

SB

21



IF You have questions,
this guy is an expert on

DENNIS R. BOWDEN

INVESTIGATOR III

LICENSING ENFORCEMENT UNIT

SB21

STATE OF ALASKA
DEPARTMENT OF LABOR
LABOR STANDARDS & SAFETY DIVISION

675 SEVENTH AVENUE, STATION J
FAIRBANKS, ALASKA 99701
PHONE (907) 451-8756
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319 U.S. 313

ADAMS et al. v. UNITED STATES et al.
No. 889.40 U.S.C.A. § 255; Act La. No. 12 of 1892,
§ 2, as amended by Act No. 31 of 1942, §
L

Argued May 10, 1943.

Decided May 24, 1943.

1. United States ⇐3

The act providing for acquisition by United States of land, and of jurisdiction exclusive or partial, thereover, was aimed at giving broad discretion to the various federal agencies in order that they might obtain only the necessary jurisdiction. 40 U.S.C.A. § 255.

2. United States ⇐3

The act providing for acquisition by United States of land, and of jurisdiction exclusive or partial, thereover, created a definite method of acceptance of jurisdiction so that all persons could know whether the government had obtained no jurisdiction at all or partial jurisdiction or exclusive jurisdiction. 40 U.S.C.A. § 255.

3. Statutes ⇐219

Where the Army and the Department of Agriculture had co-operated in developing the act providing for acquisition by United States of land and of jurisdiction exclusive or partial thereover, their views on meaning of the act were entitled to great weight. 40 U.S.C.A. § 255.

4. United States ⇐3

Under act providing for acquisition by United States of lands and of "jurisdiction, exclusive or partial," thereover by filing of notice with Governor, notice is required in order to give United States any jurisdiction, whether exclusive, partial or concurrent over such land. 40 U.S.C.A. § 255.

See Words and Phrases, Permanent Edition, for all other definitions of "Jurisdiction, Exclusive or Partial".

5. Criminal law ⇐97(4)

Where federal government had not given notice of acceptance of jurisdiction over land acquired by it in Louisiana, and used as military camp at time rape was allegedly committed at such camp by soldiers, the federal district court was without jurisdiction of prosecution for alleged crime though Louisiana statute had authorized United States to take jurisdiction. Cr. Code §§ 272, 278, 18 U.S.C.A. §§ 451, 457;

On Certificate from the United States Circuit Court of Appeals for the Fifth Circuit.

Richard Philip Adams, John Walter Brodenave, and Lawrence Mitchell were convicted of rape of a civilian woman at Camp Claiborne, La., a government military camp, and they appealed to the Circuit Court of Appeals for the Fifth Circuit, which certified two questions of law for answer by the Supreme Court pursuant to Jud.Code § 239, 28 U.S.C.A. § 346.

Questions answered.

Mr. Thurgood Marshall, of New York City, for Adams et al.

Mr. Robert L. Stern, of Washington, D. C., for the United States et al.

Mr. Justice BLACK delivered the opinion of the Court.

The Circuit Court of Appeals for the Fifth Circuit has certified to us two questions of law pursuant to § 239 of the Judicial Code, 28 U.S.C.A. § 346. The certificate shows that the three defendants were soldiers and were convicted under 18 U.S.C. §§ 451, 457, 18 U.S.C.A. §§ 451, 457, in the federal District Court for the Western District of Louisiana, for the rape of a civilian woman. The alleged offense occurred within the confines of Camp Claiborne, Louisiana, a government military camp, on land to which the government had acquired title at the time of the crime. The ultimate question is

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whether the camp was, at the time of the crime, within the federal criminal jurisdiction.

The Act of October 9, 1940, 40 U.S.C. § 255, 40 U.S.C.A. § 255, passed prior to the acquisition of the land on which Camp Claiborne is located, provides that United States agencies and authorities may accept exclusive or partial jurisdiction over lands acquired by the United States by filing a notice with the Governor of the state on which the land is located or by taking other similar appropriate action. The Act pro-

vides further: "Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted." The government had not given notice of acceptance of jurisdiction at the time of the alleged offense.¹

The questions certified are as follows:

"1. Is the effect of the Act of Oct. 9, 1940, above quoted, to provide that, as to lands within a State thereafter acquired by the United States, no jurisdiction exists in the United States to enforce the criminal laws embraced in United States Code, Title 18, Chapter 11, and especially Section 457 relating to rape, by virtue of Section 451, Third, as amended June 11, 1940, unless and until a consent to accept jurisdiction over such lands is filed in behalf of the United States as provided in said Act?

"2. Had the District Court of the Western District of Louisiana jurisdiction, on the facts above set out, to try and sentence the appellants for the offense of rape committed within the bounds of Camp Claiborne on May 10, 1942?"

Since the government had not given the notice required by the 1940 Act, it clearly did not have either "exclusive or partial" jurisdiction over the camp area. The only possible

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reason suggested as to why the 1940 Act is inapplicable is that it does not require the government to give notice of acceptance of "concurrent jurisdiction." This suggestion rests on the assumption that the term "partial jurisdiction" as used in the Act does not include "concurrent jurisdiction."

[1,2] The legislation followed our decisions in *James v. Dravo Contracting Co.*, 302 U.S. 134, 58 S.Ct. 208, 82 L.Ed.

155, 114 A.L.R. 318; *Mason Co. v. Tax Commission*, 302 U.S. 186, 58 S.Ct. 233, 82 L.Ed. 187; and *Collins v. Yosemite Park Co.*, 304 U.S. 518, 58 S.Ct. 1009, 82 L.Ed. 1502. These cases arose from controversies concerning the relation of federal and state powers over government property and had pointed the way to practical adjustments. The bill resulted from a cooperative study by government officials, and was aimed at giving broad discretion to the various agencies in order that they might obtain only the necessary jurisdiction.² The Act created a definite method of acceptance of jurisdiction so that all persons could know whether the government had obtained "no jurisdiction at all, or partial jurisdiction, or exclusive jurisdiction."³

[3,4] Both the Judge Advocate General of the Army⁴ and the Solicitor of the Department of Agriculture⁵ have construed the 1940 Act as requiring that notice of acceptance be filed if the government is to obtain concurrent jurisdiction. The Department of Justice has abandoned the view of jurisdiction which prompted the institution of this proceeding,

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and now advises us of its view that concurrent jurisdiction can be acquired only by the formal acceptance prescribed in the act. These agencies co-operated in developing the act, and their views are entitled to great weight in its interpretation. Cf. *Bowen v. Johnston*, 306 U.S. 19, 29, 30, 59 S.Ct. 442, 83 L.Ed. 455. Besides, we can think of no other rational meaning for the phrase "jurisdiction, exclusive or partial" than that which the administrative construction gives it.

