

H B

299

STATE OF ALASKA
FISCAL NOTE

Revision Date , 1983

I. REQUEST

Bill/Resolution No.: HB 299
 Title: "relating to public records."
 Sponsor: Rep. Abood
 Requestor: House Labor & Commerce

II. FISCAL DETAIL

Agency Affected: Department of Law
 Program Category Affected: General Govt.
 BRU, Program of Subprogram(s) Affected: Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY.87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: April 12, 1983
 Approved by Commissioner: Richard I. Pegues / FOR Date: April 12, 1983
 Department: Department of Law

Distribution:

Original to Legislative Finance
 Copy to Office of Management and Budget (for Legislature introduced bills)
 Copy to Department (for Governor introduced bills)
 Copy to Sponsor
 Copy to Requestor (if different from Sponsor)

HB. 299
Fiscal Note
Analysis

This bill amends the state's Public Records Act to include the names and addresses of subscribers of municipally owned public telephone utilities and the phone numbers of those subscribers who have not requested that their phone number be unlisted. Any action challenging the validity of withholding this information, would be between private parties and a municipality. Consequently, fiscal impact on the Department of Law would not occur.

AS09.25.110 DOCUMENT= 1 OF 1 PAGE = 1 OF 1
CHAPTER = 09.25
SECTION = 09.25.110
TITLE = 09

HEADINGS TITLE 9.
CODE OF CIVIL PROCEDURE.
CHAPTER 25.
EVIDENCE.

CITATION SEC. 09.25.110.
CATCH LINE

INSPECTION AND COPIES OF PUBLIC RECORDS.

TEXT UNLESS SPECIFICALLY PROVIDED OTHERWISE THE BOOKS, RECORDS,
PAPERS, FILES, ACCOUNTS, WRITINGS, AND TRANSACTIONS OF ALL
AGENCIES AND DEPARTMENTS ARE PUBLIC RECORDS AND ARE OPEN TO
INSPECTION BY THE PUBLIC UNDER REASONABLE RULES DURING REGULAR
OFFICE HOURS. THE PUBLIC OFFICER HAVING THE CUSTODY OF PUBLIC
RECORDS SHALL GIVE ON REQUEST AND PAYMENT OF COSTS A CERTIFIED
COPY OF THE PUBLIC RECORD.

HISTORY (SEC. 3.22 CH 101 SLA 1962)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

AS09.25.120 DOCUMENT= 1 OF 1 PAGE = 1 OF 2
CHAPTER = 09.25
SECTION = 09.25.120
TITLE = 09

HEADINGS TITLE 9.
CODE OF CIVIL PROCEDURE.
CHAPTER 25.
EVIDENCE.

CITATION SEC. 09.25.120.
CATCH LINE

INSPECTION AND COPYING OF PUBLIC RECORDS.

TEXT EVERY PERSON HAS A RIGHT TO INSPECT A PUBLIC WRITING OR RECORD IN
THE STATE, INCLUDING PUBLIC WRITINGS AND RECORDS IN RECORDERS'
OFFICES EXCEPT (1) RECORDS OF VITAL STATISTICS AND ADOPTION
PROCEEDINGS WHICH SHALL BE TREATED IN THE MANNER REQUIRED BY AS
18.50.010 - 18.50.390; (2) RECORDS PERTAINING TO JUVENILES; (3)
MEDICAL AND RELATED PUBLIC HEALTH RECORDS; (4) RECORDS REQUIRED
TO BE KEPT CONFIDENTIAL BY A FEDERAL LAW OR REGULATION OR BY
STATE LAW. EVERY PUBLIC OFFICER HAVING THE CUSTODY OF RECORDS
NOT INCLUDED IN THE EXCEPTIONS SHALL PERMIT THE INSPECTION, AND
GIVE ON DEMAND AND ON PAYMENT OF THE LEGAL FEES THEREFOR A
CERTIFIED COPY OF THE WRITING OR RECORD, AND THE COPY SHALL IN
ALL CASES BE EVIDENCE OF THE ORIGINAL. RECORDERS SHALL PERMIT
MEMORANDA, TRANSCRIPTS, AND COPIES OF THE PUBLIC WRITINGS AND
RECORDS IN THEIR OFFICES TO BE MADE BY PHOTOGRAPHY OR OTHERWISE
FOR THE PURPOSE OF EXAMINING TITLES TO REAL ESTATE DESCRIBED IN
THE PUBLIC WRITINGS AND RECORDS, MAKING ABSTRACTS OF TITLE OR
GUARANTEEING OR INSURING THE TITLES OF THE REAL ESTATE, OR
BUILDING AND MAINTAINING TITLE AND ABSTRACT PLANTS, AND SHALL

AS09.25.120 DOCUMENT= 1 OF 1 PAGE = 2 OF 2

FURNISH PROPER AND REASONABLE FACILITIES TO PERSONS HAVING LAWFUL
OCCASION FOR ACCESS TO THE PUBLIC WRITINGS AND RECORDS FOR THOSE
PURPOSES, SUBJECT TO REASONABLE RULES AND REGULATIONS, IN
CONFORMITY TO THE DIRECTION OF THE COURT, AS ARE NECESSARY FOR
THE PROTECTION OF THE WRITINGS AND RECORDS AND TO PREVENT
INTERFERENCE WITH THE REGULAR DISCHARGE OF THE DUTIES OF THE
RECORDERS AND THEIR EMPLOYEES.

