

H B

270



Alaska State Legislature

House of Representatives

Committee on
Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99801
(907) 465-4833

HEARING DATE:

March 20, 1985

HB 177
HB 270

| NAME (Please Print) | ADDRESS | REPRESENTING | TESTIFY (Yes or No) | PHONE NUMBER |
|---------------------|-------------------|--------------------|----------------------|--------------|
| J. Jate | Pouch B | DORA | NO | 4700 |
| J. RASIMAN | Pouch B | DORA | NO | 4707 |
| LINDA EDGEWORTH | Pouch AF Juneau | ELECTIONS | Respond to questions | 4611 |
| Chris Seagraves | Box B Palmer, AK | Mat-su Borough | yes | 245-4801 |
| BOB GREENE | 326 4th St. JUNU | AASB | YES | 586-1083 |
| Scott A. Summers | 105 Municipal Way | AML | yes | 6-1325 |
| Jayce A. York | Pouch AF | Elections | no | 6-6181 |
| Sharon Ormiston | 526 Main | Leg. Digest | NO | 63118 |
| Linda Anderson | 130 Seward Junu | Fols. No Star Bar. | NO | 6-1608 |
| LINDA CONLEY | Box 281 - NOME | CITY OF NOME | NO | 443-5242 |
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M E M O R A N D U M

DATE: February 8, 1985 705-4801

FROM: Chris Seagraves, Member of the Legislative Committee of AAMC,
Clerk of the Matanuska-Susitna Borough
P.O. Box B, Palmer, Alaska 99645 *Chris Seagraves*

TO: Whom It May Concern

SUBJ: Technical Revisions to Alaska Statutes Titles 15 & 29, Relating
to Voter Qualification and Elections

I have reviewed several of the comments made on the proposed Title 29 and Title 15 revisions relating to elections and would like to respond to them.

Under the new recall provision in Title 29, a concern has been expressed about the municipal clerk having to prepare the recall petition on one of her bosses. While this may be true, it would in no way place the burden of responsibility for the contents of the petition on the clerk. The petition is made up of the allegations in the application which are sworn to by ten sponsors and the official's rebuttal statement. The petition would also contain spaces for all the legal requirements that must be met (residence address, date of circulation, date of signatures, etc.). This is all done prior to the petition being circulated among the public and ensures that only sufficient allegations are circulated rather than wild, unsupported, possibly libelous statements which could cause damage to the reputation of the official. You can not ask the sponsors of the recall petition to place the rebuttal of the official on the petition and you certainly can't ask the official to prepare the petition. You need a non-bias party to prepare the petition, who would be the clerk, who answers both to the public and the assembly or council.

Another concern expressed was that the revisions to Title 29 should come from the attorney's association rather than the clerks. I disagree in part. Most attorneys disagree with each other and everything is always gray and nothing is black and white. The clerks are the ones who must work daily with Title 29 and use it as their "bible" of sorts. They know from experience which sections require consultation with an attorney. If Title 29 is confusing to experienced clerks, then what is it like for the general public. I think it is the clerks' duty and responsibility to gather together all the confusing sections and suggest wording that they could better understand and then contact the attorney's for reviewing any legal ramifications or inconsistencies. Many municipal clerks don't have attorneys on staff to interpret the law if it is unclear and could possibly break the law unknowingly. The attorneys only deal with Title 29 after the law is supposedly broken.

Another concern expressed was that HB 172 requires a petition to be signed by 25% of the total number of registered voters. My particular changes decreases that figure to 25% of the number of persons who voted at the last regular municipal election, which is still 10% more than what is currently required in the statutes for municipalities over 7500 population.

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A concern expressed by an attorney was the use of the word "eligible" as opposed to "registered" and "qualified" in Title 15. It was felt the word "eligible" is more confusing instead of less confusing. I disagree. Throughout Title 15 relating to Voter registration, the words "registered" and "qualified" are used in such a way as to totally disregard the real meaning of each word as they should be used since they are two different things. A registered voter is someone who has properly completed the registration form. A qualified voter being someone who has not only registered but has been registered for 30 days and who can vote. Simply completing the form does not make a person a qualified voter. The word "eligible" was used in replace of "registered" and "qualified" where ever the title was discussing the criteria or eligibility requirements. In order to be eligible to vote you must meet not only the eligibility requirements of a registered voter, you must meet the eligibility requirements of a qualified voter. The term "eligible" as used to define "registered" and "qualified" means the same thing in both sections where as "registered" and "qualified" do not mean the same thing.

The last concern I would like to address is one regarding the decrease from 40% to 20% for the number of votes a candidate must receive in order to win an election. This change was made due to the large number of and the high cost of run-off elections required. If a municipality has more than two candidates running for one seat, 40% of the vote is very close to 50% of the vote and requires the candidate to get an overwhelming majority of all votes. As the number of candidates running for a particular seat increases, it lessens the liklihood of anyone getting 40% the first time round. This 40% requirement in effect, discourages more people from running for office. An example of the necessity for an expensive run-off election under the 40% rule which usually has a low turn-out anyway is the case of where you have three popular candidates running for a vacancy on a service area board in an area of maybe only 50 individuals (the Matanuska-Susitna Borough has had to have run-off elections in an area of only about 30 individuals). The votes come in, each candidate is about five votes apart. A run-off election is required which means advertising, posting notices, hiring three election judges for a minimum of 14 hours work plus a canvass board, and at the run-off election, only 15 people turn out to vote, because there has only been five days notice given. The law has been adhered to, but has the public really been served? Or, has the government just wasted thousands of dollars of taxpayers money? Would not a 20% requirement show a clear majority vote, serve the same purpose to elect the person the majority of the voters wanted? The 20% figure would reduce the number of run-off elections required but still serve the taxpayers and voters.

If you have any other concerns or would like to discuss any of the above issues in more detail, please feel free to contact me at 745-9685 or write me in care of the Matanuska-Susitna Borough, P.O. Box B, Palmer, Alaska 99645.

IONS

endum. (a) When a petition or resolution, the clerk shall the municipality at the next or special election occurs petition with the clerk, the election within 75 days of

n is filed within 30 days after re the effective date of the the petition is filed shall be ordinance. During the period may not enact an ordinance rdinance but may repeal the

he referendum legislation, it e legislation, it is repealed. A provided in the charter or by AS 29.28.060 — 29.28.110. LA 1972)

ly or council may not, within gate the effect of a successful against which a referendum bly or council after a petition the council or assembly may n for a period of one year after

endum precludes the filing of er than six months after voter am. (§ 2 ch 118 SLA 1972)

all.

- on
- Election
- Form of recall ballots
- Election procedure
- Majority required
- Effect of failure to recall
- Election of successor

Sec. 29.28.130. Recall. An elected official of a home rule or general law municipality may be recalled by the voters after the official has served six months in office. (§ 2 ch 118 SLA 1972)

NOTES TO DECISIONS

Section applies to city school board member. — A member of a city school board was an elected public official of an incorporated municipality, within the meaning of a former, similar provision, to

the same extent as a city councilman, thus was subject to the recall provisions contained in that section. Blue v. Stock, Sup. Ct. Op. No. 7 (File No. 10,355) 395 (1960).

Sec. 29.28.140. Grounds. Grounds for recall are misconduct [in office] incompetence, or failure to perform prescribed duties. (§ 2 ch 118 SLA 1972)

Sec. 29.28.150. Petition. (a) A petition seeking recall of one or more municipal officials is filed with the municipal clerk. The petition shall contain

- (1) the signatures and resident addresses of a number of voters as prescribed in AS 29.28.070 b) for initiative and referendum;
- (2) the date each voter signed the petition; and
- (3) a statement of the grounds of the recall stated with particularity as to specific instances.

(b) A petition for recall must be filed with the clerk within 60 days after the date of the earliest signature on the petition. (§ 2 ch 118 SLA 1972)

Sec. 29.28.160. Examination for sufficiency. The municipal clerk shall review the petition for content and signatures and shall certify on the petition within 10 days of the filing date whether it is accepted or rejected. Until the petition is accepted, a petition signer may withdraw the signer's signature upon written application to the clerk. (§ 2 ch 118 SLA 1972)

Sec. 29.28.170. Supplemental petition. (a) If the petition is rejected because of insufficient signatures, it may be supplemented by additional signatures within 10 days after the date of rejection. If the petition is insufficient for any other reason, it shall be rejected and filed as a public record.