[5] Since the government had not accepted jurisdiction in the manner required by the Act, the federal court had no jurisdiction of this proceeding. In this view it is immaterial that Louisiana statutes au-

¹ Exclusive jurisdiction over the lands on which the Camp is located was accepted for the federal government by the Secretary of War in a letter to the Governor of Louisiana, effective January 15, 1943.

² In the words of a sponsor of the bill, the object of the act was flexibility, so "that the head of the acquiring agency or department of the Government could at any time designate what type of jurisdiction is necessary; that is, either

exclusive or partial. In other words it definitely contemplates leaving the question of extent of jurisdiction necessary to the head of the land-acquiring agency." Hearings, House Committee on Buildings and Grounds, H.R. 7293, 76th Cong., 1st Sess., p. 5.

³ *Ibid.*, 7.

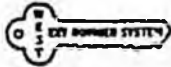
⁴ Ops.J.A.G. 650.2.

⁵ Opinion No. 4311, Solicitor, Department of Agriculture.

thorized the government to take jurisdiction, since at the critical time the jurisdiction had not been taken.⁶

Our answer to certified question No. 1 is Yes and to question No. 2 is No.

It is so ordered.



319 U.S. 432
TOYOSABURO KOREMATSU v. UNITED STATES.
No. 912.

Argued May 11, 1943.

Decided June 1, 1943.

1. Criminal law ⇨982

A "probation" order is an authorized mode of mild and ambulatory "punishment", the probation being intended as a reforming discipline. 18 U.S.C.A. §§ 724, 725, 727.

See Words and Phrases, Permanent Edition, for all other definitions of "Probation" and "Punishment".

2. Criminal law ⇨982

"Probation", like "parole", is intended to be a means of restoring offenders who are good social risks to society; to afford the unfortunate another opportunity by clemency. 18 U.S.C.A. §§ 724, 725, 727.

See Words and Phrases, Permanent Edition, for all other definitions of "Parole".

3. Criminal law ⇨1023(2)

The judgment is "final" for purpose of appeal when it terminates the litigation on the merits and leaves nothing to be done but to enforce by execution what has been determined.

See Words and Phrases, Permanent Edition, for all other definitions of "Final Judgment".

4. Criminal law ⇨1023(9)

An order of the district court suspending the imposition of sentence, but placing on probation a defendant convicted of remaining in a military zone in violation of statute and orders issued thereunder, was "final" and appealable. 18 U.S.C.A. §§ 97a, 724, 725, 727; Jud.Code § 12S, 2S U.S.C.A. § 225; Executive Order Feb. 19, 1942, No. 9066.

See Words and Phrases, Permanent Edition, for all other definitions of "Final Order".

On Certificate from the United States Circuit Court of Appeals for the Ninth Circuit.

Fred Toyosaburo Korematsu was convicted in the District Court of remaining in the City of San Leandro, California, in violation of 18 U.S.C.A. § 97a, and the orders issued thereunder. The District Court placed him on probation and ordered that pronouncing of judgment should be suspended and the defendant appealed to the Circuit Court of Appeals for the Ninth Circuit, which certified to the Supreme Court the question whether the District Court's order was a final decision reviewable on appeal.

Certified question answered in the affirmative.

Mr. A. L. Wirin, of Los Angeles, Cal., for Korematsu.

Mr. John L. Burling, of New York City, for the United States.

Mr. Justice BLACK delivered the opinion of the Court.

Korematsu was found guilty by the District Court for the Northern District of California of remaining in the City of San Leandro, California, in violation of 18 U.S.C. § 97a, 18 U.S.C.A. § 97a, and the orders

⁶Dart's Louisiana Stat. (Supp.) § 2598, Act La. No. 12 of 1892, § 2, as amended by Act No. 31 of 1942, § 1. In view of the general applicability of the 1940 Act it is unnecessary to consider the effect of the Weeks Forestry

Act, 16 U.S.C. § 480, 16 U.S.C.A. § 480, and the Louisiana statute dealing with jurisdiction in national forests, Dart's Louisiana Stat. § 3320, Act La. No. 90 of 1922, § 10, as amended by Act No. 71 of 1924, § 1, even though the land

Chapter 19, SLA 1976, not violative of Alaska Constitution. — Once congressional consent was secured, the Alaska legislature, in agreeing to the disposition of the land and mineral rights by ch. 19, SLA 1976, was not violating any specific provision of the Alaska Constitution. *State v. Lewin*, Sup. Ct. Op. No. 1364 (File No. 3039), 559 P.2d 630, appeal dismissed, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1977).

Congress cannot limit supreme court's power to discipline Alaskan lawyers either directly or by continuing in force the provision of a territorial statute claimed to have that effect. In re Mackay, Sup. Ct. Op. No. 279 (File No. ABA 8), 416 P.2d 823 (1966), rehearing denied, 385 U.S. 890 (1966).

(HOUSE OF REPRESENTATIVES MEMBERSHIP)

SEC. 9. The State of Alaska upon its admission into the Union shall be entitled to one Representative until the taking effect of the next reapportionment, and such representative shall be in addition to the membership of the House of Representatives as now prescribed by law; *Provided*, That such temporary increase in the membership shall not operate to either increase or decrease the permanent membership of the House of Representatives as prescribed in the Act of August 8, 1911 (37 Stat. 13) nor shall such temporary increase affect the basis of apportionment established by the Act of November 15, 1941 (55 Stat. 761; 2 U. S. C., sec. 2a), for the Eighty-third Congress and each Congress thereafter.

(NATIONAL DEFENSE WITHDRAWALS; JURISDICTION)

SEC. 10. (a) The President of the United States is hereby authorized to establish, by Executive order or proclamation, one or more special national defense withdrawals within the exterior boundaries of Alaska, which withdrawal or withdrawals may thereafter be terminated in whole or in part by the President.

(b) Special national defense withdrawals established under subsection (a) of this section shall be confined to those portions of Alaska that are situated to the north or west of the following line: Beginning at the point where the Porcupine River crosses the international boundary between Alaska and Canada; thence along a line parallel to, and five miles from, the right bank of the main channel of the Porcupine River to its confluence with the Yukon River; thence along a line parallel to, and five miles from, the right bank of the main channel of the Yukon River to its most southerly point of intersection with the meridian of longitude 160 degrees west of Greenwich; thence south to the intersection of said meridian with the Kuskokwim River; thence along a line parallel to, and five miles from the right bank of the Kuskokwim River to the mouth of said river; thence along the shoreline of Kuskokwim Bay to its intersection with the meridian of longitude 162 degrees 30 minutes west of Greenwich; thence south to the intersection of said meridian with the parallel of latitude 57 degrees 30 minutes north; thence east to the intersection of said parallel with the meridian of longitude 156 degrees west of Greenwich; thence south to the intersection of said meridian with the parallel of latitude 50 degrees north.