HISTORY (SEC. 3.22 CH 101 SLA 1962)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907.465.3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 19, 1983

SUBJECT: Copyright of public records
(HB 299)

TO: Senator Richard I. Eliason
Chairman, Senate Labor and
Commerce Committee

FROM: Thomas A. Sofo *TAS*
Legislative Counsel

You have asked this office to consider what effect the enactment of HB 299 will have on the ability to copyright telephone listings under the federal copyright law, 17 U.S.C. 101 et seq. Preliminarily, my review of 17 U.S.C. 102 and the notes following that section convinces me that the telephone listings of the municipal utilities are, in the absence of HB 299, eligible for copyright under the federal act. The regulations issued under the federal law, however, provide:

Works consisting entirely of information that is common property containing no original authorship such as, for example: Standard calendars, height and weight charts, tape measures and rulers, schedules of sporting events, and lists or tables taken from public documents or other common sources. (Emphasis added). 37 C.F.R. 202.1(d)

The amendment to AS 09.25.110 which HB 299 adds appears to place the phone listings referred to above into the category of material which are not subject to copyright. Unfortunately, the federal statute does not include a definition of public documents. It is not clear that a public document and public record are synonymous terms for purposes of the federal copyright law. However, to the extent that the prohibition against copyright of public documents is assumed to include a prohibition against a copyright of public records, the enactment of HB 299 would prevent the future copyrighting of such telephone lists.

Senator Richard I. Eliason
Page 2
May 19, 1983

If I can be of any further assistance, please do not
hesitate to contact me.

TAS:ljb
20/030

Alaska State Legislature

INTERIM OFFICE:
1024 WEST SIXTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 274-2843
HOME (907) 774-3102




HOUSE MAJORITY WHIP
CHAIRMAN
STATE AFFAIRS
MEMBER
TRANSPORTATION
LEGISLATIVE COUNCIL

IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4947

Representative Mitch Abood
HOUSE DISTRICT 11

MEMORANDUM

TO: Senator Richard Eliason
Chairman, Senate Labor and Commerce Committee

FROM: Representative Mitch Abood 

DATE: May 3, 1983

RE: House Bill No. 299
"An Act relating to Public Records"

Individuals have a right to inspect and copy public records, and should not pay certified charges, if a certified copy is not required. HB 299 stipulates that the Municipally owned public telephone utilities, as well as agencies and departments of the State, are obligated to provide to the public a listing of their subscribers names and addresses, if those subscribers do not request that their name be unlisted. At the present time, it is only possible to receive certified copies of public records. The public officer issuing the list of public records would only be allowed to charge a nominal copying fee, unless a certified copy is requested. HB 299 assures that an individual could access public records of agencies and departments, including municipally owned telephone utilities, without incurring exorbitant certification costs.

There is a question of "ownership" in copyright laws. The originator of a list, invention, device, etc., can put a copyright on that which he originates, but the question remains: If the list is made available to the public by a public agency, does the public agency have the right to put restrictions on that which is public knowledge?

HB 299
"An Act relating to public records"
Page Two

I do recommend that the language suggested by Assistant Attorney General Thomas Jahnke, (see letter dated April 26, 1983), be incorporated into the language of the bill as follows:

DELETE: Line 18 through 21:

"If a certified copy is not requested, a public officer may only charge a fee equal to the actual costs of copying the public records requested under this section or AS 09.25.120."

ADD: Line 18:

"If a certified copy is not requested, a public officer may charge no more than an amount equal to the actual costs of searching for and copying the public records requested under this section or AS 09.25.120."

HOUSE LABOR & COMMERCE
STANDING COMMITTEE
April 21, 1983
8:33 a.m.

Members Present: Rep. Furnace, Chairman
Rep. Cowdery
Rep. Wendte
Rep. Malone

Members Absent: Rep. Ringstad
Rep. Koponen
Rep. Uehling, Vice-Chairman

COMMITTEE CALENDAR

HB 299 "An Act relating to public records."
SSHB 7 "An Act relating to motor vehicles; and
providing for an effective date."

WITNESS REGISTER

Representative Mitch Abood
Alaska State Legislature
Capitol Building, Room 102
Pouch V
Juneau, Alaska 99811
465-4947
Position Statement: Prime Sponsor of HB 299.

Albert C. Pistorius
Anchorage Telephone Utility
Municipality of Anchorage
600 E. 38th Avenue
Anchorage, Alaska
564-1415
Position Statement: Testified on HB 299.

Mary Ann O'Brannon
Alaska Directory Services
(No address given)
Anchorage, Alaska
(No phone number given)
Position Statement: Presented some background on the statewide
telephone directory.

Statutory Reference: AS 09.25.110

SSHB 7

03/31/83: SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 7 by Hayes, Barnes, Phillips, Furnace, Lindauer, Abood, Uehling, Liska, Cowdery, Szymanski, Fritz, Pestinger and Bussell, entitled:

"An Act relating to motor vehicles; and providing for an effective date."

was read the first time and referred to the Labor & Commerce, State Affairs and Finance Committees.

04/04/83: Representative Cato has been added as a Co-Sponsor on SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 7 (relating to motor vehicles; effective date).

04/19/83: Representative Furnace moved and asked unanimous consent that Rule 23 be waived so that the Labor & Commerce Committee can hold hearings on SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 7 (relating to motor vehicles; effective date) on April 21, 1983. There being no objection, it was so ordered.

04/20/83: The Speaker stated that without objection, the referral of SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 7 (relating to motor vehicles; effective date) would be changed to Labor & Commerce, Judiciary and Finance. There being no objection, it was so ordered.

SSHB 7 is currently in the Labor & Commerce Committee.

Statutory Reference: AS 28; AS 28.20; AS 28.10.011; AS 28.10.021; AS 28.10.051; AS 28.10.111; and AS 21.89.020

ACTION NARRATIVE

TAPE#57 (Side A)
Recording
Number 0006

Chairman Furnace called the meeting to order at 8:33 a.m. Members present were: Representatives Furnace, Cowdery, Wendte and Malone. Representatives Ringstad arrived

after roll call; Uehling and Koponen were absent.

Chairman Furnace brought HB 299 before the committee for consideration.

