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A SEARCH FOR CONTROL:

THE EFFECT OF ALCOHOL ON

PUBLIC RIGHTS AND PRIVATE WRONGS

REPORT TO THE LEGISLATURE

JOINT SPECIAL COMMITTEE ON LOCAL OPTION LAWS

Representative Johne Binkley, Chairman
Senator John Sackett
Senator Vic Fischer
Senator Edna DeVries
Representative Katie Hurley
Representative John Sund

EXECUTIVE SUMMARY

March 1986

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Since Alaska communities are extremely diverse, the tools available to fight alcohol abuse must be equally varied. Approaches to controlling alcohol that are effective in urban areas are unlikely to work in the rural villages of the state. Similarly, alcohol control mechanisms that help stop the disintegration of homogenous and isolated villages, would be completely out of place in a complex urban community. Laws must be flexible enough to provide solutions to the problems faced in all communities.

Villagers repeatedly told the Committee that they want the power to completely prohibit alcohol. The broad range of problems that are associated with alcohol abuse, and which are set forth in the Committee Findings of Fact, legally and morally justify legislative action that grants villages that power. Therefore, the recommendation of the Committee is that the local option law be amended and that communities be granted the power to ban possession of alcohol

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Introduction

The numbers of social problems stemming from alcohol abuse in Alaska are staggering. The ravaging effects of alcohol are particularly acute in the isolated native communities of rural Alaska.

As a result of the enactment of the present local option law, villagers are precluded from banning alcohol. Many villagers want the power to ban alcohol in their communities because they believe that alcohol prohibition is a way to prevent serious social problems from occurring. Moreover, many villagers and expert analysts believe that existing bans on importing alcohol cannot be enforced unless possession of alcohol is also banned.

In response to requests made by the city councils of several communities in the Yukon-Kuskokwim Delta, the Fourteenth Legislature created the Joint Special Committee on Local Option Laws. The mandate of the Committee was to take testimony and collect data on the question of banning possession of alcoholic beverages within a community.

Eighteen hearings were held by the Committee during the months of November and December 1985. Hearing locations were limited by financial and time constraints to communities located in the western and northern areas of Alaska. These two areas were chosen because most of the communities which have taken advantage of the existing local option law are in western and northern Alaska.

Two significant facts were made clear to the Committee as a result of the hearing testimony. First, villagers want to have strong and healthy communities. However, their ability to turn this desire into reality is limited because they do not have meaningful input into, and thus control over, most of the governmental decisions that directly affect their lives. Second, the problems related to alcohol abuse in the villages cut across every aspect of community and family life.

After considering a vast body of evidence, the Committee found that the harm caused by alcohol abuse is so pervasive, serious and overwhelming that villages should have the authority to ban possession of alcohol. The Committee, therefore, proposed legislation that would add a new alternative to the present local option law and that would allow communities to implement a ban on alcohol. Violation of a ban on possession of alcohol would be punishable by a fine and violators would not receive a criminal record.

The proposed legislation authorizes the Alaska Supreme Court to set a bail forfeiture schedule for violations of the law. Because the statute allows for bail forfeiture, persons not contesting a citation for possessing alcohol could simply mail the appropriate amount of bail to the nearest court in lieu of a fine. Because many villagers have limited access to cash, community services performed under the direction of the city or village council could be substituted for cash bail. One hour of community service would be equal to $5.00 in cash. Confiscation and forfeiture of liquor possessed in violation of the ban would be permitted.

History of Alcohol Regulation in Alaska

From the time of initial Russian contacts with native Alaskans, through the present-day local option legislation, alcohol regulation has been a consistent theme of law enforcement in rural Alaska. Until the last ten to twenty years, federal statutes, state statutes, village ordinances, and community sanctions have all been used as control mechanisms to prohibit rural Alaskans from using alcohol.

Most recently, the legislature adopted the existing local option law in 1980. Under the local option statute, communities that want to limit the importation or distribution of alcoholic beverages can hold elections and choose one of several options for regulating alcohol. The available options are:

1. Prohibition of the sale of alcohol;
2. Prohibition of the sale and importation of alcohol;
3. Restriction of the types of license available for selling alcohol (i.e., beer and wine only);
4. Restriction of alcohol sales to community-owned liquor stores.

Studies of Alaska's Local Option Law

In-depth studies have shown that communities are adopting a wide variety of control measures, including the local option law, in an attempt to prevent residents from abusing alcohol. The local option law is an indirect method of controlling alcohol-related behavior and is used because villages do not have direct control over either the use of alcohol by community

Finding Number Seven: The dangers resulting from alcohol abuse are particularly acute in rural Alaska because the communities are small, isolated, without adequate law enforcement, without adequate health care facilities, and populated by people who are closely related and interdependent.

Finding Number Eight: The most damaging type of abusive alcohol-related behavior is that which affects innocent victims, such as children and elders. Children are particularly vulnerable, and as a result of parental alcohol abuse, suffer from a broad range of serious problems.

Finding Number Nine: The abusive use of alcohol perpetuates an escalating pattern of crime and violence from generation to generation.

