

HCR

12

# COMMITTEE REPORT

## HOUSE

FURTHER: FINANCE

March 14, 1979

Date 4/1/79

Mr. Speaker:

The Committee on STATE AFFAIRS has had HCR 12

Requesting the governor to give consideration to contract negotiations between the state and the Matanuska-Susitna Borough relating to the relocation of the capital.

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass  do not pass
- do pass with attached amendments(.)
- replace with CS for HCR 12  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

**MEMBERS SIGNING**

DO PASS NOT PASS

[Signature]

4 dr 1/2 null DO NOT PASS

Stew Handley DO NOT PASS

[Signature] " " "

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**MEMBERS HAVING**

**OTHER RECOMMENDATIONS:** Be Active

Terry Martin - Do pass

[Signature] Do Pass

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[Signature]  
CHAIRMAN

BY CARNEY, BARNES, BEIRNE, BETTISWORTH,  
BUCHHOLDT, CHATTERTON, COTTEN, HALFORD,  
HAYES, MCKINNON, MALONE, MARTIN, MEEKINS,  
METCALFE, MILES, MONTGOMERY, MUNSON,  
O'CONNELL, PARR, PHILLIPS AND RANDLOPH

1 IN THE HOUSE

2 HOUSE CONCURRENT RESOLUTION NO. 12

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 Reques- ng the governor to give con-  
6 sideration to contract negotiations  
7 between the state and the Matanuska-  
8 Susitna Borough relating to the re-  
9 location of the capital site

10 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 WHEREAS, in 1974, the people passed an initiative requiring the reloca-  
12 tion of the capital <sup>site</sup> and requiring that the relocation begin no later than  
13 October 1, 1980; and

14 WHEREAS, in 1976, the people selected the Willow area as the site for  
15 the new capital; and

16 WHEREAS, in 1978, the people passed an initiative allowing the expendi-  
17 ture of state money for the relocation of the present functions of state  
18 government only after adoption by the voters of a bond issuance which  
19 includes all bonicable costs of the relocation;

20 BE IT RESOLVED by the Alaska State Legislature that contractual negotia-  
21 tions between the state and the Matanuska-Susitna Borough, which would provide  
22 for the development of the new capital <sup>city</sup> by the borough at no expense to the  
23 state, ~~and the best~~ <sup>are a practical</sup> means of complying with the people's wish to relocate the  
24 capital <sup>site</sup> while, at the same time, complying with the 1978 initiative; and be  
25 it

26 FURTHER RESOLVED that the governor is respectfully requested to consider  
27 these contract negotiations at the earliest possible time <sup>in order to satisfy</sup>  
28 the October 1, 1980 target for beginning the relocation.

29 if it is found that:

- 1-
- 1. the Matanuska-Susitna Borough has powers and financial abilities <sup>HCR 12</sup> to accomplish the development of a capital city in accordance with AS 44.06 and AS 44.07, and
- 2. no state funds will be expended for the development of a capital city <sup>in accordance with AS 44.06 and AS 44.07.</sup>

STATEMENT BEFORE THE  
STATE AFFAIRS COMMITTEE  
ELEVENTH LEGISLATURE - FIRST SESSION  
FRIDAY, APRIL 6, 1979 AT 1:30 O'CLOCK P.M.

Our name is Carolyn Burg and we are a citizen of the United States and a resident of the City and Borough of Juneau, Alaska for approximately 26 years. With the exception of the 25th Amendment to the United States Constitution (which we are challenging as being unconstitutional and void upon its face) we believe in the Constitution of the United States and the portions of the Constitution of the State of Alaska that are constitutional according to the United States Constitution, and do not consider the United Nations Treaty or any other instrument excepting the Declaration of Independence to be the law of the land. U.S. Constitution  
Declaration of Independence Contract Theory

We do believe in Sec. 3 of the Alaska Statehood Act which states:

"...(Constitution.) The constitution of the State of Alaska shall always be republican in form and shall not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence..."

We are appearing here involuntarily inasmuch as we have searched for a lawyer to help us, have been willing to pay for such help, but none can be found within the United States to help us on the various matters we are challenging, including the Capital Move Issue. So we have to continue on our own.

Our Capital in Juneau is property which cannot be reached by an initiative because it is PRIVATE PROPERTY.

Private property does not change with a change from territory to state. That's the gist of this whole case.

In other words, we are alleging that Juneau as the Capital is a private corporation under Federal Eminent Domain and the State of Alaska has no jurisdiction in it, because years ago Congress put this Capital under an interesting set of circumstances which cannot now be changed. Property Which Cannot be Reached by the Power of Eminent Domain for a Public Use or Purpose in the Pennsylvania Law Review, Vol. 28, No. 2, December, 1929 by Milton Colvin.

In this article on page 151 Mr. Justice Story states:

"...Although the sovereign power in free government may appropriate all the property, public as well as private, for public use, making compensation therefore, yet it has never been understood, at least never in our Republic, that the sovereign power can take the private property of A and give it to B by the right of eminent domain..."

And still further on this article states:

"...The 'due process' clause of the federal and state constitutions enunciates another principle in behalf of the individual property owner, and when it has come in conflict with the principle of the prerogative of sovereign eminent domain, the latter sometimes has to give way. It has been held that eminent domain power cannot be employed to take property by the kind of undue process of law whose description has found expression in the classical example of 'taking the property of A to convey it to B'. West River Bridge Co. v. Dix, 6 How. 507 (U.S. 1948). The fact that the taking has behind it the prestige and power of eminent domain, and that the property is to be paid for by ample compensation has not been allowed to impair the integrity and applicability of this ancient example..."

Your Speaker, Terry Gardiner, has a copy of our complaint which we issued to the United States District Court and about a dozen of these complaints were delivered by the Marshal around November 1, 1978, at which time the judge, James A. von der Heydt,

dismissed the case. Knowing Judge von der Heydt to be a good judge, this is not normal behavior for him, so we are looking into the laws of Congress to see what legislation is taking away the power of this judge to act, however, we have not had time to research this matter properly, as we have been concerned about our daughter.

Our daughter, Nancy, has been experiencing trouble with her heart and has just recently come out of intensive care at the Bartlett Memorial Hospital. It was required to stabilize her condition before sending her south with a nurse, oxygen, etc. She has undergone open-heart surgery and is now recovering in Seattle, where her husband is with her. Meanwhile we have been taking care of their twins and their home.

Excepting for bringing this before the court the Capital Move Issue is all over. All of the initiatives that have ever been brought, and all of the laws associated with these initiatives are unconstitutional and void, because the police power of the state cannot act in this case.

It would be redundant to repeat all of our authorities which we have given you in in the past, but we will give you the Supreme Court Rule which puts the restriction on the taking of this Capital. Mr. Justice Field, in a very famous opinion which has never been reversed in Williams v. Arlington Hotel, 22 F 2d 669 (a hotel) and People v. Mouse, 265 P 945 (a soldier's home) states that there are three ways in which the United States may acquire and hold land within the confines of a state and Juneau as the Capital comes within the "second way" that this can be done or by the United States purchasing property from private individuals .

Even Governor Jay Hammond in his meeting before the Joint Senate and House in his State of the State message on January 16, 1979, page 14 said:

"...PRIVATE OWNERS SHOULD BE ABLE TO LOCK OTHERS OUT FROM ACCESS TO THEIR LANDS..."

If this precedent were allowed to stand - taking this Capital which is PRIVATE PROPERTY by the police power of the State, none of our homes would be safe from the police power in the Nation. Congress could take your home or ours and give it away to someone else without a deed.

Governor Jay Hammond would not be able to act at all in this situation, as he has to see that the laws are faithfully carried out - that is his function as the top executive of this State.

Therefore the Mat-Su's proposal for moving the capital is completely unconstitutional and void. What the State of Alaska cannot do, neither can a Borough who is under the State accomplish.

We have read the Attorney General's Opinion to The Honorable Samuel R. Cotten and The Honorable Patrick Carney for the State of Alaska, and in the case moving of this Capital would be valid, the Attorney General left out one very important point. We will now ask Mr. Ron Larson one question. In the case that this "move proposal" were constitutional, Mr. Larson, would the Mat-Su Borough also be willing to pay for Juneau's compensation BEFORE moving anything to your Borough? Under condemnation procedures this is what would have to be done. Would your Borough be willing to pay for all this too?

Juneau is controlled by Chapter 561 - An Act to Repeal Timber Culture Laws and for other purposes, 51st Cong. Sess. II, 1891 (March 3) page 1095, Sec. 11-14, 26 Stat (U.S. Comp. Stat. 1901, pp 1467, 1468 relating to Townsites in Alaska WHICH ARE RESERVED BY THE FEDERAL GOVERNMENT and we have a United States Deed in U.S. Survey No. 7 covering this Townsite.

Obtaining a patent for this townsite, possessory rights were immediately begun. Occupants exercise their possessory rights by applying for a deed, which these people did who owned the land underneath Block No. 19 (the Capitol) Exercising possessory rights from September 4, 1897 when this townsite was patented gives a long possessory right to the private property underneath this building.

Sec. 14 of this above law states:

"That none of the provisions of the last two preceding sections of this act shall be so construed as to warrant the sale of any lands belonging to the United States which shall contain coal or the precious metals, or any townsite, or which shall be occupied by the United States for public purposes, or which shall be reserved for such purposes..."

The controlling statute for Juneau was made by Congress and placed into a trust relationship with the Secretary of the Interior, which we consider exclusive legislation by Congress.

As we stated to The Hon. Terry Miller when he questioned us at the Baranof Hotel in April of 1974 (the first committee set up on the Capital Move) "The Capital Move is completely unconstitutional and void. Even the vote on this issue was without due process because there was no chance to study it - it was brought off in a hurry." It was that night that we gave Frank Harris, who was present at the meeting public notice

that we were looking into this issue further and challenging it. The Southeast Alaska Empire noted this fact approximately April 15 or 16, 1974.

After all the money spent on this issue, nothing has changed. No one can take private property by an initiative. This is property which cannot be reached by one.

We would like a hearing on this in a competent court with a ruling thereon by a competent judge, and we would like everything we do to be judicially noticed by the court.

We are now ready for any questions you may pose.

Respectfully submitted,

*Carolyn Burg*

(Mrs. Amos)

Carolyn Burg

- cc: The Hon. Mike Miller, Chairman, State Affairs Committee, Box 1494, Juneau, Alaska 99802
- The Hon. John G. "Jack" Fuller, Vice-Chairman, State Affairs Committee, 11th State Legislature, Box 689, Nome, Alaska
- The Hon. Terry Gardiner, Speaker of the House of Representatives, Box 6092, Ketchikan, Alaska 99901
- The Hon. Richard I. Eliason, Box 143, Sitka, Alaska 99835
- The Hon. Terry Martin, 3960 Reka Drive B-6, Anchorage, Alaska 99504
- The Hon. Ray H. Metcalfe, Box 4-2766, Anchorage, Alaska 99509
- The Hon. Bill Parker, 200 Denali Street, Anchorage, Alaska 99501
- The Hon. Solicitor General, Washington, D. C. 20000

State of Alaska )  
 Greater Juneau Borough ) ss.  
 Juneau, Alaska )

Subscribed and sworn to before me on oath that all the above facts are true to the best of my knowledge and belief, and that these facts are from Carolyn Burg's personal research and study in bringing this before the court and that it has not been in any way for delay.

I am a Notary Public for the State of Alaska, Greater Juneau Borough, Juneau, Alaska, and the above-named Carolyn Burg is known by me to be the person named in this instrument.

Dated April 6, 1979.

