

H

B

350

COMMITTEE REPORT

HOUSE

3/17/81

FURTHER:

(11)

Date: 6/4/81

Mr. Speaker:

The Committee on RESOURCES has had HB350

"An Act relating to mineral leasing; and providing for an effective date."

under consideration and reports it back as follows:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 350 same title
 new title
- and recommends DO PASS
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Frank J. Zboroff

A. Smith

Steve Paska

William

Rick Halford

B. Stewart

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Eui Sutcliffe NO REC

AGO 886249

CHAIRMAN

Frank J. Zboroff

try under the laws of the United States. The Department assures compliance with this provision by excluding from selection all lands noted on its records as being appropriated and reserved, or subject to valid existing interests, and by requiring that adequate notice be given to all other persons claiming an interest in the selected land. The Department can then receive objections to the issuance of a patent and can render a determination as to the availability of the selected lands.

3. Alaska: Land Grants and Selections: Mineral Lands—Alaska: Land Grants and Selections: Validity—Alaska: Statehood Act—Patents of Public Lands: Reservations

Section 6(1) of the Alaska Statehood Act provides that grants of mineral lands to the State are made upon the condition that all subsequent State conveyances of the mineral lands shall be subject to and contain a reservation to the State of all the minerals in the lands so conveyed. The Act does not require that federal patents to the State include a proviso to the above effect, rather, it is subsequent State conveyances which must contain a reservation for minerals.

APPEARANCES: Max Barash, Esq., Washington, D.C., for appellants; James N. Reeves, Esq., Office of the Attorney General, for the State of Alaska; Karen A. Shaffer, Esq., Office of the Solicitor, Department of the Interior, for the United States.

AGO 886243

RICHARD W. ROWE,
DANIEL GAUDIANE

20 IBLA 59

Decided April 21, 1975

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting oil and gas lease offer F 694.

Affirmed.

1. Alaska: Land Grants and Selections: Generally—Notice: Constructive Notice

Published notice of a proposed State selection in accordance with regulatory requirements is adequate notice to all persons claiming the lands adversely to the State.

2. Alaska: Land Grants and Selections: Validity—Alaska: Statehood Act—Notice: Generally—Patents of Public Lands: Generally

Section 6(b) of the Alaska Statehood Act does not require that patents issued to the State include a proviso that the conveyed lands are vacant, unappropriated, and unreserved, and do not affect any valid existing claim, location or en-

OPINION BY ADMINISTRATIVE JUDGE RITVO
INTERIOR BOARD OF LAND APPEALS

[1] In their initial argument, appellants contend that it was improper for the Department to issue a patent to the State without having first given appellants *actual* notice and an opportunity to object to the issuance of the patent. In accordance with 43 CFR 2627.4(c), the State of Alaska published notice of its proposed selection for five consecutive weeks in order to bring to the knowledge and attention of all persons who were interested in the lands described therein the fact that the State proposed to establish and perfect its claim to the selected lands. The State's publication specifically stated that, "One purpose of this notice is to allow all persons claiming the lands adversely to file in this [BLM] office their objections to issuance of patent to the State." Publication in accordance with regulatory requirements is

adequate notice. *Duncan Miller*, 20 IBLA 1 (1975); *Chem-Cate Perlite Corp. v. Bowen*, 72 I.D. 403 (1965); see also 66 C.J.S. *Notice* §§ 13, 18 (1955), and cases cited therein. Accordingly, we find that, as a result of the publication, appellants received adequate notice and an opportunity to object to the issuance of the patent to the State of Alaska.

In their next argument, appellants contend that it was improper for the Department to issue a patent to the State which failed to describe the lands selected as vacant, unappropriated, and unreserved, and as not affecting any valid existing claim, location, or entry under the laws of the United States. Appellants also object to the fact that the patent did not include a proviso prohibiting the State from subsequently reconveying the mineral interests it acquired.