Finding Number Ten: The most serious harm to the innocent victims of alcohol abuse takes place in private homes and behind closed doors. In communities that have chosen to ban the sale and importation of alcohol, and that have significant alcohol-related social problems, most drinking takes place in private homes.

Finding Number Eleven: The economic cost of alcohol abuse is high and cannot be afforded by either the state or rural communities.

Finding Number Twelve: A significant number of rural Alaska communities want, and would use, the authority to ban possession of alcohol. These communities have had a long-standing belief that alcohol should be completely banned, and this belief is based on a lengthy history of alcohol prohibition in rural villages.

Finding Number Thirteen: The policy decision to ban possession of alcohol is one that must be made by local governments. If local authorities are precluded from making such a decision, self-government efforts are undermined, respect for the state legal system is lost, and the public welfare is damaged.

Finding Number Fourteen: Although Alaska law permits communities to ban the sale and importation of alcoholic beverages, the present law is unenforceable because the possession of alcoholic beverages, including homebrew, is permitted.

Committee Conclusions

The severity of Alaska's problems with alcohol cannot be overemphasized, or exaggerated. Alcohol-induced tragedies have become a reality of daily life across the entire state. Every possible tool must be available for use in combatting the threat posed by alcohol.

A ban on the possession of alcohol would not violate the protection given to individual privacy rights in the Alaska Constitution. The courts have repeatedly held that the right to privacy must yield when it interferes in a serious manner with the health, safety, rights and privileges of others or with the public welfare. "No one has an absolute right to do things in the privacy of his own home which will affect himself or others adversely," according to the Alaska Supreme Court.

The Court has found that there is an unmistakable correlation between alcohol consumptions and poor health, death, family violence, child abuse, and crime. Based on this correlation, the court has upheld the portion of the current local option law which allows communities to ban the specific reference to previous rulings of the Alaska Supreme Court that had expressly recognized "the deleterious effects of consuming alcoholic beverages" and that had expressly found alcohol to be more dangerous than either marijuana or cocaine.

Committee Findings

Finding Number One: The abusive use of alcohol interferes in a serious manner with the health, safety, rights, and privileges of Alaskans, and with the public welfare.

Finding Number Two: The public health and welfare will, in fact, suffer if the abusive use of alcohol is not controlled.

Finding Number Three: The prohibition of alcohol in rural Alaska villages is an effective tool for controlling the abusive use of alcohol.

Finding Number Four: Serious crimes, and a wide variety of other social problems, could be prevented if the possession of alcohol were prohibited.

Finding Number Five: There is a strong and unmistakable correlation between alcohol consumption and poor health, fetal damage, death, suicide, crime, family violence, family stability, and child abuse.

Finding Number Six: The level of dangerous alcohol-related behavior is directly tied to the level of alcohol consumption, and the level of alcohol consumption is directly tied to both the cost and availability of alcohol. A law prohibiting possession would limit the availability of alcohol, and would increase the cost of illicitly-available liquor.

members or the resulting alcohol-related deviant behavior. Local option is considered to be a significant and indispensable tool because it helps prevent problems from occurring.

The most frequently used option allows for banning the sale and importation of alcohol. The use of the most restrictive option reflects the desire of many villages to severely limit access to alcohol. If villages could totally prohibit both the manufacture and possession of alcohol, many communities would opt for complete prohibition.

In the communities that have implemented the local option law, there has been a significant reduction in alcohol-related dangerous behavior. After adoption of the local option law, communities have less public drinking and public drunkenness, declines in the amount of alcohol-related interpersonal violence and accidents, and marked improvements in the physical appearance and scholastic performance of the children of drinking parents.

In addition to the direct benefits, other positive side effects of the local option law have been identified. These benefits resulted from the process used in making the decision to regulate alcohol. By implementing the law through an election, the burden of responsibility for the law shifted from the council and village leaders to the entire voting population. As a result, both lawmaking and enforcement have been made easier.

Villagers' concerns about alcohol are not based on moral judgments about drinking, or a desire to intrude on the power of individuals to make decisions about their personal health. The primary reason people want to ban alcohol is because it is intimately related to the deaths of village members. The deaths of young people are of particular concern because many villagers believe that the survival of their culture is completely dependent on the caliber of future community leaders, many of whom are dying in alcohol-related incidents.

The 1985 Local Option Hearings

Alcohol is involved in a wide range of social problems occurring in Alaska communities. Some of the problems described during the testimony are:

* Virtually all of the violent crime is alcohol related, as is a majority of all types of criminal activity in Alaska.
* A large number of deaths, including suicides, are alcohol related.
* Children of alcohol abusers suffer problems with their schooling. They do not get enough sleep at night and do not get their homework done because of parents drinking and partying in the home.

- Most cases of child abuse and neglect involve alcohol abuse. Many children of drinkers suffer from malnourishment, and some have health problems caused by mothers drinking during pregnancy.
- Children of drinkers follow in their parents' footsteps by using and abusing alcohol.
- Elders become uneasy and fearful, and cannot eat or sleep, as a result of concern about the behavior of alcohol abusers. This fear and unease causes problems which require medical intervention.
- The use and abuse of alcohol is threatening the structure of the extended family. Children and grandchildren in some families are either excluded, or exclude themselves, from extended family activities in an effort to be protected from alcohol abusers.
- Alcohol abusers can interrupt critically important subsistence activities.
- Essential and irreplaceable family tools, such as snowmachines and boat engines, are broken or destroyed by persons under the influence of alcohol.

