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**Agenda
Meeting of the
Interim Mental Health Trust Commission
and the
Joint Special Committee on Mental Health Trust Land
October 3, 1986
Loussac Library
3600 Denali, Public Conference Room
Level I
Anchorage, Alaska**

- I. Committee vs. Commission Functions
 - A. Commission Duties - Commissioner Rogers
 - B. Committee Charge - Senator Halford
- II. Threshold Issues
 - A. Definition of Mental Health - Purposes of Definition (settlement/funding)
 - B. Active vs. Passive Trust Management
 - 1. Legislation
 - 2. Administrative Costs
- III. Eventual Settlement
 - A. Issues
 - 1. Past offset
 - 2. Appraisals
 - 3. Municipal lands
 - 4. Interagency Land Management Transfers (ILMA's) (e.g. Highland Correctional, API) and Public and Charitable Use sales and leases
 - 5. Past court settlements (e.g. CIRI)
 - 6. Legislative designations (parks, forests, fish and game refuges)
 - 7. Other
 - B. Mechanics (e.g. court, legislation)
- IV. Dedicated funds - Tamara Cook, Legislative Legal
Tom Koester, AGO
- V. Future combined meetings and/or subcommittees on issues affecting both groups.

December 1, 1986

Dear

~~Committee~~ Members of the Special Joint Committee on Mental Health Trust Lands, at our November 22 meeting in Anchorage, were advised to contact staff members with specific suggestions regarding the various settlement alternatives presented to the committee.

After reviewing all the materials I present the following recommendations, and reasons, for your consideration. Since the proposals are very fluid and interchangeable, it is not productive to address each one separately. My comments are organized in the same general format with the additional of one new component: "Public Input".

I have placed great emphasis on public participation in every aspect of the issue before us. Mental illness strikes all levels of skills, professions, income and family backgrounds. Have no fear that persons and groups interested in services for the mentally ill have the intelligence and the varied resources necessary to act in their own best interest, and the best interests of their loved ones.

PUBLIC INPUT

The Interim Mental Health Trust Commission should be continued for a minimum of three years, and adequately funded for staff, travel and research. If the settlement includes necessity for appraisals, funds must be made available to do the appraisals.

The Governor's Mental Health Advisory Council should be restructured with representation from advocacy groups, clients, municipalities and public members, and the word "advisory" deleted from the title. The Council should be responsible for review and approval of the state comprehensive mental health plan, annual updating and setting required funding levels, for monitoring the implementation and effectiveness of the plan and for recommending facility needs. The Council should have authority to act that matches assigned responsibility.

Processes for public input should be structured into all legislation that sets up trust management, land or fund management, comprehensive plan approval and program monitoring. These processes to include notification, advertising, public hearings, testimony, access to information, liaison with persons most affected: the mentally ill and their families.

Funding for all mental health facilities (capital construction, rentals, leases, contracts) to include 1% for public information expenditures. A brief listing of possible projects could be distribution of books and publications explaining mental illness and how to cope with it, public service anti-stigma media spots, dissemination of latest research findings, maintenance of hot lines for individuals and families needing emergency help, training workshops and conferences.

LANDS TO BE IN TRUST

The goal should be to return as much land as possible to the trust, substituting, where necessary, replacement lands of equal value and of equal income producing potential.

I believe the committee should reach a consensus on a desired acreage goal for reconstituting the trust. I would support 750,000 acres as such a goal.

COMPENSATION FOR LAND REMOVED FROM TRUST

Revenues from lands not returnable should be subject to diversion for mental health program expenditures.

Any existing leases on lands not returnable should be subject to re-negotiation of lease fees, with revenues going to mental health program expenditures.

Lands not returnable should be available for use, if appropriate, for mental health facility sites.

Boroughs and municipalities could be encouraged, or mandated, to provide mental health services. A local share contribution can be set as a trade off for continuing to hold and/or to select mental health lands.

The amount and method of payment of the cash settlement to be paid by the state to be determined by negotiation, with the proviso that time payments be subject to interest.

Settlement negotiations should be conducted so as to reduce or eliminate appraisal costs, to disregard offset for state mental health program expenditures, and to minimize blame or liability for past errors.

I believe the committee should have a recommendation on a cash settlement, but does not now have enough statistical data to make a decision.

LAND MANAGEMENT

By a public corporation whose board of directors includes a minimum 1/3 membership of mental health program advocates. Board to have authority commensurate with the responsibility of the trust and to control management expenses.

Management policies to be based generally on maximum revenue production with enough flexibility to act in the best long term interest of the mentally ill (for example: to use land directly for facility sites.)

Policies to include specific required process of public input and review of management decisions, regulations and actions; meetings to be open to the public.

An alternate management option would be to make the interim mental health trust Commission, as presently constituted, a permanent management board to carry out the policies stated above.

I also have no objection to DNR management provided it is under the direction of a board as described above. I see no big problem with dual systems of land management within the State. Competition in land management systems might give land users a choice of more flexible, more efficient, individualized and speedy decisions. The veto provision in Nov. 22 Alternative A & B is not satisfactory. The public needs to affect positive actions, not merely take a negative position on someone else's decision.

USE OF GENERATED FUNDS

(None of the alternatives adequately address the real issue which is the quality of the program, not how the money is appropriated.)

The state comprehensive mental health plan should be approved by the public and by family advocacy groups (perhaps through the vehicle of the Governor's Mental Health Council as previously proposed in this letter) in a mandated, structured process with provision for annual updating and mandatory three year review; followed by state funded monitoring of the program effectiveness by the same advocacy groups.

Monitoring of the state mental health program to be funded by income from the trust in the same way management costs would be met out of the trust. Monitoring contracts would be handled on a regional basis, by bids or by assignment to advocacy groups. The Division of Mental Health to use present evaluation funds to provide liaison with monitoring advocates.

Funding for regional and state advocacy groups to be underwritten by the state with a minimum \$100,000.00 annual addition to present federal Community Support Program.

Consider establishment of a separate section for chronically mentally ill within the Division of Mental Health. A separate section would set the proper priority for service to those most in need and would provide direct accountability for performance of those services.

FUND MANAGEMENT

By a corporate board with 50% of its members selected from mental health program advocates.

