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Original sponsor: Bertisworth

THE HOUSE

BY THE JUDICIARY COMMITTEE

SENATE CS FOR HOUSE BILL NO. 849 (Judiciary)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE - SECOND SESSION

A BILL

An Act entitled: "An Act relating to electric and telephone co-operatives."

IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

Handwritten notes:
APPROVED BY THE JUDICIARY COMMITTEE
APR 28 1982

* Section 1. AS 10.25.120 is amended to read:

Sec. 10.25.120. VOTING. Each member is entitled to one vote on each matter submitted to a vote at a meeting of the members. Each member of a district is entitled to one vote on each matter submitted to a vote at any district meeting. Voting shall be in person, but, if the bylaws so provide, may also be by mail.

* Sec. 2. AS 10.25.190 is amended to read:

Sec. 10.25.190. DISTRICTS. The bylaws may provide for the division of the territory served or to be served by a cooperative into two or more districts for any purpose, including, without limitation, the nomination and election of directors and the election and functioning of district delegates. These delegates, who shall be members, may nominate and elect directors. The bylaws shall prescribe the boundaries of the districts, or the manner of establishing the boundaries, and the manner of changing the boundaries, and the manner in which the districts function. No member at any district meeting and no district delegate at any meeting may vote by proxy or by mail. except that the election of directors may be by mail if provided in the bylaws.

* Sec. 3. AS 10.25 is amended by adding a new section to read:

Sec. 10.25.175. BOARD MEETINGS OPEN TO MEMBERS. (a) A meeting of the board of directors may be attended by members of the cooperative.

Except when voice votes are authorized, a vote shall be conducted in such a manner that the members may know the vote of each person entitled to vote.

(b) If excepted subjects are to be discussed at a meeting, the meeting must first be convened as a regular or special meeting and the question of holding an executive session to discuss matters that come within the exceptions contained within (c) of this section shall be determined by a majority vote of the board. No subjects may be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. No formal action may be taken during the executive session.

(c) The following excepted subjects may be discussed in an executive session:

(1) matters the immediate knowledge of which would clearly have an adverse effect on the finances of the cooperative;

(2) subjects that tend to prejudice the reputation and character of a person; however, the person may request a public discussion.

(d) ^{(IN) (3) MATTERS SUBJECT TO THE ATTORNEY GENERAL PRIVILEGE} Reasonable notice shall be given for all regular or special meetings ^{AS REQUIRED IN EACH BYLAWS. GO TO PARAGRAPH 5 IN THE BYLAWS.} required to be open under this section.

(e) Action taken contrary to this section is void.

* Sec. 4. AS 10.25 is amended by adding a new section to read:

Sec. 10.25.176. MEMBER'S RIGHT TO EXAMINE BOOKS AND RECORDS. A member of a cooperative may, at a reasonable time, examine and make copies of the books and records of the cooperative at the principal office of the cooperative. The cooperative may charge a member an amount equal to the actual cost of duplicating documents requested under this section.

Approved - N.D. Approved

COMMITTEE REPORT

SENATE

4/12/82

FURTHER: Finance

Date: April 30, 1982

Mr. President:

The Committee on JUDICIARY has had HE 849 am
electric and telephone cooperatives

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for AB849 same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

John D. Anderson, No Rec.

CHAIRMAN

SENATE AMENDMENT

By _____

To: _____ SENATE BILL No. _____

To: _____ HOUSE BILL No. _____

Page PAGE: *New Sec. 1* LINE:

Sec. 10.1~~3~~.005. Purposes for which cooperatives may be organized. A cooperative may be organized under this chapter for any lawful purpose, except for the purpose of [BANKING OR INSURANCE OR] the furnishing of electric or telephone service. (3 ch 107 S.A. 1959)

1 IN THE HOUSE

BY BETTISWORTH

2 HOUSE BILL NO. 849 am

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 electric and telephone co-
7 operatives."

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

9 * Section 1. AS 10.25.120 is amended to read:

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11 each matter submitted to a vote at a meeting of the members. Each mem-
12 ber of a district is entitled to one vote on each matter submitted to
13 a vote at any district meeting. Voting shall be in person, but, if the
14 bylaws so provide, may also be by mail.

