

H B

674

LAW OFFICES

WOHLFORTH & FLINT

A PROFESSIONAL CORPORATION  
900 WEST 5TH AVENUE, SUITE 505  
ANCHORAGE, ALASKA 99501

TELEPHONE  
AREA CODE 907  
276-6401

ERIC E. WOHLFORTH  
ROBERT B. FLINT  
TIMOTHY G. MIDDLETON  
PETER ARGETSINGER  
ROBERT M. JOHNSON  
GEORGE T. FREEMAN

February 1, 1982

The Hon. Ray H. Metcalfe  
Representative  
Pouch V  
Juneau, Alaska 99811

Re: 1980 Authorization of General Obligation  
Bonds for Transportation Projects; Bragaw  
Construction Project

Dear Representative Metcalfe:

You have asked that we review the treatment of funds allocated in the legislation enacted during the 1980 legislative session providing for the issuance of General Obligation Bonds for the purpose of financing a variety of transportation projects. Specifically, you have asked whether the funds for the construction of an extension of Bragaw Street in the Anchorage area may be subject to re-allocation between projects within the particular group of projects referred to in the legislation. Section 5 of Chapter 118 of the 1980 Session Laws appropriates a certain amount of funds for projects listed in that particular section. The Bragaw extension is one of the projects listed under this separate provision. Section (5)(b) indicates that the appropriations for the projects referred to in this section "may be re-appropriated among the projects by law." This indicates that the funds allocated to the Bragaw extension may be re-appropriated only through passage of additional legislation.

Thank you for your attention to this matter.

Very truly yours,

  
Eric E. Wohlforth

EEW/dlk

cc: Wilson L. Condon, Esq.  
Attorney General  
State of Alaska

REC'D FEB 5 1982

SENT TO;  
TO REPRESENTATIVE RAY METCALFE  
ALASKA STATE LEGISLATURE  
POUCH V (MS 3100)  
JUNEAU, ALASKA 99811

FROM  
**M S I** Melody Sales Incorporated

ONE OF THE STATES OLDEST AND MOST REPUTABLE DEALERS  
The "HouseSold" Word in Alaska  
MOBILE HOME SALES AND SERVICE

Corporate Offices  
3118 Mt. View Drive  
Anchorage, Alaska 99501  
(907) 279-3528

Quality New & Pre-owned Homes  
Manufacturers Agent  
& Distributor  
(907) 279-3820

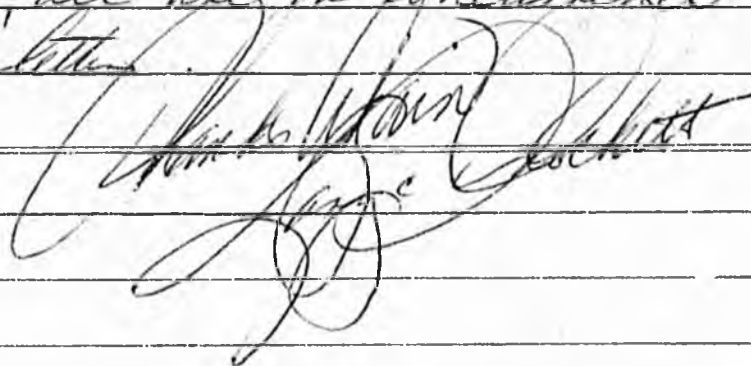
SUBJECT

DATE 2/1/82

Ray,  
Please find the enclosed written  
opinions from two of our attorneys.  
Although I didn't request opinions  
in writing from all whom I discussed  
the matter with, all are in concurrence  
with the enclosed letter.

