

HB

745

POSITION PAPER  
House Bill No. 745

"An Act relating to payment of costs for autopsies and payment of related costs."

House Bill No. 745 mandates that the court pay all extra costs incurred when an autopsy is required under AS 12.65.020.

It is our understanding that when the court system requests an autopsy pursuant to AS 12.65.020 they decline to pay for the extra costs incurred. These additional costs are then billed to the relative or the estate of the deceased. For public health reasons the Department of Health and Social Services requires in 7 AAC 35.090(d) that when death has occurred because of an "unusual or highly communicable disease" the body must be embalmed. In addition 7 AAC 35.100(b)(3) requires that if a body cannot reach its final destination within 24 hours of death it must be embalmed. When the courts require an autopsy it becomes impossible for the body to reach its final resting place within the 24 hour period. Thus the funeral home is required to embalm the body before shipping. As a matter of course other mortuary services are performed on the body.

When the court system refuses to pay the bill for embalming and other mortuary services the family is then billed. During this period of grief this added problem only contributes to the family's burdens. The extra costs are incurred through no fault of the deceased or the deceased's family and in many cases without their knowledge or approval. Many of these families live in the rural areas and have fairly low incomes; these costs represent an overwhelming financial burden.

The Department supports the passage of this bill.

Recommended by: *E. S. Rabeau*  
E. S. Rabeau M.D., Director  
Division of Public Health

Date: Feb-19, 1982

Approved by: *Helen O. Beirne*  
Helen O. Beirne, Commissioner  
Department of Health and  
Social Services

Date: 2-25-82

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. House Bill No. 745

Title "An Act relating to payment of costs for autopsies and payment of related costs"  
Requested by Commissioner's Office Date 2/19/82

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services

Program Category Affected Health/Public Health

BRU, Program, Or Subprogram(s) Affected \_\_\_\_\_

(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	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 COMMODITIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS, CLAIMS, ETC.	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Source)	0	0	0	0	0	0

POSITIONS

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

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

Passage of this bill will not result in increased expenditures for the Department of Health and Social Services.

IV. DATE 2/19/82

PREPARED BY David Bruce

AGENCY Dept. of Health and Social Services

PHONE 465-3090

Original: Legislative Finance  
cc: Budget Management

Prime Sponsor (F)

(Author Name)

33-001 (Rev. 12/81)

*JCC*

**CHAPTER 35.  
EMBALMING**

**Section**

- 10. (Repealed)
- 20. (Repealed)
- 30. (Repealed)
- 40. (Repealed)
- 50. (Repealed)
- 60. (Repealed)
- 70. (Repealed)
- 80. (Repealed)
- 90. Care of human remains
- 100. Transportation of the dead
- 110. Requirements of funeral establishments
- 120. Preparation room requirements
- 130. Definitions

7 AAC 35.010. LICENSE REQUIRED.  
Repealed. (Eff. 12/29/77, Reg. 64)

7 AAC 35.020. QUALIFICATIONS OF  
APPLICANTS FOR EMBALMER'S LICENSE.  
Repealed. (Eff. 12/29/77, Reg. 64)

7 AAC 35.030. APPLICATION. Repealed.  
(Eff. 12/29/77, Reg. 64)

7 AAC 35.040. EXAMINATION OF  
APPLICANTS FOR EMBALMER'S LICENSE.  
Repealed. (Eff. 12/29/77, Reg. 64)

7 AAC 35.050. SCOPE AND CONDUCT OF  
EXAMINATION. Repealed. (Eff. 12/29/77,  
Reg. 64)

7 AAC 35.060. SUCCESSFUL AND  
UNSUCCESSFUL APPLICANTS. Repealed.  
(Eff. 12/29/77, Reg. 64)

7 AAC 35.070. REVOCATION, SUSPENSION  
AND REFUSAL TO ISSUE LICENSE.  
Repealed. (Eff. 12/29/77, Reg. 64)

7 AAC 35.080. REPORTS BY FUNERAL  
ESTABLISHMENTS. Repealed. (Eff. 12/29/77,  
Reg. 64)

7 AAC 35.090. CARE OF HUMAN REMAINS.  
(a) All human remains shall be disinfected by  
approved disinfecting solutions so that there will  
be no danger of spreading disease or infection.

(b) Embalmers shall take every precaution to

prevent the spread of infections from persons  
who have died of communicable diseases.

(c) It shall be the duty and responsibility of all  
physicians licensed to practice medicine in the  
State of Alaska who are in attendance or any  
physician who by virtue of his appointment as  
medical examiner or local health officer shall  
have knowledge or suspect that a person has  
died of a communicable disease which may  
reasonably constitute a threat to the health of  
morticians and their staffs, village officials,  
clergymen, and all others involved in the  
handling and preparation of a dead human body,  
to inform and counsel such individuals promptly  
of this hazard or potential threat to their health  
and safety. Appropriate precautionary measures  
to prevent the spread of communicable diseases  
from deceased human bodies to employees of  
mortuary establishments, persons contracted to  
provide services involved in the preparation and  
handling of dead human bodies, and to the  
general public, shall be undertaken at all times  
and shall be the responsibility of the funeral  
director, or in his absence, the senior village  
official present.

(d) When death has occurred from smallpox,  
plague, anthrax, diphtheria, meningococcal  
meningitis, cholera, epidemic typhus, or any  
unusual and highly communicable disease, the  
body shall be handled and prepared under strict  
quarantine regulations. If one of the above  
named communicable diseases occurred or was  
reasonably suspected to be present, the body  
shall be embalmed by a licensed embalmer and  
immediately placed in a casket or coffin which  
shall be permanently closed unless the  
Commissioner of Health and Social Services shall  
make a specific exception. (In effect before  
7/28/59; am 2/21/71, Reg. 37)

Authority: AS 18.05.040

7 AAC 35.100. TRANSPORTATION OF THE  
DEAD. (a) The transportation of human remains  
dead of any diseases mentioned in sec. 90 of this  
chapter shall be permitted only under the  
following conditions:

(1) the body shall be thoroughly embalmed  
with disinfectant solution; and

(2) all orifices shall be closed with absorbent  
cotton; and

(3) the body shall be washed with the solution and placed immediately in an hermetically sealed casket; and

(4) the casket encased in a suitable shipping container acceptable to the Commissioner of Health and Social Services.