(b) Within 10 days after supplementary filing, the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record. (§ 2 ch 118 SLA 1972)

Sec. 29.28.180. New petition. Failure to secure sufficient signatures does not preclude the filing of a new recall petition. However, a new petition may not be filed sooner than six months after a petition is rejected. (§ 2 ch 118 SLA 1972)

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

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JUNEAU, ALASKA 99811
PHONE: (907) 465-4700
- 949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508
PHONE: (907) 563-1073

March 20, 1985

POSITION PAPER

RE: House Bill 270

SPONSOR: Representative Larson

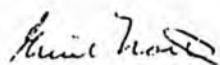
Program Effects of Bill

This bill proposes changes in municipal initiative, referendum, and recall procedures. It would not affect Departmental programs.

Comments

The Department does not oppose this bill. It basically adopts language from the Governor's Municipal code revision bill (HB 72, SB 142) in regard to municipal initiative, referendum, and recall procedures. There are some substantive changes from HB 72 which would have the following effects:

- set out in greater detail the procedures and steps for municipal clerks to follow in the process, and
- establish more elaborate safeguards for officials subject to recall.



Emil Notti, Commissioner

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 270
 Title: Municipal recalls, referendums, initiatives, & elections.

FISCAL DETAIL

Agency Affected: Community & Regional Affairs
 Program Category Affected: _____

Sponsor: Rep. Larson
 Requestor: _____
 Date of Request: _____

BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

| | FY 85 | FY 86 | FY 87 | FY 88 | FY 89 | FY 90 |
|------------------------|-------|-------|-------|-------|-------|-------|
| OPERATING | | | | | | |
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
| 300 CONTRACTUAL | | | | | | |
| 400 SUPPLIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS | | | | | | |
| 800 MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | -0- | -0- | -0- | | |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |


FUNDING: (Thousands of Dollars)

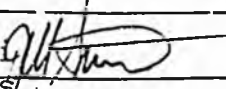
| | | | | | | |
|---------------|--|-----|-----|-----|--|--|
| GENERAL FUND | | -0- | -0- | -0- | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | -0- | -0- | -0- | | |

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: Attach a separate page if necessary

Prepared By: Doug Griffin, Deputy Director  Phone: 465-4750
 Division: Municipal & Regional Assistance Date: 3/19/85

Approved by Commissioner: Emil Notti  Date: 3/19/85
 Agency: Community & Regional Affairs

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Introduced: 3/6/85
Referred: Community & Regional
Affairs and Judiciary

1 IN THE HOUSE

BY LARSON

2

HOUSE BILL NO. 270

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to municipal recalls, referendums,
7 initiatives, and elections."

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

9 * Section 1. AS 29.13.100(8) is amended to read:

10 (8) AS 29.28.010, 29.28.022. 29.28.030 [29.28.020(b) -
11 29.28.030] (municipal elections)

12 * Sec. 2. AS 29.18.020(b) is amended to read:

13 (b) The assembly or council may call a special election at any
14 time [UPON AT LEAST 20 DAYS NOTICE].

15 * Sec. 3. AS 29.28 is amended by adding a new section to read:

16 Sec. 29.28.022. NOTICE OF ELECTIONS. (a) Unless provided
17 otherwise by law, a municipality shall give at least 30 days notice of
18 an election.

19 (b) This section applies to home rule and general law municipal-
20 ities.

21 * Sec. 4. AS 29.28.030 is amended to read:

22 Sec. 29.28.030. VOTER QUALIFICATION. (a) A person may vote in
23 a municipal election only if the person

24 (1) is a United States citizen who is qualified to vote in
25 state elections; [AND]

26 (2) has been a resident of the municipality for 30 days
27 immediately preceding the election; [AND WHO]

28 (3) is registered to vote in state elections; and

29 (4) is not disqualified under art. V of the state

1 constitution.

2 (b) Voter registration by the municipality may not be required.
3 However, a municipality may by ordinance require that a person be
4 registered to vote in state elections in the precinct in which that
5 person seeks to vote in municipal elections.

6 (c) This section applies to home rule and general law municipal-
7 ities.

8 * Sec. 5. AS 29.28.040 is repealed and reenacted to read:

9 Sec. 29.28.040. RUNOFF ELECTIONS. (a) Unless otherwise pre-
10 vided by ordinance, a runoff election shall be held if no candidate
11 receives over 40 percent of the votes cast for the office of

12 (1) mayor; or

13 (2) member of the assembly, council, or school board if
14 candidates run for a designated seat.

15 (b) Unless otherwise provided by ordinance, if candidates for
16 the assembly, council, or school board run at large, a runoff election
17 for a seat shall be held if no candidate receives a number of votes
18 greater than 40 percent of the total votes cast for all candidates
19 divided by the number of seats to be filled.

20 (c) Unless otherwise provided by ordinance, a runoff election
21 shall be held within three weeks after the date of certification of
22 the election for which a runoff is required, and notice of the runoff
23 election shall be published at least five days before the election
24 date. The runoff election shall be between the two candidates receiv-
25 ing the greatest number of votes for the seat. The ballot may not
26 contain space for a voter to write in the name of another candidate.

27 * Sec. 6. AS 29.28 is amended by adding new sections to read:

28 Sec. 29.28.061. APPLICATION FOR PETITION. (a) An initiative or
29 referendum is proposed by filing an application with the municipal

1 clerk containing the ordinance or resolution to be initiated or the
2 ordinance or resolution to be referred and the address to which all
3 correspondence relating to the petition may be sent. An application
4 shall be signed by at least 10 voters who will sponsor the petition.
5 An additional sponsor may be added at any time before the petition is
6 filed by submitting the name of the sponsor to the clerk. Within two
7 weeks the clerk shall certify the application if the clerk finds that
8 it is in proper form and, for an initiative petition, that the matter

9 (1) is not restricted by AS 29.28.060;

10 (2) includes only a single subject;

11 (3) relates to a legislative rather than to an administra-
12 tive matter; and

13 (4) would be enforceable as a matter of law.

14 (b) A decision by the clerk on an application for petition is
15 subject to judicial review.

16 Sec. 29.28.063. CONTENTS OF PETITION. (a) Within two weeks
17 after certification of an application for an initiative or referendum
18 petition, a petition shall be prepared by the municipal clerk. Each
19 copy of the petition shall contain

20 (1) a summary of the ordinance or resolution to be initi-
21 ated or the ordinance or resolution to be referred;

22 (2) the complete ordinance or resolution sought to be ini-
23 tiated or referred as submitted by the sponsors;

24 (3) the date on which the petition is issued by the clerk;

25 (4) notice that signatures must be secured within 60 days
26 after the date the petition is issued;

27 (5) spaces for each signature, the printed name of each
28 signer, the date each signature is affixed, and the residence and
29 mailing addresses of each signer;

1 (6) a statement, with space for the sponsor's sworn signa-
2 ture and date of signing, that the sponsor personally circulated the
3 petition, that all signatures were affixed in the presence of the
4 sponsor, and that the sponsor believes the signatures to be those of
5 the persons whose names they purport to be; and

6 (7) space for indicating the total number of signatures on
7 the petition.

8 (b) If a petition consists of more than one page, each page
9 shall contain the summary of the ordinance or resolution to be initi-
10 ated or the ordinance or resolution to be referred.

11 (c) Copies of the petition shall be provided to each sponsor by
12 the clerk.

13 * Sec. 7. AS 29.28.070 is amended to read:

14 Sec. 29.28.070. SIGNATURE REQUIREMENTS [REQUIRED SIGNATURES].

15 (a) The [NECESSARY] signatures on an initiative or referendum [A]
16 petition shall be secured within 60 [90] days after the clerk issues
17 [FROM THE DATE OF THE FIRST CIRCULATION OF] the petition. The state-
18 ment provided under AS 29.28.063(a)(6) shall be signed and dated by
19 the sponsor. The petition shall be signed in ink or indelible pencil.