(c) Effective upon the issuance of such Executive order or proclamation, exclusive jurisdiction over all special national defense withdrawals established under this section is hereby reserved to the United States, which shall have sole legislative, judicial, and executive power within such withdrawals, except as provided hereinafter. The exclusive jurisdiction so established shall extend to all lands within the exterior boundaries of each such withdrawal, and shall remain in effect with respect to any particular tract or parcel of land only so long as such tract or parcel remains within the exterior boundaries of such a withdrawal. The laws of the State of Alaska shall not apply to areas within any special national defense withdrawal established under this section while such areas remain subject to the exclusive jurisdiction hereby authorized: *Provided, however,* That such exclusive jurisdiction shall not prevent the execution of any process, civil or criminal, of the State of Alaska, upon any person found within said withdrawals: *And provided further,* That such exclusive jurisdiction shall not prohibit the State of Alaska from enacting and enforcing all laws necessary to establish voting districts, and the qualification and procedures for voting in all elections.

(d) During the continuance in effect of any special national defense withdrawal established under this section, or until the Congress otherwise provides, such exclusive jurisdiction shall be exercised within each such withdrawal in accordance with the following provisions of law:

(1) All laws enacted by the Congress that are of general application to areas under the exclusive jurisdiction of the United States, including, but without limiting the generality of the foregoing, those provisions of title 18, United States Code, that are applicable within the special maritime and territorial jurisdiction of the United States as defined in section 7 of said title, shall apply to all areas within such withdrawals.

(2) In addition, any areas within the withdrawals that are reserved by Act of Congress or by Executive action for a particular military or civilian use of the United States shall be subject to all laws enacted by the Congress that have application to lands withdrawn for that particular use, and any other areas within the withdrawals shall be subject to all laws enacted by the Congress that are of general application to lands withdrawn for defense purposes of the United States.

(3) To the extent consistent with the laws described in paragraphs (1) and (2) of this subsection and with regulations made or other actions taken under their authority, all laws in force within such withdrawals immediately prior to the creation thereof by Executive order or proclamation shall apply within the withdrawals and, for this purpose, are adopted as laws of the United States: *Provided, however,* That the laws of the State or Territory relating to the organization or powers of municipalities or local political subdivisions, and the laws or ordinances of such municipalities or political subdivisions shall not be adopted as laws of the United States.

(4) All functions vested in the United States commissioners by the laws described in this subsection shall continue to be performed within the withdrawals by such commissioners.

(5) All functions vested in any municipal corporation, school district, or other local political subdivision by the laws described in this subsection shall continue to be performed within the withdrawals by such corporation, district, or other subdivision, and the laws of the state or the laws or ordinances of such municipalities or local political subdivision shall remain in full force and effect notwithstanding any withdrawal made under this section.

(6) All other functions vested in the government of Alaska or in any officer or agency thereof, except judicial functions over which the United States District Court for the District of Alaska is given jurisdiction by this Act or other provisions of law, shall be performed within the withdrawals by such civilian individuals or civilian agencies and in such manner as the President shall from time to time, by Executive order, direct or authorize.

(7) The United States District Court for the District of Alaska shall have original jurisdiction, without regard to the sum or value of any matter in controversy, over all civil actions arising within such withdrawals under the laws made applicable thereto by this subsection, as well as over all offenses committed within the withdrawals.

(e) Nothing contained in subsection (d) of this section shall be construed as limiting the exclusive jurisdiction established in the United States by subsection (c) of this section or the authority of the Congress to implement such exclusive jurisdiction by appropriate legislation, or as denying to persons now or hereafter residing within any portion of the areas described in subsection (b) of this section the right to vote at all elections held within the political subdivisions as prescribed by the State of Alaska where they respectively reside, or as limiting the jurisdiction conferred on the United States District Court for the District of Alaska by any other provision of law, or as continuing in effect laws relating to the Legislature of the Territory of Alaska. Nothing contained in this section shall be construed as limiting any authority otherwise vested in the Congress or the President.

[MOUNT MCKINLEY NATIONAL PARK; MILITARY, NAVAL, ETC., LANDS;
CIVIL AND CRIMINAL JURISDICTION]

SEC. 11. (a) Nothing in this Act shall affect the establishment, or the right, ownership, and authority of the United States in Mount McKinley National Park, as now or hereafter constituted; but exclusive jurisdiction, in all cases, shall be exercised by the United States for the national park, as now or hereafter constituted; saving, however, to the State of Alaska the right to serve civil or criminal process within the limits of the aforesaid park in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said

State, but outside of said park, and saving further to the said State the right to tax persons and corporations, their franchises and property on the lands included in said park; and saving also to the persons residing now or hereafter in such area the right to vote at all elections held within the respective political subdivisions of their residence in which the park is situated.

(b) Notwithstanding the admission of the State of Alaska into the Union, authority is reserved in the United States, subject to the proviso hereinafter set forth, for the exercise by the Congress of the United States of the power of exclusive legislation, as provided by article I, section 8, clause 17, of the Constitution of the United States, in all cases whatsoever over such tracts or parcels of land as, immediately prior to the admission of said State, are owned by the United States and held for military, naval, Air Force, or Coast Guard purposes, including naval petroleum reserve numbered 4, whether such lands were acquired by cession and transfer to the United States by Russia and set aside by Act of Congress or by Executive order or proclamation of the President or the Governor of Alaska for the use of the United States, or were acquired by the United States by purchase, condemnation, donation, exchange, or otherwise: *Provided*, (i) That the State of Alaska shall always have the right to serve civil or criminal process within the said tracts or parcels of land in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed within the said State but outside of the said tracts or parcels of land; (ii) that ~~the reservation of authority in the United States for the exercise by the Congress of the United States of the power of exclusive legislation over the lands aforesaid shall~~ not operate to prevent such lands from being a part of the State of Alaska, or to prevent the said State from exercising over or upon such lands, concurrently with the United States, any jurisdiction whatsoever which it would have in the absence of such reservation of authority and which is consistent with the laws hereafter enacted by the Congress pursuant to such reservation of authority; and (iii) that such power of exclusive legislation shall rest and remain in the United States only so long as the particular tract or parcel of land involved is owned by the United States and used for military, naval, Air Force, or Coast Guard purposes. The provisions of this subsection shall not apply to lands within such special national defense withdrawal or withdrawals as may be established pursuant to section 10 of this Act until such lands cease to be subject to the exclusive jurisdiction reserved to the United States by that section.

