SB

392

MEMORANDUM

DATE: May 25, 1981

TO: Rep. Mike Miller, Subcommittee Chairman
House Judiciary Committee

Rep. Fred Brown, Chairman
House Judiciary Committee

FROM: Michael Ford, Counsel
House Judiciary Committee

SUBJ: SB 392 am and HB 371 (Continuing existence of the Alaska Bar Association)

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Both the Senate and House versions extend the existence of the Alaska Bar Association, the Senate version until June 30, 1984, and the House version until June 30, 1983. Both versions provide for three lay persons to sit on the Board of Governors, these individuals to be appointed by the Governor and confirmed by the Legislature.

These bills additionally require that meetings of the Board of Governors be open public meetings pursuant to the APA, and that the meetings be held in state after thirty days public notice.

The House version, specifies that the Alaska Bar Association is subject to various statutory requirements imposed on all state agencies and makes the Bar Association subject to review by Legislative Audit, the Ombudsman, the Administrative Procedures Act, and makes specific reference to the state statutory "sunset" provisions. The House version also adds several sections not in the Senate version beginning primarily on page 5, sec. 12. Sec. 12 of the House version specifically amends that statutory provision dealing with the Administrative Procedures Act to provide that bylaws and regulations adopted by the board of the Bar are subject to the APEA.

The other sections of the House version, not in the Senate bill, are as follows:

Sec. 13 sets out a definition of the practice of law, and in subsecs. b, c, and d sets out certain exemptions to this prohibition. After reading this sections I have some doubts as to its clarity, and I believe there would some difficulty in applying it.

Sec. 15. deals with the administration of the Bar examination, I believe that most of the provisions are already provided for by Bar rules; this would simply make those rules statutory. Secs. 15 and 16 simply are amendments eliminating any reference to Alaska Bar rules.

Sec. 17. is an amendment to make that section of the statute consistent with the definition of the practice of law in sec. 13.

Secs. 18 and 19 are technical cleanups of the existing Bar rules.

Sec. 20 contains a series of repealers, the first repealer deals with the present "sunset" provision for the Alaska Bar Association, the second repealer affects the power of the Bar to repeal or amend the bylaws and regulations, the third repealer eliminates the requirement that Department of Law employees be required to pass a bar examination within ten months of employment, and the third repealer deals with the disciplinary procedures set out by the Board of Governors.

Secs. 21 and 22 are transition sections regarding the new rules governing the Board of Governors.

Secs. 23, 24, and 25 are repealers and amendments to the Bar rules consistent with the prior changes in the Board of Governors and the provisions regarding administration of the Bar examination.

MF/cm

Senator Parr

ATTORNEYS AND THE GOVERNMENTAL SYSTEM

A key feature of American government is the distribution of power among three branches, with each branch having certain checks on the other. We have enshrined this principle in our Constitution.

The Constitution is basic law and establishes a general framework of government. Going to the ultimate sovereign (the people) with amendments to the Constitution should be done only after very careful consideration, and only when statutory changes cannot do the job.

The Judicial Branch, in my mind, is the court system, and does not include attorneys (testimony from attorneys on their status as "officers of the court" indicates only that a judge can require them to defend cases).

What concerns me is the absence of any very effective way for the people, through their elective representatives, to govern the activities of the Bar. At present attorneys enjoy a privileged status given to no other profession. Judges must be attorneys, judges and attorneys control admissions, discipline, and exclusion from the profession. Judges and attorneys determine whom the Governor may consider for judgeships.

I see no reason for the privileged status. It seems that the appropriate thing to do would be to create a Board of Legal Practice (similar to the Medical Board, Dental Board, and Board of Engineers and Architects) to regulate the profession. Such a board should have a sizeable lay presence as other professional boards do.

Appointments to such a board would be made by an elected representative (the Governor), and would be confirmed by elected representatives (the Legislature). The people would then have at least an indirect way of influencing the legal profession.

Absent such a solution, we should at least reduce the power of this closed corporation by taking away the requirement that an attorney belong to the Alaska Bar Association in order to practice his profession in this State.

Original sponsor: Rodey

IN THE SENATE BY THE JUDICIARY COMMITTEE

HOUSE CS FOR SENATE BILL NO. 392 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act continuing the existence of the Board of Governors of the Alaska Bar Association and amending the statutes relating to the practice of law in the state; amending Alaska State Supreme Court Bar Rule 2; repealing section 3 of Alaska State Supreme Court Bar Rule 2 and section 7 of Alaska State Supreme Court Bar Rule 3; and providing for an effective date."

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

* Section 1. AS 08.03.010(c) is amended by adding a new paragraph to read:

(19) Board of Governors of the Alaska Bar Association (AS 08.-08.040) -- June 30, 1985.

* Sec. 2. AS 08.08.040 is amended to read:

Sec. 08.08.040. BOARD OF GOVERNORS OF THE ALASKA BAR. (a) There is <u>created</u> [HEREBY CONSTITUTED] a Board of Governors of the Alaska Bar to be elected under bylaws and regulations <u>adopted</u> [PROMULGATED] by the board.

(b) The board consists of nine active members elected by the active members of the Alaska Bar <u>and one person who is appointed by the governor and who is not an attorney</u>.

* Sec. 3. AS 08.08.050(a) is amended to read:

Sec. 08.08.050. <u>SELECTION</u> [ELECTION] OF THE BOARD. (a) Two members of the board shall be elected by and from among the members of the association resident in the first judicial district; four members

of the board shall be elected by and from among the members of the association resident in the third judicial district; two members by and from among the members of the association resident in the combined area of the second and fourth judicial districts; and one member at large from the entire state. <u>One member who is not an attorney shall be appointed by the governor and is subject to confirmation by the legislature in joint session.</u>

* Sec. 4. AS 08.08.050(b) is amended to read:

(b) Members of the Board of Governors shall hold office for three years and until their successors are elected <u>or appointed</u> and qualified.

* Sec. 5. AS 08.08.050(c) is repealed and reenacted to read:

(c) Board members shall be selected on the following triennial rotation:

(1) in the first year, one member from the first judicial district, one member from the combined area of the second and fourth judicial districts, one member from the third judicial district, and an appointed member;

(2) in the second year, one member at large and two members from the third judicial district; and

(3) in the third year, one member from the combined area of the second and fourth judicial districts, one member from the third judicial district, and one member from the first judicial district.

* Sec. 6. AS 08.08.070 is repealed and reenacted to read:

Sec. 08.08.070. VACANCIES ON THE BOARD. (a) The board shall fill a vacancy in the elected membership of the board until the next annual election.

(b) The governor shall appoint a member to fill a vacancy in the appointed membership of the board for the unexpired term.

* Sec. 7. AS 08.08 is amended by adding a new section to read:

Sec. 08.08.075. MEETINGS OF THE BOARD. AS 44.62.310 and 44.62.312 apply to the meetings of the board. Members of the Alaska Bar and the public shall be given 30 days notice of meetings of the board except for emergency meetings. Meetings of the board shall take place in the state.

* Sec. 8. AS 08.08.080 is repealed and reenacted to read:

Sec. 08.08.080. POWERS OF BOARD. (a) Except as may be otherwise provided in this chapter or the Alaska Bar Rules, the board may approve and recommend to the state supreme court rules

(1) concerning admission, discipline, licensing, and continuing legal education, and defining the practice of law;

(2) providing for continuing legal education and for certification of a continuing legal education program;

(3) establishing a program for the certification of attorneys as specialists.

(b) The board may adopt bylaws and regulations consistent with this chapter and the Alaska Bar Rules

(1) concerning membership and the classification of membership in the Alaska Bar;

(2) fixing the annual membership fees;

(3) concerning annual and special meetings.

(c) The board may

(1) provide for employees of the Alaska Bar, the time, place and method of their selection, and their respective powers, duties, terms of office, and compensation;

(2) establish, collect, deposit, invest, and disburse membership and admission fees, penalties, and other funds;

(3) sue in the name of the Alaska Bar in a court of competent jurisdiction to enjoin a person from doing an act constituting a vio-

lation of this chapter.

(4) provide for all other matters affecting in any way the organization and functioning of the Alaska Bar.

* Sec. 9. AS 08.08.085 is amended by adding new subsections to read:

(b) The report of the Board of Governors shall note

(1) each addition, modification, or repeal of a bylaw or regulation of the Alaska Bar;

(2) each addition, modification, or repeal of the Alaska Bar Rules proposed to or adopted by the state supreme court.

(c) The report of the Board of Governors may recommend to the legislature changes to this chapter and to the provisions of state law generally.

* Sec. 10. AS 08.08 is amended by adding a new section to read:

Sec. 08.08.201. ADMINISTRATION OF BAR EXAMINATION. (a) The Board of Governors shall administer the bar examination under the Alaska Bar Rules.

(b) The Board of Governors may contract with another state or a testing organization for the preparation and grading of a portion of the Alaska Bar examination.

(c) The Board of Governors shall contract with persons experienced in the administration of bar examinations for advice on the preparation and grading of the portion of the bar examination prepared under the direction of the board.

(d) The Board of Governors shall establish and maintain standards for experience and training of persons who administer the portion of the bar examination prepared under the direction of the board.

* Sec. 11. AS 08.08.230(a) is amended to read:

(a) Any person not an active member of the Alaska Bar and not licensed to practice law in Alaska who engages in the practice of law

under this chapter or represents that he is [HIMSELF AS] entitled to engage in the practice of law as that term is defined in the Alaska Bar Rules, or an active member of the Alaska Bar who wilfully employs such a person knowing that the [SUCH] person is engaging in the practice of law or representing himself to be entitled to so engage is guilty of a class A misdemeanor [AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN $5,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH].

* Sec. 12. Alaska State Supreme Court Rule 2, Section 1(b), is amended to read:

(b) Be a graduate of a law school which was accredited or approved by the council of legal education of the American Bar Association or the Association of American Law Schools when the applicant entered or graduated or submit proof that the law course required for graduation from such a law school will be completed and that a degree will be received as a matter of course before the date of examination. An applicant who has not graduated from a law school accredited under this section who has been licensed to practice law in one or more jurisdictions in the United States for five years since his admission is eligible to take the bar examination. Graduates of law schools in which the principles of English common law are taught but which are located outside the United States and beyond the jurisdiction of the American Bar Association and the Association of American Law Schools, may qualify for examination upon proof that the foreign law school from which they graduated meets the American Bar Association Council of Legal Education Standards for approval;

* Sec. 13. AS 08.03.010(b)(11) and ~~AS 08.08.220 are repealed~~.

* Sec. 14. The governor shall appoint a non-attorney member to the Board of Governors for a three-year term.

* Sec. 15. Section 3 of Alaska Supreme Court Bar Rule 2 is repealed. Section 7 of Alaska Supreme Court Bar Rule 3 is repealed.

* Sec. 16. Section 12 of this Act amends Alaska Supreme Court Bar Rule 2.

* Sec. 17. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Senator Parr offered the following amendment No. 2:

Page 4, line 17: insert new *Sec. 10:

*Sec. 10. AS 08.08.100 is repealed and reenacted to read:

AS 08.08.100 Administrative Procedures Act. The bylaws and regulations adopted by the board or the members of the Alaska Bar under this Chapter that only relate to internal management of the Bar shall be posted for 30 days before their adoption. Regulations that concern matters of public policy shall be adopted under the Administrative Procedures Act (AS 44.62).

Senator Parr offered the following amendment No. 3:

Page 4, line 22: insert new Sections 12 and 13:

*Sec. 12. AS 08.08.020 is repealed.
*Sec. 13. AS 08.08.210(a) is amended to read:

(a) No person may engage in the practice of law in the state unless he is licensed to practice law in Alaska [AND IS AN ACTIVE MEMBER OF THE ALASKA BAR]. A member of the bar in good standing in another jurisdiction may appear in the courts of the state under the rules the supreme court may prescribe.

Introduced: 4/6/81
Referred: Judiciary and
Finance

IN THE SENATE BY RODEY

SENATE BILL NO. 392 am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act continuing the existence of the Board of Governors of the Alaska Bar Association and amending the statutes relating to the practice of law in the state; and providing for an effective date."

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

* Section 1. AS 08.03.010(c) is amended by adding a new paragraph to read:

(19) Board of Governors of the Alaska Bar Association (AS 08.-08.040) -- June 30, 1984.

* Sec. 2. AS 08.08.040 is amended to read:

Sec. 08.08.040. BOARD OF GOVERNORS OF THE ALASKA BAR. (a) There is created [HEREBY CONSTITUTED] a Board of Governors of the Alaska Bar to be elected under bylaws and regulations adopted [PROMULGATED] by the board.

(b) The board consists of nine active members elected by the active members of the Alaska Bar and three persons who are appointed by the governor and who are not attorneys.

* Sec. 3. AS 08.08.050(a) is amended to read:

Sec. 08.08.050. SELECTION [ELECTION] OF THE BOARD. (a) Two members of the board shall be elected by and from among the members of the association resident in the first judicial district; four members of the board shall be elected by and from among the members of the association resident in the third judicial district; two members by and from among the members of the association resident in the combined area

of the second and fourth judicial districts; and one member at large from the entire state. Three members who are not attorneys shall be appointed by the governor and are subject to confirmation by the legislature in joint session.

* Sec. 4. AS 08.08.050(b) is amended to read:

(b) Members of the Board of Governors shall hold office for three years and until their successors are elected or appointed and qualified.

* Sec. 5. AS 08.08.050(c) is repealed and reenacted to read:

(c) Three board members shall be selected annually, on the following triennial rotation:

(1) in the first year, one member from the first judicial district, one member from the combined area of the second and fourth judicial districts, one member from the third judicial district, and one appointed member;

(2) in the second year, one member at large, two members from the third judicial district, and ~~one appointed member~~; and

(3) in the third year, one member from the combined area of the second and fourth judicial districts, one member from the third judicial district, one member from the first judicial district, and one appointed member.

*Sec. 6. AS 08.08.070 is repealed and reenacted to read:

Sec. 08.08.070. VACANCIES ON THE BOARD. (a) The board shall fill a vacancy in the elected membership of the board until the next annual election.

(b) The governor shall appoint a member to fill a vacancy in the appointed membership of the board for the unexpired term.

* Sec. 7. AS 08.08 is amended by adding a new section to read:

Sec. 08.08.075. MEETINGS OF THE BOARD. AS 44.62.310 and 44.62.312 apply to the meetings of the board. Members of the Alaska Bar and the

public shall be given 30 days notice of meetings of the board except for emergency meetings. Meetings of the board shall take place in the state.

* Sec. 8. AS 08.08.080 is amended to read:

Sec. 08.08.080. POWERS OF BOARD. (a) Except as may be otherwise provided in this chapter or the Alaska Bar Rules, the board may adopt ~~reasonable~~ provisions

(1) concerning membership and the classification of membership in the Alaska Bar;

(2) providing for employees of the Alaska Bar, the time, place and method of their selection, and their respective powers, duties, terms of office, and compensation;

(3) concerning annual and special meetings;

(4) concerning the establishment, collection, deposit, investment, and disbursement of membership and admission fees, penalties, and all other funds;

[(5) PROVIDING FOR THE ORGANIZATION AND GOVERNMENT OF LOCAL SUBDIVISIONS OF THE ALASKA BAR;]

(6) providing for all other matters affecting in any way the organization and functioning of the Alaska Bar.

