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AMENDMENT:

Delete all after line 24, page 1, and insert:

* Sec. 4. AS 29.28 is amended by adding a new section to read:

* Sec. 29.28.072 CIRCULATION WITHIN A SHOPPING MALL. A sponsor may collect signatures on an initiative or a referendum in an orderly manner in the common area inside a shopping mall that contains at least six individual business establishments.

* Sec. 5. AS.29.28 is amended by adding a new section to read:

* Sec. 29.28.185. CIRCULATION WITHIN A SHOPPING MALL. A sponsor may collect signatures on a recall in an orderly manner in the common area inside a shopping mall that contains at least six individual business establishments.

* Sec. 6. This Act takes effect July 1, 1982.

Carr-Gottstein Properties Inc.
1341 Fairbanks Street
Anchorage, Alaska 99501
(907) 276-4470

March 24, 1982

The Honorable Ramona Barnes
State of Alaska Legislature
House of Representatives
Pouch V
Juneau, Alaska 99811

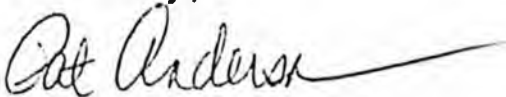
Re: House Bill Number 753

Dear Representative Barnes:

It has come to our attention that a bill which affects shopping center operation has been introduced into the House of Representatives and referred to the Judiciary Committee. The Bill, number 753, addresses the issue of public access to a shopping center for the purpose of collecting signatures.

In our opinion, this bill is extremely vague and unnecessary. At Carr-Gottstein Properties, Inc., we recognize the social impact of a shopping center to be a collecting point for the general public. Therefore, we are currently designing a community booth for The Mall at Sears. This booth will allow non-profit, civic, social, political and religious groups to use the shopping center for non-shopping purposes, and at the same time not interfere with the business operation of the center. Guidelines, as proposed by the International Council of Shopping Centers, will be adapted to our community booth. These industry guidelines outline reasonable regulations and conditions governing the time, place, number and manner of expressive activity. We, at Carr-Gottstein Properties feel we have taken the appropriate steps to allow public access to our property. We strongly urge that Bill Number 753 die a quiet death in committee.

Sincerely,



Pat Anderson
Mall Manager

PA:jc

**CARR
GOTTSTEIN**



Management Corporation

March 19, 1982

Representative Ramona Barnes, Chairperson
House Judiciary Committee
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Re: House Bill No. 753

Dear Representative Barnes:

Recently I have been made aware of the above-referenced House Bill which is of some concern to me and my colleagues who are engaged in shopping center development and management. The Bill provides for any individual or group to enter a shopping mall and collect signatures on any initiative, so long as they do so in an orderly manner.

Our concern lies in the fact that, should this Bill pass, owners/managers of shopping centers will no longer have any control over what goes on in certain circumstances in their centers. A fact of which you should be aware is that shopping centers have, for a long period of time, been aware of their responsibility to the community to provide a forum for the public. To that end they, and specifically Northway Mall, have set up a Community Booth which is available to the public for any valid, non-profit purpose to include the gathering of signatures on petitions. We have provided guidelines for the use of such areas which are fair and equitable to all concerned. I have enclosed a copy of our Guidelines for your reference. We certainly have no wish to preclude any worthwhile cause to be advanced in our centers. What we do wish is to be able to have some decision-making prerogatives with regard to the uses to which our centers are put.

We at Northway Mall strive constantly to provide a congenial and inviting atmosphere for our customers. Part of this atmosphere depends on our being able to assure those customers that they will not be accosted by a group which has indiscriminate power to disturb them as they shop.

We would certainly appreciate your further investigation of this matter, and we wish to go on record as being in opposition to the blanket permission being granted in House Bill No. 753.

