licensing criteria explicitly set forth in statute. Because this is one of the truly

"soft" areas in existing law, those criteria are set forth in full:

> Sec. 04.11.210. LICENSING CRITERIA. In addition to considerations presented at hearings or otherwise, the following factors, as appropriate, may be considered by the director in acting on an application for license issuance or transfer:
>
> (1) adequacy of licensed premises in the area of the proposed premises, with particular consideration of
>
> (A) the clientele, seating, business volume and menu of existing outlets;
>
> (B) size, design and decor of the proposed premises, and
>
> (C) changes in population and economic conditions of the area;
>
> (2) customer parking;
>
> (3) suitability of inventory, equipment, and fixtures of proposed premises;
>
> (4) effect of granting the license on traffic and traffic controls, with particular consideration of hazards in the area, such as dangerous crossings, school crossings, or children riding bicycles in the area;
>
> (5) proximity of the proposed premises to schools, churches and other public institutions;
>
> (6) effect of granting the license on public health and local law enforcement, with particular consideration of whether location of the licensed premises in proximity to other licensed premises would tend to cause or aggravate public health or law enforcement problems;
>
> (7) effect of granting the license on law enforcement or public health in areas bordering or neighboring the area of the proposed premises and in which the sale of alcoholic beverages has been prohibited or restricted by local option election;
>
> (8) effect of granting the license on property values in the area;
>
> (9) objections to granting the license, with particular consideration of the number of ojectors and their proximity of residence to the premises;

(10) accuracy and completeness of information furnished by the applicant;

(11) criminal convictions of the applicant for violations of law, or prior discipline of the applicant for violations of alcoholic beverage control laws or regulations;

(12) financial capability and resources of the applicant;

(13) other considerations required in this title or specified by regulation of the board;

(14) other considerations which the director determines to be in the best interests of the public.

It is interesting to note that this section was not a part of SB 239 as introduced.

The proposal also contained changes paralleling those recommended by the auditor's report which were designed to take the Board out of the creditor satisfaction business.

In the area of local option, the Commission proposed some of its more significant changes, designed primarily to clarify questions which had arisen over the years out of ambiguities in existing law. It spelled out the questions associated with wet/dry elections, eliminated the once a year limit on such elections, continues the misdemeanor penalties on sales in dry areas but makes it clear that telephone or mail orders originating from dry areas to licensed premises are not illegal transactions.

With respect to methods of operating premises the Commission proposed changes designed to make enforcement of laws prohibiting s ing intoxicated persons somewhat easier. Similar efforts were undertaken with respect to service to minors issues.

Finally, the Commission identified a number of policy considerations for the legislature without recommending changes in those policies. Included among these issues were the following:

(1) the composition of the Board, especially the notion of requiring two industry representatives;

(2) the Board's regulatory authority -- should it be "in the public interest" or assume a narrower scope;

(3) the quota system of licensing -- should it be retained;

(4) the role of municipalities in licensing;

(5) local option options -- is wet/dry the only way to go;

(6) authorizing compensation to localities which lose revenues by voting "dry;"

(7) alcoholic beverage control in rural Alaska -- what to do;

(8) reducing hours of sales;

(9) raising minimum drinking ages;

(10) restricting advertising; and

(11) the overriding issue of what relationship, if any, exists between restricting access to alcoholic beverages and alcohol related problems in society.

The Code Revision Commission has ended its work on title 4 until it receives further direction from the legislature. It seems likely that none will be forthcoming and that their draft and accompanying reports will be forwarded to committees already considering legislation on the subject.

Senate Bill 239, introduced by the Rules Committee, was designed to provide the first comprehensive revision of the ABC laws since the late 1950's. The legislation, drafted in large measure under the guiding hand of Senator Bill Ray of Juneau, proposed a number of significant changes to existing statutory provisions. But, in the final analysis, it cannot be considered

of beverage alcohol currently utilized. [illegible]

certainly failed to address many of the important considerations raised by the Code Revision Commission.

Perhaps the potentially most far reaching of the changes to title 4 proposed by SB 239 are provisions in article 4 which authorize the Board to grant an application for a license despite community opposition or even in the face of a community decision to go "dry" if the granting of such an application would encourage the tourist trade. In short, what little control communities now have to regulate the legal sale of alcohol within their political boundaries would evaporate in the face of the state's desire to improve its economic base by encouraging or accommodating the drinking habits of tourists.

At the same time, the provisions of proposed section 04.11.420 would appear to allow a community to assume absolute control over the sale and distribution of beverage alcohol through its zoning powers. The section in question requires the Board to deny an application for a new license or permit in any portion of a community where zoning ordinances or regulations prohibit the sale or consumption of alcoholic beverages. Thus, it would seem, a community could zone itself dry and over a period of time, as licenses or permits changed hands, bar the legal sale or consumption or alcohol inside its municipal limits. In the context of rural Alaskan settings, the time involved might well be measured in the span of a year or less.

A second significant proposed change is found in section 04.11.150 which authorizes the sale of alcohol pursuant to a verbal or written solicitation for purchase received within the licensed premises. The provision thus eliminates the current state of confusion whether it is legal to order liquor over the phone from a dry community, transmitting payment, for instance, via Alascom communication facilities.

A fair characterization of the apparent intent of SB 239 is that it perpetuates the role of the Board as one entailing economic regulation of the liquor industry, eliminating some obstacles to local control over the industry but at the same time creating a new potential for such control, while generally ignoring the question of what role the Board should play in dealing with the larger social problems associated with alcoholic beverage sale and consumption. The singular exception to this last statement apparently exists in proposed section 04.16.200 whcih authorizes felony penalties for illegal sales -- an option not available under present law. However, it is unclear whether the felony penalties only apply to sales to minors by persons previously convicted of unlicensed sales or to either unlicensed sales to minors and to unlicensed sales by persons previously convicted of unlicensed sales.

No action on SB 239 was taken by the legislature prior to adjournment. Similarly, the legislature did not approve legislation extending the life of the Board past June 30, 1980. Undoubtedly this only reflects a legislative decision that there would be sufficient time in the Second Session of the Legislature to

more fully consider the fate and possible future direction of the Board.

Members of the House Commerce Committee, which was charged with conducting the "Sunset" review of the Board, reviewed the Division of Legislative Audit's report and in a letter to House Speaker Terry Gardiner (D-Ketchikan) dated March 14, 1979[64] noted that while they concurred in the findings of the audit they did not draw identical conclusions in all cases. Because the views of the House Committee are the most explicit extant statement of a legislative perspective of the Board's role and activities, they are set forth in full below:

> The Alcoholic Beverage Control Board is intended to provide protections to the public regarding the conduct of the industries involved in the distribution and sale of alcoholic beverages within the state of Alaska, and to assure viable economic climate for those parties who participate within that industry. The objective or goal is, theoretically, to assure that this unique industry which can so easily affect the social and health conditions of any community, does not act contrary to the public interest in carrying on its business. However, the statutes establishing the Alcoholic Beverage Control Board are a historical hodgepodge of many different legislative intentions, and there is no unanimity within the State as to what this "public interest" is as it relates to this industry. There are not any other State programs which have similar, conflicting, or duplicating objectives, in short of arguable deregulation. The purposes of the program may be achieved by alternate methods, including the elimination of the Board and the streamlining of the procedure.
>
> Also unique to the industry is the manner in which it relates to the wishes of local government entities. Serious question has arisen in the past as to the role of local governments in licensing. Current law requires local governments to make certain

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64/ House Journal Supplement No. 29, March 15, 1979, pp. 53-56.

recommendations to the Alcoholic Beverage Control Board, but also allows the Board to totally ignore those recommendations. In recent years this has not been the practice, but it is still possible under current law.