(b) The board may

(1) approve and recommend to the state supreme court [ADDITIONAL RULES FOR PROMULGATION BY THE COURT INCLUDING] rules concerning admission, [AND] discipline, licensing and continuing legal education [AND DEFINING THE PRACTICE OF LAW];

(2) adopt reasonable bylaws and regulations consistent with this chapter and the Alaska Bar Rules;

(3) sue in the name of the Alaska Bar in a court of competent jurisdiction to enjoin a person from doing an act constituting a vio-

lation of this chapter;

(4) establish classifications of membership and fix the annual membership fees; [FEE FOR ACTIVE AND INACTIVE MEMBERS]

(5) provide for continuing legal education and for certification of a continuing legal education program;

(6) establish a program for the certification of attorneys as specialists.

* Sec. 9. AS 08.08.085 is amended by adding new subsections to read:

(b) The report of the Board of Governors shall note

(1) each addition, modification, or repeal of a bylaw or regulation of the Alaska Bar;

(2) each addition, modification, or repeal of the Alaska Bar Rules proposed to or adopted by the state supreme court.

(c) The report of the Board of Governors may recommend to the legislature changes to this chapter and to the provisions of state law generally.

* Sec. 10. AS 08.03.010(b)(11) is repealed.

* Sec. 11. The governor shall appoint the initial non-attorney members to the Board of Governors for the following terms: one member for a three-year term; one member for a two-year term; and one member for a one-year term.

* Sec. 12. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Introduced: 3/23/81
Referred: Judiciary

IN THE HOUSE BY THE JUDICIARY COMMITTEE

HOUSE BILL NO. 371

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWELFTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act continuing the existence of the Board of Governors of the Alaska Bar Association and amending the statutes relating to the practice of law in the state; amending Alaska State Supreme Court Bar Rules 2, 7, and 62; and providing for an effective date."

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

* Section 1. AS 08.03.010(c) is amended by adding a new paragraph to read:

(19) Board of Governors of the Alaska Bar Association (AS 08.-08.040) - June 30, 1983.

* Sec. 2. AS 08.08.010 is amended to read:

Sec. 08.08.010. CREATION OF ALASKA BAR ASSOCIATION. (a) There is created an agency [INSTRUMENTALITY] of the state known as the Alaska Bar Association, referred to in this chapter as the Alaska Bar. The Alaska Bar shall have a common seal, may sue and be sued, and may, for the purpose of carrying into effect and promoting the objects of the Alaska Bar, enter into contracts and acquire, hold, encumber and dispose of real and personal property.

(b) Except as otherwise provided by this chapter, the Alaska Bar is subject to statutory requirements imposed on state agencies including but not limited to AS 08.03, AS 24.20.271, AS 24.55, AS 44.62.310, 44.62.312 and AS 44.66.

* Sec. 3. AS 08.08.040 is amended to read:

Sec. 08.08.040. BOARD OF GOVERNORS OF THE ALASKA BAR. (a) There

is [HEREBY] constituted a Board of Governors of the Alaska Bar to be elected under bylaws and regulations adopted [PROMULGATED] by the board.

(b) The board consists of eight [NINE] active members elected by the active members of the Alaska Bar and three persons who are appointed by the governor and who are not attorneys.

* Sec. 4. AS 08.08.050(a) is amended to read:

Sec. 08.08.050. SELECTION [ELECTION] OF THE BOARD. (a) Two members of the board shall be elected by and from among the members of the association resident in the first judicial district; four members of the board shall be elected by and from among the members of the association resident in the third judicial district; two members by and from among the members of the association resident in the combined area of the second and fourth judicial districts. Three members who are not attorneys shall be appointed by the governor and are subject to confirmation by the legislature in joint session [; AND ONE MEMBER AT LARGE FROM THE ENTIRE STATE].

* Sec. 5. AS 08.08.050(b) is amended to read:

(b) Members of the Board of Governors shall hold office for three years and until their successors are elected or appointed and qualified.

* Sec. 6. AS 08.08.050(c) is repealed and reenacted to read:

(c) Board members shall be selected annually, on the following triennial rotation:

(1) in the first year, one member shall be appointed; one member shall be elected from the first judicial district, one member from the combined second and fourth judicial district, and one member from the third judicial district;

(2) in the second year, one member shall be appointed; one member shall be elected from the first judicial district, one member

from the combined second and fourth judicial district, and one member from the third judicial district;

(3) in the third year, one member shall be appointed and two members shall be elected from the third judicial district.

* Sec. 7. AS 08.08.060 is amended to read:

Sec. 08.08.060. ELECTION OF OFFICERS. The active members of the Alaska Bar [WHO ARE IN ACTUAL ATTENDANCE AT THE ASSOCIATION'S ANNUAL CONVENTION] shall elect by a majority vote [DURING THE CONVENTION] the association's officers from the membership of the Board of Governors.

* Sec. 8. AS 08.08.070 is repealed and reenacted to read:

Sec. 08.08.070. VACANCIES ON THE BOARD. (a) The board shall fill a vacancy in the elected membership of the board until the next annual election.

(b) The governor shall appoint a member to fill a vacancy in the appointed membership of the board for the unexpired term.

* Sec. 9. AS 08.08 is amended by adding a new section to read:

Sec. 08.08.075. MEETINGS OF THE BOARD. AS 44.62.310 and 44.62.312 apply to the meetings of the board. Members of the Alaska Bar and the public shall be given 30 days notice of meetings of the board except for emergency meetings dealing with the executive administration of the bar examination. Meetings of the board shall take place in the state.

* Sec. 10. AS 08.08.080 is amended to read:

Sec. 08.08.080. POWERS OF BOARD. (a) Except as may be otherwise provided in <u>this chapter or</u> the Alaska Bar Rules, the board may adopt reasonable provisions

(1) concerning membership and the classification of membership in the Alaska Bar;

(2) providing for employees of the Alaska Bar, the time, place and method of their selection, and their respective powers,

duties, terms of office, and compensation;

(3) concerning annual and special meetings;

(4) concerning the establishment, collection, deposit, investment, and disbursement of membership and admission fees, penalties, and all other funds;

[(5) PROVIDING FOR THE ORGANIZATION AND GOVERNMENT OF LOCAL SUBDIVISIONS OF THE ALASKA BAR;]

(6) providing for all other matters affecting in any way the organization and functioning of the Alaska Bar;

(7) providing for continuing legal education and for certification of a continuing legal education program;

(8) establishing and maintaining a program for the certification of attorneys as specialists.

(b) The board may

(1) approve and recommend to the state supreme court [ADDITIONAL] rules for promulgation by the court including rules concerning admission, [AND] discipline, licensing and continuing legal education [AND DEFINING THE PRACTICE OF LAW];

(2) adopt reasonable bylaws and regulations consistent with this chapter and the Alaska Bar Rules;

(3) sue in the name of the Alaska Bar in a court of competent jurisdiction to enjoin a person from doing an act constituting a violation of this chapter;

(4) fix the annual membership fee for active, [AND] inactive, and judicial members;

(5) recommend to the legislature changes to this chapter and to the provisions of state law generally.

* Sec. 11. AS 08.08.085 is amended to read:

Sec. 08.08.085. ANNUAL REPORT TO LEGISLATURE. (a) The Board of

Governors shall report annually to the judiciary committees of the legislature on all matters concerning admissions, discipline of members, and disbarment proceedings, except for those matters defined as confidential by court rule.

(b) The report of the Board of Governors shall note

(1) each addition, modification, or repeal of a bylaw or regulation of the Alaska Bar;

(2) each addition, modification, or repeal of the Alaska Bar Rules proposed to or adopted by the state supreme court.

Not in Senate Version

* Sec. 12. AS 08.08.100 is amended to read:

Sec. 08.08.100. ADMINISTRATIVE PROCEDURE ACT. The bylaws and regulations adopted by the board or the members of the Alaska Bar under this chapter are [NOT] subject to the Administrative Procedure Act (AS 44.62).

New Section Entirely

* Sec. 13. AS 08.08 is amended by adding a new section to read:

Sec. 08.08.105. THE PRACTICE OF LAW. (a) A person who is an attorney, or who is not an attorney but who represents himself to be an attorney, and who performs any of the following acts on behalf of another person, with or without compensation, is engaged in the practice of law;

(1) appearance in or conduct of litigation or performance of an act in connection with proceedings, pending or prospective, before a court in the state unless otherwise provided by court rule;

(2) appearance in or conduct of litigation or performance of an act in connection with proceedings pending or prospective before another body constituted by law to settle controversies;

(3) giving counsel as to a person's legal rights or obligations;

(4) preparation or procurement of instruments or other

papers creating, limiting, claiming, granting, terminating, or otherwise securing legal rights; or

(5) engaging in an act or other practice determined by the supreme court to constitute the practice of law.

(b) A person who is not an attorney and who does not represent himself to be an attorney and who for compensation performs an act described in (a) of this section is engaged in the practice of law unless he performs an act set out in (a)(2) - (5) of this section and the act is performed as part of the regular conduct of business the primary purpose of which is other than the performance of an act set out in (a) of this section and if the act does not consume a majority of the person's work time.

(c) The provisions of (b) of this section do not apply to a person working under the direct supervision of an attorney in the course of that employment or to a government employee in the course of his employment.

(d) The provisions of (b) of this section do not apply to a person employed by a nonprofit corporation that is engaged in public interest activities during the course of his employment by the nonprofit corporation. A nonprofit corporation may be represented in court by an officer or director who is not an attorney, notwithstanding AS 22.20.-040, on a showing to the court that

(1) the nonprofit corporation cannot afford the expense of hiring an attorney for the proceeding; and

(2) the officer or director is competent to represent the nonprofit corporation before the court.

New Section

* Sec. 14. AS 08.08 is amended by adding a new section to read:

Sec. 08.08.201. ADMINISTRATION OF BAR EXAMINATION. (a) The Board of Governors shall administer the bar examination under the

Alaska Bar Rules.

(b) The Board of Governors may contract with another state or a testing organization for the preparation and grading of a portion of the Alaska Bar examination.

(c) The Board of Governors shall contract with persons experienced in the administration of bar examinations for advice on the preparation and grading of the portion of the bar examination prepared under the direction of the board.

(d) The Board of Governors shall establish and maintain standards for experience and training of persons who administer the portion of the bar examination prepared unde the direction of the board.

* Sec. 15. AS 08.08.210(c)(3) is amended to read:

(3) is employed by or under contract to the legislature and whose activities would constitute the practice of law under this chapter [AND UNDER ALASKA BAR RULES], until the results are released of the third Alaska Bar examination following that person's employment

* Sec. 16. AS 08.08.210(d) is amended to read:

(d) Employees of the Department of Law whose activities would constitute the practice of law under this chapter [AND UNDER ALASKA BAR RULES] are required to obtain a license to practice law in Alaska, no later than 10 months following the commencement of their employment.

* Sec. 17. AS 08.08.230(a) is amended to read:

(a) Any person not an active member of the Alaska Bar and not licensed to practice law in Alaska who engages in the practice of law under this chapter or [REPRESENTS HIMSELF AS ENTITLED TO ENGAGE IN THE PRACTICE OF LAW AS THAT TERM IS DEFINED IN THE ALASKA BAR RULES, OR] an active member of the Alaska Bar who wilfully employs such a person knowing that the [SUCH] person is engaging in the practice of law or representing himself to be entitled to so engage is guilty of a class A

misdemeanor [AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN $5,000, OR BY IMPRISONMENT FOR NOT MORE THAN ONE YEAR, OR BY BOTH].

* Sec. 18. Alaska State Supreme Court Bar Rule 2, Section 1(b), is amended to read:

(b) Be a graduate of a law school which was accredited or approved by the council of legal education of the American Bar Association or the Association of American Law Schools when the applicant entered or graduated or submit proof that the law course required for graduation from such a law school will be completed and that a degree will be received as a matter of course before the date of examination. An applicant who has not graduated from a law school accredited under this section who has been licensed to practice law in one or more jurisdictions in the United States for five years since his admission is eligible to take the bar examination. Graduates of law schools in which the principles of English common law are taught but which are located outside the United States and beyond the jurisdiction of the American Bar Association and the Association of American Law Schools, may qualify for examination upon proof that the foreign law school from which they graduated meets the American Bar Association Council of Legal Education Standards for approval;

* Sec. 19. Alaska State Supreme Court Bar Rule 7, Section 1, is amended to read:

Section 1. An applicant who has been denied an examination permit or who has been denied certification to the Supreme Court for admission to practice shall have the right within thirty days after notice of such denial to file with the Board a written verified statement of appeal. Failure timely to file an appeal statement shall constitute waiver of appeal rights. In his statement an applicant shall state all

grounds upon which he intends to rely and may:

(a) object to the form of notice from which such appeal is taken on the ground that it is so indefinite or uncertain that he cannot reasonably prepare his statement;

(b) present new matter on which he relies to establish his eligibility for admission to practice.

An applicant who is denied an examination permit or who is denied certification shall allege facts which, if true, would establish an abuse of discretion or improper conduct on the part of the Board, the Executive Director, the Committee or a master. If the allegation in the verified statement is [ARE] found to be sufficient by the Board, a hearing shall be granted. A hearing shall be granted to an applicant denied certification if his score on the bar examination is within five points of the passing grade of the bar examination.

* Sec. 20. AS 08.03.010(b)(11), AS 08.08.090, 08.08.210(b), and 08.08.220 are repealed.

* Sec. 21. The provisions of AS 08.08.050 as amended by secs. 4 - 6 of this Act that relate to the election of the members of the Board of Governors of the Alaska Bar take effect at the first regular election of members of the Board of Governors held after January 1, 1982. The term of the member of the Board of Governors elected at large at the election held during 1980 terminates on the appointment by the governor and qualification of the three non-attorney members of the Board of Governors under AS 08.08.050(a) as enacted in sec. 4 of this Act.

* Sec. 22. The governor shall appoint non-attorney members to the Board of Governors for the following initial terms: one member for a three-year term; one member for a two-year term; and one member for a one-year term.

* Sec. 23. Section 3 of Alaska Supreme Court Bar Rule 2 is repealed. Section 7 of Alaska Supreme Court Bar Rule 3 is repealed.

* Sec. 24. Section 18 of this Act amends Alaska Supreme Court Bar Rule 2. ~~Section 19 of this Act amends Alaska Supreme Court Bar Rule 7.~~

* Sec. 25. ~~Section 12~~ of this Act has the effect of changing Alaska Supreme Court Bar Rule 62 by requiring the Board of Governors of the Alaska Bar to adopt bylaws and regulations under the Administrative Procedures Act (AS 44.62) and not under Bar Rule 62.

* Sec. 26. This Act takes effect June 30, 1981.

Senator Parr offered the following amendment No. 2:

Page 4, line 17: insert new *Sec. 10:

*Sec. 10. AS 08.08.100 is repealed and reenacted to read:

AS 08.08.100 Administrative Procedures Act. The bylaws and regulations adopted by the board or the members of the Alaska Bar under this Chapter that only relate to internal management of the Bar shall be posted for 30 days before their adoption. Regulations that concern matters of public policy shall be adopted under the Administrative Procedures Act (AS 44.62).

