

HB

307

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, GOVERNOR

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

November 24, 1981

Hon. M.F. "Mike" Beirne
Alaska State Legislature
1020 'I' Street, Suite 1
Anchorage, AK 99501

Re: "Residency" for pioneers'
home eligibility
Our file: J-65-196-82

Dear Representative Beirne:

Reference is made to your inquiry dated August 31, 1981 concerning eligibility standards for admission to a pioneers' home. Specifically, you ask whether the residence requirements of the relevant statutes, AS 47.25.020 - 47.25.035, allow consideration of the domicile of applicants for admission to a pioneers' home.

We have recently responded to the same inquiry from the commissioner of administration; a copy of our opinion is attached. Therein, we stated that a "resident," within the meaning of AS 47.25.020 - 47.25.035, is a person who is or was physically present within the state. This is clear in the statutory scheme; there is no need for resort to interpretive regulations.

There are a number of ways to ameliorate the occasionally harsh effects of the 15/30 year requirements. However, I would recommend strongly against a change from the physical presence standard for the reason that a domicile (i.e., intent) standard is extremely difficult to apply. Indeed, a domicile standard appears inconsistent with the intent of such legislation since it rewards persons who, as absent domiciliaries, may have had the best wishes for Alaska but contributed nothing to Alaska's physical and intellectual growth. (We hasten to add that your constituents about whom you wrote have, by all accounts, done a great deal to advance such growth in Alaska.)

Viable alternative statutory schemes could take several forms. I would be happy to discuss them with you or any

Hon. M.F. "Mike" Beirne

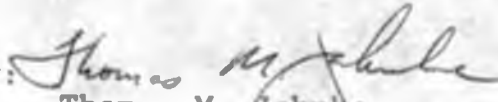
- 2 -

November 24, 1981

interested party. If I may be of further assistance, please
let me know.

Sincerely yours,

WILSON L. CONDON
ATTORNEY GENERAL

By: 
Thomas M. Jahnke
Assistant Attorney General

TMJ/pjg

MEMORANDUM

State of Alaska

TO: William R. Hudson, Commissioner
Department of Administration

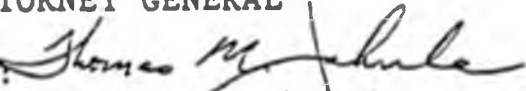
DATE: October 23, 1981

FILE NO: J-60-806-81

TELEPHONE NO: 465-3600 ext. 29

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: Two Pioneers' Home
Applications - Residence

By: 
Thomas M. Jahnke
Assistant Attorney General

You have requested our opinion on the propriety of admitting Mr. & Mrs. Hans Autor to the Pioneers' Home. They are long-time Alaska residents but have, in recent years, lived outside of Alaska. The focus of the inquiry is the residence concept in AS 47.25.

As we understand the situation, the Autors have had the following contacts with Alaska and other locales:

1. They were physically present in Alaska more or less continuously from 1947 - 1968.
2. Upon retirement in 1968 they travelled in Europe. While in Europe Mrs. Autor was advised by a physician to live in a warm, dry climate. They lived in southern California thereafter.
3. In 1971, the Autors returned to Alaska for a indeterminate period; thereafter, they returned to California.
4. From 1968 - 1976, the Autors continued to own a house in Anchorage. It is not known whether the house was maintained as a residence for them or occupied by renters or relatives. In 1976 they sold the house to their son.
5. The record is not entirely clear on the Autor's housing arrangements in California; they apparently lived much of the time in a rented apartment and since 1976 with one of their children.

6. The Autors intended to return to Alaska after their vacation in 1968; their plans were changed by the medical exigency but their intention to return did not change.
7. At the time of their application, the Autors lived in California; we are informed that at least one of them has returned to live with a son in Anchorage.

The requirements for admission to the Pioneers' Home are set forth in AS 47.25.030 and 47.25.035. They provide:

Sec. 47.25.030. Admission on payment. A citizen of the United States over 65 years of age who is a resident of the state and has been a resident for not less than 15 years continuously immediately preceding his application, but who is not destitute, may on application be admitted to the home upon his agreement to pay to the state a sum for each day as the Department of Administration considers sufficient to compensate the state for the cost of care and support of the person at the home. When this agreement is entered into the Department of Administration may receive the security for the payments, which it considers expedient.

Sec. 47.25.035. Exception to admission criteria. An applicant for admission to the home who has been a resident of the state for 30 years and is otherwise qualified to admission under AS 47.25.020 or 47.25.030 may not be disqualified for admission because of absence from the state if the commissioner of administration determines the absence was reasonable, and admission is consistent with the intent of this chapter. (emphasis added)

The Autors do not claim that they qualify under the requirement of 15 years residence immediately preceding application. See AS 47.25.030. Rather, they claim a right to admission based on a domicile of 30 years. See AS 47.25.035. We assume they meet the citizenship and age requirements. If..

the Autors are entitled to admission, it must be by reason of the exception in AS 47.25.035. We believe that that provision and others clearly resolve the question.