15 * Sec. 2. AS 10.25.190 is amended to read:

16 Sec. 10.25.190. DISTRICTS. The bylaws may provide for the
17 division of the territory served or to be served by a cooperative into
18 two or more districts for any purpose, including, without limitation,
19 the nomination and election of directors and the election and function-
20 ing of district delegates. These delegates, who shall be members, may
21 nominate and elect directors. The bylaws shall prescribe the boundaries
22 of the districts, or the manner of establishing the boundaries, and the
23 manner of changing the boundaries, and the manner in which the districts
24 function. No member at any district meeting and no district delegate at
25 any meeting may vote by proxy or by mail, except that the election of
26 directors may be by mail if provided by the bylaws.

27 * Sec. 3. AS 10.25 is amended by adding a new section to read:

28 Sec. 10.25.175. BOARD MEETINGS OPEN TO MEMBERS. (a) A meeting of
29 the board of directors may be attended by members of the cooperative.

RES = HUTCHINS

* = RAY

(1) = PARR

1 Except when voice votes are authorized, a vote shall be conducted in
2 such a manner that the members may know the vote of each person entitled
3 to vote.

4 (b) If excepted subjects are to be discussed at a meeting, the
5 meeting must first be convened as a regular ^{or special} meeting and the question of
6 holding an executive session to discuss matters that come within the
7 exceptions contained within (c) of this section shall be determined by a
8 majority vote of the board. No subjects may be considered at the
9 executive session except those mentioned in the motion calling for the
10 executive session unless auxiliary to the main question. ^{Journal} No action may
11 be taken ^{during} the executive session.

12 (c) The following excepted subjects may be discussed in an
13 executive session:

14 (1) matters the immediate knowledge of which would clearly
15 have an adverse effect on the finances of the cooperative;

16 (2) subjects that tend to prejudice the reputation and
17 character of a person; however, the person may request a public
18 discussion. ~~(3) ^{is an executive session}~~

19 DEFINE? (d) Reasonable notice shall be given for all ^{meetings required to}
20 ~~be open~~ under this section. ^{Electronic or by mail}

21 (e) Action taken ^{is an executive session} contrary to this section is void.

22 * Sec. 4. AS 10.25 is amended by adding a new section to read:

23 Sec. 10.25.176. MEMBER'S RIGHT TO EXAMINE BOOKS AND RECORDS.

24 A member of a cooperative may, at a reasonable time, ^{and for a valid corporate purpose} examine and make
25 ^(X) copies of the books and records of the cooperative. [except the names,
26 addresses and accounts of the members] at the principal office of the
27 cooperative. ²⁷ The cooperative may charge a member an amount equal to the
28 actual cost of duplicating documents requested under this section.

29 ~~REASONABLE NOTICE~~ ^{AND} TO THE EXTENT POSSIBLE, SPECIAL MEETINGS
SHALL BE POSSIBLE AT LEAST 3 WORKING DAYS IN ADVANCE
HB 849 am

IN A PERMANENT LOCATION AT ALL BUSINESS OFFICES OF A COOPERATIVE.



Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

APRIL 26, 1981

Butrovich Committee Room, State Capitol Juneau, Alaska

Legislation Before Committee:

- SJR 68 - Proposing an amendment to the Constitution of the State of Alaska providing that a legislator who is convicted of a felony forfeits legislative office.
- HB 678 - "An Act relating to membership in electric and telephone cooperatives."
- HB 849 - "An Act relating to electric and telephone cooperatives."
- HB 339 - "An Act relating to the judicial review of administrative regulations."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:05 P.M. Committee members present were: Senators Rodey, Parr, and Andersor. Senators Bennett and Ray were absent.

003 - Call to order.

010 - Chairman Rodey brought HB 678 before the committee.

025 - Mr. Hutchins testified in support of the bill.

135 - SENATOR RAY ENTERED THE MEETING.

147 - After brief discussion, Chairman Rodey laid HB 678 on the table.

157 - Chairman Rodey next brought HB 849 before the committee.

160 - Mr. Hutchins again testified in support of this legislation and offered the following amendments: On page 2, Line 5, add "or special" between "regular" and "meeting". On Page 2, Line 24, add "and for a valid corporate purpose" between "time" and ",". Mr. Hutchins also suggested adding a new subparagraph (3) under Sec. 10.25.175., Paragraph (c), to protect the attorney, client privilege.

166 - Senator Ray offered the following amendments: On Page 2, Line 10 add "formal" between the words "No" and "action". On Page 2, Line 11,

169 - Senator Parr offered the following amendment: On Page 2, Line 25 delete [except the names, addresses and accounts of the members].

771 - After discussion of the amendments, Chairman Rodey laid HB 849 on the table and directed staff to prepare a committee substitute.

779 - The next item on the calendar was HB 339.