*Jean F. Boone*  
 Notary Public  
 My Commission Expires January 21, 1982

My Commission Expires



# Alaska State Legislature

## House of Representatives

### Committee on State Affairs

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

Thursday

March 29, 1979

Representative Pat Carney

~~Mr. Ron Larson~~

~~Mrs. Carolyn Burg~~

④ Mr. Bill Overstreet

Ms. Jan Erickson

- ① Carolyn Bushey
- ① Mary Nordale
- ③ CB Bettisworth
- ⑤ Carolyn Burg

## THERE ARE OTHERS.

Some of the Juneau papers would like to have their readers and the entire country believe that city is the "whole thing." That it is the only place of importance in this vast country, and every town and mining camp in Alaska is tributary to it. The fact is that Juneau was never as dead as she is at the present time. Her business is rapidly decreasing, and many of her merchants are moving away, while others are opening up branch houses in Skagway with the intention of moving their entire business interests to that city. These facts were made voluntarily by one of the prominent business men of that city while here a few days ago. Nearly every person coming to this place from Juneau or who has passed through that city, says the same thing, "Juneau is dead."

The Record of that city has on recent occasions informed its readers that the Bauer and Turner mines of this place are tributary to Juneau. Capt. Armstrong, the manager of the Turner mine, according to that paper is to reside with his family in Juneau and operate the mine from that place and will purchase his supplies there.

Such is not the case at all. These mines will be operated from Sitka and the supplies for them will be purchased from Sitka merchants. Capt. Armstrong and family will reside in this place, the garden spot of Alaska, and will not make daily trips from Juneau to Silver bay to operate his mine. The Bauer mine is spending \$1500 a month here and has only spent \$25 in Juneau.

Juneau is a nice city and there are nice people there. Fine business houses and we suppose good mines and we wish for her future success. She covets the capital we know, our fine climate and beautiful scenery, but don't take our

mines for we have some good ones as this season's work will prove. Don't try to make the people think you are the "whole thing." There are other diggings just as rich as Juneau and you are not the only nugget in the sluice.

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June 21, 1890

## ON THE REMOVAL OF THE CAPITAL

From our Capital city, proud Sitka,  
 the Queen,  
 Jealous Juneau, low born of the hill  
 and the gale,  
 Unknown both to song and tradition,  
 Seeks to steal her high place; but it's  
 plain to be seen  
 That all capital, other than foreign,  
 must fail  
 To save the poor Jade from perdition.

J.S.B.

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May 26, 1900

The Carter Bill, which passed the senate the first of this month, contained a clause, allowing the capital of Alaska to be temporarily located at Juneau, when the necessary buildings therefor are erected at that place.

Legislative bodies rarely incorporated irony into their enactments but all who are familiar with conditions at Juneau will not fail to "see the joke" in this case.

*Compliments of*  
 REP. TERRY MARTIN

*Compliments of*  
**REP. TERRY MARTIN**

The Washington dispatch in yesterday's Post-Intelligencer to the effect that the senate committee on territories had decided to report favorably on the removal of the capital of Alaska from Sitka to Juneau is recognized as a defeat for Gov. Brady, and it is thought brings the fight on the Alaskan capital question almost to an end.

Gov. Brady lived in Sitka years before he became the chief executive. He ran a sawmill, raised potatoes, developed eloquence on prohibition, and identified himself with Rev. Sheldon Jackson and his missionary influence. The governor still runs the sawmill still has his potato patch, and has acquired in the slow passage of years considerable land that will be of great value if Sitka should ever shake off its rural semblance and grow to be a city.

The removal of the capital to Juneau means much for that town.

It is at present really the central point of Southeastern Alaska. An appropriation of \$45,000 has been hanging fire at Washington for a court house and jail at Juneau for nearly two years. The money has been available, but not a cent's worth of work has been done. Juneau people lay the delay at the door of the governor, and the alleged "missionary pull" at Washington, but this has amounted to little more than conjecture. If Juneau is made the capital, not only will the Federal building for which the appropriation has been so long available be elected, but a capital building will also have to be provided. The government now provides living quarters for the principal Alaskan officials, furnishing them with fuel, light, and all the necessaries except provisions.

The main activity, support and dignity of Sitka came from the government officials and their families. With the capital removed to Juneau, Sitka will, it is claimed, become little more than a

village of Indians and mixed descendants of the early Russian settlers.

The foregoing appeared in the Seattle P.-I. of the Jan. 26.

Seattle is a flourishing young city. It is favorably situated for handling trade and will no doubt become an important commercial center in the near future. Its business is conducted mostly by young men, bright, active, energetic and full of hope. Sitka is proud of the Queen city of the Sound and has none other than good wishes for its prosperity.

However the flavor of immaturity still pervades it. Its youth is manifest in its penchant for boasting. In that line it keeps well abreast of the band wagon, and for making the most out of little has no equal on the coast. But as that is a source of satisfaction to it, and does no injury to any one else we let it pass.

Notwithstanding all its brilliant prospects, it realizes that it is not entirely out of the woods yet, and therefore is alert to detect possible rivals. In scanning the northern coast and studying its geography its evidently conceived it had discovered one in the historic city of Alaska, and with a promptness which is an admirable characteristic of it, decided it must be destroyed.

Seattle has a piece of ordinance. It is used at long or short range as occasion may require. As to whether it is an effective piece of artillery or not we express no opinion; but its detonation is perhaps its most frightful quality. When the possible danger was noticed an attack on the historic city was ordered. Upon a reconnaissance it was found impossible to assail its location, consequently the gun was trained on the persons of the place. To be consistent the first assault was made on the most prominent of them and also the oldest inhabitant. In casting

about for a weak point in his career at which to make the attack, it was discovered that during his long residence in the town he had kept in touch with the forces that make for righteousness, had the enterprise to manufacture lumber, thrift to cultivate potatoes and foresight and prudence to accumulate some property. The offenses were rank, the gun belched forth, and the charge was made.

To be candid however the Alaskan believes the charges are true. It is not authorized to speak for the gentleman referred to, but is of the opinion he will not attempt to palliate or deny them, consequently it rests that part of the case.

But the fight on the Alaska capital question may not be so near an end as over esteemed contemporary imagines. We will gently remind it that there "is many a slip between the cup and the lip." When Congress hears all the facts touching the matter we believe it will hesitate long before taking such an unnecessary, ill advised and costly step. It will observe that Sitka is more centrally located than Juneau. It will learn that its surroundings are more, commodious, healthful and attractive, its climate more salubrious and genial. Also that the government owns a large amount of real estate in Sitka beautifully located and immediately available for use in the erection of public buildings. This property, if the claim set forth in the P.I. should prove correct, would be an almost total loss to the government, for what value has real estate in an Indian village. When the sum of this loss is added to the expense of procuring a site for the capital building in Juneau, and the cost of either leveling a mountain or filling a channel for the edifice to stand on Congress will find that the Salary of the extra clerk, which it is claimed will be necessary if the removal is not made, would be but a bagatelle in comparison.

## Compliments of REP. TERRY MARTIN

### REMOVAL OF THE CAPITAL

In our last issue we published a press dispatch which stated, that the Senate committee on territories had decided to recommend the removal of the seat of government for Alaska from Sitka to Juneau. Another dispatch conveying this intelligence stated further that the Land Office located here would probably be moved also. This action of the committee is probably the result of representations made by persons directly interested in Juneau and who were more anxious to promote their private interests than to advance the public welfare.

The Alaskan believes the step recommended by the Committee is a grave mistake. The reasons that can be urged in its favor, are few, ephemeral and local, while those against it are many, enduring and general.

1st. Sitka is more centrally located than Juneau or any other town east of it. If Lynn Canal and its cognate straits constituted Alaska this statement might not be warranted but it does not. The Alaskan does not want to be understood as disparaging that part of our territory. It is an important and prosperous section of it. It contains several thriving mining districts and its out put of bullion is considerable and will likely increase for many years to come. There are several fish canning establishments along the shores of its inlets and bays, and it is the artery through which flows the trade between Seattle and other cities on the Sound and the Klondike country. These conditions have caused some smart little towns to spring up along its shores and those of its connecting straits. These things have given it a temporary importance of which it is endeavoring to take advantage, to the detriment of other locations,

important now and which promise to be more important than it, in the near future. Nearly all of the great mineral discoveries recently made are far west of it and of Sitka also. Most of the great fish canning plants are to the westward as well. The center of population is fast flowing that way and important mining towns are growing. Soon the route for traffic with and travel to and from these points will not be through the tortuous passages of the inside channels but on the open sea. Sitka will be a much more convenient point for those places to do business with than any inland town. Furthermore if mineral developments along the Yukon river and its tributaries continue, a railroad will probably be constructed at no distant day connecting Prince Wm.-Sound with that great river. This route to the gold bearing fields of the interior will be much shorter than the one from Skagway, will avoid foreign territory and for these reasons will largely supercede it.

2d. The harbor at Sitka is one of the finest in Alaska. It was selected by the Russian American Fur Company as the point for its headquarters, after a careful investigation of the coast. It is said to have the best holding ground for Anchorage of any harbor in Alaskan waters, it is well protected from storms and is an ideal place for vessels to coal and water. This serves to keep Sitka in touch with points to the westward.

3rd. The government owns much valuable property in Sitka which it acquired at the time of the transfer. It has a large warehouse, two large three story and one two story buildings for public offices and a house for the Governor's office and reception rooms. It also has quite an amount of real estate, beautifully situated, for other public

edifices. The ground is comparatively level, cleared and immediately available for use. If the offices are removed to Juneau, rooms for them must be rented or buildings erected. The government owns no land there suitable for them. Nearly all of the available space in that naturally contracted townsite [for at Juneau the mountains crowd the channel] being occupied, a site for public buildings could not be obtained except at a heavy cost, and then places for them to stand would probably have to be cut out of a mountain or or filled up in the channel and in either case at great expense. Furthermore land titles in Juneau are not settled. Because of this the \$45,000 appropriated by Congress two years ago for the purpose of building a Court house there has not been used yet. The government will not erect its buildings on land to which the title is not perfect.

4th. With a possible exception, the removal is not desired by the officials or is it demanded by the people, save only a few who hope to be personally profited thereby. The convenience of a great majority would not be promoted in the least while a great many would be incommoded.

5th. The cost of living in Juneau is greater than in Sitka, and the salaries of some of the officials would have to be increased in order for them to meet living expenses, which would make an additional drain on Uncle Sam's pocket. Many other reasons, why the removal should not be made, press for presentation but space forbids. We think when Congress carefully considers the matter, it will discover that as a business proposition it is indefensible, and that the public demand therefor is greatly insufficient to justify it.

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That a crisis has come in the history of Sitka is a fact that can no longer be ignored. The dangers of her losing the seat of govern-

ment with all the prestige it gives, is imminent. The forces that are antagonistic to her are gaining the ascendancy. They are organized, active, alert and pulling altogether. They are leaving nothing undone to accomplish their purpose. They have a powerful lobby in Washington which is instant in reason and out of season, ever insistent and persistent for the removal of the Capital to Juneau. What is Sitka doing to counteract this baneful work? Echo answers what? If it hopes to hold its own it must arouse from its lethargy and bestir itself. It should not stand on the order of its doing. Not a moment can be safely lost. Time is precious. The citizens should hold a mass meeting without delay and set forth, in proper form the reasons why the capital and other public offices should not be removed to Juneau or any other town to the eastward. This should be done so that the manifesto might be forwarded to Washington by the next steamer. Who of our citizen will take the initiative in this matter which concerns us all so deeply? Sitka, "awake, arise or be forever fallen."

## JUNEAU NOT THE PLACE FOR THE CAPITAL.

Two Rousing Mass Meetings  
Held by the Citizens  
Of Sitka.

