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STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	3/22/85	1:30 pm
" "	3/26/85	1:30 pm

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 25, 1985

SUBJECT: Expenditure of program receipts and interest earned on University of Alaska investments (CSHB 241 (Judiciary))

TO: Representative M. Mike Miller
Chairman, House Judiciary Committee

FROM: Keith B. Levy ^{KBL-}
Legislative Counsel

You have requested a redraft of CSHB 241 (Judiciary) to resolve the constitutional problems raised in a memorandum dated March 25, 1985. In that memorandum I indicated that sections 1 and 5 of the bill may be in violation of the dedicated funds provision the State Constitution (Article IX, section 7). Enclosed you will find a draft which resolves the problem.

The concern expressed in the memorandum of March 25 is that sections 1 and 5 of CSHB 241 (Judiciary) appear to allow the university to expend program receipts and income earned on investments of the university without a legislative authorization. In the enclosed draft, language has been added to section 1 to make it clear that university receipts may be spent only "in accordance with the Executive Budget Act (AS 37.07)." Language has also been added to section 5 of the bill to make it clear that interest income may be deposited in the working capital reserve fund only if "the legislature has made a general appropriation of federal or other program receipts that exceeds the amounts appropriated specifically." The effect of both of these provisions is to require that funds held by the university be appropriated before they may be spent. Accordingly, the constitution is not violated because there is no dedication of funds.

If I may be of further assistance, please feel free to contact me.

KBL:lmb
L4/061

Enclosure

STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 25, 1985

SUBJECT: Dedication of program receipts and interest earned on University of Alaska investments (CSHB 241 (Judiciary))

TO: Representative M. Mike Miller
Chairman, House Judiciary Committee

FROM: Keith B. Levy ^{KB}
Legislative Counsel

You have asked whether a provision in CSHB 241 (Judiciary) prohibiting the University from investing in certain entities that do business with the Republic of South Africa violates the Foreign Commerce clause of the Constitution of the United States. The Foreign Commerce clause, Article I, section 8, clause 3, of the Federal Constitution provides that the United States Congress has the power to regulate commerce with foreign nations. This has been interpreted to be an exclusive power, meaning that the states may not regulate or put an unreasonable burden on foreign commerce. The provision in CSHB 241 (Judiciary) does not present a problem with respect to the Foreign Commerce clause because it does not restrict or regulate foreign commerce. It merely represents a policy decision by the state not to invest in business that supports the South African economy. Accordingly, the Foreign Commerce clause does not present a problem with respect to CSHB 241 (Judiciary).

The bill may, however, be in violation of the State Constitution. Section 1 of the bill allows the University of Alaska to "receive and spend" university receipts," presumably without an appropriation. Section 5 of the bill allows interest earned on University investments to be deposited directly into the University of Alaska working capital reserve fund without an appropriation from the legislature. These provisions may be in violation of the

prohibition against dedicated funds in Article IX, section 7 of the Constitution of the State of Alaska.

The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article [the Alaska Permanent Fund] or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

Thus, the State Constitution prohibits the dedication of certain state revenues to any special purpose except for three specific exceptions: the Alaska Permanent Fund, participation in federal programs, and funds grandfathered in at the time the constitution was adopted. It seems clear that the provisions in the bill requiring the dedication of interest income and allowing expenditure of program receipts do not fall into any of the exceptions expressly provided for in the dedicated funds clause.

Two questions are presented by the bill with respect to the dedicated funds clause. First, do interest income and program receipts constitute a "state tax or license" within the meaning of Article IX, section 7 of the State Constitution such that the dedicated funds clause applies at all? Second, does the expenditure of program receipts or placing interest income into the University of Alaska working capital reserve fund so that these funds may be used without an appropriation by the legislature amount to a dedication to a special purpose?

In a recent decision, the Supreme Court of Alaska had occasion to consider whether certain mandatory tax assessments to be paid directly to private aquaculture associations amounted to a "state tax or license" that would invoke the dedicated funds clause. State v. Alex, 646 P.2d 203 (Alaska 1982). Concluding that the assessment did come within the ambit of the dedicated funds provision, the court cited 1975 Alaska Op. Atty. Gen. No. 9 with approval:

. . . it is our conclusion that the dedication of any source of public revenue: tax, license, rental, sale, bonus-royalty, royalty, or whatever is limited by the state Constitution to those existing when the

Constitution was ratified or required for participation in federal programs. (Emphasis added.)