780 - Representative Metcalfe testifies, giving the intent of his bill.

SIDE TWO

989 - Mr. Art Peterson, Assistant Attorney General, testified against HB 339, stating that this legislation would only give more power to the court system instead of the Legislature. Mr. Peterson offered a committee substitute for committee consideration.

244 - Chairman directed Senator Anderson to work as a subcommittee with Mr. Bruce to draft a committee substitute.

340 - Phil Holsforth, testified in favor of HB 339.

410 - Chairman Rodey put HB 339 in subcommittee.

412 - Next Chairman Rodey brought SJR 68 before committee.

518 - After brief discussion, Chairman Rodey laid SJR 68 on the table.

520 - The committee directed Chairman Rodey to return SB 861 and SB 175 to the State Affairs Committee for further work.

525 - Chairman Rodey adjourned the meeting at 2:45 P.M.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

FILE 18B097
POUCH Y - STATE CAPITOL
SUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

April 30, 1982

SUBJECT: Single subject rule in relation to
SCS HB 849 (Judiciary)

TO: Senator Patrick M. Rodey
Chairman, Senate Judiciary Committee

FROM: Billy G. Berrier *BGB*
Director
Division of Legal Services

I have added the amendment to SCS HB 849 (Judiciary) as requested. In my opinion this addition creates a probable violation of the single subject rule.

The single subject rule is contained in Section 13, Article II, Constitution of the State of Alaska which provides:

SECTION 13. Every bill shall be confined to one subject unless it is an appropriation bill or one codifying, revising, or rearranging existing laws. Bills for appropriations shall be confined to appropriations. The subject of each bill shall be expressed in the title. The enacting clause shall be: "Be it enacted by the Legislature of the State of Alaska."

The primary aim of the rule has been stated by our court to be restraint of the log-rolling process in the legislature and describes log-rolling as deliberately inserting in one bill several dissimilar or incongruous subjects in order to secure the necessary support for passage of the measure. Suber v. Alaska State Bond Committee, 414 P.2d 546 (1966).

The test which broadly stated:

"Ultimately the decision in cases of this kind must be made on a basis of practicality and reasonableness. In determining whether a bill is confined to one subject we agree with the statement:

'All that is necessary is that the act should embrace some one general subject; and by this is meant, merely, that all matters treated of should fall under some one general idea, be so connected with or related to each other, either logically or in popular understanding, as to be parts of, or germane to, one general subject.'"

was adopted in Gellert v. State, 522 P.2d 1120 (Alaska 1974), and has been quoted in each subsequent case in point in Alaska with approval. It is therefore well settled that this broad language is the standard against which compliance with the single subject rule is to be tested.

I can see no relationship between allowing banking and insurance cooperatives to be formed and meetings of electric and telephone cooperatives which are logically or in popular understanding so connected or related to each other as to be part of one general subject.

BGB:ljb

Enclosure

ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION

6000 "C" STREET, SUITE C

ANCHORAGE, ALASKA 99502

April 29, 1982

Honorable Patrick Rodey
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Rodey:

After reviewing the proposed CS for HB 849 which you showed me this morning, I find two serious problems remaining.

If no modification is to be made to subsection 175(e), then there certainly needs to be some clarification as to what is meant by "reasonable notice" in subsection (d).

Section 176 as presently drafted would make the records of a cooperative more completely open than any other entity in the State of Alaska, either public or corporate. The records which this language would open for inspection which should not be opened include the following:

1. Personnel, payroll, medical or other files which reveal the financial or medical status of any specific individual, or the release of which would constitute an unwarranted invasion of privacy.
2. Records pertaining to any customer or subscriber, the release of which would constitute an unwarranted invasion of the privacy of that customer.
3. Records of engineering or other technical data which, if released, would provide a competitive advantage to any other person or corporation engaged in similar or related activities.
4. Proprietary information which a manufacturer, consultant or provider reasonably requires to be kept privileged or confidential to protect the property interests of persons providing the information or data.
5. Information which the Association, as respects collective bargaining, regularly considers to be privileged or confidential for purposes of successful collective bargaining.

6. Communications between the Association and its attorney which contain legal questions concerning pending or actual litigation.
7. Information obtained by and in the custody of insurance carriers insuring the Association and its attorneys and agents regarding possible and pending claims against the Association.
8. Personal information other than name and address given to the Association with the legitimate expectation of privacy in conjunction with requests for service or membership.