SIGNED

REPLY



DATE

SIGNED

Construction Camps - Quality Mobile Homes  
And Specialty Units

REC'D FEB 5 1982

# HUGHES THORSNESS GANTZ POWELL & BRUNDIN

## Attorneys at Law

JOHN C. HUGHES	ROBERT T. PRICE	FREDRICK J. ODSER
DAVID H. THORSNESS	* DENNIS M. BUMP	* MICHAEL L. LESSMEIER
RICHARD O. GANTZ	MARY K. HUGHES	STEVEN S. TERVOOREN
JAMES M. POWELL	FRANK A. P'IFFNER	GARY L. MARSHALL
BRIAN J. BRUNDIN	* RALPH R. BEISTLINE	MATTHEW K. PETERSON
* MARCUS R. CLAPP	GORDON J. TANS	JOSEPH R. D. LOESCHER
KENNETH P. JACOBUS	R. CRAIG HESSER	* RONALD E. NOEL
GARY W. GANTZ	ROBERT L. MANLEY	JAMES F. KLASER
JERRY E. MELCHER	* DORIS R. EHRENS	* KENNETH D. LOUGEE
JOE M. HUDDLESTON	JAMES M. GORSKI	KENNETH F. BRITTAIN
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RICHARD D. THALER	JAMES M. SEECORF	CORY A. CARLSON
CARL J. D. BAUMAN	RONNIE L. THIE	EARL M. SUTHERLAND
FRED B. ARVIDSON	PAUL J. ERICKSON	* D. RANDALL ENSMINGER

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Telecopier: 274-7325  
Telex 090-26376

3550 AIRPORT WAY, SUITE 265  
FAIRBANKS, ALASKA 99701  
Telephone (907) 479-3161  
Cable Address: DENALI

\* Fairbanks Office  
January 28, 1982

Please reply to: ANCHORAGE.

Melody Sales, Inc.  
3115 Mountain View Drive  
Anchorage, Alaska 99501

Attn: Larry C. Crockett

Dear Larry:

I have reviewed House Bill No. 674 and the proposed substitute. I have the following comments.

House Bill No. 674 does not materially change the investigative powers of the Attorney General. It rewrites the statute in a somewhat more concise form. However, the rewritten statute sets forth essentially all of the investigative powers that the Attorney General has under the present statute with the exception of the power to impound samples of property which are material to his investigation and to retain the samples. As I have never seen the Attorney General do this, I do not believe this is a critical power.

The proposed substitute is, obviously, infinitely preferable.

The proposed substitute would force the Attorney General to do what any other entity must do when it seeks to press a complaint, namely, file an action in the Superior Court and go through the normal discovery processes. The proposed substitute does add a requirement of making a showing that it is more probable than not that the person to be investigated has engaged in deceptive trade practices and that the deceptive trade practice is part of a common scheme or mode of operation.

Obviously, your political judgment as to the mood in the legislature is better than mine. It occurs to me, however, that you might want to delete this extra requirement and simply propose as the substitute bill a situation where the Attorney General must file a lawsuit in Superior Court. This would give the entity being investigated the ability and right to object to requested discovery on grounds of relevancy to the action and the various

REC'D FEB 5 1982

HUGHES THORSNESS GANTZ POWELL & BRUNDIN  
Attorneys at Law

other grounds such as the burdensome nature of the discovery. It would also limit interrogatories, by way of example, to twenty interrogatories under current court rule.

As you know from painful experience, sometimes the most critical factor in dealing with the Attorney General is not the ultimate result because that is often favorable, rather, it is the cost of obtaining that result which is often considerable.

If you have any questions or want me to expand on the thoughts in this letter, please contact me.

Very truly yours,

HUGHES, THORSNESS, GANTZ,  
POWELL & BRUNDIN

A handwritten signature in cursive script, reading "Richard D. Thaler".

By: Richard D. Thaler

RDT/ks

ERWIN, SMITH & GARNETT

ATTORNEYS AT LAW  
3812 SPENARD ROAD, SUITE 201  
ANCHORAGE, ALASKA 99503  
PHONE (907) 276-3125

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

January 27, 1982

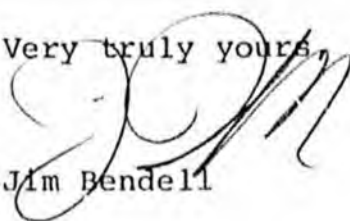
Mr. Larry Crockett  
Melody Sales, Inc.  
3115 Mountain View Drive  
Anchorage, AK 99501

Dear Larry:

RE: Proposed House Bill 674

It is my view that the Legislative Proposal contained in House Bill 674 does not provide sufficient safeguards for businessmen who are the subject of investigation by the Attorney General's Office. My reading of the statute does not reveal any mandated court overview of the Attorney General's actions. For that reason I believe that my initial proposal is more desirable.