20 (b) Every petition for either the initiative or referendum in
21 the government of a municipality shall be signed by a number of
22 [QUALIFIED] voters residing within the territorial limits of the
23 municipality, or, if the act sought to be initiated or referred per-
24 tains exclusively to the area outside cities or to a service area, by
25 a number of [QUALIFIED] voters residing within the area outside cities
26 or within the service area. The clerk shall determine the number of
27 signatures required on a petition and inform each sponsor. A petition
28 shall be signed by a number of voters based on the number of votes
29 cast at the last regular election held before the date the petition

1 was issued equal to 25 percent of the votes cast in the area concerned
2 [, AS THE CASE MAY BE, EQUAL TO THE FOLLOWING PER CENT OF THE TOTAL
3 NUMBER OF VOTES CAST AT THE LAST GENERAL ELECTION IN THE CITY OR
4 BOROUGH OR BOROUGH AREA CONCERNED, OR SPECIAL ELECTION CALLED FOR THE
5 PURPOSE OF ELECTING CITY OR BOROUGH OFFICERS:

6 (1) 25 PER CENT, WHEN A CITY OR BOROUGH HAS FEWER THAN
7 7,500 PERSONS, OR

8 (2) 15 PER CENT, WHEN A CITY OR BOROUGH HAS 7,500 PERSONS
9 OR MORE].

10 (c) When signing a petition each voter shall write or print
11 after the signature the date of signing the petition and the voter's
12 resident address.

13 (d) Illegible signatures shall be rejected by the clerk unless
14 accompanied by a legible printed name. Signatures not accompanied by
15 a legible residence address shall be rejected [MAY BE REJECTED BY THE
16 MUNICIPAL CLERK].

17 (e) A petition signer may withdraw the signer's signature upon
18 written application to the clerk before certification of the petition
19 [WITHIN SEVEN DAYS AFTER THE PETITION HAS BEEN FILED WITH THE CLERK].

20 * Sec. 8. AS 29.28.073 is repealed and reenacted to read:

21 Sec. 29.28.073. SUFFICIENCY OF PETITION. (a) All copies of an
22 initiative or referendum petition shall be assembled and filed as a
23 single instrument. Within 10 days after the date the petition is
24 filed, the municipal clerk shall

25 (1) certify on the petition whether it is sufficient; and

26 (2) if the petition is insufficient, identify the insuffi-
27 ciency and notify the sponsors at the address provided under AS 29.-
28 28.061(a) by certified mail.

29 (b) A petition that is insufficient may be supplemented with

1 additional signatures obtained and filed within 10 days after the date
2 on which the petition is rejected.

3 (c) A petition that is insufficient shall be rejected and filed
4 as a public record unless it is supplemented under (b) of this sec-
5 tion. Within 10 days after a supplementary filing the clerk shall
6 recertify the petition. If it is still insufficient, the petition is
7 rejected and filed as a public record.

8 * Sec. 9. AS 29.28.075 is amended to read:

9 Sec. 29.28.075. PROTEST. If the municipal clerk certifies an
10 initiative or referendum application or [THE] petition is insuffi-
11 cient, a sponsor or signer of the application or petition may file a
12 written protest with the clerk [MUNICIPAL EXECUTIVE] within seven days
13 after the certification. The clerk [AND THE MUNICIPAL EXECUTIVE]
14 shall present the protest at the next regular meeting of [TO] the
15 assembly or council which shall hear and decide the protest.

16 * Sec. 10. AS 29.28.077 is amended to read:

17 Sec. 29.28.077. NEW PETITION. Failure to secure sufficient
18 signatures does not preclude the filing of a new application for an
19 initiative or referendum petition. However, a new application for a
20 petition on substantially the same matter may not be filed sooner than
21 180 days [SIX MONTHS] after the date a petition is rejected as
22 insufficient.

23 * Sec. 11. AS 29.28.080 is repealed and reenacted to read:

24 Sec. 29.28.080. INITIATIVE ELECTION. (a) Unless substantially
25 the same measure is adopted, when a petition seeks an initiative vote
26 the clerk shall submit the matter to the voters at the next regular
27 election occurring no sooner than 45 days after certification of the
28 petition. If no regular election occurs within 75 days after the
29 certification of a petition, the assembly or council shall hold a

1 special election within 75 days, but not sooner than 45 days after
2 certification.

3 (b) If the assembly or council adopts substantially the same
4 measure, the petition is void and the matter initiated may not be
5 placed before the voters.

6 (c) The ordinance or resolution initiated shall be published in
7 full in the notice of the election, but may be summarized on the
8 ballot to indicate clearly the proposal submitted.

9 (d) If a majority vote favors the ordinance or resolution, it
10 becomes effective upon certification of the election, unless a diff-
11 erent effective date is provided in the ordinance or resolution.

12 * Sec. 12. AS 29.28.090 is repealed and reenacted to read:

13 Sec. 29.28.090. REFERENDUM ELECTION. (a) Unless the ordinance
14 or resolution is repealed, when a petition seeks a referendum vote the
15 clerk shall submit the matter to the voters at the next election
16 occurring no sooner than 45 days after certification of the petition.
17 If no election occurs within 75 days of certification of a petition,
18 the assembly or council shall hold a special election within 75 days,
19 but not sooner than 45 days after certification.

20 (b) If a petition is certified before the effective date of the
21 matter referred, the ordinance or resolution against which the peti-
22 tion is filed shall be suspended pending the referendum vote. During
23 the period of suspension, the assembly or council may not enact an
24 ordinance or resolution substantially similar to the suspended
25 measure.

26 (c) If the assembly or council repeals the ordinance or resolu-
27 tion before the referendum election, the petition is void and the
28 matter referred shall not be placed before the voters.

29 (d) If a majority vote favors the repeal of the matter referred,

1 it is repealed. Otherwise, the matter referred remains in effect or,
2 if it has been suspended, becomes effective on certification of the
3 election.

4 * Sec. 13. AS 29.28.110 is repealed and reenacted to read:

5 Sec. 29.28.110. EFFECT. (a) An ordinance or resolution may not
6 be repealed or amended within one year after its effective date if
7 adopted in an initiative election or if adopted after a petition that
8 contains substantially the same measure has been filed.

9 (b) If an ordinance or resolution is repealed in a referendum
10 election or by the assembly or council after a petition that contains
11 substantially the same measure has been filed, substantially similar
12 legislation may not be enacted for a period of one year.

13 (c) If an initiative or referendum measure fails to receive
14 voter approval, a new petition application for substantially the same
15 measure may not be filed sooner than 180 days after the election
16 results are certified.

17 * Sec. 14. AS 29.28.130 is amended to read:

18 Sec. 29.28.130. RECALL. An [ELECTED] official who is elected
19 or appointed to an elective municipal office [OF A HOME RULE OR
20 GENERAL LAW MUNICIPALITY] may be recalled by the voters after the
21 official has served the first 120 days of the term for which elected
22 or appointed [SIX MONTHS IN OFFICE].

23 * Sec. 15. AS 29.28.140 is amended to read:

24 Sec. 29.28.140. GROUNDS. Grounds for recall are misconduct in
25 office, incompetence, or failure to perform prescribed duties during
26 the term of office the official is presently serving. An official may
27 not be recalled for performance of or failure to perform a
28 discretionary act.

29 * Sec. 16. AS 29.28.140 is amended by adding a new subsection to read:

1 (b) For purposes of this section

2 (1) "Failure to perform prescribed duties" means the wilful
3 neglect or failure to perform faithfully a duty imposed by statute;

4 (2) "incompetence" means mental or physical incapacity to
5 perform the duties of office for a continuous period of at least 60
6 days; and

7 (3) "misconduct in office" means an unlawful act committed
8 wilfully.

9 * Sec. 17. AS 29.28 is amended by adding new sections to read:

10 Sec. 29.28.144. APPLICATION FOR RECALL PETITION. (a) An appli-
11 cation for a recall petition shall be filed with the municipal clerk
12 and shall contain

13 (1) the signatures and residence addresses of at least 10
14 municipal voters who will sponsor the petition;

15 (2) the address to which all correspondence relating to the
16 petition may be sent;

17 (3) a statement in 200 words or less of the grounds for
18 recall stated with particularity.

19 (b) An additional sponsor may be added at any time before the
20 petition is filed by submitting the name of the sponsor to the clerk.

21 (c) Each sponsor shall certify that the sponsor believes the
22 grounds for recall stated in the application are true. Knowingly
23 making a false statement on an application is a class A misdemeanor.