During our hearings, questions were raised about the advisability of the quota system of licensing and about the enforcement practices (to the extent there are any) under the alcoholic beverage control laws. Also, the members of the committee are quite familiar with the history of the Board and the industry in Alaska. The Board and its director and staff seem to spend much of their time on economic matters, particularly acting as a collection agency for local government taxing units and for the wholesalers, because of the questions involved in the transfer of a liquor license from a businessman who may have certain unpaid obligations. This is hardly in the public interest, and is not justified even under current law (however impenetrable current title 4 may seem).

It seems that the Board spends much of its time going through merely ministerial actions with regard to applications for licenses or transfers that are not opposed. Those not opposed are nearly always granted. When a licensing matter is contested, frequently it is initially heard by a hearing officer.

In light of these considerations, and in light of the social and political sensitivity of the issues involved in the regulation of the industry, the committee has concluded that, while the licensing scheme should continue, the Board should be eliminated. However, to assure that the practices of the licensing scheme are periodically brought to the attention of the legislature in harmony with the "Sunset" law, the statutory provisions providing for the quota system (which is the heart of the licensing scheme) should be subject to "Sunset" review even after elimination of the Board.

The Committee on Commerce of the Alaska State House of Representatives will soon be introducing a bill to provide for elimination of the Alcoholic Beverage Control Board, addition of a four-year "Sunset" repealer on certain provisions in title 4 that establish the quota system and relate to the quota system, requiring that in most cases local government findings and recommendations with regard to licensing issues cannot be overturned by the

state except in very unusual cases (that is, providing a limited scope of review as to both issues of fact and law); barring the state from participation in collection of debts under the alcoholic beverage licensing scheme, except for obligations owed directly to the state, but providing for notification to creditors, public and private; and incorporating at least some of the revisions of title 4 of the Alaska Statutes which have been proposed by legislative interim committees and by the Alaska Code Revision Commission.

It is hoped that the recommendations of this committee will adequately address some of the criticisms of the alcoholic beverage licensing scheme by the Division of Legislative Audit and by witnesses before this committee as well as matters that have arisen in legislative and Code Revision Commission meetings over the last recent years.

The recommendations were included in H.B. 219 which was introduced in the House by the Rules Committee and referred to the House Health, Education and Social Service Committee where it was still awaiting action as the legislature adjourned.

The Senate's Committee on Health, Education and Social Services (HESS), chaired by Senator Glen Hackney (R-Fairbanks) reviewed the auditor's report and in a letter to the Senate President dated March 14, 1979, merely recommended that the Board be continued until June 30, 1983.

B. The Kelso Study

In November of 1977 a five volume report detailing the findings of a two year analysis of alcohol problems was released. Authored by Dennis Kelso, the project's director, the report reviewed virtually every aspect of the alcohol problem in Alaska.

Volume II focused on legislative efforts at alcohol control.

65/ "An Analysis of State Legislation Pertaining to Regulation and Control of Beverage Alcohol and Alcoholism and Alcohol Abuse, Alaska 1975." January, 1977.

Kelso assumed, for purposes of his study, that the policies of the Uniform Alcoholism and Intoxication Act of 1972 (AS 47.37.010, et. seq., Ch. SLA, 1972) were the policies of the state.[66] Kelso correctly pointed out that title 4 contains no overt indication of legislative intent and that the Alaska Supreme Court in Boehl v. Saber Jet Room, Inc., 349 P.2d 585 (Alaska 1960) had to "discover" the state's policy. In the Court's words:

> [T]he "purpose" [of the 1959 Act creating the Board] is to regulate and control alcoholic beverages.[67]

The Court further noted that:

> It is a matter of common knowledge that lack of restraint in this field [the alcohol industry] is almost invariably damaging to the community. It is because of this that there may either be complete prohibition, if the legislature chooses to follow that course, or if not, that there may be conditions imposed which will have the tendency to afford the greatest degree of protection to the citizens of the state. . . .
>
> [T]he law [the 1959 Act] recognizes private interests But it also makes it abundantly clear, from the degree of regulation imposed by the legislature itself, that the primary concern was for the protection of public interests. . . .[68]

Kelso summarized his findings with respect to the state's legislative efforts at control as follows:

> In brief, the inconsistencies in current laws fall into three categories. First, the conflict between a punitive and a health-oriented alcohol policy still exists in insurance provisions, the Uniform Act's provisions for early release, and the lack of communication between the courts and treatment agencies.

66/ Id., at p. 69.

67/ 349 P.2d at 587.

68/ 349 P.2d at 589. (Emphasis added)

> Second, the state has delegated some of its responsibility to municipalities, while at the same time making it more difficult for them to meet that responsibility; e.g., the license fee rebate system which discourages the local option, the prohibition on special local liquor taxes, and the failure to allow commitment to local treatment centers. Finally, and perhaps most importantly, controls on the sale of alcohol through the ABC Board and the excise tax are totally divorced from the prevention and the treatment of alcohol abuse.
>
> The legislature must make some adjustments in these three areas if it is to fulfill its responsibility for developing a cohesive alcohol policy. One can, of course, live with inconsistencies; but the inconsistency in this case makes it difficult for different state agencies which deal with alcohol related problems to coordinate their efforts.[69]

This is certainly an accurate description of the current state of affairs two years later. And, nothing in the proposed revision of title 4 alters this situation.

C. The Views of Board Members and Staff

If the legislature's intentions in establishing the Board are as vague and inconsistent as Kelso states, it becomes a matter of more than idle curiosity to learn what members of the Board and of its staff think are the Board's purposes and the state's policies in the area of alcoholic beverage control.

Without exception, those interviewed stated that there was no clear-cut state policy on alcohol control set forth in the statutes. As one individual put it:

> There wasn't one. We had very clear indication that there wasn't one.

Another expressed the following view:

69/ Volume V: Executive Summary: "Descriptive Analysis of the Impact of Alcoholism and Alcohol Abuse in Alaska, 1975." November, 1977, p. 37.

> Well, I think it's probably . . . I've sort of answered it already. No, not an overriding state policy, in other words. There are a number of sub-policies without a big. . . . The thing you're looking for, is there a policy that says we want to, through the enforcement process and title 4, we want to cut out alcohol abuse? No. The answer is no. Or cut out alcoholism? The answer is no, clearly no. . . . Now I'm talking about title 4. I don't know about, I mean, I suppose that you might argue that there is some policy articulated somewhere as to prevention of alcohol abuse through education, for instance, or through recreation. . . . So I'm not saying that there is not an overall state policy somewhere but it certainly is not articulated in that kind in title 4.