Senator Parr offered the following amendment No. 3:

Page 4, line 22: insert new Sections 12 and 13:

*Sec. 12. AS 08.08.020 is repealed.
*Sec. 13. AS 08.08.210(a) is amended to read:

(a) No person may engage in the practice of law in the state unless he is licensed to practice law in Alaska [AND IS AN ACTIVE MEMBER OF THE ALASKA BAR]. A member of the bar in good standing in another jurisdiction may appear in the courts of the state under the rules the supreme court may prescribe.

ALASKA BAR ASSOCIATION
P O BOX 279
ANCHORAGE, ALASKA 99510
AREA CODE 907/272-7469

RANDALL P. BURNS EXECUTIVE DIRECTOR
MARVIN S FRANKEL DISCIPLINARY ADMINISTRATOR AND BAR COUNSEL

TO: William B. Rozell, Esq.
President
Alaska Bar Association

FROM: Randall P. Burns RPB
Executive Director
Alaska Bar Association

DATE: June 1, 1981

SUBJECT: Number of Alaska Bar Examination Applicant Re-reads from the Past Four (4) Exams

Per your request of May 26, 1981, for information concerning the impact on the Board of Section 19 of House Bill 371, please note the following statistics on the last four (4) bar examinations administered by the Board of Governors of the Alaska Bar Association:

Date of Bar Exam	Total No. of Applicants	No. of Applicants Scoring Between 65.0 & 69.94 on the Exam
July, 1979	102 General Applicants 13 Attorney Applicants	24 (with 3 passing after re-read)
February, 1980	69 General Applicants 10 Attorney Applicants	22 (with 5 passing after re-read)
July, 1980	93 General Applicants 13 Attorney Applicants	25 (with 3 passing after re-read)
February, 1981	84 General Applicants 10 Attorney Applicants	28 (with 8 passing after re-read)

347 Irwin Street
Juneau, Alaska 99801
May 14, 1981

Fred Broum, Legislator
House- Judiciary Committee
Pouch v
Juneau, Alaska 99801

MAY 15 1981

Dear Me Brown;

It has come to mg attention that there are hearings concerning the fund ing of the Alaska Bar Association- The Sunset Clause.

I would like it be known that recently I had to call a member of the Bar Association to help with a complaint I had about an attorney. I found the member most interested in helping me. The Bar counsel responded quickly and effectively with my problem. The attorney himself responded positively and professionally to the letter the Bar Counsel had sent to him: Thus my problem was quickly solved.

As I member of the medical profession (and also was married 10 years to a physician,), I must add that I only wish that the public could have such help from The American Medical Association. I strogly advise that the Alaskr Bar Association be continued and supported as a means to help those of us who have no recourse against unethical attorneys. Thank you for your consideration.

Yours truly,

Judith Propst

Recent Reports
Joint Jud Comm — AK Bar Assoc.

Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

March 12, 1980

The Honorable Terry Gardiner
Speaker of the House
Alaska State Legislature
Pouch Y, State Capitol
Juneau, Alaska 99811

Dear Mr. Speaker:

In compliance with AS 44.66.010 - 060 and referral by the Speaker of the House on January 15, 1980, the House Judiciary Committee has conducted a review of the Alaska Bar Association. By letter of July 31, 1979, the Speaker had notified the Committee of the forthcoming referral, thereby permitting advance work to be done during the interim between legislative sessions.

The Alaska Bar Association has taken the position "that it is not a State agency, and that it is not subject to the Sunset review process." The Association refused the Legislative Auditor access to some of its records; therefore, no performance audit has been conducted.

On November 7, 1979 the Committee requested information on 87 points; by letter of January 30, 1980 and a 71-page booklet, The Alaska Bar Association, February 1980, the Association answered completely 73 of the 87 points. Another 13 points were addressed by the Alaska Bar Association, but were not answered completely because of stated lack of adequate or feasibly retrievable information. On one point, a request for a copy of the card index on discipline, the Alaska Bar Association refused to reply, stating that it could not release this confidential information to the House Judiciary Committee.

In addition to receiving testimony during interim hearings, the Committee held 2 hearings to receive public testimony in Juneau. Also, 2 teleconference hearings were held to obtain testimony from Anchorage, Fairbanks, Kodiak, Valdez, Ketchikan, Sitka and Nome. Written testimony was received from 6 persons and the Kenai Peninsula

Bar Association. Oral testimony was received from about 15 persons. Witnesses included the president, president-elect, two former presidents, and three members of the present Board of Governors of the Association; the Ombudsman, and a number of attorneys.

The Alaska Supreme Court has delegated to the Association the responsibility for admissions and discipline, and by statute the Association may propose court rules or rule changes. All attorneys practicing in Alaska are required to be members of the Association, and to pay dues (now $180.00 per year). Statutory authority is AS 08.08.010 - 250, commonly called the Integrated Bar Act, and some members of the Bar seem to feel that authority also resides in the inherent power of the Alaska Supreme Court.

The Committee found that the Association is conducting a number of worthwhile activities. Unfortunately, it is not clear that most of these are benefiting the general public, as opposed to Association members. (If, as it claims, the Association is not a State agency, it would be under no obligation to benefit the general public.)

In some ways one of the most disturbing revelations was the extent to which attorneys form a closed corporation. The Association comprises all attorneys in the State, only its members may practice law, it is in charge of admissions to the Bar and of discipline of its members, it nominates the three attorneys who sit on the Judicial Council, which in turn sends judgeship nominees to the Governor, judges must themselves be attorneys, and the Association furnishes nine members of the Board of Directors of Alaska Legal Services Corporation. Only in the disciplinary hearing and attorney fee review committees is there any lay presence. There seems to be at present no provision for the exercise of supervisory responsibility by the elected representatives of the people. The position of the Court System on the Alaska Bar Association sunset is included as an appendix to this report.

The Committee received more complaints and more testimony on the subject of Bar examinations than on any other subject related to the Alaska Bar Association. A major defect in the administration of the Alaska examination is that it is prepared and graded by persons who, while skilled attorneys, are amateurs in testing. Professionalism is needed in both the preparation and grading of the

examination to ensure that the examination will score persons only on relevant factors. The training of the preparers and graders should be financed by the income derived each year from the administration of the bar examination (about $16,000 anticipated in 1980, not including the costs of any litigation which may arise from the examination).

There appears to be no discrimination against women in the Alaska Bar Association. Alaska has one of the highest percentages of women lawyers in the United States and, specifically, the highest percentage of women on its Board of Governors. In fact, the president of the Alaska Bar Association is a woman.

Although no apparent preference for non-minorities is shown, there is a disparity in the numbers of minorities versus non-minorities in the Alaska Bar Association. Ethnic minorities are poorly represented in the Alaska Bar Association. Present membership from these ethnic groups is as follows:

Alaska Native	5
Black	4
Asian-American	2
Hispanic	1

To the best of our knowledge, 12 Native people have been admitted to the Alaska Bar since Statehood. The only reliable statistics available are those reflecting current membership. Because the problem of low representation of minorities in the Alaska Bar Association has not been addressed adequately in the past, reasons for this situation cannot be determined at this time.

The Judiciary Committee recognizes that the percentage of minorities failing the Alaska bar examination, compared with the percentage of non-minority persons failing, is disproportionately high. The Committee believes that this disparity may be caused in part by cultural factors.

The Committee does not believe that the Alaska Bar Association intends to discriminate against minorities. The Committee commends the Board of Governors' Legal Educational Opportunities Committee for its work in gathering statistics regarding minorities in the Alaska Bar Association. The Committee urges the Board of Governors to

continue this work so that accurate minority pass rates may be established.

The Committee urges the Board of Governors to develop a program which will speak to the statistics reflecting minority representation in the Alaska Bar Association and the apparently low percentage of minority and non-minority individuals who pass the bar examination.

The Committee urges the Board of Governors to be aware of the disparity in minority participation in the bar and to direct its Committee of Bar Examiners to continually scrutinize the preparation and grading of the examination for possible cultural biases.

The Committee urges the Board of Governors to look into establishing some other criteria for evaluating an individual's competency to practice law in the State.

When, after completion of testimony, the Committee began its deliberations, the diversity of opinion was clearly evident. Apparently no one believed that the Alaska Bar Association should be extended for the maximum four years. Some members wanted to treat attorneys like other professionals, with a board to handle admissions and discipline; others preferred to make the Supreme Court directly responsible for those functions; and a third group preferred a short extension together with appropriate statute changes. The last viewpoint was finally adopted.

Findings required by AS 44.66.050(d) follow:

(1) an identification of the problems or the needs that the programs and activities of the board, commission or agency are intended to address;

Finding: The Alaska Bar Association is intended to address the need for admission and discipline of attorneys in the State.

(2) a statement, to the extent practicable, of the objectives of the program of the board, commission, or agency program, and its anticipated accomplishments;

Finding: The objectives are to upgrade the Bar in terms of education, competence, and

professionalism of its members, and to perform some services for the general public.

(3) an identification of any other programs having similar, conflicting or duplicate objectives;

Finding: There are no other programs having similar or conflicting objectives.

(4) an assessment of alternative methods of achieving the purposes of the program;

Finding: The responsibilities could be turned over to the Supreme Court or to a professional board in the Division of Occupational Licensing. The Committee has considered these alternatives but believes that they are not feasible at this time.

(5) an assessment of the consequences of eliminating the board, commission or program and consolidating its activities with another program, or of funding it at a lower level;

Finding: The Association could not be eliminated unless some other agency were responsible for the functions.

(6) a justification for the recommended continuation or extension of the board, commission or program, and an explanation of the manner in which it avoids duplication of or conflict with other efforts;

Finding: The extension of the Association for one year will permit time for a more thorough review and there is no duplication of other efforts.

(7) any other information which, in the opinion of the committee, would improve the performance of the board, commission or agency with respect to its representation of and responsiveness to the public interest;

Finding: Information which would improve the performance of the Association is included in

other portions of this report or in legislation to be introduced by the House Judiciary Committee.

The House Judiciary Committee finds that:

(1) The Alaska Bar Association should be extended until June 30, 1981.

(2) Statutory changes are needed in the public interest. The Committee will propose a bill incorporating these changes.

Charles H. Parr, Chairman

Nels A. Anderson, Jr.

Ramona L. Barnes

Fred E. Brown

Thelma Buchholdt

Hugh Malone

Terry Martin

Patrick M. O'Connell

Randy Phillips

Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

March 4, 1980

Representative Charles H. Parr
Pouch V
Juneau, Alaska 99811

Dear Representative Parr:

You have asked that I comment on behalf of the Court System concerning the sunset legislation of the Alaska Bar Association currently pending before your committee.

I have conferred with the Supreme Court with regard to your request and they asked me to comment as follows.

The Court strongly supports continued existence of the Alaska Bar Association as an integrated bar. The Court further suggests that the Bar Association and the Legislative Audit Committee reach a reasonable accommodation of the current dispute.

The Court has not given me brief to comment further on the subject. I hope these comments will help the committee.

Cordially,

Arthur H. Snowden, II

Arthur H. Snowden, II
Administrative Director

AHS:cm

cc: Donna Willard, Esq.
President, Alaska Bar Association

Alaska Court System
State of Alaska
303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN I
ADMINISTRATIVE DIRECTOR

(907) 274-8611

March 12, 1980

The Hon. Charles Parr, Chairman
House Judiciary Committee
Room 126, State Capitol Building
Juneau, Alaska 99811

Dear Representative Parr:

In my letter of March 4, 1980, with reference to the sunset of the Alaska Bar Association, I stated in the last sentence that the Court hopes that the Bar Association and the Legislative Budget and Audit Committee can reach a reasonable accommodation of their present dispute.

I wish to make it clear that in commenting on this subject, in no way did I intend to comment or convey any information on the merits of the controvery between the Legislative Budget and Audit Committee and the Alaska Bar Association before the Supreme Court.

Very truly yours,

Arthur H. Snowden II

REPORT OF EXAMINATION OF COURT DECISIONS

1. "If the legislature intended that arresting officers advise citizens of their statutory rights, an amendment to the law is required." p. 32.

   Concerns AS 28.35.033(e). Question presented was whether "any provision of law obliges an arresting officer to advise a motorist required to submit to a breath test for sobriety of his <u>right</u> to obtain an independent blood-alcohol test." (emphasis added)

   Supreme Court indicated that the law as written did not require officers to inform citizens of this option. (<u>Palmer v. State</u>, 604 P.2d 1106)

2. Page 69 presents a case on tuition grant program and private education institutions.

   Aren't you co-sponsoring a bill to allow private educational institutions to qualify under loan programs? I don't know if this information would be interesting but it does deal with private educational institutions, and constitutional questions surrounding that issue.

3. Page 71 concerns judges disqualifying themselves from cases when they feel incompetent to act. Review of laws was recommended.

4. Pages 74-5 concerns the use of internal memoranda in court cases -- whether or not, in this case, they were admissible, which the Court rules they were. Review is desirable (AS 28.35.120) but not particular action was recommended.

5. Pages 76-77. Alaska Uniform Contributions Among Tort Feasors Act. Review of the laws and "interaction" is recommended in the joint and several liability areas.

6. Page 79-80, AS 47.40.010(a)(3), AS 47.40.040, child care services. Review was recommenaed because of unclear legislative intent.

7. Page 84. AS 29.48.320, AS 29.53.415(a). Ability of borough to establish real property lien under its authority to collect sales tax. Review recommended.

8. Page 85. AS 08.08.100, AS 44.62.310, AS 44.62.312. Alaska Bar Association Board of Governors power to conduct meetings in opposition to open meeting laws. Court held on 3-2 that AS 08.08.100 exempts the Alaska Bar from the Administrative Procedures Act. Review is recommended.

Randy — Number of Senate members of Bar Assoc. serving upon Judiciary — #8 might be of interest to you.

J.

9. Page 86. AS 09.55.580(A) - Alaska's Wrongful Death Act. Definition of "other dependents". Court noted ambiguties in law. Review of definition is recommended.

10. Page 89. AS 11.15.295, AS 12.55.080 are in conflict and should be clarified if the Legislature is not comfortable with results of Gilbert v. State regarding minimum sentences.

11. Page 90. Article I, Section 3, Constitution; AS 11.40.210, AS 11.40.230. State prosition laws which are gender specific and violate state constitution. Court concluded that statute as written is unconstitutional because it is gender specific. Review is recommended.

12. Page 93. AS 09.50.250, AS 22.10.020(a). Contractor's right to appeal adverse decision of Department of Highways. Legislative review of AS 09 is recommended.

13. Pages 94-95, AS 33.20.030, AS 33.20.040, AS 33.15.190. Mandatory release of an incarcerated prisoner under AS 33.20.030 - 33.20.040 revoked by Board of Parole question. Supreme Court held that it could be revoked. Court "characterized the laws, as noted, as being 'almost hopelessly in conflict'." Review is recommended.

14. Page 96. AS 23.20.380. Unemployment compensation when employee voluntarily quits job and moves to area which has no employment opportunities. Because of the justices' diverse opinions, review is recommended.

In all cases, when "review is recommended", such review has been recommended by the Legislative Affairs Agency.