These problems and others we may not have yet considered would be appropriately addressed by amending the section to read:

* Section 10.25.176. MEMBER'S RIGHT TO EXAMINE BOOKS AND RECORDS. A member of a cooperative may, at a reasonable time and for a proper purpose, examine and make copies of the books and records of the cooperative at the principal office of the cooperative. The cooperative may charge a member an amount equal to the actual cost of duplicating documents requested under this section.

Sincerely,

Dave

David Hutchens

AS PROVIDED FOR
~~BY THE BYLAWS~~ *BY THE BYLAWS*

Quoted in *Ketchikan Retail Liquor Dealers Ass'n v. State, ABC Bd.*, Sup. Ct. Op. No. 1963 (File No. 36971, 602 P.2d 434 (1979)).

Stated in *Kingery v. Chapple*, Sup. Ct. Op. No. 258 (File No. 15541, 504 P.2d 831 (1972)).

Cited in *Boehl v. Sabre Jet Room*, Sup. Ct. Op. No. 3 (File No. 171, 349 P.2d 585 (1960)).

Am. Jur. 2d reference. — 2 Am. Jur. 2d, *Public Administrative Law*, §§ 553-775.

Article 6. Agency Meetings Public.

Section

- 310. Agency meetings public
- 312. State policy regarding meetings

Sec. 44.62.310. Agency meetings public. (a) All meetings of a legislative body, of a board of regents, or of an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money, are open to the public except as otherwise provided by this section. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. This section does not apply to any votes required to be taken to organize the afore-mentioned bodies.

(b) If excepted subjects are to be discussed at a meeting, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that come within the exceptions contained in (c) of this section shall be determined by a majority vote of the body. No subjects may be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. No action may be taken at the executive session.

(c) The following excepted subjects may be discussed in an executive session:

- (1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the government unit;
- (2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;
- (3) matters which by law, municipal charter, or ordinance are required to be confidential.
- (d) This section does not apply to
 - (1) judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding;

- (2) juries;
- (3) parole or pardon
- (4) meetings of a host
- (5) meetings of the government when holding a meeting
- (e) Reasonable public qualifications, privilege to be open under this section
- (f) Action taken contrary to 143 SLA 1959; am § 1 ch 7 SLA 1969; am §§ 1 ch 189 SLA 19

Effect of amendment. Amendment added the second sentences of subsection (a). A meeting of the board of the Alaska Bar Association in Hawaii in 1978 was not

Sec. 44.62.312. State policy of the state that

- (1) the governmental is the conduct of the people
- (2) it is the intent of the people openly and that their
- (3) the people of the agencies which serve
- (4) the people, in order servants the right to do what is not good for the
- (5) the people's right they may retain control
- (b) AS 44.62.310(c) effectuate the policy of executive sessions. (§

Revisor's note. — AS based on Cal. Gov't C.A., s Cross reference. See § 44.62.310.

Article

Section

- 327. Legislative annulment and review

le of pardon boards;
 ings of a hospital medical staff; or
 ings of the governing body or any committee of a hospital
 ing a meeting solely to act upon matters of professional
 ons, privileges or discipline.
 onable public notice shall be given for all meetings required
 under this section.
 on taken contrary to this section is void. (§ 1 art VI (ch 1) ch
 1959; am § 1 ch 48 SLA 1966; am § 1 ch 78 SLA 1968; am § 1
 1969; am §§ 1, 2 ch 98 SLA 1972; am § 2 ch 100 SLA 1972;
 189 SLA 1976)

amendment. — The 1976
 ended the second and third
 subsection (a).
 of the board of governors
 Alaska Bar Association in
 1978 was not subject to the
 requirements of this section. Horowitz v.
 Alaska Bar Ass'n, Sup. Ct. Op. No. 2059
 (File Nos. 4310, 4311). P.2d (1980).
 Am. Jur. 2d reference. — 2 Am. Jur.
 2d. Administrative Law, §§ 281, 282.

44.62.312. State policy regarding meetings. (a) It is the pol-
 icy of this state that
 governmental units mentioned in AS 44.32.310(a) exist to aid
 in the conduct of the people's business;
 it is the intent of the law that actions of those units be taken
 and that their deliberations be conducted openly;
 the people of this state do not yield their sovereignty to the
 agencies which serve them;
 the people, in delegating authority, do not give their public
 servants the right to decide what is good for the people to know and
 what is not good for them to know;
 the people's right to remain informed shall be protected so that
 they retain control over the instruments they have created.
 AS 44.62.310(c)(1) shall be construed narrowly in order to
 effect the policy stated in (a) of this section and avoid unnecessary
 public sessions. (§ 3 ch 98 SLA 1972)

note. — AS 44.62.312(a) is
 Cal. Gov't C.A., sec. 54950.
 Reference. See note under AS
 Legislative history report. — For
 report on ch. 98, SLA 1972 (SB 253), see
 1972 House Journal, p. 156.