Cordially,

TRF MANAGEMENT CORPORATION

Jo Derry
Mall Manager, Northway Mall

cc: Rep. Rick Halford

TRF Management Corporation., 3101 Penland Parkway, Suite M-1, Anchorage, Alaska 99504 • (907) 276-5520



NORTHWAY MALL COMMUNITY BOOTH GUIDELINES

Although Northway Mall is private property, and despite the fact that it invites the general public to the center for the purpose of shopping, it recognizes its social commitment in allowing non-profit civic, social, political and religious groups to use the center for non-shopping purposes. In order to treat all organizations fairly and with no discrimination whatsoever, any clubs or organizations desiring to conduct activities in the center may do so, simply by following these rules and regulations:

1. **RESERVATIONS** - All clubs, organizations or individuals desiring to use the Community Booth must make arrangements in advance, in writing, and must have written confirmation from the management office. Information regarding these reservations may be obtained by calling 276-5520 or visiting the mall management office.

2. **ADVANCE NOTICE** - All requests for use of the Community Booth must be received in the mall management office at least thirty (30) days but not more than one hundred eighty (180) days before the date requested.

3. **DURATION** - The Community Booth may be used for a maximum of three (3) days during any thirty (30) day period, during the hours that Northway Mall is open for business.

4. **LOCATION** - All activities connected with the use of the Community Booth must be confined within the Community Booth and not conducted in the Northway Mall stores, mall areas, or the parking lot.

5. **SIGNING** - All signing must be located within the Community Booth or on the bulletin board located next to the Booth. No nails or tacks may be used on the walls or the Booth itself.

6. **CLEANLINESS** - During usage, the Community Booth must be kept in a presentable state. Upon conclusion of the activity, users must clean the area and repair or replace any damaged items. If Booth is not cleaned and repaired and all refuse removed after use, Northway Mall reserves the right to retain part or all of the \$25.00 security deposit to defray cleaning/repair costs.

7. **HANDBILLS** - Distribution of information is allowed within the Community Booth. No handbills or other items may be distributed in the Northway Mall stores, mall areas or the parking lot.

8. **NOISE CONTROL** - No public address systems, loud music, or other disturbing activities will be allowed within Northway Mall property.

9. **DEPOSIT** - A deposit of \$25.00 is required for use of the Community Booth. The deposit must be received at least one (1) week prior to the requested dates. This deposit will be refunded within one (1) week after use of the Booth, provided that all requirements for cleanliness and repair have been met.

DIMOND CENTER

800 E. Dimond Blvd.
P.O. Drawer 2635
Anchorage, Alaska 99510
Phone: 274-4597

March 18, 1982

Rep. Romona Barnes
Chairperson, Judiciary Committee
Pouch V
Juneau, Alaska 99811

RE: House Bill No. 753

Dear Ms. Barnes:

In regards to the attached House Bill No. 753 introduced February 11, 1982, we feel that it would be an infringement upon our Constitutional rights as private property owners, should it be enacted into law.

Dimond Center is a privately owned shopping center and the primary operation of the center is for the benefit of our tenants and their customers. Should this piece of legislation be enacted into law by the Legislature of the State of Alaska, we feel it would disturb the peace and tranquility of our tenants and customers.

Should it be necessary for the circulation of such mentioned petitions, there is ample public property available for the collections of signatures. Initiatives, referendums, and recalls are public matters and not private, therefore private properties should not have to bear the burden of the disruption of their businesses to facilitate a public need.

I strongly request that this piece of legislation not proceed any further, for as stated previously, it is a travesty upon our Constitutional rights as private property owners.

Thanking you for your consideration in this matter.

Regards,



Bill Dolence
Manager

Enclosure

cc: Mr. Joe C. Ashlock, Owner
Rep. Joe Hayes

ERWIN, SMITH & GARNETT

ATTORNEYS AT LAW
1345 WEST 9TH AVENUE, SUITE 201
ANCHORAGE, ALASKA 99501
PHONE (907) 276-3125

ROBERT C. ERWIN
FLOYD V. SMITH
RICHARD W. GARNETT III
JAMES BENDELL
JULIE SIMON

December 8, 1981

Mr. Joe Grove
Chairman, Issues 80
Anchorage, Alaska

Re: Access to Shopping Malls

Dear Mr. Grove:

You have asked my opinion on the legal status of Issues 80 with respect to gathering signatures in the major shopping malls in Anchorage. It is my understanding that the proprietors of the malls have been approached on the subject and have refused to permit Issues 80 to gather signatures within the mall areas.

