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1/28/81

PAPPY,

ENCLOSED IS THE
LATEST LETTER FROM
DEPT. OF REV. STATING
REASONS FOR DENIAL.

I'VE OUTLINED PARAGRAPH
THAT'S NEED'S CHANGING.

WE ARE IN DIRE
NEED OF THIS PERMIT
TO CONTINUE EXISTENCE
OF THE CLUB. THANK
YOU SO MUCH FOR HELPING.

COMMODORE
Mary B. Smith

STATE OF ALASKA

DEPARTMENT OF REVENUE

December 31, 1980

JAY S. HAMMOND, GOVERNOR

11th FLOOR
STATE OFFICE BUILDING
POUCH SA
JUNEAU, ALASKA 99811

A. J. Movius
Fairbanks Outboard Association
P.O. Box 685
Fairbanks, AK. 99701

TAX TYPE AND PERIOD: Games of Chance and Skill Permit - 1980

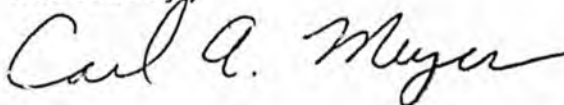
Gentlemen:

An Informal Conference decision had been reached with regard to the above referenced appeal. Your application for a permit has been denied. This decision is fully explained in the enclosed report.

If you are in disagreement with this action and wish to appeal our findings, please complete the enclosed Request for Appeal and return it with a copy of this letter within 30 days from the above date to:

Office of the Commissioner
Department of Revenue/Pouch SE
Juneau, AK 99811

Cordially,



Carl A. Meyer
Conference Officer
Audit Division
(907) 465-2344

Enclosure

TAX TYPE	EXPLANATION OF ITEMS	S.S.N./EIN
CH & SK Permit		
NAME OF TAXPAYER		YEAR/PERIOD ENDED
Fairbanks Outboard Association		1980

FACTS:

On August 22, 1979, following a review by the Department of Revenue of permittees authorized to conduct games of chance and skill, the Fairbanks Outboard Association (hereinafter Permittee) was notified by letter that it did not qualify for renewal of its permit. A second notification of the denial by the Department to renew the permit for 1980 was issued to Permittee on October 30, 1979. The permit renewal for 1980 was denied based on the Permittee not constituting a qualified organization under ALASKA STAT. § 05.15.100.

The Permittee, following a telephone inquiry with the Department in late August of 1979, formally protested on November 27, 1979 the action of the Department in the denial of the permit.

After numerous contacts with the Permittee, and conferences held in Juneau and Fairbanks, the following informal conference decision is rendered.

The Permittee was organized in 1957 for the purpose of promoting racing and use of power boats and the improvement of their design and construction, to formulate rules to govern trials of speed, endurance

TAX TYPE CH & SK Permit	EXPLANATION OF ITEMS	S.S.N./EIN
NAME OF TAXPAYER Fairbanks Outboard Association		YEAR/PERIOD ENDED 1980

and competition between boats, and, among other things to further interest in boating generally. Membership in the Permittee is open to those individuals with an interest in its boating activities.

Over the years since its inception, the Permittee has conducted raffles and lotteries to raise money for prizes and trophies awarded to winners in boat races sponsored by the Permittee. In addition, occasionally a small amount of money has been dispersed to other organizations.

Boat races, such as the Yukon 800 Marathon race, are the major activities of the Permittee and the vast majority of all funds raised are expended in connection with these races. Only the members of the Permittee's Association are eligible to participate in these boat races. However, the Permittee on occasion has also presented boating safety programs to civic groups, conducted a boat building class at a local community college and provided instruction on basics of safe boat handling to beginning level boaters.

ISSUE:

Is the Permittee a qualified organization under ALASKA STAT. § 05.15.210?

TAX TYPE	EXPLANATION OF ITEMS	S.S.N./EIN
CH & SK Permit		
NAME OF TAXPAYER		YEAR/PERIOD ENDED
Fairbanks Outboard Association		1980

PERMITTEE'S POSITION:

The activities engaged in fall within the scope of an educational organization.

LAW & CONFEREE'S DECISION

ALASKA STAT. § 05.15.100 provides in part that the Commissioner of Revenue may issue a permit to a qualified organization conferring the privilege of conducting raffles and contests of skill.