24 (d) The clerk shall review an application for a recall petition
25 and accept only those grounds that meet the requirements of AS 29.28.-
26 140. The clerk shall immediately notify the sponsors by certified
27 mail at the address provided under (a)(2) of this section of any
28 grounds for recall in the application that are rejected and the
29 reasons for the rejection.

1 Sec. 29.28.146. REBUTTAL STATEMENTS. Upon receipt of an appli-
2 cation for recall petition that meets the requirements of AS 29.28.-
3 144, the clerk shall send by certified mail a copy of the application
4 to the official sought to be recalled with a notice that the official
5 may submit to the clerk a rebuttal statement of 200 words or less
6 within 10 days after receipt of the application.

7 * Sec. 18. AS 29.28.150 is repealed and reenacted to read:

8 Sec. 29.28.150. RECALL PETITION. (a) After the period during
9 which a rebuttal statement may be submitted has elapsed, the clerk
10 shall prepare a recall petition. All copies of the petition shall
11 contain

12 (1) the name of the official sought to be recalled;

13 (2) the statement of the grounds for recall as set out in
14 the application for the petition;

15 (3) a rebuttal statement if one has been submitted under
16 AS 29.28.146;

17 (4) the date the petition is issued by the clerk;

18 (5) notice that signatures must be secured within 60 days
19 after the date the petition is issued;

20 (6) spaces for each signature, the printed name of each
21 signer, the date of each signature, and the residence and mailing
22 addresses of each signer;

23 (7) a statement, with space for the sponsor's sworn signa-
24 ture and date of signing, that the sponsor personally circulated the
25 petition, that all signatures were affixed in the presence of the
26 sponsor, and that the sponsor believes the signatures to be those of
27 the persons whose names they purport to be; and

28 (8) space for indicating the number of signatures on the
29 petition.

1 (b) Copies of the petition shall be provided to each sponsor by
2 the clerk.

3 * Sec. 19. AS 29.28 is amended by adding a new section to read:

4 Sec. 29.28.155. SIGNATURE REQUIREMENTS. (a) The signatures on
5 a recall petition shall be secured within 60 days after the date the
6 clerk issues the petition. The statement provided under AS 29.28.-
7 150(a)(7) shall be completed and signed by the sponsor. Signatures
8 shall be in ink or indelible pencil.

9 (b) The clerk shall determine the number of signatures required
10 on a petition and inform each sponsor. If a petition seeks to recall
11 an official who represents the municipality at large, the petition
12 shall be signed by a number of voters equal to 25 percent of the
13 number of votes cast at the last regular election held before the date
14 the petition was issued. If a petition seeks to recall an official
15 who represents a district, the petition shall be signed by a number of
16 the voters residing in the district equal to 25 percent of the number
17 of votes cast in the district at the last regular election held before
18 the date the petition was issued.

19 (c) Illegible signatures shall be rejected by the clerk unless
20 accompanied by a legible printed name. Signatures not accompanied by
21 a legible residence address shall be rejected.

22 (d) A petition signer may withdraw the signer's signature upon
23 written application to the clerk before certification of the petition.

24 * Sec. 20. AS 29.28.160 is repealed and reenacted to read:

25 Sec. 29.28.160. SUFFICIENCY OF PETITION. (a) The copies of a
26 recall petition shall be assembled and filed as a single instrument.
27 A petition may not be filed within 180 days before the end of the term
28 of office of the official sought to be recalled. Within 10 days after
29 the date a petition is filed, the municipal clerk shall

1 (1) certify on the petition whether it is sufficient; and
2 (2) if the petition is insufficient, identify the insuffi-
3 ciency and notify the sponsors at the address provided under AS 29.-
4 28.144(a)(2) by certified mail.

5 (b) A petition that is insufficient may be supplemented with
6 additional signatures obtained and filed within 10 days after the date
7 on which the petition is rejected if the supplementary petition is
8 filed more than 180 days before the end of the term of office of the
9 official sought to be recalled.

10 (c) A petition that is insufficient shall be rejected and filed
11 as a public record unless it is supplemented under (b) of this sec-
12 tion. Within 10 days after the supplementary filing the clerk shall
13 recertify the petition. If it is still insufficient, the petition is
14 rejected and filed as a public record.

15 * Sec. 21. AS 29.28.180 is repealed and reenacted to read:

16 Sec. 29.28.180. NEW RECALL PETITION APPLICATION. A new applica-
17 tion for a petition to recall the same official may not be filed
18 sooner than 180 days after a petition is rejected as insufficient.

19 * Sec. 22. AS 29.28.190 is amended to read:

20 Sec. 29.28.190. SUBMISSION. If a recall petition is sufficient,
21 the clerk shall [IMMEDIATELY] submit it to the assembly or council at
22 the next regular meeting.

23 * Sec. 23. AS 29.28.200 is amended to read:

24 Sec. 29.28.200. ELECTION. (a) If a regular election occurs
25 within 75 but not sooner than 45 days after [OF THE] submission of the
26 petition to the assembly or council, the assembly or council shall
27 submit the recall at that election.

28 (b) If no regular election occurs [WILL OCCUR] within 75 days,
29 the assembly or council shall hold a special election on the recall

1 (b) If a member of the school board is recalled, the office of
2 that member is filled in accordance with AS 14.12.070. If all members
3 are recalled from a school board, the assembly or council shall ap-
4 point qualified voters to fill the vacancies until the next regular
5 election.

6 (c) A person appointed under (a) or (b) of this section serves
7 until a successor is elected and takes office.

8 (d) If an official other than a member of the assembly or coun-
9 cil or school board is recalled, a successor shall be elected to fill
10 the unexpired portion of the term. The election shall be held not
11 more than 60 days after the date the recall election is certified,
12 except that if a regular election occurs within 75 days after certi-
13 fication the successor shall be chosen at that election.

14 (e) Nominations for a successor may be filed until seven days
15 before the last date on which a first notice of the election must be
16 given. Nominations may not be filed before the certification of the
17 recall election.

18 Sec. 29.28.246. APPEAL. (a) A person aggrieved by the filing
19 of a recall petition or an application for a petition or by the fail-
20 ure of an elected official to perform duties involving a recall may
21 file an action in the superior court. The court may

22 (1) consider the statutory sufficiency or specificity of
23 the grounds for recall;

24 (2) issue an injunction to compel or prevent the perfor-
25 mance of an act relating to the recall;

26 (3) determine whether the stated grounds for recall are
27 true; the person challenging the truthfulness of the grounds is re-
28 quired to prove their falsity by a preponderance of the evidence.

29 (b) An action seeking relief under (a)(1) or (3) of this section

1 question within 75 days but not sooner than 45 days after a petition
2 is submitted to the assembly or council [OF SUBMISSION].

3 (c) If a vacancy occurs in the office after a sufficient recall
4 petition is filed with the clerk, the recall question [PETITION] shall
5 not be submitted to the voters. An official who resigns after a suffi-
6 cient recall petition is filed naming that official may not be ap-
7 pointed to the same office.

8 * Sec. 24. AS 29.28.210 is amended to read:

9 Sec. 29.28.210. FORM OF RECALL BALLOTS. A recall ballot shall
10 contain [CONTAINS:]

11 (1) the grounds as stated in the recall petition;

12 (2) a [THE OFFICER'S] statement by the official named on
13 the recall petition of 200 words or less, if the statement is filed
14 with the clerk in accordance with AS 29.28.146 [FOR PUBLICATION AND
15 PUBLIC INSPECTION WITHIN 20 DAYS BEFORE THE ELECTION];

16 (3) the following question: "Shall (name of person) be
17 recalled from the office of (name of office)? Yes [] No []".

18 * Sec. 25. AS 29.28.240 is repealed and reenacted to read:

19 Sec. 29.28.240. EFFECT. (a) If a majority vote favors recall,
20 the office becomes vacant upon certification of the recall election.

21 (b) If an official is not recalled at the election, an applica-
22 tion for a petition to recall the same official may not be filed
23 sooner than 180 days after the election.

24 * Sec. 26. AS 29.28 is amended by adding new sections to read:

25 Sec. 29.28.242. SUCCESSORS. (a) If an official is recalled
26 from the assembly or council, the office of that official is filled in
27 accordance with AS 29.23.080 or 29.23.280. If all members of the
28 assembly or council are recalled, the governor shall appoint qualified
29 voters to fill the vacancies until the next regular election.