AS 47.25.035 juxtaposes two conditions, the condition of "residence" and the condition of "absence." The first term might admit of some ambiguity since, though it has a fixed meaning in the law, i.e., physical presence, it is occasionally misused in statutes to connote "domicile," i.e. initial physical presence and intent to remain permanently. 1/ However, when "residence" is contrasted with "absence" in the same statute, any ambiguity disappears: "residence" is statutorily prescribed as the opposite of "absence"; "residence" means physical presence.

Further, we believe that this is consistent with the legislative intent with respect to Alaska's pioneers. We direct your attention to AS 47.45.170 which states the purpose of the longevity bonus program for Alaska's pioneers. The emphasis in that statute on benefitting those who built Alaska over many hard years is inconsistent with the concept that a benefit can accrue to one while out of the state.

As we understand the facts of this case, the Autors were physically present in the state for approximately 21 years. As such, they fail to meet the 30 years residence requirement. 2/ This result will doubtlessly disappoint the Autors, other Alaska pioneers and their friends, but their remedy must come from the body that imposed the residency requirement, the Alaska legislature. We would be happy to work with legislators or other interested persons on any changes that might be proposed. 3/

We believe that this memorandum also answers the questions you posed with respect to "hypothetical" case #1 in your memorandum to the Attorney General dated June 3, 1981. 4/

TMJ:mr

1/We do not believe that such an ambiguity actually exists; certainly nothing in the text of AS 47.25 gives rise to the question.

2/The Commissioner of Administration has no discretion in this regard. Discretion exists only with respect to people who first meet the 30 year requirement. AS 47.25.035.

3/Any changes will have to be very carefully drafted to avoid creating a prohibitively expensive program.

4/We offer no opinion on the constitutionality of the 15 and 30 year residence requirements.

March 17, 1982

Health Education & Social Services Committee
Juneau, Alaska

Dear Sirs:

In response to HB-307 now before your committee, I would like to express my opposition.

A one-year requirement for residency in the Alaska Pioneer Home is disrespectful and unfair to the Pioneers who have contributed to our State for so many years.

Sincerely,



Mrs. Lavonne Okloasik
Box 356
Juneau, Alaska 99762

PIONEER WOMEN OF ALASKA

AUXILIARY NO. 1
NOME, ALASKA

Box 1175
March 17, 1982

Health, Education and Social Services Committee
Chairman Beirne
Vice-Chairman Martin
Members Cato, Smith and Malone

Dear HESS Committee Members,

Pioneer Auxiliary No. 1, Nome, adamantly opposes the passage of H.B. 307 which relates to the residency requirements for admission to Alaska's Pioneer Homes.

Please consider our request when the bill comes to a vote in your committee. Thank you.

Pioneers of Alaska
Auxiliary No. 1
Nome, Alaska


By: Linda E. Conley, Secretary

cc: Finance Committee
Chairman Adams
Vice-Chairman Montgomery
Members Bettisworth
Carney
Chuckwak
Cotton
Cuddy
Fuller
Haugen
Hurlbert
Meekins

Box 1175
Nome, Alaska 99762

March 17, 1982

Health, Education and Social Services Committee
Chairman Beirns
Vice Chairman Martin
Members Cato, Smith, and Malone

Dear HESS Committee Members,

We, as life long residents of Alaska, are very opposed to the passage of H.B. 307 which is currently before your Committee. Admission to the Pioneer Homes in Alaska is an honor which should be for the people who built and contributed to the greatness of this state. A one year residency requirement for admission to the Homes is not sufficient. Please leave the admission requirements as they presently stand.

Thank you for your consideration of our opinion when you are debating and voting on H.B. 307.

Sincerely yours,

Linda and Jim Conley and Doug and Claudia Doyle
Linda and Jim Conley and Doug and Claudia Doyle

cc: Finance Committee
Chairman Adams
Vice Chairman Montgomery
Members Bettisworth
Carney
Chuckwak
Cotton
Cuddy
Fuller
Haugen
Hurlbert
Meekins

Pioneers of Alaska



Igloo No. 1 - Nome, Alaska 99762

Douglas A. Doyle, Secretary Box 861 Nome, Alaska 443-2719

March 17, 1982

Health, Education and Social Services Committee
Chairman Heirne
Vice Chairman Martin
Members Cato, Smith and Malone

Dear HESS Committee Members,

Pioneer Igloo No. 1, Nome adamantly opposes the passage of H.B. 307 which relates to the residency requirements for admission to Alaska's Pioneer Hours.

Please consider our request when the bill comes to a vote in your Committee. Thank you.