The law is not entirely clear on the rights of organizations in your position to gather signatures in shopping malls. However, based on a growing body of authority, I believe the Alaska Courts would uphold such a right.

In two earlier cases, the United States Supreme Court held that there was a federal Constitutional right to enter "private" property areas for the purpose of exercising First Amendment and other rights where the use of the property was quasi public in nature.

In Marsh v. Alabama, 326 US 501 (1946), the issue was the right of Jehovah's Witnesses to enter into a "company town" for the purpose of proselytizing. The court said that the property had the indicia of public premises and could not be placed off limits to the exercise of speech related rights.

Similarly, in Ford Employees v. Logan Valley Plaza, 391 US 308 (1968), the court held that owners of a shopping center could not exclude labor pickets exercising their rights under the NLRA.

Joe Grove
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December 8, 1981

The impact of these cases was reduced by Lloyd Corp. v. Tanne, 407 US 551 (1972), where the court held that the shopping center did not lose all of the privileges of private property simply because it was open to the public for shopping purposes. In that case the shopping center had a strict policy against distributions of any kind. In addition, the court found that there were adequate alternative means for petitioners to exercise their First Amendment rights.

I believe the question of adequate alternatives is particularly important in your case. It is well known that in Alaska in the winter the public does not remain out of doors on public sidewalks, or otherwise, more than the minimum time necessary to proceed from one location to another. It may be literally impossible for your organization to secure signatures for your petition if you are limited to municipal sidewalks.

Several courts have recognized this factor in granting access to private property. See e.g. NLRB v. Babcock & Wilcox, 351 US 105 (1956), and Peterson v. Talisman Sugar Corp., 478 F 2d 73 (Fifth Circuit 1973), where the court granted access to private residential areas for plantation workers, noting:

There are no effective alternatives open to the plaintiffs for communication with the Jamaicans other than through access to the living areas of the labor camp.

In Anchorage a case similar to yours arose in 1974 relating to gathering signatures for a petition to enact campaign disclosure laws. Based on the foregoing legal arguments, the Superior Court, through Judge Seaborn J. Buckalew, granted a temporary restraining order against any attempt to exclude persons gathering signatures for this purpose in the Sears Mall. See Anchorage Election Reform Committee v. Carr's Food Center, Inc., et al, No. AN-74-286 Civ.

Subsequent to the authorities discussed above, a new development greatly strengthens your legal

position. This development is the willingness of state supreme courts to go beyond the U.S. Court's interpretation of the U.S. Constitution in protecting activities such as yours in shopping centers.

The key case is Prunyard Shopping Center, et al v. Robbins 447 U.S. 74 (1980). In that case a group sought to gather, in a large shopping center, signatures opposing a U.N. Resolution against zionism. The shopping center excluded these persons, who then brought suit. The California Supreme Court held that the California Constitution protected speech and petition reasonably exercised in shopping centers, even when the center was privately owned.

On appeal to the U.S. Supreme Court, the shopping center argued that it had a federal constitutional right to exclude such activity. The Supreme Court disagreed, holding that the state was fully empowered to recognize such a right.

The California court relied on provisions of the state constitution which are virtually identical to corresponding provisions in the Alaska Constitution. Specifically, Article 1, Section 2 of the California Constitution provides:

Every person may freely speak, write, and publish his or her sentiments on all subjects being responsible for the abuse of this right.

In addition, the court relied upon Article 1, Section 3 of the California Constitution, which states:

People have the right...to...petition government for redress of grievances.

Comparing the Alaska Constitution, Article 1, Section 5 provides:

Every person may freely speak, write, and publish on all subjects being responsible for the abuse of that right.

Article 1 Section 6 provides:

Joe Grove
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December 8, 1981

The right of the people peaceably to assemble and to petition the government shall never be abridged.