1 (b) If a member of the school board is recalled, the office of
2 that member is filled in accordance with AS 14.12.070. If all members
3 are recalled from a school board, the assembly or council shall ap-
4 point qualified voters to fill the vacancies until the next regular
5 election.

6 (c) A person appointed under (a) or (b) of this section serves
7 until a successor is elected and takes office.

8 (d) If an official other than a member of the assembly or coun-
9 cil or school board is recalled, a successor shall be elected to fill
10 the unexpired portion of the term. The election shall be held not
11 more than 60 days after the date the recall election is certified,
12 except that if a regular election occurs within 75 days after certi-
13 fication the successor shall be chosen at that election.

14 (e) Nominations for a successor may be filed until seven days
15 before the last date on which a first notice of the election must be
16 given. Nominations may not be filed before the certification of the
17 recall election.

18 Sec. 29.28.246. APPEAL. (a) A person aggrieved by the filing
19 of a recall petition or an application for a petition or by the fail-
20 ure of an elected official to perform duties involving a recall may
21 file an action in the superior court. The court may

22 (1) consider the statutory sufficiency or specificity of
23 the grounds for recall;

24 (2) issue an injunction to compel or prevent the perfor-
25 mance of an act relating to the recall;

26 (3) determine whether the stated grounds for recall are
27 true; the person challenging the truthfulness of the grounds is re-
28 quired to prove their falsity by a preponderance of the evidence.

29 (b) An action seeking relief under (a)(1) or (3) of this section

1 must be commenced within 15 days after the date the official sought to
2 be recalled received a copy of the application for a recall petition
3 from the clerk. An action seeking relief under (a)(3) of this section
4 must be commenced within 15 days after the act or failure to act
5 occurs.

6 * Sec. 27. AS 29.28.250 is repealed and reenacted to read:

7 Sec. 29.28.250. APPLICATION. AS 29.28.130 - 29.28.250 apply to
8 home rule and general law municipalities.

9 * Sec. 28. AS 29.78.010(19) is amended to read:

10 (19) "voter" means a United States citizen who is qualified
11 to vote in state elections, [AND] has been a resident of the munici-
12 pality for 30 days immediately preceding the election, [AND WHO] is
13 registered to vote in state elections and, if required by ordinance,
14 is registered in the precinct in which the person seeks to vote in
15 municipal elections, and is not disqualified under art. V of the state
16 constitution.

17 * Sec. 29. AS 29.78.010 is amended by adding a new paragraph to read:

18 (20) "residence address" means a physical location such as a
19 street name and number, subdivision name, highway name and mile
20 marker, or public road name, but does not include a post office box
21 number or rural route number.

22 * Sec. 30. AS 29.28.062, 29.28.065, 29.28.220, and 29.28.230 are re-
23 pealed.

STATE OF ALASKA

OFFICE OF THE GOVERNOR

DIVISION OF ELECTIONS
POUCH AF
JUNEAU, ALASKA 99811-9974

PHONE: (907) 586-6181

POSITION PAPER
HOUSE BILL NO. 270
March 19, 1985

The Division of Elections has reviewed House Bill No. 270, "An Act relating to municipal recalls, referendums, initiatives, and elections", and raises no major objections to its intent or content.

Most of the provisions of this bill relate specifically to incorporated communities over which the division has no jurisdiction, however, the division notes that the suggested amendments and additions concerning initiatives and referendum do make the provisions of Title 29 more consistent with Title 15 statutes governing statewide petitions and referendum procedures. The division supports the distinction outlined by the addition of AS 29.28.061 between the application for petition, and its actual circulation. The application process is helpful in assuring the sponsor, based on review by the clerk, and subject to judicial review, that the petition, is on its face, in proper form and sufficient to be favorably certified before energy is expended in securing the required number of signatures. Based on the division's experience in preparing and distributing petition booklets to sponsors supporting statewide petitions and referendum, we would suggest it advisable to require that for any type of petition, each sponsor's name be accompanied by that sponsor's signature to confirm their interest in circulating the petition. Periodically, sponsors' names have been submitted to the division who have not given their consent.

Pursuant to AS 14.08.071 and AS 14.08.081, the body of law governing the division's administration of Rural Education Attendance Area School Board elections is AS 29.28. Therefore, the amendments suggested by the bill regarding recall petitions are those that most greatly impact the division directly. Notwithstanding the reservations noted in this position paper, the division supports the provisions of this bill with regard to recall petitions.

The division favors the amendment to AS 29.28.130 clarifying the statutes by providing that elected as well as appointed officials are subject to recall. It is the division's

opinion that while this Section stipulates that an official may be recalled after the official has served the first 120 days of the term for which elected or appointed, it remains unclear as to the intended definition of "recalled" in this context. The statute is unclear as to whether the 120 day provision applies to the initiation of a petition, or to the actual election resulting from the successful certification of the circulated petition. Without clarification, there is some confusion as to whether or not a recall petition can be initiated before the official has served 120 days.

We support the changes suggested under AS 29.28.140 which specify that failure to perform prescribed duties as grounds for recall must relate to the term of office the official is presently serving. Confusion can occur when officials sought to be recalled have also served in previous terms.

As with the amendments included in this bill of initiatives and referendum, the division also supports the separation of the application process from actual circulation of recall petitions. These provisions again make the conditions involving local recalls more consistent with those in Title 15 impacting statewide recalls.

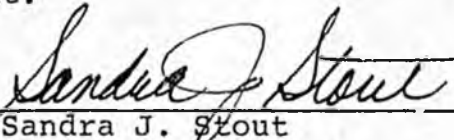
With regard to AS 29.28.150 (3), providing that a rebuttal statement shall be included in the prepared recall petition, we would express concern that the appearance of opposing points of view on the same petition may violate the basic assumptions inherent in the petition process. A petition is usually assumed to express a single point of view or command a subsequent action with which the sponsors and subscribers uniformly concur. By providing conflicting positions on the same issue, there may be some confusion as to which the signer subscribes. Under AS 29.28.210, provision is made that the rebuttal statement of the official will appear on the ballot which goes before the voters. The division suggests that this is a more appropriate placement of the rebuttal rather than on the sponsored petition. The division suggests that the deletion of the provision mandating that the ballot be made available 20 days before the election may be a detrimental deletion. While constricting timeframes frequently make it difficult to have the actual ballots published by that time, samples of the ballot language could be made available.

With regard to Sec. 29.28.242 providing for the appointment of successors to fill vacant seats resulting from the recall of an official, the division can offer no opinion as to the provision that the governor appoint municipal or other local officials in the event that entire councils or assemblies

are recalled. This amendment makes no reference to appointment authority under similar circumstances for school boards where there are no city councils or assemblies.

The division notes that the bill does not address the issue as to the recalled official's eligibility to run for re-election for the same office or for any other, and suggests that this clarification might be something the legislature may want to include in their review of this bill.

Finally, the division notes the amended definition of "voter" allowing municipalities by ordinance to require a voter to be registered in the precinct in which the persons seeks to vote in the municipal election. The division raises no objections to this amendment.



Sandra J. Stout
Director

Section 29.28.030 Voter Qualification

Page 1, Line 24 (a)(1) is a United States Citizen;

Line 26 (2) has been a resident of and registered to vote in the municipality for 30 days;

Line 28 (3) is 18 years of age or older

(4) Same

Page 2 Section 29.28.040 Runoff election.

Line 25 (c) Line 25 The ballot shall not contain

Page 6 Section 29.28.077 New Petition. Failure to

Line 19 secure sufficient signatures or contents does not...

page 10 Section 29.28.150 recall Petition

Line 22 (a)(6) Line 22 ... addresses of each signer, provided by the signer.

Change to 90th.

page 11 Section 29.28.155 Signature Requirements

Clerk's Recommendation
Line 13 (b) Line 13 number of votes cast at the last election in which the seat was filled or the official elected held before the date ...

Run-off Elections

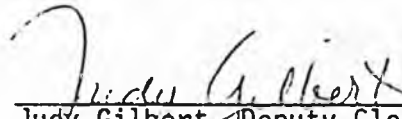
Line 17 of votes cast in the district at the last election in which the seat was filled or the official elected held before ...

page 14 Section 29.28.242 Successors

(i) Line 8 ~~Unless otherwise provided by ordinance~~ If the mayor of a municipality is recalled, successor shall be elected to fill

Add (f) Unless otherwise provided by ordinance, If an official other than the mayor, member of Assembly or Council or school board is recalled, a successor shall be appointed by the governing body to serve until the next regular election.