Number 0015

Representative Mitch Abood, Prime Sponsor of HB 299, explained the provisions of the bill and the intent of the law concerning the bill.

There was discussion by the committee concerning some of the language of the bill.

Number 0098

Albert C. Pistorius, Anchorage Telephone Utility, said that the telephone utility records are open to the public, however the information is copyrighted and that private enterprise should not be able to reprint the information for a profit.

Number 0144

Albert Pistorius proposed some amendments to the bill which would ensure that private enterprise would not utilize the telephone utility records for a profit motive without paying the price.

There was discussion by the committee members and Albert Pistorius concerning the copyright.

Number 0392

Chairman Furnace invited Rep. Abood to join in the discussion. He said that telephone books is a public record and the public should not have to purchase it if they do not wish and being a public record, the public should be allowed to use it as they wish.

There was additional discussion.

Number 0402

Mary Ann O'Brannon, Alaska Directory Service, came before the committee and gave some background on the statewide telephone directory. She stated why she felt a statewide telephone directory was needed.

There was discussion by committee members with Mary Ann O'Brannon responding to questions.

Number 0477

Chuck Kelly, Alaska Directory Service, expressed support of Mary O'Brannon's testimony. He said that Alaska Directory Service is an Alaskan-owned company

providing a tremendous service to Alaskans throughout the State. He said the law should be interpreted in such a way to serve the best interest of the public.

There was discussion by the committee and Chuck Kelly concerning the Alaska Directory Service.

TAPE#57 (Side B)
Recording
Number 0000

Continuation of discussion.

Number 0036

Chairman Furnace stated the Chair's intent to pass the bill on to the next committee of referral.

Number 0042

Rep. Cowdery moved and asked unanimous consent to pass the bill to the next committee of referral with individual recommendations.

Number 0047

Rep. Wendte objected, saying that he would like to see the motion expanded to read, 'with recommendation do pass'.

Number 0049

Rep. Cowdery made the motion. There being no further objection, HB 299 was advanced to the next committee of referral.

Number 0063

Chairman Furnace directed the committee's attention to SSHB 7.

Number 0083

Jeff Day, Professional Assistant to Representative Joe Hayes, the Prime Sponsor of SSHB 7, began testimony by reading a letter received after the bill was introduced. The letter was from the parents of a son who was killed in a traffic accident in Anchorage (available upon request).

Number 0122

Jeff Day said that the bill will go a long way towards ensuring that those who use the privilege to drive also accept the responsibilities that go along with it, and provide the incentives to use alternate means of transportation if one does not have insurance to operator a motor vehicle.

Number 0127

Jeff Day discussed the current law and its shortcomings.

- Number 0146 He then discussed the provisions of SSHB 7 which are aimed at prevention.
- Number 0192 He commented on some possible objections which may be raised concerning the legislation.
- Number 0273 Jeff Day offered some amendments to clarify certain provisions in the bill (available upon request).
- Number 0280 Chairman Furnace asked the committee to be brief in discussion due to time constraints. He proposed to continue the hearing later in the day. The committee members elected to defer questions until a later time.
- Number 0289 Don Koch with the Division of Insurance, Department of Commerce and Economic Development, said that the Administration is not in favor of a mandatory liability insurance. He explained.
- Number 0318 He offered some recommendations to the committee concerning insurance coverage.
- Number 0346 Chairman Furnace asked the committee to take note of the proposed amendments.
- Number 0348 Mike Thomas, representing American Insurance Association, came before the committee. He referred to his letter of April 15, 1983, as the basis of his testimony. He explained the Association's opposition to compulsory automobile insurance.
- Number 0408 Mike Thomas addressed the cost factor of compulsory insurance.
- Number 0429 Dan Motley, representing Self, stated that his prime concern was with section AS 23.22.540, concerning unused motor vehicles. He explained his dilemma and said that this section poses an extreme inconvenience to him and that SSHB 7 does not contain any provision which would address his concern.
- Number 0467 Chairman Furnace recommended that after the hearing Mr. Motley share his concerns with Jeff Day in order to determine if the bill could be enhanced to make allowances for his particular situation.
- Number 0470 The meeting was adjourned at 9:52 a.m.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Bill Sheffield, Governor

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

May 9, 1983

Honorable Richard Eliason
Senator
Chairman of the Senate
Labor and Commerce Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: HB 299, an Act relating
to public records

Dear Senator Eliason:

The Department of Law has two suggestions concerning the last sentence of HB 299 which proposes the amendment of AS 09.25.110. It reads:

If a certified copy is not requested, a public officer may only charge a fee equal to the actual costs of copying the public records requested under this section or AS 09.25.120.

First, the language "may only charge," is probably meant to be a ceiling; but some may read it as both a ceiling and a floor, leaving no discretion to waive charges where they are very small or where the requestor is indigent or is a news organization. We suggest language to the effect that a public officer may charge no more than an amount equal to the actual cost of copying.

Second, while the amendment does not purport to forbid search charges, some might read it that way. The executive branch conducts searches of up to 10 hours per requestor per month free of charge. This standard has the force of law. 6 AAC 95.130(c). Considering salary and fringe benefits, 10 hours of free search assistance amounts to a benefit to the requestor of several hundred dollars. There are doubtless a few individuals who might abuse a totally free search policy. In the past we have received several enormous requests which might have taken weeks or months to meet, at incredible cost to the state.

We suggest that the legislature expressly authorize assessment of search costs, bearing in mind that: (1) 6 AAC 95.-



CITY OF FAIRBANKS

Office of City Manager
410 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
907-452-1881

April 21, 1983

Honorable Richard I. Eliason
Alaska State Legislature
Pouch V (MS 3100)
Juneau AK 99811

Dear Senator Eliason:


I object to passage of House Bill 299. Evidently this bill has been introduced on behalf of Alaska Directory Service, Inc., a commercial directory company, in order to allow that company to make a profit printing local telephone directories without paying the local telephone utilities for their copyrighted listings. Under federal copyright law it is legal and common throughout the United States for telephone companies to copyright their directories and sell this compilation of listings for commercial reprinting to other companies.