Phillips

STATE OF ALASKA

Legislative Affairs Agency

A

REPORT TO THE

ELEVENTH STATE LEGISLATURE

REPORT OF EXAMINATION OF COURT DECISIONS

CONSTRUING ALASKA STATUTES RENDERED BY

THE SUPREME COURT OF ALASKA

November 1980

Prepared
by the

LEGISLATIVE AFFAIRS AGENCY
Pouch V, State Capitol
Juneau, Alaska 99811

NOVEMBER **1980**

FOREWORD

AS 24.20.065(a) requires that the Legislative Council annually examine administrative regulations, published opinions of state and federal courts and of the Department of Law that rely on state statutes, and final decisions adopted under the Administrative Procedures Act (AS 44.62) to determine whether or not

(1) the courts and agencies are properly implementing legislative purposes;

(2) there are court or agency expressions of dissatisfaction with state statutes;

(3) the opinions or regulations indicate unclear or ambiguous statutes.

Under AS 24.40.065(b) the Council is to make a comprehensive report of its findings and recommendations to the members of the Legislature at the start of each regular session.

This edition of the review by the attorneys of the Legislative Affairs Agency is limited to an examination of court opinions; the review includes not only all of the opinions of the Alaska Supreme Court that fall under the three headings described above, but also opinions of other courts that fit within the three headings.

The review of administrative regulations is accomplished by the Agency at the direction of the Administrative Regulation Review Committee under AS 24.20.460 and is not included within this review.

This review of court decisions was prepared by Richard A. Bradley, Legislative Counsel under the general direction of Billy G. Berrier, Director of Legal Services, Legislative Affairs Agency.

The Agency welcomes comments from members of the Legislature on ways in which this review may become of more assistance to members.

Myrton R. Charney
Executive Director
Legislative Affairs Agency

November, 1980

The Publication Examines Cases

Construing Alaska Statutes Which Were Decided Between

July 27, 1979 and September 12, 1980

INTRODUCTION

The decisions examined in this publication are divided into three parts, according to the nature of the court's treatment of the subject matter of the case.

The format of the three parts is derived from the subsections of AS 24.20.065.

Part One will analyze those decisions where it was determined that "the courts . . . are properly implementing legislative purposes." AS 24.-20.065(1).

Part Two will analyze those decisions where it was determined that there are "court . . . expressions of dissatisfactions with state statutes." AS 24.20.065(2).

Part Three will analyze those decisions where it was determined that the "opinions . . . indicate unclear or ambiguous statutes." AS 24.20.065(3).

The index provided will list all cases published by the Alaska Supreme Court together with other decisions which construe statutes in force in the state.

The review will index the analyzed cases by Alaska Statute number and case name, as in the past. This review also includes an index of the descriptive words under which the analyses will fall.

PART I

Question presented:	Whether the joyriding statute denies a defendant the equal protection of the laws because it permits the prosecutor the discretion to charge a felony or a misdemeanor based on identical criminal conduct.
Laws considered:	AS 28.35.010(a).
Analysis:	The Supreme Court determined that even if it were the rule in Alaska that the equal protection clause is violated when a statute prescribes different punishments for the same act committed under the same circumstances by persons in like circumstances, the statute before the court did not fall within that framework. The prosecutor did not have the unlimited discretion to charge a felony or a misdemeanor. To charge a felony and to get a felony conviction, the state must charge and prove that the defendant has been at least twice convicted of misdemeanor joyriding. Discretion on the part of the prosecutor to bring either a felony or misdemeanor charge against the third offender does not violate equal protection. If a felony is charged, the prosecutor must prove that the offender is deserving of more severe punishment because of his multiple offenses.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Bell v. State, 598 P.2d 908.

Question presented:	Whether statute amending prejudgment interest rates is to be applied retroactively.
Laws considered:	AS 45.45.010(a).
Analysis:	The Supreme Court held that the 1976 amendment to the law establishing the rate of prejudgment interest had the effect of raising the rate of interest that was assessed after the date but that the amendment would not be applied retroactively. The Court relied on AS 01.10.090: No statute is retrospective unless expressly declared therein.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

City and Borough of Juneau v. Com'l U. Ins. Co., 598 P.2d 957.

Question presented:	Whether a proprietor had proven that a nonemployment relationship existed between himself and his contractors and thus that he was exempt from unemployment insurance taxes.
Laws considered:	AS 23.20.525(a)(10).
Analysis:	The Supreme Court held the Department of Labor is vested under the law with a broad discretion to determine the existence of an employment relationship. The law establishes the elements of the employer's burden. Where the employer fails to prove any errors in the assessment of the unemployment insurance tax by the Department of Labor, the employer is liable for the tax.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Clayton v. State, 598 P.2d 84.

Question presented:	Whether the due process clause of the Alaska Constitution guaranteed the indigent wife in a private child custody case the right to court-appointed counsel.
Laws considered:	Art. I, sec. 7, Alaska Constitution.
Analysis:	The Alaska Supreme Court held that the due process clause of the Alaska Constitution requires the state to appoint counsel whenever an indigent parent, unable to present his or her case properly, faces a substantial possibility of the loss of custody or of prolonged separation from a child. It limited its holding to cases where the indigent party's opponent is represented by counsel provided by a public agency [or apparently by Alaska Legal Services Corporation]. A dissent in the case would have denied the appointment as a matter of constitutional right but have permitted such appointments in the trial court's discretion.
Recommendation:	The case is one of first impression, apparently nationally. Since the Court determined that the right in question was created under the Alaska Constitution, the legislature has limited discretion within which to change or vary the result. No legislative action is recommended.

Flores v. Flores, 598 P.2d 893.

Question presented:	Whether the trial court properly applied the defense of necessity to conduct which would otherwise be criminal.
Laws considered:	AS 11.20.135.
Analysis:	The Supreme Court determined that the emergency situation relied on by the defendant to justify the use and the resulting damage to property of the state did not properly raise the "defense of necessity."
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Nelson v. State, 597 P.2d 977.

Question presented:	Whether the trial court applied the proper standard of review in its review of a decision of the commercial fisheries entry commission; whether the commission is interpreting its regulations consistent with legislative intent.
Laws considered:	AS 16.43.010(a), AS 16.43.250(a).
Analysis:	The Supreme Court held that as the case before the commission did not involve the "formulation of fundamental policy [nor] the particularized expertise and experience of administrative personnel," the superior court was in as good a position as the commission to determine legislative intent. The Court also held that the denial of a permit to a member of a partnership, considering the "special circumstances," was a decision by the commission at cross purposes with the legislative goal of the avoidance of "unjust discrimination."
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

State, Com'l Fisheries Entry Com'n v. Templeton, 598 P.2d 77.

Question presented:	Whether an indictment that charged that the defendants did "break and enter a dwelling house * * * with intent to commit the crime of assault therein" was sufficient to charge the defendants with burglary.
Laws considered:	AS 11.20.080.
Analysis:	The Supreme Court held that the indictment was adequate to enable the defendants to prepare their defense. The law requires that a charge of burglary consist of a breaking and entering of a dwelling house with intent to commit a crime while inside. The law has been interpreted as requiring that the charge specify the crime intended to be committed while inside. While the indictment does not specify the particular form of assault that the defendants intended to commit inside the dwelling, the Supreme Court notes that any form of assault is sufficient to justify a conviction.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

State v. Van Brocklin, 598 P.2d 938.

Question presented:	Whether the commercial fisheries entry commission and the trial court are interpreting the limited entry act properly.
Laws considered:	AS 16.43.010(a); AS 16.43.250(a).
Analysis:	In a broad review of the Limited Entry Act, the Supreme Court held that the commission did not unreasonably interpret the standard of "participation in the fishery" by excluding from recognition years spent by the applicant in "preparation" for participation. The Court also held that the Commission fairly implemented the "hardship" and "economic dependence" as well as "special circumstances" provisions in the Act.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Younker v. Alaska Commercial Fisheries, etc., 598 P.2d 917.

Question presented:	Whether the failure to comply with the statutory requirements for the selection of petit jurors constitutes a reversible error.
Laws considered:	AS 09.20.040, AS 09.40.060, AS 09.40.070.
Analysis:	The Supreme Court agreed that there were "technical violations" of the law governing the selection of the jurors for the defendant's trial. A series of difficulties within the clerk's office forced the clerk to exclude certain groups of citizens from the jury call and to utilize unusual procedures for the call. The Court concluded that these violations of the statutory selection procedures would constitute a substantial failure to comply with the jury selection procedure only when they affected the random nature or objectivity of the selection process.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Calantas v. State, 599 P.2d 147.

Question presented:	Whether the injury to a worker who was travelling from a remote work site to a bank 30 miles away to cash a payroll check was an injury "arising out of and in the course of employment."
Laws considered:	AS 23.30.265(13).
Analysis:	The Supreme Court held that the employer derived a benefit from having the employee live at a remote site. The requirement of residency at a remote site presents the employer with a special situation where certain activities must be viewed as "incidents of employment" even though those same activities, if conducted at a non-remote site, would not be considered work-related. The trip was of benefit to the employer. The employer was enabled to pay the employees by check, not by cash. Given the fact of the remote site and the employee's impending leave, it was expectable that the employee might wish to cash the check. Therefore, the Court held the trip to cash the check an "incident to [the employee's] employment" and therefore compensable. Two justices dissented.
Recommendation:	The decision of the Supreme Court interprets a broad provision of the Worker's Compensation Act. The doctrines used by the Court in the interpretation are essentially judicial refinements on the basic statutory framework. As such, it appears that the Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

M-K Rivers v. Schleifman, 599 P.2d 132

Question presented: Whether the trial court interpreted the laws relating to probation revocation correctly.

Laws considered: AS 12.55.080, AS 12.55.085(a), AS 12.55.090(c), AS 33.15.230(a)(1).

Analysis: The Supreme Court noted that under AS 12.55.080, a court may suspend the execution of all or a part of a sentence and place the defendant on probation under AS 12.55.090(c) for a period not to exceed five years. Or the trial court may suspend the imposition of a sentence which would have been imposed for a particular offense.

In this case, the court had suspended the imposition of sentence on the defendant under AS 12.55.085(a) for five years before the defendant violated the conditions of the probation and the court revoked the probation allowed under AS 12.55.090(c). The question before the Court was whether in calculating the five year period of probation under AS 12.55.090(a), the trial court was bound to consider the period of probation already served under the original suspension of the imposition of sentence. The Supreme Court held that it could disregard it; that the five year limitation under AS 12.55.090(c) applies only to the period of probation to be served after the imposition of a sentence and the suspension of a portion of it under AS 12.55.080.

At the time of the original conviction, AS 33.15.230(a)(1) permitted the trial court to designate the term that the prisoner must serve before becoming eligible for parole, but the period could not be more than one third of the maximum sentence imposed. In 1974, the statute was amended to provide that any term thus designated shall be "at least one-third of the maximum sentence imposed. . . " The Supreme Court held that the trial court's power to limit parole eligibility was governed by the laws in effect at the time the offense was committed. The Court concluded that any

other conclusion came close to being an ex post fact law and thus unconstitutional under the Alaska Constitution.

Recommendation: The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Elstad v. State, 599 P.2d 137.

Question presented:	Whether passage of bill authorizing sale of bonds for the construction of correctional facilities and for the construction of public safety facilities violated the single subject rule of the Alaska Constitution.
Laws considered:	Ch. 139, SLA 1978
Analysis:	The Supreme Court held that the Alaska Constitution "requires no more than that the various provisions of single legislative enactment fairly relate to the same subject, or have a natural connection therewith. Since the facilities "serve the public safety function of protecting life and property," they are sufficiently related to survive the challenge in this case.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Short v. State, 600 P.2d 20.

Question presented: Whether the trial court applied the proper standard to a review of the ballots in an election recount.

Laws considered: AS 15.20.510, AS 15.20.540, AS 15.20.140, AS 15.20.150, AS 15.07.130, AS 15.05.020(1) and (10) and AS 15.07.060.

Analysis: The Supreme Court held that the purposes of an election contest [AS 15.20.540] and a recount appeal [AS 15.20.510] are different. In an election contest, the evidence presented must demonstrate the existence of malconduct sufficient to change the results of the election under the Hammond v. Hickel rule. In a recount appeal, the inquiry is whether specific votes or classes of votes were properly counted or rejected.

The trial court found that under the election contest, there had been no showing of malconduct sufficient to change the result of the election. Under the recount appeal, the trial court then reviewed the evidence regarding the validity of the challenged ballots. The Supreme Court agreed that the procedure was proper; it then proceeded to the substantive issues raised in the appeal.

I. Absentee ballots with late postmarks. The Supreme Court held that the requirement of AS 15.20.150 that the absentee ballots be postmarked "not later than the day of the election" was directory and not mandatory and was satisfied by a date received stamp, or a postmark, or the date of witnessing of the voter certificate that indicates that the ballot was cast on or before election day.

II. Punchcard ballots marked by pen or pencil.
The Court agreed that punchcard ballots marked by pen or pencil may be counted if the voter intention is clear. Here, where the voter marked the ballots by pencil and also punched a number of candidates' names, the trial court concluded that the intention of the

voters was not clear and the ballots were not counted. The Supreme Court agreed.

III. Absentee voters with a non-military permanent residence in a different election district.
AS 15.05.020 provides that a voter's registration card is presumptive evidence of a person's voting residence. It also provides that no person gains or loses a residence solely by virtue of military service. A registration in the election district of military personnel who reflect a resident address in a different district does not, because of the language of sec. 20(a), constitute a change of address or cancel the registration in the district in which the military personnel are registered.

The Court also refused to allow a voter to cure defects in registration on election day [AS 15.07.160] and to count an absentee ballot without a proper signature [AS 15.50.140 and 15.20.150].

Recommendation: The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Willis v. Thomas, 600 P.2d 1079.

Question presented:	Whether the disability of minor children tolled the two-year limitation on the bringing of an action for the wrongful death of their parents.
Laws considered:	AS 09.10.140, AS 09.55.580.
Analysis:	The Supreme Court held that the laws tolling the statutes of limitations during the time when minors are disabled from bringing cases in their own right extended the time in which minors could sue for the wrongful death of their parents, notwithstanding the provisions of the Wrongful Death Act that only permitted such suits within two years of the death.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Haakanson v. Wakefield Seafoods, Inc., 600 P.2d 1087.

Question presented:	Whether a seizure of bait from crab pots located in an area closed to crabbing or the marking of crabs located within the pots without notice to the owner of the pots violated statutes conditioning the power of the state to search without a warrant.
Laws considered:	AS 16.05.180, AS 16.05.190.
Analysis:	The Supreme Court held that no violation of the laws occurred, because a person conducting crabbing operations in the waters of the state had no protectable federal or state constitutional interest in the seized evidence. The Court concluded that the legislature must have intended that crab pots set in the waters of the state be outside the protection of the notice requirements of the law.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Wamser v. State, 600 P.2d 1359

Question presented:	Whether the trial court interpreted an omnibus clause of an automobile insurance policy consistent with legislative intent.
Laws considered:	AS 28.20.010, AS 28.20.440(b)(2).
Analysis:	The Supreme Court held that the omnibus clause of an automobile insurance policy which provides liability insurance for "any . . . person using such automobile with the permission of the Named Insured . . . within the scope of such permission. . . ." should be interpreted consistently with the law that provides that an insurance "owner's policy of liability insurance shall * * * (2) insure the person named and every other person using the vehicle with the express or implied permission of the named insured, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of the vehicle. . . ." The Court stated that the statutory requirement of an omnibus clause in automobile insurance policies was intended to expand insurance coverage to avoid the loss to innocent parties injured at the hands of otherwise uninsured persons; the Court agreed that it should apply the omnibus clause "broadly".
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Johnson v. United States Fid. and Guaranty Co., 601 P.2d 260.