Opinions of attorney general. — Alaska's fish and game laws are applicable as federal law on military reservations, except for the licensing of military personnel who hunt on military reservations. 1964 Op. Att'y Gen., No. 2.
Any hunting or fishing at a military

reservation must be in accord with Alaska laws regulating seasons, bag limits, methods of taking, etc., even though military personnel are not required to comply with Alaska's licensing requirements while on the reservation. 1964 Op. Att'y Gen., No. 2.

Alaska and the federal government have concurrent jurisdiction over federal military reservations by the terms of (ii) of this subsection. 1964 Op. Att'y Gen., No. 2.

Subsection (b) (iii) grants to Alaska and the federal government concurrent jurisdiction to enforce Alaska's fish and game laws and regulations on federal military reservations. 1964 Op. Att'y Gen., No. 2.

Only on a military reservation under the exclusive legislative jurisdiction of the federal government could enforcement of

game and fish laws be in the hands of the federal government exclusively. 1964 Op. Att'y Gen., No. 2.

The state has subject matter jurisdiction over sewage disposal in Petroleum Reserve No. 4. June 28, 1977. Op. Att'y Gen.

Until Congress expressly exercises its latent power of exclusive jurisdiction, the state has concurrent jurisdiction over Petroleum Reserve No. 4. June 28, 1977. Op. Att'y Gen.

[JUDICIAL AND CRIMINAL PROVISIONS]

SEC. 12. Effective upon the admission of Alaska into the Union —

(a) The analysis of chapter 5 of title 28, United States Code, immediately preceding section 81 of such title, is amended by inserting immediately after and underneath item 81 of such analysis, a new item to be designated as item 81A and to read as follows:

"81A. Alaska";

(b) Title 28, United States Code, is amended by inserting immediately after section 81 thereof a new section, to be designated as section 81A, and to read as follows:

"§ 81A. Alaska

"Alaska constitutes one judicial district.

"Court shall be held at Anchorage, Fairbanks, Juneau, and Nome.";

(c) Section 133 of title 28, United States Code, is amended by inserting in the table of districts and judges in such section immediately above the item: "Arizona * * * 2", a new item as follows: "Alaska * * * 1";

(d) The first paragraph of section 373 of title 28, United States Code, as heretofore amended, is further amended by striking out the words: "the District Court for the Territory of Alaska,": *Provided*, That the amendment made by this subsection shall not affect the rights of any judge who may have retired before it takes effect;

(e) The words "the District Court for the Territory of Alaska," are stricken out wherever they appear in sections 333, 460, 610, 753, 1252, 1291, 1292, and 1346 of title 28, United States Code;

(f) The first paragraph of section 1252 of title 28, United States Code, is further amended by striking out the word "Alaska," from the clause relating to courts of record;

(g) Subsection (2) of section 1294 of title 28, United States Code, is repealed and the later subsections of such section are renumbered accordingly;

(h) Subsection (a) of section 2410 of title 28, United States Code, is amended by striking out the words: "including the District Court for the Territory of Alaska,";

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX V, JUNEAU 99811

(907) 465-3892



HOUSE LABOR AND COMMERCE COMMITTEE

REVISED

May 11-16, 1987

(* indicates first public hearing)

Capitol Rm. 17

465-3892

T-Th. 1:30 p.m.

Tuesday, May 12, 1987 1:30 - 4:30

*HB 283 "An Act prohibiting certain employers from testing employees for drugs or other substances consumed by employees."

SB 187 "An Act relating to minimum electrical standards; and providing for an effective date."

*HB 304 "An Act relating to group disability insurance." (PENDING REFERRAL)

SB 21 "An Act relating to construction contractors."

SJR 23 "Endorsing the application of the Department of Commerce and Economic Development for a rural development assistance demonstration grant." (PENDING REFERRAL)

Proposed committee legislation.

Thursday, May 14, 1987

SCR 20 "Relating to National Tourism Week."

HB 195 "An Act excluding services provided by certain taxicab operators from the definition of employment for unemployment compensation coverage; and providing for an effective date."

*HB 305 "An Act relating to transportation of pupils; and providing for an effective date." (PENDING REFERRAL)

OVER

House Labor and Commerce
May 11-16, 1987

SB 36 "An Act relating to Amateur Radio Week."

SB 93 "An Act relating to investments by financial institutions."

SB 113 "An Act relating to the Arctic Winter Games; and providing for an effective date."

SB 15 "An Act relating to trade secrets."

SB 39 "An Act relating to the Real Estate Commission; and providing for an effective date."

Bills previously heard on Tuesday, May 12.

Proposed committee legislation.

8,014	ALASKAN 85-86 Contractors
2,963	87' "

#300 Million Fed. Contracts '87

Proposed
to Amendment
SB 21

AS 08.18.161(7)

As written:

"This chapter does not apply to: (7) construction, alteration or repair, carried on within the boundaries of a site under the legal jurisdiction of the Federal Government;

Proposed:

Delete

Discussion:

Research by the Attorney General's office indicates the assumption of site is under the "legal jurisdiction" of the Federal Government because of identifying features, i.e. a military post or national park is false. For the Federal Government to have "legal jurisdiction" over a site, an "assumption of jurisdiction" must be filed with the Office of the Governor for each site the Federal Government desires to exercise jurisdiction. In the absence of an Assumption of Jurisdiction and without a conflicting Federal statute, State law prevails. A limited investigation of the Staff Judge Advocates office at Ft. Wainwright and Eielson AFB and at the Office of the Governor in Juneau disclosed no one familiar with the concept of "an assumption of jurisdiction". This indicates that the process is a rare occurrence. The language of bid packets from the Federal Contracting Office require "...will be responsible for and will obtain, prior to building operations..licenses and other permits...in compliance with applicable laws, codes and regulations," "comply with the provisions of all Federal, State and local statutes...", and "...shall comply with provisions of all applicable federal, state and local laws, ordinances, rules, and regulations and particularly those pertaining to the protection of the environment, construction, sanitation, and licenses or permits to do business." (emphasis added) Conversation with contracting officers at the Bases indicate as long as the guidelines "of right to work" laws are not infringed upon, State requirements in the contractor registration area could be enforced on the Bases.

AS 08.18.171(2)

~~As written:~~

~~"Contractor" means..., and 'specialty contractor' is a contractor whose operations do not fall within the definition of 'general contractor'."~~

~~Proposed:~~

~~"Submit a bid or work as a contractor" means..., and a 'specialty contractor' is a contractor whose operations are restricted to those specified on their certificate of registration."~~

[Handwritten notes and signatures]

[Handwritten signature]

Bill No. Committee Substitute for
Senate Bill 21 (Finance)
Title "An Act relating to construction
contractors."