The Town Hall was crowded to its utmost capacity by enthusiastic citizens of Sitka who held two rousing mass meetings on Tuesday and Wednesday evenings in regard to the removing of the capital. The meeting was called to order by Dr. Wilbur, and Judge Kelly was unanimously elected as chairman, and W. P. Mills secretary, Judge Kelly then stated the object of the meeting and Dr. Wilbur made a motion that a committee be appointed to draft resolutions to protest against the removal of the capital; motion carried. Remarks were made by Wm. Millmore, W.R. Mills, Wm. Shergen, Capt. Apperson, Will Distin and others.

Juneau was ably represented by George Kyrage but the prevailing wind of Juneau was not sufficient to knock Sitka out of the capital.

The meeting was adjourned until Wednesday evening, when the committee brought in the following resolutions which were read and adopted.

It having come to our knowledge that the Senate Committee on Territories has decided to recommend the removal of the Capital of Alaska from Sitka to Juneau, we the citizens of Sitka in mass meeting assembled respectfully beg to submit the following reasons why the proposed removal should not be made:-

First. Public convenience does not demand it. Sitka is more centrally located than Juneau or any other point in southeastern Alaska. It is in closer call for all lines of travel than any other. It is situated on a bay on the sea, has an excellent harbor and is the focal point for all water routes of Alaska excepting the one from Puget Sound to Skagway, and is therefore the natural point for concentrating military forces.

## Compliments of REP. TERRY MARTIN

Second. The harbor at Sitka is fully protected and according to frequently repeated opinions of Naval and Revenue officers, has the best anchorage of any in Alaska and is absolutely free from ice at all times. Commanders of the Pinta, Perry, Wheeling and Marietta have stated in official reports that it is impossible for a vessel to lie continuously at Juneau.

Third. Economy dictates that the removal should not be made. The Government has buildings in Sitka for all offices and land on which to erect others as occasion may require. The buildings now occupied were provided at a large expense. They are and will continue to be adequate for the purposes for which they are used for some time. If the offices are vacated they will be unproductive for they are not adapted to the uses the business pursuits of the town requires, and therefore could not be leased or rented. Decay would follow disuse, resulting in a total loss to the Government of all that has been expended on them. The Government has no buildings at Juneau or land on which to build them. As available building space is very limited at that place rents are high; and if the offices are removed places must be provided for them either by the erection of buildings or leasing rooms from private individuals. The cost in either case would be heavy. Adding the loss of the public buildings in Sitka to that of providing places in Juneau for the various offices which would probably be involved in the removal makes a sum of no inconsiderable amount, and as the interests of a vast majority of the citizens of Alaska would not be subserved thereby it would, it seems to us, be an unjustifiable waste of public funds.

Fourth. If it should ever be desirable to remove the Capital from its present location the time is not yet. Alaska is a vast territory and its development is scarcely begun and its possibilities practically unknown. It is impossible to know where the center of population will be a year hence. That it is west of Sitka and therefore of any point on Lynn canal and will continue to be there can be no doubt. The business world which reads the signs of the times so accurately, evidently thinks so, for all the great transportation lines which have been recently established have their objective points in western Alaska. These lines do not traverse the inside channels, and consequently will not touch at points east of Sitka. A vast flood of miners will pour into the Cape Nome country during the coming summer. The richness of these mines is beyond question, and it will no doubt be a prosperous mining camp for years to come. The routes of travel to that place will be mainly by the open sea. Furthermore if mineral discoveries continue to be made in the Yukon Valley in the future as in the recent past it will probably not be many years before a railroad connects Prince William Sound with that great river. Such road will be entirely on American soil and will largely supercede the Skagway-Dawson route. This road will be reached by the open sea routes also. There are also large mining interests on Copper river, Unga island and other points along the coast west of the 141st meridian. Nearly all of the great Fish canneries are also to the westward. These enterprises employ a large number of men. That the center of population is already west of Sitka as before stated is beyond question, and that it will continue, there can be no doubt.

In view of the foregoing we believe a proposition to locate permanently the Capital at this time is premature, and we most earnestly protest against its removal from

Sitka, until a more settled condition of the country determines the most desirable point therefor.

COMMITTEE.

Wm. Shergen	W.P. Mills
J.L. Cogswell	J.S. McNair
Geo. Browell	J.A. Shields
A.J. Apperson	B. Hiser
W.O. Mendenbauer	L.A. Cox
B. K. Wilbur M.D.	John Hanlan
A. Anonamoulsky	W. Millmore

*Compliments of*  
**REP. TERRY MARTIN**

THE ALASKAN

March 10, 1900

WHAT WILL THEY DO NEXT?

The first page of the Alaskan Miner of the 17th inst., is almost filled with a report of a committee which was appointed by a mass meeting of the citizens of Juneau on the 8th of the same month to look for reasons why the capital should be removed from Sitka to that place. We judge the citizens selected wisely, so far as diligence is concerned for the committee was apparently composed of very diligent men. The mass of material it collected in such a short time is quite remarkable. The report makes interesting reading and some portions of it may be valuable as statistics, but other parts of it are not, because of their deviation from verities.

We apprehend however that the principal fault the intelligent citizens of that town will find with it, is that the greater part of it is not pertinent to the purpose it was designed to serve.

It is largely devoted to exploiting the commercial importance of the town. It is well known that, that of itself is no reason why the capital should be located there. It is not so considered elsewhere. In fact but few commercial cities are capitals. Call to mind the states, in which they are not and the greater number of them will have been named. The capitals of the Pacific Coast States are none of them commercial center, but towns as nearly centrally located as was practicable at the time the seat of government was definitely fixed.

We suppose it does not occur to New York city, that because it sells more goods, pays more taxes, loads more ships, is the headquarters of more corporations and has more white inhabitants than Albany it is therefore a more suitable place for the capital of the State.

The report is also weak in other respects, notably, in that it attempts to advance the claims of the town it advocates by disparaging an-

other. This perhaps is not reprehensible if done on the lines of fairness. In this case however in order to do so it departs widely from facts. This is especially so in the matter of applications for the survey and entry of public lands. The report says, "Of public land applications more than nine tenths are filed from the vicinity of Juneau, while Sitka and vicinity show only one twentieth of the total." Upon an examination of the records in the U.S. Surveyor General office we find they tell quite a different story. They reveal that more than five fold of the applications for the survey of non-mineral land have been from points west of Sitka. It is true the greater number of applications for the survey of mining claims have been from points east of Sitka but not in the proportion set forth in the report. How the committee could have been so misled as to make such a statement, or how they could have been prepared to make any report under that head is not understood, as it was impossible for them to visit the land office, the only place reliable information touching the matter is obtainable, between the time they were appointed and the time they reported.

In the matter of mineral applications we are informed that conditions are rapidly changing. A much larger proportion of applications are from the westward than formerly, nearly all of the deputy mineral surveyors that have been recently appointed are for districts in the interior or along the western coast, and the business is rapidly tending that way.

The report endeavors to make much of the fact that Juneau has better facilities for subduing fires than Sitka and therefore the records of the various federal offices would be safer there. Not to mention the fact that the Government buildings are more isolated here

than would be possible in Juneau and that all of the offices are provided with fire proof vaults or safes where the more valuable records are kept, it is well known that where water, through hose, is used to check a conflagration, one is as liable to destroy them as the other. If the fire does not consume, the water will ruin them.

It must not be forgotten that Sitka has a very efficient fire Company, which allows no grass to grow under its feet when an alarm is sounded. It is provided with chemical extinguishers and a fire must be a lively one to get a head of it.

Further more, from present indications no considerable time will elapse before Sitka will be as well supplied with water for all purposes as any town in Alaska. We understand that a gentleman who represents abundant capital has applied for a right of way for mains through, and reservations for reservoirs on the public domain for the purpose of bringing water into the town. When this is done an electric light plant is sure to follow.

The inaccessibility of Sitka is also exploited. In this matter the committee indulges in misleading statements which are unworthy of them. It is true that for about three months during the winter Sitka has only a semi-monthly mail, but during the other seasons it is served much more frequently. In regard to the mail boat, that comes here, being only a small one as the report asserts, suffice it to say it is on that place, between Juneau and Seattle and is as large as the average that navigates the narrow and dangerous inside channels.

However arrangements will soon be consummated by which Sitka will be provided with a weekly mail during the entire year.

But space forbids any further review of this remarkable report. We assure our sister city, whose misfortune it is to be so near the boundary line, that we bear her no ill will. We sincerely hope to entertain many of her citizens

when we celebrate our connection with the outside world by the ocean cable line.

*Compliments of*  
**REP. TERRY MARTIN**

THE ALASKAN

March 17, 1900

AN INTERESTING LETTER.

In Regard to the Removal  
Of The Capital

FROM SITKA TO JUNEAU.

The following letter was written by a gentleman who takes great interest in all matters pertaining to Alaska. It was prepared for the information of those to whom it is addressed; but as it contains much that, we think, will be of interest to our reader, in all parts of the territory, he kindly permitted it to appear in the columns of The Alaskan.

Sitka, Alaska, Feb 24, 1900.  
To our Senators and  
Representatives,  
In Congress.

Sirs:

As there seems to be considerable discussion about removing the capital of Alaska from Sitka to Juneau, and believing as I do it is not for the best interests either of the Government or the people of Alaska that any changes be made now or until this District becomes more definitely and permanently settled; at present at least the population is too fluctuating for Congress to deal intelligently with this proposition.

I therefore inclose clippings taken from the Alaskan, a newspaper published at Sitka, giving some very good reasons why no change should be made at this time.

Looking at this from Governmental and point it will readily be seen the Government owns all the public buildings at Sitka now used and occupied by the various officials (except possibly the Land Office and even that is on Government land) thereby the Government saves a large annual outlay for rents; and the government at considerable expense have not only kept these buildings in repairs but have built large fire proof vaults for the better

protection of all public records, besides the Government owning sufficient ground around each and every one of these buildings they cannot, without the consent of the Government be endangered by individuals erecting contiguous buildings, thus making them comparatively safe from fires.

And there is no necessity of the Government ever having to do so as she already has a beautiful tract of some ten or fifteen acres of land reserved expressly for other public buildings as occasion may hereafter require. To all such lands the Government holds unquestioned and undisputed titles.

In case of removal these buildings would be abandoned and go into disuse and possibly destroyed or jumped by some enterprising citizens as has been done else where.

It seems some of our so called miners have no respect for either Government reserve lands or burial grounds; for the ground reserved at Juneau for court house purposes is now claimed by such miners as mineral ground; hence the forty-five thousand dollars appropriated by Congress for the erection of a suitable court house and jail at Juneau some two years ago has and is being held up by some of those enterprising miners.

If the Government in two years cannot secure title to enough land in Juneau for the one building, how can it be expected that sufficient ground could ever be secured for the duplication of the buildings now owned and occupied at Sitka, unless it would be at fabulous prices for either the ground or rental.

In the early history of Juneau the Catholic and Greek churches, the Presbyterian Mission, the miners and the people of Juneau selected burial grounds near by and buried their dead thereon; now application has already been filed on some, if not all of these burial

grounds by mineral applicants.

Owing to the contracted location of Juneau all of the available ground seems to have already been improved and occupied, and the cost in either case would be five or six fold greater than it now costs or will cost the Government if the capital remains at Sitka.

Why any official should favor or encourage the change, if any are doing so, would be most difficult to explain unless, perchance, they like some of the Lobby you now have in Washington working for this, either own or expect to own blocks of real estate or stock in electric lights, water or other plant which they seek to dispose of to the Government before the boom is over.

Whatever tends to make it more expensive to the Government tends to increase the cost of living to each and every official; therefore as rents and living at Juneau are much greater than at Sitka, (and it is clear enough here present salaries being insufficient, but few if any of the officials would be satisfied to remove until their salaries were sufficiently increased to compensate for such change.

It is noticed that bills have already been introduced looking to an increase in the salaries of some of the officials all should be included in such bills.

Now we come to consider some of the claims put forward by the Juneau people themselves.