I, JUDY GILBERT, Deputy Clerk for the Matanuska-Susitna Borough do hereby certify that the following transcript of the decision rendered by Judge Souter, in Judge Souter's Court on May 23, 1984 regarding case #3PA-84-426 Cir, to be a true and accurate transcript to the best of my ability.



Judy Gilbert, Deputy Clerk
Matanuska-Susitna Borough
5-25-84
Date

SOUTER:

I am going to place on the record right now will constitute the decision in this case. Mr. Morrisett has reminded me that one of the questions that I must address is, what is the current standard of review by the court, of the municipal clerk's decision in this case. I am persuaded that the proper standard of review is that of substitution and judgement by the court. What are involved here in this case, are questions of law, questions of legal interpretation of the statutes, and on those sorts of questions, the courts are deemed to be at least as well qualified as the administrative body of the Borough to answer, therefore, I am utilizing the substitution of judgement standard of review. With respect to the contention Mr. Fossey has made that the recall election should not go forward because the allegations made in the second paragraph of this recall petition are as a matter of empirical fact, untrue. I have already indicated at the start of the hearing today that I regard that argument as being invalid. I think the underlying philosophy of the recall statutes is very clear. That is, that on questions of fact, such as that, it is the judgement of the voters, not the judgement of any particular court that counts, and therefore, I do not intend to examine the question of truth or falsity of the allegations themselves. I will, however, determine whether the allegations even if true, satisfy the requirements, the legal requirements of the statute. It is clear to me that on that question, the courts are permitted to exercise overall supervisorial review. Another of the issues raised by the plaintiff here, has to do with whether or not the Borough Clerk has an obligation to authenticate the signatures on the petition. It's tempting to say that the Clerk ought to do that, but I'm not sitting up here as some sort of super legislature, the courts are not supposed to be in the business of legislating, except to an interstitial extent. The legislature has not expressed itself on this particular question, and arguments can be made both ways.

I mean after all, it seems to me the great majority of signatures on a petition, are not going to be subject to any authentication questions to start with. The forged signature on a great majority of petitions, is likely to be a rarity. Surely every petition that has a couple of hundred signatures or so, is going to have a forged one, I wasn't born yesterday, but the odds on chances are, that the great majority of signatures are going to be authentic signatures. Now why am I even talking about that when there isn't any evidence on it? Well, because I think it bears on the question of public policy here. Who should have the burden? Should the burden be on the municipal clerk's office, which is typically understaffed and overworked? Or should it be on the, should the burden be on the party who is challenging the validity of the recall petition? I think in the absence of any statutory law, I would place it on the latter. I would place it on the party challenging the recall petition. To come forward and show that the unusual exists, that is, that forged signatures do appear in substantial or significant percentage on the recall petition. That is the way I construe the law in the absence of any specific statutory directive, and we don't have a specific statutory directive here. So I would not require the Borough Clerk's office to go down to the State Elections office, get the voter registrations, and check visually herself, the authentic, the authenticity of the signatures on the petition. I leave that burden on the challenger to the petition here, that would be Ms. Siry's burden. The next point raised by plaintiff in this case, has to do with the obvious fact that many of the residence, residence addresses that appear on the petition in this case, were put on there by someone other than the person who signed the petition, and it's obvious, all you have to do is look at it. The addresses in numerous instances, are obviously in a different hand than that which did the rest of the writing on the petition entries. And it's clear that some third party, probably with the best of intentions, without intending to defraud anybody, or to commit any legal violation of any sort, or to mislead anybody, somebody went and found out the addresses, or at least the last recorded addresses of the people signing the petition. Even though that was probably in the best of good faith, even though it was not intended to have any improper effect whatsoever, I find that to be a flat, clear violation of state law. The State statute clearly states that it is the signatory voter, who must place his or her residence address on the petition, not somebody else, and I think that's important. Because people do move around, this is a geographically mobile society that we live in. People live in Anchorage for a while, they move to the Valley, and they move on to Glennallen, or who knows where, and perhaps they don't stay very long either. But, in any

event, it's no guarantee that because you come across a recorded address for somebody that has signed a petition in one of the Boroughs of Alaska, that that person still is a residence voter at the time that signature is put on there. And the recall statutes do require that the signatories on a petition be resident in the municipality in which the recall is being attempted. So I do find it to be a, not only a clear violation of the state statute, but I find it to be an important, a consequential, a consequential, violation of state law and I would invalidate this petition and require an additional 10 days be allowed for additional signatures to be obtained. If that were the only defect which I find with this petition. It is not. Another point raised by plaintiff has to do with whether or not Sections 15.30.010 and following, that is to say Chapter 30 of Title 15 of the Alaska Statutes, apply to recall elections. Plaintiff contends that those provisions do apply to recall elections. Defendant contends that they do not. I'm going to address myself narrowly only to the specific points raised. It appears to me quite clear, that AS 15.30.010, especially part B of it, and AS 15.30.090, do apply to recall elections. I think that's plain language of those sections. But I think one has to be careful in articulating what extent they apply. It appears to me clear beyond any doubt, that AS 15.30.010 and 15.30.090 require that individuals and groups identify themselves on campaign circulars and those mass media presentations, whether they be newspaper, radio, or TV. It appears to me clear that once the campaigning begins on the question of whether the petition should or should not be passed by the voters, that the individuals and groups who are campaigning must identify themselves on their campaign literature. It is equally clear to me, however, that prior to that point in time, before the campaign begins on whether or not the recall petition should succeed, that the election code does not apply. Let me put it in a slightly different way. There are two stages to this process, stage one is getting enough signatures on the petition so the issue can be put to the voters. On that first stage is: getting enough signatures on a petition, it's clear to me that AS 15.30.010 and 15.30.090 do not apply. The people that are pushing the petition, trying to get enough signatures, do not have to identify themselves and t

they don't have to make public financial filings. But once the campaign begins to, to adopt or to, not to adopt, the recall petition, from that point on, the election code does apply. That's not an easy distinction to draw, and the legislature might well have gone the other way on it. But, it appears to me very clear that the legislature did not, the legislature speaks very clearly in the statutes as to the point at which the duty to disclose financially and from the stand

point of identity begins. And it has to do with whether or not a proposition is to be adopted, or a candidate is to be elected. It does not have to do with whether the issue should be or should not be put to the voters.

* Maybe the legislature ought to take another look at that. Because it's a difficult distinction, it's a muddy one, in practice. It's very easy really to talk about it. It's very easy to point to the distinction between the two processes that go on. The problem in practice is they tend to overlap, sure, they tend to overlap. Somebody may well campaign for adoption of initiative, referendum or recall petition, at the very same time that they're striving to get signatures on it. In fact, I would think typically, that's the situation. People get all inflamed, they start carrying around a petition, and at the time the petition is being brought around, they're actively campaigning in favor of it's passage. Well, I would think that to the extent that the issue might be reasonably arguable, the individuals and groups participating in that process should err on the side of disclosure because I think that is clearly the policy of the law. But if push comes to shove, I think that the law is clear, that they are required to disclose and to identify themselves, only with respect to the campaign with regard to whether or not any petition should or should not be enacted. Incidentally, part of the, part of the reasoning or part of the language, that really has a bearing on that also comes directly from Section 130, that's the closing section of Chapter 30 of Title 15. It defines contribution and expenditure right in that section, and when you examine the definition of contribution and expenditure, you run across verbiage that makes it very clear that it is only at the point at which the enactment of a proposition is a question, that the election code comes into effect. I think it might be worthwhile to just read one of those right now. Let's see we've got... If I've been saying 15.30, and I think I have, you should delete the 30 and insert 13. It's not 15.30, it's 15.13.010, 090, and 130, that I have been intending to refer to. Now for example, in AS 15.13.130, subparagraph 4, I'll quote, "Expenditure means a purchase or a transfer of money or anything of value, or promise or agreement to purchase, or transfer of money or anything of value, incurred or made for the purpose of, a) influencing the nomination of or election of a candidate, or of any individual who files for nomination at a later date and becomes a candidate." B and c I'm not going to read. D is the one that really applies, "Influencing the outcome of a ballot proposition or question." You see, it's the point at which the outcome of the proposition is what is being campaigned on, when the election code requirements of disclosure of identity and of financing and of contributions come into play. That's where I come from with that ruling, it's tied