[2] Section 6(b) of the Statehood Act provides that the State may select up to 102,550,000 acres from the public lands in Alaska which are vacant, unappropriated and unreserved at the time of their selection, provided the selection does not affect any valid existing claim, location or entry under the laws of the United States. The Act does not require that patents to the State include a proviso to that effect. Compliance with this provision is fulfilled by the Department excluding from selection all lands noted on its records as being appropriated and reserved, or subject to valid existing interests, and by requiring that

adequate notice be given to all other persons claiming an interest in the land. The Department can then receive objections to the issuance of a patent and can render a determination as to the availability of the selected lands. In the present case, following publication of the State's proposed selection, the BLM, in its decision tentatively approving the State's application, made a finding that, "The lands described * * * are not known to be occupied or appropriated under the public land laws, including the mining laws * * *." We conclude that this procedure adequately assured conformity with the requirements of the Statehood Act.

[3] We also reject appellants' argument that it was improper to issue a patent to the State without including a proviso prohibiting the State from reconveying acquired mineral interests. Section 6(i) of the Statehood Act provides that grants of mineral lands to the State are made upon the condition that all subsequent State conveyances of the mineral lands shall be subject to and contain a reservation to the State of all of the minerals in the lands so conveyed. All lands or minerals disposed of contrary to the provision are to be forfeited to the United States by appropriate proceedings instituted by the United States Attorney General. Again we note that the Act does not require that federal patents to the State include a proviso to the above effect. Rather, it is subsequent State conveyances which must contain a res-

ervation for minerals. Adherence to this requirement of the Act is adequately assured by the fact that the laws of the United States are the supreme law of the land, and state action in contravention can be set aside. *Lee v. Florida*, 392 U.S. 378, 385-86 (1968).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is affirmed.

MARCUS RAYO,
Administrative Judge.

WE CONCUR:

DOUGLAS E. HENRIQUES,
Administrative Judge.

EDWARD W. STEVENS,
Administrative Judge.

MAY 4 1981

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

POUCH D

JUNEAU, ALASKA 99811

Phone: 465-2500

April 29, 1981

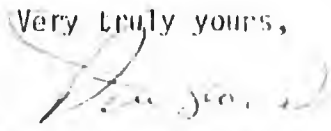
Honorable Fred Zharoff, Co-Chairman
House Resources Committee
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Mr. Zharoff:

Re: HB 350 Relating to Mineral Leasing

The department supports HB 350 subject to an amendment which would replace the term "lease" with "development and production lease." This would be a pedantic change and would not alter, in any way, the intent of the bill (it would satisfy the legal connotation of "lease"). The suggested changes would, however, desensitize the concerns of the mineral industry with the imposition of a lease system for locatable minerals.

Very truly yours,


Charles R. Webber
Commissioner

CRW/shB/11

cc: Representative Richard Halford

BY HALFORD, ABOOD, ANDERSON, BARNES,
BEIRNE, BETTISWORTH, BROWN, BYLSMA,
CARNEY, COTTEN, FANNING, FREEMAN,
FULLER, GARDINER, GRUSSENDORF, HAUGEN,
HAYES, MALONE, MARTIN, MEEKINS,
MONTGOMERY, O'CONNELL, RANDOLPH AND
SMITH

1 IN THE HOUSE

2 CS HOUSE BILL NO. 350

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to mineral leasing; and providing for
7 an effective date."

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

9 * Section 1. AS 38.05.205(a) is amended to read:

10 (a) Prior discovery, location and filing shall initiate prior
11 rights to mineral deposits subject to AS 38.05.185 - 38.05.280 in or on
12 state lands, other than submerged lands, which are open to mining
13 leasing. Locations shall be made and certificates of location recorded
14 in accordance with AS 38.05.195. If the located lands are available
15 only for leasing, the director shall publish in a paper of general
16 circulation in the area of the location, notice of the filing of the
17 location and notice that a mineral lease will be issued. The notice
18 may be combined with notices of locations either in the same general
19 area or statewide. At least two weeks after publication of the notice,
20 an application form for a mining lease shall be mailed to the locator
21 by the director [UPON REQUEST OR UPON RECEIPT OF NOTICE THAT THE LOCA-
22 TION HAS BEEN MADE ON LANDS OPEN ONLY FOR LEASING]. A lease applica-
23 tion shall be filed with the director by the locator within 90 days
24 after receipt of the form. If the located lands are not available for
25 leasing, notice shall be given the locator by the director and his
26 prior rights shall terminate. A mining lessee has the exclusive rights
27 of possession and extraction of all minerals subject to AS 38.05.185 -
28 38.05.280 lying within the boundaries of his lease. ^{allocation} Mining leases may
29 be issued for one location or for a group of contiguous locations held

1 in common. Minerals may not be mined and marketed or used until a
2 lease is issued, except for limited amounts necessary for sampling or
3 testing.