They claim they are more nearly the center of population, this is not, never was, nor never will be true. By glancing at the map it can readily be seen that Juneau is located at almost the extreme Eastern boundary line along what is known as the Inland or Eastern channel, which route was first established by the old Hudson bay company to supply the various forts and trading posts they had established in British Columbia. The initial point formerly was from Victoria to Fort Hope or Yale on Frazier river. As our prospectors and miners pushed on their forward and onward march of progress to the

Stickeen, then this route was extended to Fort Wrangel which, for a long time, bid fair to out-rival any and all other inland towns along that route. When the prospectors and miners opened up the Atlin country the route was extended to Skagway and Dyea at the head of Lynn canal. Therefore Juneau's importance as a flourishing town is due largely, if not wholly, to the fact that it, for a time, was one of the many supply stations along that route for the miners across the line to British Columbia and some of the Islands near by. But, never having been the terminus of any route, she can never become the commercial metropolis, as Seattle and Victoria claim the distinction of being at the one end while Skagway and Dyea claim the distinction of being at the other end of that route.

Now as the bulk of the mining population was first along Frazier river, then the Stickeen, then Atlin, the Klondike and other places north and west of either Juneau, Skagway, Dyea or Sitka, it can readily be seen that either Fort Wrangle, Skagway, Dyea and Dawson land more and better claims than Juneau ever had of being nearer the center of population.

Circle city, at one time, bid fair to outrival either as a central mineral point; now Circle city is so nearly depopulated that it has already been recommended that the Land Office located there be abandoned.

If there is not sufficient business and population to support the Land Office why is it prudent to establish a Judicial branch there?

What is true of Circle city is to some extent, true of other inland and mining towns; either in the interior or along this eastern water route, they too are fast becoming depopulated as the people last spring and summer were rushing to the Copper river, Cape Nome and other new discoveries. It is ever thus in all mining countries, in order to keep pace with these fluctuations it would be necessary to have all public buildings on boats

or wheels to follow the changing population.

Now as to comparison of these two water routes, the one we designate as the inland or eastern route, is at best a very hazardous, dangerous route, inaccessible to all sailing crafts, and requiring from three to five days longer time for a steamer to make the round trip from either San Francisco, Portland, or Seattle to any of the towns located as Sitka and many of the other towns all along the Pacific ocean by the all ocean route.

The one is open and safe alike to all vessels whether driven by steam or sails. It is the route leading alike to most all ports in central and western Alaska, Lering sea, the Orient and the Philippine Islands as well and when the Niaranga canal is constructed it will become the shortest, safest and best route for all our commercial nations.

It claimed that more mineral patents have been issued to lands in and around Juneau than from any and all other points in all Alaska. Granting this to be so, it was equally true in the early history of California, Oregon, Washington, Idaho, Colorado and Montana, and every other mineral country.

It only goes to prove that mineral applications are not made except when the lands have been first made valuable as real estate holdings independent of their mineral character, by reason of their location on some thoroughfare or by their contiguity to some villiage or town; was it ever seriously urged by the states above named as a reason why the capital of those states should change with each and every new discovery, or change in the center of a mining population?

If not, why this effort to change Alaska's capital?

If it is better for the public good and service then there should be some fixed policy by which such changes could be more speedily met when the center of population does take effect. The facts are this looks

too much like some interested parties were seeking to bolster up the waning fortunes of some transportation lines, some real estate or town boomers to be seriously considered by Congress. Admitting that Sitka and for that matter all other towns situated along the ocean beach, are and will be somewhat isolated so long as the people of all Alaska shall be confined to one single water route, and that one along our extreme eastern boundary, and form foreign lands.

This will not and cannot much longer remain true, for the ocean and western route must supply equal facilities to all central and western Alaska, as the administration has already wisely appointed Brigadier General Randall and equipped him to build Military codes and Telegraph lines connecting all points in Alaska with the out side world.

The very fact of Sitka being so favorably located on the sea with the best and safest harbor in all Alaska, a climate from ten to forty degrees warmer than either Juneau or any other of the interior towns, with ample and available grounds for building a city, with fine roads for miles around, with good pure water near by, with excellent facilities for drainage goes to make Sitka the most healthful and desirable for residences in all Alaska.

She is surrounded by mountains of low grade ore that bids fair to out rival those of Juneau, Douglas island or other points in south eastern Alaska; only waiting capital to develop these properties.

Who says Sitka has not a greater future before her than her rival along Lynn Canal. While Juneau boasts of having obtained or applied for more patents of mineral lands, the records of the Sitka Land Office and those of the Interior Department show six to one more surveys and applications to non-mineral lands east of Sitka than ever came from Juneau and all its tributaries. And in due time when the western and ocean route is fairly established the great

majority of mineral entries must and will come from the central and western portion of this District.

There is now every indication of more business coming from Prince Williams Sound, Valdes, Copper River, Kodiak, Yakutat, and other points to the westward than ever came from the placid discoveries made in the Klondike mineral belt.

These statements can and will be verified by the records in the various Land Offices throughout this District by the records of the Interior and other Departments in Washington as well as by every Senator or Member of the House of Representatives tourists, or other persons who ever have visited Alaska save and except possibly the few whose personal investments and personal interests may conflict therewith. Very respectfully.

*Compliments of*  
**REP. TERRY MARTIN**

THE GOVERNOR REPLIES.

Re Removal of Executive Office.

Sitka, Alaska, March 13, 1905  
 F.A. LaVanlette, John Olds, Dr. P.  
 Shackelford, committee of Ju-  
 neau Chamber of Commerce,  
 Juneau Alaska.

Gentlemen:-I beg leave to ac-  
 knowledge the receipt of your com-  
 munication of the 1st instant with  
 the enclosed copy of your letter to  
 the Honorable Secretary of the  
 Interior.

At the time of the revision of the  
 code by the Senate territorial com-  
 mittee, in 1900, a citizen of Juneau  
 had an opportunity at one of its  
 sittings to tell the senators how in-  
 significant a place Sitka was and how  
 inconvenient and far out of the way  
 its location was for doing business.  
 Its lack of mail facilities was espec-  
 ially emphasized. At that very  
 time this same gentleman was the  
 means of staying off the contract  
 for carrying the local mail from  
 Juneau to Sitka for a year.

There was no opportunity to  
 present the other side of the ques-  
 tion of removal before the commit-  
 tee reported to the senate.

It is clear therefore that the  
 spirit and intent of the act of  
 congress of June 6, 1900 is that the  
 government shall own its grounds  
 and buildings thereon and by no  
 possibility is this an incorrect as-  
 sumption.

You say that the absence of the  
 surveyor-general from Juneau has  
 been and is a cause of a great deal  
 of dissatisfaction to persons who  
 are interested in the proceedings of  
 the land department, or who are  
 interested in the proceedings of the  
 district court in Juneau, when  
 confronted with land matters.

Out of thirty eight mineral sur-  
 veys which were noted upon during  
 this past year five were in the  
 mining district (Juneau),  
 five Berner's bay, four Ketchikan,

three in Porcupine, two each  
 Cape Nome, Cook inlet and Wrang-  
 ell, one at Sitka and fourteen in  
 Valdez; and of the forty surveys  
 under soldiers additional home-  
 stead rights, twenty-three are from  
 Yakutat and places west of it and  
 four are from Juneau, five  
 from Fanler bay and the remaining  
 eight from other places in southeast  
 Alaska.

It would appear then from  
 these figures that the people of  
 Valdez have more reason for com-  
 plaint than the dissatisfied ones at  
 Juneau.

The President has authority to  
 fix the location of the land office.  
 He can move it from Sitka to  
 Juneau and within one or two years  
 he may order it to Valdez or Fair-  
 banks if the district is to have but  
 one office.

The office of surveyor-general for  
 the state of Washington is at Olym-  
 pia and there are seven land offices  
 within its borders. In Oregon the  
 surveyor-general is at Portland and  
 all its six land offices are scattered  
 over the state and none in Portland;  
 in California the surveyor-general  
 is at San Francisco and there are  
 ten land offices; Nevada has the  
 surveyor-general's office at Reno  
 and the land office at Carson  
 City, the argument that the two  
 offices should be in the same place  
 is not valid nor is it based up-  
 on the practice of the land depart-  
 ment.

It is true that terms of court are  
 held by Juneau, but they are also  
 held at Skagway and at Ketchikan  
 and the law provides that the  
 Attorney-General may for cause,  
 change the place of residence  
 of the judge of either division of the  
 court.

It is probable that the residence  
 of the judge of the third division  
 may soon be changed from Eagle to  
 Fairbanks. A combination of

unforeseen events might make it desirable to change the residence of the judge of the first division back to Sitka. It is not necessary nor imperative that the land officers, the surveyor-general and the judge should reside in the same town.

The cry against Sitka in 1900 does not hold good today. It has become, by reason of its location the cable center connected with Juneau with Seattle and with Valdes. There is mail connection with Juneau by steamer Georgia every six days; the Pacific Coast company sends two steamers a month; the Northwestern Steamship company sends two vessels each month via Sitka to western parts and return, and the Alaska Commercial company sends one steamer a month via Sitka to Kodiak. The cry of isolation no longer carries force.

There is another argument for letting officers remain at Sitka until suitable grounds and buildings thereon at Juneau are owned by the government: it is that of the protection of their records from fire. Juneau has a good water system and her fire brigade is remarkably prompt and successful in combatting fires, but notwithstanding the insurance companies charge a very high rate for what few risks there are willing to accept. There is a risk of fire in Sitka but between the two places the chances are much in favor of the latter especially since it has just completed a water system with strong pressure.

Very few of our people understand what an important library we are gathering for the district. Most of the books are now kept in the Sheldon Jackson Museum of Natural History and Ethnology. This is the nearest fire-proof building in Alaska. The walls and floor are of thick grout and the roof of heavy galvanized iron. There is very little wood for the fire to take hold of.

The desirableness of Sitka's location and climate might be

pleaded as a fitting place for the location of the offices of the district.

For these reasons I do not deem it for the best interests of the government to move the offices of the surveyor-general and governor from Sitka to Juneau at the present time and shall so advise my Department.

Yours very respectfully,

John G. Grady,  
Governor of Alaska

*Compliments of*  
**REP. TERRY MARTIN**

**SKAGWAY AT IT AGAIN**

Understanding that Senator Geo. E. Perkins of California, has been working for the retention of the capital of Alaska at Sitka, the business men of Juneau and Skagway have taken no uncertain exception to his course, and have addressed to him protests decalring emphatically that they consider such action as he is understood to have taken to be *inimical* to the best interests of Southeastern Alaska.

In the Skagway protest it is stated that it is impossible to disassociate the public position of the senator from that of his private position in the Pacific Coast Steamship Company, which has a service to Sitka.

The Skagway protests have been forwarded to the senator. The signatures at the bottom of the document represent thirty-five of the leading and most important business firms of Skagway. The protest void of superscriptions and signatures follows:

"We the undersigned merchants of the city of Skagway, Alaska, are in favor of the removal of the capital of Alaska from Sitka to Juneau, Alaska. We expressed our desires in this matter through our delegates at a territorial convention held in Juneau, and later at a mass meeting of the citizens of Skagway held February 3, 1900, copies of the resolutions passed at which were duly forwarded to you. Also, the facts being personally known to you that the removal of the capital to Juneau would be a great convenience and the saving of much time and expense to the men of this city desirous of doing any legal business, we feel bound to express our surprise at the position you have taken in regard to the same in the United States senate, which amounts to an opposition of such removal and a disregard of the wishes of the people of Skagway.

"Further, it must also be within

your personal knowledge that the people of Southeastern Alaska, with the exception of Sitka, is in favor of the removal of the capital to Juneau and that your position in regard to the same is in direct opposition to the will of the people of this whole section.