Fairbanks Municipal Utilities System (FMUS) has offered to sell their listings for a reasonable price to ADS. In addition, ADS has an option of independently compiling their own listing. FMUS realizes a significant amount of revenue from yellow pages advertising. If ADS or other companies are permitted to use this legislation to deprive FMUS of a significant portion of this advertising revenue then FMUS will have no choice but to pass this revenue deficit along in the form of higher rates for individual and business telephone customers.

This is a particularly inappropriate time for this legislation because of the national decision to deregulate telephone companies and the pressure that is applied to Alaska telephone companies to maintain service and rates while they are facing a reduction in revenue from toll charges.

Also, these changes have absolutely nothing to do with public access to information which was the topic of AS 9.25.110. Telephone listings are already the most public information available from municipalities. They are both widely distributed in directories to all customers and available for sale at nominal amounts and available from toll free information operators. FMUS sells its copyrighted directory to anyone for \$3.00. This bill will not contribute to public information being made more available but solely to a private company making a profit at the expense of local municipal telephone utilities yellow pages advertising. It is only fair and appropriate if a private company wants to use the property interest which municipal telephone companies currently have under federal copyright law that they pay a reasonable price to the local utilities.

Sincerely,


W.C. Proz
City Manager

130(c) assures free record searches of up to 10 hours; (2) the commissioner of administration must authorize the assessment of costs no matter how many hours are spent in the search; and (3) news organizations are assessed no search charges at all unless a request is in bad faith or extraordinarily large.

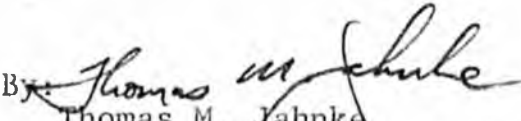
We suggest the following language to incorporate these suggestions:

If a certified copy is not requested, a public officer may charge no more than an amount equal to the actual costs of searching for and copying the public records requested under this section or AS 09.25.120.

If we may be of further assistance, please let us know.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By 
Thomas M. Jahnke
Assistant Attorney General

TMJ/pjg

cc: Honorable Mitch Abood
Representative
Alaska State Legislature
Juneau

Honorable Donald E. Clocksin
Representative
Alaska State Legislature
Juneau

Honorable Rick Uehling
Representative
Alaska State Legislature
Juneau

Emil Notti
Legislative Assistant
Governor's Office

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

RECEIVED
MAR 24 1983

JUNEAU ALASKA 99811

907-465-3800

M E M O R A N D U M

March 21, 1983

SUBJECT: Definition of public documents
(Work Order No. 13-1067)

TO: Representative Don Clocksin

FROM: Thomas A. Sofor ^{TAS}
Legislative Counsel

The attached bill draft brings within the definition of public records the names, addresses, and, in most cases, the phone of numbers subscribers of municipally owned utilities, such as the Anchorage and Fairbanks telephone companies. It is not clear what the effect of this amendment to the Alaska Statutes will be on any claim that the information described is protected by federal copyright law.

Typically, the doctrine of federal preemption, which is grounded on the Supremacy Clause of Article VI of the United States Constitution, prohibits a state from legislating in any way which would thwart or frustrate the operation of a federal statute on the same subject. If the federal act indeed provides an enforceable right in favor of those who have compiled such phone lists, the state will be powerless to legislate in a manner which destroys that right. However, since I am not intimately acquainted with the extensive federal patent and copyright scheme, I am not able to conclude with any certainty that the passage of the attached bill would be completely without effect. The fact that a state jurisdiction considers material that may be copyrightable to be a public record under local law, may be of some consequence since the material in this case is largely of intrastate interest.

Obviously, the full ramifications of the enactment of the attached bill are beyond the scope of this memo. I understand that litigation is pending concerning this issue and I suspect a review of pleadings and supporting memoranda filed in that case would be useful in developing a complete understanding of the federal issues involved. Due to the scope

Representative [redacted] Clocksin
Page 2
March 21, 1983

of the material to be covered, an undertaking of that sort would be more appropriate as an interim project of this office.

Please give me a call if I can be of further assistance on this issue.

TAS:ljb

Enclosure
11/002

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Bill Sheffield, Governor

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

May 9, 1983

Honorable Richard Eliason
Senator
Chairman of the Senate
Labor and Commerce Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

Re: HB 299, an Act relating
to public records

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Second, while the amendment does not purport to forbid search charges, some might read it that way. The executive branch conducts searches of up to 10 hours per requestor per month free of charge. This standard has the force of law. 6 AAC 95.130(c). Considering salary and fringe benefits, 10 hours of free search assistance amounts to a benefit to the requestor of several hundred dollars. There are doubtless a few individuals who might abuse a totally free search policy. In the past we have received several enormous requests which might have taken weeks or months to meet, at incredible cost to the state.

We suggest that the legislature expressly authorize assessment of search costs, bearing in mind that: (1) 6 AAC 95.-

130(c) assures free record searches of up to 10 hours; (2) the commissioner of administration must authorize the assessment of costs no matter how many hours are spent in the search; and (3) news organizations are assessed no search charges at all unless a request is in bad faith or extraordinarily large.