ALASKA STAT. § 05.15.210(15) provides that a qualified organization means "a bona fide civic or service organization or a bona fide religious, charitable, fraternal, labor, political or educational organization, police or fire department company, dog mushers association, or fishing derby association in the state, which operates without profits to its members and which has been in existence continually for a period of five years immediately before applying for a license, and the organization may be a firm, corporation, company, association or partnership".

Alaska Reg. § 15 AAC 05.300 provides that operating without profit to its members means that no part of the net earnings of the organization shall inure to the benefit of any private shareholder or individual.

STATE OF ALASKA
DEPARTMENT OF REVENUE

SCHEDULE

TAX TYPE	EXPLANATION OF ITEMS	S.S.N./EIN
CH & SK Permit		
NAME OF TAXPAYER Fairbanks Outboard Association		YEAR/PERIOD ENDED 1980

ALASKA STAT. § 05.15.210(4) provides that a contest of skill means a contest or game in which prizes are awarded for the demonstration of human skills in races and ALASKA STAT. § 05.15.210(16) provides that a raffle means the selling of rights to participate, and the awarding of prizes, in the specified kind of game of chance conducted by the drawing for prizes by chance.

ALASKA STAT. § 05.15.020 provides that no raffle or contest of skill may be conducted without a permit.

ALASKA STAT. § 05.15.210(7) provides that an educational organization means a:

"civic, service or charitable organization in the state, not for pecuniary profit, whose primary purpose is educational in nature and designed to develop the capabilities of individuals by instruction and which has been in existence for five years before applying for a license"
(emphasis added).

ALASKA STAT. § 05.15.210(3) provides that a civic or service organization means any branch or lodge or chapter of a national or state organization which is a

TAX TYPE	EXPLANATION OF ITEMS	S.S.N./EIN
CH & SK Permit		
NAME OF TAXPAYER		YEAR/PERIOD ENDED
Fairbanks Outboard Association		1980

civic or service organization, not for pecuniary profit, and authorized by its written constitution, charter or articles of incorporation or bylaws to engage in a fraternal, civic or service purpose in the state.

ALASKA STAT. § 05.15.210(2) defines a charitable organization as an organization which is operated for the relief of poverty, distress, or other condition of public concern in the state.

ALASKA STAT. § 05.15.150(a) provides that the authority to conduct the activity authorized by this chapter is contingent upon the dedication of the net proceeds of the raffles or contests to the awarding of prizes to contestants or participants and to educational, civic, public, charitable, patriotic or religious uses in the state.

ALASKA STAT. § 05.15.210(13) defines net proceeds as gross receipts less expenses, prizes, duties, or charges, fees, and deductions which are specifically authorized under this chapter.

A reading of the above statutes reflects the fact that permits may only be issued to organizations falling

TAX TYPE CH & SK Permit	EXPLANATION OF ITEMS	S.S.N./EIN
NAME OF TAXPAYER Fairbanks Outboard Association		YEAR/PERIOD ENDED 1980

within certain classifications. One of the permitted classifications is an educational organization. For the Permittee here to fall within the terms of the statute, he must fit within the educational organization classification.

For an organization to fall within the educational organization classification, such organization must have as its primary purpose the development, through education, of the capabilities through instruction of individuals. This contemplates an ongoing teaching process through which individuals gain knowledge in the area of instruction. In the instant case, the primary purpose of the Permittee is to promote boat racing, as evidenced by its activities. Thus, the Permittee is unable to satisfy the primary purpose test. Permittee thus cannot constitute a qualified organization.

However, apart from the primary purpose test, before an organization can qualify as an educational organization it must first be either a civic, service or charitable organization. The Permittee here cannot qualify as a civic or service organization as it is not a branch or lodge or chapter of a national or state civic or service organization. It also cannot

STATE OF ALASKA
DEPARTMENT OF REVENUE

SCHEDULE

TAX TYPE CH & SK Permit	EXPLANATION OF ITEMS	S.S.N./EIN
NAME OF TAXPAYER Fairbanks Outboard Association		YEAR/PERIOD ENDED 1980

qualify as a charitable organization as it is not operated for the relief of poverty, distress, or any other area of public concern. Thus, as the Permittee is not a civic, service or charitable organization, it does not come within the scope of the educational organization criteria.