If explicit policy could not be found in legislative acts, then perhaps it could be developed implicitly from them. Consequently, we asked our respondents[70] what <u>they</u> thought the policies of the Board were and ought to be. Predictably, the responses varied from respondent to respondent.

Typical are the following:

> My opinion, there, is the total regulation of the industry and alcohol in the state to the degree that I don't think we're a public regulatory agency. We're an industry and some people don't like the term industry because it isn't manufacturing, but that's what it refers to: is the liquor industry. To me, that's the crux of where we are as far as I'm concerned. Our enforcement efforts delve into the regulation of those licensees who are distributing the product throughout the state through a license or even not through a license, illegally, and that's been my total enforcement thrust. That enforcement also goes hand in hand, I think, with the licensing function which is an enforcement element in itself in terms of what documentation is presented by applicants in terms of new licenses, transferred licenses, or renewal applications. That has an enforcement element, too. That's what I envision it. You see?
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> * * * * *

<u>70/</u> All of whom were assured anonymity because of the position in which the Board found itself during this research.

Well, uh, you know, given the nature of alcohol, what it does, what it can do, I think that it [the Board] can and should and ought to legitimately control the use thereof and, of course, I can't avoid the contexts that, setting aside what is, but still remembering that contexts in which we are dealing. I'll use some examples: the control they use, for instance, is by age. We recognize that some people are, by virtue of their age, less able to "handle" alcohol and perhaps exercise self-discipline in respect thereto than are those who are somewhat older. That assertion is probably generally true but in specifics it is certainly subject to some question. O.K., I think we also, because of the nature of the substance, can say that perhaps we ought to regulate the times during which it is consumed or even sold simply on the basis that we frankly need some protection against ourselves, from ourselves I should say. That may be little bit of a paternalism showing through which is really kind of reflected to me in other ways, but, anyway, and in the same vein, we can recognize again because of the nature of the substance that it creates in people or, shall we say, it causes people to lose some sense of judgment as to what they should or should not do. Hence, we should indicate by the law or regulation in some manner that beyond a certain point maybe we ought not to allow these people to continue to drink. Again, I think that from an "ought to" point of view, we ought to regulate the kind of behavior you can engage in when you are under influence of the substance in the sense that, again, because of the loss of judgment that I think is medically provable. As you know, we have a limit on the number of establishments that can exist within a certain population area. Frankly, I'm not certain that that serves any particular purpose in the sense that we, I suppose the goal is that it would limit the consumption and given what I've always said about consumption, I'm not certain that we want to place an upper limit on consumption through legal means and I say this because of various strong feelings of my own in connection with, oh, just freedom of the individual. For instance, I don't think that we ought to say that while you can buy no more than two fifths of wine in one night or one purchase or that we ought to say that a person can only have two bottles of beer in the bar -- aside from this, the incredible enforcement problem. If the goal of the population quota is simply to limit consumption, I'm not sure that that is a valid goal. In other words, I think that our goals should legally, from a legal point of view, and legal control and so forth should not necessarily be to limit consumption per se but limit the kinds of behavior you can engage

in while under some sort of influence. Probably restrict the hours during which it is consumed and limit and restrict the ages, limit the consumption to certain ages assuming that they are better able to handle it. I haven't given any thought to what else ought to be. I'm just hesitant to recommend that we pass a lot of laws saying that this, this, and this, are restrictions on the consumption of alcohol. I just don't know that that's the way to go about fighting alcohol abuse. . . . And, I think there are some legitimate concerns about who's in the business. I think there are some legitimate concerns about the way a business is operated. I can say this because of the nature of the substance, people's judgments affected and so forth. People tend to do things when they are inebriated that they don't do when they are sober. That goes without saying. Hence, there should be means to make certain that while it's served in a bar it should be properly reported and dealt with in an appropriate manner.

I think that the biggest concern or the biggest underlying attitude for anybody who is on the Board has got to be the concern probably that nobody has really answered: Is licensing and regulation going to really prevent or control alcoholism? And I don't think that question has ever really been addressed, I don't know if it can be addressed. And I think, at least it's my feeling, that prohibition is not necessarily a way to control alcoholism. I think that's where the Board could have an important impact. By limiting availability, or limiting availability to certain groups, or certain areas, and the Board as a hwole has never addressed that, never taken a broad look at that. They've gone regulation by regulation, actually they've gone application by application, and tried to address that in a small way and that's one of the problems, I think, that there is no general attitude or theory that should the Board limit alcoholism through licensing, we haven't really addressed that. . . .

[W]e try to but a lot of time we don't even stay within the framework of title 4 because it's an outdated law and there are certain things that, you know, it's just not reasonable to enforce anymore. Maybe it's a very broad outline, sure we try to stay within title 4, and we sue that a lot as far as when someone goes down to the ABC Board and asks about a license or something and they'll say: Well, here's what you have to do and you have to stay, you know, you have to be so many feet away from the church, and so many feet away from

the school and you have to be within the population quota and you do this, that , and the other thing and then you can get a license. And so, we use that, and then only when we have certain extenuating circumstances do we go outside title 4 to either approve or disapprove a license. And it's always the overriding factor, is it in the best public interest? But when you say, "Is it in the best public interest?" nobody, like I said before, nobody has answered that question. Is limiting licensing, or limiting liquor availability in the best public interest to control alcoholism? I personally don't think it is, but you know we have that confrontation or argument several different times every meeting because some of us think it is and some of us think it isn't. And that's not really our job, though, I think that's a problem, possibly with the ABC Board, is that we're supposed to be controlling the liquor industry through rule making or regulation making and enforcement and, not necessarily enforcement on the Board but through listening to problems. But, we've never, ever, in the year that I've been on the Board, said, "Look, there's an alcoholism problem in this city or this state. What are we as Board members going to do about it?" And, I think that's something that the Board could address themselves to much more easily than any other body because they are involved directly, they can do things. The question is, I think, what can we do, and nobody knows.

Those connected with the Board who were questioned during the course of this study were unanimous on three things: (1) that title 4 was totally outdated and had to be completely rewritten, (2) that the Board's own regulations were similarly outmoded and had to be revised, and (3) that enforcement efforts had to be improved.

With respect to changes in title 4 and the regulations, the following comments fairly characterize the tenor of the responses:

> Title 4? First, I think that there just has to be a specific definition of the authority that enforcement people have on the staff. Alot of it tends to be in the attitude of the individuals who are employed. We tend to have a lot of applicants who are police officials, troopers or former police officers/troopers, and they have a strong criminally oriented enforcement background where it appears that part of the job

should be carrying a gun. I mean, there are instances probably where there are premises that the guys go into either in surveillance or investigative areas where there might be some need for some protection, but we always try to coordinate that with the local authorities so there's some support there. But that's an area of concern with staff, you know, they don't feel they can do their job unless they can wield power, so to speak, to make the public aware that "Hey, you're going to have to abide by what we dictate," so to speak. That's a poor word, that's a very poor word, but that's the feel, they feel that way. But that's a mental attitude and I think it's just background and training that has revolved that person into that law enforcement and mental stance, but we're not a criminally oriented organization. There are off-shoot kinds of criminal activities, you know, liquor establishments like this bootleg thing in Bethel. Could be alot of other things involved peripherally with that. That remains to be seen.