"Under these circumstances it is scarcely possible to disassociate your public position as senator from your private position as head of the Pacific Coast Steamship Company, and we must therefore regard the latter as representing interests which are inimical to those of this port and those of Southeastern Alaska and take action accordingly. For the consideration of such action we have hereunto signed our names this ninth day of April, 1900." Daily Alaskan.

It certainly is surprising that Senator Perkins should have the audacity to express an opinion of his own, and more especially an opinion that is not in accordance with the egotistical ideas of the inhabitants of Skagtown.

You poor, benighted, selfcentered inhabitants of a doomed city, don't you realize that Senator Perkins, or any one else for that matter, knows that you want the capital where it will be most convenient for you, regardless of the rest of the Territory.

But on the other hand don't you know that Senator Perkins was interested in Alaska before you really knew that it was inhabitable for any one but Esquimaux and years before Skagway contained anything but Capt. Moore's residence and a few half starved Siwash.

Don't you realize that Senator Perkins knows that while Skagway and Juneau are at the present time the most populous towns in Alaska, and have more official business than the rest of Alaska combined, that they are on the decline.

That the westward portions of

the Territory are developing very rapidly, that the U.S. government is going to put in a telegraph and railroad line from Valdez to the Yukon, which will draw all the American traffic from Skagway, that the English are already working on a telegraph line to connect to Dawson through their own territory, that they are diligently striving to get a port of entry somewhere near Skagway and if they don't succeed they will build a railroad from the south to connect with the one already being built in their domain.

If you were not so completely wrapped up in your own interests you would see that the center of population of Alaska is rapidly moving west and that if the government was justified in moving the capital at all it would be to move it west and not east in close proximity to the boundary line.

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL  
JUNEAU, ALASKA 99811

April 5, 1979

The Honorable Ray Metcalfe  
House of Representatives  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99.11

Re: Capital Relocation  
Proposal

Dear Representative Metcalfe:

As you requested, we have reviewed your proposal to see if it conflicts with the FRANK Initiative.

It appears that your proposal does conflict with the FRANK Initiative. Moreover, it appears that it also conflicts with the requirements of the original Capital Relocation Initiative, and portions of the Alaska Constitution, as well.

To begin with, the proposal contemplates a committee of the legislature to negotiate "all agreements" with the Matanuska-Susitna Borough and, in effect, plan jointly with the borough the development plans for the new capital. As a general proposition, negotiating agreements and preparing development plans are things done to carry out a law and are not acts of making law. This means that they are not legislative function and that they may not constitutionally be performed by the legislature or its committees. Vesting the legislature with an executive power not given to it by the constitution is unconstitutional. Bradner v. Hammond, 553 P.2d 1 (Alaska 1976). This is the reason that the legislature created an agency in the executive branch to plan for the capital move. AS 44.06.200-260.

The original Capital Relocation Initiative required the legislature to provide for the planning of the new capital. AS 44.06.160. The legislature provided for a new

April 5, 1979

capital planning commission and its functions in AS 44.06.200-260. Your proposal to have this planning done jointly by a legislative committee and the borough conflicts with the initiative's mandate and the statute's express provisions. Legislation would be required to amend the existing law.

With respect to the FRANK Initiative, the problem is that your proposal does not take into account the interlocking nature of that initiative and the statute establishing the New Capital Site Planning Commission. Your proposal would supersede the commission's plan with a plan to be agreed upon jointly by the legislature and the borough. The FRANK Initiative requires voter approval of a bond issue for all the bondable costs of relocation to a capital city as determined by a commission created by the legislature to plan the move. Under present law, the legislature has mandated that the only "plan" that is acceptable is one which, in essence, duplicates the facilities of the present capital city. In order to supersede that requirement, an amendment to AS 44.06.230 or to the FRANK Initiative or to both is necessary. In other words, if there is no statutory amendment, the borough's commitment to pay all the costs under a new plan would not suffice. It would have to commit to (and arrange for) payment of all the costs under the commission's existing plan in order to relieve the state from that burden and thereby nullify the effect of the FRANK Initiative.

I would be happy to discuss this matter further with you at your convenience.

Yours very truly,



Avrum M. Gross  
Attorney General

AMG:as

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
307 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 9, 1979

SUBJECT: Capital Move Concept  
(Work Order No. 6821)

TO: Representative Mike Miller

FROM: Kenneth E. Vassar  
Legislative Counsel

You have requested a legal opinion relating to the "Capital Move Concept" outlined in the rough draft of an agreement between the Matanuska-Susitna Borough and the state which you have furnished us. At the outset, I think it is appropriate to discuss the FRANK initiative and the effect of any attempt to avoid it.

I would have to approach any plan which would attempt to provide for the relocation of the capital without the expenditure of state money with a skeptical attitude as to its viability in the courts. Such a plan must avoid any expenditure of state money for the physical relocation of the present functions of state government and must also avoid incurring any obligation on the part of the state to pay any state money at any time in the future for such physical relocation. Even assuming that such a plan does exist, any prognosis as to the viability of the plan comes with a very large caveat, which will be explained in the following paragraph.

In the ordinary review of statutes, a court will apply the law in accordance with the literal meaning of the words used in the statutes unless there is some ambiguity which requires it to go behind the words of the statutes and look at the legislative intent. The phrase "State money may be expended," as it is used in the FRANK initiative, appears to be unambiguous, and so it would be fair to assume that a court would apply the law strictly in accordance with the language in the initiative under normal circumstances. Thus, a plan which does not involve the expenditure of any state money, now or in the future, for the physical relocation of the

March 9, 1979

present functions of the state government might be expected to survive a FRANK initiative attack. However, the magnitude of the issue and the fact that this is an initiative rather than a legislative enactment would take the interpretation of this language far from normal circumstances, and a court might go beyond the literal interpretation of the words used in the initiative and examine the purpose behind the words.

If this were the case, the court would surely give some weight to the "Purposes" section of the initiative. That section includes the following language:

It is the purpose of this act to insure that the people of Alaska will have the opportunity to make an intelligent and objective decision on relocating the capital with all pertinent data available to them concerning the costs to the State. . . .

Since it would be only of relatively mild interest to the people to know the costs of the move after the move had begun, and since it would leave little room for decision making by the people at that point, I would assume that a court would view this purpose as applying before any move began. It would follow that a court could interpret the language of the initiative to actually mean that no movement of the present functions of state government may begin before the required bond issue election.

Turning now to the "Capital Move Concept," I would like to begin with a summary of my perception of the plan. Since the concept does not appear to present all the details of the plan, this summary and the following analysis may include some assumptions on my part relating to those details. Under the plan the borough would select from, or trade borough land for, a minimum of 6,240 acres of state land at the relocation site. The existing provisions of law relating to borough selections and exchanges of land are found in AS 29.18.205 and 29.18.209. In return, for the selection or trade, the borough would prepare a basic site plan for the capital city and finance and construct a building for use as a part of the total state office complex. When the building is completed, it would be turned over to the state for occupancy, and the borough would be allowed to charge rent on the building in an amount sufficient to cover debt service on a portion of the bonds issued by the borough for

the project. The state would provide rights of way to the borough for the construction and would establish an appropriate body to consult with the borough. The borough would return title to lands it receives under the agreement to the state if (1) the borough is repaid for all its expenditures; (2) any bonds issued by the borough are retired or assumed by the state; and (3) the borough regains entitlement to selection of an equal amount of land.

Before getting into an analysis of the concept in relation to the FRANK initiative, I have some comments about the selection and transfer of land under AS 29.18.205. That law allows boroughs to select vacant, unappropriated and unreserved state land within their boundaries. Under the terms of the 1974 initiative (AS 44.06.130), the land from which selections would be made under the concept submitted is classified as reserved use lands. Therefore, it is ineligible for selection under AS 29.18.205 absent some legislative action. It appears, however, that the land would be eligible for a land exchange under the authority of AS 29.-18.209. The exchange would have to be for land owned by the borough of equal value to the state land. The determination of equal value would be incumbent upon the director of the division of lands and the commissioner of natural resources.

The following paragraphs relate to the "Capital Move Concept" on a paragraph-by-paragraph basis with specific attention to the relationship of the concept to the FRANK initiative.

1. As noted before, this paragraph will require a land exchange rather than a municipal selection. In order to fulfill his statutory duties (which cannot be contracted away), the director will be required to determine whether there is a public interest to support the exchange and whether the land offered by the borough is of approximately equal value to the land offered by the state (including the non-monetary value of public benefits). In addition, the director must give notice of the exchange to the governing body of the borough under AS 38.05.305 and to the public under AS 38.-05.345. Finally, while AS 29.18 requires a survey to be conducted or paid for by the municipality for municipal selections under that chapter, it does not expressly require the municipality to survey or pay for the cost of a survey of land proposed to be exchanged.

Representative Mike Miller

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March 9, 1979

The director's duties, particularly those relating to the giving of notice, appear to require the expenditure of some state money. Thus, the FRANK initiative prohibition could apply to this section. In the absence of statutory requirements relating to surveys, the state may be required to pay for the survey of the land subject to the exchange; this would be prohibited by the FRANK initiative.

2. Since this paragraph relates solely to planning by the borough, there would appear to be no FRANK initiative questions.

3. Since this paragraph relates solely to financing and construction of a building by the borough, there would appear to be no FRANK initiative questions.

4. This paragraph requires the state to provide rights of way to the borough for construction of necessary access roads and other infrastructure items to be built by the borough. This is a power granted to the director under AS 38.05.330. If the application is made in accordance with regulations promulgated under AS 38.05.330, it appears that there would be no required expenditure of money for the granting of the rights of way.

5. Under this paragraph, the state would be required to establish an appropriate body to consult with and coordinate the work of the borough to ensure compliance with the agreed plans. I am not sure how this body would be established; however, it appears that its duties would require travel and per diem allowances and possibly salaries. These obviously will require the expenditure of state money. Again, the FRANK initiative may prohibit this expenditure.

6. After the completion of the building, the borough will turn it over to the state to permit meetings of the legislature in the building. The borough, six months after completion of the building, will charge the state rent based upon the proportionate amount of revenue raised by the sale of bonds for the construction of the building.

There are two questions with regard to this paragraph. First, the obligation to pay rent would require an expenditure of state money. The obligation to maintain and operate a municipal building leased to the state for state purposes would

also require an expenditure of state money. Either of these expenditures could be violative of the FRANK initiative. The ultimate question would be whether they are expenditures for the physical relocation of the present functions of state government or whether they are expenditures for some other purpose. This could be the ambiguity that would justify a court's decision to look at the purpose of the initiative rather than relying on a literal interpretation of the words used in the initiative.

The second question also relates to the FRANK initiative. It seems that tying rental payments to an amount sufficient to cover debt service on a portion of the bonds equal to the ratio of borough expenditures on the building to total borough expenditures raises a strong argument that the borough is acting as a "straw man" for the purpose of the bond issuance. It could be argued that there is very little difference between the state issuing the bonds itself and the state contracting to pay the debt service on the bonds used to construct the building. A court, even if it found the payment of rent permissible under the FRANK initiative, could determine that tying the rent to payment of the bonds is impermissible.

7. This paragraph provides that, if the borough is repaid for its expenditures and if the bonds issued by the borough are retired, the borough will return the land it receives under the agreement to the state.

In order to accomplish this, the state could assume or pay off any amounts outstanding on the bond issuance; and I assume it would be the state that would reimburse the borough for its expenditures. Of course, none of this can happen until the FRANK initiative requirements are satisfied, amended or repealed.

8. This paragraph appears to have no FRANK initiative repercussions.

In conclusion, it would appear that, if I have understood the plan you have presented to us correctly, the plan could not be implemented without violating the provisions of the FRANK initiative.

KEV:jdn

**Editorial Opinion and Comment of**



**Daily News - Miner**

*"Independent in All Things . . . Neutral in None"*

Other opinions expressed on this page do not necessarily reflect those of the Daily News-Miner.