In addition to Permittee's failure to qualify as a qualified organization, it also is not eligible for a permit due to the manner in which the net proceeds from its raffles are utilized. ALASKA STAT. § 05.15.150 expressly conditions the granting of a permit to those situations where the net proceeds of the raffles or contests are dedicated to the awarding of prizes to contestants or participants and to political, educational, civic, public, charitable, patriotic, or religious uses in the state. It is the utilization of the net proceeds from each separate activity that must be examined. In other words, where both a raffle and a contest of skill are conducted, the net proceeds from the raffle must be determined independently from the net proceeds from the contest of skill. The net proceeds from each of these activities must then be dedicated to a proper purpose.

In the instant case, the Permittee has consistently

STATE OF ALASKA
DEPARTMENT OF REVENUE

SCHEDULE _____

TAX TYPE CH & SK Permit	EXPLANATION OF ITEMS	S.S.N./EIN
NAME OF TAXPAYER Fairbanks Outboard Association		YEAR/PERIOD ENDED 1980

used the net proceeds from the raffles to fund cash prizes in its contests of skill. For instance, in 1979 the Permittee had gross receipts of \$16,304.50 from raffles and lotteries and \$770 from contests of skill. The net proceeds of the raffles were then utilized to pay cash prizes to contestants in the contests of skill. As the proceeds from the raffles may only be used to provide raffle-related prizes or for contributions to political, educational, civic, public, charitable, patriotic or religious uses, the utilization of such proceeds to provide prizes in the contests of skill is not authorized by the statute and thus operates to revoke the privilege of conducting these types of activities.

The operational result of the Permittee's activities serves to illustrate the reason why the net proceeds from each activity must be separately utilized in the appropriate manner. The Permittee conducts raffles to raise money. This money is then awarded as prizes in its contests of skill. Only members of the Permittee can participate in the contests of skill. Thus, for all practical purposes the money raised in the raffles is expended to members of the Permittee. Essentially, the profits of the organization are being applied to the "profit of the members" in an indirect manner.

STATE OF ALASKA
DEPARTMENT OF REVENUE

SCHEDULE _____

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This result has never been condoned by the statute;
indeed, it has specifically been prohibited.

Accordingly, it is the decision of the Conferee that
the Permittee is not a qualified organization. It is
further the decision of the Conferee that the net
proceeds from the Permittee's activities have been
utilized in past years in a prohibited manner.

Accordingly, Permittee is not entitled to a permit in
1980 and the protest is therefore denied.

pay the additional tax within 20 days after service of the notice he forfeits his license and is permanently disqualified from receiving a new license. In addition the licensee and the members thereof are jointly and severally liable to the state in the penal sum of \$1,000. (§ 11 ch 157 SLA 1960)

Sec. 05.10.160. Penalty for conducting contests without license. A person, club, corporation, organization, association or fraternal society conducting boxing, sparring or wrestling contests or exhibitions without a license is guilty of a misdemeanor. (§ 12 ch 157 SLA 1960)

Sec. 05.10.170. General penalty. A person violating a provision of this chapter for which no penalty is provided in this chapter is guilty of a misdemeanor. (§ 13 ch 157 SLA 1960)

Chapter 15. Bingo, Raffles and Ice Pools.

Article

1. Administration (§§ 05.15.010—05.15.090)
2. Licenses and Permits (§§ 05.15.100—05.15.180)
3. General Provisions (§§ 05.15.190—05.15.210)

Article 1. Administration.

<p>Section</p> <p>10. Department of Revenue to administer chapter</p> <p>20. Annual permit and fee</p> <p>30. Notification of local governments and protests</p> <p>40. Issuance and effect and term of permit</p> <p>50. Surrender of permit upon suspension or revocation</p>	<p>Section</p> <p>60. Rules and regulations</p> <p>70. Commissioner of revenue may examine permittees</p> <p>80. Reports by permittees</p> <p>90. Reports to the legislature by commissioner of revenue, attorney general and commissioner of public safety</p>
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Sec. 05.15.010. Department of Revenue to administer chapter. The Department of Revenue shall administer this chapter. (§ 9 ch 27 SLA 1960)

Legislative committee reports.— For legislative committee reports on original bill, see House Journal (1960), pages 276, 412; House Journal (1961), pages 57, 58, 95, 325, 326.