Date March 3, 1987

Contact: Eileen Plate
465-2700

Tom Stuart, Jr.
465-4870

Committee Substitute for Senate Bill 21 seeks to strengthen and clarify the contractor licensing law which is enforced by the Department of Labor and the Department of Commerce.

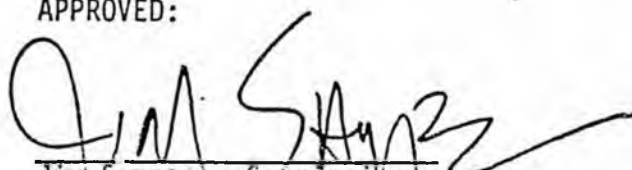
Specifically, this bill:

1. Extends the prohibition against contracting with unlicensed persons to speciality contractors. Under present law, only a general contractor is prohibited from contracting with an unlicensed person.
2. Provides that a specialty contractor may work only in those areas of contracting for which he/she is specifically licensed, as evidenced by the specialities listed on the certificate of registration.
3. Makes it unlawful for a contractor who is not properly registered to advertise as a contractor.
4. Requires that the Department of Commerce list on the certificate of registration issued to a specialty contractor each specialty area of contracting that is covered by the certificate; and
5. Clarifies the information that is required on a contractor's business documents and advertising.

Each of these amendments to the contractor licensing law has merit. However, of particular significance is the amendment to AS 08.18.011(b) which makes it unlawful for all contractors to contract with unlicensed persons. Presently only a general contractor is subject to remedial action for contracting with an unlicensed person. It will therefore preclude the use of the speciality contractor licensing classification as a means of circumventing the law. The amendment will also render the contracting licensing law more equitable, with both general and specialty contractors sharing the responsibility for assuring that the persons who contract with them are properly licensed.

The Department of Labor supports Committee Substitute for Senate Bill 21. It will not have a fiscal impact on the Department.

APPROVED:


Jim Sampson, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: CSSB 21 (Fin)

Publish Date: _____

Revision Date: _____

Agency Affected: Labor

Title: " An Act relating to construction
contractors "

BRU: Labor Standards and Saftey

Sponsor: Coghill

Components: Wage & Hour Administration

Requestor: House Labor and Commerce

Mechanical Inspection

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Tom Stuart, Director

Phone: 465-4870

Division: Labor Standards and Saftey

Date: 2/25/87

Approved by Commissioner: Jim Sampson

Date: 2/25/87

Agency: Labor

Distribution (by preparer):

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

No. 20

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE SENATE

BILL VERSION: SB 21a
PUBLISH DATE: 2/2/87

REQUEST: _____

Revision Date: _____

Title: An Act relating to construction contractors.

Sponsor: Senator Coghill

Requestor: _____

Agency Affected: Commerce & Economic Dev.
BRU: Occupational Licensing

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

The bill makes various amendments to strengthen and clarify the construction contractor statutes, AS 08.18, however new funding is not required to implement the bill.

Prepared by: Jennifer Strickler, Management Analyst
Division: Occupational Licensing

Phone: 465-2144
Date: 1-22-87

Approved by Commissioner: J. Anthony Smith
Agency: Commerce and Economic Development

Date: 1/27/87

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to construction
contractors.
Sponsor: Senate Labor & Commerce Committee
Requestor: _____

Agency Affected: Commerce & Economic Dev.
BRU: Occupational Licensing
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

The bill makes various amendments to strengthen and clarify the construction contractor statutes, AS 08.18; however, new funding is not required to implement the bill.

Prepared by: Jennifer Strickler, Mgnt. Analyst
Division: Occupational Licensing

Phone: 465-2144
Date: January 22, 1988

Approved by Commissioner: J. Anzures Smith
Agency: Commerce and Economic Development

Date: 1-26-88

Distribution (by preparer):

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

5-0210L ✓
Bannister
5/13/87

Original sponsor: Coghill

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 21 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to construction contractors."

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

8 * Section 1. AS 08.18.011(b) is amended to read:

9 (b) A [GENERAL] contractor may not allow a person required to be
10 registered under this chapter to work for the [GENERAL] contractor as
11 a [SPECIALTY] contractor unless the person is registered under this
12 chapter.

13 * Sec. 2. AS 08.18.011 is amended by adding new subsections to read:

14 (c) A specialty contractor may not submit a bid or work as a
15 contractor in an area of contracting specialty unless the specialty is
16 listed on the contractor's certificate of registration.

17 (d) A person may not advertise as a contractor in the state
18 without being registered under this section.

19 * Sec. 3. AS 08.18.031 is amended by adding a new subsection to read:

20 (c) The commissioner shall list on the certificate of registra-
21 tion issued to a specialty contractor each area of contracting spe-
22 cialty that is covered by the certificate.

23 * Sec. 4. AS 08.18.051(b) is amended to read:

24 (b) All advertising, contracts, correspondence, cards, signs,
25 posters, papers and documents prepared by a contractor for the con-
26 tracting business shall show the contractor's name, business mailing
27 address or [, AND] address of the contractor's principal place of
28 business in Alaska, and [. ADVERTISING AND CONTRACTS SHALL ALSO
29 INCLUDE THE CONTRACTOR'S] registration number.

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* Sec. 5. AS 08.18.161(7) is repealed.

* Sec. 6. This Act does not apply to contracts that are entered into before the effective date of this Act.

Senator John B. (Jack) Coghill
Alaska State Legislature

Box V
Juneau, Alaska 99811
(907) 465-4797

Box 55028
North Pole, Alaska 99705
(907) 488-0862



TO: HOUSE LABOR AND COMMERCE COMMITTEE
FROM: SENATOR JACK COGHILL
DATE: MAY 12, 1987
RE: SB 21 "An Act relating to construction contractors"

SPONSOR'S STATEMENT

I believe that this bill would do much to benefit local hire in Alaska. It would accomplish this by making it harder for out of state contractors to do business in Alaska. Out of state contractors are much more prone to not only hire out of state residents, they are also more apt to perform substandard work and pay substandard wages.

This bill has the support of both the Department of Labor and various associations of contractors. I urge you to support its passage.

The following is a brief sectional analysis of SB 21.

Section 1 (b) - This is one of the main points of the bill, and basically extends the prohibition against contracting with unlicensed persons to specialty or subcontractors. Under present law only a general contractor is prohibited from contracting with unlicensed persons. Often, illegitimate subcontractors hire non-resident, unlicensed additional subcontractors, who, due to the present law's language, become the responsibility of the general contractor for any bad debts or illegal activities.