Pioneers of Alaska, Igloo No. 1

By:  Douglas A. Doyle, Secretary

cc: Finance Committee
Chairman Adams
Vice Chairman Montgomery
Members Kettisworth
Camey
Chalchuk
Cotton
Cuddy
Fuller
Huges
Rulbert
Mekins

10

Honorable B.B. Allen, Commissioner
Department of Administration

DATE: January 12, 1979

FILE NO:

ATTN:

Vernon L. Perry, Director
Division of Pioneers' Benefits

TELEPHONE NO:

FROM:

AVRUM M. GROSS
ATTORNEY GENERAL

SUBJECT:

Peter Frank account
(J-66-324-79)

By: Richard L. Peter
Assistant Attorney General

You have asked what can be done to compel a Pioneer's Home guest with financial resources to apply as much of them as is needed to pay the costs of his maintenance.

We have twice proposed to your office that regulations be adopted to address this problem, but since they have not been promulgated under the Alaska Administrative Code your present regulations do not have the force of law, so we must depend for authority on the sparse and ambiguous statutes relating to Pioneers' Homes.

You describe a guest who has some \$13,000 worth (value at maturity) of United States Savings Bonds, as well as a bank account, and an income of \$150 a month in Longevity Bonus payments, but plans to dispose of these resources to his children.

In the first place, persons with resources should not be admitted as indigent. AS.47.25.030 provides:

A citizen of the United States over 65 years of age who is a resident of the state and has been a resident for not less than 15 years continuously immediately preceding his application, but who is not destitute, may on application be admitted to the home upon his agreement to pay to the state a sum for each day as the Department of Administration considers sufficient to compensate the state for the cost of care and support of the person at the home. When this agreement is entered into the Department of Administration may receive the security for the payments, which it considers expedient.

This contrasts with AS 47.25.020(a) which provides:

Every worthy person residing in the state who has been a resident of the state continuously for more than 15 years immediate-

ly preceding his application for admission, and who is destitute and in need of the aid or benefit of the home because of physical disability or other cause, is entitled to admission to the home under the conditions, limitations and penalties prescribed by the regulations of the Department of Administration. No person may be admitted as a guest to the Alaska Pioneers' Home under the provisions of §§ 10 -- 110 of this chapter, if the support and maintenance of the person is imposed by law upon a relative or member of the family of the person.

AS 47.25.020(b) is also pertinent:

Every person admitted to the Pioneers' Home, except a person admitted under § 30 [paying guest] of this chapter, who receives income from any source in excess of \$35 a month may be required by the Department of Administration to pay the excess . . . immediately upon receipt of the money in payment, or part payment, of the cost of his maintenance.

Neither the legislature by statute, nor your office by regulation, has provided guidance as to whether a guest admitted as destitute can later be determined as capable of paying toward his maintenance, or whether a paying guest who exhausts his resources is then considered to be a destitute guest. Undoubtedly there have been occasions in the past when a person admitted to a Pioneers' Home as a paying guest has run out of money. I would assume that in such an event he becomes a destitute guest and therefore subject to AS 47.25.020(b): i.e. he must apply his income to his maintenance costs. Your policy and procedures manual states: "When the resident's monthly income or other funds do not permit him to pay the established rate he will be charged only to the extent of his income."

That manual also explains:

A person may be considered "destitute" if he has less than \$1,500 savings, or property valued at less than \$35,000 and a total income not in excess of \$300 monthly. [No. 10-1 at 1]

In order to make this determination you apparently rely on the following statement which appears in your Information Handbook, and is presumably given to applicants and residents.

[E]ach [applicant] will be asked to list all property and income. Please be truth-

ful because failure to do so could lead to dismissal from the home. This does not mean that property must be turned over to the State of Alaska, but the State of Alaska does reserve the right to file a claim against the estate of a Pioneers' Home guest, provided the resident has not paid full charges while living there. [Emphasis in original]

We are told that the application form now in use permits the applicant to list ownership of property, but that applicants have not been required to do so. Because the statutes require that only destitute applicants be admitted without setting up a payment plan, this procedure should be tightened up to insist upon a listing of all resources, under the threat of possible dismissal that you have in the handbook. Even if there is no contemplation of selling a piece of property to pay Pioneer Home charges, it may be producing rental income.

We are pleased the declaration of property ownership is made under oath because the only judicial decision which is relevant, In Re Jackson's Estate, 15 Alaska 116 (1954), held that a welfare recipient's \$10,000 which had been transferred to her daughter without consideration, was still in the mother's estate subject to the territory's claim because she had declared under oath that she owned no property. But to assure due process this requirement should be adopted in the Alaska Administrative Code to provide sufficient notice of the effect of deliberate concealment of assets.