Am. Jur., ALR and C.J.S. references.— 24 Am. Jur., Gaming and Prize Contests, §§ 12 to 30; 34 Am. Jur., Lotteries, §§ 22 to 32.

What transactions are within the purview of statutes or ordinances in relation to gifts or prizes or gift enterprises, 30 ALR 1035.

Statute exempting schemes for benefit of public, religious or charitable purposes, from statute against lotteries, 103 ALR 875.

Lottery as game of chance, 135 ALR 168.

What are games of chance, games of skill, and mixed games of chance or skill, 139 ALR 104.

38 C.J.S. Gaming §§ 80 to 132; 54 C.J.S. Lotteries § 1 et seq.

to the department. No activity is permitted for a period of 15 days after application. (§ 3 ch 27 SLA 1960)

Sec. 05.15.030. Notification of local governments and protests. (a) At the time of filing application the applicant shall notify the city or borough nearest to the location of the proposed activity of the application. During the 15-day period a local government unit may protest the conduct of the activity in its jurisdiction by resolution stating the reasons for the protest filed with the department. Protests are limited to the lack of qualifications prescribed by this chapter.

(b) This resolution is only a recommendation by the city which may be considered by the commissioner in his determination to issue or refuse to issue a permit. (§ 3 ch 27 SLA 1960)

Sec. 05.15.040. Issuance and effect and term of permit. After the fee is paid, a permit issued, and during the effective period of the permit, the organization may conduct the activity specified in the permit. If a permit is revoked, the permittee is not eligible for another permit until the expiration of one year from the date of revocation. A permit expires at the end of the period for which it is issued. A permit is not transferable. (§ 3 ch 27 SLA 1960)

Permit for more than one activity. —Under AS 05.15.210 a permit may be issued which gives a qualified organization the privilege of conducting any of the designated activities. AS 05.15.040 limits the activities that may be conducted to those activities specified in the permit. Under AS 05.15.060 the commissioner has authority to further limit the number of activities which may be conducted pursuant to any permit. Therefore, absent any regulation to the contrary, a permit could be issued for more than one activity to a qualified organization. 1960 Op. Atty. Gen., No. 8.

Sec. 05.15.050. Surrender of permit upon suspension or revocation. When a permit is suspended or revoked, the permittee shall surrender the permit to the department on or before the effective date of the suspension or revocation. A permit is not valid beyond the effective date of the suspension or revocation, whether surrendered or not. (§ 3 ch 27 SLA 1960)

Sec. 05.15.060. Rules and regulations. In accordance with the Administrative Procedure Act (AS 44.62), the commissioner of revenue shall adopt, no later than September 7, 1960, rules and regulations necessary to carry out this chapter covering, but not limited to

- (1) the issuance, renewal, and revocation of permits;
- (2) a method of ascertaining net proceeds, the determination of items of expense which may be incurred or paid and the limitation of the amount of the items of expense to prevent the proceeds from the activity permitted from being diverted to noncharitable non

(3) the immediate revocation of permits if this chapter or regulations issued under it are violated;

(4) the requiring of detailed, sworn, financial reports of operations from permittees including detailed statements of receipts and payments;

(5) the investigation of permittees and their employees, including the fingerprinting of those permittees and employees whom he considers it advisable to fingerprint;

(6) exclusion from participation as a permittee or employee of a permittee of any person convicted of a felony, a crime involving moral turpitude, or violation of a municipal, state, or federal gambling law;

(7) the method and manner of conducting activity and awarding of prizes or awards, and the equipment which may be used;

(8) the number of activities which may be held, operated, or conducted under a permit during a specified period;

(9) a method of accounting for receipts and disbursements including the keeping of records and requirements for the separate banking of all receipts, and payments by check only;

(10) the disposition of funds in possession of a permittee at the time a permit is surrendered, revoked or invalidated;

(11) other matters which the commissioner considers necessary to carry out this chapter or protect the best interest of the public. (§ 4 ch 27 SLA 1960)

Permit for more than one activity.
—See same catchline in note to AS 05.15.040.