Very truly yours,

  
Jim Bendell

pb

REC'D FEB 5 1982

Alaska State Legislature

Official Business



Pouch V  
State Capitol  
Juneau, Alaska 99811

(907) 465-4766  
(907) 465-4767  
(907) 465-3718  
(session only)

Members

- Rep. Barnes, Chairman
- Rep. Anderson, Vice-Chairman
- Rep. Phillips
- Rep. O'Connell
- Rep. Freeman
- Rep. Meekins
- Rep. Buchholdt

POUCH V  
JUNEAU, ALASKA 99811

House of Representatives

Committee on Judiciary

P.O. Box 3352  
Anchorage, AK 99510  
(907) 274-1432  
(907) 274-1441  
POUCH V  
JUNEAU, ALASKA 99811

MEMORANDUM

TO: CHIEF CLERK OF THE HOUSE

FROM: REPRESENTATIVE RAMONA BARNES  
CHAIRMAN, HOUSE JUDICIARY COMMITTEE

DATE: February 1, 1982

TIME: 1:15 p.m.

PLACE: Room 124, Capitol Building

RE: COMMITTEE SCHEDULE  
February 8-12

Monday, February 8, 1982 - Joint Hearing for Teleconference  
Testimony with House, Health, Education and Social Services Committee  
on:

- HB225 - Relating to Alaska Board of Parole
- HB293 - Relating to Alaska Board of Parole
- HB261 - Relating to Alaska Board of Parole

NOTE: This joint teleconference hearing will be held in Room 112,  
Capitol Building.

Tuesday, February 9, 1982 - Testimony and Mark-up:  
HB184 - An act authorizing an advisory vote on convening special  
sessions of the legislature at any location in the state.

Wednesday, February 10, 1982 - Testimony and Markup:  
HB674 - An act relating to requirement for Attorney General's  
investigation of violations of AS 45.50.

Thursday, February 11, 1982 - Testimony and Markup:  
HB428 - An act relating to state litigation and amending Civil  
Rules 6 and 65.

Friday, February 12, 1982 - Testimony and Markup:  
HB74 - An act amending the laws relating to creditors and debtors  
duties and rights.

*These people  
are to be  
contacted by  
Diane*

*Gail Kincaid  
Melody  
Homes*

MEMORANDUM

January 15, 1982

SUBJECT: Investigations under AS 45.50  
(Work Order No. 12-2226)

TO: Representative Ray H. Metcalfe

FROM: Diane T. Colvin  
Legislative Counsel

You submitted to us a proposal for a draft bill which would limit the authority of the Attorney General to conduct investigations concerning deceptive trade practices, as currently authorized by AS 45.50.495. We are reluctant to prepare a draft bill as proposed for the following reasons, stated in brief:

1. The proposal is subject to challenge on constitutional grounds because it may violate the doctrine of separation of powers. The proposal would require court approval before the attorney general could proceed to investigate an alleged violation of AS 45.50. It would, in effect, give the court control over exercise of the attorney general's discretion.

The Alaska Supreme Court recognized in Public Defender Assn. v. Superior Ct. Third Jud. Dist., 534 P.2d 947 (1975), the discretionary control of the attorney general over the local business of the state. The Court in that case found that interference with that discretion would be a violation of the doctrine of separation of powers. The Court stated that it did not have the power to control the exercise of the attorney general's discretion as to whether he will take action in a particular case.

2. The proposal mixes, and creates drafting problems as a result, criminal and civil procedures. Proceedings under AS 45.50 are civil and the penalties provided for violations are civil, not criminal. The proposal creates a procedure akin to a finding of probable cause, a criminal procedure,

Representative Ray W. Metcalfe  
Page 2  
January 15, 1962

under AS 45.50 and places it in what is otherwise a civil proceeding. This is technically difficult to deal with and to mesh with existing court rules.

As you know, I discussed these problems with your aide, Ann Krekleberg. She suggested as you directed that we contact the individual who prepared the draft for you. We have done so, and discussed the problems involved and possible alternatives.

One alternative is to provide that the attorney general prepare an investigative demand when he believes a violation of AS 45.50 exists and allow the person upon whom the demand is served to file a petition in court challenging that demand and asking that it be set aside. We have prepared a draft bill incorporating this alternative for your review. It is the procedure followed in several states and would seem to accomplish the intent of the original proposal while avoiding possible separation of powers problems.