(b) The transportation of human remains dead of any cause other than those diseases mentioned in sec. 90 of this chapter is permitted only under the following conditions:

(1) when the destination can be reached within the state within 24 hours after death, an unembalmed body shall be thoroughly washed, all orifices shall be closed with absorbent cotton, and the body dressed in a clean sheet and placed in an hermetically sealed metal shipping container;

(2) human remains shipped into or out of Alaska must first be embalmed;

(3) when the body cannot reach its destination within 24 hours after the death, the body shall be thoroughly embalmed, and placed in a casket; the casket encased in a suitable shipping container acceptable to the Commissioner of Health and Social Services;

(4) exceptions to (b) of this section may be approved only by the Commissioner of Health and Social Services where circumstances render the provisions of (b) of this section impossible to carry out.

(c) An outside shipping container is required in all instances except when the casket is transported in a hearse. The outside container shall be of wood, canvas, reinforced nylon, composition board, or other suitable material. (In effect before 7/28/59; am 2/21/71, Reg. 37)  
Authority: AS 18.05.040

**7 AAC 35.110. REQUIREMENTS OF FUNERAL ESTABLISHMENTS.** (a) A funeral establishment shall

(1) repealed (Eff. 12/29/77, Reg. 64);

(2) have a sanitary preparation room; and

(3) be subject to approval and inspection by the department.

(b) Repealed. (Eff. 12/29/77, Reg. 64) (Eff. 2/21/71, Reg. 37; am 12/29/77, Reg. 64)

Authority: AS 18.05.040

**7 AAC 35.120. PREPARATION ROOM REQUIREMENTS.** (a) The walls and ceiling of the preparation room shall be covered with tile, plaster, sheet rock, composition wall board or brick. With the exception of tile, all these materials shall be finished off with an impervious, readily washable or cleanable material.

(b) Outside ventilation shall be provided for by windows or transoms. If outside ventilation cannot be provided for by these means, an eight-inch pipe shall be installed to run from the ceiling of the room to the roof of the building, or from the side wall to the outside of the building. The installation shall be arranged so that it will not be a public health hazard.

(c) The preparation room shall be private and shall not be located near a public passageway. It shall contain only equipment necessary for preparing bodies for burial or shipment, and no toilet or commode.

(d) Windows and exterior doors shall be installed in such a way that the room shall be obstructed from view from the outside and so that fumes and odors are prevented from entering other parts of the building.

(e) The equipment for preparation rooms shall consist of the following:

(1) an operation or embalming table, which has rustproof metal or porcelain or glass top and a drainage opening at the lower end;

(2) a covered waste can, and sink with running water and backflow prevention and sewage connections;

(3) a cabinet, and instrument table, instruments, all necessary supplies including disinfectants and antiseptics, a sterilizer for instruments, and several pairs of rubber gloves;

(4) a first aid emergency kit for personal use.

(f) A water supply shall be available that complies with the Water Supply chapter of the Administrative Code.

(g) An approved method of sewage disposal shall receive the waste and water from all facilities in the preparation room. (Eff. 2/21/71, Reg. 37)

Authority: AS 18.05.040

7 AAC 35.130. DEFINITIONS. In this chapter, unless indicated otherwise

(1) "department" means Department of Health and Social Services;

(2) "disinfectant fluid" means a fluid having a disinfectant value or carbolic coefficient of not less than four percent formaldehyde gas, or such other fluid as may be approved by the Commissioner of Health and Social Services in writing;

(3) "disinfectant solution" means an embalming fluid having a disinfectant of carbolic acid, a 1-500 solution of bichloride of mercury, a five percent solution of formaldehyde, or other solution approved by the Commissioner of Health and Social Services in writing;

(4) "embalm" means to inject sufficient disinfectant and preservative material into the circulatory system of a dead body and to apply these materials internally and externally so as to arrest decomposition and to render the body sanitary and not a hazard to public health;

(5) "wash" means to bathe the entire surface of the body with a disinfectant solution, and to bathe or pack with cotton saturated with disinfectant solution the mouth, nose, and other body orifices;

(6) repealed 12/29/77;

(7) repealed 12/29/77;

(8) repealed 12/29/77;

(9) "funeral establishment" means every place or premises devoted to or used in the care and preparation for burial of the body or major portion of the body of a deceased person, or where dead human bodies are prepared for burial or other disposition;

(10) repealed 12/29/77.  
(Eff. 2/21/71, Reg. 37; am 12/29/77, Reg. 64)  
Authority: AS 18.05.040

### PART 3. FAMILY AND CHILDREN SERVICES

Chapter	
37.	Public Assistance (7 AAC 37.010-7 AAC 37.270)
40.	Adult Public Assistance (7 AAC 40.005-7 AAC 40.100)
42.	(Repealed)
43.	Medical Assistance (7 AAC 43.005-7 AAC 43.985)
44.	Energy Assistance Program (7 AAC 44.010-7 AAC 44.900)
45.	Aid to Families with Dependent Children (7 AAC 45.010-7 AAC 45.900)
46.	Food Stamp Program (7 AAC 46.010-7 AAC 46.090)
47.	General Relief (7 AAC 47.010-7 AAC 47.900)
48.	Catastrophic Illness (7 AAC 48.010-7 AAC 48.900)
49.	Hearings (7 AAC 49.010-7 AAC 49.900)
50.	Children Services (7 AAC 50.002-7 AAC 50.850)

### CHAPTER 37. PUBLIC ASSISTANCE

Section	
10.	Safeguarding information
20.	Information to be safeguarded
30.	Prohibitions against disclosure of information
40.	Authorization for disclosure of information
50.	Disclosure to law enforcement officers
60.	Right of court to subpoena information
70.	Participation in court or other hearings related to operation of Division of Family and Children Services' program
80.	Disclosure to state officials and legislators
90.	Disclosure of identifying information
100.	Disclosure for research
110.	Release of names for charitable purposes
120.	Release of information at recipient's request
130.	General information
140.	Distribution of these regulations
150.	(Repealed)
160.	Mandatory provisions of eligibility

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED  
AS A UNIT IN THE ORIGINAL DOCUMENT.



