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STATE OF ALASKA

Bill Sheffield, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

February 10, 1983

Honorable Don Gilman
Senator
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: Residential tax exemption
Our file: 366-430-83

Dear Senator Gilman:

You have inquired whether a residential tax exemption may be passed by municipal voters directly by initiative. AS 29.53.025(a) provides for such an exemption "by ordinance ratified by the voters at a regular or special election." (Emphasis added.) Put another way, must there first be council or assembly action which the voters might ratify, or may the voters simply create the exemption directly, by initiative?

In its current form, AS 29.53.025(a) casts a long shadow across the notion of municipal tax exemption by initiative. The problem is the word "ratified," and its reference to "ordinance."

As one court has put it, "[r]atification refers to ... the adoption of a past act or transaction as his own act...." First National Bank v. Allen, 14 So. 335, 337 (Ala. 1893). Virtually all ratification cases reference an antecedent contract, transaction, or other act which is confirmed, adopted, or sanctioned by the ratifier.

The Massachusetts Supreme Judicial Court faced a similar situation in Revere Water Co. v. Inhabitants of the Town of Winthrop, 78 N.E. 497 (Mass. 1906). Though the case is distinguishable in one or two important respects, what the court said is instructive:

The word "ratified" as used in the statute [requiring voter approval] plainly means that when the selectmen issue the warrant they are supposed to have taken appropriate precedent action, otherwise there is no proposal of purchase in existence which can be made the subject of ratification, and which by the ratifying act thereupon becomes and existing contract.

Honorable Don Gilman
Alaska State Legislature
366-430-83

February 10, 1983
Page #2

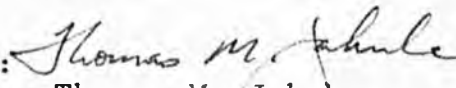
Id. at 501.

It may well be argued that the legislature intended that municipal tax exemption be a two-step process, i.e., that the assembly first bring its expertise and judgment to bear to draft, debate, and enact a bill, after which the voters would act affirmatively to adopt the bill passed by the assembly. On the other hand, it could, with conviction and force, be argued that the heart and sense of AS 29.53.025(a) is the voter approval provision, and that assembly action was not intended to be a condition precedent to direct voter action.

As rough as the fit may be, we believe that the court cases cited above require assembly action first, followed by voter approval. If a different process is preferred, we would be happy to assist you in drafting an amendment to AS 29.53.025(a).

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 
Thomas M. Jahnke
Assistant Attorney General

TMJ/pjg

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 10, 1983

SUBJECT: Optional tax exemption questions
(Work Order No. 13-0721)

TO: Senator Donald E. Gilman

FROM: Richard C. Folta *RCF*
Legislative Counsel

The following is in response to your inquiry of February 7th, on optional property tax exemptions.

(1) No, the exemption tax option would be subject to initiative. Article XI, section 7 of the Alaska Constitution provides for the restrictions against the use of the initiative, one of which is "appropriations" initiatives. A tax exemption which operates to limit tax revenues, cannot be considered an appropriation, in my opinion. (The Thomas V. Bailey case, 595 P.2d 1 is the Alaska case which discusses the appropriation restriction on initiatives by the people.) The tax exemption limits the tax revenues collectable by the municipality, but cannot be defined any closer than that to appropriations. In the Thomas case, the giving away of land in the homestead initiative was construed by the Court to be really an appropriation measure restricted by the constitution.

(2) There could be a substantial impact on the bonding ability of a municipality, since the full faith and credit of a municipality is pledged for the payment of principal and interest on general obligation bonds (AS 29.58.180). The passage of an initiative for the exemption could decrease the municipality's ability to bond since the tax base is reduced. There may be an instance where an initiative for the exemption could impair existing indebtedness and thus be subject to legal attack.

RCF:ljb

Alaska State Legislature

SENATOR
DON GILMAN

Juneau Ph.
(907) 465-4934 .



HOME ADDRESS
P.O. BOX 630
KENAI, ALASKA 99611
(907) 283-4182

DURING SESSION
POUCH V
JUNEAU, ALASKA 99611

State Senate

February 7, 1983

Memorandum

To: Billy G. Berrier
Director
Division of Legal Services

From: Senator Don Gilman

Thank you for the response by Richard C. Folta to our recent inquiry (Work Order No. 13-0721). This concerned whether the optional \$100,000 property tax exemption proposed by SB 65 is libel to placement on municipal ballots by elections.

Based on that response, I would like to inquire on two other points.