**Back from the grave**

Anyone who forgot the capital move should check with the imaginative folks down the highway. There the capital move drama plays like a horror story serial, with their hero periodically lurching out of the grave to be paraded, zombie-like, through the Anchorage press and the halls of Juneau.

The latest sequel in "The Return of the Capital Move" will be acted out before the House State Affairs Committee in Juneau Friday. Let's hope the return engagement doesn't go beyond that stage.

The capital move achieved its greatest glory when passed as an initiative in the 1974 primary election. The law required that the state capital be moved by Oct. 1, 1980, and set up a process for selecting the new capital city site.

Two years later the voters selected the Willow area, on the banks of Deception Creek, as the new capital site. Then the voters got a good look at what the whole scheme was going to cost and last year they overwhelmingly passed another initiative insuring that the capital move won't be made without the Alaskan people having a say in the price.

That was the so-called "FRANK Initiative," sponsored by the Fairbanks-based Frustrated Responsible Alaskans Needing Knowledge. In it the voters passed a state law saying no money could be spent on the capital move without an election for a bond authorization vote.

That pretty much killed the monster since even the capital move supporters admit Alaskans aren't going to vote for a multi-billion dollar bond issue to finance the schemes.

But nobody drove a stake through the heart of the corpse. While licking their wounds from last year's election, the Matanuska-Susitna Borough has come up with a new way that they say can move the capital without costing the state money and requiring a FRANK-type bond issue vote.

The Mat-Su Borough leaders say they can build the new capital for the state. The idea is that the borough would acquire the state land in the capital site through municipal selections or an exchange. It would then build the capital facilities and get its money back through sale of the adjoining land as the city builds up around the new capitol.

The doors of the crypt creaked open at a Mat-Su Borough Assembly meeting March 6. The plan advanced then was that a new "municipal building" could be built for the capital city through a borough bond issue and the governor would move into that structure temporarily. Likewise a high school would be built and the Legislature would move in its offices, and a junior high school would house the judicial branch. That would get the capital moved by the 1980 deadline, and later more suitable permanent buildings could be built for the state government and the first buildings would become the city hall and schools of the new city.

Thus the capital move revivers have not only figured out a way of doing it at no cost to the state, they can move the capital at no cost to themselves either—they say.

But that, like so many of the other capital mover claims, is just more fiction. And like a horror story, it's more amusing than scary.

Even if a school can be designed that is also a suitable legislative hall, and we doubt it can, it will draw state money into the project. The state pays back municipalities 80 per cent of what they spend to build schools, so that means the state, not the borough, will foot most of the bill. The FRANK initiative prohibits that.

Alaskans don't need a capital move, and we especially don't need a make-shift capital move carried out by the same people who pushed the idea of the low-budget "trailer camp capital move" four years ago. If we're going to move the capital, it should be a statewide effort with the design and budget approved by all Alaskans.

And until that time, our state money and our Legislature's time can be better spent on more realistic dramas.

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL  
JUNEAU, ALASKA 99811

March 22, 1979

The Honorable Samuel R. Cotten  
The Honorable Patrick Carney  
House of Representatives  
Eleventh Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Gentlemen:

Following our recent opinion concerning the Mat-Su Borough proposal for the capital move, you asked that we review for you what legally valid steps could now be taken by the administration to relocate the capital, and further, what legislative action might facilitate the process. As I told you, in an area as sensitive and as controversial as the capital move, I do not want to be in a position of analyzing proposals that have not been made or even suggesting proposals without the intensive research that the proposals would require prior to being sanctioned by this office. However I can outline for you at this time the basic legal framework that will have to be followed, and comment briefly on possible legislative action.

At present there are three major statutes which control any executive action on the capital move issue. The first was the original initiative passed in 1974. That initiative required that the seat of government be relocated under a plan set forth in the initiative. Specifically, certain lands were to be identified as potential capital sites by a capital selection committee. The voters were then to select one of three possible sites, all of which had to contain at least 100 square miles of land either owned or to be acquired by the state. The land was then to be placed in a "reserved use" land designation. The initiative further provided that at the next legislative session following the selection of a site, the legislature should provide for the planning of a new capital city, including the construction of "necessary" state and public facilities. The initiative

contained no clarification of what state and public facilities would be "necessary," leaving that question for future legislative resolution.

Consistent with the directive of the initiative, a Capital Site Selection Committee was appointed by the Governor and three possible sites were selected. The voters then chose one of the three and the state has set aside the lands required in "reserved use" land designation. The legislature then continued along the course directed in the initiative by passing a bill (AS 44.06) setting up the Capital Site Planning Commission. In the course of that action, a conflict developed in the legislature over whether or not to give the commission freedom to plan any particular type of capital that the commission might find appropriate, or, in contrast, whether to specify at the outset the size of the new capital city for which the commission was required to plan. The decision of the legislature was to instruct the commission to plan for "the development of those facilities, public and private, described in the Capital Site Selection Committee Report dated December 11, 1976." AS 44.06.230(j). Those "facilities," described in a report previously submitted to the legislature, were for a city with a core of public employees approximately 6,000 in number and a total city of about 30,000 people. We reviewed the legislative history and purpose of the Capital Site Planning bill in an opinion which was rendered to the commission two years ago. I am appending a copy of that opinion to this letter since it reviews in detail the nature of the legislative dispute and the manner in which it was resolved. The key feature of the resolution was that the legislature chose to settle the issue of the size of the capital itself rather than leave it to the commission, and so it is written directly into the law.

The Planning Commission then embarked upon its work, eventually presenting the legislature with the requested plan. In their planning document, the Commission made certain cost estimates among them an estimate that it would cost approximately 1.4 billion dollars just to construct the public facilities required in the new capital. The report was debated by the legislature, and eventually resulted in that body passing a bond issue of over 900 million dollars, subject of course to voter approval, to begin construction.

At the same election at which the proposed bonds were placed before the voters, a second initiative, the so-called FRANK Initiative, also appeared on the ballot. That initiative requires that no money be spent for relocating the functions of government until the full "bondable costs" of the capital move have been approved. As we noted in an opinion issued last year, "bondable costs" refer to all costs capable of being bonded--in other words, costs which could be bonded as opposed to those that actually would be bonded. The reasons for that conclusion are set forth in the previous opinion and I won't repeat them here other than to note that the wording of the initiative is straightforward and that its clear meaning will require the full approval of all potential capital costs of the move at a minimum before any state money can be spent on the project.

The FRANK initiative also contained wording which tied the term "bondable costs" to a specific capital plan. The initiative refers to the bondable costs for a capital site as determined by "a commission created by the legislature to plan the relocation." The Capital Site Planning Commission is, of course, the only such commission ever created, and at least the magnitude of its "plan" was pre-ordained by the legislature. That plan, in essence, assumes that the facilities of the present capital will be duplicated elsewhere and, to no one's surprise, the cost of doing that is very high.

Since the costs determined by the Capital Site Planning Commission were by previous direction of the legislature the costs of a specified size capital city, the people of Alaska, when they adopted the FRANK Initiative, impliedly stated that the "bondable costs" of a move to a city of that size be first approved before any state money be spent in relocation. I mention this now for two reasons. First, in reviewing what "bondable costs" must be first approved (or perhaps, if not approved, at least alleviated through construction of capital facilities by some other entity than the state), there is an established figure which governs any analysis. Unless and until the "commission established by the legislature" is given authority to plan for a different size capital, and in fact does so, the FRANK Initiative will continue to be linked to the presently

planned capital city. Moreover, even if the legislature decides today that it wants to utilize a different concept of a capital than set out by the Capital Site Planning Commission--that it wants to amend its earlier direction to the commission to plan for a particular size city--there is at least a possibility that the FRANK Initiative may also require amendment. While the chances of such a result are, in my view, slight, a court may subsequently conclude that the size of the city already planned by the commission was, by reference incorporated into the FRANK Initiative and will remain there until changed by legislative action. As a practical matter, I assume that if there were the votes to amend the legislative act pre-ordaining the size of the city, there would probably also be the votes to amend the initiative. But the legal implications of amendment may be different. The legislature is completely free to do what it wishes with its previously adopted acts, but initiatives may not be repealed for two years. Alaska Const., art. XI, §6. If a court were to rule that a change in the size of the city for which "bondable costs" had to be previously approved before monies were spent to relocate the capital was at the heart of the initiative, and that an amendment of that section was in essence a repeal of the basic intent of the initiative, it might rule the amendment invalid. A discussion of the legal principles that control this decision may be found in Warren v. Thomas, 568 P.2d 400 (Alas. 1977), a case which involved an amendment not considered to be a repeal. There is no way of predicting the future conclusion of a court on this issue with certainty. The best that can be said is that it would create a legal issue if and when it is done.

The Mat-Su plan previously reviewed by this office, as well as the resolution recently introduced in the House, do not, in and by themselves, assume any legislative action amending past statutes or initiatives. If no legislative action is taken, there are serious legal problems with almost anything the administration by itself would initiate in this area. All those legal problems stem from the fact that anything done by the executive branch to relocate the capital is going to cost some money, and the FRANK Initiative is a direct statutory prohibition against the executive branch's spending that money. The basic message which I tried to convey in my opinion on the Mat-Su plan is that so

long as the FRANK Initiative remains undiminished on the books it will not be sufficient for the borough to simply play a role in constructing a new capital site--it will have to play the only role. At the least, the borough would have to build all the required public facilities since that would be the absolute minimal definition of "bondable costs" as the term appears in the initiative. If the borough were willing to do that (at a cost estimated by the Planning Commission at over a billion dollars), then there is a real possibility that the state could spend funds for a move, since then there would be no "bondable costs" left to approve. I say this with some reservation, since there is absolutely no judicial precedent to rely upon in this analysis, and once we depart from the plain meaning of the statute and try to predict the legal validity of capital move plans never really contemplated by the initiative, we are of necessity in a realm of uncertainty.

During the recent meeting in the Governor's office, you asked that I not only point out the legal problems which confront a present effort toward a capital move, but also suggest to you a possible course of action which might be followed to carry out the intent of the original initiative. The problem is, of course, that the original initiative has subsequently been amended. Initially the voters provided that the capital should begin to move in 1980, but then, in adopting the FRANK Initiative, the voters decided, in effect, that the capital should not move at all until the voters had approved the full bondable costs of the move. There is no longer any requirement that anything be done by 1980; the operative date is now the date of voter approval.

If the state is to do any more on this issue without directly affronting the will of the people as expressed in the FRANK Initiative, it will be necessary to amend existing law. The resolution presently pending in the House would not have the effect of law. The Governor would still be bound by the same statutory constraints expressed in the initiative and prior law, even were the resolution to pass. What would be required are statutes amending the legislature's direction to the Planning Commission and specifically authorizing the executive branch to spend funds to plan for a different sort of move. These new statutes, which would implicitly amend the FRANK Initiative, would provide a valid basis on which the expenditure of state money could be justified.

The Honorable Samuel R. Cotten  
The Honorable Patrick Carney

March 22, 1979  
- 6 -

As an alternative, the FRANK Initiative could be amended directly so as to eliminate or alter its requirements. Either the prohibition against expending state funds could be changed, or the requirement that all "bondable costs" first be approved might be modified. These enactments, of course, would raise the constitutional issues concerning amendment of initiatives discussed above, but those issues really cannot be avoided if action is to be taken now.

Yours very truly,



Avram M. Gross  
Attorney General

AMG:as  
Attachment

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K. - STATE CAPITOL  
JUNEAU 99511

August 9, 1977

Mr. Charles Behlke  
Chairman  
New Capital Site Planning Commission  
310 "K" Street  
Anchorage, Alaska 99501

Re: Commission's Powers  
and Duties

Dear Mr. Behlke:

I have been advised that the New Capital Site Planning Commission desires an opinion concerning its basic powers and duties. The opinion request has arisen in the context of a debate over the extent to which the Commission may plan various capital site alternatives. Specifically you have asked whether the legislation establishing the Planning Commission directs the Commission to plan for a particular type of new capital or whether there is discretion within the Commission to suggest various alternatives and plan for those alternatives.