# Ombudsman

John B. Chenoweth

State of Alaska

Reply to:

- 840 K Street, Room 203  
Anchorage, Alaska 99501  
(907) 276-4011
- Pouch W0  
Juneau, Alaska 99811  
(907) 465-4970
- P.O. Box 74358  
Fairbanks, Alaska 99707  
(907) 452-4001

January 26, 1982

Albert P. Adams, Representative  
House of Representatives  
Pouch V - MS 3100  
Juneau, Alaska 99811

Dear ~~Representative Adams~~ <sup>Al</sup>,

This letter is submitted by way of follow-up to my brief telephone conversation with Cindy of your office concerning state payment of costs associated with the autopsy of a body of a rural resident. The nature of the problem is succinctly stated in the November 3, 1980, letter of John M. Holmes to Governor Hammond and in earlier correspondence between Mr. Holmes and Judge Blair of the Superior Court. The matter was brought to my attention after my appointment as ombudsman last July. I was able to gather some information concerning numbers of autopsies from the three coroners in the state. I also had the good fortune to speak to Robert Fisher, fiscal officer for the court system, who had wanted to schedule discussion of the matter with the three coroners at a coroners' meeting last November. For reasons unforeseen, Mr. Fisher and the coroners did not address the matter at that time.

I direct the matter to your attention as one who represents the district in which the circumstances were first called to my attention. In so doing, I am asking your consideration of introduction and support of legislation that would require the court system to bear not only the transportation and service costs associated with a court-ordered autopsy, but would direct payment of reasonable costs of mortuary services and embalming in order to return the body to the community following the autopsy. In the alternative, if you do believe that the matter can be resolved within the court system by its personnel and do not want to offer and support legislation, you should consider, if shown to be necessary, an increment in the amount appropriated to the court system for autopsy-related expenses so that court officials may not refuse to assume reasonable costs of mortuary services and embalming on a plea of lack of sufficient funds.

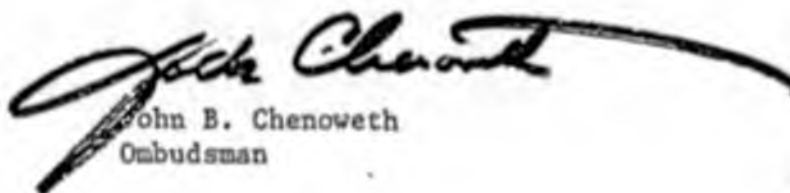
The policy issue of whether the state should or should not pay these associated costs should have legislative consideration. If court system personnel are amenable to reversal of the policy enunciated by Judge Blair, the legislature should consider the level of financial

January 26, 1982

support provided for the autopsy-related services that the state would assume. The letter of the Judge suggests the need for legislative authorization of court payment of these expenses, and I have a sense that the Judge's expression on this point is correct.

Thank you for your attention. If you offer legislation, Mr. Holmes has expressed willingness to testify concerning the problem by teleconference from Barrow or in person.

Sincerely,



John B. Chenoweth  
Ombudsman

JBC:cmg

cc: John M. Holmes  
Robert Fisher

LAW OFFICES OF

## ALASKA LEGAL SERVICES CORPORATION

POST OFFICE BOX 308

BARROW, ALASKA 99723

TELEPHONE (907) 832-2311

July 9, 1980

The Honorable James Blair  
 Presiding Judge of the Superior Court  
 Fourth Judicial District  
 State Courthouse  
 604 Barnette Street  
 Fairbanks, Alaska 99701

Re: Autopsy-Related Funeral Home Costs

Dear Judge Blair:

I am referring the following problem to you for your consideration, in your role as Presiding Judge of the Fourth Judicial District.

When a person dies of non-natural causes or dies unattended by a physician, the court may order an autopsy. (AS12.65.020) Since there is no medical examiner at Barrow, the deceased must be transported to Fairbanks for purposes of autopsy.

The problem is that the family is then compelled to make expensive funeral home arrangements, which are completely unnecessary at Barrow, before possession of the deceased will be returned.

If the family has not made funeral home arrangements by the time the autopsy has been completed at the Fairbanks hospital, the Coroner has the body transferred to whichever funeral home may be on call. The body must be embalmed before it will be returned to Barrow. The resulting funeral home costs are substantial. In the present case, involving a twenty-year old Wainwright man who died in a vehicle accident at Barrow on October 29, 1979, the funeral home billed as follows:

1. Availability Fee	\$	95.00
2. Professional Services:		
a) Embalming		195.00
b) Dressing/Cosmetology		95.00
c) Paperwork (Permits etc...)		60.00
d) Arranging Shipping Details		40.00
3. Funeral Home Facilities		75.00
4. Automotive Equipment:		
a) Removal to Mortuary		50.00
b) Funeral Coach to Carrier		50.00

5. Goods/Advances		
a) Telephone Calls	\$ 7.36	
b) Clothing	75.00	
c) Underwear	6.00	
SUBTOTAL. . . . .		\$ 748.36
6. Casket	375.00	
TOTAL FUNERAL HOME CHARGES . . . . .		<u>\$1,123.36</u>
(Copy of Bill is attached)		

It is the position of the Coroner for the Fourth Judicial District, Mr. Fred Smith, that the family is responsible for all funeral home costs. The state is responsible only for releasing the body to the funeral home and paying round-trip transportation costs to and from Fairbanks.