Alex, supra, at 210. This language indicates that the Supreme Court takes a very broad view of the kinds of revenue that amount to a state tax or license within the meaning of the dedicated funds provision. Program receipts seem to clearly fall within the ambit of the dedicated funds provision under the Alex decision. Interest income placed in a revolving fund is probably also subject to the provision, although it is of a slightly different character.

The Attorney General has released an opinion providing a thorough discussion of the dedicated funds clause. 1982 Alaska Op. Atty. Gen. (November 30). That opinion specifically discusses the applicability of the dedicated funds clause to interest income that is returned to a revolving fund. The opinion acknowledges that an argument could be made that placing interest generated by a fund back into the fund without an appropriation by the legislature does not violate the purpose of the dedicated funds clause. However, the Attorney General reached the following conclusion:

A difficulty that arises from the view that the dedicated funds prohibition is not applicable to interest or investment income on separate funds is that it permits steadily increasingly amounts of money to be received and used by state departments and agencies without legislative control through the annual budget process. This is precisely the problem posed by the dedication of revenue sources which the drafters [of the State Constitution] sought to avoid. For this reason, while we are not certain about the likely outcome, we doubt that a blanket exception for derivative income would be approved by the courts.

1982 Alaska Op. Atty. Gen., at 16 (November 30). Thus, in light of the significant amounts of interest generated by various state funds and the broad view of the dedicated funds clause taken by the Supreme Court, the dedication of interest income to the University of Alaska working capital reserve fund is at least open to constitutional attack.

Moreover, the bill may present an even greater constitutional problem than that discussed in the Attorney General's opinion. This is because the Attorney General's opinion

Representative M. Mike Miller
March 25, 1985
Page 4

considered only the dedication of the interest earned from a particular fund to that fund itself. Section 5 of the bill differs, however, in that it would dedicate the interest earned on all investments made by the University of Alaska to the working capital reserve fund. Thus, the relationship between the fund and the interest income which the Attorney General considered significant is lacking.

In conclusion, while the applicability of the dedicated funds clause to interest income remains undecided, there are strong indications that such a dedication of funds may be unconstitutional. The dedication of program receipts is almost certainly unconstitutional. This problem could be avoided by including a provision in the annual budget bill appropriating all program receipts and interest income earned on funds held by the University of Alaska to the working capital reserve fund. This would not guarantee that the money would be appropriated to the fund in future years, but it would provide that money to the university on an annual basis and thereby circumvent the constitutional problem.

KBL:ojb
J13/022

Amendment

To: HB 241

By: Clocksin

On p. 2, line 18, after "surplus"
insert

"except that no funds may be invested
in corporations or other business
firms that do business in or with
the Republic of South Africa until the
Board of Regents determines that the
oppression of its black citizens by the
Republic of South Africa has ended."

AMENDMENT

TO: HB 241

Offered in the House
Judiciary Committee
By: Gruenberg

Page 2, line 20, between "the excess may be expended" and "in",
insert "only".

AMENDMENT

TO: HB 241

Offered in the House
Judiciary Committee
By: Gruenberg

Page 3, line 25, between "Administration" and "by" insert, "and the legislature".



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill clarifying and codifying fiscal procedures for the University of Alaska.

This bill will settle three university fiscal issues:

- 1) administration of university receipts;
- 2) university authority to invest money and spend the interest earned on it; and
- 3) reallocation of state appropriations to the university.

1. Administration of university receipts:

Because it is a public, higher-education corporation established under the state constitution, the University of Alaska has several unique sources of revenue. Unlike the heads of other state agencies, members of the Board of Regents are trustees; they administer university money and property, and, while serving in that capacity, are accountable for all university receipts.

The university receives money from a variety of sources. In addition to state general fund appropriations, the university generates income from student tuition and fees; auxiliary enterprises; gifts, grants, and contracts; federal educational and research projects; sales and rentals of university educational properties; sales, rentals, and services of educational activities; and recovery of indirect costs of university activities.

Section 1 of the bill clarifies the Board of Regents' ability to receive and spend these sources of income. Section 2 requires the university president to establish procedures for receipt, expenditure, and reporting of university

receipts. Section 5 defines "university receipts." Section 8 allows the university to carry forward unexpended balances of these university receipts.

2. Investment of university money:

Unlike other state agencies, the university maintains a separate treasury, drawing cash from the state treasury in monthly installments. The university deposits money in interest-bearing accounts pending payment of payrolls and other obligations. While the university has received annual budget authority to receive and spend the interest earned, the attorney general has opined that the university has no statutory authority to do so.