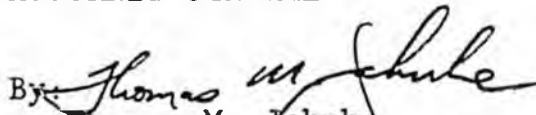
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If we may be of further assistance, please let us know.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 
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Assistant Attorney General

TMJ/pjg

cc: Honorable Mitch Abood
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Alaska State Legislature
Juneau

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Honorable Rick Uehling
Representative
Alaska State Legislature
Juneau

Emil Notti
Legislative Assistant
Governor's Office

Alaska State Legislature

PERMANENT ADDRESS:
1527 H STREET
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(907) 278-4188

WHILE IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3704



CHAIRMAN - 1981
HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE
VICE CHAIRMAN - 1981
JUDICIARY COMMITTEE
MEMBER - 1982
COMMUNITY AND REGIONAL
AFFAIRS COMMITTEE

Representative Don Clocksin
DISTRICT 7

March 11, 1982

A. C. Pistorius, General Manager
Anchorage Telephone Utility
600 East 38th Avenue
Anchorage, Alaska 99503

Dear Mr. Pistorius:

Mary O'Brannon of Alaska Directory Service has contacted me regarding a problem she has had in obtaining up-to-date "white page" listings from you. My research has indicated that your failure to provide her with the information may be improper.

Alaska Statutes 9.25.110-.120 provides that "public writing or record" is available for inspection and copying by "every person" unless the writing or record is exempted. One exemption allows records to be kept confidential by "federal law or regulation or by state law." AS 9.25.120(4).

I believe utility company records are open to the public, and believe the recent issue regarding Chugach Electric payroll records confirms that. Further, I believe the specific records sought by Ms. O'Brannon are public. And further, I have reviewed the Alaska Public Utilities Commission Act (AS 42.05.010-.721) and find no statute exempting such records. Alaska Statute 42.05.671 relates only to public disclosure of APUC records and is therefore irrelevant.

There is a regulation which provides that telephone utility records are not open to the public--3 AAC 48.050(a). However, that regulation is not authorized by the statute and is not an allowable exemption under AS 9.25.120(4) since it is not an exemption "by state law."

Failure to provide a public record upon request authorizes suit under AS 9.25.125 and an injunction.

I also understand that you have taken specific action to discourage advertisers from advertising in Ms. O'Brannon's publication. See the attached letter. This effort at restricting Ms. O'Brannon's ability to sell ads is particularly of concern since you use her lack of "white page" information--information you have (perhaps illegally) refused her--as a reason for not buying advertising.

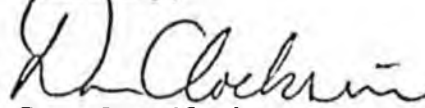
A. C. Pistorius
March 11, 1982
Page 2

I understand the philosophy behind regulation of utilities to be a trade-off between regulation of rates, etc. and protection from competition. If a utility is told what its rates may be, what its return will be, and what services to provide, it is not fair to subject that utility to cut-throat competition by unregulated competitors. However, I'm not sure Ms. O'Brannon's request rises to that level of threat. Absent hard evidence that rates will be seriously affected, I think the law is clear that your new "white page" listings are public records and, thus, available to Ms. O'Brannon.

I would appreciate either your cooperation with Ms. O'Brannon or a response explaining why you still do not feel cooperation is appropriate.

Thank you.

Sincerely,



Rep. Don Clocksin

cc: Mary O'Brannon
APUC members
APUC Executive Director

Enclosure

DC:ne

Bill orders ATU to share listings

By STEVE SEPLOCHA

Daily News business editor

A bill that would force the Anchorage Telephone Utility to turn over its subscriber list and numbers to a competing telephone directory company was passed this week by the House in a 38-1 vote.

Rep. Mitch Abood, R-Anchorage, prime sponsor of the bill, said he understands there is a good chance for passage in the Senate.

Controversy over whether phone listings are public information surfaced when the telephone utility tried to block publication of a directory which would compete for advertising with the utility's contracted version.

The new directory was published late last year by Alaska Directory Service, Inc., owned by Mary O'Brannon. She has since been sued by the utility for copyright infringement and the litigation is pending.

Al Pistorius, general manager of the telephone utility, said Wednesday that the bill probably will have no impact on the position of the utility.

He still claims the list is protected by federal copyright law and the information requested by O'Brannon will probably cost her more than \$200,000.

Pistorius said he is trying to protect the \$5 million in "pure profit" the utility receives from GTE Directories Corporation, which has a contract for the listings.

The listing was offered to O'Brannon for \$218,000 last year, according to Pistorius. He said the names and numbers must be extracted from documents that contain confidential information about customers, and labor costs are expensive.

Whether the bill passes or not will not change these costs, he said.

O'Brannon has accused the phone company of charging an excessive amount for the lists. The bill, according to Abood, would require the utility to charge no more than duplicating fees.

Anchorage Daily News
4/28/83

Anchorage Daily News

351, 118 PAGES

ANCHORAGE/ALASKA, THURSDAY, DECEMBER 16, 1982

Statewide phone directory prompts suit

By STEVE SEPLOCHA
Daily News business editor

About 80,000 people in Anchorage have received a new statewide telephone and information directory, but the Anchorage Telephone Utility (ATU), claiming copyright infringement, has sued to stop distribution.

U.S. District Judge James von der Heydt on Wednesday denied a request for a temporary restraining order against Alaska Directory Service Inc. and will hear arguments Monday in the second phase of the injunction proceedings.

Mary Anne O'Brannon, owner of the new directory, said Wednesday that ATU is simply trying to keep competition out of the lucrative yellow pages directory business. She denied that her company has infringed on ATU phone listings and accused the utility of restraint of trade.

Al Pistorius, general manager of ATU, said he could not discuss the new directory because it is in litigation. The phone company's attorney was unavailable.

The new directory contains 350 pages of yellow pages advertising and offers phone listings and other information services on



See Back Page, NEW

Mary Anne O'Brannon shows her new telephone directory.