Question presented: Whether a labor union offered its member a reasonable accommodation to his First Amendment grounds for not joining a labor union or paying union dues to it.

Laws considered: AS 18.80.220(a).

Analysis: On rehearing. [Former opinion: 583 P.2d 860 (1978).]

The Supreme Court noted that the decisions of other courts on which it relied in the former opinion in this case have been overruled. Since the Court said that it was unaware of any case supporting its view of the law, it reconsidered its former opinion.

The question was whether a labor union has an obligation to offer "reasonable accommodation" to its member when the member complains about the obligation to pay union dues as a violation of religious beliefs. In the former opinion, the Court held that reasonable accommodation does not require a union to accept a payment by the member to a charitable organization selected by the union in lieu of the union dues.

The Court held that the law in question is modeled closely on Federal law and thus the overruling of cases construing analagous Federal law was significant for the reasonable interpretation of the Alaska law.

The Court held that the burden of proving that the accommodation with the worker's religious beliefs would create an undue hardship rests on the union and the employer, not on the worker. Since the record suggests that the local union has no other member who has complained similarly, the Court found that the burden was likely to be insignificant. It stated that the union could reopen the case if it were able to prove an undue hardship.

One justice dissented.

Recommendation: The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Wondzell v. Alaska Wood Products, Inc., 601 P.2d 584.

Question presented: Whether the trial court properly implemented the "nonduplication of recovery" provisions of the Alaska Insurance Guaranty Association Act in a claim against the Association.

Laws considered: AS 21.80.100, AS 21.80.180(4).

Analysis: Jordan's vehicle was struck from the rear by a vehicle operated by King. King's insurance company was declared insolvent. Jordan recovered from her insurer on a provision of her policy providing her protection against motorists whose insurers become insolvent; the settlement with her company expressly reserved to her a right to maintain suit against King and against the Alaska Insurance Guaranty Association and her insurer waived all its subrogation rights.

Jordan had filed suit against King. King admitted liability. On the issue of damages, the trial court found that Jordan was injured in the amount of some $9,500. The judge ruled that this award should not be offset by the $12,500 recovered from Jordan's insurer.

King then filed suit against the Association asking that the Association be ordered to pay the $9,500. The judge granted the Association's motion for summary judgment.

The Supreme Court held that the Alaska Insurance Guaranty Association Act applied to Jordan's claim against King. The Association is to be "considered the insurer . . . on the covered claims and to that extent has all the rights, duties, and obligations of the insolvent insurer. . . " AS 21.80.060(2). The Court then held that the claim of Jordan was a "covered claim".

The Court then considered the "nonduplication of recovery" provision of the Act. AS 21.-80.100(a). The Court rejected Jordan's argument that the uninsured motorist provision of her policy was a "collateral source" that should not diminish the amount of damages

otherwise recoverable from the fund established under the Act.

"The collateral source rule has been adopted as the lesser of two evils: allowing a victim double recovery rather than allowing the tortfeasor, the benefit of the victim's insurance premiums, charity or another source independent of the tortfeasor". Since Jordan would not recover from the tortfeasor King but from the publicly created fund, the equities otherwise presented by the collateral source rule are not present. Since the $12,500 Jordan recovered from her own insurance company exceeds the amount she recovered in the superior court suit, the equities of the case prevent a double recovery by Jordan from the fund as well.

Recommendation: The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

King v. Jordan, 601 P.2d 273

Question presented:	Whether the use by the Alaska Transportation Commission at a hearing of a hearing officer without the presence of the individual commissioners violated law.
Laws considered:	AS 42.07.141, AS 42.07.151(a), AS 44.62.340, AS 44.62.500.
Analysis:	The Supreme Court held that the law exempted the Commission's adjudications from nearly all the standard procedural safeguards of the Administrative Procedures Act and permitted the Commission to adopt by regulation its own procedures. Included in the procedures permitted to the Commission is the decision to use a hearing officer to hear a case, rather than requiring that each hearing demand the presence of one or more members of the Commission.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Alaska Transp. Com'n v. Gandia, 602 P.2d 402.

Question presented:	Whether the trial court properly interpreted the law in denying a bifurcated trial in a criminal case involving an insanity defense.
Laws considered:	AS 12.45.083(d).
Analysis:	The Supreme Court held that the unilateral right granted by statute to a defendant to waive a jury trial in a criminal case where the issue of insanity will be raised as a defense does not grant the defendant the right to a bifurcated trial -- waiving the jury trial on the issue of insanity while retaining the jury trial on all other issues.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Houston v. State, 602 P.2d 784.

bifurcated = having two branches or forks.

Question presented: Whether (1) the law prohibiting conduct that contributes to the delinquency of a child is constitutionally overbroad or vague; (2) the defendant's constitutional rights were violated by the law making the same conduct both a misdemeanor and felony when the defendant was charged with the felony.

Laws considered: AS 11.40.130, AS 11.40.150.

Analysis: The Supreme Court held that the laws prohibiting conduct which contributes to the delinquency of a child are not constitutionally overbroad or vague. Conversation between a defendant and someone else may not be the basis for a prosecution unless the speech advocates imminent lawless action and would be likely to produce such action. The Court also concluded that though there were potential areas on the "fringes of 'immoral conduct'" that might present constitutional problems in the future, depending on the cases that are actually presented to the courts, those fringe areas presented no problems in the case at hand and accordingly they would not be examined in determining the constitutionality of the law.

The Court also examined the defendant's claim that his constitutional rights were abridged because the law makes contributing to the delinquency of a child both a misdemeanor and a felony and the defendant was charged with the felony. It rejected the argument because it concluded that the law requires the state prove that the defendant used "threats, command or persuasion" to obtain the felony conviction; no such proof is required in a misdemeanor prosecution.

Recommendation: The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Holton v. State, 602 P.2d 1228.

Question presented:	Whether the constitutional rights of the defendant were violated by allowing the prosecutor discretion to charge different crimes with different penalties for identical criminal conduct.
Laws considered:	AS 11.15.160, AS 11.15.120(a), AS 11.15.-130(c), and AS 11.05.020.
Analysis:	The Supreme Court held that the prosecutor had no discretion, even under the theory of the defendant, regarding the charges that could be made. The defendant was convicted of "assault with the intent to commit rape". The defendant argued that the crime of "attempted rape", established by the interaction of AS 11.-15.120(a) [rape], AS 11.15.130 [punishment for rape], and AS 11.05.020 [punishment for attempted substantive crimes] has a lower penalty than the specific crime of assault with intent to rape. The Court concluded that even if the defendant was correct two different charges were possible, the elements of the proof on the two crimes were different and the defendant was charged properly, the proof supported the charge, and no "arguably impermissible charging discretion" existed.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended. Note that the laws in question have been replaced with the provisions of the new criminal code. It appears that the argument made in this case will not be possible under the new code.

Holden v. State, 602 P.2d 452.

Question presented:	Whether an award of liquidated damages is mandatory in overtime compensation cases under the Alaska Wage and Hour Act.
Laws considered:	AS 23.10.110(a).
Analysis:	The Supreme Court held that the award of liquidated damages in an amount equal to the amount of unpaid overtime compensation must be granted as a matter of law. The Court noted that the result in this case is identical to that which would have occurred under Federal law before the enactment of a law making the award of such damages discretionary with the trial court, depending upon its view of the good faith of the employers and the existence of reasonable grounds for believing that his act or omission was not a violation of law. Since the Alaska law contained no such qualification, the Court believed that the award of the liquidated damages was mandatory.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Alaska Intern. Industries v. Muscarra, 602 P.2d 1240

Question presented:	Whether the trial court properly credited the defendant with probation time completed during the suspension of sentence.
Laws considered:	AS 12.55.080, AS 12.55.085(a), AS 12.55.090(c).
Analysis:	The Supreme Court held that probation time had been computed properly, relying on Elstad v. State, analyzed elsewhere in this report.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Rice v. State, 603 P.2d 913.

Question presented:	Whether the trial court erred in granting the City of Valdez a fee simple estate in the property taken by inverse condemnation rather than an easement.
Laws considered:	AS 09.55.250.
Analysis:	The Supreme Court held that the City could not have taken a fee interest by condemnation in lands taken for a storm drainage ditch. The Court construed the portion of the law that permitted a fee interest "for an outlet for a flow" to apply only to the case of drainage from a mine and not to storm drainage. The Court applied the usual rule that law permitting condemnation is to be strictly construed against the condemnor. Since the law provides that except for the statutorily specified purposes for which a fee interest may be taken, an easement is the interest granted in all other cases.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Williams v. City of Valdez, 603 P.2d 483.

Question presented:	Whether any provision of law obliges an arresting officer to advise a motorist required to submit to a breath test for sobriety of his right to obtain an independent blood-alcohol test.
Laws considered:	AS 28.35.033(e).
Analysis:	The Supreme Court held that "the statute, however, contains no requirement that such advice be given [regarding his right to obtain an independent test], and we are not persuaded that it is required by any provision of the state or federal constitution."
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. If the legislature intends that arresting officers advise citizens of their statutory rights, an amendment to the law is required.

Palmer v. State, 604 P.2d 1106.

Question presented:	Whether a law governing the burden of proof on the question of mental disease or defect applies at post-conviction relief hearing.
Laws considered:	AS 12.45.083(b).
Analysis:	The Supreme Court held that the burden of proof in post-conviction relief proceedings does not fall squarely under the law but rather under Alaska Criminal Rule 35(a). The law itself applies at the defendant's trial. But in post-conviction proceedings, the defendant levels a collateral attack on a final judgment. The defendant had already had his trial on the merits and it will normally be presumed to be a valid proceeding. A post-conviction proceeding is not another trial; it is separate from the original trial and is governed primarily by rules of civil procedure. "To protect the integrity of the prior proceeding, the defendant should be required to prove by a preponderance of the evidence those facts which would entitle him to have the conviction set aside."
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Hensel v. State, 604 P.2d 222.

Question presented:	Whether the trial court erred in refusing to instruct the jury that chronic alcoholism constituted a defense to the charge of negligent homicide because the defendant lacked the "substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirement of the law" [the "insanity" defense].
Laws considered:	AS 12.45.083(a).
Analysis:	The Supreme Court held that the insanity test in the law is unavailable to those who are legally sane and capable of controlling their drinking before becoming intoxicated. When the preexisting alcohol-related condition is voluntary and not the equivalent of legal insanity, the trial judge correctly refused to instruct the jury on the elements of an insanity defense.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

O'Leary v. State, 604 P.2d 1099.

Question presented:	Whether the trial court erred in making its award of prejudgment interest.
Laws considered:	AS 45.45.010(a).
Analysis:	The Supreme Court held that the interest before the effective date of the amendment of the law in 1976 accumulates at the rate in existence under the prior law. Interest accumulating after the effective date of the amendment is earned at the rate established by the amendment.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Drickersen v. Drickersen, 604 P.2d 1083.

Question presented:	Whether the trial court properly allocated responsibility for worker's compensation benefits where the employment with successive employers contributed to the worker's disability, when the worker had been determined to be permanently and totally disabled after the first employment.
Laws considered:	AS 23.30.265(10).
Analysis:	The Supreme Court held that the primary consideration is not the degree of the worker's impairment, but rather the loss of earning capacity related to the impairment. The law defines "disability" as the "incapacity because of injury to earn wages which the employer was receiving at the time of the injury in the same or any other employment." The worker had been declared permanently and totally disabled; he later went to work. The Court stated that in determining the extent of his preexisting disability, his demonstrated earning capacity cannot be disregarded. He was performing his duties satisfactorily. Accordingly, the Court found that the decision of the worker's compensation board that the preexisting total disability was derived from the first employment was not supported by the evidence.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Ketchikan Gateway Borough v. Saling, 604 P.2d 590.

Question presented:	Whether the trial court properly refused to enforce claim of lien.
Laws considered:	AS 34.35.070.
Analysis:	The Supreme Court held that where the lien was filed more than 90 days after the lienor completed the contract, it was too late under the law. The Court rejected the suggestion that failure of the owner to file a "notice of completion" as allowed under the law leaves the period under which a lien may be filed indefinitely open. Such an interpretation is inconsistent with the "general philosophy" of lien laws that establish a system of distinct deadlines for lien filings and preclude the open-ended filing periods. The Court noted that the law was amended in 1977 and 1978 consistently with its interpretation of the earlier law. While it agreed that "it is always debatable whether a legislative change is a clarification or a change in substantive law . . . , these changes are consistent with the philosophy of requiring definite deadlines in connection with materialmen and laborer's lien laws."
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is required.

Frontier Rock & Sand v. Heritage Ventures, 607 P.2d 364

Question presented: Whether the trial court properly allowed the juvenile defendant to consent to an extra year of treatment beyond his nineteenth birthday as an alternative to the state's motion of waiver for juvenile jurisdiction and permission to try him as an adult.

Laws considered: AS 47.10.080(b)(1).

Analysis: The Supreme Court held that the consent of a minor to an additional one-year period of supervision, though given during a period when a minor is traditionally viewed as incompetent to enter into binding agreements, can be binding on the minor.

"While it is true . . . that the statute contemplates that the determination of the additional period of treatment be made after the initial hearing, such an intent does not mandate that an advance consent to treatment given by the minor may not be regarded as binding."

To the extent that this case is inconsistent with In re F.S., 586 P.2d 607, that case is overruled.

Recommendation: The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

State v. F.L.A., 608 P.2d 12.

Question presented:	Whether the trial court properly refused to allow a peremptory challenge of judge where the challenge was promptly exercised on the appointment of defense counsel.
Laws considered:	AS 22.20.022.
Analysis:	The Supreme Court held that challenge, when promptly made after the appointment of defense counsel, should have been granted even though it was technically late under the unusual practice in the courts on the Kenai Peninsula. The Court held that the challenge should not be exercised without the advice of counsel. The right to challenge peremptorily is sufficiently important that it should not be lost by inaction before an opportunity to consult with counsel exists.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Riley v. State, 608 P.2d 27.

Question presented:	Whether the trial court, in sentencing on multiple convictions, may impose probation in excess of five years.
Laws considered:	AS 12.55.090(c).
Analysis:	The Supreme Court held that the plain meaning of the law precludes combined probation periods totalling in excess of five years. "We believe that AS 12.55.090(c) was intended to protect a convicted defendant from the uncertainties resulting from . . . long period[s] of probation.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Gonzales v. State, 608 P.2d 23.

Question presented:	Whether the trial court properly removed municipal initiative proposition from the ballot where the initiative was inconsistent with a provision of AS 29.
Laws considered:	AS 29.13.100, AS 29.53.170.
Analysis:	The Supreme Court held that an initiative proposed for adoption by the voters of the Anchorage Municipality which would have provided that increases in existing taxes and the adoption of new taxes must be approved by the voters at a regular or special election violated the provisions of AS 29.53.170. The latter law requires the assembly to "assess, levy, and collect a general property tax. . . ." The Court notes that AS 29.13.-100 prohibits a municipality from acting otherwise than under AS 20.53.170.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Whitson v. Anchorage, 608 P.2d 759

Question presented:	Whether the trial court properly upheld the award of damages by an arbitrator in a dispute between a school district and a teacher.
Laws considered:	AS 09.43.010.
Analysis:	The Supreme Court held that the decision of the superior court in upholding the award of damages by the arbitrator was correct. The Court found that AS 09.43 was inapplicable to the dispute because AS 09.-43.010 provides that the law does not apply to labor-management contracts unless it is "incorporated into the contract by reference." Since the contract does not incorporate the law into it by reference, it is accordingly inapplicable. The Court then held that the parties to a contract may adopt their own rules for the arbitration of contracts; it enforced the arbitration as agreed on by the parties.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Bd. of Ed., Fairbanks N. Star Bor. Sch. Dist. v. Ewig, 609 P.2d 10

Question presented: Whether the trial court correctly enforced and interpreted the Unfair Trade Practices and Consumer Protection Act.