When we discussed this alternative with the drafter of the proposed bill, he stated that it appeared to be a reasonable alternative and that he would like to review a draft based on this approach. We will, with your permission, forward a copy to him.

If you have any questions concerning this issue, do not hesitate to contact us.

DTC:ljb

Enclosure

PROPOSED STATUTE

ALASKA STATUTE 45.50.495 shall be amended as follows:

**Authorizing Investigative power of attorney general.**

(a) If the attorney general has cause to believe that a person has engaged in, is engaging in, or is about to engage in, a deceptive trade practice under AS 45.50.471, he may bring an action in the name of the state against the person, seeking the authority to pursue the investigative powers described in subsection (c). The action may be brought in the Superior Court in the Judicial District in which the person resides or is doing business or has the principal place of business in Alaska, or, with the consent of the parties, in any other Judicial District in the State. The action shall be instituted by filing a complaint in the Superior Court stating with specificity:

- (1) the nature of the deceptive practice;
- (2) the dates on which said deceptive practices occurred or upon what facts are based any assertion that they are likely to occur;
- (3) the names of all persons who are alleged to have been harmed or will be harmed by said deceptive practice.

The Superior Court shall schedule a hearing no less than thirty (30) days and no more than sixty (60) days from the date of service of the complaint on the person who is the subject of the investigation. All parties to the action shall have the right to subpoena witnesses to attend the hearing.

(b) At the conclusion of the hearing held pursuant to subsection (a), the Superior Court shall issue an order empowering the attorney general with investigative powers listed in subsection (c) only if the attorney general has proven, by a preponderance of the evidence, the following facts:

- (1) that it is more probable than not that the person who is the subject of the investigation has engaged in, is engaging in or is about to engage in, a deceptive trade practice under AS 45.50.471, and;
- (2) that the deceptive trade practice is part of a common scheme or mode of operation and is not an isolated or uncommon event.

(c) If the Superior Court enters an order finding probable cause as specified in subsection (b) above, then the attorney general may then:

- (1) request the person to file a statement or report in writing, under oath, on forms prescribed by him, setting out all facts and circumstances concerning the sale or advertisement of the property by the person, and other information considered necessary;
- (2) examine under oath any person in connection with the sale or advertisement of property;

- (3) examine property or sample of the property, record, book, document, account or paper that he considers necessary;
- (4) make true copies of records, books, documents, accounts, or papers examined under (3) of this subsection which may be offered in evidence in place of the originals in actions brought under AS 45.50.471--45.50.561; and
- (5) under an additional order of the Superior Court, impound samples of property which are material to his investigation and return the sample until proceedings undertaken under AS 45.50.471--45.50.561 are completed.

(d) Service of an order or subpoena pursuant to this section shall be made in the same manner as a summons in a civil action in the Superior Court.

(e) The investigative order specified in subsection (c) shall only be effective for a period of sixty (60) days after which the attorney general may seek an additional sixty-day (60) renewal of his powers by reinstating an action in Superior Court and demonstrating by a preponderance of evidence the following:

- (1) that the investigative materials obtained so far demonstrate that it is more probable than not that the person has engaged in, is engaging in or is about to engage in, a deceptive trade practice under AS 45.50.471; and
- (2) that after due and diligent exercise of his powers the attorney general was unable to obtain all necessary information and

documents or other materials pertinent to his investigation; and

- (3) the use of an additional sixty (60) days for the investigation would substantially increase the amount of information to him.

(f) If the attorney general fails to prevail in any hearing pursuant to this section, than the court shall award the defendant an amount equal to the actual costs and attorney's fees incurred in his defense.

*Backup*

Introduced: 2/3/82  
Referred: Judiciary

1 IN THE HOUSE

BY METCALFE

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 674

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to investigation of violations of  
7 (AS 45.50.471) by the attorney general."