Sec. 05.15.070. Commissioner of revenue may examine permittees. The commissioner may examine or have examined the books and records of a permittee. The commissioner may require the permittee to pay the reasonable cost of the examination. The commissioner may issue subpoenas for the attendance of witnesses and the production of books, records, and other documents. (§ 6 ch 27 SLA 1960)

Sec. 05.15.080. Reports by permittees. If the licensed activity grosses over \$500, the permittee shall, within 15 days after the holding of the specific activity, file for public inspection with the city or borough clerk nearest to the location of the activity licensed and with the commissioner of revenue, an itemized statement showing all income and expense in connection with the activity. If the activity grosses over \$20,000, the commissioner may extend the time for filing the report for a period not exceeding 60 days. (§ 6 ch 27 SLA 1960)

Sec. 05.15.090. Reports to the legislature by commissioner of

commissioner of revenue shall submit a detailed report containing a summary of all reports required of permittees and recommending a permit fee scale that will cover costs of administration and enforcement. The attorney general and the commissioner of public safety shall, within 10 days after the convening of the legislature each year, submit a jointly prepared, detailed report outlining the effect, if any, of the operation of this chapter on the legal and law enforcement activities of the state. (§ 9 ch 27 SLA 1960)

Article 2. Licenses and Permits.

Section	Section
100. Commissioner of revenue may issue permits	140. Proof necessary to qualify for permit
110. Authorized activities a privilege	150. Limitation on use of proceeds
120. Eligibility for permit	160. Authorized expenses
130. Commissioner may impose additional requirements for eligibility	170. Suspension of permit
	180. Limitations on authorized activity

Sec. 05.15.100. Commissioner of revenue may issue permits. The commissioner of revenue may issue a permit to a qualified organization. The permit gives the organization the privilege of conducting bingo, raffles and lotteries, ice classics, dog mushers' contests, fish derbies and contests of skill. (§ 1 a ch 27 SLA 1960)

Sec. 05.15.110. Authorized activities a privilege. The activities specified in § 100 of this chapter may be permitted as a privilege and do not confer a right upon any person to conduct the activities. (§ 1 b ch 27 SLA 1960)

Sec. 05.15.120. Eligibility for permit. An applicant shall be a qualified organization to be eligible for a permit. (§ 1 c ch 27 SLA 1960)

Sec. 05.15.130. Commissioner may impose additional requirements for eligibility. The commissioner of revenue may supplement the definitions of qualified organizations and activities by rules and regulations adopted under this chapter adding to the definitions additional requirements which the commissioner considers necessary for the best interests of the public or for the proper administration of this chapter. (§ 1 d ch 27 SLA 1960)

Sec. 05.15.140. Proof necessary to qualify for permit. The commissioner of revenue may not issue or renew a permit except upon proof, satisfactory to him, that the applicant is a qualified organization, the activity may be permitted under this chapter, and the issuance of a permit is not detrimental to the best interests of the public. Upon request of the commissioner of revenue, the applicant

Sec. 05.15.150. Limitation on use of proceeds. (a) The authority to conduct the activity authorized by this chapter is contingent upon the dedication of the net proceeds of the raffles or contests to the awarding of prizes to contestants or participants and to educational, civic, public, charitable, patriotic or religious uses in the state. "Educational, civic, public, charitable, patriotic, or religious uses" mean uses benefiting an indefinite number of persons either by bringing them under the influence of education or religion or relieving them from disease, suffering, or constraint, or by assisting them in establishing themselves in life, or by erecting or maintaining public buildings or works, or otherwise lessening the burden of government but do not include the erection, acquisition, improvement, maintenance, or repair of real, personal or mixed property unless it is used exclusively for one or more of the uses stated.

(b) The net proceeds derived from the activity must be devoted within one year to one or more of the uses stated. An organization desiring to hold the net proceeds for a period longer than one year must apply to the commissioner of revenue for special permission and upon good cause shown the commissioner may grant the request. (§ 1 e ch 27 SLA 1960)

Sec. 05.15.160. Authorized expenses. No item of expense may be incurred or paid in connection with the holding, operating or conducting of an activity, held, operated or conducted under a license issued under this chapter, except bona fide expenses in reasonable amount for goods, wares, and merchandise furnished or services rendered, reasonably necessary for the holding, operating or conducting of the activity. (§ 1 e ch 27 SLA 1960)