The university and my administration agreed to clarify this statutory authority, using four fundamental principles:

- 1) the university should be encouraged to prudently manage its resources;
- 2) university cash balances should not sit idle, but should be temporarily deposited in interest-bearing accounts;
- 3) the university should be strictly accountable for money entrusted to it; and
- 4) there should be clear statutory rules for university investment.

Section 3 of the bill authorizes the university to invest money it receives, regardless of the source. Section 4 of the bill requires the university to invest certain surplus money, and restricts that investment to the same instruments provided for state general fund surplus under AS 37.10.070. If appropriated by the legislature, or approved under the revised program procedures of AS 37.07.080(h), the university may spend earnings from these investments.

Last year the legislature attempted to appropriate prior years' interest income to the University of Alaska working capital reserve fund (AS 14.40.296). I vetoed that appropriation because the statutory authority for both the receipt of interest income and its deposit to the working capital reserve fund were unclear. Amendments to the working capital reserve fund contained in sec. 6 of this bill would take care of last year's problem.

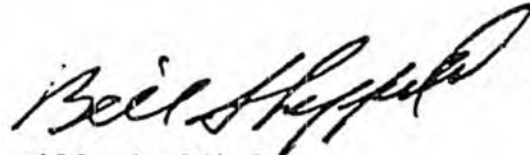
3. Reallocation of state appropriations:

AS 37.07.080(e) establishes procedures for the division of budget review, in the Office of the Governor, to reallocate

money authorized by legislative appropriations. In past years, the legislature has authorized the Office of the Governor to establish procedures for reallocations within university appropriations. Section 7 of this bill gives the division of budget review and the Board of Regents the authority to establish procedures for reallocation within appropriations. Transfers between appropriations would continue to require authorization by law.

The University of Alaska is working closely with my administration on budget and financial matters. This bill settles several issues that have damaged university-state relations in past years. Therefore, I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Sheffield".

Bill Sheffield
Governor

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: AB 241
 Title: "An Act relating to the fiscal procedures ..."
 Sponsor: Rules/Governor
 Requestor: _____
 Date of Request: 2/22/85

P9102

FISCAL DETAIL

Agency Affected: University of Alaska
 Program Category Affected: _____
 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		0				
200 TRAVEL		0				
300 CONTRACTUAL		0				
400 SUPPLIES		0				
500 EQUIPMENT		0				
600 LAND & STRUCTURES		0				
700 GRANTS, CLAIMS		0				
800 MISCELLANEOUS		0				
TOTAL OPERATING		0				

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE		0				
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FUNDING: (Thousands of Dollars)

GENERAL FUND		0				
FEDERAL FUNDS		0				
OTHER		0				
TOTAL		0				

POSITIONS:

FULL-TIME		N/A				
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary See Attached

Prepared By: Sherman Carter, Executive Vice President Phone: 474-7593
 Division: University of Alaska Date: _____

Approved by Commissioner: Sherman Carter Date: 2/21/85
 Agency: _____

- Distribution (by Agency preparing fiscal note):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)

7/1/84

STATEMENT OF FISCAL IMPACT

PS 282

Agency Comments

No additional funding will be required as a result of this legislation. This bill codifies present investment and operating procedures and provides additional flexibility in fiscal planning which will allow the University of Alaska to better cope with adverse financial conditions during periods of revenue instability.

It will permit increased efficiency; and, by providing full disclosure will not decrease the governor's or legislature's control over the university. The Board of Regents endorsed this legislation as indicated in the following resolution: "The Board of Regents reaffirms its endorsement of the legislation to clarify fiscal procedures of the University of Alaska and urges adoption of a bill to do this to be introduced by the governor."

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 241 (Judiciary)

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 fiscal procedures of the Univer-
7 sity of Alaska; and providing for an effective date."

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

9 * Section 1. AS 14.40.170(b) is amended to read:

10 (b) The Board of Regents may

11 (1) adopt reasonable rules, orders, and plans with reason-
12 able penalties for the good government of the university and for the
13 regulation of the Board of Regents;

14 (2) determine and regulate the course of instruction in the
15 university with the advice of the president;

16 (3) set student tuition and fees;

17 (4) receive and spend university receipts in accordance
18 with the Executive Budget Act (AS 37.07).

19 * Sec. 2. AS 14.40.210 is amended to read:

20 Sec. 14.40.210. POWERS OF PRESIDENT OF THE UNIVERSITY. The
21 president of the University of Alaska may

22 (1) give general direction to the work of the University of
23 Alaska in all its departments subject to the approval of the Board of
24 Regents;[.]

