HB
45

***** PRINTED FROM SCIV JUL. DATE IS 0079078 TIME EQUAL 1153212 ** **

AMENDED TITLE:
AN ACT RELATING TO POWERS OF THE ALASKA LEGISLATIVE COUNCIL
AND THE LEGISLATIVE BUDGET AND AUDIT COMMITTEE;
AND PROVIDING FOR AN EFFECTIVE DATE

PRIME SPONSORS: HOUSE RULES COMMITTEE.

CO-SPONSORS:

CURRENT STATUS: 2/14/79 IN (S) STATE AFF. REFERRAL: JUDICIARY

***** PRINTED FROM SCIV JUL. DATE IS 0079078 TIME EQUAL 1153303 ** **

DATE	SEQ	PAGE	LEGISLATIVE ACTION
01/24/79	01	0050	FIRST READING -- COMMITTEE REPORTS
01/24/79	02	0050	LEG BUDGET & A..IT CMTE
02/09/79	03	0179	JUD -- DP06, NR02
02/13/79	04	0226	SECOND READING
02/13/79	05	0226	ADVANCED TO 3RD READING BY UNAN CONSENT
02/13/79	06	0226	THIRD READING
02/13/79	07	0227	PASSED BY DIV 36-01-03
02/13/79	08	0227	EFFECTIVE DATE VOTE SAME AS PASSAGE
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DATE	SEQ	PAGE	LEGISLATIVE ACTION
02/14/79	09	0251	FIRST READING -- COMMITTEE REPORTS
			STATE AFF.
			JUDICIARY
			RULES
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IN THE DISTRICT COURT
IN AND FOR THE
CITY AND COUNTY OF DENVER
AND THE
STATE OF COLORADO
CIVIL ACTION NO. C-24520

DONALD H. MACMANUS AND CLARENCE A. DECKER,

PLAINTIFFS,

VS.

JOHN A. LOVE, GOVERNOR OF THE STATE OF COLORADO, AND HILBERT SCHAUER, EXECUTIVE DIRECTOR OF THE DEPARTMENT OF INSTITUTIONS OF THE STATE OF COLORADO,

DEFENDANTS.

FINDINGS, CONCLUSIONS, AND DECREE

THIS MATTER HAVING COME ON FOR TRIAL ON THE 20TH DAY OF OCTOBER, 1971, AND THE COURT, HAVING HEARD THE TESTIMONY AND THE STIPULATIONS, STATEMENTS, AND ARGUEMENTS OF COUNSEL, AND NOW BEING FULLY ADVISED IN THE PREMISES, FINDS AND CONCLUDES AS FOLLOWS:

1. IN ORDER TO AVOID UNDUE COMPLICATION, THE COURT WILL SET FORTH ITS RULINGS UPON EACH OF THE CONTESTED VETOES TO SENATE BILL 436 IN SERIATIM, MAKING SUCH FINDINGS OF FACT AND CONCLUSIONS OF LAW AS NECESSARY TO SUPPORT THE COURT'S CONCLUSIONS. HEREAFTER, THE VETOES WILL BE REFERRED TO IN ACCORDANCE WITH THEIR APPEARANCE IN, AND APPLICATION TO, SENATE BILL 436.

> Sec. 2.(a) Except as otherwise specifically provided in this act, wherever appropriations are from both cash funds and the general fund to the same agency, unexpended balances of the appropriation, existing at the close of the fiscal period covered hereunder, shall revert to the general fund. In the event any ongoing program currently finances in whole or in part from federal funds and the appropriation thereof is inadvertently omitted from this act, the controller, with

the approval of the governor, may approve the expenditure of said funds to continue such programs; but no such funds shall be used to initiate new programs;

2. THE COURT FUNDS THAT THE VETO TO SUBSECTION 2(A) WAS A PROPER VETO. THE COURT FINDS THAT ALL THE PROVISIONS CONTAINED IN THIS SUBSECTION, WITH THE EXCEPTION OF THAT CONTAINED IN THE LAST CLAUSE THEREOF, ARE GOVERNED BY EXISTING LAW. THE LAST CLAUSE SEEKS TO PROHIBIT EXECUTIVE DEPARTMENT AGENCIES FROM USING FEDERAL FUNDS "INADVERTENTLY OMITTED FROM THIS ACT" TO INITIATE NEW PROGRAMS. THE COURT FINDS THAT THIS LAST CLAUSE IS SUBSTANTIVE LEGISLATION CONTRARY TO ARTICLE V. SECTION 33, CONSTITUTION OF COLORADO, AS IT PURPORTS TO GRANT TO THE GENERAL ASSEMBLY A POWER TO APPROPRIATE FEDERAL MONEYS CONTRARY TO THE LIMITATIONS OF 3-6-15 CRS 1963, AS AMENDED BY SECTION 1, CHAPTER 28, SESSION LAWS OF COLORADO 1971.

Sec. 2.(b) Wherever, in the judgment of the controller, good fiscal order may be fostered, the controller may order the payment of any of the expenses authorized by appropriation hereunder from either cash or general funds when appropriations are made hereunder from both general and cash funds for the agency; except that in no case shall the total expenditure for each agency exceed the aggregate amount appropriated from both funds as hereinafter set forth; and except that if expenditures are made from the general fund under this authority, controller shall make transfers from cash funds to the general fund as necessary to keep the ultimate burden on the general fund within the appropriation therefrom for the fiscal year;

Sec. 2.(c) Appropriations made herein to organizational units of state government which subsequently are reorganized and reconstituted by statutory authority may be reallocated for like functions to the new organizational units by the controller, with approval of the governor and advice to the joint budget committee;

3. THE COURT RULES THAT THE VETOES OF SUBSECTIONS 2(B) AND 2(C) WERE PROPER VETOES BECAUSE THE PROVISIONS CONTAINED IN EACH OF THESE SUBSECTIONS ARE SUBSTANTIVE LEGISLATION CONTRARY TO ARTICLE V, SECTION 33, CONSTITUTION OF COLORADO, AND FOR THAT REASON ARE VOID AND UNENFORCEABLE.

Sec. 2.(d) The figures in the column headed "cash funds" are from both federal and state cash accounts.

The letters in parentheses after each figure shall designate which fund is to be used. An "(F)" shall designate federal funds and a "(C)" shall designate cash funds. Any federal or cash funds received by any agency in excess of the appropriation shall not be expended without additional legislative appropriation;

4. THE COURT FINDS THAT THE VETO OF SUBSECTION 2(D) WAS IMPROPER BECAUSE THE MATTERS CONTAINED THEREIN DO NOT REPRESENT ITEMS SUBJECT TO VETO; AND, MOREOVER, BECAUSE THE PURPOSE OF THIS SUBSECTION IS MERELY TO EXPLAIN THE MEANING OF CERTAIN PORTIONS OF THE BILL ITSELF AND THEREFORE CONSTITUTES A CONDITION INSEPARABLY CONNECTED TO ALL THE APPROPRIATIONS TO WHICH IT APPLIES. THE COURT FURTHER FINDS THAT THE GENERAL ASSEMBLY HAS THE AUTHORITY TO APPROPRIATE THE FEDERAL FUNDS TO WHICH THIS SUBSECTION APPLIES.

Sec. 2.(e) Of the separate amounts from the general fund and from cash funds appropriated herein, excepting Part I, fifteen percent of each amount set forth for capital outlay and ten percent of each other amount set forth, other than amounts designated for personal services, is intended to be, and is hereby declared to be, set aside in a reserve and no part thereof shall be expended or encumbered during the fiscal year 1971-1972 except on the written prior approval of the governor, pursuant to section 3-3-7, C.R.S. 1963;

5. THE VETO TO SUBSECTION 2(E) WAS CONFESSED BY THE PLAINTIFFS TO HAVE BEEN A PROPER VETO ON THE GROUNDS THAT THE CONTENTS OF THIS SUBSECTION ARE SUBSTANTIVE LEGISLATION CONTRARY TO ARTICLE V, SECTION 33, CONSTITUTION OF COLORADO; THEREFORE, THE COURT FINDS THAT SAID VETO WAS PROPER, AND THAT THE PROVISIONS OF SUBSECTION 2(E) ARE VOID AND UNENFORCEABLE.

Sec. 2.(f) No moneys appropriated by this act shall knowingly be paid to any organization, business firm, person, agency, or club which places restrictions on employment or membership based on sex, race, creed, color, religion, national origin, or ancestry.

6. THE COURT FINDS THAT THE VETO TO SUBSECTION 2(F) WAS IMPROPER AS THIS SUBSECTION IS NOT AN ITEM SUBJECT TO VETO BECAUSE THE PROVISIONS OF THIS SUBSECTION CONSTITUTE A VALID LIMITATION ON THE EXPENDITURE OF APPROPRIATIONS AND ARE INSEPARABLY CONNECTED TO ALL APPROPRIATIONS.

LEGISLATIVE INTENT - The following expressions of legislative appropriations intent are referenced to numbered footnotes throughout Section 2.

[1]Executive Aircraft - Any state agency utilizing this aircraft shall reimburse the general fund for all cost incurred in such use, from their appropriated operating accounts.

7. THE COURT FINDS THE VETO TO FOOTNOTE 1 OF SECTION 2 WAS A PROPER VETO. THE COURT FINDS THAT THE CONTENTS OF THIS FOOTNOTE ARE NEITHER A LIMITATION NOR A CONDITION INSEPARABLY CONNECTED TO THE APPROPRIATION OF $56,433.00 FOR THE EXECUTIVE AIRCRAFT IN THE OFFICE OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF INSTITUTIONS. BY ITS OWN LANGUAGE, THE FOOTNOTE CLEARLY IS INTENDED TO APPLY TO APPROPRIATIONS OTHER THAN THE ONE TO WHICH IT IS ATTACHED. THEREFORE, THE FOOTNOTE IS AN ITEM SUBJECT TO SPECIFIC DISAPPROVAL BY THE GOVERNOR PURSUANT TO POWERS GRANTED HIM BY ARTICLE IV, SECTION 12, CONSTITUION OF COLORADO.

[5]Group Health Insurance - These funds shall not be allocated to individial agencies. The Controller shall make payments directly to the insurance carriers on a quarterly or less frequent basis.

8. THE PLAINTIFFS HAVE CONFESSED THAT THE VETO OF FOOTNOTE 5 OF SECTION 2 WAS A PROPER VETO ON THE GROUNDS THAT THIS FOOTNOTE CONSTITUTES SUBSTANTIVE LEGISLATION CONTRARY TO ARTICLE V. SECTION 33, CONSTITUTION OF COLORADO, AND FURTHER CONSITUTES AN INVASION OF THE SEPARATION OF POWERS REQUIRED BY ARTICLE III OF THE CONSTITUTION OF COLORADO. ACCORDINGLY, THE COURT FINDS THAT THE VETO OF FOOTNOTE 5 OF SECTION 2 WAS PROPER, AND THAT THE PROVISIONS OF FOOTNOTE 5 ARE VOID AND UNENFORCEABLE.

[6]Department of Administration and Department of Higher Education - The funds in these ADP appropriations are the total amount to be expended for ADP services. The appropriation shall not be increased by transfer from other funds, except as may be allocated from the central appropriations for Salary Survey, Group Health Insurance, and Workmen's Compensation.

9. THE COURT FINDS THAT THE VETO OF FOOTNOTE 6 IN SECTION 2 WAS A PROPER VETO. THIS FOOTNOTE CONSTITUTES SUBSTANTIVE LEGIS-

LATION IN VIOLATION OF ARTICLE V, SECTION 33, CONSTITUTION OF COLORADO INASMUCH AS THE SECOND SENTENCE CLEARLY CONFLICTS WITH THE EXISTING POWERS GRANTED TO THE CONTROLLER PURSUANT TO SECTION 3-3-1(10), CRS 1963.

[7]Automated Data Processing Division - The Department of Administration appropriation contains $53,100 for the statewide Co-Tie project. The Department of Higher Education shall assign a high priority to Co-Tie and shall allocate funds appropriated for Higher Education ADP so as to insure timely implementation of this program.

10. THE COURT FINDS THAT THE VETO OF FOOTNOTE 7 IN SECTION 2 WAS NOT A PROPER VETO AS THE FOOTNOTE CONSTITUTES A LIMITATION OF $53,000.00 ON THE SPENDING AUTHORITY FOR THE STATE-WIDE CO-TIE PROJECT. THE COURT FINDS THIS TO BE A VALID LIMITATION ON THE EXPENDITURE OF THESE FUNDS IN ACCORDANCE WITH THE GENERAL ASSEMBLY'S POWER TO APPROPRIATE MONEYS FOR THE OPERATION OF STATE GOVERNMENT.

[8]ADP Division - In order to continue centralized ADP appropriations the Department of Administration shall develop an output-oriented ADP performance evaluation system applicable to all ADP installations and services of the State. This system shall be installed by July 1, 1971, and shall include, but not be limited to, a turnaround time, utilization rates, unit costs, and error rates. There also shall be developed a procedure for comparing the production potential of each State installation. This procedure shall include, but not be limited to, current market value of equipment, original cost, staffing, and maximum potential utilization. Further, the Executive Director shall undertake a comparative study of state operated ADP versus outside contractual services. The Executive Director shall select an ADP application which can be split for comparative purposes or two comparable applications. The criteria for evaluation shall be the same criteria used in the statewide ADP performance evaluation system.