This places the family at an extremely unfair disadvantage. Although the family requested neither the autopsy nor the funeral home services, the family is forced to arrange for payment of the funeral home costs - basically the necessity for embalming - before the body will be released to the family. Considering the emotional pressure of the circumstances, the family is in a particularly vulnerable position; its efforts are inevitably directed toward raising the money and bringing the deceased home, not contesting the propriety of the charges. The only voluntary expenditure above is for the casket.

If embalming were a common practice at Barrow, the state's position would make more sense. However embalming is not necessary and not done at Barrow; the ground is permafrost. The body is kept cooled at the hospital, or is frozen, until the funeral. Burial takes place immediately after the funeral; the grave is then immediately filled-in by funeral participants as a part of the graveside service, regardless of the weather. Burials occur year-round. The frozen ground is opened by hand with picks or by machine and the grave is closed by hand shovel.

The embalming and related activities at the Fairbanks funeral home are therefore strictly autopsy-related. They are necessary only because the body has been removed from Barrow under a court order, pursuant to the police power of the state under the criminal code. (AS12.65.020) Presumably one reason for even the cosmetology work is to correct the effects of the autopsy. Under the circumstances it is clear that the state should pay for all of these services; it is the state which has incurred these charges. It is totally wrong that the state should seize the body for its own purpose and then, when that purpose is completed, callously step out of the picture without restoring possession of the body to the family; it is even worse that the family can only regain such possession by arranging for the payment of a large amount of money.

Judge James Blair  
July 9, 1980  
Page Three

There is no requirement under Alaska law that bodies be embalmed before burial, where no communicable disease is involved. (7AAC 35.090) In fact, no embalming is required in order to transport a body within the state, so long as no communicable disease is involved and the destination can be reached within twenty-four hours. (7AAC 35.100)b)) I have discussed the matter with Mr. David Bruce, who until recently was the Chief of the Environmental Health Section of the Division of Public Health, Department of Health and Social Services. Mr. Bruce has been charged with enforcing Chapter 35 (Embalming) of Title 7 of the Administrative Code. He concurs that the state should pay for embalming costs under these circumstances. (Enforcement of Chapter 35 has recently been transferred to the Department of Environmental Conservation.) Ms. Connie Sipe, Chief of the Consumer Protection Division of the Attorney General's Office stated in an April 18, 1980 letter:

"I share your concern regarding the imposition of additional fees on the family of a deceased which occur only because of a state ordered autopsy. However, my office cannot render any sort of legal opinion as to the state's liability in that regard. I strongly suggest sending this complaint to the Ombudsman's office, requesting the Ombudsman to look into the matter of autopsies and otherwise undesired service charges."  
(Copy of Letter is attached)

In the past Barrow service organizations have tried to alleviate this problem. However, in the present case the Inupiat Community of the Arctic Slope has refused to pick up any of the costs; I.C.A.S. determined that to do so would violate its own regulations. Thus, while the V.F.W. has contributed more than enough to cover the cost of the casket (which we would concede should be paid by the family), a total of seven hundred dollars remains to be paid. The funeral home ultimately looks to the family to pay this bill (funeral home's letter of November 19, 1979 is attached). In reality these services were incurred by the State of Alaska.

I am requesting that you investigate this matter and determine the proper division of autopsy-related funeral home costs. In my opinion the family can be properly charged with only one expenditure in this case: the casket. Otherwise there is nothing in the law to suggest that families must subsidize a statutorily prescribed procedure which is invoked under the state police power and the criminal code. (AS12.65.020) The state should pay the costs that it incurs; the state should be responsible for restoring the possession of the deceased to the family in a dignified manner.

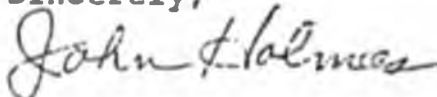
The position of Medical Examiner is created pursuant to AS12.65.010, and his duties are set out in AS12.65.020-030. The

Judge James Blair  
July 9, 1980  
Page Four

position of Coroner is created pursuant to AS22.15.310, and his duties are set out in AS22.15.110, AS22.15.350, AS12.65.040-110. See also AS12.65.030. State embalming regulations are set out in Chapter 35 of Title 7 of the Alaska Administrative Code. Statutes relating to funeral homes include Chapter 42 of Title 8, Alaska Statutes, AS18.50.340(c), AS18.50.360(c)(1), AS45.45.120, and AS 45.50.471.

The State-ordered autopsy is a traumatic aftershock to the tragic news that a member of the family has suddenly died. For most people it is nothing less than a shuddering, hideous desecration of someone they love. Such gross intrusion by the state police power into the privacy of family grief can be justified by only the most compelling reasons. When an autopsy does become necessary, state officials must act with sensitivity; the family has made a sacrifice to the interests of the state, and it deserves sympathetic treatment in return.

Sincerely,



John M. Holmes  
Attorney at Law

cc: Hon. Charlotte Brower, Magistrate, Barrow  
Mr. Fred Smith, Coroner, 4th Judicial District  
Mrs. Annie Brower, Social Services, I.C.A.S., Barrow  
Mr. Arnold Brower, Jr., Cmdr., V.F.W., Barrow  
Ms. Elise Patkotak, Director, N.S.B. Health Center, Barrow  
Mr. Eugene Kaye, Director, Alaska Native Hospital, Barrow  
Mr. Doug Mertz, Chief Assistant, Attorney General, Dept. of Law

INUICH IKAYUOTAAI SU' ILIQAA FII, HA'U'U'U'

LAW OFFICES OF

ALASKA LEGAL SERVICES CORPORATION

POST OFFICE BOX 310

BARROW, ALASKA 99707

TELEPHONE (907) 832-2300

September 25, 1980

The Honorable James R. Blair  
Presiding Judge, Superior Court  
State Courthouse Building  
604 Barnette Street  
Fairbanks, AK 99701

Re: Transportation Costs for  
Autopsy Cases

Dear Judge Blair:

In addition to the previously raised question of who should pay mortuary costs, a problem regarding transportation costs has now arisen. In August three persons died at Point Lay. The bodies were transported to Fairbanks for autopsy and were then returned to Barrow in caskets. Due to the size and weight of the caskets, it was not possible to transport the bodies from Barrow to Point Lay on a scheduled air taxi flight. A twin otter was required for the trip.