Section 2 (c) - This provides that a specialty contractor may work only in those areas of contracting for which he/she is specifically licensed, as evidenced by the specialties listed on the certificate of registration.

(d) - Makes it unlawful for a contractor who is not properly registered to advertise as a contractor.

Section 3 (c) - Requires that the Department of Commerce list on the certificate of registration issued to a specialty contractor each specialty area of contracting that is covered by the certificate.

Section 4 (b) - Clarifies the information that is required on a contractor's business documents and advertising.

No 01

STATE OF ALASKA 1987. LEGISLATIVE SESSION
FISCAL NOTE

SENATE
BILL VERSION: SB 216
PUBLISH DATE: 2/2/87

REQUEST: _____

Revision Date: _____

Title: "An Act relating to construction
contractors."

Sponsor: Codhill

Requestor: Senate Labor and Commerce

Agency Affected: Labor
BRU: Labor Standards and Safety

Components: Wage & Hour Administration
Mechanical Inspection

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

[Empty box for analysis]

Prepared by: AS Tom Stuart, Director JEA
Division: Labor Standards and Safety

Phone: 465-4870
Date: 1/27/87

Approved by Commissioner: AS Jim Sampson
Agency: Labor

Date: 1/27/87

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary

April 1,

APR 3 1987

Dear Mike,

I have highlighted the operable portions of the enclosed references. These were the basis of both the AG and DA reasoning that contractor registration could be enforced on the federal enclaves within the state.

They have both since reversed their positions based on the exemption #7 contained in AS 08.18.161. The rationale being the exemption made the above references vague and ambiguous and since we are dealing with criminal offences the benefit of the doubt had to go to the defendant.

Deleting exemption #7 would allow statewide enforcement of contractor registration.

As the majority of "new construction" forecast is to be done federally, enforcement of contractor registration would impact on local hire in two ways. First, an established Alaskan contractor would have an inside track on federal projects within the state since it is just as unlawful to bid unregistered as it is to work unregistered. Therefore, speculation bidding by non-resident contractors would be virtually eliminated, giving the cost of registration, bonding, and insurance required by the contractor registration statutes. Alaskan contractors in the main have a local labor force. The more contracts they are awarded, obviously, the more their local labor force will be employed. Secondly, with exemption #7 in the book, any fly-by-night can buy a Alaskan business license, declare himself a contractor that restricted his work to those covered by exemption #7 and proceed to the federal enclaves to go to work. Without the overhead the Alaskan contractor has to include in his bids, the fly-by-night has an unfair edge in the bid competition, and eliminates the resident contractor's opportunities.

In my original correspondence with Senator Coghill,, I recommended we delete exemption #7. However, at that time I felt it was the least compelling change. The current economical forecasts have changed my priorities. If we don't get this thru this year we will be way behind the power curve on enforcement in this area. At the time exemption #7 (1976) was passed, the violation of contractor registration was not a criminal offence. This did not take place until 1985. Once the offence became criminal, exemption #7 should have been eliminated to allow enforcement concurrently as is spelled out in the attached references.

Thank you for taking the time to address this. Anything you can do to force the issue will be greatly appreciated by every one concerned. I hope at the May AGC luncheon I can describe how we were able to get this measure thru at the last minute.

Denny,

DMB

Bill No. Committee Substitute for
Senate Bill 21 (Finance)

Date March 3, 1987

Title "An Act relating to construction
contractors."

Contact: Eileen Plate
465-2700

Tom Stuart, Jr.
465-4870

5-11987

Committee Substitute for Senate Bill 21 seeks to strengthen and clarify the contractor licensing law which is enforced by the Department of Labor and the Department of Commerce.


Specifically, this bill:

1. Extends the prohibition against contracting with unlicensed persons to speciality contractors. Under present law, only a general contractor is prohibited from contracting with an unlicensed person.
2. Provides that a specialty contractor may work only in those areas of contracting for which he/she is specifically licensed, as evidenced by the specialities listed on the certificate of registration.
3. Makes it unlawful for a contractor who is not properly registered to advertise as a contractor.
4. Requires that the Department of Commerce list on the certificate of registration issued to a specialty contractor each specialty area of contracting that is covered by the certificate; and
5. Clarifies the information that is required on a contractor's business documents and advertising.

Each of these amendments to the contractor licensing law has merit. However, of particular significance is the amendment to AS 08.18.011(b) which makes it unlawful for all contractors to contract with unlicensed persons. Presently only a general contractor is subject to remedial action for contracting with an unlicensed person. It will therefore preclude the use of the speciality contractor licensing classification as a means of circumventing the law. The amendment will also render the contracting licensing law more equitable, with both general and specialty contractors sharing the responsibility for assuring that the persons who contract with them are properly licensed.

The Department of Labor supports Committee Substitute for Senate Bill 21. It will not have a fiscal impact on the Department.

APPROVED:


Jim Sampson, Commissioner
Department of Labor

POSITION PAPER/Department of Labor

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version: CSSB 21 (Fin)
Publish Date: _____

REQUEST: _____

Revision Date: _____
Title: " An Act relating to construction
contractors. "
Sponsor: Coghill
Requestor: House Labor and Commerce

Agency Affected: Labor
BRU: Labor Standards and Saftey
Components: Wage & Hour Administration
Mechanical Inspection

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Tom Stuart, Director Phone: 465-4870
Division: Labor Standards and Saftey Date: 2/25/87
Approved by Commissioner: Jim Sampson Date: 2/25/87
Agency: Labor

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary



APR 9 1987

April 7, 1987

Representative Dave Donley
Capitol, Room 13
House of Representatives
P. O. Box V
Juneau, Ak 99811

Dear Representative Donley:

I am writing to urge you to support Senate Bill #21 which has passed the Senate and is now in the House.

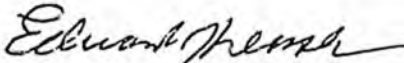
As a general contractor, we do not feel we should be responsible when a subcontractor who does work for us leaves the State without paying his bills. In addition, the paperwork involved in monitoring their payments is a heavy burden and cost for us.

Senator Jack Coghill has recognized this hardship in introducing this bill and I strongly urge you to support it with an affirmative vote.

Thank you.

Sincerely,

FRONTIER CONSTRUCTION, INC.


Edward J. Neuser
President

EJN:sk

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / BOX 2170 - JUNEAU 99801

1964 Opinions of the
Attorney General No. 2

July 22, 1964

Honorable Walter Kirkness
Commissioner
Department of Fish and Game
Support Building
Juneau, Alaska

Re: Enforcement of State Fish and Game
Laws on Military Reservations

Dear Mr. Kirkness:

You have asked whether the state has authority to enforce its fish and game laws on military reservations in Alaska. In our opinion the state does have such authority.