Laws considered: AS 45.50.471 - 45.50.561.

Analysis: The Supreme Court noted that the Act declares unlawful "unfair or deceptive practices in the conduct of trade or commerce . . ."

The Court determined that

(1) the civil penalties authorized in the Act [up to $5,000 per violation] are not so severe as to render them "penal in nature". "The legislature's characterization of the penalty as civil is, under the circumstances, entitled to great weight;"

(2) the exemption on sec. 481(1) of the Act does not preclude the application of the Act to activities regulated under a separate and distinct regulatory scheme if the latter regulatory scheme does not prohibit the practices declared unlawful in the Act;

(3) it is appropriate that interpretations of the Federal Trade Commission receive due consideration and great weight in interpreting analagous provisions of the Act.

Two justices concurred: They refused to agree that the characterization of the penalties by the legislature as "civil" will be necessarily accepted by the court so long as they are not included within the class of "traditionally criminal provisions". "[C]omplete deference to the legislative label . . . is a gross abdication of the judicial role. . . ." But the justice agreed that it was appropriate to exclude from the category of criminal prosecutions "legal measures which can be considered regulatory rather than criminal in their thrust, so long as incarceration is not one of the possible modes of punishment."

He agreed that the Act is not a penal statute.

Recommendation: The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

State v. O'Neill Investigations, Inc., 609 P.2d 520.

Question presented:	Whether the trial court should have credited time spent in a residential treatment house as a condition of probation towards the sentence imposed after probation is revoked.
Laws considered:	AS 11.05.040(a).
Analysis:	The Supreme Court held that on revocation of probation, a convicted defendant is entitled to credit against his sentence on the original offense for time spent as a condition of probation in a rehabilitation program which imposes substantial restrictions on the defendant's movement and behavior. The Court noted that since the defendant was on probation under a suspended imposition of sentence, the time spent in the rehabilitation program was literally "pending . . . sentencing" under the law.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Lock v. State, 609 P.2d 539

Question presented:	Whether the Workmen's Compensation Board erred in ascribing employee's injury to non-work related activity in the context of a demonstrated history of work-related pain and injury.
Laws considered:	AS 23.30.120.
Analysis:	The Supreme Court held that there was no substantial evidence that the employee's injury did not arise out of his employment and that therefore the statutory presumption that his injury came within the protection of the compensation act controls. Substantial evidence existed of work-related difficulties of which the employer was aware.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Alaska Pac. Assur. Co. v. Turner, 611 P.2d 12.

Question presented:	Whether the trial court properly concluded that the purchaser of cattle was not liable for damages on his refusal to complete the sale where the seller did not have good title to the cattle.
Laws considered:	AS 45.05.092(a) and (b).
Analysis:	The Supreme Court noted the law implies in every contract of sale a warranty that the title is good and that the goods will be delivered free of encumbrances. The Court held that where the seller has obtained a release of security interests but fails to advise the purchaser of the release, the attempted sale with the security interests remaining on file amounts to a breach of the warranty that the goods will be delivered free of encumbrances.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Wright v. Vickaryous, 611 P.2d 20.

Question presented:	Whether a municipality may enact an ordinance regulating massage parlors and physical culture studios.
Laws considered:	AS 29.48.035(a)(19).
Analysis:	The Supreme Court held that a municipality may enact an ordinance regulating massage parlors and physical culture studios under its authority to provide for the "general health, safety, well-being, and welfare of its inhabitants."
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Hilbers v. Municipality of Anchorage, 611 P.2d 31.

Question presented: Whether the trial court properly implemented "an exclusionary rule" as a sanction against police officer's assumed violation of arrest statute.

Laws considered: AS 11.81.370(a), AS 12.25.080.

Analysis: The Supreme Court held that the superior court correctly rejected an interpretation of AS 12.25.080 which would have permitted law enforcement personnel to employ deadly force to arrest fleeing suspects under any and all circumstances. In making its interpretation of the former law, it considered the relevant portions of the new Criminal Code, AS 11.-81.370, which had become effective after the arrest in question.

Under the new law, deadly force may be utilized only when it is appropriate to the fleeing suspect's activities, as when the suspect has committed a "felony [using] force against a person" or "may inflict serious physical injury . . . ."

The Court construed the "necessary and proper" clause of AS 12.25.080 to include the provisions contained in AS 11.81.370 as the relevant standards for resolving issues that may still arise under AS 12.25.080.

Assuming arguendo that the officer used excessive force under Alaska law in making the arrest, the Court concluded that the establishment of an exclusionary rule was "inappropriate" in this case. The Court stated that its holding on this point was not "immutable." "In the event a history of excessive force arrests is shown, demonstrating that existing deterrents are illusory, we will not hesitate to reexamine the question whether an exclusionary deterrent should be fashioned in a situation where evidence is obtained as a result of an arrest which is effectuated by excessive force."

Recommendation: The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

State v. Sundberg, 611 P.2d 44.

Question presented:	Whether the provisions of Article 9 of the Uniform Commercial Code apply to a security agreement between the state and a private party.
Laws considered:	AS 45.05.696(12).
Analysis:	The Supreme Court held that the language of the law which provides that Article 9 does not apply "to a security interest created by or on behalf of the state" would be construed to mean that Article 9 does not apply to those transactions where the state is the debtor. The Court considered significant the legislative history of the law that the amendment was proposed to avoid problems for the state in the sale of public securities and in debt financing. Accordingly the law does apply to the transaction in the case before the Court.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

State, Div. of Agriculture v. Fowler, 611 P.2d 58.

Question presented:	Whether the trial court properly interpreted the provisions of the adoption consent law.
Laws considered:	AS 20.15.050(a)(2).
Analysis:	The Supreme Court held that the father had not failed to communicate meaningfully without justifiable cause with his children for the statutory period under the facts of the case. The Court stated: "Applying the rule of law we have mentioned in our discussion of whether [the natural parent] had provided for the care and support of his children, we construe the adoption - consent provisions of AS 20.15.050 strictly in favor of a natural parent and against a finding that such parent had failed significantly without justifiable cause, to communicate meaningfully with his children for a one-year period."
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Matter of Adoption of K.M.M., 611 P.2d 84.

Question presented:	Whether the Public Utilities Commission properly interpreted the law regarding the public disclosure of information from the records of the commission.
Laws considered:	AS 42.05.671
Analysis:	The Supreme Court held that the privilege against the disclosure of information which is reflected in the law should be construed narrowly so that it does not conflict with due process requirements; the other parties to a case before the commission are entitled to know the facts which form the basis for the decision of the commission. "The requirements of the statute that information not be withheld if 'required in the interests of the public' will normally prevent a conflict with due process requirements. If a conflict nevertheless occurs, due process must control." The Court noted that no showing was made that competitive disadvantage would result from the disclosure. If a showing had been made, the commission could have dealt with it consistently with due process requirements.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

City of Fairbanks v. Alaska P.U.C., 611 P.2d 493.

Question presented:	Whether a foreign manufacturer of seat belts had sufficient minimum contacts with the state to meet minimum due process requirements for personal jurisdiction under Alaska's "long-arm" statute.
Laws considered:	AS 09.05.015.
Analysis:	The Supreme Court held that in order to meet due process standards for personal jurisdiction over a non-resident defendant certain minimum contacts with the state are required so "that maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" The Court held that by placing seat belts it manufactured in the general stream of commerce, the defendant knew that they were destined for incorporation into automobiles throughout the United States. Alaska law requires the addition of seat belts into automobiles sold in the state. The label put on its seat belts stated that they were "approved for sale in all states." The Court also noted the existence of recent decisions of the U.S. Supreme Court construing other "long-arm" laws and concluded that its decision was consistent with them.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Volkswagenwerk, A.G. v. Klippan, GmbH, 611 P.2d 498

Question presented:	Whether the trial court properly interpreted the Alaska Business License Act.
Laws considered:	AS 43.70.010(a)(5).
Analysis:	The Supreme Court held that appellee's sales to contractors and sub-contractors are not sales to "dealers" and therefore the gross receipts from those sales are not within the exemption provided by the law. The trial court had concluded that the term "dealers" was essentially synonymous with the term "merchant." The Court did not agree. Rather, the Court said that a dealer is "one who buys to hold for sale." As construed, the term "dealer" excludes construction contractors and subcontractors.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

State, Dept. of Rev. v. Debenham Elec. Supply Co., 612 P.2d 1001.

Question presented:	Whether the deposition of a witness may be taken in a hearing held under the Administrative Procedure Act before a hearing has been held in the matter.
Laws considered:	AS 44.62.440.
Analysis:	The Supreme Court held that there was nothing in the law that requires that a hearing be held on the facts alleged in a petition before a hearing officer may permit the taking of a deposition. "A requirement that there be such a hearing would ordinarily be a cumbersome and costly waste of time. We, therefore, believe that the most reasonable construction of Section 440(a) is that petitions filed pursuant to it may be granted without a hearing."
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

State v. Thompson, 612 P.2d 1015.

Question presented:	Whether provisions for longevity pay increases in a collectively bargained agreement between teachers and a school district become a "vested right" and not therefore subject to being bargained away in subsequent contractual negotiations.
Laws considered:	AS 14.20.550, AS 14.20.560(a)
Analysis:	The Supreme Court held that privileges bargained for in agreements between an employer and a labor union may be subsequently yielded in negotiations for a new contract, "even for such items as seniority rights for which certain employees have already completed the performance which entitled them to the privilege under the old contract."
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Rouse v. Anchorage Sch. Dist., 613 P.2d 263

Question presented: Whether the excess realized when real property which has been abandoned by a trustee in bankruptcy and then later sold for more than the amount of the encumbrances on it may be distributed to the bankrupts or to creditors claiming on the basis of unfiled materialmen's liens which were discharged in bankruptcy.

Laws considered: AS 34.35.070

Analysis: The Supreme Court held that the statutory formulas for the resolution of conflicting claims should be enforced according to the formulas and that it is error to apply equitable considerations to the proceedings.

Property of the bankrupt in Alaska had been "abandoned" by the trustee in bankruptcy because of the trustee's view that the liens against the property exceeded its value. The property was sold after the bankruptcy was closed for more than the liens on file against it; the question is whether the unsecured claimants [who had the option of becoming lien claimants but did not file their lien] or the discharged bankrupt is entitled to the net proceeds.

The Court held that the failure of the materialmen to file their liens according to the procedure established by law meant that the claimants had no valid or effective claims to the property.

Since the materialmen were not lienholders, their claims were solely personal and had been discharged in the bankruptcy. The Court then applied the usual rule that property abandoned by the trustee returns to the debtor free of unsecured claims.

Recommendation: The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Brooks v. R & M Consultants, Inc., 613 P.2d 268

Question presented:	Whether the Public Utilities Act or the municipal code nullifies the rights and liabilities of the municipality and its franchisee under the franchise agreement between them.
Laws considered:	AS 29.13.100, AS 29.48.050(1)
Analysis:	The Supreme Court held that neither the enactment of the Public Utilities Act nor the adoption of AS 29.13.100(17) as a part of the municipal code operated to void the franchise for the use of public streets granted by the municipality in Juneau to a cable television service. The Court held that a franchise takes on the character more of a contract than an enactment and was therefore unaffected by AS 29.13.-100(17) which only applies to "enactments". This is true, the Court said, whether it is granted by ordinance [an "enactment"] or otherwise. The Court was also pursuaded that the general savings clause, AS 01.10.100, precludes a finding that municipal franchises had been superseded.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

B-C Cable Co. v. City & Borough of Juneau, 613 P.2d 616.

Question presented: Whether the trial court properly interpreted the Alaska Security Act.

Laws considered: AS 45.55.070, AS 45.55.130(12), AS 45.55.210(a).

Analysis: The Supreme Court held that the promise to deliver gold at a price considerably below its market value in return for money to be used to finance the mining was the sale of a security. The Court construed it as an "investment contract" under AS 45.55.130(12).

The Court then considered the sanction for the sale of admittedly unregistered securities.

"Where the crime involved may be said to be malum in se, that is one which reasoning members of society regard as condemnable, awareness of the commission of the act necessarily carries with it an awareness of wrongdoing. In such a case, the requirement of criminal intent is met upon proof of conscious action, and it would be entirely acceptable to define the word "wilfully" to mean no more than a consciousness of the conduct in question. * * * However, where the conduct is malum prohibitum there is no broad societal concurrence that it is inherently bad. Consciousness on the part of the actor that he is doing the act does not carry with it an implication that he is aware that what he is doing is wrong. In such cases, more than mere conscious action is needed to satisfy the criminal intent requirement. * * *

"The crime of offering to sell or selling unregistered securities is malum prohibitum, not malum in se. Thus, criminal intent in the sense of consciousness of wrongdoing should be regarded as a separate element of the offense, unless the public welfare exception applies.

"The public welfare offense exception encompasses a narrow class of regulations 'caused primarily by the industrial revolution, out of which grew the necessity of imposing

more stringent duties on those connected with . . . activities that affect public health, safety or welfare. * * * The penalties for public welfare offenses commonly are relatively small, and conviction does no grave damage to an offender's reputation."

The Court therefore required a retrial on the question of the defendant's criminal intent.

Recommendation: The Supreme Court construed the law according to the apparent legislative intent. Since the Court concluded that the imposition of strict criminal liability for serious crimes would raise substantial constitutional problems, no legislative action is recommended.

Hentzner v. State, 613 P.2d 821

Question presented:	Whether the state adequately considered the effect on condemnees in property acquisition.
Laws considered:	AS 09.55.460(b)
Analysis:	The Supreme Court held that the trial court's determination that the property taken for a public use or purpose was not taken "in a manner compatible with the greatest public good and the least private injury" was reasonable. The Court said that the trial court should not substitute its judgment for the judgment of the state but that the trial court could set aside the condemnor's decision if it was arbitrary, capricious, and an abuse of discretion or otherwise not according to law. The mandate of the law is that "private injury" be considered with reference to the particular properties involved. In the view of the Court, the law contemplates that the injury suffered by each individual should be minimized to the extent that it is reasonably possible to do so without impairing the integrity and function of the project and without adding unreasonable costs to the project.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

State v. 0.644 Acres, More or Less, 613 P.2d 829

Question presented: Whether Alyeska Pipeline Service Co. is shielded by the Alaska Worker's Compensation Act from common law tort liability for the injuries of employees of its contractors who performed the actual construction of the pipeline.

Laws considered: AS 23.30.045(a), AS 23.30.055.

Analysis: The Supreme Court held that Alyeska was subject to common law liability.