The state refused to charter the twin otter. The state consented only to paying normal freight costs. The family was told that someone else would have to charter the twin otter and that the state would then contribute the amount of the freight charges. As you can, imagine, the three deaths at Point Lay had caused a great deal of grief both at Point Lay and elsewhere on the North Slope. In addition to the shock of the incident, and the trauma of the autopsies, the families were now faced with a controversy over the return of the bodies to Point Lay.

I was on vacation at the time. You might be interested to know that the person who was caught squarely in the middle of this situation was the Magistrate, Charlotte Brower. At one point she was told by the Coroner that the families could be informed that the funeral could be delayed until someone chartered a plane for the flight to Point Lay. She told me that this was something that she could never tell the families. She finally succeeded in arranging for the North Slope Borough to charter the aircraft on an emergency basis.

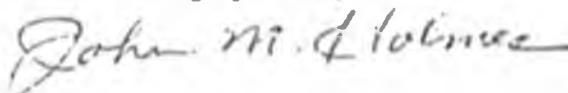
Honorable Judge Blair  
September 25, 1980  
Page Two

I am requesting that you investigate this matter also. In my opinion, once the state assumes responsibility for the body for autopsy purposes, it must take responsibility for returning the body to the home community in an expeditious manner. It is true that this can be expensive when a village other than Barrow is involved. But that is the price of assuming jurisdiction over this area.

These continuing problems regarding autopsy procedures and costs are causing disruption among North Slope families, organizations, local government, and in the local court. The problem always comes up in the context of an emergency, making each incident that much more difficult to resolve. The persons who really suffer are the families; first they are confronted with the shock of the death, and then they must deal with the trauma of the autopsy. Finally, on top of it all, they find themselves involved in haggling over the return of the bodies. In addition, from the standpoint of the court system, the Magistrate is thrust squarely into the middle of an impossible situation which has been created by the intransigence of the state itself. She requires and deserves the support of the court system.

I hope that a policy will be developed which resolve these unnecessary difficulties.

Sincerely yours,



John M. Holmes  
Attorney at Law

cc: The Honorable Charlotte Brower, Magistrate  
Mr. Fred Smith, Coroner

JMh/mc



RECEIVED  
BARROW OFFICE

SEP 17 1980

ALASKA LEGAL  
SERVICES CORP.

Superior Court

State of Alaska

FOURTH JUDICIAL DISTRICT  
604 BARNETTE STREET  
FAIRBANKS, ALASKA  
99701

JAMES R. BLAIR, PRESIDING JUDGE

September 15, 1980

JOHN M. HOLMES, Esq.  
Alaska Legal Services Corporation  
Post Office Box 309  
Barrow, Alaska 99723

Dear Mr. Holmes:

Re: Autopsy-Related Funeral Home Costs  
(Your letter of July 9, 1980)

In response to your letter of July 9th, I have conferred with Fred Smith on the above-reference matter. I have asked him to submit a written report to me and expect he will do so shortly after his return to work September 29th.

When I receive Fred's report, I will make a decision and let you know.

Very truly yours,

*James R. Blair*

James R. Blair

JRB:cjm

cc: Fred Smith, Coroner

Copy mailed to Charlotte Brown 9/17/80



## Trial Courts

State of Alaska

FOURTH JUDICIAL DISTRICT

604 BARNETTE STREET

FAIRBANKS, ALASKA

99701

FREDERICK M. SMITH  
CORONER/PUBLIC ADMINISTRATOR

(907) 452-5762

October 1, 1980

The Honorable James R. Blair  
Presiding Judge  
Fourth Judicial District  
604 Barnette Street  
Fairbanks, Alaska 99701

Dear Judge Blair:

Re: Autopsy related Funeral  
and Transportation costs.

The matter first came to my attention in November 1979, when I received a letter from Mr. Holmes requesting the State pay for services provided by Northern Lights Mortuary for Ward Anashugak, Jr., charges for which were set forth in Mr. Holmes' letter of July 9, 1980.

I was enlightened by Mr. James Heiber, President of Alaska Memorial Parks, Inc. concerning the background of that case, a copy of his memo is enclosed.

I discussed Mr. Holmes' request with Doug Mertz, of the Attorney General's Office, who agreed with me that this is not an expense that should be borne by the State, and to honor such a request would set a precedent which would be difficult to live with.

Mr. Heiber advised me that in 99% of the deaths in the North Slope Borough, the charges Mr. Holmes is requesting the State to pay, are paid for by the B.I.A. through its contract with the Inupiat Community in Barrow.

The costs are the normal, usual funeral costs charged throughout the State of Alaska and itemized in the billing as required by law.

If the State should pay for the funeral costs after autopsy for North Slope Borough residents, then it should also pay such costs for residents for the entire state; for there is no law which gives them special privileges. AAC 35. 090 applies to all of Alaska.

Mr. Holmes states the cosmetology work done by the mortuary is to correct the effect of the autopsy. In fact, cosmetology work is done to restore more natural color to the complexion because of the loss of blood from the body, and the cost is the same with or without an autopsy.

With regard to the Point Lay deaths, Charlotte Brower called me on Friday August 22, 1980 and advised the three bodies had arrived in Barrow too late to make the scheduled flight to Point Lay. The next scheduled flight was Tuesday and the cost of chartering an aircraft large enough for the bodies would cost \$2,100.00. I told Charlotte the State normally pays for scheduled airline transportation from, and to the point from which the body was received, and that \$2,100.00 seemed rather high for a charter. I requested she find out what arrangements she could make and advise me. I never heard anything more from her. I later learned the North Slope Borough chartered the aircraft.