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

9 \* Section 1. AS 45.50.495 is repealed and reenacted to read:

10 Sec. 45.50.495. AUTHORIZING INVESTIGATIVE POWER OF ATTORNEY GENERAL.

11 (a) If the attorney general has cause to believe that a person has  
12 engaged in, is engaging in, or is about to engage in, a deceptive trade  
13 practice under AS 45.50.471, he may bring an action in the name of the  
14 state against the person, seeking the authority to pursue the investiga-  
15 tive powers described in (c) of this section. The action may be brought  
16 in the superior court in the judicial district in which the person  
17 resides or is doing business or has the principal place of business in  
18 the state, or, with the consent of the parties, in any other judicial  
19 district in the state. The action shall be instituted by filing a  
20 complaint in the superior court stating with specificity: (1) the  
21 nature of the deceptive practice; (2) the dates on which the deceptive  
22 practices occurred or upon what facts are based any assertion that they  
23 are likely to occur; (3) the names of all persons who are alleged to  
24 have been harmed or will be harmed by the deceptive practice. The  
25 superior court shall schedule a hearing no less than 30 days and no more  
26 than 60 days from the date of service of the complaint on the person who  
27 is the subject of the investigation. All parties to the action shall  
28 have the right to subpoena witnesses to attend the hearing.

29 (b) At the conclusion of the hearing held under (a) of this

1 section, the superior court shall issue an order empowering the attorney  
2 general with investigative powers listed in (c) of this section only if  
3 the attorney general has proven, by a preponderance of the evidence, the  
4 following facts:

5 (1) that it is more probable than not that the person who is  
6 the subject of the investigation has engaged in, is engaging in, or is  
7 about to engage in, a deceptive trade practice under AS 45.50.471; and

8 (2) that the deceptive trade practice is part of a common  
9 scheme or mode of operation and is not an isolated or uncommon event.

10 (c) If the superior court enters an order finding probable cause  
11 as specified in (b) of this section, the attorney general may then

12 (1) request the person to file a statement or report in  
13 writing, under oath, on forms prescribed by him, setting out all facts  
14 and circumstances concerning the sale or advertisement of the property  
15 by the person, and other information considered necessary;

16 (2) examine under oath any person in connection with the sale  
17 or advertisement of property;

18 (3) examine property or sample of the property, record, book,  
19 document, account or paper that he considers necessary;

20 (4) make true copies of records, books, documents, accounts,  
21 or papers examined under (3) of this subsection that may be offered in  
22 evidence in place of the originals in actions brought under AS 45.50.-  
23 471 - 45.50.561; and

24 (5) under an additional order of the superior court, impound  
25 samples of property that are material to his investigation and return  
26 the sample until proceedings undertaken under AS 45.50.471 - 45.50.561  
27 are completed.

28 (d) Service of an order or subpoena under this section shall be  
29 made in the same manner as a summons in a civil action in the superior

1 court.

2 (e) The investigative order specified in (c) of this section shall  
3 only be effective for a period of 60 days after which the attorney  
4 general may seek an additional 60-day renewal of his powers by reinsti-  
5 tuting an action in superior court and demonstrating by a preponderance  
6 of evidence the following:

7 (1) that the investigative materials obtained so far demon-  
8 strate that it is more probable than not that the person has engaged in,  
9 is engaging in, or is about to engage in, a deceptive trade practice  
10 under AS 45.50.471;

11 (2) that after due and diligent exercise of his powers the  
12 attorney general was unable to obtain all necessary information and  
13 documents or other materials pertinent to his investigation; and

14 (3) the use of an additional 60 days for the investigation  
15 would substantially increase the amount of information to him.

16 (f) If the attorney general fails to prevail in any hearing under  
17 this section, the court shall award the defendant an amount equal to the  
18 actual costs and attorney fees incurred in his defense.  
19  
20  
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26  
27  
28  
29



Eagle river story  
the logs and firewood

the last time I called a reg. about 4 -

2

As has curiously written, the  
Governor basically has the authority  
to write law in the form of Reg's  
as a result of a recent Supreme Court  
Decision ~~to~~ to repeal those Regs. requires  
a full action by both houses, and  
to change that would require a constitutional  
amendment. Other answers boil  
down to a new layer of government  
to watch the watchers.

in view of all of that it seems  
much easier to simply squeeze down  
the nozzles through which regulations  
flow which the legislation seeks  
to do  
as law now exists

1) with a comment on fish and game. Fanning's  
comment's look at it up in down  
from the top bottom and from ~~the~~  
both sides