Another respondent stated:

Well, I guess that I'm maybe a man of low expectations, but the first thing [title] I'd want to see is simply the thing straightened out. It's almost impossible to interpret. It's been a hodgepodge, it's been put together amendment by amendment. It's probably the worst title in the whole. In my practice I've had occasion to deal with most of them, it's probably the worst written of all. There are some things that, one of my pet peeves is the hotel/motel license, which is an exception to the population quota, which is just awfully difficult to interpret. You know, what's encouraging the tourist trade? What findings you have to have for that? Does indeed that license count in the population quota? It seemed to me that it is strictly, and the statute would say that it certainly does count in the population quota. Well, what does that mean? It means that the small neighborhood bar is someday going to be excepted out of existence because the hotel/motel licenses will take over. That bothers me. There's some other provisions as to transfer and transfer relocation that are terribly messy. We just got through with a case, that was, from my point of view, very unsatisfactory, I mean in the sense that we had to do what we had to do, we did what we had to do but it was just, the poor citizen who was involved never understood to this day what happened to him and why he couldn't do something. It was just so messy and unclear.

The other thing that I'm not so certain that I like is the fact that we end up being sort of, in a sense, a debt collector. Before you can transfer a license, you have to present an affidavit saying that all debts have been paid or that, not so much that, but you have to present an affidavit of debts and then, of creditors, and then or course the creditors have the opportunity to hold up the license pending payment of the debt. And, I don't know if that's a legitimate function of state government in the sense that what happens is that the wholesaler can keep feeding liquor to a bar with the knowledge that he's got a lien in a sense on the license and I don't know whether that, you know, whether that's really legitimate. Also, it creates problems with what's a debt. I guess the main thing is that I don't know whether I want any more power because I think government is dangerous to give any agency alot of discretion. I think it's inappropriate to do so. I guess the main thing I'd like to do is to have the darn thing cleaned up so you could read it, make some sense out of it. It's not organized well. Incidentally, it doesn't, for instance, place any restrictions on the moral character of the licensee but does place a restriction on the so-called moral character of employees which I find kind of anomalous. We as a matter of course indicate if the guy has an extensive felony record, recent felonies, we might not let him into business. Certainly if it was recent we wouldn't, but if they were real old we would, but I think that's exercising some discretion and I've, nobody has ever challenged it, but I'd query whether we have that authority.

Still another respondent viewed title 4 in the following vein:

I think most of the enforcement areas. Some idea of what is and what is not against the law and the different licenses or license categories right on down to wholesale, retail, dispensary, everything, because nobody really knows. I think that's a real problem. Also, what to do if there is a problem there. Do you, what can you do? I think there is a lot of, as I was saying, title 4 is a good title because I think it addresses just about everything that needs to be addressed. But it's not clear enough: What is and what is not against the law. So you can go through there and say O.K., this is a good point, it should be in here but what should we do about it? I don't think title 4 should get into any of this pricing stuff, what is, you know, that kind of stuff.

> I think title 4 should probably give the Board more power, or more, it needs more input from the alcoholism people, people that think you can control alcoholism through licensing or availability, and it needs more input from everybody. I think it should be the headquarters for alot of different, all the feeling or attitudes on alcohol and though the ABC Board does have the power to make new regulations and to get new laws established and it also has the power to enforce the existing ones through some means better than what we have now. That should be done and I don't think it is being done.

The comments set forth above also provide some sense of the problems associated with enforcement of the provisions of title 4. However, one of our respondents identified a problem unrelated to title 4 which is difficult to comprehend. The respondent stated:

> It [communication] should happen with the enforcement people, _____ and I had never talked prior to my coming on the Board. In fact, I had never talked to them until about six months ago and I had been on the Board almost a year. And never talked to them until then and he had some questions, he didn't know how bush business worked or how any of this or that thing worked? Why they didn't come to us and ask us, I'll never understand. How can you regulate anything unless you know what's going on? They would call up and ask us how do you get a better price on something? And these people are supposed to be regulating us and they don't know how, anything about wholesalers. That's what I mentioned earlier is that sometimes they don't even know the names of the wholesalers and they are supposed to be regulating the industry? I think that's embarrassing. So, I think the fault is just as much on that side, they aren't really getting out enough and talking to anybody about the problems. Maybe that's what it is, maybe they're short of people there and they are just busy doing regular licensing work and taking care of some of the problems. But, I think that's the answer for alot of things. It certainly would seem to be!

CONCLUSIONS

On the basis of our legal analysis of Title 4 and of the Board's regulations, analysis of the views of others who have studied the Board, and as a result of our conversations with those associated with the Board, we have reached the following conclusions with respect to the Board's role in the control of alcohol in Alaska.

Initially, the Board's role is not clearly understood by most people, including, apparently, those who should know. One of our respondent's replied when asked about this: "No, absolutely not. Some pretty sophisticated people don't understand, especially the limits. * * *

[I]t seems to me that there is a real lack of understanding as to what our responsibilities are, what our limits are. I think it is a fairly common misconception that somehow we have all these broad powers and I just don't see it that way. We're limited by Title 4."

It would appear that those who have assumed that the Board would solve social problems associated with alcohol consumption have been mistaken. Nothing in the legal history of alcoholic beverage control efforts in Alaska provides any basis for such expectations. To the contrary, the legal history, current and proposed statutes and regulations, and the attitudes of Board members and staff clearly demonstrate a relatively simple role: regulation and control of the alcoholic beverage <u>industry</u> in Alaska.

Secondly, both existing Alaska statutes and their accompanying regulations originally designed, one assumes, to facilitate this relatively simple role are hopelessly outdated and work substantially at cross purposes with even this role.

Third, and by almost universal agreement, the current enforcement activities of the Board are inadequate. Such a result is not surprising when one considers that there are approximately 1300 licensed premises of one sort or another scattered across the vast Alaskan landscape and but five (5) investigators. While no one has recently attempted the feat, it would probably be a physical impossibility for the staff to thoroughly inspect every single licensed premise in the state in the course of a normal working year.

On the other hand, as Table One reveals, the enforcement activities of the Board have taken a decided swing up in recent years indicating at the very least an increased awareness of the need for more vigorous enforcement activities.

TABLE ONE

ABC BOARD ACTIONS

(Excluding License Issuance & Denial)
1971 - 1978

Type of Action	Year							
	1978	1977	1976	1975	1974	1973	1972	1971
Suspension	3	11	1	4	2	5	4	5
Strong letter	5	7	4	4	7	2	6	2
Revocation	--	--	4	--	--	2	--	1
Non-Renewal	9	1	1	--	--	6	--	6
	17	19	10	8	9	15	10	14

SOURCE: ABC Board Minutes 1971 - 1978

In addition, over the same period of time the Board denied approximately 330 applications for licenses, although the annual number of denials presents a much smoother line over time than other enforcement activities.