4 * Sec. 2. AS 38.05.305 is amended by adding a new subsection to read:

5 (e) The provisions of this section do not apply to a lease issued
6 under AS 38.05.205.

7 * Sec. 3. AS 38.05.345 is amended by adding a new subsection to read:

8 (h) The provisions of this section do not apply to a lease issued
9 under AS 38.05.205.

10 * Sec. 4. SPECIAL PROVISION FOR MINING LEASE LOCATIONS. Notwithstanding
11 AS 38.05.205(a), until ~~March 1, 1985~~ ^{July 1, 1984}, minerals may be mined, marketed, or
12 used on a location for mineral leasing under AS 38.05.205 on land tentatively
13 approved or patented to the state under section 6(a) or 6(b) of the Alaska
14 Statehood Act (P.L. 85-508, 72 Stat. 339, as amended) upon discovery,
15 location, and recording in accordance with AS 38.05.195. However, this
16 section does not apply to a locator who does not file an application for a
17 lease within 90 days after receipt of the application form as required by
18 AS 38.05.205.

19 * Sec. 5. This Act takes effect immediately in accordance with AS 01.10.-
20 070(c).

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K—STATE CAPITOL
JUNEAU, ALASKA 99811

May 22, 1981

The Honorable Terry Gardiner
House Resources Committee
House of Representatives
Pouch V, State Capitol
Juneau, Alaska 99811

Dear Chairman Gardiner:

On April 30, 1981, during a hearing on HB 350, the House Resources Committee requested that, prior to the conclusion of this legislative session, this office issue its opinion on whether, and to what extent, leasing is required for mineral interests in lands granted to the state under section 6(a) and 6(b) of the Alaska Statehood Act. (The opinion is often referred to as the "6(i) opinion" because the leasing restriction is contained in section 6(i) of the Alaska Statehood Act.) The purpose of the request was to allow time for the legislature to act if the opinion concluded that a significant change was necessary in the manner that the state has dealt with minerals in 6(a) and (b) lands. This office has released drafts of a proposed opinion on this subject and is currently working on its final opinion.

Although it will not be possible to issue a final opinion on all matters prior to the end of this legislative session, this letter expresses our opinion on at least one of the issues: whether the past state interpretation of the mineral leasing restriction in section 6(i) of the Alaska Statehood Act was correct. Although the correct application of the 6(i) restriction is still being researched, our opinion is that past state practice was incorrect. A final opinion on the correct interpretation will be forthcoming sometime this summer. In that opinion the matters discussed in this letter will be set forth more thoroughly.

This opinion does not conclude which lands are covered by the leasing requirement. The draft opinions' tentative conclusion that the leasing restriction applies to all 6(a) and (b) lands is vigorously disputed. As expressed by the testimony of the Alaska Miners Association, by Mr. Phil Holdsworth, during the hearing on HB 350, the miners' position is that the mineral leasing restriction in section 6(i) applies only to those 6(a) and (b) lands that are "mineral" in character as determined by the Department of Natural Resources.

Although the miners' position may be correct, their view also represents a significant departure from past practice. The Department of Natural Resources has never made mineral character determinations. Requiring such determinations would possibly result in severe dislocations in present mining activities while miners await those determinations. Thus, some legislative relief this session would still be appropriate. A more detailed discussion of this remaining issue, and the attendant legal and practical problems, is contained later in this letter.

Section 6(i) provides:

"All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the expressed conditions that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. Mineral deposits in such lands shall be subject to lease as the State Legislature may direct: Provided, That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska."