Article 7. Legislative Review of Rules.

Legislative annulment of regulations
 and review

HOGUE AND LEKISCH

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

437 "E" STREET, SUITE 500 • ANCHORAGE, ALASKA 99501

(907) 276-1726

ANDREW E. HOGUE
PETER A. LEKISCH
WARREN G. KELLCUT
CALVIN R. JONES
ANN W. RESCH
RICHARD F. DEUSER

April 19, 1982

Dave Hutchens

Alaska Rural Electric Cooperative
Association, Inc.

6000 C Street, Suite C
Anchorage, Alaska 99502

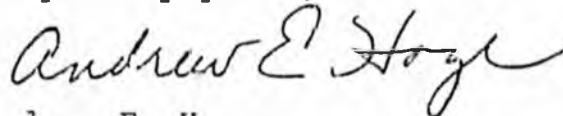
(Sent to Baranof in Juneau)

Re: HB 849 am

Dear Dave:

I received a copy of House Bill No. 849 am (copy enclosed). I believe you received my previous letter on this bill. I think the excepted subjects [see Sec. 3, A.S. 10.25.175(c)(1) and (2)] are acceptable. However, I think there is a clear need for items protected by the attorney/client privilege to be discussed in executive session. Generally, litigation would come under items 1 and 2. However, there may be occasions when litigation might not affect the finances and might not defect the character of a person but would be important and the formulation of the policy for that litigation should be something that counsel for the cooperative and the cooperative board should discuss in executive session. The attorney/client privilege is a privilege that has been long recognized in law, is recognized by the Rules of Evidence of the State of Alaska, and an appropriate exception should be made in the statute for that kind of discussion.

Very truly yours,



Andrew E. Hoge

AEH/pfm

Enclosure

cc: Copper Valley Telephone Cooperative w/ encl.
Copper Valley Electric Association w/ encl.
Matanuska Telephone Association w/ encl.

Kempel, Huffman & Ginder

255 E. Fireweed Lane, Suite 200

Anchorage, Alaska 99503

Roger R. Kempel
Richard R. Huffman
Peter C. Ginder
Ronald L. Baird

Telephone
(907) 277-1604
(907) 276-1605

April 22, 1982

Mr. Dave Hutchens, Director
Alaska Rural Electric Cooperative Assn.
6000 C Street
Anchorage, AK 99503

Dear Dave:

I have reviewed Committee Substitute for House Bill 670, introduced by Representative Brian Rogers in the Alaska State House of Representatives which provides for the right of a member of an electric or telephone cooperative to inspect the books and records of the cooperative.

The provision, in essence, states that a member of a cooperative may, at a reasonable time, examine and make copies of the books and records of the cooperative.

The bill, as it is presently written, however, lacks a common law provision which qualifies the right to inspect records. Traditionally, a shareholder of a corporation (or a member of a cooperative as in this case) has the right to inspect the entity's records, but the right is not an absolute right. Rather, it is a qualified right, in that the inspection can only be made for a proper purpose. There is no language in the bill which calls for the inspection to be for a proper purpose.

In existing common law, the right of shareholders to inspect the books and records of the corporation is a fundamental one. Despite the fundamental nature of this right, it exists in common law not as an absolute right, but as a qualified one. In order to strike a proper balance the common law shareholders' right of inspection is qualified to permit inspection of the various books and records of the corporation only if the demand is made in good faith at reasonable times and places and if the inspection is for a proper purpose. A proper purpose would be a purpose which protects the interest of the member of the cooperative and which protects the interest of the cooperative and other cooperative members. Any purpose inimical or detrimental to the accomplishment of the purpose for which the corporation was organized would be improper.

1. Alaska Statutes: The Alaska Business Corporations Act (AS 10.05) which is the comparable statute to the Electric & Telephone Cooperative Act (AS 10.25) also calls for the right of inspection of shareholders of the books and records of a corporation. This particular statute (AS 10.05.240) qualifies this right by requiring that the inspection be for a proper purpose. Furthermore, under AS 10.05.246, if the corporation refuses to allow a shareholder to inspect its records, a shareholder may go to court to compel inspection if the shareholder proves that he is exercising his right for a proper purpose.