It would seem to me that some counseling of families concerning the necessity for making funeral arrangements in keeping with the release and transportation of the body would help eliminate this problem.

In the remote areas of Alaska where there are no embalming facilities, the Department of Commerce issues a permit to an individual who must prepare bodies in compliance with AAC 35. 090.

Even if bodies are handled in accordance with the statutes (and I am not sure they are in all instances) in my opinion, this practice presents a very real health hazard.

I hope I have furnished you with sufficient information to be of value.

Sincerely,



Frederick H. Smith  
Public Administrator

FHS/ab  
Encl (1) Memo/Heiber

ALASKAN

MEMORIAL PARKS, INC.

TO HONOR AND REMEMBER THOSE WHO ARE GONE  
TO INSPIRE THOSE WHO ARE LIVING

ENDOWMENT CARE  
MEMORIAL GARDENS  
MAUSOLEUMS

FUNERAL HOMES

December 6, 1979

N. RIVERSIDE DRIVE, JUNEAU  
YANKOVICH ROAD, FAIRBANKS

MEMO

To: Mr. Fred Smith, Coroner

Re: Ward Anashugak, Jr., Deceased

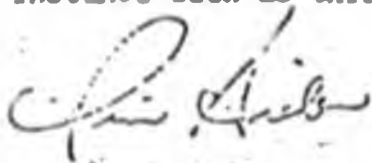
Pursuant to our conversations this week and my conversation with Annie Brower at the Inupiat Community in Barrow, I felt this memo should be drafted to reiterate the events involved in the arrangement for the above.

Northern Lights Mortuary was contacted by Arnold Brower, Jr., Commander VFW Post 406 Barrow, Alaska in regard Mr. Anashugak's arrangements. Mrs. Flummer was instructed that we should provide the services outlined in our billing. We were further told that a better casket than the flat top was desired and that the VFW would be responsible for expenses in excess of \$700 and that the Inupiat Community would pay the \$700. Because of prior satisfactory arrangements with Mr. Brower, we went ahead as instructed. We were not aware that he, nor the family, had not checked with the Inupiat Community as to their eligibility for assistance.

Upon receipt of our billing by the Inupiat Community they called our office and related that they knew nothing of the families request for assistance and that authorization had not been given to anyone. Therefore Mr. Brower would be responsible for payment.

We wrote to Mr. Brower, copy of letter attached, I then spoke with Annie and she related that upon Mr. Browers receipt of our letter he had contacted her office threatening to take her and her agency to court and sue for the amount of the money due. We understand the need of having families check with her for approval before she can commit to payment. She indicated to me that she did not appreciate Mr. Browers attitude in the matter but that she was having a village representative contact in family of the deceased to complete an application so that she might give it further consideration.

Regarding the matters mentioned in the letter to your office from Mr. Kolbus as to whether the State of Alaska should be responsible for certain expenses because an autopsy is required by the State is a matter that will have to be determined between the agencies. However, the normal practice nationally is that the State pays the cost of the autopsy but is not responsible for other expenses. Particularly in an instance such as this when an individual made the arrangement for services.





Superior Court

State of Alaska

FOURTH JUDICIAL DISTRICT

604 BARNETTE STREET

FAIRBANKS, ALASKA

99701

October 14, 1980

JAMES R. BLAIR, PRESIDING JUDGE

RECEIVED  
BARROW OFFICE

OCT 16 1980

ALASKA LEGAL  
SERVICES CORP.

JOHN M. HOLMES, Esq.  
Alaska Legal Services Corporation  
Post Office Box 309  
Barrow, Alaska 99723

Dear Mr. Holmes:

Re: Autopsy-Related Funeral Home Costs

In my previous letter of September 15, 1980, I informed you that Mr. Smith would present me with a report. He has now done so and I enclose a copy.

While I can certainly sympathize with families who find themselves in the unfortunate position of having to deal with a death which requires autopsy, I do not feel I should use my position as Presiding Judge to order the State of Alaska to bear the costs involved. It does seem to me that you might find a receptive climate in the legislature if you approached the right people to request statutory relief.

Thank you for your concern.

Very truly yours,

*James R. Blair*  
James R. Blair

JRB:cjm

Attachment

cc: Larry Wood, Asst. Attorney General  
Fred Smith, Coroner/Public Administrator

LAW OFFICES OF  
ALASKA LEGAL SERVICES CORPORATION

P. O. BOX 308  
BARROW, ALASKA 99723

TELEPHONE 852-2381

November 3, 1980

The Honorable Jay S. Hammond,  
Governor  
State of Alaska  
State Capitol, Third Floor  
Pouch A  
Juneau, Alaska 99811

RE: Autopsy-Related Mortuary Costs and  
Autopsy-Related Transportation Costs  
On The North Slope

Dear Governor Hammond:

The purpose of this letter is to bring the following matter to your attention. I have just referred the problem to the Ombudsman's Office and have requested that the Ombudsman investigate it.

When the court orders an autopsy after a death on the North Slope, the state considers the family responsible for all mortuary costs (principally embalming) before the body is returned from Fairbanks to the North Slope for burial. This is an expense that would never have occurred had the body remained on the North Slope; embalming is neither necessary nor practiced in North Slope funeral preparations because of the fact that burials take place in permafrost ground. Another issue which has subsequently arisen concerns the reluctance of the state to return bodies to the outlying villages in the most expeditious manner.

I have outlined these problems in my July 9 and September 25 letters to Judge James Blair, Presiding Judge of the Fourth Judicial District. In his reply of October 14, Judge Blair said that he did not feel that he should use his position as presiding judge to order the requested payments. He enclosed a memo from the Coroner and a memo from the Alaska Memorial Parks, Inc., funeral home.