A standard management principle is that authority to act must match responsibility assigned. In a Sept. 25, 1986 communication, G. Thomas Koester, Assistant Attorney General, State of Alaska, stated that an "active constituency" could effectively prevent legislative reappropriation for other purposes of mental health trust land revenues, even if those revenues were not in a dedicated fund. His letter closes with this sentence: "At the same time, experience has shown that it is politically difficult -- particularly in light of a well-informed and vocal constituency -- to affect significant changes." My point is if the monkey is to be put on the backs of the mentally ill and their families to preserve funding for their own services, then those families must have access to information, power and decision making.

LEGISLATIVE INTENT

Earnings from mental health trust lands will be spent on mental health programs. The legislature will provide additional (as needed) increased funding annually by a pro-rated amount that will enable the 3 year goals of the comprehensive mental health plan to be met.

The legislature will also pledge annual appropriations, plus interest, to meet any cash settlement to the trust agreed on and approved by the court.

The legislature will make a statement of intent similar to that stated on page 2 of Sept. 25, 1986 letter from G. Thomas Koester to George Rogers: "It is the intent of the Legislature that the income from the fund shall first be used to meet the necessary expenses of the mental health program of Alaska."

Pledges of % of state revenue, or % of state lands revenues, or fixed % increases in budget allocations such as proposed in Nov. 22 alternative B or Nov. 14 alternatives A, B & C are not useful because they base appropriation calculations on factors other than treatment goals for the mentally ill.

Thank you for consideration of these suggestins.. I would be happy to discuss any of the ideas in greater detail, or to work with you on procedure to achieve the goals. I have met with The Fairbanks Alliance for the Mentally Ill and the general tenor of my presentation represents their views as well as my own.

Sincerely,

Janet Baird, alternate member
Special Joint Committee on Mental
Health Trust Lands

Would like you to share this
with Janet Baird, if appropriate,
before the Oct. 3 joint meeting.
→ She got a copy.

TO: **Bettye**
FROM: Sandra
RE: Al George's Mental Health Lands Settlement Proposal
DATE: September 16, 1986

1. Return "less than fee disposal" lands to trust (oil and gas leases, mining claims, timber sales, coal leases, land leases, material sales, rights of way).

224,499.07 acres

2. Return "legislatively designated" lands to trust (parks, refuges, state forests).

368,241.02 acres

3. Require each borough/city to return "a few acres" of their municipal entitlement to the trust "as penalty for the pressure they put on the legislature to break the trust".

10,000.00 acres

TOTAL RETURN TO THE TRUST

602,740.09 acres

GEORGE FEELS THIS IS A FAIR RECONSTITUTION OF THE TRUST; THAT "ANYTHING DONE TO RESTORE ABOUT 400,000 ACRES SHOULD GET THE PARTIES TOGETHER".

4. Other lands removed from the trust would be assigned a dollar value that the state would have to pay into the trust (patented to individuals, municipal entitlements, etc.).

118,330.47 acres

5. Lands currently in the trust would remain there.

149,097.00 acres

NOTE: Federal funds used for park or refuge development may need to be reimbursed if the park/refuge designation is removed.

Sgt 3'86
FHS Ok

The following comments are my personal observations and have not been cleared or discussed with FNSB or any other organization.

Before the proposed joint meeting between the legislative MH land committee and the Governors Mental Health land settlement commission it might be interesting to try on a few options dealing with land (not what is mental health) on the chance that the commission would be polite and ask the ^{legislative} committee what they thought.

The court in simple terms said "restore the trust." With so many parcels & individuals now holding what was assumed to be good title probably not all of the trust can be restored with just returning land. A \$ dollar value of the "impossible" parcels will have to be declared and the state hope it will result in a figure that can be reasonably attained in a acceptable period of time. To start the process will have to be some assumptions that have a "taint of logic" to them. Several rather large acreage categories come to mind right away, the first being the less than Sec 224,499.07 acres that contain leases, timber sales, material sales etc.

The transfer of those acreages and income back to the trust will not affect the completion of the terms of the transaction unless they were granted at less than fair market value.

Next, lets look at the category retained in state ownership: Park Legislative units 150,576.41 acres and Fish and Game legislative units 85,709.61 acres

both of these units do not earn income and what the legislature gives it can take away. ~~the~~
④ 131,955.00 acres of Forest legislative unit only need to be given ~~without~~ ^{simple} instruction that all income goes to the MH Trust Fund. There may be a few acres of the Interagency Land Management parcels that could be returned to help temper the affect of the dollar settlement.

Lets look at what this totals numberswise

①	224,499.07 *	less than fee
②	150,576.41	Parks
③	85,709.61	wildlife
④	<u>131,955.00</u>	<u>Forests</u>

592,740.09 acres

For talking purposes lets call that 500,000 acres if another 10,000 was picked up from the Municipal Entitlement area I see no reason why the suit litigants should hold back from the negotiation table. * when one uses this figure plus the figure Acres remaining in the trust on the two page sheet from DNR (August 1986) the arithmetic falls apart, however, anything done to restore about 400,000 acres should get the parties together.

local affect of MH Trust case

Lets look at the figures that are contained in the DNR (Joe Sullivan) 3 page tally sheet 4/18/86. Fairbanks North Star Borough has applied for 25 parcels 19 of which have been patented to the Borough and 6 have been T'd and the borough is doing work on at least one of these T'd parcels for the cost of \$70000 in survey work.

The FNSB arithmetic look like this,

19 parcels patented = 9235.04 acres

6 parcels Tied = 7096. —

Total MH 16,331.04 acres FNSB.

The above is 14.58% of the 112,000 acres of municipal entitlement allowed the F.N.S.B. Unfortunately the parcel 400227 in T1N R4E Sec. 19-23 for 2880 acres is where the 70,000 has been spent and it is in the Tied only list.

Personally I feel that each Borough and/or city should have to give up a few acres of their Municipal entitlement MH lands as a penalty for the pressure they applied on the legislature to break the Trust.

Another area of interest to look at is the Blue Book for Alaska write up for Mental Health to show the growth and expansion, ~~and~~ and see what was called mental health in the year the Blue book was published.

[Signature]

[Some of the expenditures for capital improvements to Parks and possibly wildlife may need close scrutinyst as there may be Federal or special matching funds involved that if violated may require reimbursement to the originating agency or fund.]