On the subject of income, we have seen that this is the only type of funds mentioned by AS 47.25.020(b): "income from any source". Your policy and procedures manual says "income and other funds" but it seems that you are foreclosed from tapping other resources. But "income" can be construed to include interest and of course dividends from the investment of resources. However, there are two types of income which may not be compulsorily applied to the costs generated by a destitute guest. This office has concluded in a memorandum issued August 25, 1977 (a copy of the pertinent portion is attached) that a resident of a state mental facility or a pioneers' home may not be required to pay money he receives under the Alaska Native Claims Settlement Act, or the Alaska Longevity Bonus toward his support. The longevity bonus may be reached in his estate after death, but the ANCSA funds which can be identified are immune and may never be attached by the state for a service the guest would be entitled to without cost were he not receiving ANCSA benefits. Although AS 47.25.020(b) says "any source", this option has been limited by the Alaska

Native Claims Settlement Act and AS 47.40.120.

Therefore, in regard to Mr. Frank's liability for payment, you must first determine what part of his resources and income can be traced to ANCSA and Longevity Bonus receipts. The bank account is apparently made up of native funds, but he does not list the bonds or other property. He was honest enough in revealing his plans to bequeath his assets to his children but we do not know if he read the Information Handbook. AS 47.25.070(a) provides in pertinent part: "An expense incurred for a person under §§ 10 -- 110 of this chapter with interest at the rate of six percent a year from the date of payment, is a debt to the state and may be recovered during the life of the beneficiary . . ." This means that Mr. Frank can be told the amount of his bill, and asked to pay it. Presumably he could be sued, and execution levied on non-exempt resources, but I am sure you would not consider such a course desirable, especially if most of his funds are exempt from attachment. It might be argued that once exempt funds are used to purchase government bonds, they lose their exempt status, but United States Savings Bonds are a form of savings device, and are analagous to a bank account which -- if it held only Longevity Bonus receipts, for example -- would be immune.

If Mr. Frank read and understood your Information Handbook and then concealed some resources at the time he applied for admission you may want to make good your threat and turn him out if he refuses to pay as much of his bill as he is able. You cannot consider the exempt funds as resources or income, but you can require him to be treated as a paying guest if the exemptions do not bring him into the destitute category.

It may not be possible to do much about Mr. Frank, but we would suggest that in the future, more attention be given to the property declaration when a guest is applying for admission. Unless you know what his resources and income are, it is impossible to determine accurately whether he is destitute or should be a paying guest. Applicants should be advised of the importance of this information, and it should be explained to them that even if they plan to bequeath certain assets to members of their family or others, until their death the resources must be listed as belonging to the applicants.

It may be necessary to amend your statutes to tighten the collection process but regulations authorized by present law will certainly be helpful. We would recommend that the Pioneers' Home Advisory Board be consulted to learn its ideas, because under the present procedure it is very difficult for us to assist you with collections.

RLP:vr
Enclosure

ATTN: Richard Branton
Director
Division of Mental Health .

. . . for a period of twenty years after
December 18, 1971, the stock, anchoat
rights thereto, and any dividends paid
or distributions made with respect there-
to may not be sold, pledged, subjected
to a lien or judgment execution, as-
signed in present or future, or other-
wise alienated. . . .

But there was some doubt about the validity of government
claims on the funds after they had been paid to the re-
cipient. Originally 43 U.S.C. Sec. 1601(c) gave the only
guidance. It declared:

no provision of this Act shall replace or
diminish any right, privilege, or obliga-
tion of Natives as citizens of the United
States or of Alaska, or relieve, replace,
or diminish any obligation of the United
States or of the State of Alaska to pro-
tect and promote the rights or welfare
of Natives as citizens of the United
States or of Alaska. . . .

In 1976, however, Public Law 94-204 added a new section to
the Alaska Native Claims Settlement Act. Codified as 43
U.S.C. Sec. 1626, it provides:

(a) The payments and grants authorized
under this Act constitute compensation for
the extinguishment of claims to land, and
shall not be deemed to substitute for any
governmental programs otherwise available
to the Native people of Alaska as citizens
of the United States and the State of
Alaska.

(b) Notwithstanding section 5(a) and
any other provision of the Food Stamp Act
of 1964 (78 Stat. 703), as amended, in
determining the eligibility of any house-

ATTN: Richard Branton
Director
Division of Mental Health

hold to participate in the food stamp program, any compensation, remuneration, revenue, or other benefit received by any member of such household under the Settlement Act shall be disregarded.

Subsection (b) enshrines in legislation the judicial decision in Hamilton v. Butz, 520 F.2d 709 (CA9 Alaska 1975), while subsection (a) imposes a broad prohibition against any claim for ANCSA funds to reimburse a government for a service which would have been provided without charge had those funds not been available to a Native.

But to be exempt from such claims, ANCSA funds must be identifiable and not commingled indistinguishably with other money. You state that the savings account balance in the particular case confronting you "is understood to be Native Land Claims money". This can be determined only by a study of deposits and withdrawals relating to the account. The ratio of ANCSA to other deposits should be found and then applied to the final balance. Withdrawals should be treated as representing a proportional drain on both kinds of funds. As such, the patient or his estate may not claim that the withdrawals have been all non-Native funds so that the entire remainder could be protected. /1

/1 Alaska Longevity Bonuses are likewise sheltered -- at least during the life of the recipient. AS 47.40.120 provides:

Bonuses received under this chapter are exempt from all state and political subdivision taxes except sales and use taxes and are not subject to execution, attachment, garnishment or other process. No bonus received under this chapter may be exempt from a federal tax requirement.