The Alaska Statehood Act (Pub. L. 85-508, 72 Stat. 339) in section 11(b) provides that Congress has the power of exclusive legislation over land owned by the federal government as of the date of admission which is used for military purposes. Section 11(b)(11) provides, however, that:

the reservation of authority in the United States for the exercise by the Congress of the United States of the power of exclusive legislation over the lands aforesaid shall not operate to prevent such lands from being a part of the State of Alaska, or to prevent the said State from exercising over or upon such lands, concurrently with the United States, any jurisdiction whatsoever which it would have in the absence of such reservation of authority and which is consistent with the laws hereafter enacted by the Congress pursuant to such reservation of authority.

By the terms of the Statehood Act, Alaska and the federal government have concurrent jurisdiction over federal military reservations.

A federal interdepartmental committee studied the problems arising out of the jurisdictional status of federally owned areas within the states and in 1956 submitted its report and recommendations. The committee explained the concept of concurrent legislative jurisdiction, such as exists between the federal government and Alaska over federally owned lands in Alaska, in this manner:

Under concurrent jurisdiction the two sovereigns, the Federal Government and a State, occupy an area, each having all the rights accorded a sovereign with the broad qualification that such rights run concurrently with those of the other sovereign. . . .

State law, including any amendments which may be made by the State from time to time, is applicable in a concurrent jurisdiction area. . . . State or local agencies and administrative processes needed to carry out various State laws, such as laws relating to notaries, various licensing boards, etc., can be made available by the State or local government in accordance with normal procedures. State criminal laws are, of course, applicable in the area for enforcement by the State. . . . Most crimes fall under both Federal and State sanction, and either the Federal or State government, or both, may take jurisdiction over a given offense. 1/

Of course, there are limits to the state's power. "The regulatory powers of the States may be exercised in the area but, again, not directly on the Federal Government or its instrumentalities, and not so as to interfere with Government activities." 2/

1/ Interdepartmental Committee for the Study of Jurisdiction over Federal Areas within the States, Jurisdiction over Federal Areas within the States, Part I, p. 20, U. S. Government Printing Office, 1956.

2/ Ibid.

Honorable Walter Kirkness
Commissioner

July 22, 1964

- 3 -

We conclude, therefore, that the Statehood Act grants to Alaska and the federal government concurrent jurisdiction to enforce Alaska's fish and game laws and regulations on federal military reservations. This conclusion is supported by a recent opinion of the Attorney General of Utah that State Fish and Game Department officers and federal officers could properly exercise jurisdiction in enforcing fish and game laws upon military reservations in Utah. The Attorney General stated:

The right of the state to enforce state game laws on military reservations on which there exists concurrent jurisdiction is undisputed. The penal laws of the state relative to fish and game are operative not only as federal law under the above cited [Assimilative Crimes] Act, but are enforceable as state laws as well. It follows then that both the United States and the state may actively enforce these laws. 3/

The states' jurisdiction over fish and game resources on federally owned military lands is more specifically set out in 10 U.S.C. section 2671. Because of its importance in answering your question this section is quoted in full:

(a) The Secretary of Defense shall, with respect to each military installation or facility under the jurisdiction of any military department in a State or Territory--

(1) require that all hunting, fishing, and trapping at that installation or facility be in accordance with the fish and game laws of the State or Territory in which it is located;

(2) require that an appropriate license for hunting, fishing, or trapping on that installation or facility be obtained, except that with respect to members of the Armed Forces, such a license may be required only if the State or Territory

3/ Opinions of the Attorney General of Utah, No. 54-060, 1954.

July 22, 1964

- 4 -

authorizes the issuance of a license to a member on active duty for a period of more than thirty days at an installation or facility within that State or Territory, without regard to residence requirements, and upon terms otherwise not less favorable than the terms upon which such a license is issued to residents of that State or Territory; and

(3) develop, subject to safety requirements and military security, and in cooperation with the Governor (or his designee) of the State or Territory in which the installation or facility is located, procedures under which designated fish and game or conservation officials of that State or Territory may, at such time and under such conditions as may be agreed upon, have full access to that installation or facility to effect measures for the management, conservation, and harvesting of fish and game resources.

(b) The Secretary of Defense shall prescribe regulations to carry out this section.

(c) Whoever is guilty of an act or omission which violates a requirement prescribed under subsection (a)(1) or (2), which act or omission would be punishable if committed or omitted within the jurisdiction of the State or Territory in which the installation or facility is located, by the laws thereof in effect at the time of that act or omission, is guilty of a like offense and is subject to a like punishment.

(d) This section does not modify any rights granted by treaty or otherwise to any Indian tribe or to the members thereof.

The purpose of this statute is to make violations of state fish and game laws applicable to military installations and facilities violations of federal law, and subject to like punishment as though committed within the state jurisdiction. 4/

4/ See 1958 U.S. Code Cong. and Adm. News, pp. 2230-2231.

July 22, 1964

- 5 -

Section 2671(a)(2) requires that military personnel obtain state licenses before hunting or fishing on military reservations but only if the state issues licenses to such personnel without regard to residence requirements and on the same terms as those upon which a license is issued to residents. Alaska does not grant such special privileges to military personnel: AS 16.05.940(14) provides that a member of the military service becomes a "resident" for licensing purposes only after fulfilling the normal twelve months residence requirement. Thus Alaska cannot require a license of military personnel who hunt or fish on a military reservation. 5/ However, any hunting or fishing at a military reservation must be in accord with Alaska laws regulating seasons, bag limits, methods of taking, etc., even though military personnel are not required to comply with Alaska's licensing requirements while hunting on the reservation. 6/

Except for the licensing of military personnel who hunt on military reservations, Alaska's fish and game laws are applicable as federal law on military reservations. One question remains: To what extent may state officers enter military reservations and enforce Alaska's fish and game laws? Section 2671(a)(3) requires the Secretary of Defense, in cooperation with state governors and subject to safety and military security requirements, to develop procedures by which state fish and game officials may have "full access" to military reservations "to effect measures for the management, conservation, and harvesting of fish and game resources." The subsection does not state that state officials must be given access to enforce state fish and game laws. However, Congress apparently anticipated that, at least where the military does not assign sufficient personnel to enforce fish and game laws, state game officials as well might enforce them. 7/ This might be done by deputizing state game officials as federal marshals, since subsection (c) makes violation of state fish and game laws a federal offense. But this would not seem to be necessary since state fish and game laws operate on a federal military

5/ The state may, of course, require a license of military personnel who hunt outside military reservations.