11. THE PLAINTIFFS HAVE CONFESSED THAT THE VETO TO FOOTNOTE 8 OF SECTION 2 WAS A PROPER VETO ON THE GROUNDS THAT SAID FOOTNOTE CONSTITUTES SUBSTANTIVE LEGISLATION CONTRARY TO ARTICLE V, SECTION 33, CONSTITUTION OF COLORADO. ACCORDINGLY, THE COURT FINDS THAT THE VETO OF FOOTNOTE 8 OF SECTION 2 WAS PROPER, AND THAT THE PROVISIONS OF FOOTNOTE 8 ARE VOID AND UNENFORCEABLE.

[9]ADP Division - The appropriation provides $87,500 for feasibility [illegible]dies relative to a cental accounting sys[illegible] [illegible]d $120,500 for Social Services

systems work. The Department of Administration shall contract for these studies with outside ADP consulting firms for an amount not to exceed $208,000.

12. THE PLAINTIFFS HAVE CONFESSED THAT THE CONTENTS OF FOOTNOTE 9 OF SECTION 2 CONSTITUTE ITEMS SUBJECT TO VETO AND THAT, THEREFORE, THE VETO WAS PROPER. ACCORDINGLY, THE COURT FINDS THAT THE VETO OF FOOTNOTE 9 OF SECTION 2 WAS A PROPER EXERCISE OF THE POWERS CONFERRED UPON THE GOVERNOR BY ARTICLE IV, SECTION 12, CONSTITUTION OF COLORADO.

[10] Archives and Public Records - The general fund portion is the maximum general fund authorization. Total expenditures shall be reduced by any amount failed to be achieved by the cash fund. Any excess generated in the cash fund above the $38,085 appropriated shall be deposited to the general fund.

13. FOOTNOTE 10, SECTION 2 CONTAINS THREE SENTENCES. THE COURT FINDS THAT THE VETO OF THE FIRST TWO SENTENCES WAS IMPROPER, BUT THE VETO OF THE THIRD SENTENCE WAS PROPER. THE COURT FINDS THE FIRST SENTENCE IS A PROPER LIMITATION ON THE APPROPRIATION, AND THAT THE SECOND SENTENCE CONSTITUTES A REITERATION OF THE EFFECT OF THE CURRENT LAW. THE THIRD SENTENCE CONSTITUES SUBSTANTIVE LEGISLATION CONTRARY TO ARTICLE V. SECTION 33 OF THE CONSTITUTION OF COLORADO, AND ON THAT GROUND THE VETO OF THE THIRD SENTENCE WAS PROPER, THEREFORE, THE SENTENCE IS VOID AND UNENFORCEABLE.

[11] Department of Administration - All federal reimbursements under the State of Colorado Statewide Cost Allocation Plan, dated February 4, 1971, or later revisions, shall be deposited to the general fund.

14. THE PLAINTIFFS HAVE CONFESSED THAT FOOTNOTE 11 OF SECTION 2 CONSTITUTES SUBSTANTIVE LEGISLATION CONTRARY TO ARTICLE V, SECTION 33, CONSTITUTION OF COLORADO, AND THAT THEREFORE THE VETO WAS PROPER. ACCORDINGLY, THE COURT FINDS THAT THE VETO OF FOOTNOTE 11 OF SECTION 2 WAS PROPER, AND THAT THE PROVISIONS OF FOOTNOTE 11 ARE VOID AND UNENFORCEABLE.

[14] Department of Higher Education - Appropriations in Part VII for colleges, universities, and community colleges include all operating cash receipts except for nonappropriated auxiliary enterprises, provided that any cash or federal

receipts in excess of those appropriated herein shall not be expended without additional legislative appropriation action. Cash receipts are appropriated on the basis of the following academic year tuition rates. Each student shall be presented with an invoice at the time of registration indicating the total tuition cost and the amount of that cost covered by his tuition payment.

*** Table Deleted ***

None of the appropriated funds in Part VII shall be used to implement public broadcast educational television. Expenditure of these appropriations for television operations shall be for existing closed-circuit teaching and vocational-technical operations only.

15. FOOTNOTE 14, SECTION 2 CONTAINS FIVE SEPARATE SENTENCES AND A TABLE RELATING TO COLLEGES AND UNIVERSITIES. OF THESE, THE GOVERNOR VETOED THE FIRST AND THIRD SENTENCES, AND THE TWO SENTENCES IMMEDIATELY FOLLOWING THE TABLE. THE PLAINTIFFS HAVE CONFESSED THAT THE THIRD SENTENCE CONTAINS SUBSTANTIVE LEGISLATION CONTRARY TO ARTICLE V, SECTION 33 OF THE CONSTITUTION OF COLORADO. THE DEFENDANTS HAVE CONFESSED THAT THE LAST TWO SENTENCES WERE IMPROPERLY VETOED, AS A MATTER OF LAW. THE COURT FINDS THAT THE FIRST SENTENCE CONSTITUTES AN INVASION OF THE SEPARATION OF POWERS AS REQUIRED BY ARTICLE III OF THE CONSTITUTION OF COLORADO. ACCORDINGLY, THE COURT FURTHER FINDS THAT THE VETO OF THE FIRST AND THIRD SENTENCES OF FOOTNOTE 14 WAS PROPER, AND THAT THOSE PROVISIONS ARE VOID AND UNENFORCEABLE. THE COURT FURTHER FINDS THAT THE VETO OF THE LAST TWO SENTENCES OF FOOTNOTE 14 WAS IMPROPER.

[16]Department of Higher Education - The following is intended to be the maximum expenditure level for extension courses at each institution. No additional funds may be used to expand these programs.

University of Colorado...........	$1,159,764
Colorado State University........	4,763,431
Adams State College..............	70,000
Southern Colorado State College..	140,400
University of Northern Colorado..	150,000
Western State College............	60,000
Fort Lewis College...............	5,000
Arapahoe Community College.......	28,104

16. THE PLAINTIFFS HAVE CONFESSED THAT THE VETO OF FOOTNOTE 16 WAS PROPER INASMUCH AS THE FOOTNOTE WAS LOCATED AT LINE (1)

BY ITS TERMS THE FOOTNOTE APPLIES TO THE COLLEGES AND UNIVERSITIES OF THE STATE AND NOT TO THE COMMISSION ON HIGHER EDUCATION. ACCORDINGLY, THE PLAINTIFFS HAVE CONFESSED THAT THE VETO WAS PROPER BECAUSE THE FOOTNOTE APPEARS TO BE AN ERROR IN DRAFTING. ACCORDINGLY, THE COURT FINDS THAT FOOTNOTE 16 IS MEANINGLESS AND UNENFORCEABLE.

> [18]Colorado General Hospital - Additional positions of 73.3 FTE nursing and 36.2 FTE support over the current year's approved level of staff are contingent upon realizing an increase to 140,400 in-patient days and 207,000 out-patient visits.

17. THE COURT FINDS THAT THE VETO OF FOOTNOTE 18, SECTION 2 WAS A PROPER EXERCISE OF THE POWERS CONFERRED UPON THE GOVERNOR BY ARTICLE IV, SECTION 12, CONSTITUTION OF COLORADO, INASMUCH AS THE FOOTNOTE CONSTITUTES A SEPARATE ITEM BECAUSE THE CONTENTS OF THE FOOTNOTE ARE SEPARABLE FROM THE APPROPRIATION AND BECAUSE ITS CONTENTS ARE NOT INSEPARABLY CONNECTED TO THE APPROPRIATION MADE TO COLORADO GENERAL HOSPITAL.

> [20]Northeastern Community College - This appropriation is contingent upon the dissolution of the existing Northeastern Junior College School pursuant to article 26 of chapter 124 CRS 1963, with the transfer of all assets and applicable liabilities effective July 1, 1971.

18. THE DEFENDANTS HAVE CONFESSED THAT AS A MATTER OF LAW THE VETO OF FOOTNOTE 20, SECTION 2 WAS IMPROPER BECAUSE THIS FOOTNOTE CONSTITUTES A LAWFUL CONDITION ON THE APPROPRIATION TO NORTHEASTERN COMMUNITY COLLEGE, EVEN THOUGH THE APPROPRIATION ITSELF FAILED BECAUSE THE NORTHEASTERN JUNIOR COLLEGE DISTRICT WAS NOT DISSOLVED. IF THE NORTHEASTERN COMMUNITY COLLEGE HAD BEEN ESTABLISHED, DEFENDANTS CONFESS THAT FOOTNOTE 20 WOULD HAVE BEEN A VALID CONDITION ON THE APPROPRIATION TO NORTHEASTERN COMMUNITY COLLEGE. ACCORDINGLY, THE COURT FINDS THAT THE VETO OF FOOTNOTE 20 WAS IMPROPER EVEN THOUGH THE APPROPRIATION FAILED.

> [21]Area Schools, Guidance and Advisory Workshops - The appropriation includes the funding of San Juan Basin Area School and the San Luis Area School based upon 10% state funds, not to exceed $17,720, 10% local funds and 80% federal funds of each school's approved budget less tuitions at current

rates and other income. Prior to the establishment of any additional Area Schools the state authority shall submit to the Joint Budget Committee, for approval, any applications which will require either state or local matching.

19. FOOTNOTE 21, SECTION 2 CONTAINS TWO SENTENCES, THE SECOND OF WHICH WAS VETOED BY THE GOVERNOR. THE PLAINTIFFS HAVE CONFESSED THAT THE SECOND SENTENCE CONSTITUTES SUBSTANTIVE LEGISLATION CONTRARY TO ARTICLE V, SECTION 33, CONSTITUTION OF COLORADO. ACCORDINGLY, THE COURT FINDS THAT THE VETO OF THE SECOND SENTENCE OF FOOTNOTE 21, SECTION 2 WAS PROPER, AND THAT THIS SENTENCE IS VOID AND UNENFORCEABLE.

[21a]These moneys are to be used only for contract services and no single recipient is to receive more than $5,000.

20. THE PLAINTIFFS HAVE CONFESSED THAT THE VETO OF FOOTNOTE 21(A), SECTION 2 WAS PROPER. THE COURT FINDS THAT THIS FOOTNOTE INVADES THE SEPARATION OF POWERS REQUIRED BY ARTICLE III OF THE CONSTITUTION OF COLORADO IN THAT IT ATTEMPTS TO CONTROL THE SALARIES OF THE STAFF OF THE COUNCIL ON ARTS AND HUMANITIES CONTRARY TO THE PROVISIONS OF EXISTING LAW IN WHICH SALARIES OF PERSONS WITHIN THE CLASSIFIED PERSONNEL SYSTEM OF THE STATE DEPEND UPON THEIR GRADE AS DETERMINED BY THE STATE PERSONNEL BOARD. ACCORDINGLY, THE COURT FINDS THAT THE VETO OF FOOTNOTE 21(A), SECTION 2 WAS PROPER, AND THAT FOOTNOTE 21(A) IS VOID AND UNENFORCEABLE.

[24]Department of Institutions - Division of Mental Health - This appropriation is intended to provide up to 90% of the eligible cost under the existing federal Mental Health staffing grants to continue the present level of services established through Community Center Programs. Prior to the establishment of additional Community Mental Health Centers the state authority shall submit to the Joint Budget Committee, for approval, any federal applications which shall require either state matching or state replacement of federal funds. No funds are appropriated in this Act for any other Community Mental Health Center.

21. FOOTNOTE 24, SECTION 2 CONTAINS THREE SENTENCES, THE SECOND OF WHICH WAS VETOED BY THE GOVERNOR. THE PLAINTIFFS HAVE CONFESSED THAT THIS VETO WAS PROPER INASMUCH AS THIS SENTENCE CONTAINS SUBSTANTIVE LEGISLATION AND CONSTITUTES A VIOLATION OF THE

SEPARATION OF POWERS REQUIRED BY ARTICLE III OF THE CONSTITUTION OF COLORADO. ACCORDINGLY, THE COURT FINDS THAT THE VETO OF THE SECOND SENTENCE OF FOOTNOTE 24 WAS PROPER, AND THAT THIS SENTENCE IS VOID AND UNENFORCEABLE.

> [26]Department of Local Affairs - Law Enforcement Training Academy - The appropriation includes an estimate of $25,000 in tuition receipts. No less than this amount shall be deposited to the general fund by the end of the fiscal year from tuition charges.

22. FOOTNOTE 26, SECTION 2 CONTAINS TWO SENTENCES, THE LAST OF WHICH WAS VETOED BY THE GOVERNOR. THE PLAINTIFFS HAVE CONFESSED THAT THIS VETO WAS PROPER ON THE GROUNDS THAT THIS SENTENCE CONTAINS SUBSTANTIVE LEGISLATION CONTRARY TO ARTICLE V, SECTION 33 OF THE CONSTITUTION OF COLORADO, AND IS UNENFORCEABLE. ACCORDINGLY, THE COURT FINDS THAT THE VETO OF THE LAST SENTENCE OF FOOTNOTE 26 WAS PROPER, AND THAT THIS SENTENCE IS VOID AND UNENFORCEABLE.

> [27]Department of Natural Resources - Division of Game, Fish, and Parks - The Division shall give highest priority to conducting, with existing staff, a Metropolitan Area Fish Study.

23. THE COURT FINDS THAT THE VETO OF FOOTNOTE 27, SECTION 2 WAS IMPROPER BECAUSE THIS FOOTNOTE CONSTITUTES A CONDITION UPON THE APPROPRIATION NECESSARY TO CARRY OUT THE PURPOSES OF THE AGENCY, AND, THEREFORE, THIS FOOTNOTE IS NOT A SEPARATE ITEM SUBJECT TO VETO BY THE GOVERNOR.