A mental hospital patient or Pioneers' Home guest may be requested to apply his bonus to his bill at the institution, but he cannot be forced to surrender it. After his death if it is still in his estate it may be claimed to satisfy his debt to the state, because it is intended only to assist him to live his declining years in Alaska, and not to provide capital for his heirs.

ATTN: Richard Branton
Director
Division of Mental Health

Such a method would seem to be dictated by our determination that ANCSA funds may not be applied to state charges for otherwise free services, although there is no other authority for such a computation. The only rule in this area is that of "first in, first out" which is frequently applied to taxation of stock transactions, the handling of trust funds, and other special monies which may be deposited in the same account as general funds.

'[T]he first in, first out,' rule is not a rule of law or of logic, but a rule of thumb. It is a presumption of fact and really a regulation of the burden of proof. What is first sold is presumed to be what was first bought. [Or first deposited is first withdrawn.] Like every fact presumption, it is not conclusive, but yields to evidence, if there is any, of what the real fact is. 9th Bank & Trust v. United States, 15 F. Supp. 951, 952 (C.E.D. Pa., 1936).

In identifying ANCSA funds commingled with others, the rule may be helpful but is not mandatory and should yield to the more equitable approach suggested here so that any funds withdrawn to pay certain state charges would not diminish Native Claims receipts.

With respect to mental health care, we must point out, however, that, even if a claim may be made against all or a part of a patient's or his estate's property, an Alaska statute does limit a claim for recovery of money expended by the state. AS 47.30.270(a) provides:

A patient . . . shall pay or contribute to the payment of the charges for the care or treatment . . . in the manner and proportion which the department finds is not detrimental to the patient's rehabilitation and which is within their ability to pay The order of the department relating to the payment of charges by the patient . . . shall be charged within six months of the date on which the charge was incurred.

Pioneer

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
707-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 20, 1979

SUBJECT: Residence requirements for Pioneers' Homes and
Alaska Longevity Bonus (Work Order No. 7081)

TO: Representative M. F. Beirne

FROM: Billy G. Berrier *BGB*
Director
Division of Legal Services

You have asked for an opinion on the constitutionality of the residence requirements for eligibility for the Alaska Pioneer Homes and the Alaska Longevity Bonus Program.

Under AS 47.25.020 and 030, a person must have been a resident of the state continuously for more than 15 years immediately preceding application for admission to the home.

Under AS 47.45.010 a person who is 65 years of age or older, who was domiciled in the territory before January 3, 1959 and who has maintained a continuous domicile in the territory or state for 25 years is eligible for the Alaska Longevity Bonus. Continuous retention of domicile in the state is required for continued eligibility.

The longevity bonus contains a statement of purpose in AS 47.45.170 which reads:

Sec. 47.45.170. PURPOSE. The sole purpose of this chapter is to offer and provide all law-abiding Alaskans capable of managing their own affairs who have maintained a domicile in the state for at least 25 years and have reached a retirement age of 65, an incentive to continue uninterrupted residency in the state. Under no circumstances shall this chapter be considered a form, type, or manner, of public relief. Bonuses made under this chapter are not predicated on need even though they may appear to provide supplemental income to some qualified persons who would otherwise be forced to become responsi-

bilities of the state. The legislature further finds and states that this legislation recognizes the economic hardships suffered by many elderly Alaskans, Alaskans who through their tenacity and perseverance molded Alaska as we know it through skillful application of their talents. These pioneers are the same Alaskans, who in the prime of their life were in effect treated as second-class citizens by the federal government and who paid much of their hard-earned income to a government in which they did not have the right to participate through the power of the ballot. The legislature also is aware of the fact that many of these pioneers have been forced to live out their retirement years in areas far away from the land they loved and nurtured and thereby also suffering, in many cases, the loss of familial relationship with their own kin, an experience that is sad and frustrating to them as well as depriving new generations of Alaskans of the benefits of their wisdom and experience. This legislation hopefully will provide our pioneers with the economic means to remain in and continue to serve their state and to enjoy the opportunity of aiding the new Alaskan in making this state truly "The Great Land."

The heart of the policy rationale in both instances is aiding people who have been long-time residents of Alaska to remain in the state, recognizing the economic disadvantage of higher costs in the state. Factually, many people over 65 and people who are physically disabled have substantially impaired earning capacity.

The test used to determine the constitutionality of durational residency requirements was stated recently in Hicklin v. Orbeck, 565 P.2d 159 as:

"Durational residence requirements are subject to strict scrutiny under the equal protection clauses of the federal and state constitutions because they penalize those who have exercised their fundamental right of interstate migration.