Rec 8/5/86

Department of Natural Resources
Current Land Status Estimates
Mental Health Grant Land
August, 1986

The figures in section I are subject to further negotiation between federal and state land title auditors. At question are the chargeability of navigable and meanderable water bodies. Further deductions are expected from reconveyance of such things as erroneously conveyed native allotments.

I. Land Base:

A. Total grant:	1,000,000 acres
B. Patented to the State:	829,250 acres
C. Approved for patent to the State: (subject to survey)	176,634 acres
D. Possible remaining entitlement (see F below)	0 - 21,737 acres
E. Land under Mental Health grant selection:	146,503 acres
F. Estimated reconveyance liability (e.g. erroneously conveyed Native allotments, meanderable waters)	27,621 acres x

The figures in sections II are subject only to minor revisions unless otherwise noted.

II. Conveyed out of state ownership:

A. Full conveyance (excluding subsurface)	
1) Patented to individuals	20,751.43
2) Under contract for sale to individuals	25,936.33
3) Municipal Conveyances	
Patented	23,286.16
Approved for patent	18,967.79
4) Litigation Settlements	5,605.66
5) PL 94-204 CIRI Term and Conditions	33,783.01
6) Other exchanges	unknown *
Total Conveyed	128,330.47

B. Less than fee disposals

1) Land Leases	4,012.22
2) Oil and Gas Leases	107,882.08
3) Coal leases	54,563.22
4) Timber Sales	1,751.72
5) Mining Claims	55,064.09
6) Material Sales	1,219.74
7) Rights-of-way	unknown *

Total less than fee disposal 224,499.07

immediate transfer all
future income to fund
Negotiate ~~past~~ past
funds as an outstanding
obligations

*Accurate figures will not be available until a full audit of mental health land for these actions is complete.

III. Retained in state ownership with encumbrances:

A. Interagency Land Management Assignment	3,761.90 X
B. Park Legislative Units	150,576.41 X
C. Fish and Game Legislative Units	85,709.61 X
D. Forest Legislative Units	131,955.00 X
TOTAL	372,002.92

verify if cap. imp. or how used.

Request list of each legislative ac the created the above acreage involved.

The Department believes that the items above may not have to return to the trust but instead are a part of the state's liability to the trust under the authority of State v. University.

IV. Summary:

Total land conveyed to the state:	978,262 - 1,005,884
Total land conveyed from the state:	- 128,330
Total land encumbered not returned to the trust:	- 372,003
Acreage remaining in the trust	609,885 - 505,551
Encumbrances (Less than Fee)	- 356,454
Acreage remaining in the Trust unencumbered	149,097

???

X Probably transfer back. But list out and see how could be handled in the future.
X on an individual basis (list out)

MENTAL HEALTH LANDS - MUNICIPAL ENTITLEMENTS

MUNICIPAL SELECTIONS APPROVED,
PATENTS

FAIRBANKS NORTH STAR BOROUGH

MTRS	USS #/SEC	ADL NUMRER	ACREAGE MH	CITY/BOROUGH	APPROVAL DATE	CONVEYANCE DATE	PATENT #	MH #	COMMENTS
1N, 1E	SEC 12, 13	400725	520.0	FNSB	7/27/80	4-28-81 *	5302	26	
1N, 1E	SEC 11	400725	160.0	FNSB	7/27/80 *	4-28-81	5303	26	
1N, 4E	SEC 24, 27-30	400727	1780.0	FNSB	6/23/80	7/13/81 *	5372	27	
1N, 4E	SEC 19-23	400727	2880.0	FNSB	6/23/80 *	—	—	27	
2N, 8E	SEC 1-3	403933	1720.0	FNSB	6-27-80 *	—	—	117	SEC 3 - 6-27-80 SEC 1-2 - 6-27-80
3N, 8E	SEC 26-27, 22 34-36	403933	2331	FNSB	6/27/80 *	—	—	118	
1S, 4E	SEC 10	26538	5	FNSB	6/13/79 *	—	—	29	
5S, 4E	SEC 10-11, 15	400974	1720.0	FNSB	6-27-80	4-30-81 *	5452	44	
6S, 4E	SEC 13, 14, 24	400760	500.0	FNSB	6-27-80	6-8-81 *	5397	44	
6S, 4E	SEC 13, 24, 25	400760	640.0	FNSB	6-27-80	9-23-81 *	5396	44	
6S, 4E	SEC 10	400756	235.0	FNSB	6-27-80	7/12/84 *	7698	44	
6S, 5E	SEC 18	400760	497.49	FNSB	6-27-80	9-3-81 *	5454	44	
7S, 5E	SEC 13	400758	1.54	FNSB	6-27-80 *	4-30-81	5357	73	
7S, 5E	SEC 13	400778	65.94	FNSB	6-27-80	4-30-81 *	5357	73	

7096 acres T Ad
9235.04 ac Retained
16351.04 ac MH in the
Fairbanks North Star Borough Municipal
Entitlement draw.

MENTAL HEALTH LANDS - MUNICIPAL ENTITLEMENTS

APPROVED SELECTIONS/PATENT

FAIRBANKS NORTH STAR BOROUGH

THed

2/1/81

276-3052

MTRS	USS #/SEC	ADL NIMRER	ACREAGE MH	CITY/BOROUGH	APPROVAL DATE	CONVEYANCE DATE	PATENT #	MH #	COMMENTS
1N,1W	sec 6	400705	88.0	FNSB	6-27-1980 *	4-27-1981	5272	26	
1N,2W	sec 1	400705	80.0	FNSB	6-27-1980 *	4-27-1981	5300	136	
1N,3W	sec 9	400712 ~~400705~~	160.0	FNSB	6-27-1980 *	-	-	126	
1S,1W	sec 25	400711	120.0	FNSB	6-27-1980	6-8-81 *	5750	74	
1S,2W	secs 19,30	400707	309.08	FNSB	6-27-1980	6-27-1981 *	5340	26	
1S,2W	sec 31	400707	30.11	FNSB	6-27-1980 *	(6-5-85)	8155	126	← called in to Marene 6/27/81
1S,3W	sec 2	400770	297.42	FNSB	6-27-80 *	4-27-81	5456	126	
1S,3W	sec 24,25,36	400707	1867.59	FNSB	6-27-1980	6-27-1981 *	5455	9	
1S,3W	sec 17	400706	320.0	FNSB	6-27-1980	6-27-1981 *	5455	9	
1N1W	sec 6 Lot 1	400705	34.		6-27-80	—			

21.