In my opinion the state bears an absolute responsibility to pay all costs which directly result from the state's assumption of its authority under the police power to order an autopsy. And the state has a responsibility to do this in the most expeditious and sensitive manner possible.

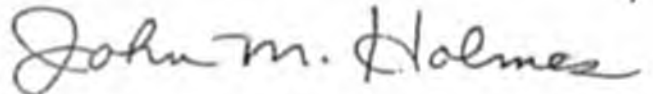
There is perhaps no more traumatic an experience for a family than to learn first of the sudden death of a relative and then to

Honorable Jay S. Hammond,  
Governor  
November 3, 1980  
Page Two

learn that the deceased is to be transported out of town for an autopsy. The least that the state can do under the circumstances is to pay the expenses incurred and to ensure the expeditious return of the body.

I have referred this matter to the Ombudsman in order to determine who is ultimately responsible for settling these questions and to try to obtain a fair resolution of them. Any assistance that your office can contribute in this regard would be greatly appreciated.

Sincerely Yours,



John M. Holmes,  
Attorney at Law

Enclosures

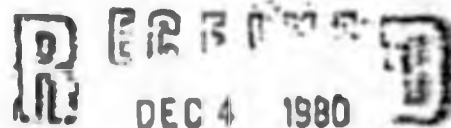
cc: Mr. Francis M. Flavin, Ombudsman  
The Honorable James Blair, Presiding Judge  
The Honorable Charlotte Brower, Magistrate  
Mr. Fred Smith, Coroner

LAW OFFICES OF  
ALASKA LEGAL SERVICES CORPORATION

P. O. BOX 309  
BARROW, ALASKA 99723

TELEPHONE 852-2301

November 3, 1980



ANCHORAGE  
OFFICE OF THE OMBUDSMAN

Mr. Francis M. Flavin,  
Ombudsman  
State of Alaska  
360 K Street, Room 246  
Anchorage, Alaska 99501

RE: Autopsy-Related Mortuary Costs and  
Autopsy-Related Transportation Costs  
On The North Slope

Dear Mr. Flavin:

I am referring the following issue to you for investigation by the Office of the Ombudsman.

When the court orders an autopsy after a death on the North Slope, the state considers the family responsible for all mortuary costs (principally embalming) before the body is returned from Fairbanks to the North Slope for burial. This is an expense that would never have occurred had the body remained on the North Slope; embalming is neither necessary nor practiced in North Slope funeral preparations because of the fact that burials take place in permanent frost ground. Another issue which has subsequently arisen concerns the reluctance of the state to return bodies to the outlying villages in the most expeditious manner.

The problem with the mortuary costs is outlined in my letter to Judge James Blair, Presiding Judge for the Fourth Judicial District, dated July 9, 1980. The problem with the transportation costs is outlined in my subsequent letter to Judge Blair, dated September 25, 1980. In his October 14 reply, Judge Blair stated that, while he does "...certainly sympathize with families who find themselves in the unfortunate position of having to deal with a death which requires autopsy, I do not feel I should use my position as Presiding Judge to order the State of Alaska to bear the costs involved." He referred me to the legislature for "statutory relief". Judge Blair enclosed a memo from the Coroner for the Fourth Judicial District and also a memo from the Alaskan Memorial Parks, Inc., funeral home.

I am requesting that you use my July 9 and September 25 letters as a basis for investigation of this matter. Once the state assumes the authority to transport a body for autopsy, it should at least pay for the expenses incurred and return the body to the village in the most expeditious manner possible. The family deserves this much consideration following the traumatic news that the death of a

Mr. Francis M. Flavin,  
Ombudsman  
November 3, 1980  
Page Two

relative has occurred and that the State of Alaska has elected to perform an autopsy on the body of that relative.

Sincerely Yours,

*John M. Holmes*

John M. Holmes,  
Attorney at Law

Enclosures

cc: The Honorable Jay S. Hammond, Governor  
The Honorable James Blair, Presiding Judge  
The Honorable Charlotte Brewer  
Mr. Fred Smith, Coroner

# STATE OF ALASKA

JAY S. HALBORD, GOVERNOR

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL  
CONSUMER PROTECTION SECTION

1049 WEST 5TH AVENUE  
SUITE 101  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 279-0428

November 17, 1980

Frank Flavin  
Ombudsman's Office  
840 K Street, Room 203  
Anchorage, AK 99501

Re: Ward Anashugak, Jr.  
Wainwright, Alaska

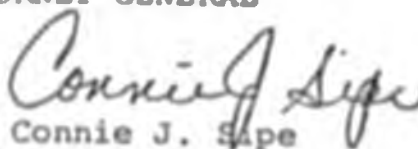
Dear Frank:

Enclosed are some more papers concerning the above matter  
for your file. Thank you.

Sincerely,

WILSON L. CONDON  
ATTORNEY GENERAL

By:



Connie J. Sape  
Assistant Attorney General  
Chief, Consumer Protection  
Section

/aw  
Enclosures

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL  
CONSUMER PROTECTION SECTION

420 L STREET, SUITE 100  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 279-0428

April 18, 1980

John Holmes  
Attorney at Law  
Alaska Legal Services Corporation  
P.O. Box 309  
Barrow, Alaska 99723

Re: Ward Anashugak, Jr.  
Wainwright, Alaska  
Deceased

RECEIVED  
BARROW OFFICE

APR 22 1980

ALASKA LEGAL  
SERVICES CORP.

Dear John:

I am sorry it took me so long to respond, but your materials arrived while I was out of the state for three weeks. Now that I have reviewed everything, I am not sure what further assistance this office can offer, since we have no jurisdiction over the actions of the coroner. If the funeral home had proceeded without authorization, or had failed to give a complete breakdown of the services provided, we might have had a matter falling under the jurisdiction of the Unfair Trade Practices Act. However, it does appear the Northern Lights Mortuary was operating in good faith on the basis of Mr. Brower's phone call.