25 (2) appoint the deans, heads of departments, professors,
26 assistants, instructors, tutors, and other officers of the University
27 of Alaska to the positions established by the Board of Regents;

28 (3) establish procedures for receipt, expenditure, and
29 fiscal year reporting of university receipts.

1 * Sec. 3. AS 14.40.250 is amended to read:

2 Sec. 14.40.250. REGENTS TO ACT AS TRUSTEES AND ADMINISTER MONEY
3 OR PROPERTY [FROM SOURCES OTHER THAN LEGISLATURE OR FEDERAL APPROPRIA-
4 TION]. The Board of Regents may receive, manage, and invest money or
5 other real, personal, or mixed property [IN ANY MANNER RECEIVED FROM
6 SOURCES OTHER THAN THE STATE LEGISLATURE OR FEDERAL APPROPRIATION] for
7 the purpose of the University of Alaska, its improvement or adornment,
8 or the aid or advantage of students or faculty, and, in general, may
9 act as trustee on behalf of the University of Alaska for any of these
10 purposes. The [HOWEVER, THE] regents shall make a written report to
11 the legislature, in accordance with AS 14.40.190, as to the adminis-
12 tration and disposition of money [FUNDS] received under this section.

13 * Sec. 4. AS 14.40 is amended by adding a new section to read:

14 Sec. 14.40.255. INVESTMENT OF SURPLUS MONEY. If the Board of
15 Regents determines that there is a surplus of money, received in the
16 form of state and federal appropriations, above the amount sufficient
17 to meet current and projected cash expenditure needs of the universi-
18 ty, the surplus must be invested in the same instruments set out in
19 AS 37.10.070 approved for investment of state treasury surplus, except
20 that funds may not be invested in a corporation or other business firm
21 that does business in or with the Republic of South Africa until the
22 Board of Regents determines that oppression of its black citizens by
23 the Republic of South Africa has ended. If interest income earned on
24 investments made under this section exceeds appropriations derived
25 from that source, the excess may be expended only in accordance with
26 the procedures set out in AS 37.07.080(h).

27 * Sec. 5. AS 14.40.296(a) is amended to read:

28 (a) There is established in the treasury of the University of
29 Alaska the University of Alaska working capital reserve fund. The

1 fund consists of money appropriated by the legislature. If the
2 legislature has made a general appropriation of federal or other
3 program receipts that exceeds the amounts appropriated specifically,
4 the university may deposit interest income earned from investments
5 authorized by AS 14.40.255 in the fund in accordance with the
6 procedures set out in AS 37.07.080(h). The working capital reserve
7 fund is established for the purpose of providing nonlapsing current
8 working capital for the University of Alaska and is not available for
9 appropriation by the Board of Regents.

10 * Sec. 6. AS 14.40 is amended by adding a new section to read:

11 Sec. 14.40.325. REALLOCATION OF STATE APPROPRIATIONS. Notwith-
12 standing the provisions of AS 37.07.080(e), each appropriation to the
13 University of Alaska is subject to reallocation by the university
14 administration under procedures established by the Board of Regents
15 and the division of budget review in the Office of the Governor.
16 Transfers may not be made between appropriations except as provided in
17 an Act making transfers between appropriations.

18 * Sec. 7. AS 14.40 is amended by adding a new section to read:

19 Sec. 14.40.490. DEFINITION FOR AS 14.40.120 - 14.40.490. For
20 purposes of AS 14.40.120 - 14.40.490, "university receipts" includes

- 21 (1) student fees, including tuition;
22 (2) receipts from university auxiliary services;
23 (3) recovery of indirect costs of university activities;
24 (4) sales and rentals of university property;
25 (5) federal receipts;
26 (6) gifts, grants, and contracts;
27 (7) sales, rentals, and services of educational activities.

28 * Sec. 8. AS 37.25.010 is amended by adding a new subsection to read:

29 (c) The unexpended balance of an appropriation of university

1 receipts existing on June 30 of a year is automatically reappropriated
2 for the fiscal year beginning on the succeeding July 1 if the unex-
3 pended balance is reported to the Department of Administration and the
4 legislative budget and audit committee September 30 of the
5 succeeding fiscal year. In this subsection "university receipts" has
6 the meaning given in AS 14.40.490.

7 * Sec. 9. This Act takes effect immediately in accordance with AS 01.-
8 10.070(c).
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House Bill 241 (Judiciary) "An Act relating to fiscal procedures of the University of Alaska; and providing for an effective date."