Finally, the current staff of the Board in interviews with it indicated a significant increase in criminal enforcement activities in recent years. However, the exact proportions of the increase are difficult to measure because, as the Auditor's report noted,[70/] it was difficult to find documents on these cases. The apparent reason is that the entire file was shipped to the appropriate District Attorney's office where it became submerged in his paperwork, never again to surface. This practice has since been stopped and D.A.'s are now provided with copies of the Board's file material.

All other conclusions with respect to the Board's role and activity pale in comparison to these three. In fact, most are simply constituent elements of these three major conclusions and have been mentioned directly or alluded to previously in this report.

RECOMMENDATIONS

In arriving at decisions on the nature of the recommendations which we should offer with respect to the role and functions on an Alcoholic Beverage Control Board we had to confront a problem we assume must have confounded those who have also looked at

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70/ Op. cit., n. 57 at p. 12

the Board of late: how and what does one prescribe as a remedy in the absence of a consensus as to what is wrong with the patient. In reality there is no surefire answer to this dilemma. Consequently, we have reached our decisions on the basis of certain assumptions which may or may not be acceptable to all concerned.

First, we assumed that some control of the sale and distribution of alcohol is viewed as essential by all concerned.

Second, we assumed that some enforcement activity with respect to sales and distribution violations is essential.

Third, an assumption was made that some level of enforcement of alcohol consumption abuse would be expected by the citizens of the state.

Fourth, we concluded that local units of government could be expected to maintain a relatively high level of interest in activities related to the sale, distribution and consumption of alcohol.

Fifth, we assumed that the capacity of both state and local agencies of government to deal with all these problems would always be greater in the urban areas of the state (Anchorage, Fairbanks and Juneau) than in its rural areas (everything else, but especially western Alaska and the North Slope).

Sixth, we assumed that the identifiable social problems associated with alcohol would not dissipate in the foreseeable future and would continue to be most pronounced in relative terms in their impact on rural Alaska and Alaska Natives.

Seventh, and lastly, we assumed that if the state or its

citizens wish to begin to solve some of the clearly demonstrated social costs[fn] associated with alcohol abuse, then a cohesive and comprehensive state policy encompassing taxation, regulation, enforcement, education, prevention, and treatment issues is an absolute necessity and ultimately must be realized.

Given these assumptions we make the following recommendations with respect to the future of the Alcoholic Beverage Control Board.

1. The Board should be continued for a period of time consistent with the objectives of rigorous sunset review.

2. The Board's membership should be constituted substantially as provided for in the Code Commission's April 18, 1979, draft. Our observations of the current Board have led us to conclude that the "industry" representatives on the Board are not blind to the needs of the public interest. Further, they bring to the Board much needed expertise with respect to a very complicated industry from a business operations perspective.

3. The jurisdiction of the Board's staff should be narrowed considerably. Enforcement of hours, minors, intoxicated persons and similar violations should be removed from the responsibilities of the Board's staff. We have concluded that the Board will never be given sufficient investigative staff to perform such functions, nor should they. There is simply not cost justification for such action. Moreover, so long as the perception that such enforcement activities are within the jurisdiction of the Board

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See generally, Kelso, Dennis: "The Economic Impact of Alcoholism and Alcohol Abuse in Alaska 1975" and Kelso, Dennis, Social Systems Indicators of Alcoholism and Alcohol Abuse in Alaska, 1975. Juneau, 1977.

is permitted to exist the incentive for local or state law enforcement agencies to perform such functions is either eliminated or significantly reduced. If all clearly understand that either the State Troopers or local police are the only recourse to total non-enforcement then it is probable that they will begin to actively enforce existing or proposed laws. Collectively, their enforcement efforts should produce significantly greater results than those generated by a mere five (5) incredibly overworked individuals. At worst case limits -- that is, no one does anything -- the situation can not deteriorate much from where it now stands.

4. The Board's Director should be given, as most others have recommended, the authority to approve or deny all license applications, subject to appropriate due process appeal to the Board.

5. The Board's licensing staff should remain with the Board but be transferred in toto to the Department of Commerce. Their functions should be consistent with a policy designed to insure that the industry remains relatively "clean", that those who are licensed are "fit" -- financially sound, not actively associated with criminal elements, etc., -- to deal with a volatile commodity and that applications are efficiently processed in a fair manner.

6. The Board's investigative staff should be retained and also transferred to the Department of Commerce. However, they should be given significantly new duties.

First, they should focus their investigative activities

primarily on the issue of whether the issuance of a license is in the "best public interest." We would define "best public interest" as the balancing of the individual right of competent adults to consume alcoholic beverages with the need of society to suffer a minimum of dislocation resulting from abuses of that individual right.

We would view dislocation as occurring on a number of levels including: (a) insuring that the sale and distribution of alcohol takes place in an environment that effectively protects the economic interests of the consumer; (b) that the balance of economic power between retailers and wholesalers remains in relative equilibrium; and (c) that the potential social costs of excessive consumption are adequately accounted for in the decision making process.

In this regard, we strongly urge adoption of a procedure somewhat akin to the environmental impact statement process in connection with all future new license or license transfer applications. More specifically, we believe that the Board should adopt a checklist of sorts of probable "impacts" ensuing from the issuance of a license, such as increases in vehicular accidents, shootings, injury, family disturbances, etc., and determining the carrying capacity, if any, of public and private agencies to deal with such occurrences. Questions such as what emergency medical resources exist, are there adequate "sleep-off" shelters, what is the jail capacity, how far away is the nearest law enforcement officer, among others, should be

asked and answered in connection with new applications or transfers. And, they should be reevaluated after a period of time in the case of renewals. The applicant should be obliged to provide a significant amount of this information, all of which should be of such a nature that it will be readily verifiable by a state agency.

The social ecostructure which such a statement should cover should be consistent with the location of the proposed license premise. In rural Alaska this would entail review of probable impact on villages within reasonable or easily accessible air or water travel. Artificial notions of distance such as 2 or 5 mile radii have no real meaning in rural Alaska contexts.

7. The Department of Health and Social Services and its appropriate divisions should undertake inspections of licensed beverage dispensary permises, pubs, clubs, etc., to ensure that elemental health and safety laws and regulations are observed.

8. Credit sales other than face to face transactions should be banned.

9. Transportation other than by an owner into a community which has opted to be completely dry should be banned. All alcohol transported by common carrier which is not clearly labeled as such should be declared contraband and subject to seizure and forfeiture. Propelled vehicles as that term is defined in AS 11.81.900(b)(43) used in connection with the illegal transportation of alcohol should be subject to due process forfeiture proceedings.

10. Local units of government and unincorporated villages should be given explicit authority to pass local ordinances in accordance with provisions of Title 29 limiting or banning possession of alcoholic beverages in cases in which they have opted to be totally dry.

11. Revenue refunds from taxes collected on alcoholic beverages should be provided to communities which vote themselves dry. Similarly, but proportionately, additional revenues should be provided to communities which by local ordinance significantly restrict the legal hours of sale or consumption. And, communities which demonstrate concerted enforcement activities should be concomitantly recompensed. The investigative staff of the Board should monitor these enforcement activities and the Director should make explicit recommendations to the Commissioner of Revenue on the amount of refunds a particular community should receive under AS 04.10.460.