The legislation establishing the New Capital Site Planning Commission is Ch. 67 SLA 1977, now AS 44.06.200-260 (attached hereto as Exhibit A). That legislation is specific as to the responsibility of the Planning Commission. The

law provides:

"The purpose of the commission is to prepare a detailed plan for development of the capital site within the guidelines enumerated in this chapter." AS 44.06.230(a)

The "detailed plan for development of the capital site" is defined in the same section as meaning:

"...the development of those facilities, public and private, described in the Capital Site Selection Committee Report dated December 11, 1976."  
AS 44.06.230 (j)

The public and private facilities described in the Capital Site Selection Committee Report are those of a city of 30,000 residents, including 5,960 central state employees. (Capital Site Selection Committee Report, 283-290, appended hereto as Appendix 5)

The specifically assigned function of the Commission, then, is to plan for a new capital city of 30,000 residents. Moreover, this appears to be the single plan the Commission is authorized to initiate since the language of the act repeatedly indicates that only one plan was contemplated by the legislature. For instance, AS 44.06.230(a) provides that

"The purpose of the commission is to prepare a detailed plan for development of the capital site within the guidelines enumerated in this chapter. This detailed development plan shall be completed no later than March 15, 1978 and shall be made subject to public input during its formulation. Following completion of the plan, the commission shall make public presentations of it throughout the state." (emphasis added)

Subsection (b) of the same section provides:

"The detailed development plan shall include, but need not be limited to, the following elements: government facilities, community facilities, transportation, public utilities, communication facilities, commercial and industrial development, residential development, resources, and environmental aspects. It shall include provisions addressing each element in terms of its social and economic impact. The plan should also address governmental jurisdictions, including statements as to the appropriate planning and development authority and recommendations as to the forms and powers of the local government. The commission shall also develop a planning and implementation work program." (emphasis added)

Formulating that single "detailed development plan" contemplated by the act will, of course, require intensive study and analysis, to say nothing of a major commitment of financial resources. The Commission, for example, must plan for government and community facilities, transportation modes, public utilities, communications facilities, industrial and residential developments. AS 44.06.230. Analysis must be made of the social, economic and environmental impact of each aspect of the plan. Id. The Commission must perform physical and geo-technical site specific analysis and related mapping for the planned city. AS 44.06.230(c). It must determine environmental and use permits necessary for construction of the capital (AS 44.06-230(h)), conduct cost analyses including proposed construction schedules (AS 44.06.230(f)), investigate funding alternatives, and submit a recommended financial plan to the

legislature no later than February 1, 1978. And this list is not all inclusive--it is only a partial indication of the enormous effort which must be undertaken for the planning of the new capital city specified by the legislature.

In addition to its basic obligation to develop the plan for a city of 30,000 people, the Commission is also authorized to do certain other things. Specifically AS 44.06.230(d) provides:

"The commission shall conduct an analysis of the opportunity for the reorganizing and regionalization of state government, and develop a list of executive agencies which are expected to be located in the capital. This list shall include the offices to be moved, the number of personnel to be employed in those offices, and the anticipated required office space for that number of persons. This list shall be used for capital site planning purposes only, and is not binding as to which executive agencies may be located in the capital. The commission shall then develop a relocation phasing plan."

AS 44.06.230(d)

Apparently this section has been cited as authority for the Commission to expand its efforts so as to actually plan for a variety of possible capital sites. I see absolutely no justification for that position. For if one reviews the history of ch. 67, it becomes clear that the legislature never intended subsection (d) to be any more than a minor adjunct to the separately defined primary purpose of the Commission, a primary purpose that was established through direct legislative consideration and resolution of what that primary purpose should be.

Ch. 67 began as SB 27, a copy of which is attached as Appendix C. The original bill contained no mention of the specific size of the city to be planned. It only required that the Commission "prepare a detailed plan for development of the capital site within the guidelines enumerated in this chapter." The bill went on to state that "the detailed development plan shall include, but need not be limited to, the following elements: community facilities, transportation, public utilities, commercial and industrial development, residential development, water resources, environmental aspects." There was no more specific definition of the type of plan required for the capital city contained in the bill, and in particular no reference to the type of capital city envisioned by the Capital Site Selection Committee in its report.

If SB 27 had remained unchanged, there is no question but that the Commission would have been free to exercise its opinion as to the site plan it felt would best accommodate movement of the capital. But the bill did not remain unchanged. It was replaced with a State Affairs Committee Substitute. That measure also contained no specific direction as to the size city to be planned, only

repeating the requirement that a "detailed plan" be prepared. However when the State Affairs Committee Substitute was debated on the floor of the Senate, an effort was made to amend the bill so as to put in the provision which ultimately became AS 44.06.230(j), a definition of "detailed plan for development of capital site." As you might imagine, the debate over the inclusion of the new definition section was intense. Senator Orsini, who opposed the amendment, perhaps most clearly stated the reasons for that opposition in these words:

"The problem is, section (j) in particular, is locking us in into a concept put forth by a group of people a couple of years ago for some time in the future. We have in the State Affairs version a look at the concept of decentralization of state government. That is, putting more regional state governmental centers in different parts of the state rather than having everybody in one central location. I think this is a good idea. However, this idea is not what was conceived of in the Selection Committee Report dated December 11, 1976, and to do that would really thwart the part of the version of the bill we are adopting."

(Senate Debate on CSSE 27, April 1, 1977)

In the face of this strong opposition, the amendment passed, 11 to 9. The amended State Affairs version was then passed unanimously and sent to the House. There, it was replaced by a House version of the bill, which deleted the specific direction as to the size of the city

and substituted a more flexible formula by which the Commission would come up with a number of step-by-step plans for movement of the capital. The House version was not accepted by the Senate and was returned to the House to determine whether that body would accede to the Senate version of the bill. After two days of debate, which focused precisely on the issue posed now by the Commission, the House by a 22-18 vote accepted the Senate version.

The debate on the measure in the House is helpful because it makes it clear beyond question that the legislature by its action sought to resolve this issue of whether the Commission should be required to plan for only one type of city or whether it should be free to plan for alternate types of capital sites. For instance, Rep. Cotten, a proponent of the House version, analyzed the differences between the Senate and the House versions in these terms:

"So what the senate bill calls for is a detailed development plan of a city of 30,000 people, and that's gonna be the bottom line and that's gonna be what people are gonna be able to point to and say here's what your capital city is going to look like, we've already determined that that's what it's going to look like, and we already have a pretty good idea of what the costs are going to be. I think the [House] State Affairs version takes a little different approach... in that they accept the fact that the whole capital can't be moved right away, and there's going to be an initial development..."  
(House Debate, May 10, 1977)

Rep. Bradley, who was a major author of the House version, responded to Rep. Mike Miller's (of Juneau) advocacy of the

Senate bill by responding:

"So Mr. Miller said that the way we follow the law is to lock in 30,000 people by 1990."  
(House Debate, May 10, 1977)

And finally, Rep. Cotten again, who led much of the debate, commented:

"And I just, I think it's important to make it clear to people that the decision on what size the capital is going to be has already been made by the Site Selection Committee of a couple years ago. And that's the difference between the Senate bill and the House State Affairs one which allows for a little more latitude and it isn't quite so specific as to what exactly the capital's going to consist of."  
(House Debate, May 10, 1977)

Proponents of the House version argued that the Commission should not be "locked in" to a particular size city--that it was better planning procedure to let them have a freer hand. Proponents of the Senate version countered by suggesting that in the end, what kind of a city would be required would involve a controversial political decision and that the legislature, as elected representatives, should make the decision in the bill creating the Commission. I mean to intimate no opinion as to which of these arguments I believe most sound. The point I do wish to make is that the Senate view prevailed, and that it settled the issue.

Reliance on subsection (c) as justification for drawing up alternate plans is really nothing more than an effort to resurrect the settled debate on this issue. At no time during the debate was it even remotely suggested that

subsection (d) was even at issue when the basic decision as to single or alternate plans was made. That issue was decided head on by a fight over whether the Commission should be specifically told to draw one plan or alternate plans. Subsection (d) in contrast was a part of a whole series of duties given the Commission subsidiary to its basic planning function. For instance, subsection (d) requires the Commission to list the offices to be moved and to develop a relocation phasing plan. Since the Commission must plan for a city of 30,000 people with approximately 6,000 state employees, the "list" and the "phasing plan" must apply to that type of city. The mandate of the same section that the Commission conduct an "analysis of the opportunity for the reorganizing and regionalization of state government...." can be read as also relating exclusively to an assumed capital city of 30,000, but I believe it probably goes further than that. The required plan for a city of 30,000 is obviously to be made under the assumption of the present governmental structure, but an analysis for reorganization can go into new areas. It could, for instance, explore the prospect of constitutional change which would permit a different type of government structure or operation. It could suggest alternates to a capital city containing approximately 6,000 central state employees, dependent upon whether its reorganization and regionalization studies indicate that such alternates would be feasible. But that

type of analysis is a far different thing from doing the detailed design and engineering studies to plan for a new city. That detailed work, by legislative directive, must be restricted to the prescribed city of 30,000 people.

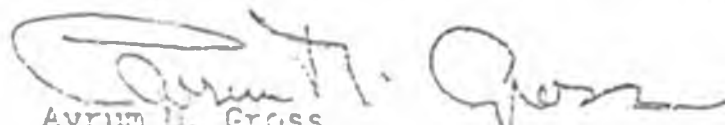
Put simply the Commission may analyze and, we assume, recommend various alternate types of capital cities based on reorganized or regionalized governmental structures. But the Commission's basic resources, financial and otherwise, must be spent in developing a detailed plan for a city based on our present organization of government--a city described by the Capital Site Selection Committee and mandated by the legislature. That is what the basic financial appropriation to this group is for--that is what the legislature decided should be the focus of the effort.

I am sure there are members on the Commission who will strongly disagree with what the legislature has done, just as there will be Commissioners who would defend the legislative decision. But the wisdom of that decision is an issue for the voters, not for this Commission. The choice has been made, and I believe it should guide the Commission in its procedures.

I plan to attend the Commission meeting on Friday so I can be available to discuss this matter and any others you may raise. I also hope to be able to review

with the Commission ways in which this office may be of assistance to the Commission or its members as you handle this difficult and controversial assignment. I look forward to seeing you then.

Yours very truly,



Avrum H. Gross  
Attorney General

AMG:as  
Attachments



Source  
CSSB 27 am

Chapter No.  
67

AN ACT

Relating to the New Capital Site Planning Commission; and providing for an effective date.

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

\* Section 1. AS 4.05 is amended by adding new sections to read:

ARTICLE 3. NEW CAPITAL SITE PLANNING COMMISSION.

Sec. 44.05.200. NEW CAPITAL SITE PLANNING COMMISSION. There is created in the Office of the Governor the New Capital Site Planning Commission.

Sec. 44.05.210. MEMBERSHIP. (a) Within 15 days after the effective date of this Act, the governor shall appoint a commission consisting of nine members, subject to confirmation by a majority of the members of the legislature in joint session. Members are appointed for four-year terms and may be reappointed. Members shall be appointed on a nonpartisan basis, and shall be selected as follows:

- (1) one member must be a registered engineer;
- (2) one member with a financial or economic background;
- (3) the mayor of the Matanuska-Susitna Borough or his designee;
- (4) the mayor of the City and Borough of Juneau or his designee; and
- (5) five members appointed from the general public.

resources, public works, revenue, community and social affairs or their designees, one state senator chosen by the president of the senate, and one state representative chosen by the speaker of the house shall serve as nonvoting ex officio members of the commission.