[illegible]

 * Deliver to Gall, Slaughter Location Anchorage
 * From Joe Sullivan Location Fairbanks
 * Telephone/Telecopier # 276-3032 Total number pages 3
 * Transmitted on/speed _____ Date 4/18/85 Time 2:55 P
 * Phone for problems-Name Joe Sullivan Telephone number 479 2293
 * Comments _____

JAMES B. GOTTSTEIN

ATTORNEY AT LAW

406 G STREET, SUITE 206
ANCHORAGE, ALASKA 99501
(907) 274-7686

October 16, 1986

Dr. Melbourne Henry
Director, Division of Mental Health
and Developmental Disabilities
Pouch H
Juneau, Alaska 99801

Re: August 22, 1986 Draft Comprehensive Mental Health Plan

Dear Dr. Henry:

Thank you for providing me with a copy of the above referenced draft plan. We know you and your staff have devoted a lot of time and effort in the draft plan and we commend you for your efforts. There are a lot of good things in the draft plan and we no doubt will not be mentioning anywhere nearly all of them in this letter. As you know, when people comment on agency actions, they tend to focus on the things they don't like rather than the things they do. We, no doubt, are guilty of the same thing, but wanted to let you know that we do appreciate the Division's work and have tried to recognize the good aspects of the draft plan.

As you know, I am the attorney for the Alaska Mental Health Association (AMHA), Mary C. Nanuwak and John Martin on behalf of themselves and all others similarly situated, in the Mental Health Lands litigation, Weiss et al. v Alaska, 4FA 82-2208 Civ., as well as being a member of the board of directors of the AMHA.

I. REQUEST FOR INFORMATION

(a) Public Testimony and Written Comments on the Draft Plan.

We would appreciate it very much if you would provide us with a copy of all public input you have received regarding the draft plan. With respect to oral testimony, I understand that notes were taken, and copies of the notes will be fine. You will recall that at the public testimony in Anchorage, I expressed the goal of trying to bring the various groups interested in the Mental Health Plan together to try and develop a consensus. You indicated the Division would be unable to attempt such a task, particularly in light of your desire to have a final plan by January. However, Sharron Lobaugh and I agreed after the meeting that it might prove quite useful for the Alaska Mental Health Association and the Alaska Alliance for the Mentally Ill (AAMI) to undertake such consensus building.

Of course, in order to do so, we will need the requested information. We do understand that the Division has a severe budget shortfall, and are quite willing to have someone come in to do the copying.

(b) Senate Bill 520 Blue Ribbon Committee Report

Please provide us with a copy of the Senate Bill 520 Blue Ribbon Committee Report on the need for mental health services in Fairbanks and the Northern Region that is referenced at page 10 of the draft plan.

(c) Annual Mental Health Statistical Report.

At the end of Table 5, on page 23, the above referenced Annual Mental Health Statistical Report is mentioned. We would appreciate it if you would send us a copy.

II. GENERAL COMMENTS

(a) Integration/coordination Between Different Sections of The Plan.

In our view, the plan does not have sufficient coordination or integration between the various components. For example, Chapter 3 regarding acute care does not provide very clearly how a person is tracked and cared for when he or she moves from Alaska Psychiatric Institute (API), the acute care facility, to a less intensive treatment. The Alaska Mental Health Association has always felt the goal of treatment should be to continually strive for moving the patients into a more productive level of functioning and if this is to be accomplished, there must be integration between the various categories, ie. Acute, Serious, and Clinical Services. In this regard, it seems to us that having the receiving agency participate in discharge planning would be a very beneficial addition to the process. Otherwise, the discharge planning may often be "pro forma" with no realistic expectation that it will be followed.

Chapter 5, regarding the Seriously Mentally Ill, describes some very good concepts, such as Case Management, Continuum of Care, Point of Entry, and Community Support Services, such as housing. However, it seems to us that such concepts apply across all categories of treatment. Thus, we feel these treatment paradigms should be applied throughout the plan, and not just to one segment of the mentally ill population. The same is true with the concept of community oriented development of the mental health program that is contained in Chapter 7, on Natives. While we strongly support the concept of local involvement in the development of programs for Natives, we feel the concept is good for the Non-Native population as well. In other words, community based development of local programs should apply across the board, not just for Native communities.

The problem of of integrtrion & coordination also applies generally to Chapter 7, regarding Alaska Natives, because the plan does not fully discuss how treatment in the other categories

relates to services to Natives. For example, we know that approximately 30% of the population of API is Native, while the state's Native population generally is only half of that. While Goal C of Chapter 7 includes cultural sensitivity at API, the objectives do not adequately address the issue. For the Native chronic population, how is case treatment and management going to be culturally sensitive? What about the large segment of urban mentally ill Natives?

(b) Description of Programs or Services

In our view, the plan is quite vague as to exactly what the programs or services described entail. We understand that an annual "Implementation Plan" will flesh out the description of the programs/services, but if that is so, it is not possible to really evaluate the draft plan without reviewing the Implementation Plan. From a review of the draft plan only, it is quite difficult - even impossible - to determine the scope of the program. Thus, the Implementation Plan, at least for the first couple of years, should be available to review at the same time.

(c) Delineation of Priorities.

The draft plan describes with some particularity the categories of services that are desired, but does not describe where the Division feels resources (funding) should be applied based upon different availability levels. In other words, if only \$25,000,000 per year is going to be available where would the Division spend it, as opposed to where the Division would spend \$50,000,000? We believe it is imperative that prioritization be made in the plan, with emphasis on high risk populations.

(d) Level of Services

This issue is actually related to all three prior general issues. As an example "Basic", "Minimum", and "Optimum" levels of services is sometimes used in the body of the draft plan. On page 36, in the "Additional Fiscal Impact" portion of the Services for the Severely Mentally Ill, Chapter 4, "Basic", "Adaptive" "Promotive" levels of service are defined and costs estimated for a "Basic" system. The balance of the draft plan, however, does not describe at what level the goals and objectives are addressed.

In our view, the plan should describe in each instance what funding it requires for "Basic", "Minimum", and "Optimum" or "Basic", "Adaptive" and "Promotive" levels of services, and also, as set forth in (c) above describe when funding should be applied to the different programs as funding increases.

(e) Fiscal Estimates.