Provided by M. O'Brannon

Alaska Directory Service

*****ADVERTISING RATES*****

630 E. 5th Avenue, Suite 200 • Anchorage, Alaska 99501 • (907) 272-5491

DISPLAY ADS

<u>AD SIZE</u>	<u>UNITS</u>	<u>FULL ANNUAL RATE</u>	<u>30% DOWN WITH ORDER</u>	<u>TOTAL CASH WITH 20% DISCOUNT</u>	<u>BANK CARD 15% DISCOUNT</u>
QC	5	325.00	97.50	260.00	48.75
DQC	10	650.00	195.00	520.00	97.50
HC	10	650.00	195.00	520.00	97.50
THC	15	975.00	292.50	780.00	146.25
DHC	20	1,300.00	390.00	1,040.00	195.00
THC	30	1,950.00	585.00	1,560.00	292.50
STRIP	40	2,600.00	780.00	2,080.00	390.00
RED INK	4	260.00	78.00	208.00	39.00
COUPONS	10	650.00	195.00	520.00	97.50

LISTINGS

WBL	1	65.00	19.50	52.00	9.75
BL	1	65.00	19.50	52.00	9.75
TN	2	130.00	39.00	104.00	19.50
TM	3	195.00	58.50	156.00	29.25
CTM	4	260.00	78.00	208.00	39.00
TBL	1	65.00	19.50	52.00	9.75
ABL	2	130.00	39.00	104.00	19.50
FL	3	195.00	58.50	156.00	29.25

IN-COLUMN ADVERTISING

1HS	2	130.00	39.00	104.00	19.50
2HS	3	195.00	58.50	156.00	29.25
3HS	4	260.00	78.00	208.00	39.00
4HS	5	325.00	97.50	260.00	48.75

DIRECTIONAL BLOCK - 65.00 (1 unit)

AW	1	65.00	19.50	52.00	9.75
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CD

25



Phone competition

It is laughable to see the "Daniel (sic) and Goliath" confrontation presently occurring between our municipally owned telephone monopoly and a company which has dared to produce an independent phone listing book. Small minds are often threatened when someone challenges them.

Nationally, the telephone industry is facing many challenges as modern telecommunications and computer technology provide options beyond the scope of present telephones. The AT&T giant has been struck down by the courts in its efforts to control telephone communications from the subscriber's instrument through the network and beyond reason.

Now, in Alaska we see an independent telephone directory publishing company has rocked the cozy relationship

between Anchorage Telephone Utility and GTE Telephone Directories Company. An indignant ATU general manager, Al Pistorius, says copyright laws were broken because the new publisher did not pay enough to the utility for listings and the right to sell lucrative yellow page advertisements in the statewide directory.

A past administration "old boy" carryover, Pistorius may have a lot of reasons for being afraid of competition in the communications industry marketplace. Soon, simple adaptations to the family television may bring direct video communications without need of so many top-heavy empires like ATU funneling regulated tax dollars down a soon-to-be antiquated rat hole.

If the telephone utility were really service-oriented, it would welcome as many listings of numbers in as many places as possible. Instead, ATU is fighting consumers' best interests with tax dollars.

—Donn Liston

O'Brannon says she'll beat ATU

by Steve Hansen
Times Writer

Although facing a court order to come up with a plan to recall her product, the owner and creator of a statewide telephone directory said Wednesday she is "winning the war" against the Anchorage Telephone Utility.

Mary Ann O'Brannon, owner of the Alaska Directory Service, said she will continue to fight ATU and the municipality for the right to publish and distribute the new directory.

O'Brannon's statewide directory is in direct competition with the ATU phone book for local advertising.

Last week, U.S. District Court Judge James von der Heydt ruled O'Brannon was in contempt of court because she distributed about 200,000 books after agreeing to halt free distribution on Dec. 20, 1982.

O'Brannon was fined \$10,000 and ordered to submit a plan by Friday for the "total recall" of

the directories distributed after Dec. 20. The recall plan, which must be implemented by April 1, has to include the use of flyers, newspaper and television advertisements asking people to return the books to Alaska Directory Service.

About 200,000 books have already been distributed.

O'Brannon estimated advertising the recall would cost her about \$5,000.

But despite von der Heydt's action, O'Brannon said she's confident the statewide directory will prevail.

"I feel we lost the battle but are winning the war," she said.

O'Brannon said ATU has tried unsuccessfully on several occasions to gain a temporary restraining order from the court to prohibit the distribution.

Brannon has filed a restraint-of-trade and anti-trust suit against the municipality listing the 3,000 advertisers in her book as "injured parties."

"It's not just me," she said.

The municipality, however, contends that O'Brannon has violated federal copyright laws by using ATU telephone names, numbers and addresses in her book. But O'Brannon said her company is entitled to compete in the free market with municipal telephone utilities, and that she has been assured by a copyright attorney that her actions are legal.

"They're just making a last ditch effort," she said.

As for von der Heydt's contempt ruling, O'Brannon said, "I think he did what he had to do."

She said she had voluntarily stopped distribution of her directory on Dec. 20 in order to negotiate a settlement between Alaska Directory Service and ATU. However, ATU did not bargain in "good faith," she said.

"What they wanted was 30 percent of our revenue," O'Brannon said. Then (ATU general manager) Al Pistorius went to on

vacation to Hawaii for two weeks (further delaying the negotiations).

"That's when I said, 'That's it,'" she said, adding that she felt ATU had only been trying to delay her distribution until after the new ATU books were distributed.

O'Brannon said von der Heydt was then formally notified by her company that the distribution would be continued because ATU had not negotiated in "good faith."

"I think he wanted us to get the directory out, otherwise he would have done something sooner," she said.

She said she violated the court order because "I had a responsibility to the public to get the book out and I did."

"I'd do it again if I had to," she added.