Under strict scrutiny, the law must be struck down unless the state can demonstrate that it is necessary to

further a compelling state interest, and is the least drastic means available to further that interest. Dunn v. Blumstein, 405 U.S. at 342-43, 92 S.Ct. at 1003-04, 31 L.Ed.2d at 284-85."

This is also the test used by the United States Supreme Court when strict scrutiny is involved. Although the United States Supreme Court has limited strict scrutiny to situations where the right of interstate migration is penalized by denying the recent migrant of a basic necessity of life (Memorial Hospital v. Maricopa County, 415 U.S. 250, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974)), our court has not accepted this limitation in construing the Alaska Constitution.

However, this test was subsequently modified in State v. Erickson, 574 P.2d 1. In that case the court stated the test as

"In cases involving federal constitutional questions, where fundamental rights and suspect categories are at issue, we are bound by the "compelling state interest" standard unless that test is altered by the United States Supreme Court. In applying the Alaska Constitution, however, there is no reason why we cannot use a single test. Such a test will be flexible and dependent upon the importance of the rights involved. Based on the nature of the right, a greater or lesser burden will be placed on the state to show that the classification has a fair and substantial relation to a legitimate governmental objective. Where fundamental rights or suspect categories are involved, the results of this test will be essentially the same as requiring a 'compelling state interest'; but, by avoiding outright categorization of fundamental and non-fundamental rights, a more flexible, less result-oriented analysis may be made."

Although it is quite possible the reasonable basis test is applicable here since the purpose is not to restrict interstate migration but to aid people avoid involuntary interstate migration after having lived for many years in Alaska, in my opinion the statutes would survive a strict scrutiny test.

It appears clear that there is a compelling state interest in aiding elderly or disabled people who desire to stay in

the state to do so. The question then is whether the least drastic means available to further that interest were chosen.

I cannot conceive of a less drastic way to encourage and assist elderly and disabled people to remain in Alaska than the method chosen. The discrimination is a result of a valid, independent public purpose.

In my opinion both laws are constitutional.

BGB:jdn

Introduced: 3/10/81
Referred: Health, Education &
Social Services and Finance

1 IN THE HOUSE

BY MALONE AND BEIRNE

2 HOUSE BILL NO. 307

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 WELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska Pioneers' Home; and
7 providing for an effective date."

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

9 * Section 1. AS 47.25.020(a) is amended to read:

10 (a) A [EVERY WORTHY] person residing in the state who has been a
11 resident of the state for one year [CONTINUOUSLY FOR MORE THAN 15
12 YEARS] immediately preceding his application for admission, and who is
13 destitute and in need of the aid or benefit of the home because of
14 physical disability or other cause, is entitled to admission to the
15 home under the conditions, limitations and penalties prescribed by the
16 regulations of the Department of Administration. A [NO] person may not
17 be admitted as a resident of the Alaska Pioneers' Home under the provi-
18 sions of AS 47.25.010 - 47.25.110, if the support and maintenance of the
19 person is imposed by law upon a relative or member of the family of the
20 person.

21 * Sec. 2. AS 47.25.030 is amended to read:

22 Sec. 47.25.030. ADMISSION ON PAYMENT. A citizen of the United
23 States over 65 years of age who is a resident of the state and has been
24 a resident of the state for not less than one year [15 YEARS CONTINI-
25 OUSLY] immediately preceding his appl cation, but who is not destitute,
26 may on application be admitted to the home upon his agreement to pay to
27 the state a sum for each day as the Department of Administration consi-
28 ders sufficient to compensate the state for the cost of care and support
29 of the person at the home. When this agreement is entered into the

1 Department of Administration [©] may receive the security for the payments,
2 which it considers expedient.

3 * Sec. 3. AS 47.25.035 is repealed.

4 * Sec. 4. This Act takes effect July 1, 1981.
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Proposed Amendment for HB 307

Sec. 2, line 27: This line would read, "the state a sum. . . sufficient to compensate the state for the full cost of care and support of the person at the home, unless it can be shown that this would create an undue hardship on that person. This standard shall be implemented for persons currently in residence at the facility, if they were not subject to it upon admission."