> [28]Department of Natural Resources - Division of Game, Fish, and Parks - Parks Operations - Summer Work Program - For part-time help to clean and maintain state recreation areas and parks during the summer tourist season. These funds may not be expended on salaries exceeding $300 per month and may not be used for full-time positions.

24. FOOTNOTE 28, SECTION 2 CONTAINS TWO SENTENCES, BOTH OF WHICH WERE VETOED BY THE GOVERNOR. THE COURT FINDS THAT THE VETO OF THE FIRST SENTENCE PERTAINING TO PART TIME HELP WAS NOT PROPER BECAUSE THIS SENTENCE CONSTITUTES A PROPER LIMITATION UPON THE APPROPRIATION, AND, THEREFORE, THIS SENTENCE IS NOT A SEPARATE ITEM SUBJECT TO VETO. THE COURT FURTHER FINDS THAT THE VETO OF THE SECOND SENTENCE WAS

PROPER INASMUCH AS THIS SENTENCE PURPORTS TO LIMIT THE EXPENDITURE OF SALARIES FOR PERSONS EMPLOYED WITH THE FUNDS APPROPRIATED. THE COURT FINDS THAT THIS LIMITATION CONSTITUTES AN INVASION OF THE SEPARATION OF POWERS PROVIDED BY ARTICLE III, AND OF ARTICLE XII, SECTION 13, 14 AND 15 OF THE CONSTITUTION OF COLORADO. ACCORDINGLY, THE COURT FINDS THAT THE VETO WAS PROPER, AND THAT THE SECOND SENTENCE OF FOOTNOTE 28 IS VOID AND UNENFORCEABLE.

> [29]Civil Rights Division - This appropriation is only for the "Colorado Investigations, Conciliations Coordination Pilot Program" to coordinate efforts between the state and federal commission investigating the same complaints in employment.

25. THE COURT FINDS THAT THE VETO OF FOOTNOTE 29, SECTION 2 WAS IMPROPER BECAUSE THIS FOOTNOTE CONSTITUTES A PROPER LIMITATION ON THE APPROPRIATION FOR CONTRACTUAL SERVICES IN THE CIVIL RIGHTS DIVISION OF THE DEPARTMENT OF REGULATORY AGENCIES; THEREFORE, THIS FOOTNOTE IS NOT A SEPARATE ITEMS SUBJECT TO VETO.

> [30]Medical Care Title XIX - The Title XIX appropriation is based on an estimate of 156,301 welfare clients in 1971-72. A supplemental request will only be considered at the next session of the General Assembly for the reason of having exceeded that caseload estimate.

26. THE PLAINTIFFS CONFESS THAT THE VETO OF THE SECOND SENTENCE OF FOOTNOTE 30, SECTION 2 WAS PROPER ON THE GROUNDS THAT THIS SENTENCE CONSTITUTES SUBSTANTIVE LEGISLATION CONTRARY TO ARTICLE V, SECTION 33 OF THE CONSTITUTION OF COLORADO. ACCORDINGLY, THE COURT FINDS THAT THE VETO OF THE SECOND SENTENCE OF FOOTNOTE 30 WAS PROPER, AND THAT THIS SENTENCE IS VOID AND UNENFORCEABLE.

> [31]Nursing Homes - This appropriation provides $11.77 average total cost per day for the projected caseload of 9,055 with an anticipated $2.26 per day in patient income. The Department of Social Services will establish payment ceilings so as to remain at or below the total per day average.

27. THE PLAINTIFFS HAVE CONFESSED THAT THE VETO OF THE SECOND SENTENCE OF FOOTNOTE 31, SECTION 2 WAS PROPER ON THE GROUNDS THAT THIS SENTENCE CONSTITUTES SUBSTANTIVE LEGISLATION CONTRARY TO ARTICLE V, SECTION 33 OF THE CONSTITUTION OF COLORADO. ACCORDINGLY,

THE COURT FINDS THAT THE VETO OF THE SECOND SENTENCE OF FOOTNOTE 31, SECTION 2 WAS PROPER, AND THAT THIS SENTENCE IS VOID AND UNENFORCEABLE.

[32]Division of Rehabilitation

A. The General Assembly desires that the Department of Social Services establish the following priority order regarding clients served:
   1. State and community institutional populations.
   2. Present welfare caseload.
   3. Potential welfare caseload.
   4. Disadvantaged and minority persons.
   5. General population.

   The Department of Social Services shall not add any additional clients in four-year academic degree or graduate degree programs.

B. The Department of Social Services shall implement a uniform means test to insure that only those clients who are unable to provide all or a part of Rehabilitation services for themselves are supported by the state program.

C. The Department of Social Services shall use the services of the Division of Employment to the fullest extent possible, for job counseling, job seeking, job placement, and follow-up.

D. The Model Cities program is viewed as having a high priority. The Department of Social Services shall insure that the program is fully supported.

28. THE PLAINTIFFS HAVE CONFESSED THAT THE VETO OF THE SECOND SENTENCE OF PART A AND THE VETO OF PARTS B AND C OF FOOTNOTE 32, SECTION 2 WERE PROPER ON THE GROUNDS THAT THESE PARTS OF SAID FOOTNOTE CONTAIN SUBSTANTIVE LEGISLATION CONTRARY TO THE PROVISIONS OF ARTICLE V, SECTION 33 OF THE CONSTITUTION OF COLORADO. THE COURT FURTHER FINDS THAT THE VETO OF PART D OF FOOTNOTE 32, SECTION 2 WAS A PROPER VETO ON THE GROUNDS THAT PART D CONSTITUTES A SEPARATE ITEM BECAUSE IT IMPOSES NEITHER A LIMITATION NOR A CONDITION INSEPARABLY CONNECTED TO THE APPROPRIATION, AND THAT PART D IS SUBSTANTIVE LEGISLATION CONTRARY TO ARTICLE V, SECTION 33 OF THE CONSTITUTION OF COLORADO. ACCORDINGLY, THE COURT FINDS THAT THE VETOES OF PARTS A, B, C, AND D OF FOOTNOTE 32, SECTION 2 WERE PROPER, AND THAT SAID PARTS ARE VOID AND UNENFORCEABLE.

[35]Colorado Bureau of Investigation - Seven of these personnel shall be used for narcotics cases.

29. THE COURT FINDS THAT THE VETO OF FOOTNOTE 35, SECTION 2 WAS PROPER ON THE GROUNDS THAT THIS FOOTNOTE CONSTITUTES AND INVASION OF THE SEPARATION OF POWERS PROVIDED IN ARTICLE III OF THE

CONSTITUTION OF COLORADO, AND THAT FOOTNOTE 35 IS VOID AND UNENFORCEABLE.

[36] The total expenditure for these two projects is not to exceed the $20,000 appropriated.

30. THE PLAINTIFFS HAVE CONFESSED THAT THE VETO OF FOOTNOTE 36, SECTION 2 WAS A PROPER VETO ON THE GROUNDS THAT THIS FOOTNOTE IS DUPLICATIVE OF THE APPROPRIATION AND MEANINGLESS SURPLUSAGE, AND NOT INSEPARABLY CONNECTED TO THE APPROPRIATION TO WHICH IT REFERS, AND THEREFORE IS AN ITEM SUBJECT TO VETO. ACCORDINGLY, THE COURT FINDS THE VETO OF FOOTNOTE 36, SECTION 2 WAS PROPER, AND THAT FOOTNOTE 36 IS VOID AND UNENFORCEABLE.

[40] Department of Institutions - Division of Mental Retardation - No less than sixty percent of personnel employed shall be used for direct care of patients.

31. THE COURT FINDS THAT THE VETO OF FOOTNOTE 40, SECTION 2 WAS A PROPER VETO ON THE GROUNDS THAT THIS FOOTNOTE VIOLATES THE SEPARATION OF POWERS REQUIRED BY ARTICLE III OF THE CONSTITUTION OF COLORADO, AND THE FOOTNOTE 40 IS VOID AND UNENFORCEABLE.

CAPITAL CONSTRUCTION

(2) Appropriations from state funds shall be reduced by any amounts received from federal, local, or private sources not appropriated herein.

32. THE DEFENDANTS HAVE CONFESSED THAT AS A MATTER OF LAW THE VETO OF SUBSECTION (2) OF SECTION 3 WAS IMPROPER ON THE GROUNDS THAT THE GENERAL ASSEMBLY MAY APPROPRIATE STATE MONEYS CONDITIONED UPON THE RECEIPTS OF FEDERAL MONEYS, AND MAY FURTHER REDUCE THE APPROPRIATION OF STATE FUNDS BY ANY AMOUNTS RECEIVED FROM FEDERAL SOURCES. ACCORDINGLY, THE COURT FINDS THAT THE VETO OF SUBSECTION (2) OF SECTION 3 WAS IMPROPER BECAUSE THIS SUBSECTION IS A PROPER LIMITATION UPON APPROPRIATIONS AND DOES NOT CONSTITUTE AN ITEM SUBJECT TO VETO.

(3) Allotment of appropriations for construction of higher education facilities shall be made only upon certification by the Commission on Higher Education

that program planning has been completed and is approved by the Commission.

(4) Allotment of progam and master planning appropriations made to the Commission on Higher Education shall be made only upon certification of specific planning request, with advice to the Joint Budget Committee.

33. THE COURT FINDS THAT THE VETOES OF SUBSECTIONS (3) AND (4) OF SECTION 3 WERE PROPER ON THE GROUNDS THAT THESE SUBSECTIONS CONTAIN SUBSTANTIVE LEGISLATION CONTRARY TO ARTICLE V, SECTION 33 OF THE CONSTITUTION OF COLORADO, AND THAT SUBSECTIONS (3) AND (4) OF SECTION 3 ARE VOID AND UNENFORCEABLE.

[14]Department of Natural Resources - Parks - Of this amount $500,000 shall be used to hire part-time help at a salary not to exceed $300 a month to assist in the development and construction of recreational areas, with priority being given to summer projects so as to provide summer jobs for youth.

34. THE COURT FINDS THAT THE VETO OF FOOTNOTE 14 OF SECTION 3 WAS A PROPER VETO ON THE GROUNDS THAT THIS FOOTNOTE PURPORTS TO CONTROL THE EXPENDITURE OF $500,000 OF FEDERAL MONEYS BY LOCAL GOVERNMENTS FOR PART TIME HELP TO ASSIST IN THE DEVELOPMENT AND CONSTRUCTION OF RECREATIONAL AREAS. THE GENERAL ASSEMBLY HAS NEITHER THE POWER NOR THE AUTHORITY TO APPROPRIATE OR CONTROL SUCH MONEYS AS A MATTER OF LAW. THE COURT FINDS SPECIFICALLY THAT THE GENERAL ASSEMBLY DOES NOT HAVE THE POWER TO APPROPRIATE FEDERAL FUNDS RECEIVED BY AN AGENCY OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT AS A CONDUIT FOR THE DISTRIBUTION OF FEDERAL MONEYS TO ELEMENTS OF LOCAL GOVERNMENT ON THE GROUNDS THAT SUCH FUNDS ARE NOT PROPERTY OF THE STATE SUBJECT TO APPROPRIATION.

[19]The General Fund moneys herein appropriated shall be reduced by any federal funds received by the state for mental health construction above the amount herein appropriated. The federal funds appropriated for this purpose shall not be expended until the Jefferson County Mental Health Center shall receive $105,000 of federal construction funds.

35. THE DEFENDANTS HAVE CONFESSED AS A MATTER OF LAW THE VETO OF FOOTNOTE 19, SECTION 3 WAS IMPROPER BECAUSE THE GENERAL

ASSEMBLY MAY REDUCE THE APPROPRIATION OF STATE FUNDS BY ANY AMOUNTS RECEIVED FROM FEDERAL SOURCES. ACCORDINGLY, THE COURT FINDS THAT THE VETO OF THE FIRST SENTENCE OF FOOTNOTE 19 IS NOT AN ITEM SUBJECT TO VETO.

36. IN FINDING PROPER THE VETOES TO FOOTNOTES WHICH VIOLATE EITHER ARTICLE III OR ARTICLE V, SECTION 33 OF THE COLORADO CONSTITUTION, THE COURT HAS NOT HELD THE FOOTNOTES TO BE SEPARATE ITEMS UNLESS SPECIFICALLY INDICATED. THE COURT CONCLUDES, HOWEVER, THAT SINCE ANY FOOTNOTE VIOLATING EITHER ARTICLE III OR ARTICLE V, SECTION 33 IS VOID AND UNENFORCEABLE, THE GOVERNOR'S ACT OF DISAPPROVAL IS AN APPROPRIATE ACT CALLING ATTENTION TO THE INVALID ACT. THE COURT ALSO CONCLUDES THAT THE GOVERNOR'S DISAPPROVAL IS NOT NECESSARY TO INVALIDATE ANY PROVISION VIOLATING EITHER ARTICLE III OR ARTICLE V, SECTION 33.