We understand it was difficult or impossible to be very precise in the various cost estimates, but we believe it is imperative that more information on the basis for the estimates

be provided. Otherwise it is not possible to evaluate them. This also relates to (b) above, in that the description of the services to be provided are not very clearly set out. It seems that if the description of the services was more clearly set forth, more detailed and verifiable cost estimates could be developed.

Having made all these comments, please don't misunderstand us to be opposed to trying new programs and techniques. On the contrary, we are very supportive of trying new things as more knowledge is gained by the mental health professions.

(f) Definitions.

We were somewhat confused by the terminology used at various points and believe having all the relevant terms clearly defined and consistently applied throughout the plan would be useful. Probably the best example is the use of "Basic", "Minimal", and "Optimal" in some places, and "Basic", "Adaptive", and "Promotive" in another. Terms should be defined in the appropriate place, preferably prior to their use, and consistently used throughout the plan.

(g) The Process.

We are quite pleased that you have decided to bring the draft plan before the public for review, even though you don't believe it to be required. We know that you would not have done so if you also did not have the intention of carefully reviewing the comments and attempting to incorporate them into the Plan. We, of course, would like to have the public input process formally required for the future. We are somewhat concerned with your stated desire to adopt a final plan by January 1987. We do recognize that the Legislature is clamoring for the plan, but feel it is more important to have as good a plan as we can, since it should be operative for 5 years. For that reason, we feel it would be better to spend a little more time on it to get it as good as it can be.

(i) Periodic Review.

We believe that the Plan, once adopted should be reviewed annually both to "fine tune" it, and to review progress under it.

(j) Most Therapeutic Treatment.

The current statutory scheme for treatment of patients is on a "least restrictive" basis. We believe, a change to the "most therapeutic" would be beneficial. We would therefore like to see this added in the plan as a legislative goal.

III. SPECIFIC COMMENTS.

In addition to the general comments previously made, we have a number of comments regarding the specific language of the draft plan. In going through the draft plan from front to back, we attempted to incorporate our general comments where they apply.

(a) Chapter One - Introduction and Background

1. It seems like the "Population" section, starting on page 1, would benefit by using more current statistics.
2. The first full paragraph on page two is good in recognizing the need for considering the differences in age and sex populations in Alaska on Alaska's Mental Health Program.
3. The last sentence of the last full paragraph on page two is good in recognizing the great differences between the various Native groups.
4. It would be nice if the Plan could describe some of the reasons for the large incidence of mental illness in the Native population.
5. Again, the carry-over paragraph on page 3-4 and the description of Alaska's population throughout pages 4 & 5 is good in recognizing the differences in Alaska's demography which impacts its Mental Health Program. The carry-over paragraph on pages 4-5 relating to unemployment's impact on mental health is important and it's good it is recognized. Perhaps a citation to the 1985 National Mental Health Association's published research into unemployment and mental illness would be helpful.
6. Again, it seems it would be useful if Table 2 on page 5 could be updated with more current data on unemployment.
7. The first full paragraph on page six does not appear quite accurate in that the administrative office of the Division of Mental Health (and not "of Developmental Disabilities" at that time) was established in the then Alaska Department of Health (and not "& Social Services") in 1952 (and not 1957).
8. Perhaps a final sentence to the second full paragraph on page 6 should be added, recognizing that 14 API patients were moved to Harborview earlier this year as a new unit. Actually, this move by the Division exemplifies two of our comments to be made about acute care, which is that it is not necessarily "short term" and that alternatives to API should be made available.
9. In the last paragraph of page 6, the Alaska Mental Health Association was established in 1955, not "the early '60's".

10. The sentence in the first paragraph on page 7, referring to the passage of the Community Mental Health Services Act, as follows:

This act was passed only after more than 85 years of identifying mental health problems in Alaska.

should be explained, we believe.

11. With respect to the second paragraph on page 7, relating to designated beds, we believe it would be useful to describe what progress has been made in this area.

12. We believe it would be useful to provide statistics on CMHC growth and API admissions as compared to the general population growth in the last paragraph on page 7.

13. The description of the Weiss case is not quite accurate on page 8. We will be happy to work with you on it if you like. Otherwise, (a) it seems it would be useful to indicate that the Alaska Supreme Court's decision was specifically to invalidate the 1978 legislation purporting to "redesignate" Mental Health Trust Lands as general grant lands, and (b) to clarify that the deduction allowed is only for state money that was spent on mental health, not funds from the federal government or other sources.

14. With respect to the last paragraph on page 8, it was actually CSSB 472 that was passed, although HB 128 was the original legislation in the House. In addition, it seems it would be more useful to use Chapter 132 SLA 1986 as the citation rather than the bill number. Also, the sentence that "The commission will have an executive director and staff" is simply incorrect. At this point, there is no executive director, and no realistic prospects for one, due to the grossly inadequate funding for the commission. It does appear the commission will hire an editor/coordinator for its report to the legislature however. Perhaps changing "will" to "may" is all that needs to be done.

15. With respect to the third full paragraph on page 9, it might be helpful to summarize the Battelle Study's findings.

16. It is unclear to us what role the 12 regional Native corporations have as described in the carry-over paragraph on page 9. Are you referring to the for-profit corporations such as NANA, Doyon, and the like, or the non-profits such as Maniilaq and the Tanana Chiefs Conference? If the latter, which seems reasonable, they are normally referred to specifically as non-profits to distinguish them from the profit corporations.

17. The last sentence in the paragraph on page 10 under the heading "THE MENTAL HEALTH PLAN" states:

If even a small percentage of the total funds needed become available, this plan will serve as a blueprint for development of the mental health system.

We certainly agree that this should be the case, but as mentioned in Section II(c), above, we believe the priorities and programs/services should be more clearly delineated in order to accomplish this.

18. Our comments in Section II(c), above, relating to cost estimates applies to the section on page 11 under the heading "Fiscal Impact Estimates".

19. Again the discussion of cultural and geographic differences in the last paragraph on page 11 is good in recognizing "the mental health service system must address these differences by promoting a flexible, culturally sensitive approach to service delivery," and that "professional staff must be specially trained in the diverse needs of Alaska citizens, particularly when working in remote areas."

