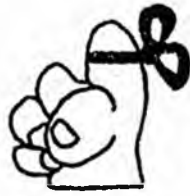


Alaska House of Representatives

MEMO



Phone: 465-3725
Room: 214 Capitol

From the desk of CHIEF CLERK

TO: FINANCE DATE: 2/8

Pick up

Please return HB 478 to the Chief Clerk's Office as it has been withdrawn by sponsor.

Thank you.

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STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

465-3600

March 31, 1981

Honorable Don Bennett
Honorable Ed Dankworth
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: Lower Kuskokwim REAA claim
Our file: J-77-149-81

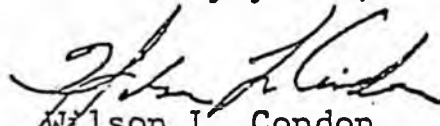
Dear Senators Bennett and Dankworth:

This responds to your request for advice on this matter.

First, there is an arguable basis for ultimate liability on the part of the state for contractor claims arising from school construction projects by a rural educational attendance area. It is our position that the state is, at most, morally obligated to make good on the claim. But a contractor could argue that school construction is a state responsibility and that, assuming the claim to be valid, the state must pay.

Second, notwithstanding the above, legislation for a contingent appropriation for the Lower Kuskokwim claim is not called for at this time. Should the parties get well along in the arbitration process and should a substantial likelihood of a large award emerge, then a contingent appropriation would be appropriate. Until that occurs, and it may well never occur, the legislature's acting on this matter might well constitute an unnecessary intrusion into the dispute resolution process.

Sincerely yours,


Wilson L. Condon
Attorney General

WLC/pjg

cc: Edward A. Merdes, Esq.
Stephen L. Nourse, Esq.
Saul R. Friedman, Esq.

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6 For an Act entitled: "An Act making a special contingency appropriation to
7 the Department of Transportation and Public Facilities
8 for the Lower Kuskokwim REAA; and providing for an ef-
9 fective date."

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

1 * Section 1. An amount not to exceed the total of the claim stated in
2 the Claim for Additional and Change Work on the Bethel area schools pre-
3 sented by Modern Construction, Inc. (Modern) and dated December 3, 1980, is
4 appropriated to the Department of Transportation and Public Facilities to
5 pay the amount of any arbitration award or settlement made on that claim
6 pursuant to the settlement agreement between Modern and the Lower Kuskokwim
7 REAA (REAA) dated July 16, 1980. Any settlement agreement must be approved
8 by the Attorney General. If the Attorney General neither approves nor disap-
9 proves a settlement agreement within 60 days after it is entered into by
0 Modern and the REAA; then it will be deemed to be approved. Any arbitration
1 award must be certified by the attorney general to be a bona fide, final, and
2 binding award. If the Attorney General neither certifies nor states in
3 writing that he declines to certify that an arbitration award is bona fide,
4 final and binding award within 60 days after the award is entered, then the
5 award will be deemed to be certified. Any part of the amount which exceeds
6 the award or settlement lapses upon the making of the award. This appropri-
7 ation is void if its existence is made known to the arbitrators by Modern or
8 anyone acting in Modern's behalf, or is otherwise used in any way by Modern
9 or anyone acting in Modern's behalf which reasonably could be construed to

For an Act entitled: "An Act making a special contingency appropriation to the Department of Transportation and Public Facilities for the Lower Kuskokwim REAA; and providing for an effective date."

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

* Section 1. An amount not to exceed the total of the claim stated in the Claim for Additional and Change Work on the Bethel area schools presented by Modern Construction, Inc. (Modern) and dated December 3, 1980, is appropriated to the Department of Transportation and Public Facilities to pay the amount of any arbitration award or settlement made on that claim pursuant to the settlement agreement between Modern and the Lower Kuskokwim REAA (REAA) dated July 16, 1980. Any settlement agreement must be approved by the Attorney General. If the Attorney General neither approves nor disapproves a settlement agreement within 60 days after it is entered into by Modern and the REAA, then it will be deemed to be approved. Any arbitration award must be certified by the attorney general to be a bona fide, final, and binding award. If the Attorney General neither certifies nor states in writing that he declines to certify that an arbitration award is bona fide, final and binding award within 60 days after the award is entered, then the award will be deemed to be certified. Any part of the amount which exceeds the award or settlement lapses upon

upon the making of the award. This appropriation is void if its existence is made known to the arbitrators by Modern or anyone acting in Modern's behalf, or is otherwise used in any way by Modern or anyone acting in Modern's behalf which reasonably could be construed to be an attempt to influence the award in favor of Modern. This contingency appropriation is in no way a finding that any award should be made. It is made solely because, if any award is made or settlement reached, it will likely occur during the interim, and it could not be paid unless an appropriation has been made by law for that purpose.

* Sec. 2. The amount of \$50,000 is appropriated to the Department of Law for the fiscal years 1981 and 1982 for costs of ascertaining the bona fides of any award or settlement of the claim by Modern against the REAA.

* Sec. 3. The Commissioner of Transportation and Public Facilities is authorized to loan to Modern out of the funds appropriated by Section 1 the sum of \$6,000,000 or the amount of the claim whichever is less. The loan shall bear interest at the legal rate established by AS 45.50.010(a) and shall be fully secured by adequate collateral. Principal and interest shall be due and payable in full in one sum upon the certification of the settlement or arbitration award by the Attorney General except that interest shall be waived to the extent of any sum awarded Modern which offsets the loan.

* Sec. 4. Section 2 of this Act takes effect immediately in accordance with AS 01.10.070(c).

Introduced: 4/6/81
Referred: Finance

1 IN THE HOUSE

BY ROGERS, VASKA AND MOSS

2 HOUSE BILL NO. 478

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act appropriating to the Department of Transporta-
7 tion and Public Facilities the amount of money neces-
8 sary to settle the claims of Modern Construction, Inc.
9 against the Lower Kuskokwim Regional Educational
10 Attendance Area; and providing for an effective date."

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

12 * Section 1. There is hereby appropriated from the general fund to the
13 Department of Transportation and Public Facilities the sum of money neces-
14 sary to pay the award by the conciliator made February 27, 1981, under the
15 July 18, 1980 settlement agreement between the Lower Kuskokwim Regional
16 Educational Attendance Area and Modern Construction, Inc.; however, only the
17 amount that the parties agree to be due to Modern Construction, Inc. in
18 voluntary settlement of the dispute or the amount awarded by arbitration or
19 court decree to Modern Construction, Inc. may be expended and any remainder
20 shall lapse into the general fund.

21 * Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-
22 070(c).

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