ON THE BASIS OF THE FINDINGS AND CONCLUSION HEREINABOVE EXPRESSED, THE COURT ORDERS AS FOLLOWS:

1. THAT JUDGMENT BE ENTERED ON BEHALF OF THE PLAINTIFFS AND AGAINST THE DEFENDANTS DECLARING THAT THE VETOES OF: PARAGRAPHS (D) AND (F) OF SUBSECTION (1) OF SECTION 2; OF FOOTNOTE 7 OF SECTION 2; OF THE FIRST TWO SENTENCES OF FOOTNOTE 10 OF SECTION 2; LAST TWO SENTENCES OF FOOTNOTE 14, SECTION 2; FOOTNOTE 20 OF SECTION 2; OF FOOTNOTE 27 OF SECTION 2; OF THE FIRST SENTENCE OF FOOTNOTE 28,, SECTION 2; OF FOOTNOTE 29, SECTION 2; OF SUBSECTION 2 OF SECTION 3; AND OF THE FIRST SENTENCE OF FOOTNOTE 19, SECTION 3 ARE ILLEGAL, VOID, AND WITHOUT EFFECT;

2. THAT JUDGMENT BE ENTERED IN FAVOR OF THE DEFENDANTS AND AGAINST THE PLAINTIFFS DECLARING THAT THE FOLLOWING PARTS OF SENATE BILL 436 ARE VOID AND OF NO EFFECT ON THE GROUNDS THAT THE CONTENTS THEREOF VIOLATE ARTICLE III OF THE CONSTITUTION OF COLORADO:

FOOTNOTES 21(A), 35, OF SECTION 2;
THE FIRST SENTENCE OF FOOTNOTE 14;
THE SECOND SENTENCE OF FOOTNOTE 24;
THE SECOND SENTENCE OF FOOTNOTE 28, OF SECTION 2;
AND FOOTNOTE 14 OF SECTION 3;

3. THAT JUDGMENT BE ENTERED IN FAVOR OF THE DEFENDANTS AND AGAINST THE PLAINTIFFS DECLARING THAT THE FOLLOWING PARTS OF SENATE BILL 436 ARE VOID ON THE GROUNDS THAT THE CONTENTS THEREOF CONTAIN SUBSTANTIVE LEGISLATION CONTRARY TO ARTICLE V, SECTION 33 OF THE CONSTITUTION OF COLORADO:

PARAGRAPHS (A), (B), (C), (E) OF SUBSECTION (1) OF SECTION 2;
FOOTNOTES 5, 6, 8, 11, 32, 36 OF SECTION 2;
THE THIRD SENTENCE OF FOOTNOTE 10;
THE THIRD AND THE LAST TWO SENTENCES OF FOOTNOTE 14;
THE SECOND SENTENCE OF FOOTNOTE 21;
THE LAST SENTENCE OF FOOTNOTE 26;
THE SECOND SENTENCE OF FOOTNOTE 30;
SUBSECTIONS (3) AND (4) OF SECTION 3;

4. THAT JUDGMENT BE ENTERED ON BEHALF OF THE DEFENDANTS AND AGAINST THE PLAINTIFFS DECLARING THAT THE VETOES OF THE FOOTNOTES HEREINABOVE DESCRIBED AS VIOLATING ARTICLE III AND ARTICLE V, SECTION 33 OF THE CONSTITUTION OF COLORADO WERE PROPER AND IN ACCORDANCE WITH THE POWERS CONFERRED UPON THE GOVERNOR BY ARTICLE IV, SECTION 12 OF THE CONSTITUTION OF COLORADO;

5. THAT JUDGMENT BE ENTERED ON BEHALF OF THE DEFENDANTS AND AGAINST THE PLAINTIFFS DECLARING THAT THE VETOES OF THE FOLLOWING FOOTNOTES WERE PROPER INASMUCH AS THOSE FOOTNOTES, AS A MATTER OF LAW, CONSTITUTE SEPARATE ITEMS SUBJECT TO VETO BY THE GOVERNOR IN ACCORDANCE WITH THE POWERS CONFERRED UPON HIM BY ARTICLE IV, SECTION 12 OF THE CONSTITUTION OF COLORADO:

FOOTNOTES 1, 9, 16, 18, 40 OF SECTION 2;
PART D OF FOOTNOTE 32 OF SECTION 2;

6. THAT THE PLAINTIFFS' SECOND CLAIM FOR RELIEF BE DISMISSED, AND THAT JUDGMENT BE ENTERED THEREON IN FAVOR OF THE DEFENDANTS AND AGAINST THE PLAINTIFFS.

7. THE COURT FURTHER ORDERS THAT EACH PARTY SHALL PAY HIS OWN COSTS.

DONE IN OPEN COURT THIS ___________ DAY OF NOVEMBER, 1971.

BY THE COURT:

____

HENRY E. SANTO
DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENTS:

____

C. THOMAS BASTIEN
COUNSEL FOR PLAINTIFFS

PATRICK RODEY
SPENARD

601 W. 5TH AVE. SUITE 820
ANCHORAGE, ALASKA 99501

DURING SESSION

POUCH V
JUNEAU, ALASKA 99811

Alaska State Senate

JUNEAU, ALASKA 99811

March 19, 1979

MEMORANDUM

TO : Senator Bob Mulcahy, Chairman, Senate State Affairs

FROM: Senator Patrick Rodey

RE : Proposed Amendment to House Bill 45, "An act relating to powers of Legislative Council"

I would like to propose an amendment to House Bill 45 when it is considered in Senate State Affairs. The amendment would establish a student legislative internship program. Enclosed is a summary of the proposed amendment's effects. I hope you will be able to support it. Please let me know if you have any questions. Thanks.

Attachment

STATE AFFAIRS

March 19, 1979

HB 45 — An Act Relating to powers of the legislative council and the legislative budget and audit committee and providing for an effective date

SUMMARY

This legislation would give the legislative budget and audit committee and legislative council the power to sue in the name of the legislature during interim if authorized by a majority vote of the full membership of each.

FISCAL

None

RELATED LEGISLATION

This bill was HCSSB432 last year which passed both houses but was vetoed by the governor.

SUMMARY OF AMENDMENT TO ESTABLISH STUDENT LEGISLATIVE INTERNSHIP PROGRAM

This amendment to AS 24 would establish a legislative internship program designed to serve students who have at least reached their junior year in an accredited postsecondary institution.

As interns, students would earn both salary and credit, a concept which already has precedence in programs presently operating at the University of Alaska such as Cooperative Education and the University Year in Action (UYA). As the program is envisioned at this time, the credits (three for the internship and three for an independent study course taken at the same time) would be provided through and under the auspices of the University of Alaska, Juneau. The salary, which would be at least minimum wage, would come from the Legislative Council.

Interns would be assigned to standing committees of the legislature, and their period of service would last throughout the session. In addition to meeting the above-mentioned criteria, interns would be chosen on the basis of experience and interest in subjects which are likely to be addressed during any particular session.

This legislation would not require a set number of interns per year, nor would it restrict the number of interns who could participate in any given year. Interns would be chosen by the Legislative Council in cooperation with representatives from the cooperating postsecondary institution.

Alaska State Legislature

House of Representatives

MEMBER
FINANCE COMMITTEE

REPRESENTATIVE JIM DUNCAN
CHAIRMAN
BUDGET & AUDIT COMMITTEE

STATE CAPITOL
POUCH V
JUNEAU, ALASKA 99811
465-3818

HOME ADDRESS
RR 4 BOX 4316
JUNEAU, ALASKA 99803
789-9792

MEMORANDUM

TO: Senator Bob Mulcahy
Chairman, State Affairs Committee

FROM: Rep. Jim Duncan
Chairman, Budget & Audit Committee

SUBJECT: House Bill No. 45 DATE: March 27, 1979

Attached is a copy of a proposed amendment to House Bill No. 45.

The amendment would allow for the appointment of alternate members to the Legislative Budget & Audit Committee. Often during the interim, the Legislative Budget & Audit Committee has difficulty establishing a quorum. The appointment of alternate members would allow the committee the flexibility to establish a quorum on a regular basis.

I do strongly support the amendment. Jay Hogan of Legislative Finance will be in attendance at your meeting to testify on the amendment.

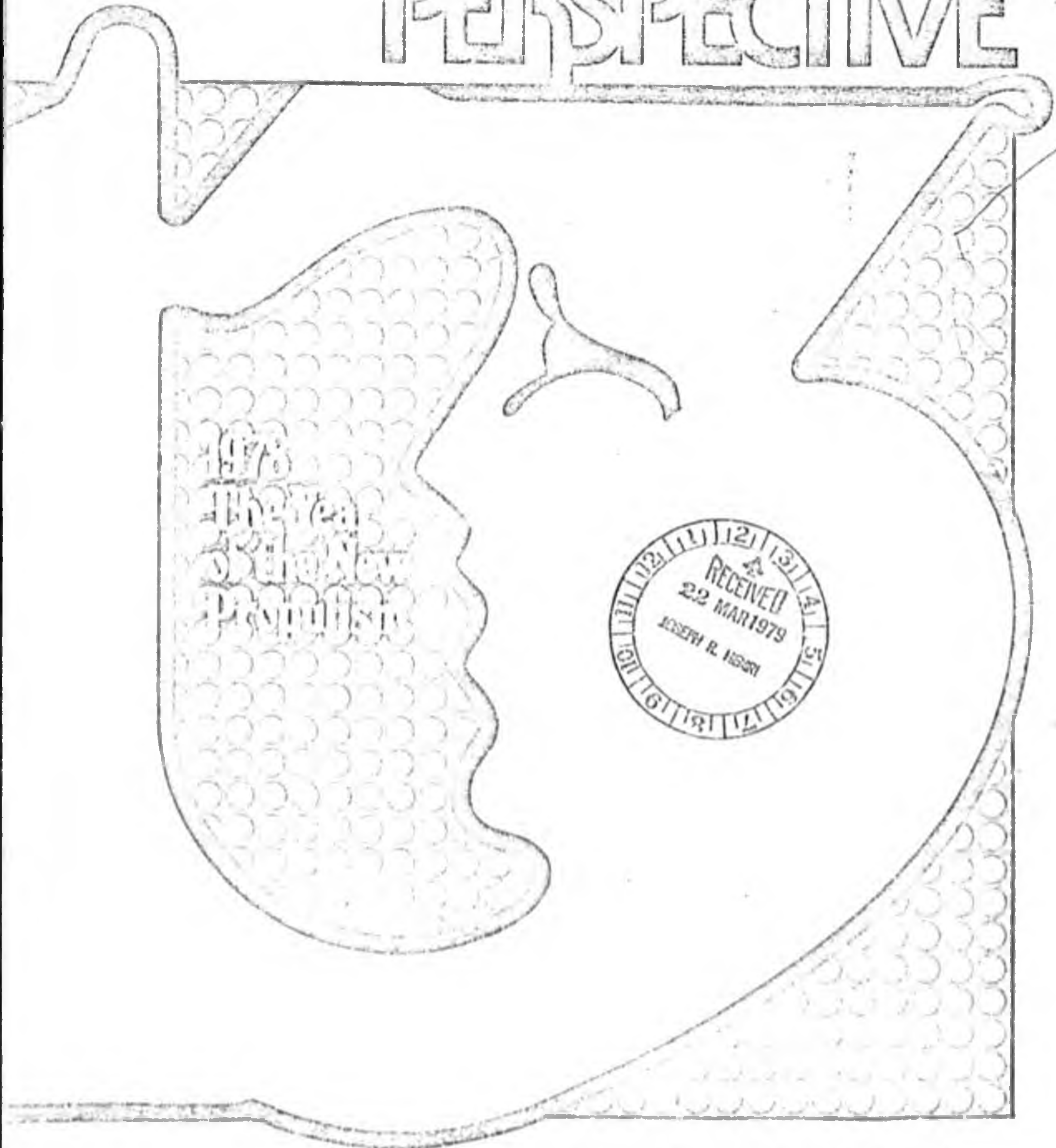
If I can provide further information, please feel free to contact me.

JD:jp

Winter 1979, Vol. 5, No. 1

For Jay Hogan

Intergovernmental PERSPECTIVE



RECEIVED
22 MAR 1979
JOSEPH R.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

state organization and procedure were generally not very significant in 1978.

While there was some activity in legislative review of agency applications for federal funds and in "sunset" legislation, in only one area was there an event of considerable impact to intergovernmental relations during 1978. In a landmark case, the Pennsylvania Supreme Court ruled in *Shapp v. Sloan* that the state legislature had the right to appropriate federal funds.

Legislative Oversight of Federal Funds

In a July decision, Pennsylvania's highest court upheld a lower court's ruling in *Shapp v. Sloan* that there was "no legal basis" for the assumption that federal funds are not subject to the General Assembly's appropriation power.

Shapp v. Sloan was initiated in 1976 with passage of legislation requiring federal funds to be deposited in the state's general fund and thus subject to appropriation by the legislature. A second bill specifically appropriated all federal funds coming into the state for that fiscal year. The court challenge arose when the state's treasurer refused to release federal funds for a special prosecutor's office because there was no legislative appropriation for that office.

The state supreme court, in upholding the validity of the two acts noted: "The framers (of the state constitution) gave to the General Assembly the exclusive power to pay money out of the state treasury without regard to the source of the funds. In contrast, nowhere in our constitution is the executive branch given any right or authority to appropriate public moneys for any purpose. . . The constitution says 'no money' shall be paid without an appropriation. We think the constitution means what it says."

The plaintiffs in the case had argued that legislative appropriation of federal funds violated the separation of powers doctrine and encroached on the duties of the executive. The court disagreed, saying, "it is the General Assembly, not the executive branch, which has been given the constitutional power to determine what programs will be adopted in our Commonwealth and how they will be financed. The executive's function is to carry out these programs authorized by legislation."

To the plaintiff's charge that the law violated the supremacy clause of the U.S. Constitution, the court responded that there was "no clear and direct conflict" between state and federal law.