Therefore, in a very similar situation, that is, where a shareholder is seeking to inspect the records of the corporation, as opposed to a member of a cooperative seeking to inspect the records of a cooperative, a proper purpose is required.

2. Alaska Common Law: The only case which mentions the concept of "proper purpose" in the exercise of a shareholders right to inspect corporation books and records, is Wolff.v. Arctic Bowl, Inc. 560 F.2d 758 (1977).

Under the facts and circumstances of the case, the court held that the record demonstrated a "proper purpose" for exercise of plaintiff's right as a shareholder to inspect the corporation's books and records. That is, where the minority shareholder suspected fraudulent misconduct by the directors and officers of the corporation, this was a "proper purpose" to justify the court in compelling the corporation to produce for the shareholder's examination the corporation records attainable under AS 10.05.246.

This case demonstrates that "proper purpose" is a determining factor in a court's order to compel production of the records for the shareholder.

b. General Rule-Common Law:

1. Proper purpose-Good faith: In order to exercise the common law right of inspection, the demand of the shareholder must be made in good faith and for the purpose of protecting his investment and ascertaining whether the corporation is being properly managed. John Bondi v. Business Education Forum, Inc. 384 N.Y.S.2d 291 (1976).

At common law, the right of a stockholder to inspect and examine books of a corporation was recognized

Mr. Dave Hutchens, Director
April 22, 1982
Page 3

but was not granted to gratify mere idle curiosity. It was necessary to show some specific interest or some beneficial purpose. Crouse v. Rogers Park Apartments, 99 N.E.2d 404 (1951).

The common law restricts the inspection of corporate records for "speculative purposes". The definition of proper purpose is one in which a stockholder is seeking information bearing upon the protection of his interest and that of other stockholders. Crouse v. Rogers Park Apartments, Supra p.406.

In Mayer v. Cincinnati Economy Drug Co., 103 N.E.2d 1 (1951), it states that the test by which to determine whether the shareholder's purpose is unreasonable or improper is whether it would be inimical or detrimental to the accomplishment of the purpose for which the corporation was organized.

The following purposes are generally held to be "proper" if the shareholder's demand is made in good faith. These purposes are in terms of a private corporation but some can easily be applied in concept to cooperatives.

1. To protect his own interest.
2. To advance the interest of the corporation.
3. To determine the value of his stock.
4. For the purpose of soliciting proxies from other shareholders.
5. Solicitation of shareholders to join in a derivative suit.
6. Dissemination of information concerning a proposed corporate merger.
7. Efforts to form a protective committee of preferred shareholders.
8. For the purpose of buying stock from other shareholders.
9. To ascertain possible mismanagement.
10. To determine the cause of substantial corporate losses.

11. To obtain justification for non-payment of dividends.

The following have been held to be improper purposes for inspection of corporate books and records:

1. Mere curiosity.
2. Where employee of corporation was guilty of fraud and sought information to help him prepare defense to action by the corporation.
3. Where petitioner was in the business of selling and procuring shareholder lists.
4. Where petitioner was employed by business rival to gain access to the records for purposes of unfair competition.
5. Where purpose was to injure business of corporation for the benefit of a competition.
6. To further social and political beliefs, without concern for the economic welfare of the corporation or petitioner himself.

Cavitch on Business Organizations, Section 116.02(2).

c. Statutory Right of Inspection:

1. In general: Many jurisdictions have adopted a statute, in one form or another, granting the right to inspect corporate books and records to certain specified parties. (In Alaska-AS 10.05.237, AS 10.05.240 and 10.05.249). These statutory sections were meant to supplement common law and not replace it. The statutes have generally retained the qualifications of good faith and proper purpose upon the right to inspect corporate records. Some states have generally eased the shareholder's task by placing the burden of proving an improper purpose on the corporation, instead of the shareholder. And in statutes where there are no purpose requirements, courts have implied them, or in their discretion, denied mandamus to the shareholder to compel inspection if there was no proper purpose shown. Cavitch on Business Organizations, Section 116.031.

2. Model Business Corporation Act: The Model Business Corporation Act 552 (2d Edition 1971), requires that proper purpose be shown. Many state jurisdictions have substantially adopted this act.

Dave Hutchens, Director

11 22, 1982

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If you have any further questions, please feel
to contact me.

Sincerely yours,

KEMPEL, HUFFMAN & GINDER

Roger R. Kempel

Roger R. Kempel
General Counsel
ARECA

/ks