20. With respect to the first paragraph on page 12, we believe it would be beneficial to describe how the statutory priority populations are being unserved despite the statutory mandate because of inadequate funding. The second sentence in the second paragraph on page 12, stating that the acutely disturbed population would be brought up to basic level before basic services in other areas were addressed, and that acute services would be brought up to a minimal level before the chronically severely disturbed population would be brought up to the minimal level is an example of needing definitions, consistently used. While "basic" and "minimal" levels are defined elsewhere, we don't think they were defined prior to this discussion. This is also an example of defining the priorities and method for determining allocation of funding discussed in Section II(c), above. We believe it is imperative the plan, as a whole, describe the priorities for funding in this manner.

(b) Chapter Two - The Mental Health System

1. It seems that the word "development" might be changed to "behavior" on page 14 in the carry-over sentence from page 13. We recognize "development" is probably alright, but we believe the focus in the plan is behavior.

2. With respect to the third full paragraph on page 14, it seems that the failure to receive adequate funds for the comprehensive program for hospital development for the mentally ill contemplated in AS 47.30.350 has precluded being able to meet the statutory mandate and this should be mentioned.

3. As in Section II(a)(8), the placement of API patients in Harborview should be mentioned in the fourth paragraph on page 15.

4. Of course, there is no "Appendix 2", as mentioned in the fifth paragraph on page 15.

5. The statement of philosophy beginning on page 15 is very good and we agree wholeheartedly with it. As mentioned in Section II(a), we would like to see this philosophy more comprehensively incorporated into the specifics of the plan.

6. It seems to us that the signature block on page 17 should be eliminated, leaving the effective date.

7. With respect to "(5)" on page 19, regarding Central Office purposes, it is not at all clear why one of the purposes is to "establish a uniform ratio of local and state government responsibility for financing mental health services;". Moreover, it does not appear to us that this is actually the case in any respect. Indeed, it appears exactly the opposite.

8. With respect to the personnel chart on page 19, it seems more appropriate to leave out all names.

9. The statistics in the first paragraph after table 4 on page 21 were confusing to us. It would be helpful, to us at least, to clarify what they mean.

10. The statistic in the last paragraph of page 21 that 30.4% of commitments to API during 1984, were "pending judicial review" seems unbelievable. Almost certainly, most of this category eventually received judicial determination or were converted to voluntary commitments sometime during the year.

11. The note at the end of Table 5, on page 23, references a blank for a page number.

12. It seems that the Annual Mental Health Statistical Report, DMHDD, undated, referenced as the source for Table 5, on page 23, should be dated.

13. Appendix 3, referenced in the first full paragraph of page 26, is not provided.

14. With respect to the third full paragraph on page 26, under the heading "CURRENT ADMINISTRATIVE ISSUES", it does not appear to us why additional funding "will call for regionalization of programs and services." While we vigorously agree that local input and control, to a degree, particularly in rural

Alaska, is critical for a successful program, we do not necessarily agree that "regionalization" per se, is a component of this. If regionalization simply means that the end result is another layer before the central office, we are opposed. If it results in staffing that works with local entities to foster creative solutions, we would be in favor.

(c) Chapter Three - Specialized Services to the Acutely Mentally Ill.

1. It does not appear to us that defining acute as of "short duration" in the first paragraph on page 27, is accurate, particularly when it becomes clear that the acute population is functionally defined as the people who are in API. Obviously, patients at API often are there for a long period of time. Since treatment of the acutely mentally ill is often not short term, it should not be defined as short term.

2. The description in the second paragraph of page 27 regarding ongoing aftercare, residential services, monitoring, etc., in regarding continuum of care is good.

3. The first full paragraph on page 28, describing the comprehensive care system for the acutely mentally ill is good. In addition to those areas mentioned, we would like the continuum of care elements also explicitly mentioned, such as residential services, monitoring, including follow-up review, etc., as well as such things as case management, outpatient services, prevention and early intervention.

4. We would like to see a Goal and/or Objective(s) for alternatives to API.

5. With respect to Goal A, perhaps objectives of having
(i) a 24 hour statewide on call telephone service, and
(ii) mental health training of village health aides
would be beneficial.

6. With respect to the entire Fiscal Impact section, it seems to us that the plan should describe (i) what services are being provided, and (ii) how the estimates are arrived at. This comment relates to all of the fiscal impact sections for the balance of the draft plan.

(d) Chapter Four - Specialized Services For the Severely Mentally Ill

1. The first paragraph in this chapter, on page 31, is good in recognizing the benefits of continuity of care, and treatment plans for reducing hospitalization and increasing self-sufficiency.

2. It seems to us that "not yet been fully realized" appearing in the sixth line of the third paragraph, on page 31 should be changed to "barely been touched".

3. We would find it useful for the plan to summarize the standards for services mentioned in the first full paragraph on page 32, following # 2 of the definition of Seriously Mentally Ill.

4. With respect to the first paragraph on page 33, it seems it would good to state what the unmet need is for supervised apartments, halfway houses, crisis respite beds, residential care facilities, etc.

5. With respect to the second paragraph on page 33, again, it seems it would be good to describe the needs, waiting lists, etc.

6. In Objective 1, of Goal A, on page 33, 2nd line, "of" should be inserted between "development" and "an".

7. With respect to Objective 5, of Goal A, on page 34, it seems overreaching to "require" contacts at the clients residence. Perhaps other phraseology should be used.

8. With respect to Objective 6, of Goal A, on page 34, it seems to us that the patient's family, when available, is probably the best source of observation on the client's behavior and should be used.

9. We would like to see an additional Objective for the provision of the housing component of the Community Support Program.

10. With respect to Objective 1, Goal B, on page 34, it seems to us that one of the elements is that the services be provided in a location(s) that are readily accessible to the population concerned.

11. With respect to Objective 2, Goal C, on page 35, we believe job placement, with follow-up counseling, is the most important component of vocational rehabilitation (which in many instances might be considered "vocational habilitation" since many patients have never been capable of holding a job). It seems to us that vocational training alone, without job placement, just makes things worse by raising hopes for employment without any realistic expectation of obtaining a job.

12. With respect to Objective 1, of Goal D, on page 35, we are sure you also mean to provide support to the patient themselves. With respect to the actual language of the Objective, we are not sure what it means.

13. With respect to Objective 2, Goal E, on page 35, is the provision of legal services meant to be for the patients themselves? If so, it would appear there is the very real danger of a conflict of interest between the patient and the Division, in that the Division may want someone involuntarily committed. The federal government recently enacted a Public Advocacy Program

for the Mentally Ill, which includes the provision of legal services to certain qualified individual mentally ill persons. It seems that coordination with this program would be beneficial.