12. Conversely, when a community votes to go "wet" serious consideration should be given to the impact such a decision will have on surrounding dry communities and mechanisms should be established to insure that they are adequately recompensed; perhaps out of revenues otherwise due to the community voting "wet."

13. The entire structure of licensing exceptions designed to promote tourism should be carefully evaluated. Provisions similar to those proposed by the Code Revision Commission in its April 18, 1979, Draft should be enacted and licenses should be

enacted and licenses should be issued for a limited two year basis subject to renewal only upon a clearly demonstrated showing of positive tourism impacts on the effected community. In no case should such an exception be made in a community which has opted to be totally dry.

14. The Code Revision Commission's proposal with respect to differentiating between a license and a certificate to operate should be enacted by the legislature. Investigation of fitness to operate should be performed by the Board's investigative staff.

15. Statutory criteria for determining whether to issue a license or a certificate of fitness such as those suggested by the Code Revision Commission should be adopted. The criteria should include items compatible with the impact statement suggested previously in recommendation six above. While many of the items proposed by the Code Revision Commission as criteria are meritorious considerations of due process suggest that they be more specifically set forth so that applicants as well as the public, the Board and its staff will know what kinds of information will be required to support licensing or certificate to operate decision making and those called upon to review such decisions will have a basis for objective review.

16. Criminal statutes carrying felony penalties for bootlegging should be enacted and these and other crimes such as those set out in proposed chapter 16 of the Code Commission's draft or those contained in chapter 16 of SB 239 should be removed from Title 4 and incorporated with the revised Title 11

in an appropriate chapter, perhaps 66.

It should be understood that this list of recommendations is by no means all inclusive. In fact, many solid recommendations can be found in SB 239, HB 219, The Code Revision's Draft, the Auditor's Report and the various public comments made in connection with the Code Commission's work.

What is most important, however, is that a complete revision of Title 4 and a companion revision of the Board's regulations should only be undertaken in connection with a complete restructuring of all the state's laws dealing with alcohol. And, that restructuring should be designed to deal comprehensively with the serious impacts which alcohol has on rural Alaska and on Alaska Natives.

Finally, we would like to stress that while a comprehensive review of all alcohol laws is essential, revision of Title 4 and a reordering of the activities of the ABC Board can proceed independently of those larger efforts. All that is required is, as we noted in our seventh assumption,[fn] is the establishment of the state policy which will provice the basis for legislative purpose. On the other hand we recognize that while "all" is a small word, in these contexts it would have to span a very large gulf between significantly diverse areas of public opinion. We do not ignore the likelihood of failure. We would only remind the reader of the continued consequences flowing from a failure to try: serious bodily injury, death, broken families, ruined

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fn Supra p .

lives, lost wages, increased state costs, higher crime rates, to but start again the litany of problems flowing from abuse of alcoholic beverages.

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 533

Title "An Act providing for the prohibition of possession in and importation of intoxicating liquor into local communities by local option"

Requested by Representative Meekins Date Feb. 22, 1980

II. FISCAL DETAIL

Agency Affected Department of Law

Program Category Affected Administration of Justice

BRU, Program, or Subprogram(s) Affected Prosecution

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS CLAIMS, ETC.						
TOTAL	Ø	Ø	Ø	Ø	Ø	Ø

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This bill, which provides state criminal penalties for those who violate local option prohibition ordinances, can be enforced by state prosecutors without additional staffing, provided the Governor's FY 81 budget recommendations for prosecution are adopted. These recommendations concentrate prosecution efforts at the trial level and increase prosecution services in rural areas where local option prohibition ordinances are most frequently used. Should the budget plan increase fail to materialize, state prosecutors would be hard pressed to enforce this bill if a sizeable number of violations occurred without additional special funding. Since enforcement of local ordinances has, heretofore, been a local responsibility we do not have reliable data which indicate the extent of possession or importation which may be occurring.

IV. DATE February 26, 1980 PREPARED BY Richard I. Pegues Admin Officer

AGENCY Law

PHONE 465-3695

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/79)

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 533 - An Act providing for the prohibition of possession in and
Title importation of intoxicating liquor into local communities by local option.
Requested by Rep. Meekins Date 2/22/80

II. FISCAL DETAIL

Agency Affected Public Safety
Program Category Affected Administration of Justice
BRU, Program, or Subprogram(s) Affected Detachments & CIB
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		0	0	0		

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Fiscal impact would be negligible.

IV. DATE 2/25/80 PREPARED BY Mike Clemens
AGENCY Public Safety
PHONE 465-4336

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/79)

To: House Judiciary Committee
From: M.W. Berck, staff
Date: MARCH 19, 1980

THE ALCOHOLIC BEVERAGE CONTROL BOARD IN ALASKA

A Report to the
ALASKA LEGISLATURE

by

Peter Smith Ring
Justice Center
University of Alaska
Anchorage, Alaksa

December 1979

premise. In rural Alaska this would entail review of probable impact on villages within reasonable or easily accessible air or water travel. It is critical that all concerned parties understand that artificial notions of distance such as two or five mile radii have no real meaning, are largely useless and potentially counterproductive concepts in rural Alaska contexts.

7. The Department of Health and Social Services and its appropriate divisions should undertake the inspection of licensed beverage dispensary premises, pubs, clubs, etc., to insure that elementary health and safety laws and regulations are observed.

8. Credit sales other than face to face transactions should be banned.

9. Transportation other than by an owner into a community which has opted to be completely dry should be banned. All alcohol transported by common carrier which is not clearly labeled as such should be declared contraband and subject to seizure and forfeiture. Propelled vehicles as that term is defined in AS 11.81.900(b)(43) used in connection with the illegal transportation of alcohol should be subject to due process forfeiture proceedings.

10. Local units of government and unincorporated villages should be given explicit authority to pass local ordinances, in accordance with provisions of title 29, limiting or banning possession of alcoholic beverages in cases in which they have opted to be totally "dry."

11. Revenue refunds from taxes collected on alcoholic beverages should be provided to communities which vote themselves

dry. Similarly, but proportionately, compensating revenues should be provided to communities which by local ordinance significantly restrict the legal hours of sale or consumption. And, communities which demonstrate concerted enforcement activities should be concomitantly recompensed. The investigative staff of the Board should monitor these enforcement activities and the director should make explicit recommendations to the Commissioner of Revenue on the amount of refunds a particular community should receive under AS 04.10.460.

12. Conversely, when a community votes to go "wet" serious consideration should be given to the impact such a decision will have on surrounding "dry" communities and mechanisms should be established to insure that those dry communities are adequately recompensed, perhaps out of revenues otherwise due to the community voting to go "wet."

13. The entire structure of licensing exceptions designed to promote tourism should be carefully evaluated. Provisions similar to those proposed by the Code Revision Commission in its April 18, 1979, draft should be enacted and licenses should be enacted and licenses should be issued for a limited two year basis subject to renewal only upon a clearly demonstrated showing of positive tourism impacts on the effected community. In no case should such an exception be made in a community which has opted to be totally "dry."