- 1) Because any limitation on a municipality's ability to tax affects its ability to appropriate, could this exemption be ruled not subject to initiative on the municipal level because it affects a municipality's ability to appropriate?
- 2) If, as indicated in the first response, the exemption may be placed on the ballot by initiative, what effect would this have on the bonding ability of municipalities? In particular, what effect would this have on their ability to pledge full faith and credit?

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

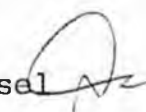
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 3, 1983

SUBJECT: Optional exemption bill subject to referendum
(Work Order No. 13-0721)

TO: Senator Donald E. Gilman

FROM: Richard C. Folta
Legislative Counsel 

If SB 65, allowing for an optional exemption for certain real property from municipal taxation, becomes law, would it be subject to a referendum by the people of Alaska? The answer to your question as I understand it, is yes.

Article XI, section 1, of the Alaska Constitution provides that the people may propose and enact laws by the initiative, and approve or reject acts of the legislature by the referendum. In Municipality of Anchorage v. Frohne, 568 P.2d 3 (1977), the Court held that the subject of the petition must constitute such legislation as the legislative body to which it is directed has the power to enact. The power is liberally construed.

Local or special legislation is exempted from both petitions. Wolf v. Alaska State Housing Authority, 514 P.2d 233.

The subject matter of SB 65 is clearly general legislation in that it affects all of the people in a municipality, not just some. It is not required legislation, like AS 29.53.-020 which mandates certain exemptions. It is an optional exemption. The legislature has the power to legislate tax exemptions.

In summary, SB 65 is subject to a ballot by the people if it passes.

RCF:ljb



Official Business

Alaska State Legislature

Senate

Pouch V
State Capitol
Juneau, Alaska 99811

February 1, 1983

Billy G. Berrier
Director
Division of Legal Services
Legislative Affairs Agency
Pouch Y
Juneau, AK 99811

Dear Mr. Berrier:

Attached is a copy of Senate Bill 65. This bill establishes an optional property tax exemption for a portion of the value of residential property.

We request an opinion on whether, if this bill becomes law, the optional exemption it creates would be subject to being placed on the ballot by petition.

Sincerely,

A handwritten signature in cursive script that reads "Don".

Don Gilman
State Senator



Official Business

Alaska State Legislature

Senate

Pouch V
State Capitol
Juneau, Alaska 99811

February 1, 1983

Norman Gorsuch
Attorney General
Department of Law
Pouch K
Juneau, AK 99811

Dear Mr. Gorsuch:

Attached is a copy of Senate Bill 65. This bill establishes an optional property tax exemption for a portion of the value of residential property.

We request an opinion on whether, if this bill becomes law, the optional exemption it creates would be subject to being placed on the ballot by petition.

Sincerely,

A handwritten signature in cursive script that reads "Don".

Don Gilman
State Senator

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700

Position Paper

Re: SB 65

Sponsor: Paul Fischer

Program Effects

This bill would raise the optional municipal real property tax exemption, permitted by statute, from the current \$10,000 to \$100,000.

Comments

The Department is in favor of increased control at the local government level. This Bill would expand that local control. To the extent that municipalities might exempt residential property under the proposed language, taxes would increase on commercial properties. In municipalities which have a substantial amount of oil and gas property, that increase would result in a proportionate decrease in State collected revenues.

Passage of this Bill could result in a small minority of taxpayers paying the majority of local property taxes if the increased optional exemption was employed by the community. This shift of tax burden could result in a weakening of local government. If the populace has no monetary stake in their local government, their interest and participation may well wane. From a standpoint of maintaining local interest and control other methods of tax relief may be preferable.

WORK ORDER REQUEST FORM

M13- 0721

KEYWORDS: taxes
real estate
revenue

ASSIGNED TO Folta

REQUEST FOR: BILL RESOLUTION ^{Opinion} RESEARCH OTHER

SUBJECT SB 65 Municipal tax exemption

REQUESTED FOR Sen. Gilman BY Gilman EXT. _____

* DELIVER TO Senator Gilman TAKEN BY Barnes

INSTRUCTIONS, EXPLANATIONS _____

If this bill becomes law would the optional exemption it creates be
subject to being placed on the ballot by petition?

OBTAIN

SPECIAL DRAFTING INSTRUCTIONS ATTACHED

AUTHORIZED TO CONFER WITH _____

RETURN _____

_____ TO REQUESTER

APPROVED: UCB Director, Legal Services

REVIEWED _____

IN 2/1 DUE _____

TYPED - Draft _____ DATE _____

Final _____ DATE _____

PROOFED _____ DELIVERED _____

SPECIAL INSTRUCTIONS TO TYPIST/PROOFREADER

DRAFT

FINAL