Narrow window / insights caution  
Gives the multitude of the effected  
parties the opportunity ~~to~~ reach  
in to the thousands of regulated  
civils and pick apart the ~~the~~ tug  
the vertical mountain of regulation

Clockson.

in each case referred to,  
their rights to habe  
interrogatory's or Deposition's  
accounts, only ~~at~~ after a law  
suit has been filed.

conmit Sipo consumer protection

Need for secrecy, can be accommodated  
by providing its affected party  
with ability to respond by demanding  
that

## Questions.

1. What number of your complaints that are investigated actually result in an action and filing of a formal complaint?
2. Record taking.
3. ~~that~~ aren't always stayed.
3. ~~the~~ the statement that it may not be over burdensome ~~they~~ ~~is~~ ~~not~~ refer to determine unless the affected party who has far less resources than the A.G. office.
4. first the A.G.'s office can ask voluntary compliance which in most cases, will account the only real reversal is that if each side can not agree the burden.

~~of the~~ court costs

support

"in part" showing of cause.

July 19 - 1982  
Ramona's  
17 - Hearing

(He will call me back ASAP)  
3/11/82  
Left above message  
and suggested he get  
w/ Crockett -

3/15 =  
Never called

RETO MAR 11 1982

3/19  
(Friday) Talked to Larry  
Crockett - He says  
they definitely are  
not going to push  
any further nor spend  
any more money. The  
Chamber (Frank) will  
lobby - Harris will have  
Frank call you. I'll call  
again Monday

Call - } Cliff Krah =  
          } Larry Crockett  
Telecopying comm.  
Sub. for HB 674 to  
Legis Affairs in Anca.  
It is the compromise  
language proposed by  
the AG's (C/o). Your comments  
are requested.

Call Larry Crockett  
3/12

3/15  
Left call at 9:25 AM (proceeding)  
for him to call me

3/15/82 - 10:30  
(no time)  
(not in office 10:30 or 11:44 AM and)  
Left another <sup>time</sup>  
request to return  
the call. (Third  
time I have left  
a call).

Jeresa Hogan

272-6474

2/11/82 -

272-647

3:35pm  
674

3/19  
10:50AM

Serena Hogan (1982) finally returned my three calls. HB-674.

Call Cliff Groh re HB-674 (Landlord Remedies). Ask him what is happening. Your comments and input would be helpful. We want the bill rescheduled ASAP.

He was out of the office. I left my call and message as to info I needed as to any input he might suggest as an amendment or any other comments as we are anxious to bring it to hearing ASAP.

He is to call me back ASAP. I will contact him again tomorrow.

MAR 11 1982

did not call back

She said she talked to you at length the other day, and apparently she is out of it.

She said "their client" did not wish to pursue the issue any further on their own". She said the Chamber of Commerce was into it and she thought her clients would let them work it out.

She said she would get with Larry Crockett and have him call you as to what they finally decided.

MAR 19 1982

Called Larry Crockett -  
He had not called as  
yet. Teresa Hogan was  
to talk to him and he  
was to call Ray back.

4 P.M. 279-3528,

As he sees it, the  
compromise isn't any  
better. The Chamber was  
going to lobby on behalf  
of the bill. He doesn't  
want to pursue it in  
its present form and  
spend any more money  
than he has.

He will get with "Frank"  
at the Chamber and he will  
get back to you after this  
conversation. Apparently,  
the Chamber has lobbyists  
to work on it.

Civil lawsuit E: 1074  
17 unfair deceptive practice charges

36 Consumer complaints  
April 81 + Jan 82

Connie Sites Consumer Protection

under investigation for sometime.

copy of lawsuit in S. Kelly's office

Melody Mobile Homes - Gale Kren

Henrietta Merrill

(372-6474)  
∴ @ Contact Clifford Groh, Atty  
for Gail Kirkaid, (Melody)  
Dales, Inc., 3115 Mountain View  
Drive, 279-3528, by memo  
with copy of the draft  
bill <sup>as amended</sup> enclosed ~~and~~ saying ~~the~~ <sup>this</sup>  
~~contract~~ is the recommended  
compromise by the PJ's  
office, and I would like  
your comments

#3. When we get the comments  
we then -