Sec. 05.15.170. Suspension of permit. The commissioner of revenue may suspend a permit pending investigation or hearing. The suspension is effective upon the giving of notice to the permittee. The notice may be given by the delivery or handling of written notice to the permittee or a person conducting an activity under the permittee's permit or the mailing of notice to the permittee at the address shown on the permit. A permit may be suspended under this section for a period of 90 days or until the end of a hearing or other proceeding begun during suspension. The authority of the commissioner to suspend a permit is not subject to the Administrative Procedure Act (AS 44.62). (§ 5 ch 27 SLA 1960)

Sec. 05.15.180. Limitations on authorized activity. (a) This chapter does not authorize the use of playing cards, dice, roulette wheels, coin-operated instruments or machines, or other objects or instruments used, designed, or intended primarily for gaming or gambling or any other method or implement not expressly au-

existed in the state in substantially the same form and was conducted in substantially the same manner before January 1, 1959. (§ 2 ch 27 SLA 1960)

Quoted in Pin-Ball Machine, Serial No. 2334 v. State, Sup. Ct. Op. No. 86 (File No. 162), 371 P. (2d) 305.

Article 3. General Provisions.

Section	Section
190. Interpretation and construction	210. Definitions
200. Penalty	

Sec. 05.15.190. Interpretation and construction. If any provision of this chapter, or regulation made under this chapter, is determined to be unlawful, then all permits issued in connection with the licensed activity to which the unlawful provision or regulation related shall be cancelled. (§ 8 ch 27 SLA 1960)

Sec. 05.15.200. Penalty. Every permittee and every officer, agent, or employee of the permittee and every other person or corporation who wilfully violates or who procures, aids, or abets in the wilful violation of this chapter is guilty of a misdemeanor. (§ 7 ch 27 SLA 1960)

Sec. 05.15.210. Definitions. In this chapter

(1) "bingo" means a game of chance of, and restricted to, the selling of rights to participate, and the awarding of prizes, in the specific kind of game of chance sometimes known as bingo or lotto, played with cards bearing numbers or other designations, five or more in one line, the holder covering numbers when objects similarly numbered are drawn from a receptacle, and the game being won by the person who first covers a previously designated arrangement of numbers on the card;

(2) "charitable organization" means an organization, not for pecuniary profit, which is operated for the relief of poverty, distress, or other condition of public concern in the state, and which has been so engaged for five years before applying for a permit under this chapter;

(3) "civic or service organization" means any branch or lodge or chapter of a national or state organization which is a civic or service organization, not for pecuniary profit, and authorized by its written constitution, charter, or articles of incorporation, or by-laws to engage in a fraternal, civic or service purpose in the state and which has been so engaged for five years before applying for a license under this chapter;

(4) "contest of skill" means a contest or game in which prizes are awarded for the demonstration of human skills in marksmanship.

MEMORANDUM

State of Alaska


TO: R. D. Stevenson
Legislative Assistant

DATE: April 14, 1981

FILE NO:

TELEPHONE NO:

FROM: Gary L. Jenkins
Director
Audit Division



SUBJECT: HB 468

This bill would make an amendment to the Games of Chance and Skill law by providing for a boating association to become a qualified organization for purposes of obtaining a permit. However, there is a serious question whether the organization for which this amendment is proposed will qualify even if this change is made in the law. The proposed definition of a boating organization requires that the organization be a civic, service, or charitable organization in the state. The organization in question is organized to conduct a boat race on the Chena River. They want a Games of Chance and Skill permit to raise money to give away as prizes in their race. If the organization could have met the requirement of being a civic, service or charitable organization, they would be eligible to obtain a permit under the current law. It does not appear possible to change the law to enable the organization in question to obtain a permit without completely departing from the original intent of the law of limiting permits to civic, service and charitable organizations.

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. HB 468
 Title An Act relating to Games of Chance and Skill
 Requested by House Judiciary Committee Date April 4, 1981

II. FISCAL DETAIL
 Agency Affected Department of Revenue
 Program Category Affected Revenue Collection and Management
 BRU, Program, or Subprogram(s) Affected Audit Division
 (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) NONE

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Thousands of Dollars) NONE

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS NONE

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
FULL TIME						
PART TIME						
TEMPORARY						

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

See the memorandum to R. D. Stevenson dated April 14, 1981 which is attached.

IV. DATE April 14, 1981 PREPARED BY Gary L. Jenkins
 AGENCY Audit Division
 PHONE 465-2320
 Original: Legislative Finance
 cc: Budget and Management
Prime Sponsor (First Legislator Named)