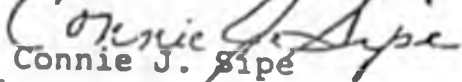
I share your concern regarding the imposition of additional fees on the family of a deceased which occur only because of a state ordered autopsy. However, my office cannot render any sort of legal opinion as to the state's liability in that regard. I strongly suggest sending this complaint to the Ombudsman's Office, requesting the Ombudsman to look into the matter of autopsies and otherwise undesired service charges. If you wish, I will send my file on the matter directly to the main office of the Ombudsman here in Anchorage. I will wait to do that until I get a release from you.

John Holmes  
April 18, 1980  
Page No. 2

Sorry that we could not be of more assistance at this time.

Sincerely,

AVRUM M. GROSS  
ATTORNEY GENERAL

By:   
Connie J. Sipe  
Assistant Attorney General  
Chief, Consumer Protection  
Section

/aw

LAW OFFICES OF

ALASKA LEGAL SERVICES CORPORATION

POST OFFICE BOX 309  
BARROW, ALASKA 99723  
TELEPHONE (907) 852-2311

November 30, 1979

Mr. Fred Smith, Coroner  
Fourth Judicial District  
Courthouse Building  
604 Barnette Street  
Fairbanks, AK 99701

Re: Ward Anashugak, Jr.  
Wainwright, Alaska  
Deceased

Dear Fred:

Enclosed please find the bill of the Northern Lights Mortuary and Memorial Park with regard to services rendered for Ward Anashugak, Jr.

I am requesting that the state pay the following charges which relate specifically to the autopsy:

1. Availability Fee	\$ 95.00
2. Professional Services	390.00
3. Funeral Home Facilities	75.00
4. Automotive Equipment	100.00
5. Telephone Calls	<u>7.36</u>

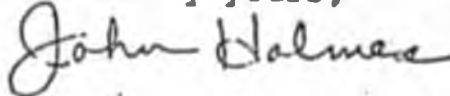
The family did not request an autopsy. The above fees became necessary only when the autopsy was ordered by the State. At Barrow no embalming or other funeral home services are necessary. The body of the deceased is held in a cold vault at the Alaska Native Hospital at Barrow until the funeral. After the funeral the body is buried in permafrost earth.

Therefore, if the autopsy had not been ordered by the state, there would have been no necessity for an "availability fee" any of the other related charges. There specifically would have been no necessity for embalming.

Mr. Fred Smith  
November 30, 1979  
Page Two

It is my understanding that other families have found themselves in this situation, and it would be beneficial for everyone if an understanding is reached on this kind of matter.

Sincerely yours,



John M. Holmes  
Attorney at Law

cc: Mr. Arnold Brower, Jr, Commander  
VFW Post 408, Barrow

Enclosure

# NORTHERN LIGHTS MORTUARY & MEMORIAL PARK

SR BOX 20055 - FAIRBANKS, ALASKA 99701 - (907) 479-2545

November 19, 1979

Mr. Arnold Brower, Jr.  
Post Office Box 403  
Barrow, Alaska 99723

Dear Mr. Brower:

We received your check today on Ward Anashupak, Jr. in the amount of \$423.36. On Thursday, we received a call from Annie Brower of Inupiat Community of the North Slope that they had not authorized the \$700.00 charge, and would absolutely not pay us. Now we must look to you to pay this additional charge as we, in good faith, accepted your phone call saying that they would pay the \$700.00 and that you had talked to them about it.

From here on, we will certainly check a little further into messages given us making someone else liable for services we perform.

If the Veterans of Foreign Wars does not pay this amount due, we will have to contact the Anashupak family for the payment.

Sincerely,



(Mrs.) Peta H. Murrer  
Assistant Secretary

NORTHERN LIGHTS MORTUARY & MEMORIAL PARK

S.R. BOX 20055  
FAIRBANKS, ALASKA 99701

(907) 479-2545

TO: Mr. Arnold Brower  
c/o Veterans of Foreign Wars  
Post Office Box 403  
Barrow, Alaska 99723

DATE: October 31, 1979

TERMS: 30 days

FOR FUNERAL EXPENSES OF: Ward Anachugak, Jr.		
Availability fee		\$ 75.00
Professional Services		300.00
Funeral Home Facilities		75.00
Automotive Equipment		100.00
Funeral Goods Furnished:		
Casket of Mr. Brower's selection (X)	\$375.00	
Underwear	6.00	381.00
Total Our Charges		\$1041.00
Cash Advances:		
Phone Calls	7.36	
Clothing for burial (A)	75.00	32.36
Total All Charges		\$1123.36
Inupiat Community to pay	700.00	
Veterans of Foreign Wars - Barrow to pay	423.36	
By phone call by Arnold Brower, Commander of VFW	1123.36	

*pl. A/Vh.*

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED  
AS A UNIT IN THE ORIGINAL DOCUMENT.

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 745

Title An Act relating to payment of costs for autopsies and related  
Requested by House HESS Committee Date 3/15/82 costs.

II. FISCAL DETAIL

Agency Affected Alaska Court System

Program Category Affected Administration of Justice

BRU, Program, Or Subprogram(s) Affected Trial Courts

(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						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>	See Analysis Below					

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME						
TEMPORARY						

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

HB 745 requires the court system to pay for mortuary services if the court ships a body to an outlying area for autopsy, and mortuary services would not have been required except for the autopsy.

On an annual basis there are an estimated 280 autopsies performed on bodies shipped into Anchorage or Fairbanks from outlying areas. The cost of embalming ranges from \$150 to \$300. Therefore, the annual cost to the court system for embalming would be approximately \$70,000.

If HB 745 contemplates the court system paying for caskets and clothing, this fiscal note would need to be adjusted by \$500 to \$800 per case, or approximately \$180,000.

IV. DATE March 17, 1982 PREPARED BY Richard P. Barrier  
AGENCY Alaska Court System

Original: Legislative Finance PHONE 264-0545  
cc: Budget and Management  
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)