The court considered at some length the nature of the federal grant. Plaintiffs argued that the legislative action violated a contract between the federal grantor agency and state grantee agency. The court, however, determined that "the federal funding system is, in essence, one of a voluntary cooperative effort between two governments to provide needed services for their citizens. The federal government supplies the funding while the state government plans and administers the programs. This cooperative venture is not based upon those rights and duties of an obligatory nature, enforceable in a court of law, which characterize a contractual relationship."

The case has been appealed to the U.S. Supreme Court. The court will decide in early 1979 if it will accept the case (now called *Shapp v. Casey*).

A related issue of concern in at least two states during 1978 was legislative authority to appropriate federal funds during periods when the legislature is not in session. While several states use an interim committee to accomplish this, the courts in other states have called such action an unconstitutional delegation of legislative authority.

In Alaska, a court case, *Kelley v. Hammond*, was partially decided by the superior court when it held that all federal receipts must be appropriated by the legislature. However, the court refused to allow the state's budget and audit committee to perform the appropriating function in concert with the Governor during the interim. A petition by the Governor for a review of the first part of the decision was denied. An agreement by the parties that the second part should be decided by the people in a constitutional amendment vote in November led to dismissal of the case. In November, the voters rejected the amendment which would have provided the interim authority of a legislative committee, working with the Governor, to deal with budget amendments when the legislature was out of session.

A November vote on interim legislative appropriations during the interim was also defeated in Montana. This proposal would have authorized a joint interim committee of the legislature to approve or reject budget amendments to spend funds not appropriated during the preceding session. Like Alaska, the Montana amendment was precipitated by a court decision (*Montana ex. rel. Judge v. Legislative Finance Committee*, 1975). Unlike the Alaska proposal, the Montana measure did not include a state gubernatorial role.

Several states attempted to come to grips with state agencies' applications for federal aid during 1978. Vermont instituted a requirement that approval for all federal grants must be obtained from a joint legislative fiscal committee. South Carolina enacted a requirement that state agencies must get prior approval for seeking federal funds, and delegated authority to a permanent joint appropriations review committee to approve or disapprove a grant request when the legislature is not in session. Louisiana passed a law providing for review of grants by the Governor, the budget committee, and legislative fiscal office.

A 1978 Illinois law requires all agencies under the governor to submit all applications for federal aid to the bureau of the budget for approval. A Missouri enactment requires all state agencies to supply the fiscal affairs and appropriations committee of both houses of the legislature, with monthly reports on expenditures of federal and state matching funds.

Legislative Oversight of the Executive Branch

Activity in legislative oversight was not limited to federal funds during 1978. Several states provided for legislative review of administrative rules and regulations prior to their promulgation. Idaho enacted provisions for legislative review of rules and regulations when the legislature is out of session. An Alaska measure, passed over the Governor's veto, empowers the Administrative Regulation Review Committee to suspend regulations adopted when the legislature is out of session.

Implementation of a 1978 South Carolina law requiring legislative approval of rules of practice and procedure issued by the state supreme court has been delayed until March 1979. The extension gives the legislature and the state supreme court time to come to an agreement on the controversial issue.

Iowa eased requirements for legislative oversight of administrative rules and established a legislative oversight bureau with subpoena power and access to all records. Wisconsin expanded the membership of a joint committee to review administrative rules. Kentucky created a legislative program review and investigations committee.

In Pennsylvania, the Governor must present budget information to the legislative leadership prior to formal submission, and the legislature there is now to be given periodic revenue estimates.

November 16, 1978

M E M O R A N D U M

TO: Chairman and Members
Budget & Audit Committee

FROM: J. H. Hogan, Director
Legislative Finance Division

The enclosed measure granting the Legislative Budget and Audit Committee and the Legislative Council power to sue in the name of the Legislature was passed during the 1978 session and vetoed by the Governor. I would suggest that the Committee officially request that the Legislative Council prefile for introduction a new bill incorporating the act as passed last year, and that the legislative leadership be requested to expedite passage of this measure early in the 1979 legislative session.

JHH:pw

Attachments

LAWS OF ALASKA

1978

Source | **Chapter No.**

HCSSB 432(Rules)

AN ACT

Relating to powers of the Legislative Budget and Audit Committee and of the Legislative Council; and providing for an effective date.

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

* Section 1. AS 24.20.201(a) is amended by adding a new paragraph to read:

(8) sue in the name of the legislature during the interim if authorized by majority vote of the full membership of the committee.

* Sec. 2. AS 24.20.060(4) is amended by adding a new subparagraph to read:

(G) sue in the name of the legislature during the interim if authorized by majority vote of the full membership of the council.

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

ACTION BY GOVERNOR

Vetoed ~~Approved~~ by the Governor July 3 1978

Governor of Alaska

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

July 3, 1978

The Honorable John Rader
President of the Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. President:

After due consideration, I have decided that I must veto HCSSB 432 (Rules) which would empower both the Legislative Council and Budget and Audit Committee to bring suit in the name of the legislature.

Legislation authorizing legislative agents to bring civil actions in the name of the legislature in support of its orders and subpoenas is constitutional, and their doing so would be quite proper were the executive to fail to do so at the legislature's request. It would also be proper to authorize legislative agents to appear as amici curiae in cases challenging the validity of legislative acts, particularly as, for instance, in cases such as A.L.I.V.E. Voluntary, where the executive is challenging their validity. No one could possibly question the legislature's empowering its interim committee to act on these matters.

But bringing civil actions to compel the executive to act in accordance with the constitution and laws of the state exceeds the power vested in the legislative branch. Buckley v. Valeo, 424 U.S. 1 (1976). Circumstances compel me to infer that the legislature intends this bill to serve that purpose, that is, as it has in Croft v. Thomas (enforce election laws); Kelley v. Hammond (enforce finance laws); Bradner v. Hammond (enforce personnel laws); Hammond v. Chance (enforce constitution); and SCR 112 (enforce land laws).

At the present time, the Legislative Council has apparent authority to file amicus briefs in suits brought by others in which the legislature's laws or acts are challenged and

the executive's position is not in support of the legislature's, for example, as in A.L.I.V.E. Voluntary. So that is no problem. There has never been so much as a hint that the executive would fail to support the legislature's issuance of a subpoena or order. So that is no problem either. Accordingly, there is no pressing need for any authorizing legislation such as this bill at this particular time. There is time in which to develop legislation on the subject which will include standards and guidelines to steer the interim committees away from the shoals of the separation-of-powers doctrine.

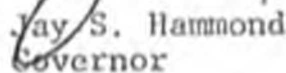
Given the recent -- and continuing -- examples of the litigiousness of the interim committees, this bill, which is absolutely devoid of any standards or guidelines for bringing suit, is an open invitation to usurp executive power. As the United States Supreme Court said in Buckley:

> The enforcement power, exemplified by [the] discretionary power to seek judicial relief, is authority that cannot possibly be regarded as merely in aid of the legislative function of Congress. A lawsuit is the ultimate remedy for a breach of the law and it is to the president, and not to the Congress, that the Constitution entrusts the responsibility to 'take care that the laws be faithfully executed.'

The Constitution of Alaska dictates the same result. Public Defender Agency v. Superior Court, 3rd Jud. Dist., 534 P.2d 947 (Alaska 1975).

Accordingly, I have vetoed HCSSB 432 (Rules).

Sincerely,



Jay S. Hammond
Governor

person's name in the blank space provided for that
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For or Against.)

dden and make the ballot void.

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JR BALLOT CARD.

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THE TOP AND HAND IT TO THE ELECT
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SIDE 2

I HAVE VOTED

THE SEAL OF THE STATE OF ALASKA

HAVE YOU?

GB 4B45

STATE OF ALASKA
General Election November 7, 1978

BALLOT PROPOSITION NO. 1

Advisory Vote on Legislative Session

Shall the Legislature adopt a resolution placing before the voters an amendment to the state constitution to provide for a maximum length for regular sessions of the legislature of 120 days which may be extended in 10-day increments by a resolution concurred in by a majority of the membership of each house? The vote on this proposition does not amend the constitution. It merely advises the legislature of the voters' preference.

A vote "FOR" advises the legislature to place the proposed amendment before the voters	FOR	+
A vote "AGAINST" advises the legislature not to place the proposed amendment before the voters	AGAINST	+

BALLOT PROPOSITION NO. 2

Constitutional Amendment
Powers of Legislative Interim Committees

This is a proposed constitutional amendment to Article II, section 11 (interim legislative committees) to allow the legislature, by law, to vest one of its interim committees with the authority to share with the Governor the authority to approve or disapprove revisions to the budget. The amendment would also permit the legislature to delegate to the committee its power to appropriate federal or other monies received from non-state sources.

A vote "FOR" adopts the amendment	FOR	+
A vote "AGAINST" rejects the amendment	AGAINST	+

For

.076
.183 x
68400 - Against

SIDE 1

TOP

OFFICIAL GENERAL ELECTION BALLOT

GENERAL ELECTION NOVEMBER 7,

THIS STUB TO BE REMOVED BY ELECTION BOARI

STATE OF ALASKA
General Election November 7, 1978

BALLOT PROPOSITION NO. 3

Initiative No. 6
Full Bondable Costs of Relocating Capital

This proposal would require that all costs of the capital [re]cation be determined. All costs include: moving perso[nnel] offices to the relocation site, planning, building, furni[sh]ing and financing a new capital having facilities equal to at the current capital and those required by the 1974 [capital] move initiative, and the social, economic and environment[al im]pact to the present and relocation sites. In addition, it [would] require that a bond issue including all bondable costs of [capi]tal relocation be approved by a majority of voters prior [to] expenditure of state money to relocate the capital.

A vote "FOR" approves the Initiative.	FOR
A vote "AGAINST" rejects the Initiative.	AGAINST

BALLOT PROPOSITION NO. 5

Initiative No. 11
Refundable Deposits on Certain Beverage Containers

This proposal would provide that all beer and carbonated b[ever]age containers sold in certain areas of Alaska after July 1, 1[...] have refund value of at least ten cents. Areas without ac[cess] to Anchorage, Fairbanks, Juneau and Ketchikan by road, [or] mainline state ferry service would not be affected. An unaf[fect]ed area could elect to participate by vote of its local gov[ern]ing body. Containers would have to be marked "Alaska Ref[und] - 10¢" or "Rural Alaska -- No Refund". Dealers could re[fuse] to accept unstamped, damaged, or unsanitary containers [...] tabs on metal beverage containers would be banned statew[ide].

A vote "FOR" [approves] the Initiative	FOR
A vote "AGAINST" rejects the Initiative	AGAINST

SACKETTS A.A

GARY PESCA - Legislative Finance- This bill has been introduced to give the legislature the power to sue the Governor. The LB&A Committee and the Legislative Council tried to sue Hammond for transferring money between appropriations (revising programs) during the interim without the approval of the Leg. B&A Committee. (Kelly vs. Hammond). The issue of the right to sue came up after the preliminary judgement. Governor said it was unconstitutional. Ramona Kelly was on the LB&A Committee at the time.* They tried to make it a personal suit but it didn't work. Hammond has pressed this point to a much further extent than other governors. But it is a problem that has been and will be faced with any governor. There will always be a difference of opinion between the Legislative and Executive branches as to their powers as equal but separate branches and how far beyond their powers each can step. LB&A was trying to get the 3rd branch (Judicial) involved as a referee. But without the power to sue the leg. branch has no power to ask for 3rd party involvement. When the leg. is in session the law is clear and the gov. has the pwer to transfer between appropriations by going thru the bedget process (supp. or special appropriations). During the interim he dces not have this vehicle and just does it on his own. At this point he cannot legally be stopped during an interim. So unless the leg. is physically here, the gov. can do anything he wants with bills and appropriations. Courts say the issue doesn't matter. The leg. does not have the authority to bring a suit against the Gov.

Rob C. for Hohman

This bill is to insure that legislative intent is implemented. When the governor circumvents the intent of legislation the only alternative is to sue him. Last election Prop. 2 (which would have given the leg. the power to sue) was voted down by the people.

Bill Barrier-Legislative Affairs, Legal Services

Although he feels that this is a separation of powers issue, Mr. Barrier does not believe that this bill is in violation of the separation of powers concept of American Democracy. In some instances the legislature must be allowed to sue the executive in order to defend their powers. If the legislature wants to give the Legislative Council the power to sue it should be made specific, by statute, if they do or do not have this power. Best example of this type of situation. A few years ago there was aballot proposition on exchange of lands. The legislature said that the ballot title was misleading and couldn't wait for the next session to do something about it as the election would be over by then. So the Legislative Council sued the executive through the Legislative Affairs Division of Legal Services. The court ruled that constitutionally the legislature cannot sue and that the Legislative Council does not have statutory authority to bring suit

Proposition # 2, A Constitutional Amendment

In last election the voters failed to pass Proposition #2 This proposed amendment would have given the legislature the ability to vest one of its interim committees the authority to approve or disapprove revisions to the budget. The amendment would also permit the legislature to delegate to the interim committee its power to appropriate federal or other monies received from non-state sources

Opinions OF HB 45. Bob Mulcahy

ROD PEGUES - DEPT. OF LAW

This bill is unconstitutional and violates the separation of powers. The legislative branch enacts laws, the executive branch executes the law and the judicial branch adjudicates. It is clearcut. This bill would in effect usurp, by the legislative branch, the powers of the executive branch. The governor's first obligation is to uphold the constitution. There are cases when the legislature could litigate when exercise of legislative powers is being thwarted (via amicus briefs) He feels that the legislature should have certain powers of sueing (see attached bill draft from Law) but cannot and should not have the power to sue the governor. Please see attached article which gives the Dept. of Law's basic position.