"Anything that's going on now will not affect our future publication."

letters from the people

Take my name, please

Reference: "State directory owner seeks list free," in the Daily News, Dec. 29.

I don't understand why M. A. O'Brannon, owner of Alaska Directory Services, Inc., should pay anything for the names in the telephone book. The names were not purchased, nor are they the sole property of Anchorage Telephone Utility. I, for one, did not sell them my name and gladly will join O'Brannon in a suit requesting that my name be given to anyone who wants it. At no cost. *Long live competition!*

— Andre Piekarski

Thursday, February 24
B

Entrepreneur expects to win phone book war

by Steve Hansen
Times Writer

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Alaskans speak their minds

Tight grip

Dear Editor:

I will surrender my Alaska telephone and information director when they pry it from my cold, dead fingers! I am a concerned

citizen and a member of the Right to Bear Directories of America.

Duane J. Bryan

ALASKA CLIPPING
SERVICE

Kodiak Mirror
Kodiak, AK

JAN 28 1992

45
Alaska Directory Service and their representative Mike would like to thank Kodiak residents and businesses for their friendliness and support of the local and state wide telephone book.

If I may have inadvertently missed or overlooked any advertiser, they may call Mike collect at: 272-5491

ALASKA FEYER

SO WHAT'S
YOUR PHONE
NUMBER?

I CAN'T
GIVE IT
TO YOU...

THE PHONE
COMPANY
CLAIMS
THEY OWN
THE COPYRIGHT
ON IT!



2-22

JERRY FLU
THE ALASKA TIMES

ALASKA CLIPPING
SERVICE

Ketchikan Daily
News
Ketchikan, AK

JAN 29 1983

North in huff over state directory

ANCHORAGE (AP) — It's big, bold and brassy and it's got utility officials and attorneys in Anchorage and Fairbanks in a furor.

It's the Alaska Telephone & Information Directory, a statewide listing of telephone numbers in communities large and small, except for those in Southeast Alaska.

It's the brainstorm of Mary Ann O'Brannon of Anchorage.

The Municipality of Anchorage went back to federal court Friday in another effort to halt its distribution. Fairbanks City Attorney Herb Kuss said he will seek a similar injunction there.

The telephone utilities in both cities contend the directory constitutes a copyright infringement.

Ms. O'Brannon argues that they are just monopolies afraid of competition, and engaged in an illegal restraint of trade.

The distribution question is almost moot. Ms. O'Brannon said Friday about 200,000 of the hefty books have been distributed free around most of the state. That's about 90 percent of what she anticipated. She said the rest should be done within two weeks.

Callers who have business outside their community no longer are forced to thumb through dozens of phone books looking for numbers.

Besides telephone numbers, the directory contains marine radio designations for boats operating in Alaska waters. It also has maps and

594 pages of classified ads.

It's the "yellow pages" that upset the Anchorage and Fairbanks officials most, because they siphon off some of lucrative advertising.

The Anchorage Telephone Utility tried earlier to halt distribution by filing a copyright infringement suit, but U.S. District Judge James von der Heydt ruled distribution was not against the law.

Ms. O'Brannon and ATU then began voluntary negotiations to try to resolve the dispute. Distribution was halted briefly, but resumed when Ms. O'Brannon and her attorney decided ATU no longer was bargaining "in good faith."

Kuss, acting on behalf of the Municipal Utility System in

Fairbanks, said he will try to get a judge not only to order a halt, but to force distributors to pick up the books they've already handed out. He said he's also asked the FBI to investigate possible criminal infringement of the copyright laws.

Ms. O'Brannon obviously anticipated the controversy. In an "editorial" on the last of the yellow pages, she says "the fact that you are reading this is proof that courage and conviction of the people of Alaska has come through again."

"Advertisers had no alternative to the many utility directories across the state," she wrote. "Thanks to the courage & independence of the people we've sold millions of dollars of advertising."

45
32

Welder vows to keep his

by Ellis E. Conklin
Times Writer

The great telephone book war isn't quite over yet.

It's a battle for legitimacy, with the Anchorage Telephone Utility and the Alaska Directory Service each claiming that its telephone book is shinier, and better than its competitor — not to mention free of copyright infringement.

Now Clay Newman has joined the book battle.

Newman is pursuing a whole new tack. Unlike virtually everyone in Anchorage who simply ig-

nored a judge's order in February to return Alaska Directory's statewide phone books to the company, Newman marched in to the Alaska Directory office Thursday morning and returned his Anchorage Telephone Utility book.

Why?

"I'm sick and tired of the Anchorage telephone book. I'm in the welding business in Eagle River and I need the Alaska book because I do a lot of work in the Bush. I tell you, the all-Alaska book was a dream come true."

For Newman, he'd rather part

with, well, just about anything before giving back that Alaska book.

"They're not getting that Alaska book. They're going to have to pry it out of my fingers. They'll have to shoot first, shoot me first or throw rocks."

Newman doesn't stop here. He also plans to hit ATU where it hurts — in the pocketbook. "When I'm down there, I'm also going to pull all of my ads out of the Anchorage book and put them in the Alaska book."

In case you missed it, the Anchorage Telephone Utility de-

'contraband' directory

4-3-83

clared open war on the Alaska Directory Service when the rival phone book firm went out and distributed about 200,000 of its own directories, replete with cross references and maps.

ATU, which publishes its own phone book and Yellow Pages, claimed the Alaska Directory stole the Anchorage names and phone numbers from its own white pages.

On Feb. 23, U.S. District Court Judge James von der Heydt slapped the private telephone directory with a \$10,000 contempt of court fine and ordered the

company to go out and retrieve the 200,000 copies it distributed after Dec. 20, and not to hand out and more.

Susan Blanchard, office manager at Alaska Directory Services, said only about 10 people have brought back the Alaska directory.