Alyeska claimed that sec. 45(a) may make it liable to secure worker's compensation and therefore it is in effect the employer of the injured worker; as such it is shielded from liability under sec. 55. The Court rejected this analysis; it concluded that it was unable to find either that Alyeska was a "contractor" or that the actual construction was performed by sub-contractors. The Court noted that Alyeska performed no construction on its own. Moreover, the contracts between Alyeska and the "execution contractors" [who performed the actual work] stated that the contractor is "an independent contractor and not the agent or employee of the [oil company] OWNERS or ALYESKA."

Recommendation: The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Everette v. Alyeska Pipeline Service Co., _____ P.2d _____, [No. 2125, July 18, 1980].

Question presented: Whether the trial court erred in denying multiple defendants in a criminal trial more than a single peremptory disqualification of a judge.

Laws considered: AS 22.20.022.

Analysis: The Supreme Court held that where there are several defendants in a criminal trial, each defendant is not entitled to one peremptory challenge but rather the defense as a whole is entitled to but one peremptory challenge as a matter of right. The Court noted that Criminal Rule 25, which implements the law, permits the trial court in the interest of justice to give more than one challenge when the defendants cannot agree on the judge to hear the case. Any other challenges must be made for cause.

Recommendation: The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Hawley v. State, _____ P.2d _____, [No. 2137, July 24, 1980].

Question presented:	Whether liquor licensees may be held vicariously liable for violations of liquor laws.
Laws considered:	AS 04.15.010(a), AS 04.10.180.
Analysis:	The Supreme Court held that the statutory language which provides that a "licensee is solely responsible for the lawful conduct of the business licensed under [AS 04] . . . " indicates that the legislature intended "to hold a licensee civilly responsible for lawfully conducting the business." The legislature did not state that the licensee's responsibility would apply solely to criminal or administrative sanctions." "A licensee's liability to the public for statutory violations creates an incentive to see that the establishment is conducted lawfully so that members of the public are not harmed."
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Alesna v. Legrue, _____ P.2d _____, [No. 2148, August 8, 1980].

PART II

Question presented:	Whether the tuition grant program constitutes a "direct benefit [to] any religious or other private educational institution."
Laws considered:	AS 14.40.751 - 14.40.806
Analysis:	The Supreme Court held that Art. VII, sec. 1 of the Alaska Constitution, which prohibits the expenditure of public funds "for the direct benefit of any religious or other private educational institution," was violated by a tuition grant program which benefitted a class composed "only of private colleges and their students." "Unlike a statute that provides comparable dollar subsidies to all students, Alaska's tuition grant program is not neutral, inasmuch as the only incentive it creates is the incentive to enroll in a private college." The Court noted that the prohibition in question deals with private education generally, not only with respect to institutions with a religious affiliation, and that the direct benefit clause applies to education at all levels, not only to education on the primary or secondary levels.
Recommendation:	The Supreme Court determined that the tuition grant program was unconstitutional; the grounds for that conclusion were largely [though not entirely] outside the provisions of the program itself. In light of the failure of the electorate to adopt a constitutional amendment at the 1976 election that would have permitted student aid there are few options open to the legislature in the area of aid to students attending private educational institutions.

Sheldon Jackson College v. State, 599 P.2d 127.

Question presented: Whether the trial court has the authority to order the Department of Health and Social Services to perform a home study in a private, child-custody case against its wishes.

Laws considered: AS 09.65.130(a) and (c).

Analysis: The Supreme Court held that the judiciary does not have the inherent authority to order a study of the home environment in a private, child-custody case. It agrees that the only statute approaching the question, AS 09.65.-130(a) and (c), does not grant the court that authority.

Two justices dissented.

The dissent interprets the same law as permitting such assignments of responsibility to the Department. And, it believes, the court had the authority to order such studies under its inherent and broad equitable powers.

Recommendation: The actual issue in the case is less significant than the logical problems presented by the dissent. The majority opinion concludes that it is the legislature that determines which functions will be assigned to executive agencies and that the courts are essentially without authority to enlarge these responsibilities. The dissent suggests that the "inherent equitable authority" of the courts may be relied on to increase the responsibilities of executive agencies when the judiciary has a problem that needs addressing.

The majority opinion states the better and more proper rule. No legislative action is recommended.

Granato v. Occhipinti, 602 P.2d 442.

Question presented: Whether the trial judge properly refused to recuse himself from a case.

Laws considered: AS 22.20.020.

Analysis: The Supreme Court held the decision of the trial judge not to recuse himself from a case returned to him for resentencing, where the judge in question has performed the earlier sentencing, will only be reversed for an abuse of discretion.

The Court held that a judge has as great a reason not to recuse himself from a case where there is no objective reason for the recusal as he does to recuse himself when there are valid reasons for the recusal.

The Court also noted that the Code of Judicial Conduct contemplates that a judge will disqualify himself in a proceeding in which his impartiality might reasonably be questioned. The law does not provide for a disqualification in such circumstances.

The Court then said:

"We believe that, in the light of the importance of promoting 'public confidence in the integrity and impartiality of the judiciary,' (Canon 2(a), Code of Judicial Conduct) it would be well to permit disqualification under such circumstances, and we respectfully recommend it to the legislature."

Recommendation: The Supreme Court construed the law according to the apparent legislative intent. Note, however, that the Supreme Court recommended that the law itself be broadened to cover those situations where there are no objective grounds for recusal but the where the judge's impartiality might be questioned on subjective grounds. Review of the law is recommended.

Amidon v. State, 604 P.2d 575.

Recuse (ri kyooz') – to challenge as prejudiced or otherwise incompetent to act

Question presented: Whether the decision in a proceeding before the Alcoholic Beverage Control Board involving an application for a license could be appealed by an individual opposed to the granting of the license who is not a party to the application.

Laws considered: AS 04.10.380, AS 44.62.560. AS 44.62.-640(b)(4).

Analysis: The Supreme Court held that a decision by the Board to issue a license is subject to review under the law. Further, the law provides that the Administrative Procedures Act governs all proceedings under AS 04. The Court held that a proceeding which will consider an application for a license is an adjudicatory proceeding under AS 04. Law required the Board to consider the application and any protests that have been filed against it. And finally, the law gives a right of appeal to final administrative orders. Since the Court considered that those who opposed the grant of the license were parties to the proceeding, they had standing adequate to allow them to appeal the adverse decision.

One justice dissented. He was unable to conclude that the opponents to the issuance of the license were "parties" to the administrative proceedings. The opponents only "significant contacts" with the Board "were letters which were sent to the Board opposing the application . . . and [their] appearance at the meeting at which they voiced their objections to the issuance of a license."

The dissent supported the state's position

Recommendation: The analysis by the Supreme Court is superficially logical but was unexpected. The result is inconsistent with the usual understanding of the concept of a "party" to a case. The recent revision of AS 04 may address or have implications for this question.

Ketchikan Retail Liquor Dealers v. State, etc., 602 P.2d 434.

Question presented: Whether the constitutional requirement that judges be selected for "terms prescribed by law" is violated by a law that requires magistrates to serve "at the pleasure of the presiding judge of the superior court."

Laws considered: AS 22.15.170(c).

Analysis: The Supreme Court held the law constitutional.

While the Supreme Court agreed that the usual meaning of a phrase like the one found in Art. IV, sec. 4 of the Alaska Constitution, that judges shall be "selected . . . for terms . . . prescribed by law," would refer to a "period of service fixed in time," it concluded that the usual rule did not apply in this case.

The Court stated that the broad discretion granted to the presiding superior court judge was intended to provide an unencumbered means of quickly remedying a situation in which judicial unfitness is impairing the administration of justice in rural Alaska. In this context, the Court found that service at the discretion of the superior court judge constitutes a term.

Two justices dissented: they would hold that the legislative failure to state the "term" of the magistrates violates the Alaska Constitution.

Recommendation: It is clear that the Supreme Court construed the law according to the apparent legislative intent. There were statements in the dissents that suggested that the result was a distortion of the usual meanings of words employed in the Constitution. If the legislature continues to prefer the law as written, then no legislative action is recommended.

Buckalew v. Holloway, 604 P.2d 240.

Question presented: Whether the internal memoranda of the Department of Public Safety proposing discipline for a state trooper because of conduct leading to an automobile accident may be used in the negligence action against the state arising out of the accident under a law prohibiting the use of reports made under AS 28 in civil or criminal actions arising out of the same accident.

Laws considered: AS 28.35.120.

Analysis: The Supreme Court held the memoranda were admissible.

The Court stated that it would distinguish the reports made under the requirements of AS 28 from other reports or analyses made by the parties not in response to the requirements of AS 28. The Court said that a corporation could not insulate internal reports made concerning proposed discipline of an employee arising out of an accident and it considered the Public Safety reports analagous.

The Court stated:

"Since we have recently expressed our view that there are 'strong reasons for giving narrow scope to the statutory prohibition' of AS 28.35.120, [citations omitted] we believe . . . that the memoranda were not inadmissible police investigatory reports in terms of that statute's language and purpose."

Finally, the Court said that if it viewed the prohibition of the law expansively, it would be creating an exception to the usual rule of evidence that an "admission" may be introduced as evidence against the party making it; this rule is now embodied in the Alaska [and Federal] Rules of Evidence, Rule 801(d)(2)(D).

Recommendation: While the Supreme Court agreed that it was arguably narrowing the impact of the law, when the usual rules of evidence are

considered it seems that the Court construed the law according to the apparent legislative intent. While legislative review is desirable, no particular legislative action is recommended.

Rutherford v. State, 605 P.2d 16.

Question presented: Whether the trial court properly interpreted the Alaska Uniform Contribution Among Tort-Feasors Act, adopted by the legislature at a time when contributory negligence, if found, would defeat a claim, in the context of (1) the adoption by the Alaska Supreme Court of the doctrine of comparative negligence, and (2) the interaction between an employer's obligations under the Workers' Compensation Act and the employer-tortfeasor's obligations under the Uniform Act.

Laws Considered: AS 09.16.

Analysis: The petitioners in this case had argued that the logic of the comparative negligence rule announced in Kaatz v. State, 540 P.2d 1037 (Alaska 1975) should be extended to the apportionment of damages as between multiple defendants and they urged the Court to limit the liability of a defendant proportionately to its degree of fault. The Court stated that the argument presented requires the Court to determine whether a rule of several liability (as opposed to joint and several liability) would violate the legislative intent in the enactment of the Uniform Act.

The Court stated:

"Despite the express language of the [Uniform] Act requiring pro rata distribution of liability for damages among concurrent tortfeasors, petitioners contend that the underlying purpose of the act was the fair and equitable treatment of multiple defendants rather than a pro rata sharing, and that the pro rata method was chosen because it was the only method of apportionment thought workable or judicially acceptable before comparative negligence had become acceptable as a method for apportioning damages. Petitioners therefore urge this court to adopt judicially the rule of several liability in recognition of the changed approach to liability brought about by Kaatz . . . and to effect the legislative intent to achieve an equitable result even though the literal language lends itself to the opposite outcome.

* * *

"Though the common law rule of joint and several liablity [contained in the Uniform Act] does impose the risk of uncollectability upon the solvent defendants, we are not convinced that as a general rule the alternative, which would cast the total risk of uncollectability upon the injured plaintiff, is an improvement."

Petitioners had also argued that the employer of the plaintiff, which had already paid the statutorily defined amount of workers' compensation to him, cannot be relieved of responsibility for its proportion of the negligence in causing the injury, notwithstanding the law which prevents the employer from being required to contribute further to the damages that the employee is entitled to receive.

The Supreme Court held that the judicial adoption of the doctrine of comparative negligence in Kaatz, did not disturb the continued validity of joint and several liability for tort. The Court also held that the lack of availibility of pro rata contribution from a negligent employer under the Uniform Act because of the limited liability of an employer under the Worker's Compensation Act was not unreasonable.

One justice dissented, calling the result "far from equitable," "absurd," and "so arbitrary that it presents a serious question whether constitutional due process rights are violated."

Recommendation: The Court upheld all the laws before it. The Court noted that several states have modified their laws on joint and several liability since the courts in those states adopted comparative negligence. Since the result may be in part awkward and in part unintended by the legislature, review of the laws and particularly their interaction is recommended.

Arctic Structures, Inc. v. Wedmore, 605 P.2d 426.

Question presented:	Whether the trial court properly interpreted the law relating to the right to bail after conviction of certain offenses.
Laws considered:	AS 12.30.040(b).
Analysis:	The Supreme Court held that the constitutional right to bail granted by Article I, sec. 11 of the Alaska Constitution terminates on conviction. The Court noted that the Alaska Constitution grants the right to bail to the "accused." The Court also noted that similar constituional language in other states is interpreted consistently. One justice dissented: The right to bail extends through the prosecution of the defendant. The prosecution continues until the defendant is sentenced. Thus, the defendant is fairly described as the "accused" until sentencing.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

State v. Wassillie, 606 P.2d 1279.

Question presented: Whether the Department of Health and Social Services was, under the law, required to reimburse a private, nonprofit corporation for the actual expenses incurred in providing child care services which exceeded the predicted increases anticipated in providing the services.

Laws considered: AS 47.40.010(a)(3), AS 47.40.040.

Analysis: The Supreme Court held that the statutory responsibility of the Department of Health and Social Services to reimburse the private, non-profit corporation for its "full cost of services" did not require it to reimburse the corporation for the expenses of the corporation in excess of an anticipated increase predicted by the department.

Two related laws were construed.

The first required the department to "pay all expenses related directly to the full cost of services at the levels of care required" when it purchases services for persons for whom the state has assumed responsibility. The second provides that the "'full cost' of services shall be determined by the per person, per day cost in the preceding fiscal year plus a proportionate share of anticipated cost of living and staff salary increment increases" for the coming fiscal year.

The department uses the latter statute primarily to determine the past costs and then to predict anticipated increases; the provider of the services complained that the actual increases have been more than the predicted increases.

The Court held that the law reflects "a legislative intention to place in the hands of administrative officials the task of predicting cost increases each year. Whether they do this well or poorly, there is nothing in the statutory language which permits cost-settling at the end of each year. While we think it unfortunate that ACS . . . must lose money in

some years when the costs exceed the predicted amounts, we can find no basis for reading the statute in the manner urged by ACS. The remedy lies with the legislative branch of government, not the courts.

Recommendation: The Supreme Court construed the law according to the apparent legislative intent. The Court noted that the result of the legislative intent is that "in some years, ACS . . . must lose money . . . " but the Court said that the answer could come only from the legislature. Legislative review is recommended.

Alaska Children's Services v. Williamson, 606 P.2d 786.

Question presented:	Whether the legislature may annul a regulation of a department or agency by a concurrent resolution.
Laws considered:	AS 44.62.320(a).
Analysis:	The Supreme Court held that the law permitting legislative annulment of a regulation by a concurrent resolution violates Article II of the Alaska Constitution, the legislative article. "[W]hen the legislature wishes to act in an advisory capacity it may act by resolution. However, when it means to take action having a binding effect on those outside the legislature it may do so only by following the [bill] enactment procedures [of Article II]." [Bracketed material added.]
Recommendation:	The legislature responded to the A.L.I.V.E. case by the adoption of a proposal to amend the constitution which will be on the ballot in November, 1980. No other legislative response is appropriate.

State v. A.L.I.V.E. Voluntary, 606 P.2d 769.

Question presented: Whether the trial court interpreted the Limited Entry Act properly.