Bill Barrler Leg Affairs

Proposition 4

Gary Peska

Rob Hos

1
2
3
4
5
6 For an Act entitled:

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

8 * Section 1. AS 24.20.060 is amended by adding a new paragraph to read:

9 (8) to litigate in behalf of the legislature during the
10 interim between sessions, if authorized by a majority vote of the full
11 membership of the council, as follows:

12 (A) initiate civil action to enforce legislative sub-
13 poenas;

14 (B) intervene or appear as amicus curiae in any case
15 in which the power or responsibility of the legislature is placed
16 in issue;

17 (C) defend legislators, legislative officers or
18 employees, and legislative agencies in actions brought against
19 them in which the validity of their official acts or proceedings
20 are placed in issue.

Legal Services for Congress

Congress now depends on the executive branch's Justice Department for its legal services. Both branches would be better served if Congress had its own legal counsel.

By Dorothy Sellers

THE NEED OF Congress for legal services is beyond question. It is evident from both the volume and substance of present-day litigation involving members, officers, and committees of Congress. The Joint Committee on Congressional Operations in its final report for the Ninety-fourth Congress (December 31, 1976) identified more than forty pending cases "of vital interest to the Congress." The report lists ninety-eight senators and representatives who had assumed litigative as well as legislative responsibilities.

These cases frequently raise core governmental and constitutional issues. Three from the United States Court of Appeals for the District of Columbia Circuit illustrate the point:

1. In *United States v. American Telephone and Telegraph Company*, 551 F. 2d 384 (1976), a congressional subcommittee investigating the scope of warrantless wiretapping for alleged national security reasons subpoenaed from A.T.&T. all wire-tap request letters sent to it or its subsidiaries by the Federal Bureau of Investigation. Because the White House feared public disclosure of the subpoenaed documents, the United States, represented by the Department of Justice, sued A.T.&T. to enjoin compliance with the subpoena. Rep. John Moss, through private counsel, intervened for himself and on behalf of the committee and the House of Representatives. On appeal from a district court decision largely favorable to the plaintiff, the court, characterizing the action as "a portentous clash between the executive and legislative branches," remanded without decision in December of 1976 in the hope that the parties might settle the case. But those negotiations failed, and the court reheard the case in June of 1977.

2. In *Clark v. Valeo*, 559 F. 2d 642 (1977), Ramsey Clark, an unsuccessful candidate for the Democratic party's senatorial nomination in New York, challenged the constitutionality of the provisions of the Federal Election Campaign Act under which a single house of Congress may disapprove regulations promulgated by the Federal Election Commission. The secretary of the Senate and the clerk of the House of Representatives were named defendants. Each was represented by private counsel. Over their objection, the United States, represented by the Department of Justice, intervened on the side of plaintiff on behalf of the president and executive branch. Five constitutional questions were certified to the court of appeals *en banc* pursuant to the unique judicial review provisions of the act. In January of 1977 the court dismissed the case for lack of a ripe case or controversy within the meaning of Article III of the Constitution. The Supreme Court affirmed the judgment in *Clark v. Kimmett* in June (97 S.Ct. 2667).

3. *Dellums v. Powell*, 561 F. 2d 242 (1977), arose from the 1971 May Week demonstrations in the District of Columbia. On May 5 approximately twelve hundred people assembled on the steps of the Capitol to hear speeches by members of the House of Representa-

tives and to present them with a "peoples' peace treaty." The District of Columbia police and the Capitol police dissolved the assemblage by arresting the participants. A district court jury awarded Rep. Ronald Dellums, a scheduled speaker at the disrupted meeting, $7,500 for the invasion of his First Amendment rights. Representative Dellums had private counsel. The Capitol police chief, who was found jointly and severally liable for the award with the District of Columbia police chief, was represented by the Justice Department. The court of appeals affirmed the jury's findings of liability but remanded for a reduction of damages.

Congress Depends on the Justice Department

At present legal services for Congress are provided *ad hoc*, primarily by the Department of Justice and to a lesser extent by private counsel. During the period 1971–75 the Department of Justice defended members, officers, employees, or agencies of Congress in approximately sixty cases. The cases above illustrate the inexpedience of congressional reliance on the Department of Justice. In each the department not only failed to represent a recognizable congressional interest but appeared in opposition to it.

The department's representation of Congress is founded more in custom than statute. 2 U.S.C. §118 empowers the department to defend the officers of Congress against claims relating to their official duties. There is no comparable statutory authority for the department's representation of congressional members and committees. Former Attorney General Edward H. Levi characterized that representation as a matter of comity rather than as an absolute obligation.

The department may have discretion to represent Congress under 28 U.S.C. §§ 517 and 518, which authorize the attorney general to conduct litigation in which the "United States" has an interest, but the definition of "United States" has proved elusive. In *United States v. A.T.&T.* and *Clark v. Valeo* the department appeared as plaintiff or intervenor-plaintiff "United States" solely on behalf of the executive branch in opposition to the legislative. Yet, in defending the executive branch, Justice has argued with perfect inconsistency that an action which pits the legislative branch against the executive cannot present a case or controversy because the "United States" appears on both sides of the issue. (*Statts v. Lynn*, D.D.C. No. 75-0551, dismissed by stipulation November 26, 1975.)

The occasions on which the department does not represent or actively opposes congressional interests reflect the indisputable fact that its primary responsibilities and loyalties run to the executive branch. This raises a question as to the appropriateness of the present attorney-client relationship between the department and Congress under the doctrine of separation of powers. The effective operation of the doctrine requires, if not eternal vigilance, at least continuing suspicion on the part of each branch toward the others. The present system of providing legal services for Congress primarily through the executive branch cannot be reconciled with the doctrine of separation of powers: it leaves Congress perpetually unprepared for the increasingly frequent and inestimably important occasions when it must judicially protect its prerogatives from executive branch inroads.

The situation is equally uncommendable from the department's viewpoint. Its sometimes congressional client is assured a second-class status in relation to its principal client, the executive branch.

Congress Needs Its Own Counsel

The objective should be to assure the uninterrupted availability of legal services for Congress, regardless of the nature of the case. To expand the role of private counsel is to perpetuate a makeshift solution to an unremitting problem. In addition, private counsel are expensive and, when retained case by case, necessarily lack a comprehensive perspective of the problems and policies of congressional litigation.

Recent Congresses have considered proposals for establishing a source of representation within the Congress. The principal measures have been S. 2731, which would have established an Office of Congressional Legal Counsel and was passed in the Ninety-fourth Congress by the Senate but not acted on by the House, and, in the Ninety-fifth Congress, Title II ("Congressional Legal Counsel") of S. 555, the Public Officials Integrity Act of 1977, which passed the Senate on June 27 and is now under consideration in the House.

These proposals would establish within Congress a permanent Office of Congressional Legal Counsel. The legal counsel would be appointed jointly by the Speaker of the House and the president *pro tempore* of the Senate without regard to political affiliation and solely on the basis of fitness to perform the duties of office. The counsel, in turn, would appoint necessary assistants on the same merit basis.

A professional law office serving the entire Congress would have benefits beyond providing needed representation for litigation purposes. Ideally, litigation is the last step in the process of providing legal services. The earlier part of the process—giving advice and counsel—is aimed at avoiding litigation and formulating positions that are legally as well as politically sound. The sources of advisory and litigative services to Congress now are bifurcated: the advisory function is distributed among the various committee counsel (with a consequent unevenness of quality from committee to committee); the litigative function is jointly discharged by the Department of Justice and private counsel. The establishment of an Office of Congressional Legal Counsel would provide a unitary, nonpartisan source for advisory and litigative legal services. But the congressional legal counsel would not displace existing committee counsel. Rather he would be authorized to advise, consult, and co-operate with any

committee or subcommittee regarding the use of congressional investigative powers.

In litigation the proposals would empower the congressional legal counsel on direction from Congress (1) to initiate civil actions to enforce congressional subpoenas, (2) to defend congressional individuals or entities in pending actions in which the validity of their official acts or proceedings was placed in issue, and (3) to intervene or appear as *amicus curiae* in any case in which the powers and responsibilities of Congress are placed in issue. In addition, S. 555 authorizes the counsel to represent Congress in proceedings involving use immunity for persons who testify before Congress pursuant to 18 U.S.C. §§ 6002 and 6005.

The primary substantive difference between S. 555 and S. 2731 is that the former would not allow the congressional legal counsel to commence legal actions—other than those against nongovernmental parties to enforce congressional subpoenas—while the latter would authorize him to bring suit to "require an officer or employee of the executive branch of the government to act in accordance with the Constitution and laws of the United States."

Supreme Court Draws Distinction

In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Court held that the Federal Election Commission could not constitutionally exercise the enforcement powers conferred on it because of the exclusion of the president from participation in the appointment of a majority of its members. The Court drew a distinction between a power "essentially of an investigative and informative nature, falling in the same category as those powers which Congress might delegate to one of its own committees" and the power to seek judicial enforcement of a law of the United States. The former may be exercised by persons appointed without presidential participation; the latter may not.

The Court stated: "The commission's enforcement power, exemplified by its discretionary power to seek judicial relief, is authority that cannot possibly be regarded as merely in aid of the legislative function of Congress. A lawsuit is the ultimate remedy for a breach of the law and it is to the president, and not to the Congress, that the Constitution entrusts the responsibility to 'take Care that the Laws be faithfully executed.' "

This distinction affects the proposals for establishing a congressional legal counsel. Both S. 2731 and S. 555 would authorize the counsel to bring civil actions to enforce congressional subpoenas and orders. Congress now has two methods for handling contempt of Congress cases. It may refer them to the United States attorney for criminal prosecution as a misdemeanor pursuant to 2 U.S.C. §§ 192, 194, or it may bring the contemnor to trial before Congress, although this procedure has not been used since 1945.

The congressional contempt cases inevitably ar[illegible] from the use of the congressional investigative power. For this reason it appears that a congressionally appointed legal officer may constitutionally bring a civil action in support of that power, and this could be "regarded as merely in aid of the legislative functions of Congress."

The proposals would empower the congressional legal counsel to undertake the defense of congressional committees and personnel in cases in which the validity of their official actions was placed in issue. As this would be in a previously filed action, the counsel would not be involved in the discretionary decision to institute legal proceedings.

Because the counsel's responsibility would be limited to the defense of pending challenges to official congressional actions, it may be construed as supportive of the legislative function of Congress rather than as an invasion of the presidential power. This conclusion is fortified by the practicalities of the situation—exemplified by *Clark v. Valeo*—in which the Department of Justice declined to represent a congressional defendant. Surely Congress may appoint a replacement counsel in that situation.

Counsel Also May Be Friend of the Court

Both proposals would allow the congressional legal counsel to intervene or appear as *amicus curiae* in cases challenging the constitutionality of any law of the United States in which the United States is a party. Intervening and appearing as *amicus curiae* are totally different undertakings. An *amicus curiae* is not a party to the litigation and independently cannot request any form of relief. Thus an appearance *amicus curiae* could not infringe on the executive's power to seek judicial relief.

In contrast, an intervenor is a party to the action and able to request any appropriate relief and to be bound by the ultimate judgment. There is no way of predicting whether a constitutional challenge to an act of Congress will come from a plaintiff seeking declaratory relief or from a defendant charged with violating the act. The right to intervene in support of the constitutionality of a law of the United States may carry with it the discretionary power to appear as plaintiff seeking judicial relief.

The provisions by which the congressional legal counsel may be directed to intervene or appear as *amicus curiae* are clear attempts to protect Congress against the exceedingly rare situation when the executive branch chooses not to defend all or part of the constitutionality of a statute. This situation in fact occurred in *Buckley v. Valeo*. The Department of Justice filed two briefs in the Supreme Court, one on behalf of the defendant attorney general and a second *amicus* brief that argued against the constitutionality of the grant of enforcement powers to the Federal Election Commission. The congressional interest in that case could have been protected without infringing on

executive responsibilities if counsel had appeared as *amicus curiae* rather than as an intervenor.

But provisions like that in S. 2731 that would authorize the congressional legal counsel to institute actions against the executive branch to compel it to act in accordance with the Constitution and laws of the United States would appear to be unsalvageable in light of *Buckley v. Valeo.*

Challenges by Individual Members of Congress

Buckley v. Valeo does not foreclose the possibility that an individual member of Congress may bring suit against the executive branch. Members of Congress, although officers of the United States, are outside the scope of the appointments clause because the Constitution expressly provides the method for their selection. The Supreme Court has never addressed the question of the standing of individual members of the legislative branch to seek judicial relief from actions taken by members of the executive branch. Circuit court decisions, however, hold the member-plaintiff to the standing requirements applicable to all other plaintiffs—the member must demonstrate a specific nonspeculative personal injury in fact. *Harrington v. Bush*, 553 F. 2d 190 (D.C. Cir. 1977); *Harrington v. Schlesinger*, 528 F. 2d 455 (4th Cir. 1975); *Holtzman v. Schlesinger*, 484 F. 2d 1307 (2d Cir. 1974).

The narrow area in which members of Congress do have standing to challenge executive branch action is illustrated by two cases, again from the District of Columbia Circuit. In *Kennedy v. Sampson*, 511 F. 2d 430 (1974), Sen. Edward Kennedy sought a declaratory judgment that the Family Practice of Medicine Act was validly enacted despite a purported pocket veto. The court found the requisite injury—and therefore standing to sue—in the nullification of Kennedy's specific vote and of the congressional power to override a veto.