14. The Code Revision Commission's proposal with respect to differentiating between a license and a certificate to operate

should be enacted by the legislature. Investigation of fitness to operate should be performed by the Board's investigative staff.

15. Statutory criteria for determining whether to issue a license or a certificate of fitness such as those suggested by the Code Revision Commission should be adopted. The criteria should include items compatible with the impact statement suggested previously in recommendation six above. While many of the items proposed by the Code Revision Commission as criteria are meritorious, considerations of due process suggest that they be more specifically set forth so that applicants as well as the public, the Board and its staff will know what kinds of information will be required to support licensing or certificate to operate decision making and to insure that those called upon to review such decisions will have a basis for objective review.

16. Criminal statutes carrying felony penalties for bootlegging should be enacted and these and other crimes such as those set out in proposed chapter 16 of the Code Commission's draft or those contained in chapter 16 of SB 239 should be removed from title 4 and incorporated within the revised title 11 in an appropriate chapter, perhaps 66.

It should be understood that this list of recommendations is by no means all inclusive. In fact, many solid recommendations can be found in SB 239, HB 219, the Code Revision's draft, the Auditor's Report and the various public comments made in connection with the Code Commission's work.

Alaska State Legislature

House of Representatives

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

TO: Charlie Parr, Chiarman, and Members of the House Judiciary Committee.

FROM: Margaret W. Berck, Staff

DATE: March 19, 1980

RE: Regulation of alcohol by local communities through the local option election process.

In April of 1979 the Code Revision Commission completed a recodification of Title 4. Attached are copies of the Commission's draft, commentary and suggested policy considerations for the legislature relative to the local option election portion. The Committee may desire to incoporate certain of the Commission's concepts in the alcohol bills currently before the Committee.

(A) a felony or crime of violence and committed on the licensed premises;

(B) a violation of a law or regulation concerning the manufacture, barter, sale and possession of alcoholic beverages by a licensee, or the agent or employee of a licensee, or

(C) a violation under AS 04.90.010(b).

(2) a violation of a board regulation by a licensee, or the agent or employee of a licensee;

(3) the misrepresentation of a material fact by an applicant in obtaining a license;

(4) failure by a licensee to correct objectionable conditions within a prescribed time after receipt of notice to make the correction given by the director;

(5) failure of a licensee to comply with the laws and regulations pertaining to public health in the state;

(6) a determination that continuation of a license would be contrary to the best interests of the public.

(b) The director may act to suspend or revoke the licensee's certificate to operate under a provision of (a)(1) - (a)(6) of this section by giving the licensee notice of intention to suspend or revoke setting forth grounds and otherwise proceeding in accordance with AS 04.90.020. Failure to timely request a hearing waives the licensee's right to hearing and review.

(c) License suspensions imposed shall be for a period of time, and a fine may not be substituted for a suspension.

CHAPTER 14. LOCAL OPTION.

Sec, 04.14.010. ELECTION IN CITIES. (a) If 35 percent of the total number of voters in the last regular municipal election held in

a city petition the governing body to do so, it shall place on the ballot at the next regular municipal election the following questions:

(1) Should the sale of alcoholic beverages be permitted within this city?

YES [ ]

NO [ ]

(2) If you favor the sale of alcoholic beverages within this city, should the sale be permitted under privately-owned licenses or only under a community-run license? Check only one.

PRIVATELY-OWNED [ ]

COMMUNITY-RUN [ ]

(3) If you voted for a community-run license in question (2), which type of license would you favor? Check only one.

PACKAGE STORE [ ]

TAVERN [ ]

BOTH [ ]

(b) The city election officials shall canvass the ballots cast on questions and certify the election results to the board.

(c) If a majority of the votes cast on question (1) opposes the sale of alcoholic beverages within the city, no licenses may be issued, renewed or transferred within the city, and a new license for a beverage dispensary or retail package store may not be issued within five miles of the city. The expiration date of licenses in effect within the city is coterminous with the date of election certification. However, a licensee within the city is entitled to retail stock permits, as authorized in AS 04.11.145(1) but without pay ment of the permit fee and irrespective of the type of license he hold

(d) If a majority of the votes cast on question (1) favors the sale of alcoholic beverages within the city, licenses may be issued, renewed or transferred within the city or five miles of it in

accordance with the provisions of this title.

(e) If a majority of the votes cast on question (2) favors the sale of alcoholic beverages only under a community-run license, no licenses may be issued, renewed or transferred within the city, except that ~~but~~ a community liquor license may be issued for a retail package store or beverage dispensary, or both, as authorized by the voters at the election. However, a license already issued within the city on September 10, 1972 and thereafter continuously renewed may be renewed or its ownership transferred within the city irrespective of the restriction of this subsection. The duration of other licenses within the city is coterminous with the date of election certification; however, holders of retail package store licenses within the city are entitled to retail stock sales permits, as authorized in AS 04.11.145(1) and without payment of the permit fee.

(f) If, following an election prohibiting or limiting the sale of alcoholic beverages within the city under (a) of this section, a majority of the voters at a subsequent regular municipal election under (a) of this section authorize the sale of alcoholic beverages under private licenses, the director upon application may issue only the same number and type of licenses to the same or other premises within the city as were in effect on the date of certification of the previous election. Those applicants who were licensees and whose licenses were not continued by reason of the previous election have priority in license issuance over other applicants. A license shall be issued to a prior licensee notwithstanding a resulting restriction, whether under AS 04.11.050 or otherwise, which arose subsequent to the election.

Sec. 04.14.020. LOCAL OPTION ELECTION MANDATORY IN CERTAIN CITIES. No new license for the sale of alcoholic beverages may be issued within a city in which there is no licensed premises on

the effective date of this Act, unless a local option election under sec. 010 of this chapter is first conducted and sale authorized by the voters.

Sec. 04.14.030. LOCAL OPTION ELECTION IN CERTAIN UNINCORPORATED AREAS. (a) In an area outside a municipality, if the director finds that protest of a license issuance, renewal or transfer has been made in the manner provided in AS 04.11.080 by at least 35 percent of the qualified voters having permanent places of abode within a village and within two miles of the boundaries of the village, the Department of Community and Regional Affairs shall conduct a special election within the village on the question of whether any licenses may be issued, renewed or transferred within the village and within two miles of its boundaries.

(b) An election under this section shall be conducted in conformity with the applicable provisions of AS 15. The effect of the election within the village and within two miles of its boundaries is the same as the effect of a local option election within a city as provided for in sec. 010(c), (d) and (f) of this chapter. Upon petition of the same number of voters from the same area as prescribed in (a) of this section, the department shall conduct the subsequent election on the question.

Sec. 04.14.040. SALE IN VIOLATION OF LOCAL OPTION. (a) A person who barters, sells or offers for sale an alcoholic beverage in an area where a local option election has made these activities illegal is guilty of a Class A misdemeanor.

(b) Nothing in this section prohibits mail and telephone orders for alcoholic beverages placed from the local option area

to a retail package store licensee in another area and the satisfaction of such orders from his licensed premises, if the sale is made in good faith and without knowledge or reason to believe that the alcoholic beverages ordered are intended for sale or offering for sale in violation of (a) of this section. A sale under this subsection shall be considered a sale made on the licensed premises.