The most recent and direct support for your position comes from the Washington State Supreme Court in Alderwood Associates v. Washington Environmental Council, 50 LW 2271. There, petitioners sought to gather signatures for an initiative proposition in a chopping center. The Washington Supreme Court held that they were entitled to do so, relying in part on the Prunyard case. In addition, the court relied heavily upon provisions of Washington Constitution providing for the right of initiative. The court held that that right was specifically guaranteed within the Washington Constitution. The Court also held that this right was protected against unreasonable private action, as well as "state action".

The Alaska Constitution is at least as emphatic as the Washington Constitution in its protection of the right of initiative. Article XI is devoted entirely to the rights of initiative, referendum, and recall. Article XI, Section 1 provides:

The people may enact laws by the initiative and approve or reject acts of the legislature by the referendum.

Following the reasoning of the California and Washington Supreme Courts, actions by private parties such as shopping owners which unreasonably restricted the initiative process would be vulnerable.

It should be stressed that this analysis does not relate to all private property but only to private property which has become the "functional equivalent of a business street" by reason of the owners chosen use of the property.

For the reasons stated above, it is my opinion that a court test of your right to enter large, commercial shopping malls for the purpose of gathering

Joe Grove
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December 8, 1981

signatures in a peaceful and orderly manner would be resolved in your favor.

I understand that there is a short time remaining for you to gather the necessary signatures. If the mall owners refuse to grant entry, immediate court action may be necessary. If you are required to go to court, and prevail, you will be entitled to an award of costs and attorneys fees.

I hope the foregoing is useful. Please feel free to call me if you have any questions or comments.

Yours very truly,

A handwritten signature in cursive script that reads "Richard W. Garnett" followed by a horizontal line and a small flourish.

Richard W. Garnett, III

RWG/jlw

Introduced: 2/11/82
Referred: Judiciary

1 IN THE HOUSE

BY MARTIN

2 HOUSE BILL NO. 753

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL.

6 For an Act entitled: "An Act allowing for the collection of signatures on
7 initiative, referendum, and recall petitions in shop-
8 ping malls; and providing for an effective date."

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

10 * Section 1. AS 15.45 is amended by adding a new section to read:

11 Sec. 15.45.115. CIRCULATION WITHIN A SHOPPING MALL. A sponsor may
12 collect signatures on an initiative in an orderly manner in the common
13 area inside a shopping mall that contains at least six individual busi-
14 ness establishments.

15 * Sec. 2. AS 15.45 is amended by adding a new section to read:

16 Sec. 15.45.345. CIRCULATION WITHIN A SHOPPING MALL. A sponsor may
17 collect signatures on a referendum in an orderly manner in the common
18 area inside a shopping mall that contains at least six individual busi-
19 ness establishments.

20 * Sec. 3. AS 15.45 is amended by adding a new section to read:

21 Sec. 15.45.585. CIRCULATION WITHIN A SHOPPING MALL. A sponsor may
22 collect signatures on a recall in an orderly manner in the common area
23 inside a shopping mall that contains at least six individual business
24 establishments.

25 * Sec. 4. This Act takes effect July 1, 1982.

26 *Need Title 29 Section → Martin*

FISCAL NOTE

I. REQUEST HB 753 - An Act allowing for the collection of signatures on
 Bill/Resolution No. initiative, referendum and recall petitions in shopping malls;
 Title and providing for an effective date.
 Requested by House Judiciary Date 2/24/82

II. FISCAL DETAIL
 Agency Affected Office of the Governor
 Program Category Affected Division of Elections
 BRU, Program, Or Subprogram(s) Affected Division of Elections
 (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.						
TOTAL		-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS No additional positions required.

FULL TIME						
PART TIME						
TEMPORARY						

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

HB 753 will have no fiscal impact on the Division of Elections.

IV. DATE 2/24/82 PREPARED BY Dana C. Coffman
 AGENCY Division of Elections
 PHONE 586-6181
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)