6/ 1958 U.S. Code Cong. and Adm. News, p. 2242

7/ Id. at p. 2243

Honorable Walter Kirkness
Commissioner

July 22, 1964


- 6 -

reservation not only as federal law but also as state law. Thus both the federal and state officers may enforce these laws. Only on a military reservation under the exclusive legislative jurisdiction of the federal government could enforcement be in the hands of the federal government exclusively. Our information is that at present no military reservations in Alaska are under exclusive federal jurisdiction.

One other federal statute deals with this matter. 16 U.S.C. section 670a allows, but does not require, the Secretary of Defense to agree with the Secretary of Interior and appropriate state agencies to cooperate in the development and conservation of fish and game on military reservations. Since section 670e provides that this statute does not modify or repeal any provision of 10 U.S.C. section 2671, it is of no importance in interpreting the latter. It does indicate, however, that Congress intends that the states maintain their authority to manage fish and game resources and enforce their laws on military reservations.

In brief the answer to your question is: Alaska's fish and game laws are applicable as state and federal law on military reservations in Alaska. State officers should have "full access" to such reservations in Alaska, subject to safety and military security requirements, to enforce these laws and manage and harvest fish and game resources. Federal law requires that the Secretary of Defense develop procedures by which this "full access" may be provided to state officials.

Very truly yours,


Warren G. Colver
Attorney General

WCC:rw

cc: Honorable William A. Egan
Governor of the State of Alaska

Honorable Floyd L. Guertin
Commissioner of Administration

notwithstanding that
of merchandise
by way of further
machines than upon
use of the amount
m offered for sale.¹⁴

does not necessarily
on the business of
a particular consti-
of the produce of a
ness of selling such

judicial interpretation,
if a debt has some-
by a licensing statute.
automobiles assigned
the purpose of satis-
imposing a license tax
where the dealer had

a state or municipality
ies.¹⁸ Some authority
ereas other authority
re the validity of such
its payment does not
on such business or

118 ALR 827.

Massachusetts, 5 Wall (US)
License Tax Cases, 5 Wall
497; *Casius v Lee*, 236
35, 118 ALR 822 (license
taxes); *Youngblood v Sexton*,
120 Tenn 470, 120 Tenn
470, 88 Tenn 553,
Palmer v State, 88 Tenn 553,

Example, *Ex parte Garza*, 28
3 SW 779, holding that a
state could not impose a license tax
on a business, which was prohibited by
the state where there was no charter
authorizing such a tax.

118 ALR 827, 831.

Ex parte 43 Gallons of Whisky,
1 L Ed 803, 2 S Ct 906 (sale
of liquor in Indian territory); *Pervear v*
5 Wall (US) 475, 19 L Ed
462, 5 Wall (US) 462,

The matter of the validity of federal impositions on illegal activities is
discussed elsewhere in this work.²

§ 11. — Work on federal projects and federal land.

Legislation purporting to impose license restrictions or charges against
instrumentalities of the Federal Government has frequently been described
as "void."³ And particular legislation attempting to impose such require-
ments or charges has often been found to be inapplicable to the particular
federal project involved. Accordingly, it has been said that a contractor
whose bid for the construction of federal facilities in a particular state has
been accepted by the United States and who has begun work on the project
may not be convicted by a court of that state for working as a contractor
in the state without obtaining the contractor's license required by the state's
laws, where the effect of imposing the state's licensing restrictions would give
state authorities a virtual power of review over the federal determination
of whether an award of a particular contract to a particular contractor was
consonant with federal policy as set out in express federal legislation.⁴ It has,
however, been declared that a state may extend a privilege tax to contractors
with the Federal Government, where the locus in quo is within the territorial
limits of the state and exclusive jurisdiction over the same has not been ceded
to the Federal Government, and where there is no discrimination against
such contractors and no unlawful interference with interstate commerce.⁵
Thus, it has been held that a state statute imposing a license tax for the
privilege of transacting business in the state as a contractor is applicable to
a contractor whose sole business in the state is the erection of a building on
land of the Federal Government, where the work makes it necessary for the
contractor to occupy the sidewalks on the adjacent streets to the exclusion
of pedestrians.⁶

It has been held that a state has territorial jurisdiction to enforce an oc-
cupation tax as applied to gross income received by contractors with the
United States for the construction of locks and dams in navigable streams,⁷
and that a state's jurisdiction to impose an occupation tax upon a contractor
with the United States also extends to activities of the contractor on lands

18 L Ed 497; *Palmer v State*, 88 Tenn 553,
13 SW 233.

Annotation: 118 ALR 827, 832 et seq.

2. See 38 Am Jur 2d, *GAMBLING* §§ 20-25.

3. See, for example, *Williams v Talladega*,
226 US 404, 57 L Ed 275, 33 S Ct 116,
holding ordinance void that taxed the privi-
lege of carrying on the telegraph business,
without making any exception as to the send-
ing of government messages, the court noting
that part of the business was that of a gov-
ernmental agency in communication between
the officers and departments of the federal
government.

Annotation: 96 L Ed 263, 269, s. 2 1 Ed
2d 1789, 1791.

4. *Leslie Miller, Inc. v Arkansas*, 352 US
187, 1 L Ed 2d 231, 77 S Ct 257.

Annotation: 1 L Ed 2d 1729, 1731.

5. *Silas Mason Co. v Tax Com.* 302 US
186, 82 L Ed 187, 58 S Ct 233; *James v*

Dravo Contracting Co. 302 US 134, 82 L
Ed 155, 58 S Ct 208, 114 ALR 318; *General*
Constr. Co. v Fisher, 149 Or 84, 39 P2d
358, 97 ALR 1252, app dismd 295 US 715,
79 L Ed 1671, 55 S Ct 646 (involving a
contract with the federal Government to fur-
nish labor and materials for the construction
of a dam and irrigation works in connection
with an irrigation project within the state);
Sollitt & Sons Constr. Co. v Commonwealth,
161 Va 854, 172 SE 290, 91 ALR 774.

Annotation: 91 ALR 779, 780, s. 115 ALR
371, 127 ALR 827; 97 ALR 1257, s. 114
ALR 347.

6. *Sollitt & Sons Constr. Co. v Common-
wealth*, supra.

7. *Silas Mason Co. v Tax Com.* 302 US
186, 82 L Ed 187, 58 S Ct 233; *James v*
Dravo Contracting Co. 302 US 134, 82 L Ed
155, 58 S Ct 208, 114 ALR 318.

Annotation: 115 ALR 371, 372, s. 127
ALR 827; 96 L Ed 263, 267, s. 2 1 Ed 2d
1789, 1790.