Laws considered: AS 16.43.260(a).

Analysis: The Court noted that there was some confusion concerning the meaning of its earlier interpretation of the Limited Entry Act, Isakson v. Rickey, 550 P.2d 359 (Alaska 1976). The Court stated that the question presented in Isakson was whether "the circumstances of holding a gear license before January 1, 1973" bears a fair and substantial relationship to the purpose sought to be advanced in AS 16.-43.260(a). It held that there was no such relationship to the purpose of the legislation.

The Court noted that there was language in the opinion which could be interpreted as invalidating the gear license requirement in its entirety. "We regard such statements as dictum and to the extent that they may be construed differently from the views set forth in this opinion they are superseded."

The Court then considered the question presented in this case.

"To obtain an entry permit, one had to have previously harvested fishery resources commercially as a gear licensee. AS 16.43.260. To be a gear licensee, one personally had to own or lease fishing gear and operate or assist in the operation of fishing gear. AS 16.05.-540. Thus, a person applying for an entry permit was required to have both previously owned or leased fishing gear and possessed a gear license. Since such persons would have had a unique status in the fishing industry, they alone, if prohibited from applying for a limited entry permit, would be deprived of that status which they had previously enjoyed, namely, that of a licensed gear operator. It is also reasonably conceivable that they generally would have the greater financial investment in the industry as owners or lessors of vessels or gear. Therefore, the gear license requirement

is rationally related to the goal of preventing unjust discrimination in the allocation of entry permits. Considering those factors and the presumption of reasonableness, we conclude that under the federal constitution the classification does not violate the equal protection clause."

Two justices concurred: While joining in the Court's opinion that the facts shown in the case violate neither the Alaska nor the Federal equal protection clauses, they noted what they characterized as "developing" problems.

First, the legislative action in permitting entry permits to be transferred, typically at "very high prices," "has the effect of creating another classification" and "favoring the well-to-do over the poor." Second, all that a buyer of a permit has to establish is "present ability to participate actively in the fishery." This results in another unjust classification: applicants for entry permits must demonstrate "economic hardship in order to receive a permit; permit transferees need not make such a showing. I see no reason why transferees (close to one-half of the permit holders) should be favored over applicants in such a manner."

Recommendation: The Supreme Court construed the law according to the apparent legislative intent. No legislative action is recommended.

Commercial Fisheries Entry Com'n v. Apokedak, 606 P.2d 1255.

Question presented:	Whether a borough may establish a real property lien under its authority to collect a sales tax.
Laws considered:	AS 29.48.320, AS 29.53.415(a).
Analysis:	The Supreme Court held that the establishment by a municipality of a real property tax lien is beyond the scope of the general powers granted to a municipality that may be "implied in or incident to" the authority to collect a sales tax. The Court followed what it characterized as the "general rule" "against [the establishment of] nonstatutory tax liens". "Public policy would be thwarted if individual municipalities were enabled to set up a number of different systems of sales tax liens and the determination of lien priorities would be unduly complicated. This is an area which should be addressed by specific legislation rather than by municipal or judicial fiat.'
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. The Court agreed that there may be a justification for new statutory procedures for municipal liens. It believes that those procedures should be established by the legislature. Review is recommended.

Fairbanks North Star Borough v. Howard, 608 P.2d 32.

Question presented: Whether the trial court properly concluded that the open meeting laws did not apply to the Board of Governors of the Alaska Bar.

Laws considered: AS 08.08.100, AS 44.62.310, AS 44.62.312.

Analysis: The Supreme Court held the provisions of AS 08.08.100 which exempt the "bylaws and regulations" of the Alaska Bar from the "Administrative Procedure Act (AS 44.62)" by its plain language exempts the Alaska Bar from the contents of AS 44.62 which include the open meeting law.

The Court rejected the suggestion that the repeal and re-enactment of the open meeting law in 1966 removed the open meeting law from the "Administrative Procedures Act." The Court concluded that it would have to conclude that the 1966 law "amounted to an implied repeal of AS 08.08.100" which it refused to do.

Two justices dissented: One justice concluded that AS 08.08.100 acts merely to exempt the Board from the procedural aspects of the adoption of regulations and does not act to exempt the Board from the open meeting law because the Board is an instrumentality of the state.

A second justice concurred in the dissent of the other justice and added an additional reason. He concluded that even assuming that the Board was exempt from the APA, its meeting outside the state violated Article IX, section 6 of the Alaska Constitution (the public purpose clause).

Recommendation: Three justices of the Supreme Court found the law "plain" in its meaning. Two justices read the same law and concluded that a different result was intended. While the Supreme Court may have construed the law according to the apparent legislative intent, legislative review is recommended.

Horowitz v. Alaska Bar Ass'n, 609 P.2d 39.

Question presented:	Whether the trial court correctly ruled that a former wife and unadopted son could qualify as "other dependents" under Alaska's Wrongful Death Act.
Laws considered:	AS 09.55.580(a).
Analysis:	The Supreme Court held that the addition of the phrase "other dependents" to the list of statutory beneficiaries under the Wrongful Death Act was intended by the legislature to allow for the inclusion of dependents whose status does not arise by operation of law [marriage, divorce, adoption] but who are in fact dependent. Two justices dissented: laws on marriage, divorce, and adoption exist so that the very questions presented in this case can be determined with clarity.
Recommendation:	The Supreme Court construed the law according to the apparent legislative intent. Because of the ambiguities noted by the Supreme Court, legislative review is recommended.

Greer Tank & Welding, Inc. v. Boettger, 609 P.2d 548.

PART III

Question presented:	Whether the trial court has the authority to suspend the minimum sentence established under AS 11.15.295.
Laws considered:	AS 11.15.295; AS 12.55.080.
Analysis:	An earlier case, Deal v. State, 587 P.2d 740 (1978) held that notwithstanding the "mandatory sentence "established under AS 11.15.295, the provisions of AS 12.55.080 give the trial court the authority to suspend a portion of a sentence imposed under AS 11.15.295. The Supreme Court adhered to that earlier opinion, one judge concurring in the result.
Recommendation:	The two statutes cited appear in conflict with each other. If the legislature is not satisfied with the result, one or the other statute should be clarified.

Gilbert v. State, 598 P.2d 87.

Question presented:	Whether the state prostitution laws which are gender specific violate the state constitution.
Laws considered:	Art. I, sec. 3; AS 11.40.210; AS 11.40.230.
Analysis:	The Supreme Court agreed that Art. I, sec. 3 of the Alaska Constitution requires "gender neutrality" in legislation enacted by the legislature. The Court found that the offense of prostitution lacks a rational justification since though it is capable of being violated by a male, it is only made criminal when committed by a female. The Court therefore concluded that, as written, the statute is unconsitutional. The Court noted that the constitutional problem is presented by the language "by a female" in AS 11.40.210. The Court also noted that the prostitution laws were enacted with a savings clause. The Court concluded that the laws could be saved from "total nullity" by the operation of the savings clause. The Court therefore wrote the offending phrase out of the law and concluded that such a result would not unreasonably distort legislative intent.
Recommendation:	The Court eliminated the described language from the statute. In doing so, the Court made conduct criminal [when committed by a male] that the legislature had failed to make criminal originally. While the result may be appropriate, it is clear that the result was not intended by the legislature. Legislative review is recommended.

Plas v. State, 598 P.2d 966.

Question presented: Whether the state is liable to the plaintiffs for injuries inflicted by a bear allegedly attracted by accumulated and uncollected garbage on state owned property along the highway.

Laws considered: AS 09.50.250(1).

Analysis: The Supreme Court held that the action against the state did not fall within the "discretionary acts exception" to the general waiver of sovereign immunity in the Alaska Tort Claims Act. The law permits a person having a tort claim against the state to bring an action against the state. The law provides that no claim can be brought if the action is based on the performance or the failure to perform "a discretionary function or duty" on the part of the state.

The Court reaffirmed the rule stated in earlier cases that "decisions which rise to the level of planning or decision-making are considered discretionary acts which do not give rise to tort liability, while decisions that are merely operational in nature are not considered to be discretionary acts and therefore not immune from liability."

Applying this rule, the Court declared that the state's decision whether to collect garbage at highway turnouts in the winter was a policy determination that did not give rise to tort immunity. But the decisions on how to cease the collection are operational decisions and as to these decisions the state is under a duty to reasonable care. For a violation of that duty, the state is responsible.

Recommendation: The Supreme Court construed a difficult and complex law according to the apparent legislative intent. If the result achieved is not what the legislature intends, a review of the law would be appropriate.

Carlson v. State, 598 P.2d 969.

Question presented: Whether a state statute reserving for the state the exclusive power to regulate the insurance industry prohibited a municipal equal rights commission from making an investigation into a charge of discrimination.

Laws considered: AS 21.03.060.

Analysis: The Supreme Court held that the municipal equal rights commission could "investigate" a claim of unfair discrimination; the Court implied that the commission could not issue an order arising out of the investigation that would constitute a "regulation of the insurance industry." The opinon makes clear the distinction between the regulation of the insurance industry which is prohibited under AS 21.03.060 and the regulation of employment practices, for example, within the insurance industry which would be permitted to the municipal commission.

Two justices dissented. They stated that the investigatory exception that is carved out of the pre-emption provisions of AS 21.03.060 are unique and that in fact the power to investigate closely approaches the power to regulate in the potential burdens on the insurance industry it permits.

Recommendation: The law interpreted by the Supreme Court is neither unclear nor ambiguous. The Court has, however, engrafted an unusual exception to the usual pre-emption concept. If the legislature dislikes the policy results achieved by the Court in the area addressed, legislation is appropriate.

Allstate Ins. Co. v. Municipality of Anchorage, 599 P.2d 140.

Question presented: Whether a contractor with the state Department of Highways, after an adverse decision from the department's contracting officer, could file suit in superior court to challenge the decision or whether the contractor was limited to an Appellate Rule 45 procedure.

Laws considered: AS 09.50.250, AS 22.10.020(a).

Analysis: The Supreme Court held that the review of a decision of the contract claims review board was the review of a decision of an administrative agency, whether it was created by the legislature or not. The law establishing the court system provides that appeals from a decision of "an administrative agency" are on the record of the agency unless the superior court, in its discretion, directs otherwise. The Court acknowledged that the AS 09 provisions appear to permit a direct suit in superior court in this kind of case. The Court considered that the provisions of AS 09 which deal with procedural matters and which are inconsistent with AS 22 had been superseded by the Supreme Court's adoption of Appellate Rule 45.

Recommendation: The foundation for the decision in this case reached back to Keiner v. City of Anchorage, 378 P.2d 406 (1963). The Court has been consistent in its interpretation of the provisions of AS 22 and its authority under Art. IV, secs. 1 and 15 of the Alaska Constitution. Considering these premises and the apparent acquiescence by the legislature in this conclusion, it seems that the Supreme Court construed the law according to the apparent legislative intent. A legislative review of AS 09 generally is recommended.

State v. Lundgren Pacific Const. Co., Inc., 603 P.2c 889.

Question presented: Whether the mandatory release of an incarcerated prisoner under AS 33.20.030 - 33.20.040 may be revoked by the board of parole.

Laws considered: AS 33.20.030, AS 33.20.040, AS 33.15.190.

Analysis: The Supreme Court held that it could be revoked.

The defendant was convicted in April, 1974, sentenced to six years in prison, was granted parole in November, 1976, only to have it revoked in October, 1977, on his pleas of guilty to robbery. He was sentenced to serve seventeen and one-half months of the original sentence, without possibility of parole.

He was released in March, 1979, under AS 33.20.030 - 33.20.040 which directs the release of a prisoner when he has served the time to which he was sentenced less good time. At that time he had 545 days of good time. The division of corrections considered that he was on parole under AS 33.20.040(a) which directs that when a prisoner is released with more than 180 days remaining on his sentence, he is considered as if released on parole until the maximum term for which sentenced less 180 has passed.

In June 1979, he violated the terms of parole and was re-arrested. He sought his release, arguing that AS 33.15.190 required it. The latter law, which the Court describes as "almost hopelessly in conflict" with the provisions of AS 33.20.030 - 33.20.040, provides that "A prisoner released on parole remains in the legal custody of the [parole] board until the expiration of the maximum term or terms to which he was sentenced, less good time allowances provided by law."

The Court's resolution of the matter was achieved by concluding that the board could revoke a parole for a violation of the parole, regardless of whether the board had technical custody of the parolee.

Two justices concurred in the result but used a different analysis: They would conclude that the phrase "good time allowances provided by law" should be interpreted as limiting the parolee to the 180 days under AS 33.20.040(a).

Recommendation: The Supreme Court characterized the laws, as noted, as being "almost hopelessly in conflict". The Court's resolution of the conflict, necessitated by the facts of the case before it that required an answer, does not necessarily eliminate the need for legislative review of the conflict. Review is recommended.

Morton v. Hammond, 604 P.2d 1.

Question presented: Whether an employee who voluntarily withdraws from employment and moves to a small community which has no employment available is entitled to unemployment compensation.

Laws considered: AS 23.20.380.

Analysis: The Commissioner of Labor had held that because the employee voluntarily moved from a labor market to an area where little employment was available, the employee had removed herself from the labor market and was not entitled to unemployment compensation.

The Supreme Court held that unemployment benefits are conditioned on an employee being genuinely attached to a labor force. Where the applicant moved from an area in which her services are in demand to an area where work is essentially non-existent in her profession, the move is relevant to a determination whether the applicant is genuinely attached to a labor market.

One justice dissented: The Department of Labor had the burden of showing that the employee's availability does not extend to a substantial field of employment. The employee had worked in the area before and said she was available again. "There is no requirement [in the law] that a claimant must be available for work in the area in which [she] last worked."

Recommendation: The two opinions in the case indicate that entirely different policy results can be reached using the same statutory language. Review of the law is recommended.

Lind v. Employment Sec. Division, etc., 608 P.2d 1.

Question presented: Whether the municipality properly leased real property.

Laws considered: AS 29.48.260.

Analysis: The Supreme Court held that the lease of the municipal real property was subject to competitive bid requirements.

The law permits a municipality to lease real property to persons who agree to operate a "beneficial new industry;" the lease may be on terms agreed upon by the parties. The law establishes specific procedures which were not complied with.

The Court noted that the phrase "beneficial new industry" is not defined in the law. After reviewing cases from other jurisidictions construing similar phrases, the Court found that the phrase "refers to any newly organized business that is not a mere expansion or continuation of a business that has operated in the municipality." The Court noted that the law required a "new industry," that is, a newly organized enterprise. The law also requires that it be "beneficial;" the Court interpreted this to mean a business that was not then presently in place in the community -- a new line of activity, unless the existing lines of similar activity were not adequate to service the community.

The Court then considered whether sec. 260(e), which permits a lease on ". . . terms and conditions the assembly or council considers advantageous . . ." allows the assembly or council to negotiate a lease. Using statutory construction analysis, the Court refused to read into the statute the specific waiver for beneficial new industry of the otherwise general requirements for competitive bidding.

One justice concurred: He agreed with the result but reached it by a different analysis.

Recommendation: The Supreme Court construed the law according to the apparent legislative intent. While the Court agreed that the law was not entirely free from ambiguities, the result seems reasonable. No legislative action is recommended.

Libby v. City of Dillingham, 612 P.2d 33.

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