In *Pressler v. Simon*, 428 F.Supp. 302 (D.D.C. 1976), the three-judge court, although finding for the defendants on the merits, upheld the standing of the plaintiff, Rep. Larry Pressler, to challenge the Postal Revenue and Salary Act of 1967 and the Executive Salary Cost-of-Living Adjustment Act of 1975 as violative of Article I, Section 6, of the Constitution. Citing *Kennedy v. Sampson*, the Court stated, "a Congressman has standing to sue by reason of his office where executive action has impaired the efficacy of his vote. . . ."

Litigation Must Be Directed by Congress

The proposals for establishing an Office of Congressional Legal Counsel would not allow litigation other than as directed or consented to by Congress. Because the individual members of Congress are beyond the pale of the appointments clause, the question is why cannot the actual lawyering on behalf of Congress be delegated without violating the appointments clause. The answer is twofold.

First, as noted earlier, Congress cannot appoint any one to perform duties other than in aid of those functions Congress may itself carry out. A nonlegislative function—for example, enforcement of the laws—cannot properly be delegated because it is not a proper congressional function. Second, even if an individual member of Congress demonstrates standing to sue on his own behalf, that showing is not automatically transferable to Congress as an institution. And a practical problem with assigning a congressionally appointed legal officer to represent an individual member of Congress is that the decision on standing is frequently—as in *Kennedy v. Sampson*— inseparable from the decision on the merits and, therefore, simply comes too late for assignment to a congressionally appointed legal officer.

At present the legislative branch is dependent on the executive branch for legal services. The arrangement is inexpedient for both, particularly Congress. It has no reliable source of representation for judicial confrontations with the executive branch. Proposals for establishing an Office of Congressional Legal Counsel are likely to recur as the quantity and importance of litigation involving congressional interests continue to increase.

While it is probable that a statute conferring on a congressionally appointed legal officer the authority to sue an executive branch member for alleged errors of omission or commission in enforcing the laws would be struck down under the appointments clause, there is nevertheless a large area in which the litigative responsibilities of a congressional counsel could be regarded as incidental to the legislative function and outside the appointments clause.

An additional benefit to Congress would be that of merging the advisory and litigative sides of the legal services available to it and of providing a central source for analyzing court and administrative rulings and recommending legislative responses.

While a proposal for establishing a legal office in Congress, where more than half the members are lawyers, may have the superficial appearance of carrying coals to Newcastle, in reality it could provide necessary and now unavailable legal services to Congress. ▲

Dorothy Sellers practices as a partner in a Washington, D.C., law firm. She holds a B.A. from Stanford University, attended Stanford Law School, and earned her J.D. at George Washington University in 1969.

UNIV. is exempt

HB207

CH A.G.

February 22, 1974

Richard W. Freer
Deputy Commissioner
Department of Administration
Pouch C
Juneau, Alaska 99801

Dear Mr. Freer:

You have asked if the state is governed by the proposed regulations developed by the Department of Labor on the provisions of AS 23.10.375-400, Transportation of Employees. It is a uniform and well established rule that in statutory construction, the government, as sovereign, is not bound by the restrictive terms of statutes unless expressly mentioned. Alaska Rural Rehabilitation Corp v. Ubert, 10 Alaska Reports 508, 517 (1945) and cases cited therein.

Examples of Alaska Statutes in which the state is included are AS 23.30.265(12) which relates to workman's compensation, and AS 18.60.030(6) which relates to occupational safety and health standards.

Therefore, it is the opinion of the department that the state is not governed by the proposed regulations developed by the Department of Labor on the provisions of AS 23.10.375-400, Transportation of Employees.

Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By
James E. Douglas
Assistant Attorney General

JED:jcc

UNIV. is exempt

HB 207

C.H. A.G.

February 22, 1974

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Deputy Commissioner
Department of Administration
Pouch C
Juneau, Alaska 99801

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Sincerely,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By
James H. [illegible]
Assistant Attorney General

[illegible]

STATE OF ALASKA

DEPARTMENT OF LABOR

NEWS RELEASE

FOR IMMEDIATE RELEASE

JAY S. HAMMOND, GOVERNOR

EDMUND N. ORBECK, COMMISSIONER

L. D. CHAPLIN, INFORMATION OFFICER

P. O. BOX 1149
JUNEAU, 99811
907–465–2700

OUT.

HB 45 | An act relating to powers of the Alaska Legislative Council and the Legislative Budget and Audit Committee; and providing for an effective date. | By Rules by request of tl Leg. Council For LB&A Com

SUMMARY

This bill amends statutes concerning powers of the Legislative Budget and Audit Committee by adding a new paragraph enabling them to sue in the name of the legislature during the interim between sessions if authorized by a majority vote of the full membership of the committee. HB 45 also amends statutes concerning the powers of the Legislative Council enabling them to do the same by a majority vote of the full membership of the council.

SUPPORTING INFORMATION

Check with Judiciary

FISCAL NOTE: Check with Judiciary

RELATED LEGISLATION: None

INTERESTED PARTIES: Legislative Budget & Audit
Legislative Council

648 Court Bldg.

Alaska State Legislature

45

JUNEAU ALASKA

M E M O R A N D U M

TO: Senator Bob Mulcahy, Chairman
Senate State Affairs Committee

FROM. J. W. Hogan, Director
Legislative Finance Division

SUBJECT: HB 45 - Arguments in Favor

At your request I have prepared the following arguments in support of HB 45. HB 45 grants the Legislative Council and the Legislative Budget & Audit Committee statutory authority to bring suit in the name of the Legislature during the interim. As the bill came to your committee, it was the same bill approved by the Legislature last year and vetoed by the Governor (SB 432 - since SB 432 was enacted by the last legislature this legislature could not override the veto this January, and a new bill had to be introduced, i.e., HB 45).

In the veto message for SB 432 the Governor stressed that the Legislature could always file an amicus brief in suits brought by others. The problem with this of course is that if "others" don't file suit against some executive action/inaction, then the Legislature has no case in which to file an amicus brief. Using the Budget & Audit Committee's Kelley v. Hammond case as an example, the 1976 legislature enacted Ch. 26, SLA 1976 which prohibited transfers between appropriations. Then in the General Appropriations Act (Ch. 279, SLA 1976) the Legislature modified the prohibition to allow transfers when approved by the Governor and the Legislative Budget & Audit Committee. The Attorney General advised the Governor to proceed with transfers but not to submit them to the Budget & Audit Committee for their approval. A list of transfers so approved is contained in LR 67, SLA 1977, attached.

Putting yourself in the place of the then Budget & Audit Chairman, the time is August 1976, the beginning of the 1977 fiscal year, and the Governor is transferring between appropriations against the expressed will of the Legislature. The Budget & Audit Committee votes to bring suit to stop the transfers, but has to search for four months to find a "private citizen" to file the suit. By the time the suit is

filed in January, the fiscal year is one-half over, and $2,637,385 has been transferred outside the approval mechanism set up by the Legislature. In brief, the real argument in favor of this bill is as follows:

> If the Legislature creates interim committees, as the Constitution allows, to look after its interests during the interim, then it must grant those committees the power to act--in this case bring suit--against the executive branch when the expressed interests of the Legislature are ignored. Otherwise, the interim committees can only anguish, publicly and/or privately,

The amendment added by your committee would authorize the presiding officer of each house to appoint one alternate member to the Budget & Audit Committee. The sole purpose of this amendment is to make it easier to obtain the necessary six-member quorum to accomplish Budget & Audit Committee interim business (normally a full day's agenda at least once a month). The extreme travel distances and divergent interests of our legislators has made it very difficult to obtain a comfortable quorum throughout the history of the Budget & Audit Committee's existence (established 1971).

JHH:pw
Attachment

cc: Jim Duncan, Chairman
Budget & Audit Committee

SCHEDULE OF G.O. BOND SALE - APRIL 1979

CHAPTER	SLA	PURPOSE	AUTHORIZED BUT UNISSUED	ORIGINAL APRIL OFFERING	REVISED APRIL OFFERING	REMAINING AUTHORIZATION UNISSUED
194	1972	Airports	$ 1,000,000	$------	$------	$ 1,000,000
201	1972	Flood Control Facilities & Sm. Boat Harbors	1,000,000	------	------	1,000,000
202	1972	Water Supply and Sewerage Systems	6,900,000	------	------	6,900,000
86	1974	Port Facilities Development	4,500,000	------	------	4,500,000
116	1974	Library Facilities	2,900,000	------	------	2,900,000
118	1974	Trunk and Secondary Airports	2,100,000	------	------	2,100,000
132	1974	Health Care Facilities	2,000,000	------	------	2,000,000
124	1976	Regional Fire Fighter Training Center	3,800,000	500,000	------	3,800,000
131	1976	School Construction	11,840,000	------	500,000	11,340,000
214	1976	Fish Management & Development Facilities	13,805,000	3,000,000	3,000,000	10,805,000
239	1976	Senior Citizen Housing Development	1,400,000	------	------	1,400,000
247	1976	Highways, Ferries & Local Svc. Roads	12,785,000	------	------	12,785,000
248	1976	Airports	2,396,000	500,000	500,000	1,896,000
271	1976	Water Supply & Sewerage Systems	24,000,000	1,000,000	1,400,000	22,600,000
95	1978	Flood Control, Port Facilities & Sm. Boat Landing	33,290,000	1,600,000	2,600,000	30,690,000
96	1978	Parks and Recreational Facilities	5,850,000	700,000	1,500,000	4,350,000
122	1978	Health Facilities, Sr. Citizen Ctrs/Pioneers Homes	25,000,000	1,500,000	4,500,000	20,500,000
137	1978	Voc. Educational Facilities & U of A	33,656,000	9,400,000	10,900,000	22,756,000
138	1978	Highway, Ferry, Airport & Local Svc. Roads	88,450,000	20,000,000	29,000,000	59,450,000
139	1978	Correctional & Public Safety Facilities	30,504,000	------	------	30,504,000
140	1978	Fisheries Mgmt. & Development Facilities	26,965,000	4,100,000	4,100,000	22,865,000
145	1978	Water Supply and Sewerage Systems	27,640,000	1,200,000	2,000,000	25,640,000
			$361,781,000	$43,500,000	$60,000,000	$301,781,000

November 16, 1978

M E M O R A N D U M

TO: Chairman and Members
Budget & Audit Committee

FROM: J. H. Hogan, Director
Legislative Finance Division

The enclosed measure granting the Legislative Budget and Audit Committee and the Legislative Council power to sue in the name of the Legislature was passed during the 1978 session and vetoed by the Governor. I would suggest that the Committee officially request that the Legislative Council prefile for introduction a new bill incorporating the act as passed last year, and that the legislative leadership be requested to expedite passage of this measure early in the 1979 legislative session.

JHH:pw

Attachments

OPINIONS OF HB 45 Bob Mulcahy

ROD PEGUES - DEPARTMENT OF LAW

This bill is unconstitutional and violates the separation of powers. The legislative branch enacts laws, the executive branch executes the law and the judicial branch adjudicates. It is clearcut. This bill would in effect usurp, by the legislative branch, the powers of the executive branch. The governor's first obligation is to uphold the constitution. There are cases when the legislature could litigate when exercise of legislative powers is being thwarted (via amicus briefs). He feels that the legislature should have certain powers of sueing (see attached bill draft from law) but cannot and should not have the power to sue the governor. Please see attached article which gives the Dept. of Law's basic position.

BILL BARRIER - LEGISLATIVE AFFAIRS, LEGAL SERVICES

Although he feels that this is a separation of powers issue, Mr. Barrier does not believe that this bill is in violation of the separation of powers concept of American Democracy. In some instances the legislature must be allowed to sue the executive in order to defend their powers. If the legislature wants to give the Legislative Council the power to sue it should be made specific, by statute, if they do or do not have this power. Best example of this type of situation. A few years ago there was a ballot proposition on exchange of lands. The legislature said that the ballot title was misleading and couldn't wait for the next session to do something about it as the election would be over by then. So the Legislative Council sued the executive through the Legislative Affairs Division of Legal Services. The court ruled that constitutionally the legislature cannot sue and that the Legislative Council does not have statutory authority to bring suit.

PROPOSITION #2, A CONSTITUTIONAL AMENDMENT

In last election to voters failed to pass proposition #2. This proposed amendment would have given the legislature the ability to vest one of its interim committees the authority to approve or disapprove revisions to the budget. The amendment would also permit the legislature to delegate to the interim committee its power to appropriate federal or other monies received from non-state sources.

GARY PESCA SACKETT'S A.A.

Legislative Finance- This bill has been introduced to give the legislature the power to sue the Governor. The LB&A Committee and the Legislative Council tried to sue Hammond for transferring money between appropriations (revising programs) during the interim without the approval of the LB&A Committee. (Kelly vs. Hammond). The issue of the right to sue came up after the preliminary judgement. Governor said it was unconstitutional. Ramona Kelly was on the LB&A Committee at the time.* They tried to make it a personal suit but it didn't work. Hammond has pressed this point to a mucn further extent than other governors. But it is a problem that has been and will be faced with any governor. There will always be a difference of opinion between the Legislative and Executive branches as to their powers as equal but separate branches and how far beyond their powers each can step. LB&A was trying to get the 3rd branch (Judicial) involved as a referee. Buth without the power to sue the legislative branch has no power to ask for 3rd party involvement. When the legislature is in session the law is clear and the governor has the power to transfer between appropriations by going thru the budget process (supp. or special appropriations). During the interim he does not have this vehicle and just does it on his own. At this point he cannot legally be stopped during the

interim. So unless the legislature is physically here, the governor can do anything he wants with bills and appropriations Courts say the issue doesn't matter. The legislature does not have the authority to bring a suit against the Governor so even though she was a private party (who can sue) it was considered a suit by LB&A.