The intent of the proposed language is to provide a statutory imperative for the Pioneer Home administration to charge up to the full cost of care for each resident if they are able to pay this. Since the Pioneer Homes are for the needy, it is hoped that those persons residing there who are not needy shall be charged for their care or given the option to find other accommodations and thus free-up their beds for persons on the waiting lists who are destitute.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. H. B. 307
Title An Act Relating to the Alaska Pioneers' Home
Requested by Representative Malone Date _____

II. FISCAL DETAIL

Agency Affected Administration
Program Category Affected Social & Economic Assistance for the Aged
BRU, Program, Or Subprogram(s) Affected Pioneers' Homes
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES	0	164.2	1,387.7	1,505.7	1,633.6	15,673.3
200 TRAVEL	0	.2	1.3	1.4	1.5	20.0
300 CONTRACTUAL	0	8.0	115.7	125.0	135.0	3,122.5
400 COMMODITIES	0	1.1	7.9	8.5	9.2	580.2
500 EQUIPMENT						
600 LAND & STRUCTURES	0		55,000.0	60,500.0	33,275.0	36,602.5
700 GRANTS, CLAIMS, ETC.	0	.2	1.0	1.0	1.0	25.0
TOTAL	0	173.7	56,513.6	62,141.6	35,055.3	56,023.5

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	0	173.7	56,513.6	62,141.6	35,055.3	56,023.5
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	0	10	36	36	36	436
PART TIME						
TEMPORARY						

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

This bill, which reduces the residency requirement for admission to a Pioneers' Home to one year, would bring numerous people into the Pioneers' Home who do not presently qualify

There are many persons over 65 years of age within Alaska at the present time, who have lived in Alaska for one year or more, who do not qualify for admission to a Pioneers' Home because of the 15 year residency requirement. Many of these persons need care and probably would enter a Pioneers' Home, because of physical or economic reasons or a combination of both, if they could gain admission. The department of Administration is aware of this situation because of the many inquiries which are received on a regular basis about admission to Pioneers' Homes. No record has been kept of these inquiries, and therefore they cannot be accurately quantified. However, it is estimated that up to 800 Alaskans would apply for admission to a Pioneers' Home in FY83, if the residency requirement was reduced to one year.

IV. DATE 3/18/82

PREPARED BY Gregory T. Michael

AGENCY Administration

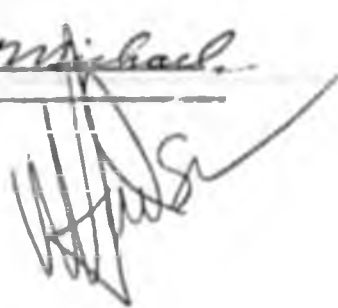
PHONE 465-4401

Original: Legislative Finance
cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81) Representative Hugh Malone

Keith Specking



It is also considered a certainty that a number of persons over 65 years of age would move to Alaska from the lower 48 states, or would return to Alaska to live, if they could enter a Pioneers' Home and be cared for the rest of their lives. This easy mode of living, along with the Alaska Longevity Bonus, would ease the hardship being pressed on many of America's elderly by high inflation, which is rapidly eroding the fixed incomes of many elderly persons. For this reason the Department of Administration believes that hundreds of persons would take advantage of this economic Godsend. It is assumed for the purpose of this fiscal note that at least 500 persons per year would apply for admission to Pioneers' Homes for the first two years, FY 84 and 85, with applications tapering off in FY 86 as the need is met to approximately 250. Since the Homes would be filled to capacity in FY 84, there would be a great deal of public pressure to build additional Pioneers' Homes. These structures, which could be built to care for 250 persons, would cost near \$27.5 million each at FY 84 prices, depending upon location and when they were built. Inflation at the rate of 10% per year is included for construction of new facilities funded in FY's 85, 86 and 87.

As of February 1982, the Pioneers' Homes cares for 484 residents at the Anchorage, Fairbanks, Palmer, Sitka and Ketchikan Pioneers' Homes. These homes have facilities to care for 558 residents. Nineteen of the available beds will be filled by June 30, 1982, at the rapidly-filling new Ketchikan Pioneers' Home which was just opened on December 1, 1981. Also a number of skilled nursing beds must be held vacant for those in the Homes who fall seriously ill. Since the average age of residents in the Homes is 82, the need for these beds is frequent.

The new Skilled Nursing Wing, which is being constructed as an addition to the Anchorage Pioneers' Home, is scheduled for completion in September, 1982. However, there already exists a waiting list of 224 persons for this Home, and it is estimated that the Anchorage Home will be completely filled by January 1, 1983. This would leave approximately 45 vacancies in all the existing Pioneers' Homes which would quickly be filled by applicants under Provisions of H.B. 307.

Therefore, this fiscal note shows the cost of filling the existing Pioneers' Homes to capacity (45 additional residents) by FY 84. It is estimated that only 10 additional staff positions would be needed in FY 83, as the Homes can absorb a few additional residents without additional staff. These 10 positions would be needed for approximately 6 months of FY 83, gradually building staff to the 36 persons needed by the beginning of FY 84. Operating these homes presently requires approximately .8 staff positions for each resident. Adding 45 residents to the Homes would create the need for 36 additional positions in nursing, housekeeping, food service and administration.