The issue causing the greatest controversy is the application of the phrase "mineral deposits in such lands will be subject to lease" (emphasis added). The question is which lands are "such lands." The draft opinion concludes that, first, "such lands" means all mineral lands granted under section 6(a) and (b). Second, the draft opinion concludes that the term "mineral lands" as used in section 6(i) means all 6(a) and (b) lands that contain valuable mineral deposits no matter when those deposits become known.

The miners apparently agree that the restriction applies to "mineral lands," but contend that "mineral lands" means only those lands which are believed to be valuable at a certain point in time as determined by the Department of Natural Resources. Minerals discovered after the land has been determined to be "non-mineral" would not need to be leased. The draft opinion recognizes that the miners' position may be valid, and research is still being done on this point.

But the state's interpretation and practice to this time has taken still a third position--one which this office concludes is incorrect. The prior state interpretation, presently set forth in 11 AAC 86.135(b), only applied the mineral leasing restriction to those 6(a) and (b) lands which had previously been conveyed to third parties. If 6(a) and (b) lands remained in state ownership, then past state practice would allow miners to mine simply by location and discovery whether or not the land was mineral in character. Since until recently little 6(a) and 6(b) land was sold to third parties, the leasing restriction was practically nonexistent. As a result few, if any, hard rock mineral leases have been issued by the Department of Natural Resources.

Notwithstanding the department's interpretation and practice, it is our opinion that section 6(i) requires a different scheme. Whether or not the state sells the non-mineral interest, the state may only lease the minerals in the 6(a) and (b) mineral lands.

These restrictions, however, do not apply to all lands granted to the state. The first sentence of section 6(i) includes mineral rights in all state grants: "All grants made or confirmed under this Act shall include mineral deposits." The leasing restriction, however, applies only to lands granted under section 6(a) and 6(b), and then only those 6(a) and (b) lands which are "mineral" in nature.

As will be set forth more fully in the eventual final opinion, the reasons for the conclusion that the past state practice was incorrect are based on the legislative history, administrative interpretations, and judicial decisions surrounding the almost identical provisions of the 1927 School Lands Act, 43 U.S.C. 870, and the history of section 6(i) itself. The legislative history of the School Lands Act and section 6(i) are set forth in the draft of February 11, 1981, which is appended to this letter for your reference. See also, e.g., Shores v. Utah, 52 I.D. 503 (1928); Instructions, 52 I.D. 51 (1927), 52 I.D. 273 (1928), 53 I.D. 30 (1930).

Definition of "Mineral Lands".

Although the applicability of the 6(i) leasing restriction to all 6(a) and (b) mineral lands is relatively clear, a more difficult question is the meaning of the term "mineral lands." The February 11, 1981, draft's preliminary conclusion was that "mineral lands" meant all 6(a) and (b) lands that contain minerals no matter when the mineral character of the land became known. That conclusion would require leasing of minerals on all 6(a) and (b) lands, since there would be no point in time where anyone could conclusively say that a particular piece of land was not mineral in nature.

The reasons for this preliminary conclusion are set forth in the February 11, 1981, draft at pages 49-54, and will not be repeated here. It is to be emphasized that that conclusion was only preliminary, and, in fact, subsequent research has tended to weaken the rationale for that result.¹

The alternative interpretation was generally described in testimony by former natural resources commissioner Phil Holdsworth before your committee concerning HB 350. Basically, under this approach, the term "mineral lands" only applies to lands known or reasonably believed to contain valuable minerals at the time of equitable transfer from the federal government to the State of Alaska. Since the federal government has granted both the mineral and non-mineral land to the state, the federal government does not

^{1/} The conclusion in the February 11, 1981, opinion was based solely on the School Lands Act experience and comments during the admittedly confused legislative process surrounding section 6(i) of the Alaska Statehood Act. See, e.g., comments of Representative Pillion quoted in the February 11, 1981, draft at page 87. The term "mineral lands," however, has been applied in a wide range of federal land grants, and subsequent research has included research into those other types of grants and the decisions and practices of the Department of the Interior in those other applications. Subsequent research has tended to show that a more restrictive reading of the term "mineral lands" has had application in a wider range of instances than previously thought. Particularly telling has been the tendency of administrative bodies to automatically apply the more restrictive interpretation of the term "mineral lands" even when the purposes of the restriction were markedly different.

have the authority to make that initial determination and, instead, the state is responsible for setting up and implementing that administrative decision. See Instructions, 53 I.D. 30, 35 (1930).²

Under this approach, the mineral leasing restriction applies only to land the state determines is mineral in character. If the state determines that the land is not mineral in character, the leasing restriction does not apply even if there is a subsequent discovery of minerals in that land.