But Kim Tullis, a production manager for Alaska Directory Service, said to her knowledge, only one person obeyed the judge's order. In fact, the person who did surrender her Alaska book turned out to be a neighbor of Alaska Directory's president.

"It was kind of a joke," Tullis said.

Blanchard said Newman's satirical act of civil disobedience isn't the kind of support Alaska Directory Service is looking for right now.

"That's going to hurt us. It's bad publicity. It's like mud-throwing," Blanchard said. "It's nice that he'd rather have our book, but I feel that he's making the wrong statement."

"Of course, I can't say no. I can't tell him I won't take his (Anchorage Telephone Utility) book," Blanchard said.

Phone book combines Treasure Valley listings

By DEBBY ABE
The Idaho Statesman

Some southwestern Idahoans are letting their fingers do the walking through a new telephone book that has listings for residents and businesses throughout the Treasure Valley.

The book is the 1982-83 Treasure Valley edition of the *Aid's Telephone Directory*. It contains the resident, business and government listings included in the five Mountain Bell, Continental and Fruitland telephone company books that cover Boise and points south to McDermitt, Nev., north to White Bird and west to Vale, Ore.

Distribution of the 26,000 to 28,000 books started in December. All businesses in the Treasure Valley and a random selection of residents received one of the directories at their doorstep, said *Aid's Telephone Directory* President John Thayer, Ontario.

Thayer said he plans to print 125,000 copies of a revised edition in August. Some copies are still available at *Aid's* Boise office, 6027 Clinton St.

"Reaction to it has been great. We're getting good sales and good response," Thayer said. "I have yet to meet anyone who doesn't like it."

What residents — especially those in rural areas — like most, he said, is that they have access to numbers for all cities in the Treasure Valley. For example, a person in Ontario can look up a McCall phone number. And listings are as recent as the telephone companies'

books because the companies sold their listings to *Aid's*, Thayer said. (Phone companies are required by law to sell listings upon request.)

Many like the directory's size, Thayer said. The 1½-inch thick, 10¾-by-7-inch book is more compact than the 9-by-11-inch Mountain Bell books. Older people like the book's large type size, he said.

The *Aid's* book offers some things that most phone company books do not: Idaho license plate codes, Idaho and Oregon zip codes, recreation information, a calendar of events, sports schedules and a section of coupons redeemable at Treasure Valley businesses.

But, just like the other phone books, *Aid's* directories are free. Advertisers in the "Yellow Pages" section of the directory paid for the book's publication and distribution. Advertising rates are 50 to 80 percent lower than Mountain Bell's rates, Thayer said.

Aid's plans to distribute a directory for the Mountain Home area soon and may eventually put out a northern Idaho directory.

"We have some investors looking at us. If they come in, we might go up there (north)," he said.

But as healthy as the young business seems now, a year ago it stood on shaky ground.

Thayer initially was a salesman for the company's original owners, Bill Landriani and Jess McCall, who operated through a corporation called L.J. Inc. Thayer was one of 200 salesmen who had worked for the business at one time or another since its start in December,

1981. The salesmen had sold more than \$100,000 worth of advertising to Treasure Valley merchants and promised them the book would come out in July 1982, as Landriani and McCall had told them, Thayer said. But when June 1982 rolled around and few layouts could be found, Thayer said, he and the three other remaining salesmen suspected the owners did not intend to publish it.

Thayer, who said he hoped to keep his reputation clean and to get in on what he thought was a good business opportunity, offered Landriani and McCall \$5,000 in June to take over the assets and liabilities of *Aid's Telephone Directory*.

"They were gone in three days," Thayer recalled. And "the \$60,000 to \$70,000 we had on the books turned out to be only \$10,000 or \$12,000," he said.

Thayer contacted the Boise police and local FBI office, but was told the men couldn't be sued or charged with violation of any law because they had protected themselves through their corporation.

Ken Thornberg, executive director of the Better Business Bureau of the Treasure Valley, confirmed Thayer's story of Landriani and McCall.

"They left with \$100,000 to \$130,000 and left Thayer and his group holding the bag," Thornberg said.

However, Thayer and his brother, Skip, (See BOOK, Page 2C)



Aid's directory and Mountain Bell book

(Continued from Page 1C)

Thayer of Ontario, published the book by borrowing money from friends, relatives and their ranch, the Thayer Cattle Co. of Ontario.

"In July, I owed \$100,000 to put the book out. If we hadn't had the publishers and layout people who gave us good terms and let us spread out payments, we never could have done it," he said.

"Thayer said at least half the debt incurred to publish the book has been paid back.

"It's a miracle the book came out," he said. "I really stuck my neck out. I've realized since then (when he took it over) that I made myself liable to a lot. Our advertisers could have sued, it could have been paid back."

sought to them, but they didn't. We're really grateful."

In compensation for the company in publication and other problems, *Aid's* is giving advertisers in the first Treasure Valley book free advertising space in the August edition, Thayer said.

Landriani and McCall apparently moved to Oregon after their stay in Idaho, the Portland Better Business Bureau and the Portland field division of the FBI said. The Portland BBB reported that it had received complaints on the two men for conducting activities similar to those in Boise on the Oregon coast. Darwin Schroeder, special agent and information officer for the Portland FBI office,

Bill Fact Sheet

Date Received _____

Bill Number HB299 Title _____

Fiscal Note - Date Requested _____ Date Received _____

- Of Whom _____

Dept. Position Paper -- Date Requested 5/13 Date Received _____

- Of Whom Ron Lorensen (Dept of Law)

Resource People

Initial Hearing - Date 5/17/83

People Contacted

Ron Lorensen - 3600

Ann (Mitch Apood) - 5/16 - told earlier tho - want scheduled around 2:30

Wally Kubley - 5/16

Sharon Mc -

Ginny . 5/12

Follow-up Hearing - Date _____

Final Action _____ Date _____