The Social Costs of Alcohol Abuse

The overall level of alcohol consumption, regardless of beverage source, determines the prevalence of dangerous drinkers and alcohol-related problems, both nationally and within Alaska. Alaska has a high rate of annual consumption in comparison to both the rest of the world and the rest of the United States. Moreover, Alaska has historically shown a dramatic increase over the years in the average annual alcohol consumption rate.

In analyzing which factors most affect per capita consumption rates, a recent study pointed to three variables: the cost of alcohol, the hours in which alcohol is available for sale, and the number of outlets in which alcohol may be purchased. Thus, states with "strict, tight or conservative" liquor laws were found to have low per capita consumption rates, and states with "permissive, loose, or liberal" liquor laws had high per capita consumption.

Chronic alcohol consumption has toxic effects on every part of the body, with medical consequences ranging from slight impairments of physical condition to life-threatening diseases. The most common location of the disease is the liver; however, alcohol may also directly injure the gastro-intestinal tract, muscles, and the pancreas. The cardiovascular system, the nervous system, and the endocrine system may be damaged by alcohol. Finally, there is evidence of a strong association between chronic alcohol use and cancer of the stomach, large intestine, pancreas, and liver.

Studies have consistently shown that alcoholics and heavy drinkers have significantly higher death rates than the rest of

the population. The numbers of homocides, suicides, and accidental deaths are increased as a result of alcohol. Native Alaskans have a particularly high alcohol-related suicide rate. The leading cause of death in Alaska is "accidents" and the rate of of accidental death is over twice the national average. A majority of Alaska's accidental deaths are alcohol-related.

Alcohol and violent crime are inseparable in Alaska. Many different studies have shown the close link between criminal activity and the abusive use of alcohol. The highest correlation between alcohol and crime is with violent acts committed in rural Alaska.

Studies have shown that a strong relationship exists between problem drinking and spouse abuse. The domestic violence problems linked to alcohol were not limited to incidents of spouse abuse; child abuse and parent abuse have also been found to be common. In comparing men who abuse their spouses with those who do not, researchers have found that the abusers had a history of exposure to spouse abuse in their childhood home. These findings suggest that spouse abuse may become more widespread as children from violent homes make families of their own.

Heavy drinking during pregnancy increases the risk of miscarriage and can result in alcohol-related birth defects. When consumed in large amounts, alcohol can cause fetal alcohol syndrome.

There is a substantial relationship between having an alcoholic parent and development of alcoholism. Children of alcoholics are frequent victims of incest, child neglect, and other forms of violence and exploitation. In 90% of child abuse cases, alcohol is a significant factor. Children of alcoholics are prone to experience a range of psychological difficulties, including learning disabilities, anxiety, attempted and completed suicide, eating disorders, and compulsive achieving.

The economic cost to society from alcohol abuse is high. Various methodologies have been used for measuring the cost of alcohol abuse to the State of Alaska in dollars. One study concluded that the total cost for fiscal year 1984, including direct and indirect costs, was $195,500,000. Another analysis of the economic cost of alcohol abuse during the same period found the cost to be $185,294,061.

Legal Issues Presented by Proposal to Ban Alcohol

Under federal law, states are given the power to absolutely prohibit, or to limit and regulate, traffic in intoxicating liquors within their borders. The Alaska Supreme Court has recognized that the legislature has the power to impose either complete prohibition or any other conditions deemed necessary to protect the people of the state.

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privileges of others or with the public welfare. "No one has an absolute right to do things in the privacy of his own home which will affect himself or others adversely," according to the Alaska Supreme Court.

The court has found that there is an unmistakable correlation between alcohol consumption and poor health, death, family violence, child abuse, and crime. Based on this correlation, the court has upheld the portion of the current local option law which allows communities to ban the importation of alcohol. In so holding, the court made specific reference to previous rulings of the Alaska Supreme Court that had expressly recognized "the deleterious effects of consuming alcoholic beverages" and that had expressly found alcohol to be more dangerous than either marijuana or cocaine.

Committee Findings

Finding Number One: The abusive use of alcohol interferes in a serious manner with the health, safety, rights and privileges of Alaskans, and with the public welfare.

Finding Number Two: The public health and welfare will, in fact, suffer if the abusive use of alcohol is not controlled.

Finding Number Three: The prohibition of alcohol in rural Alaska villages is an effective tool for controlling the abusive use of alcohol.

Finding Number Four: Serious crimes, and a wide variety of other social problems, could be prevented if the possession of alcohol were prohibited.

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Finding Number Six: The level of dangerous alcohol-related behavior is directly tied to the level of alcohol consumption, and the level of alcohol consumption is directly tied to both the cost and availability of alcohol. A law prohibiting possession would limit the availability of

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