directly to the language of the statute. And if you look elsewhere in the statute, you'll find that sort of indication very clear in other sections as well. Another of the points raised by the plaintiff here, deals with the proper interpretation of the word gen, of the words general election in section 29.28.170b of the Alaska Statutes. It is my view, and I do hold, that the legislature inadvertently used the words general election, instead of regular election, in that section. That that was inadvertent appears clear to me from the fact that the final verbiage in AS 20.28.170b permits special elections to be used as the basis for determining the number of voter signatures necessary to qualify a recall petition. Special elections of course, are either less general in their scope than regular elections, and it appears nonsensical to me, that the legislature could truly have intended to use only general elections on one end of the spectrum, or special elections at the other end of the spectrum. As a basis on which to determine on whether or not there is sufficient voter interest in a petition to justify putting it on a ballot. I know that Judge Schultz has held the other way, and I respect Judge Schultz, but I think he's wrong. I think he's clearly wrong. It seems to me, very clear that the legislature used the term general election in contradistinction to the term special election. And that it therefore, clearly intended regular election when it inadvertently used the term general election. The conclusion is bolstered by the fact that recall elections within boroughs deal with borough officers and borough issues, not state officers and state issues. And it seems clear that the voter basis for borough recall elections should deal with the number of voters who participated in borough elections, not statewide general elections. Accordingly, I would conclude that the Borough Clerk did use the proper election when she used the regular borough election of October, 1983 here. And again, I think the † legislature, if it's going to redo these recall statutes, ought to take a good hard look at that one, because I think it's rather obvious that if the exact words were used, you reach a nonsensical result. I really don't think they intended what the exact words say. Now then, the real issues, I think in this case, I haven't yet addressed. And that has to do with whether or not the petition allegations are sufficient to require this petition to go to the voters for them to express their approval or disapproval of the recall of the plaintiff. Mr. Morrisett, in typical fashion for him, I wish it were more typical for everyone else, has conceded on several points, and I think he really had to in good faith. He says that on the third of the allegations of the recall petition, that allegation does not constitute a proper allegation under state law. I appreciate the concession, even if you had not made the concession, Mr.

Morrissett, I would have held that way. The third allegation in the recall petition, alleges that the, that Mrs. Siry has not paid attention to, has not listened to her constituents. And that she has therefore, failed to perform her prescribed duties. Well, even if the allegations of the, of that part of the petition are true, and I'm not passing on the truth or falsity of it, but even if they were, it's absolutely clear that they would not constitute a failure by Mrs. Siry to perform her prescribed duties. A school board member does not have any statutory or any common law duty to talk to, or to listen to the people in the municipality. Of course, she might not get reelected, you know, that's really what it's all about in a democracy, if you, there's a real tension between whether you ought to be constantly taking a poll of your constituents, as Lyndon Johnson tried to get people to believe he was always doing, or whether you ought to utilize your own wisdom and discretion, whether that's in fact what the voters are electing you to do, and pass independent judgement on the public issues presented to you, as many people believe Lyndon Johnson did. Whether rightly or wrongly. He's a, he is a case in point on that because he certainly held himself out as constantly trying to run the government by consensus, and yet his administration saw the huge buildup of forces in Vietnam and the most unpopular war we've ever seen. In any event, the statutes on this are not terribly clear, but there is one statute that gives us some help. Judge Schultz cited it in his Bering Straits opinion, I think it's AS 14.08.111, dealing with regional school board duties, and I realize Mrs. Siry does not sit on a regional school board, but I looked for local school board duties, and I couldn't find them anywhere. But regional school board duties, if you look at them in 14.08.111, provide, I think, excellent guidance as to what a school board member's duties are. Well, you have to provide an educational program for each school child, you have to develop a philosophy of education principal and goal, you have to employ a chief school administrator, and teachers and so on. You have to establish salaries, you have to designate authorized employees to direct disbursement of school funds, you have to submit reports prescribed to all school districts, you have to provide for an annual audit, you have to provide for custodial services and maintenance, you have to establish procedures for the review and selection of text books and instructional materials and so on. It doesn't say anywhere in there you have to go around and talk to the people and listen to their views, it doesn't say that at all. And I think it doesn't need saying, because you're elected, if you don't listen to enough people or at least have them believe you are looking out for their interests, you won't be reelected. But that's no ground to be recalled. Once you're

elected, you're in office to perform prescribed duties. And what is alleged in the third paragraph of this recall petition does not allege failure to perform what truly amount to prescribed duties. And that allegation is, is clearly insufficient. Unfortunately, it's clearly very inflammatory, too. It's the very sort of thing, that if you take around to people to read, they're very apt to get inflamed, and not even pay attention to anything else in the petition and sign it just because of that. What it's doing is charging an elected representative of paying no heed to the electorate's desires. And that's something that's very inflammatory to people who cast votes in elections in democratic societies. So it's the sort of thing that does not qualify for as a basis for recall, but predictably, is such as to inflame people to sign the petition. The first allegation on the petition, I believe Mr. Morrisett has indicated, it could not stand alone as a sufficient ground for, for the recall petition. And I certainly agree. In the first place, assuming the truth of it, that in the spring of 1983 and again on July 25, 1983, that Ms. Siry approached parents in Wasilla to solicit written letters supporting the removal of Mr. Ray Carter from his position as principal from Iditarod an elementary school, does not allege any impropriety at all, none whatsoever. In fact, it's sort of interesting to compare the first allegation with the third one. Because the first one makes it sound as though Mrs. Siry is soliciting the views of the constituents whereas, the last says she doesn't do it. A certain tension, a certain inconsistency between the first and the third allegations in that respect. But in any event, the first allegation certainly cannot stand on it's own as an allegation of any misfeasance, nonfeasance, or incompetence on the part of Mrs. Siry. That leaves the middle one, the middle allegation. I think the middle allegation is legally sufficient. If it were the only allegation, or if it were not intermingled with what I consider to be clearly an inflammatory and disqualifying allegation, I would send this petition to the voters in the Matanuska Valley to vote whether or not to recall Mrs. Siry. It seems to me rather clear that the middle paragraph alleges incompetence. I mean, you could disagree with whether or not these things reached the point of seriousness, to constitute incompetence. I'm not saying they do, I'm not saying they don't, that's not for me to decide. That would be for the voters to decide. But they do allege, with sufficient specificity, in my view, to allow Mrs. Siry to identify what the issues are and to make her defense to the voters. Items of conduct which arguably, could constitute incompetency, they arguably could not constitute incompetency, too. I think they are within the area of fair public debate. And that's all that's required in order for the recall petition to be sent to the voters. However, it appears

clear to me that to send this petition to the voters to vote on, would violate the clear policy that underlies the recall statutes in this state. It seems obvious to me that the recall statutes require a specified percentage of voters to approve a recall petition on narrow statutory grounds, in order to insure that we don't just have re-elections being held again and again and again. Mrs. Siry, like any other elected official, is called upon from time to time to make unpopular decisions. In fact, on this one here if she'd have gone the other way, there would probably be a recall petition out from another group, to recall her because she did not vote to give Mr. Carter the heave-ho. This is an area that we have to be very careful about. We certainly don't want to discourage public officials, elected officials, from making those difficult decisions. You know, the United States has seen the Congress of this country for many years, refuse to face many, many of the divisive issues in the country. And the courts have increasingly had to take that over. That's unfortunate because many of those issues, indeed, should have been decided by elected representatives so that they could have received the approval or the disapproval of the electorate at the elections held every two or four years and we should not allow ourselves to begin using the recall petition device for the purpose of giving people the heave-ho just because they've taken a stand on a difficult public issue. Furthermore, we have to recognize that many people that are brought before the electorate on a recall petition win, and what happens is that a person gets subjected to a recall petition because they take a position on a difficult public issue, then they are put to the burden of either giving up their public office, or of, or of spending substantial campaign monies to keep the office. This is not the purpose of the recall statutes at all. The purpose is to weed people out of public office whose conduct falls within very narrowly defined standards of impropriety or insufficiency. And we want to be careful that the manner in which that is done, does not allow other improper factors to have any significant effect on the process. What we're looking at in this case, is a final paragraph in this petition that is not a proper allegation for, or not a proper basis for recall. And it's an inflammatory one, that is very apt to incite numerous people that wouldn't sign the petition for the other reasons asserted, to sign it just because of this one. And to allow therefore, for the recall election of a public official to take place, because a number of voters thought a new election should be held, even though the recall statute was not satisfied with respect to this third and final inflammatory allegation. I think it infests the whole process with illegitimacy, and for that reason, that if any part of this is inflammatory