Even if the miners' position is correct, there are still a number of unresolved questions which require additional research. Briefly, the main areas of inquiry are:

- (1) What are the criteria for determining whether land is mineral in character?
- (2) What date is the relevant time for identifying the known conditions which form the basis for determining whether land is mineral?
- (3) What is the effect of the provision in section 6(g) of the Statehood Act which provides:

Following the selection of lands by the State and the tentative approval of such selection by Secretary of the Interior or his designee, but prior to the issuance of final patent, the State is hereby authorized to execute conditional leases and to make conditional sales of such selected lands.

^{2/} This was the approach taken by the Department of the Interior in implementing the School Lands Act. E.g., Instruction, 52 I.D. 51, 54 (1927). On the other hand, the Department of the Interior took the position that it could review the mineral character of the land in order to determine whether the state has violated the leasing and mineral reservation restrictions, since the Department has taken the position that it must recommend to the U.S. Attorney General to institute forfeiture proceedings in appropriate instances. See, generally, 1 American Law of Mining, Section 3.16 at page 508; Shores v. Utah, 52 I.D. 503, 505 (1928); Instructions, 53 I.D. 30 (1930).

The most commonly cited expression of the "mineral lands" test is contained in the U. S. Supreme Court case of Diamond Coal & Coke Co. v. United States, 233 U. S. 236, 239-40 (1914):

It must appear that at the time [of determination] . . . the land was known to be valuable for minerals; that is to say, it must appear that the known conditions at the time . . . were plainly such as to engender the belief that the land contained mineral deposits of such quality and in such quantity as would render their extraction profitable and justify expenditures to that end.

There is some confusion, however, concerning what passes for evidence of profitability. On the one hand, there is some indication in the cases that profitability must be judged in terms of the then contemporaneous market conditions.³

On the other hand, it has been held that subsequent developments may be considered so as to allow a finding that lands are "mineral" even though the contemporary belief is that the minerals were unmarketable.⁴ Furthermore, there is even doubt that this test applies at all to hardrock minerals. See, e.g., Diamond Coal & Coke, supra, 233 U.S. at 249.

^{3/} See United States v. Southern Pacific Co., 251 U. S. 1, 13 (1919) which implies that an immediate willingness to risk money is the test:

That an ordinary and prudent man, understanding the hazards and awards of oil mining, would be justified in purchasing the lands for such mining and making the expenditures incident to their development, and in that a competent geologist or expert in oil mining, if employed to advise in the matter, would have ample warrant for advising the purchase and expenditure.

^{4/} In Standard Oil of California v. United States, 107 F. 2d 402, 415 (9th Cir. 1940), the court held land to be mineral and, after quoting the Diamond Coal & Coke test,

"In applying such a test, rather than that of actual discovery, it is obvious that a wide field of inquiry is opened up. It was not necessary to show that appellants themselves, in 1903, believed the land to be valuable for oil, or that there was unanimity of contemporary opinion to that effect. The erection of

Besides the criteria to be applied in deciding the physical attributes of mineral land, a second question is identifying the relevant point in time for applying the criteria. Are the conditions those which were known at the time of statehood? State selection? Tentative approval? Patent? Or subsequent transfer to a third party? Arguments can be made for all five dates. Generally, however, it appears that the key time is the point of equitable transfer from the federal government to the state. E.g., Wyoming v. United States, 255 U. S. 489 (1921). This narrows the inquiry to a choice between two dates: (1) when the state has done all that it must do to complete its selection for a piece of land; or (2) when the state's selection is tentatively approved by the Department of the Interior. The completion of all activities necessary for selection is the traditional time for determining mineral character for those types of grants where a state is able to select the land from the general public domain. One such example was the ability of states to make in-lieu selections for grants in aid of schools where the original in-place grants were determined to be mineral in character and not passed to the state under pre-1927 law. Id. On the other hand, 6(g) of the Statehood Act gives the state the authority to dispose of its interest in land upon the receipt of tentative approval. At least one court has stated that "section 6(g) provides that on tentative approval of the selected lands equitable title passes to the State," Schraier v. Hickel, 417 F.2d 663, 665 (D. C. Cir. 1969).