ROB C FOR HOHMAN

This bill is to insure that legislative intent is implemented. When the governor circumvents the intent of legislation the only alternative is to sue him. Last election Prop. 2 (shich would have given the legislature the power to sue) was voted down by the people.

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION
POUCH WF–STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3795

March 19, 1979

M E M O R A N D U M

TO: Senator John Sackett, Chairman
Senate Finance Committee

FROM: J. H. Hogan, Director
Legislative Finance Division

SUBJECT: HB 45

HB 45 (current copy of Bill History attached) would grant the Legislative Council and the Legislative Budget and Audit Committee statutory authority to sue on behalf of the Legislature. The bill, as it currently stands, is the same bill that was vetoed by the Governor last year. Should it pass this year, I would assume it would suffer the same fate, thus an override of the Governor's veto appears to be necessary to put this law on the books.

If it is the intention of the legislative leadership to pass this measure and to have it effective this interim, I would suggest that the bill be moved quickly to a vote in the Senate in anticipation of a veto and subsequent need for a vote to override.

JHH:pw

Attachment

STATE AFFAIRS COMMITTEE

March 28, 1979

The meeting was brought to order by the Chairman, Bob Mulcahy.

Rick Lauber of the Pacific Seafood Processors testified first on HB 207. He said the bill does what "we" think the original act would do.

"We have no objection to the bill whatsoever, it seems it does only what it should do anyway."

Ziegler asked if anyone had received the letter from the University. He pointed out that the question had been raised that the university does not want to pay for return trips.

Lauber said that processors had had similar situtations where someone did not want to complete their contracts but that was covered by the department of labor. He said the only exceptions would be if the contract was really unreasonable.

Kelly said the president wants to bexcluded from the bill.

As there were questions and Sen. Ziegler's office was looking for a copy of the letter to share with the committee the chairman addressed the next bill on the agenda.

Jay Hogan, Director of Legislative Finance testified on behalf of HB 45.

Hogan passed out a document compiled by Budget & Audit. The first page contained the act passed in 1977. The second page contained the Governor's vetoe message. The bill was vetoed then overruled by a unanimous vote of the legislature and put on the books.

The Attorney General's office advised that governor that the act was unconstitutional and the Governor failed to comply with the act.

In January the Governor ceased making transfers but at that time the value of the transfers was about $2.5 million.

The up shoot is that Budget & Audit found themselves wishing to have no transfers or to have them in accordance to the law passed by the legislature. The legislature went to court knowing they had no power to sue. Without the power to sue the legislature has no power at all during the interim. If the legislature came in after Budget and Audit had filed a suit and said go ahead made Budget & Audit feel that the legal problems on power had been solved.

The committee realized the governor was ignoring the law in August and tried to get a private suit or former legislator but without success. Finally Ramona Kelly sued as a private citizen.

Kelly wanted to know how the legislature goes about suing - if it must be done during the session.

Hogan said there are limited rights. He said the legislature was trying to enforce the law and Budget & Audit was trying to get the law adhered to. It appears that a legislative resolve is necessary to continue the suit. The only other vehicle the legislature would have would be to anticipate problems ahead of time and instruct Budget & Audit what to do before they adjourn and that would be nearly impossible to do.

Rodger Pegues from the Attorney General's office testified next. He said that the AG's office opposes the legislation but does not oppose legislation on the subject. Congress resorts to resolution of the house or both houses and gets counsol to present their feelings. The U.S. Attorney General ruled it unconstitutional to bring actions to court. The United States Supreme Court ruled 9-0 that it was unconstitutional.

Surely the legislature could have representation when there is no legal interest at stake. Having house counsol with standing authority would bring in another body of expertise. I don't see a reason for both bodies to have counsol since most issues would be based on constitutional law. He said the bill brobably violates the constitution since ours is not that different from the United States Constitution. He also said that the law that the Governor is not complying with is not the transfer law. He described contests where this had been tested.

He said this program would allow any suit. "I think it is a bad idea - I would rather get issues resolved before committees like this. There is more sophistication than in the Supreme Court. I think the bill is an invitation to trouble."

Billy Berrier, Director of Legal Services testified next.

He again passed out copies of the Governor's vetoe.

He said that it is true that many of the questions that would be involved in this bill such as questions of ballot propositions, questions on a mandate to spend, etc. are resolved in other ways.

The ballot proposition for the constitutional amendment was worded such that the legislature felt it would change the outcome of the election. After the legislature adjourned they didn't want a special session to so the Legislative Council brought a suit. THe judge did not decide the constitutionality question. In Pennsylvania the legislature does have the power. The Attorney General has asked for the decision to be dismissed but there hasn't been a decision yet. Berrier said he hadn't attended the Budget and Audit meeting but both bodies felt it was an important piece of legislation.

Rodey said it was a complex legal problem. The question is when the Governor refuses to comply with the law who will carry it out - the legislature or the public.. Because of the checks and balances set up within our government he feels the legislature should. To require a private citizen seems undesirable.The Legislature being able to sue carries out the intent of the constitution.

Most cases wuld deal with constitutional issues and the court is the proper place to deal with constitutional issues.

Berrier said the type of questions that come up are constitutional, not dealing with something easy that can be solved politically.

Ziegler said he has great reservations but is inclined to vote "do pass".

Kelly wanted to know if the legislature could sue during session.

Berrier said if a resolution is passed.

There was discussion on the reapportionment case.

Ziegler received the letter from the University and said the statutes state that the University is exempt so that should solve his question.

Hogan requested an alternative membership to call on to make up a quorum during the interim for meetings and explained past prob= lems.

Ziegler said it was a worthwhile amendment.

Bradley made a motion it be accepted

Rodey made a motion the bill be moved out of commitee.

Representative Randolph testified on HJR 12. He said it was a very simple resolution making a request on Congress. He said it would be hard to pass in Washington but he felt it was worthwhile for the people of Alaska to ask. He said it would have no affect on the state income tax.

Mulcahy asked for a motion to move the bill out of committee. Bradley made the motion.

Mulcahy asked if SB 207 was resolved to everyones satisfaction.

Kelly made a motion to move the bill with individual recommendations.

Mulcahy said as a matter of housekeeping he would ask for acceptance of the substitute for HB 147.

Kelly made a motion to accept the substitute.

Vern Roberts from the Dept. of Motor Vehicles was present to answer questions.

Ziegler asked if the $20.00 fee was reasonable.

Roberts said the fee was best to be left in the hands of the legislature.

Rodey said the cost of plates today is $60.00 - he wasn't ad- vocating an increase but said down the road the cost could create a problem.

Rodey sais he didn't know if we should try to make money with the plates since there was other sources of state revenue.

Roberts said it didn't matter to him that it doesn't cost anymore to try to collect $50 or $150. He said the cost for plates hadn't risen for a number of years.

Mulcahy said an increase would touch most families these days two or three times.

Rodey said OPEC touches them a lot more.

MOre discussion arose concerning legislative license plates.

The chairman asked for a motion to move the bill.

Rodey moved that it be passed out for individual recommendation.

HOUSE JUDICIARY COMMITTEE MINUTES
February 8, 1979

Chairman PARR called the meeting to order at 3:09 and asked the Committee's indulgence in entertaining business on HJR 17, regarding ice fog research. He explained that, as this legislation is not likely to promote any controversy, it would be nice to get it out of Committee.

ANDERSON
Representative ~~BARNES~~ moved to consider HJR 17, there was no OBJECTION and so the motion passed unanimously.

Representative BARNES moved that the commitee report out HJR 17 and there being NO OBJECTION, the motion passed unanimously, and the Committee reported out HJR 17.

Chairman PARR then opened the meeting to testimony on HB 45, the bill of calendar, regarding the powers of the Legislative Council.

BILLY BERRIER, the Director of Legal Services, Legislative Affairs Agency, appeared to testify. He stated that this legislation passed both legislative houses last year and was vetoed by the Governor. He believes that this bill is <u>not</u> in violation of the separation of powers concept of American Democracy, and in some instances the Legislature must be allowed to sue the Executive in order to defend their powers.

ROD PEGUESE testified on behalf of the department of Law. The opinion expressed by Peguese is that this legislation is unconctitutional and violates the separation of powers. He feels that the legislature is ursurping the Executive Powers, but cannot answer how the legislature can compel the Executive the enforce their laws.

BILLY BERRIER appeared briefly again before the committee, explaining briefly that this legislation does not violate any separation of powers concenpts and that it only insures that the Legislature will, under this law, have the power to protect their authority.

Representative NELS ANDERSON moved that the Committee report out HB 45, there being NO OBJECTION, the motion passed unanimously and HB 45 was reported out of committee.

Chairman Parr adjourned the meeting at 4:30 p.m.

(9)

COMMITTEE REPORT

HOUSE

FURTHER:

1-24-79

Date: ____________

Mr. Speaker:

The Committee on ____JUDICIARY____ has had ____HB 45____

"An Act relating to powers of the Alaska Legislative Council and the Legislative Budget and Audit Committee; eff. date."

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(s)

[ ] replace with CS for ____________ [ ] 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

MEMBERS HAVING OTHER RECOMMENDATIONS:

CHAIRMAN

Gary Pesca-Legislative Finance

This bill has been introduced to give the legislature the power to sue the Governor. The only time the Leg. Council & Leg. B&A Committee have tried to sue was when Hammond was transferring money between apporpriations without authority. during ~~the~~ interims. LBA & L.C. both tried to sued.

KELLY VS. HAMMOND - RAMONA KELLY sued in name as private citizen

Courts say the issue doesn't matter. Leg. does not have authority to bring a suit against Gov. This bill would give them the power.

Hammond has pressed this to a much greater point than other governors. But it is a problem that has been & would be faced w/any Gov. There will always be a difference of opinion between the Leg & Ex branches as to their powers (as = branches) and how far beyond each can step. LBA was trying to get the 3rd branch (judicial) involved as a referee. But w/o power to sue, leg. branch has no power to get 3rd party involvement

When the leg. is in session the law is clear & the gov. has power to transfer between app. by going thru the budget process = supp or special appropriations. During the interim he does not have this vehicle and just does it on his own. At this point he cannot legally be stopped during an interim. So unless leg. is physically here, the Gov. can do anything he wants. Until bills & appropriations

Sackett & other members of the IBA com & L.C.
feel very strongly about this issue & consider
it priority

Atty. gen. against it

ROD PIGUES - DEPT. OF LAW

Leg. is unconstitutional & violates the separation of powers:

Executive branch - executes law
Legislative branch - enacts law
Judicial branch - adjudicates

The governor's first obligation is to the constitution.

No objection to amicus briefs

The bill would in effect usurp by the leg. branch, the powers of the executive branch

Many times legislation enacted doesn't comply w/ law.

There are cases where legislature could litigate where exercise of legislative powers are [illegible] [illegible] - amicus briefs - but they should have their own counsel. Statute should specify that [illegible] amicus should be handled by Leg Aff from the legislature.

Rod Pegues - Dept. of Law

Leg. acting as a member
because of sep of power leg does not enforce law

Sep of Powers
Jud - adjudicate
Ex - execute
Leg - enact

[illegible] on strict grounds
[illegible] Ballot [illegible]

[illegible] vs [illegible]

[illegible]

[illegible]

Amicus [illegible]

[illegible]

[illegible]

[illegible]

Allison   Gary Peska   3753 3756

Find out who the committee would most likely sue + for what reasons? I suspect it may be because of #3's in current powers. Also, try some from Attorney General's office to get some input from them

[illegible]

[illegible]

[illegible]

PATRICK RODEY
SPENARD

601 W. 5TH AVE. SUITE 820
ANCHORAGE, ALASKA 99501

DURING SESSION

POUCH V
JUNEAU, ALASKA 99811

Alaska State Senate

JUNEAU, ALASKA 99811

March 19, 1979

MEMORANDUM

TO : Senator Bob Mulcahy, Chairman, Senate State Affairs

FROM: Senator Patrick Rodey *Pat*

RE : Proposed Amendment to House Bill 45, "An act relating to powers of Legislative Council"

I would like to propose an amendment to House Bill 45 when it is considered in Senate State Affairs. The amendment would establish a student legislative internship program. Enclosed is a summary of the proposed amendment's effects. I hope you will be able to support it. Please let me know if you have any questions. Thanks.

Attachment

SUMMARY OF AMENDMENT TO ESTABLISH STUDENT LEGISLATIVE INTERNSHIP PROGRAM

This amendment to AS 24 would establish a legislative internship program designed to serve students who have at least reached their junior year in an accredited postsecondary institution.

As interns, students would earn both salary and credit, a concept which already has precedence in programs presently operating at the University of Alaska such as Cooperative Education and the University Year in Action (UYA). As the program is envisioned at this time, the credits (three for the internship and three for an independent study course taken at the same time) would be provided through and under the auspices of the University of Alaska, Juneau. The salary, which would be at least minimum wage, would come from the Legislative Council.

Interns would be assigned to standing committees of the legislature, and their period of service would last throughout the session. In addition to meeting the above mentioned criteria, interns would be chosen on the basis of experience and interest in subjects which are likely to be addressed during any particular session.

This legislation would not require a set number of interns per year, nor would it restrict the number of interns who could participate in any given year. Interns would be chosen by the Legislative Council in cooperation with representatives from the cooperating postsecondary institution.