and non-qualifying, it's clear to me that the entire petition must fail. And that the motion for the issuance of the injunction must be granted, is granted, the Borough may not hold it's election on this recall petition, the petition is non-qualifying. It does not comply with the law. This is regarded as the final decision in the case. I don't believe there are any other issues left to resolve. My comments have been intended to constitute a memorandum of decision, you need not prepare any formal document, Mr. Fossey, except a very briefly worded injunction, stating that for the reasons placed on the record in open court, on the afternoon of May 23, 1984, the Matanuska-Susitna Borough is enjoined from conducting a recall election on the petition to recall Karen Siry. And you may present your motion for costs and attorneys fees. I realize this is a matter of some public importance, I said that at the outset, and it is my intention that the injunction that I just announced will take effect immediately and that the time to appeal shall begin to run immediately also, even though it's not in writing yet. I will enter it nunc pro tunc when you bring it in, Mr. Fossey. So the time to appeal it starts to run now, Mr. Morrisett, I'm not doing that to put you under the gun, I'm doing it to help you so that you can move it on to the Supreme Court as quickly as possible, if you should wish to take it there. Is there anything further?

MORRISSETT: Just one clarification on your decision. If I understand. And the reason I'm concerned on this is because, regardless, we are, we have two other petitions which are not identical to this, and the wording of your ruling will, will be a determining on how those are treated. With regard to the second allegation, are you stating that if the third allegation were not there, but that the first allegation were there, there would not be an inflammatory statement, thereby the petition would go forward? With sufficient signatures?

SOUTER: That's what I intended to say, yes. It is the third allegation which disqualifies the petition. I did not address the question, and I would not address it, Mr. Morrisett, of what would happen if just the first and the second allegations were there.

MORRISSETT: That's I guess, is what I am asking you. Is whether or not if the third allegation were not there, and the first and the second were,...

SOUTER: I won't decide it because I, I mean, in my view, the inflammatoryness of the third allegation here, makes this a very clear case. With respect to the proposition that if part of the petition is bad, all of it must fail. It's not clear to me that the first allegation, although

it's not a qualified one, although it doesn't qualify under the statute, it's not clear to me that that clear fact, in the absence of inflammatoryness, which I don't see emanating from the first of these allegations, should disqualify the entire petition. And I'm reluctant to, you know, I would love to give the borough all the guidance possible, but I don't want to give it some guidance that's not worth anything. I think that issue needs to be argued by people in a setting that have the sort of stake in it that Ms. Siry had here. And she doesn't have a stake in that particular argument. I think the point is made here that the inflammatoryness and the non-qualifying aspect together of the third paragraph, that requires that this petition be thrown out. I simply don't feel comfortable in ruling on the other closely connected, but nevertheless different, question. Anything further?

MORRISSETT: No, thanks.

SOUTER: O.K., then I will be in recess.

Cross references. — For voter authority under a former, similar provision to require that voters preregister as a condition to voting in a borough election. 1965 Op. Att'y Gen., No. 9.

Opinions of attorney general. — A first or second class borough had no

Sec. 29.28.040. Majority elections. If in a municipal election no candidate receives in excess of 40 per cent of the votes cast for that office, the assembly or council shall hold a runoff election within two weeks from the date of certification of the election between the two candidates receiving the greatest number of votes for the office. Notice of a runoff election shall be published at least five days before the election. The assembly or council may by ordinance require a majority vote for election of officials. A runoff election or other means of obtaining a majority may be used. (§ 2 ch 118 SLA 1972)

Sec. 29.28.050. Election contest and appeal. (a) The assembly or council may provide by ordinance the time and procedure for the contest of an election.

(b) Unless otherwise provided by ordinance, an election may be contested only upon the filing, before or at the time of the first canvass of ballots by the assembly or council, by a person qualified to vote in the municipality of a written affidavit of the person specifying with particularity the grounds for the contest or invalidity of the election.

(c) Unless otherwise provided by ordinance, the assembly or council shall declare the election results at the first meeting to canvass the election and record the results in the minutes of that meeting.

(d) The contestant shall pay all costs and expenses incurred in a recount of an election demanded by the contestant if the recount fails to reverse any result of the election or the difference between the winning and a losing vote on the result contested is more than two per cent.

(e) A person may not appeal or seek judicial review of a city or borough election for any cause or reason unless the person is qualified to vote in the municipality, has exhausted the administrative remedies before the assembly or council and has commenced, within 10 days after the assembly or council has finally declared the election results, an action in the superior court in the judicial district in which the municipality is located. If an action under this subsection is not commenced within the 10-day period, the election and election results shall be conclusive, final and valid in all respects.

(f) Notwithstanding the provisions of (e) of this section, the expulsion of a member of a borough assembly under AS 29.23.060(c), of a member of a city council under AS 29.23.210(b), of a borough mayor under AS 29.23.130(f), or of a city mayor under AS 29.23.255 is final and is not subject to judicial review. (§ 2 ch 118 SLA 1972; am § 213 ch 100 SLA 1980)

statutes fixing term of office
 for removal without cause,
 17.
 public officer for misconduct
 us term, 42 ALR3d 691.
 retirement of public officer
 based on age, 81 ALR3d 811.

of all municipal bodies
 assembly and council
 public to be heard at regu-
 home rule and general

en to the public, 38 ALR3d

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law municipalities.

Opinions of attorney general. — A former, similar provision did not authorize a borough to provide, as a condition to

voting, a preregistration requirement. 1965 Op. Att'y Gen., No. 9.

NOTES TO DECISIONS

Legislative grant of power to regulate elections. — The legislature, by a former, similar provision, conferred on cities the power to make suitable provision for municipal and other elections. *United States v. Bowden*, 11 Alaska 503, 166 F.2d 701 (9th Cir. 1948).

Council can act by ordinance only. — Under a former, similar provision, the council could only provide for calling elec-

tions, appointing election officers, canvassing the returns, and declaring the result by ordinances, either general or special. *Bates v. Mayor & Council*, 1 Alaska 208 (1901).

And action of a mayor in calling an election without the sanction of ar.y ordinance is void. *Bates v. Mayor & Council*, 1 Alaska 208 (1901), decided under former, similar law.

Collateral references. — 25 Am. Jur. 2d, Elections § 1 et seq.
 29 C.J.S., Elections, § 1 et seq.

Sec. 29.28.015. Nominations. (a) The assembly or council shall provide by ordinance for nominations of elected officers by providing for declaration of candidacy, or petition requiring the signatures of not more than 10 voters, or both.

(b) A person may be nominated for and occupy more than one office, but a person may not serve simultaneously as borough mayor and as a member of the borough assembly or as mayor and as a member of the council of a first class city. (§ 2 ch 118 SLA 1972)

Opinions of attorney general. — The intention of a former, similar provision was to provide for the preparation of the ballot with the printed names of candidates. 1963 Op. Att'y Gen., No. 30.
 A former, similar provision did not

prohibit write-in votes and a qualified person who received a sufficient number of votes was elected whether his name was printed on the ballot or not. 1963 Op. Att'y Gen., No. 30.

Sec. 29.28.020. Election dates. (a) The date of a regular municipal election is the first Tuesday of October annually, or on a date of election or at an interval of years provided by ordinance.

(b) The assembly or council may call a special election upon at least 20 days notice. (§ 2 ch 118 SLA 1972)

Sec. 29.28.030. Voter qualification. A person may vote only if the person is a United States citizen who is qualified to vote in state elections and has been a resident of the municipality for 30 days immediately preceding the election and who is registered to vote in state elections and is not disqualified under art. V of the state constitution. Voter registration by the municipality may not be required. This section applies to home rule and general law municipalities. (§ 2 ch 118 SLA 1972)



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Signature of Camera Operator

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