The language of section 6(g) raises an additional question. Again, 6(g) provides:

Following the selection of lands by the State in the tentative approval of such selection by the Secretary of the Interior or his designee, but prior to his issuance of final patent, the State is hereby authorized to execute conditional leases and to make conditional sales of such selected lands.

such standards would require, in the one case, proof of fraud, and, in the other, proof of conditions pointing so unerringly to the existence of valuable oil deposits as to be the equivalent of actual discovery. Nor, as we understand the rule laid down in the controlling decisions, need it be shown that contemporary belief was such as to prompt the willingness immediately to risk money in the exploitation of the land. On this point there is persuasive evidence that the then prevailing market for oil was unfavorable to new development and continued to be so for a number of years." (emphasis added)

Section 6(g) seems to state that the only way that the state can convey a third party interest in land prior to receipt of patent is by a conditional lease or conditional sale contract. Since section 6(i) prevents the sale of the mineral interest at all times, even if non-mineral land can be mined by location after the state receives patent, it may be that prior to patent the state may only authorize mineral entry by means of a conditional lease. Given the long period of time between tentative approval and receipt of patent in most instances, present mining activities may still be affected. Further research on this question is also being conducted.

Conclusion

Past state practice was based on an incorrect interpretation of section 6(i). Also, it is relatively clear that whatever the proper application of section 6(i) may be, there will be a significantly increased need for the issuance of leases for mining activities on 6(a) and (b) land. If no transitional legislation is enacted, disruption of mining activities could occur. This potential for disruptions exists even if the miners' interpretation of the 6(i) restriction is eventually adopted in our final opinion because of the need of the department to make mineral character determinations under the miners' analysis.

On the other hand, even though past state interpretation was incorrect, it should not be assumed that the state has violated the 6(i) restriction. First, the state has always retained the mineral interest when it has sold 6(a) and (b) land to third parties. AS 38.05.125. Second, the leasing requirement in 6(i) is probably satisfied as long as a lease eventually issues. Allowing interim mining solely by discovery and location prior to issuance of a lease would probably not be a violation of section 6(i). Cf. Idaho Code Annotated §47-703 et. seq. (where the statute allows mining by location only for two years before a lease must be secured). Thus, if a claim has been staked on 6(a) and (b) mineral land, the potential violation of 6(i) would probably be cured by issuing a lease for that claim. Third, given the poor market for hardrock minerals in Alaska until recent years, many lands that have been tentatively approved or patented may not be "mineral lands" under one of the likely tests for mineral character: i.e., that the land was reasonably believed to contain valuable minerals at the time the state completed its selection. Therefore, the lands already conveyed to the state by tentative approval or patent that would be "mineral" may be very few. Finally, if a court would rule that the state practice was incorrect, it is likely that the court would give the ruling prospective effect only. See, e.g., Chevron Oil Co. v. Huson, 404 U.S. 97, 106 (1971).

Terry Gardiner

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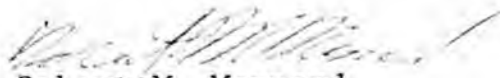
May 22, 1981

Again, a final opinion is expected to be issued sometime this summer. That opinion will expand upon the matters discussed herein, reach conclusions on the undecided issues outlined above, and answer a number of related questions addressed in prior drafts but not discussed in this letter.

If you have any questions please do not hesitate to call.

Sincerely,

WILSON L. CONDON
ATTORNEY GENERAL

By: 
Robert M. Maynard
Assistant Attorney General

RMM:mr

AGO 886259