Sec. 04.14.050. SEIZURE, FORFEITURE AND SALE OF CONVEYANCE. (a) A conveyance used, or intended for use, to transport or in any manner to facilitate the transportation, sale, receipt, possession or concealment of an alcoholic beverage sold in an area where a local option election has made its sale illegal may be seized when the seizure is incident to an arrest or a search under a search warrant.

(b) Upon conviction of the offender or upon judgment of the court having jurisdiction that a conveyance was used or intended for use to transport or in any manner to facilitate the transportation, sale, receipt, possession or concealment of an alcoholic beverage sold in an area where a local option election has made its sale illegal, it is forfeited and shall be disposed of to the community in the local option area most directly affected by the sale or to the state, as directed by the court. If the conveyance is sold for the benefit of the state, the proceeds of the sale shall be transmitted to the proper state officer for deposit in the general fund. If not ordered disposed of by the court, a seized conveyance shall be returned after completion of the case and payment of the fine, if any.

(c) No conveyance used as a regularly-scheduled common carrier in the transaction of business as a common carrier is forfeited under

this section unless the owner or other person legally in charge of the conveyance consented to or had knowledge or reason to know of the illegal conduct.

(d) No conveyance is forfeited under this section because of conduct of a person, other than the owner, having unlawful possession of it.

Sec. 04.14.060. APPEARANCE BY PERSON HAVING INTEREST IN CONVEYANCE. A person holding a lien, mortgage, or conditional sales contract on a conveyance seized under sec. 050 of this chapter may appear before the court in the proceeding involving the forfeiture to petition for remittance or mitigation of the forfeiture. The court shall remit or mitigage the forfeiture if it finds that the petitioner has an interest in the conveyance which he acquired in good faith and without knowledge or reason to believe that the conveyance was being used or would be used in the transportation of an illegally sold alcoholic beverage.

CHAPTER 16. REGULATION OF SALES AND DISTRIBUTION.

ARTICLE 1. OPERATION OF PREMISES.

Sec. 04.16.010. POSTING OF LICENSE AND INSPECTION OF PREMISES. (a) A license and certificate to operate shall be posted conspicuously on the licensed premises.

(b) Licensed premises, or other storage premises of a licensee, shall be readily accessible for inspection by ABC enforcement and other peace officers during all regular business hours and other reasonable times.

Sec. 04.16.020. HOURS OF SALE. (a) No person may consume, sell, offer for sale, give, furnish or deliver from a licensee an alcoholic beverage on a licensed premises between the hours of 5:00 a.m. and 8:00 a.m. each day of the week.

(b) Municipalities may by ordinance provide for more restrictive

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----------COMMENTARY----------

CHAPTER 14. LOCAL OPTION.

The current provision of law authorizing elections on sale of intoxicating liquors within cities, AS 04.10.430, has been completely redrafted to answer a number of questions on meaning and application of the provision as amended over the years (Sec. 04.14.010). The current law implies that at least two questions may be the subject of a local option election, namely, whether the city should be "wet" or "dry", and, if not "dry", whether sale should be permitted only under a community liquor license of the kind authorized first and second class cities under other provisions of current law. This effect is spelled out in the revision.

The current law's prohibiting in case of a "dry" vote, further license issuance in the city "for a period of one year" (AS 04.10.430(a)) seems to be so ambiguous as to intended effect that it is not retained, but the provision under current law for extraterritorial effect of a "dry" vote, so as to prohibit new beverage dispensary or package store licenses within five miles of the city, is continued. Should the option of a community liquor license rather than "dry" status be elected, no extraterritorial effect appears intended under present law or is provided for in the redraft.

Unlike the current law, the exclusion of all licenses within the city having elected the community liquor license option carries no exception for tourist facility licenses and extends to renewals and transfers of existing licenses as well as new licenses (the only category affected under present law), but licenses issued before September 10, 1972 -- the effective date of the current law authorizing local option election for community licenses -- remains unaffected.

in a city in which there are no licensed premises before a license may be issued is continued and is intended to prohibit sale under either a permit or license if the majority vote is "dry", the same effect as under current law (Sec. 04.14020)).

The one provision of current law which now has the effect of authorizing local option election on the question of "wet" or "dry" (but not community license) status in unincorporated areas of the state, upon a 35 percent protest of license issuance, renewal or transfer, as noted above, is also retained and the effect of the election expressly spelled out and made consistent with the effect of a "dry" or subsequent "wet" vote within a city (Sec. 04.14.030).

Sales in an area in violation of a "dry" ban continue to be penalized as a misdemeanor (Sec. 04.14.040(a)). (The term "class A misdemeanor is used in the revision to conform to classifications of penalties taking effect January 1, 1980 under ch. 166 SLA 1978, the criminal code revision.) The revised section makes clear that mail or telephone orders originating from a "dry" area to a package store in an area not prohibiting sale do not per se constitute a violation (Sec. 04.14.040(b)).

Provisions specifically authorizing seizure of conveyances utilized in connection with illegally-sold alcoholic beverages and specifying the conditions of seizure are added to current law (Secs. 04.14.040 - 04.14.060), essentially as they appear in pending proposed alcoholic beverage control legislation introduced at the request of the Governor (HB 219 of the current Legislature.)

The local option elections authorized in this article, while obviously principally intended as an alcoholic beverage regulatory means for rural areas, continue in the revision, as under current law, to be applicable within any city of the state, regardless of population or location. A 35 percent petition of municipal voters continues prerequisite to any local option election.

CHAPTER 16. REGULATION OF SALES AND DISTRIBUTION.

ARTICLE 1. OPERATION OF PREMISES.

The present prohibition of law on serving intoxicated persons is changes so as to proscribe serving "visibly intoxicated" persons, largely to facilitate enforcement as a practical matter (Sec. 04.16.050). In addition, the present restriction of law on permitting intoxicated persons to remain on licensed premises is modified so as to permit an intoxicated person to remain in order to avoid unreasonable risk of bodily harm to the person (Sec. 04.16.050).

C. Local Option

1. Authorizing local option election choices in addition to the choices under present law, i.e., "wet", "dry" or community license status. In particular, authorizing communities which change from "wet" to "dry" status to further limit the number and types of outlets permitted by quota has been urged (most notably in a formal city council resolution conveyed to the commission; Resolution #250, 1978, Bethel City Council). Other options which have also been proposed are limited and unlimited community licenses (HB 219 of the current Legislature), and election to permit only sales of beer and wine.

2. Authorizing local option elections in unincorporated areas, e.g., outside-city areas of election precincts in the unorganized borough; under current law (retained in the revision), a very limited right of local option outside incorporated areas is authorized within two miles of village boundaries, and then only upon protest of a issuance, renewal or transfer within the village (Sec. 04.~~14.~~ 030(a) discussed above).

3. Authorizing compensation to communities voting "dry" for loss of alcoholic beverage sales tax revenues. A fear of economic loss from prohibiting alcoholic beverage sales appears to be a key and perhaps inappropriate consideration of local option elections under present law.

6/13/86

Jeannie Henry Her
out to File
re: question about restitution
bill

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