14. Objectives 3 & 4, of Goal D, on page 35, relating to the provision of recreation and transportation are good.

15. Again, as with Section 9 above, there is a housing component that needs to be addressed.

16. With respect to Objective 1, of Goal E, on page 35, we would hate to see the addition of administrative staff for its sake alone. We would want to see a clear delineation of the tasks and results expected out of the additional person(s) contemplated to be added to the central office staff.

17. In the "Additional Fiscal Impact" section, page 36, the draft plan identifies the costs are for a "basic" level of services, after defining "Basic", "Adaptive", and "Promotive" levels of services. We believe this is the only place the fiscal impacts clearly show at what level the services are to be provided. As we mentioned in Section II(d), above, we believe not only should this be identified in all cases, but the costs for the "Adaptive" and "Promotive" levels of service should also be provided.

Moreover, in other parts of the plan the terms "basic", "minimal", and possibly "optimum" levels of service are discussed, but without definition. As we said in Section II(f), we believe these terms should be defined early in the plan and applied consistently throughout it.

(e) Chapter Five - Specialized Services to Children and Adolescents.

1. This chapter deals with this population without describing how it interrelates to other portions of the plan. While we recognize the special considerations and treatment necessary for children and adolescents, it is clear that some portion are or end up being chronically, severely and/or acutely mentally ill. Thus, the plan should integrate this segment with the other segments of the plan. This is an example of general comment II(a).

2. With respect to the second paragraph on page 37, there are interesting statistics, but it seems to us that the implications or impacts on the need for mental health services should be made specific with estimates of the increased needs because of the divorce and alcoholism rates in Alaska.

3. The third paragraph on page 37, is good in identifying the "gap" in the mental health system for the severely disturbed adolescent.

4. With respect to the second full paragraph on page 38, fourth line, again, it does not appear to us that API is solely a "short-term facility. Also the standard for admission to API seems to be based upon the Civil Involuntary Commitment Standard. We question if this is actually the case, because it appears that children and adolescents who do not meet this standard are cared for in API.

5. With respect to the definition of a "severely emotionally disturbed" child or adolescent", starting with "A." on page 38, and continuing through "E." on page 39, there needs to be disjunctive and/or conjunctive connection(s). In other words do "A" through "E" all have to be present or just "A" and one of "B" through "E" or some combination. I suppose this is a classic lawyer's comment, but it is impossible to tell what the definition is without it.

6. With respect to Objectives 1 & 2 of Goal C, on page 40, it seems to us that they do not quite mesh. We would suggest that "who are at high risk or are experiencing mental health problems" be inserted after "children" in the fourth line of Objective 2, in order to make this whole Goal consistent.

(f) Chapter Six - Specialized Services To The Elderly

1. This section of the draft plan could also benefit from a fuller discussion of how it integrates with the other elements, as discussed in Section II(a), above.

2. In the second paragraph on page 44, the draft plan states that "74% of those over 60 have no nearby relatives". Depending on the definition of "nearby" we believe this statement is either not credible, or perhaps, not useful. It seems to us that a large number of the people over 60 in Alaska have children in the state, certainly Natives over 60. If nearby is defined to exclude these children, then we do not believe the figure is altogether that useful. On the other hand, perhaps the figure is simply a mistake. Or on the third hand, perhaps we are completely off base with our questioning this figure. In any event, we would like to know the basis of this statement.

3. The first paragraph on page 45 is good, pertaining to the interdisciplinary approach to the organization, development, and delivery of specialized mental health services to the elderly.

4. With respect to Goal A, on page 46, as discussed in Section(s) II(a) and III(c)(3), the concepts of continuum of care, case management, and the like should also be addressed here. However, in light of the separate housing assistance the state provides for seniors, any housing support should be considered as being provided under that program and not under the mental health program.

5. With respect to Objective 1, Goal A, on page 46, we believe a mobile component of the services makes a lot of sense. Oftentimes, seniors have a very difficult time getting around, and it may be cost effective to have some services come to the patients, particularly where there are groups of seniors receiving services. Indeed, it seems that seniors needing mental health services could be placed together to a certain extent.

6. With respect to Object 2, Goal B, it is not clear to us that only day treatment should be provided.

7. With respect to Objective 1, Goal C, providing for the addition of a central office administrator, as with Section III(d)(16), above, we would want to make sure the person would be productive.

(g) Chapter Seven - Specialized Services to Alaskan Natives

1. First off, this section is entirely oriented to rural Natives. However, as demonstrated by the over representation of Natives at API and as "street people" in the cities, there is a huge urban Native component. As you know, oftentimes the village mentally ill person(s) is transferred by the mental health system, or community pressure, to the cities. The plan should address these urban mentally ill Natives. Many of the same issues apply, such as culturally sensitive treatment, Native service providers and Native participation in program development, but the application has to be in the urban areas because that is where these particular Natives are located.

2. With respect to the statement in the first paragraph on page 48 that no epidemiological studies of Natives as a group exist, we believe this is simply incorrect. We understand that both the Indian Health Service and the Alaska Native Health Board have helpful information. These sources should be utilized. In addition, Dr. Robert Alberts, recently appointed to the Governor's Mental Health Advisory Board has assembled over the years, we believe, very valuable information. To the extent that information is already available, (i) it is unnecessary to spend the time and money to re-obtain it, and (ii) it will be unfortunate to delay program/service development.

3. The second and third paragraphs on page 48 are quite good, in describing the problem of service provision in the bush. We believe the real key is in the development of Native service providers. Not only is the local Native much more likely to remain, but while it takes a non-Native a lifetime to understand the Native culture, it takes the Native only three years or so to obtain the requisite training. We do not believe any level of realistic compensation and/or other incentives significantly change the high turnover of non-Native personnel in the bush.

4. With respect to item "1.", beginning page 49, we can not emphasize enough the importance of local involvement in the design, staffing and pace of implementation of mental

health programs. We do not have the space here to develop the reasons for the incredibly high incidence of mental illness and indicia of mental illness for Natives, such as suicide, other than to say that it is the product of the displacement of Native culture by the non-Native culture in the last 50 years. From what we have observed, the only viable way to heal the Native community(ies), and it is often the entire community(ies) which are mentally ill, is to have the people themselves fully involved in the process. If non-Natives, even non-local Natives, to a lesser extent, come into communities and tell them what the problem is and what the solutions are, this is actually just another example of the problem.