FY 83 expense is computed as follows:

<u>Job Title</u>	<u>Pay Range</u>	<u>Mo. Salary</u>	<u>No. Pos.</u>	<u>No. Mos.</u>	<u>Total Salaries</u>	<u>Benefits</u>	<u>Total Personal Services</u>
Nurse I	13B	2,249	x 2	x 6 =	26,988	+ 8,231 =	35,219
Nurse II	14A	2,327	x 3	x 6 =	41,886	+ 12,660 =	54,546
LPN I	10B	1,873	x 1	x 6 =	11,238	+ 3,611 =	14,849
LPN II	12B	2,111	x 1	x 6 =	12,666	+ 3,930 =	16,596
Nurses Aide	7B	1,568	x 1	x 6 =	9,408	+ 3,202 =	12,610
Hskpg. Aide	WGX	1,909	x 1	x 6 =	11,514	+ 3,673 =	15,187
Food Svc. Worker	WGX	1,909	x 1	x 6 =	11,514	+ 3,673 =	15,187
Totals				10	125,214	+ 38,980 =	164,194

Salaries and benefits are computed using current (FY 82) salary and benefit schedules increased to reflect negotiated increases which are expected to be 6.5% each year.

Travel

\$ 200

Additional funds are need to provide transportation for indigent residents entering the Pioneers' Homes, and for residents who may need emergency medical treatment that is unavailable locally.

Contractual Services

\$8,000

Additional cost for ambulance, eye exams, lab and dental fees, hospital charges for emergency care of residents, burial expenses, and food service.

Commodities

\$1,100

Drugs, lab and medical supplies, clothing for residents, kitchen and laundry supplies.

Grants and Benefits

\$ 210

Stipend of \$35 per month to residents in need of funds.

FY 84 expense is computed as follows:

<u>Job Title</u>	<u>Pay Range</u>	<u>Mo. Salary</u>	<u>No. Pos.</u>	<u>No. Mos.</u>	<u>Total Salaries</u>	<u>Benefits</u>	<u>Total Personal Services</u>
Nurse I	13B	2,240	x 4	x 12 =	107,520	+ 32,825 =	140,345
Nurse II	14A	2,525	x 8	x 12 =	242,400	+ 71,769 =	314,769
LPN I	10B	2,032	x 4	x 12 =	97,536	+ 30,593 =	128,129
LPN II	12B	2,291	x 4	x 12 =	109,968	+ 33,373 =	143,341
Nursing Aide	7B	1,701	x 4	x 12 =	81,648	+ 27,040 =	108,688
Hskpg. Aide	WGX	2,072	x 4	x 12 =	99,456	+ 31,838 =	131,294
Food Svc. Worker	WGX	2,072	x 4	x 12 =	99,456	+ 31,838 =	131,294
Clerk Typist II	7B	1,701	x 2	x 12 =	40,824	+ 13,520 =	54,344
Clerk Typist III	8B	1,801	x 2	x 12 =	43,224	+ 14,057 =	57,281
Totals				36	922,032	+ 286,853 =	1,209,485

Salaries and benefits are computed using current (FY 82) salary and benefit schedules increased to reflect negotiated increases which are expected to be 8.5% each year.

Travel

\$1,100

Additional funds needed to provide transportation for indigent residents entering the Pioneers' Homes, and for residents who may need emergency medical treatment that is unavailable locally.

Contractual Services

\$107,140

Additional cost for ambulance, eye exams, lab and dental fees, hospital charges for emergency care of residents, burial expenses, and food service.

Commodities

\$6,740

Drugs, lab and medical supplies, clothing for residents, kitchen and laundry supplies.

Grants and Benefits

\$ 840

Stipend of \$35 per month to residents in need of funds.

Inflation at the rate of 8% per year is included beyond FY 84 for travel, contractual services and commodities.

New Construction

If H.B. 307 is passed, planning should be started immediately for construction of new Pioneers' Homes in which to care for the additional 500+ applicants expected each year. This fiscal note assumes a one-year planning and design period. Capital construction cost is included in FY 84 so that construction of the first two Homes can begin in FY 85. Construction is expected to take 2 years and funding for operation of the facilities is included in FY 87. Funds for two more Homes are included in FY 85, and for one additional Home in each year FY 86 and 87.

Amortization of capital construction costs would probably be done over an extended period of time through sale of ASHA bonds. However, capital construction cost is shown in the year the appropriation would be needed to illustrate the effect of H.B. 307.

Operating costs shown in FY's 84, 85, 86 and 87 include costs needed in previous years, including inflation at the rate of 8% per year, except for personal services which are inflated at the rate of 8.5% per year.

It should be noted that operating cost will escalate rapidly beginning in FY 87, the year the first two additional Pioneers' Homes would be placed in operation.

I was trying to get at the fact
that you had to be continuous resident
for 30 years to be in an igloo
and the residency of the pioneer
homes and are eligible but not
applying -

3-1882

HS 357 } Pioneer
" 307 }

Red Swanson

307-

1 yr. reg = 800 would be eligible!

Bob Gore

Pioneer - request - 6286
or 7000

Vern Perry -

agrees charges out of line

307 - No.

8900 on long Bond