SECTIONAL ANALYSIS

Section 1. Powers of the Board of Regents

- Clarifies the authority to set student tuition and fees.
- Allows the Board of Regents to receive and spend university receipts in accordance with the Executive Budget Act.

Section 2. Powers of the University President

- Allows the President to establish procedures for receipt, expenditure, and fiscal year reporting of university receipts.

Section 3. Regents to Act as Trustees

- Allows the Regents to invest funds received from the state.

Background: The Board has been investing such funds with legislative approval to spend the income each year, but the Attorney General questioned whether the Board can legally do so. This section makes it clear the Board may invest these funds.

Section 4. Investment of Surplus Money

- Provides for the methods by which the Regents can invest funds.
- Allows the Board to invest cash balances in excess of daily operational needs, but limits the investments to those allowed to the Department of Revenue for general fund surpluses.
- Prohibits the University from investing in businesses which do business with either the Republic of South Africa or the U.S.S.R. until oppression of citizens ends in these countries.
- Prohibits the Board from expending income from its investments unless (1) the interest income is appropriated by the legislature or (2) the expenditure is submitted to the Legislative Budget and Audit Committee as a revised program.

Background: The University invests its cash balances in certificates of deposit in Alaska banks, savings and loans, and credit unions; bank repo agreements; and fully-collateralized loans issued by Alaska financial institutions. No cash balances are currently invested in any businesses of any nature.

Section 5. Working Capital Reserve Fund

-Allows income from university investments to be deposited in the University's working capital reserve fund if the deposit is submitted to the Legislative Budget and Audit Committee as a revised program.

Section 6. Reallocation of State Appropriations

-Allows reallocation of University funds within state appropriations in accordance with procedures established by the Board of Regents and the Office of Management and Budget.

Background: This language is usually contained in one of the front sections of the annual budget bill. No transfers between appropriations are allowed. The University may transfer within appropriations in the same manner as state agencies.

Section 7. Definitions

-Defines "university receipts" to include most sources of university income other than state general funds. These include student fees (including tuition); receipts from university auxiliary services (food service, bookstore, student housing); recovery of indirect costs of university activities (primarily overhead on federal research projects); sales and rentals of university property (rentals of university buildings, sales of gravel from university campuses, etc.); federal receipts; gifts, grants and contracts (from private sources, state agencies, etc.); sales, rentals and services of educational activities (sales of materials produced by university classes or research activities, sales of computer time to state agencies, intercollegiate athletics receipts, etc.)

Section 8. Unexpended balances

-Carries forward unexpended balances of "university receipts" to follow... fiscal year.

Background: Unexpended balances of program receipts received by state agencies revert to the general fund at the end of the fiscal year. The majority of states allow universities to carry forward balances of non-state funds. The university believes allowance of this carryforward in Alaska will encourage managers to trim spending to save money for future years when budgets will be tighter.



Anchorage Community College Student Association

2801 PROVIDENCE DRIVE, ANCHORAGE, ALASKA 99508-4670
CAMPUS CENTER ROOM 225, 786-1205 or 786-1220

ANCHORAGE COMMUNITY COLLEGE STUDENT ASSOCIATION

Resolution: 85-27

By: Chris A. Tolladay
Donna Farren

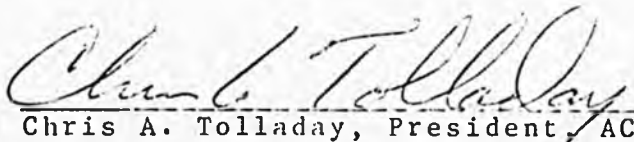
WHEREAS the ACCSA Assembly has approved Resolution 85-19
in support of HB 241, and

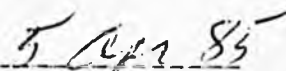
WHEREAS the House Judiciary Committee has offered a
committee substitute to HB 241, and

WHEREAS the overall intent of CSHB 241 is deemed to be in
the best interest of the University of Alaska and its students,
be it therefore

RESOLVED that this resolution be adopted as an official
and formal expression of support of CSHB 241 (Judiciary). Be
it further

RESOLVED that this resolution be forwarded to the Governors
office, the House Judiciary Committee, the Anchorage legislative
delegation, the student regent, the University of Alaska Legis-
lative Liaison, the Alaska Commission on Postsecondary Education,
the Statewide Student Information Network, and other student
government groups in the State of Alaska.


Chris A. Tolladay, President, ACCSA


Date Approved