(c) The members are entitled to receive \$100 per day for their service on the commission and per diem and travel expenses as authorized by law.

Sec. 44.06.220. MEETING OF THE COMMISSION. The members shall elect a chairman and vice-chairman from among their membership. The governor shall call the first meeting of the commission within 15 days after appointment of the members. A majority of the members constitutes a quorum for conducting business and exercising the powers of the commission. The commission shall meet at the call of the chairman, at the request of a majority of the members, or at a regularly scheduled time as determined by the members.

Sec. 44.06.230. PURPOSE; DETAILED DEVELOPMENT PLAN; DUTIES OF COMMISSION. (a) The purpose of the commission is to prepare a detailed plan for development of the capital site within the guidelines enumerated in this chapter. The detailed development plan shall be completed no later than March 15, 1978 and shall be made subject to public input during its formulation. Following completion of the plan, the commission shall make public presentations of it throughout the state.

(b) The detailed development plan shall include, but need not be limited to, the following elements: government facilities, community facilities, transportation, public utilities, communication facilities, commercial and industrial development, residential development, resources, and environmental aspects. It shall include provisions addressing each element in terms of its social and economic impact. The plan should also address governmental jurisdictions, including statements as to the appropriate planning and development authority and recommendations as to the form and powers of the local government. The commission shall also develop a planning and implementation work program.

(c) The commission shall perform physical and geotechnical site-specific analysis and related mapping.

(d) The commission shall conduct an analysis of the opportunity for the reorganizing and regionalization of state government, and develop a list of executive agencies which are expected to be located in the capital. This list shall include the offices to be moved, the number of personnel to be employed in those offices, and the anticipated required office space for that number of persons. This list shall be used for regional site planning purposes only, and is not binding as to which executive agencies may be located in the capital. The commission shall then develop a relocation planning plan.

(e) The commission shall, no later than March 15, 1978, recommend to the legislature the type of development entity which would be responsible for capital city development as well as the powers and authority which should be vested in this development entity.

(f) The commission shall conduct a cost analysis which includes proposed construction schedules and related cost studies including but not limited to construction costs and escalation, energy efficient construction, and life cycle costing including operations and maintenance costs. The commission shall also prepare financing analysis including the investigation of funding alternatives and submission of a recommended financial plan to the legislature no later than February 1, 1978.

(g) The commission shall investigate the possibility of using existing facilities currently in the state which could serve as a construction camp and any fixtures or equipment necessary to operate the camp for the construction of the capital. The commission may accept the facilities, furnishings, and equipment as a donation to the state or it may execute an option on this property.

(h) The commission shall determine the environmental and use permits necessary for the construction of the capital and shall recommend to the legislature any possible methods to expedite this process while protecting the environmental quality of the area.

(i) The commission may undertake other activities as are appropriate to carry out its functions, including but not limited to investigating the most economical and expeditious means of procurement, construction methods, construction alternatives, and labor costs.

(j) In this section, "detailed plan for development of capital site" means the development of those facilities, public and private, described in the Capital Site Selection Committee Report dated December 15, 1976. The initial and overall site specific development plan shall be presented to the legislature no later than March 15, 1978.

(k) The commission shall provide a comprehensive assessment of the social, economic and environmental impact on the Metropolitan Area through and the City and Borough of Jersey in accordance with generally accepted standards for these procedures, the assessment shall emphasize the effect of governmental relocation on all items listed in this section.

Sec. 44-69.740 FUNDING. The commission is subject to the Executive Budget Act (S 17 (a)) and funding by the legislature.

Sec. 44-69.750 ASSISTANCE TO COMMISSION. (a) The commission shall hire or engage professional and technical services required to assist in the planning. The commission shall hire full-time staff to provide support services, and it may employ the consultants when in its judgment are necessary to assist in the planning. The commission may also request any information which it

(b) The commission shall develop an appropriate procedure in order to select competent firms to develop the elements involved in the capital site development plan within the time frame called for in sec. 230 of this chapter.

Sec. 44.06 260. REPORTS. The commission shall report on its work every six months. This report shall be distributed to the governor, presiding officers of the legislature, chief justice of the supreme court, and the general public.

\* Sec. 2. AS 39.50.200(9) is amended by adding a new subparagraph to read:

(10) New Capital Site Planning Commission  
(AS 44.06.203).

\* Sec. 3. This Act takes effect immediately in accordance with AS 01.10.070(c).

Approved by the Governor: May 28, 1977  
Actual Effective Date: May 29, 1977



State of Alaska  
The Capital Site Selection Project  
Selection of Three Alternative Sites

## CHAPTER 4: CAPITAL CITY PROGRAM

### Background

During the course of the site selection process, a series of projections relating to the size of the population and the program requirements for a new capital city were developed. The purpose of this analysis was threefold.

- o First, the projected program requirements were used to determine whether or not adequate land area was available at alternative sites for capital city development.
- o Second, population and program requirements were used to determine the transportation and utility linkage requirements at alternative sites.
- o Third, the projections have been used to analyze the potential economic base at alternative sites (i.e., potential secondary employment opportunities).

Ultimately, the square footage building requirement, highway and utility requirements were used to generate construction costs for capital city development at five year intervals. (A discussion of these costs relative to the three recommended sites included in Chapter 5.)

The projection of capital city program requirements was based on interviews with State Department Commissioners, a review of previously published

reports, existing State government facilities and requirements of a new capital location, as well as computer assisted employment and population projections developed by Homan/McDowell Associates in conjunction with Dr. George Rogers of the University of Alaska. These projections are derived from the University of Alaska Institute of Social, Economic and Government Research (ISEGR) Model of State Economic growth using Juneau's 1974 economy as a base, and take into account existing State central government positions in Juneau together with the increased State government employment and secondary employment anticipated to result from projected growth in state revenues. These population and employment projections are included in Table 1 which follows.

Initially, the analysis of employment, population and space requirements was determined for a capital at any location. Near the end of the site selection study some differences among sites were identified; but these proved to be insignificant. In consequence, the square footage requirements for the three recommended sites were assumed to be identical. Site specific differences between the length of highways, rail and power connections to the site were identified as the only programmatic variables.

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TABLE I

CAPITAL CITY EMPLOYMENT AND POPULATION PROJECTIONS

<u>SECTOR</u>	<u>1980</u>	<u>1985</u>	<u>1990</u>
<u>PRIMARY EMPLOYMENT</u>			
o Government			
o State <sup>1</sup>	3,760	5,030	5,920
o Federal <sup>2</sup>	315	315	315
o Contract Construction <sup>3</sup>	570	650	830
o Manufacturing <sup>4</sup>	140	165	200
<u>Total Primary</u>	<u>4,785</u>	<u>6,170</u>	<u>7,265</u>
<u>SECONDARY EMPLOYMENT</u>			
o Municipal Government <sup>5</sup>	660	825	990
o Services	4,650	6,025	7,075
<u>Total Secondary<sup>6</sup></u>	<u>5,310</u>	<u>6,850</u>	<u>8,065</u>
TOTAL EMPLOYMENT	10,095	13,020	15,330
TOTAL POPULATION <sup>7</sup>	19,785	25,520	30,045

1. State central position. Projected at State government growth rates, ISEGR.
2. Projected at Statewide Federal government growth rates, ISEGR.
3. Projected at Statewide construction growth rates, ISEGR.
4. Projected at Statewide manufacturing growth rates, ISEGR.
5. Projected at State per capita municipal employment for 1974.
6. Projected at primary employment to secondary employment ratio of 1:1.1.
7. Projected at employment to population ratio of 1:1.96.

SOURCE: Hamer, McDowell Associates in cooperation with Dr. George Rogan, Institute of Social, Economic, and Government Research, University of Alaska.

### Capital City Development Program

Program requirements for the new capital city were developed on the basis of accepted planning standards and the previous experience of the consultants. As additional backup, the State Department of Administration provided figures on state owned and leased space by Department in three cities -- Fairbanks, Anchorage and Juneau (see Table C in the Appendix). The following table presents the capital city program requirements generated by the ISEGR 1930 population project of 20,000. Included in the table are notes and standards applied to the population employment figures to arrive at the necessary square footage requirements. Site specific requirements of highway, rail and power linkages are also included for each of the three recommended sites.

TABLE II

CAPITAL CITY PROGRAM REQUIREMENTS  
1980 ECONOMIC BASE PROJECTIONS

<u>TYPE OF FACILITY</u>	<u>NO. OF PERSONS</u> <u>(EMPLOYEES, PUPILS,</u> <u>POPULATION)</u>	<u>SIZE OF FACILITIES</u> <u>(Square Feet)</u>	<u>NOTES/STANDARDS</u>
<u>Government Buildings</u>			
o State	3,760 employees	940,000	250 sq. ft./employee
o Federal	315 employees	78,750	250 sq. ft./employee
o Municipal/Board of Education	660 employees	66,000	100 sq. ft./employee
<u>Housing</u>			
o Single Family (Detached 1800 sq. ft.)		2,375,000	<u>Distrib. of Housing Type</u> Single Family detached 20% - 1320 d.u.
o Single Family (Attached 1200 sq. ft.)		3,957,000	Single Family attached 50% - 3,325 d.u.
o Multi-Family (900 sq. ft.)		1,188,000	Multi-Family 20% - 1,320 d.u.
o Mobile Homes (700 sq. ft.)		<u>462,000</u>	Mobile Home 10% - 660 d.u.
		<u>7,982,000</u>	<u>100% - 6,596 d.u.</u>

TABLE II (Cont.)

CAPITAL CITY PROGRAM REQUIREMENTS  
1980 ECONOMIC BASE PROJECTIONS

<u>TYPE OF FACILITY</u>	<u>NO. OF PERSONS (EMPLOYEES, PUPILS, POPULATION)</u>	<u>SIZE OF FACILITIES (Square Feet)</u>	<u>NOTES/STANDARDS</u>
<u>School Buildings</u>			<ul style="list-style-type: none"> <li>o 6,595 Households --</li> <li>o 3 persons/household --</li> <li>o students per household --</li> </ul>
o Pre-School	495 pupils (assumes 75% in facilities)	32,670	Pre-School 0.1
o Elementary	5,275 pupils	527,500	Elementary 0.8
o Junior High	2,640 pupils	330,000	Junior High 0.4
o Senior High	3,295 pupils	411,875	<u>Senior High 0.5</u>
			Total 1.8
			Number of Community College Students --
o Community College	150 pupils	28,125	Assume Juneau Example
			<u>Sq. Ft. Per Student</u>
			Pre-School 66
			Elementary 100
			Junior High 125
			Senior High 125
			Community 125
			College

TABLE II (Cont.)

CAPITAL CITY PROGRAM REQUIREMENTS  
1980 ECONOMIC BASE PROJECT, DNS

<u>TYPE OF FACILITY</u>	<u>NO. OF PERSONS (EMPLOYEES, PUPILS, POPULATION)</u>	<u>SIZE OF FACILITIES (Square Feet)</u>	<u>NOTES/STANDARDS</u>
<u>Recreation Buildings</u>			
o Library/Community Recreation Building		25,000	
<u>Health Care Buildings</u>			
o Hospital (including long term bed facility)			Hospital requires minimum population of 30,000. 1 bed/500 people + 3 long term beds/1000 people. 900 sq. ft. + 800 sq. ft./long term beds.
o Clinics	10 doctors	10,000	Clinic -- 1 doctor / 2000 people equals 10 doctors. Assume 1000 sq. ft./doctor.
<u>Commercial Buildings</u>	19,785 population	695,000	@ 35 sq. ft./person.
<u>Industrial Buildings</u>	140 manufacturing employees	60,000	@ 430 sq. ft./mfg. employee