5. With respect to the description of the goals and objectives at the bottom of page 49, just above Goal A, it seems that "community based natural helpers" has been forgotten.

6. With respect to Objective 1, Goal A, on page 49, any study of Natives' perceptions of the nature and prevalence of mental health needs and preferred manner of delivering services, needs to be performed by Natives, as well as being about them.

7. With respect to Goal B, page 50, we believe the objectives should go even farther with Native involvement in both the design of programs and the delivery of services..

8. With respect to Goal C, page 50, we believe, in addition to cultural sensitivity, physical sensitivity should also be provided. An example, is diet. For a Native from a truly remote village, the diet at API could be completely unpalatable.

9. With respect to Goal D, on page 51, regarding suicide education, while we think this is good for Natives because the suicide rate is unbelievably high in this population, we believe suicide education would be beneficial for the general population as well. This applies to Objective 2, regarding suicide prevention and intervention as well.

10. With respect to Objective 1, Goal D, page 51, we suggest changing "itinerate" to "travel".

11. "Curriculum" is misspelled in Objective 1, Goal E, on page 51.

12. Objective 3, Goal E, on page 51, regarding providing financial incentives for natives to obtain education, certification, etc., is good.

13. With respect to B, on page 52 regarding fiscal impact, how is the Division going to ensure cultural sensitivity and appropriateness of services without any fiscal impact?

(h) Chapter Eight - General Mental Health Clinical Services.

1. On page 55, third paragraph, Copper River is mentioned as a community. Of course there is a Copper River, but it seems the most likely communities the plan may be referring to is Copper Center, while the largest community in the area is Glenallen.

2. With respect to Objective 2, Goal A, on page 56, as we stated in Section III(g)(3), we do not believe higher wages, longevity bonuses, sabbaticals, or the like can significantly reduce turnover in the bush. In our view, local Natives must be trained to provide services in these communities.

3. Objective 1, Goal B, on page 56, pertaining to a centrally located training workshop to orient new clinicians to culturally diverse needs is good. The only thing we would add is the participation of Natives.

4. With respect to Goal E, on page 57, we believe phrasing the issue as:

Universal mental health coverage in all health insurance policies at the same level of benefits for general medical coverage

is preferable to the phrasing used. Substantively, we couldn't agree more that having mental health coverage in all medical insurance policies would be a tremendous addition to Alaska's mental health system. The Alaska Mental Health Association has been advocating this for many years.

(i) Chapter Nine - Specialized Forensic Mental Health Services.

1. We would suggest the insertion of "internal" after "taken" in the first line on page 59.

2. The rest of the first paragraph on page 59 is good, although we would prefer to see some elaboration of the problems the forensic unit has on API, ie. the detrimental impact on the therapeutic environment of API.

3. Finally, with respect to the the first sentence in the first paragraph on page 59, relating to the lack of funding and community pressure which resulted in the abandonment of the plan to move the forensic unit to Hiland Correctional Center, I feel impelled to point out that the Hiland Correctional Center was illegally constructed on Mental Health Trust Lands without compensation to the Trust. In essence, the Hiland Correctional Center is trespassing on Mental Health Trust Lands, and it is certainly ironic that the Division could not even place the forensic unit there.

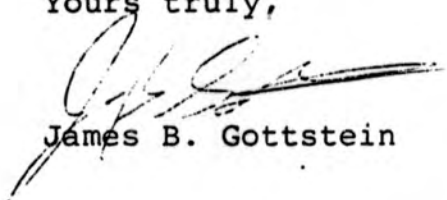
(j) Chapter Ten - Availability of Professionals.

1. Much of this chapter seems to be inapplicable to Alaska. For example, the Levels described on pages 64 & 65, discuss year round surface transportation. The first full paragraph on page 65 also seems inapplicable when it discusses the assumption that communities in Alaska are linked together and are mutually dependent for comprehensive mental health service delivery.

2. With respect to Goal C, on page 66, we do not necessarily support the concept of rotating API psychiatrists to rural areas. It could be good if it results in increased sensitivity and knowledge by the psychiatrists, but by the same token, we wouldn't want it to result in inappropriate treatment in the bush.

Dr. Henry, we feel the work you have done on the Comprehensive Mental Health Plan is invaluable. We also believe the development of the best plan possible is very important in increasing funding for mental health services, in addition to deciding where to spend available funds. We hope our comments have been helpful and offer our assistance in any way you might find it useful. Of course, if you have any questions about our comments, please don't hesitate to call.

Yours truly,



James B. Gottstein

cc: Alaska Mental Health Association
Governor's Mental Health Advisory Council
Interim Mental Health Trust Commission, including designees
and alternates.
Joint Legislative Committee on Mental Health Trust Lands
Steve Harrison
David Walker
G. Thomas Koester
Doug Modig
Ev Tucker
Amy Lohr
Tom Abel
Coral Allen
John Frannich

MEMORANDUM

State of Alaska

TO: George Rogers, Chairman
Interim Mental Health Trust
Commission

DATE: September 10, 1986

FILE NO: 663-87-0093

TELEPHONE NO: 465-3600

FROM: Harold M. Brown
Attorney General

SUBJECT: Can monetary proceeds of mental health land sales be preserved in perpetuity?

By: G. Thomas Koester *GTK*
Assistant Attorney General

The Interim Mental Health Trust Commission asked for our advice regarding possible legal mechanisms for preserving, in perpetuity, the monetary proceeds from disposals of mental health trust lands. The basic question is whether it would be constitutionally permissible to establish a mental health trust permanent fund into which the proceeds of sales of mental health lands can be deposited and preserved in perpetuity -- i.e., can mental health trust lands be converted to money and the money preserved as a permanent trust asset? For the reasons which follow, we believe such an approach probably would be permissible under federal law but would be unconstitutional under the Alaska Constitution, although contrary arguments can be made.

As a general matter, the nature and extent of a trustee's powers and duties are determined by the terms of the trust itself. See generally Restatement (Second) of Trusts § 164 (1959). Under § 202(e) of the Alaska Mental Health Enabling Act, P.L. 84-830, the state as trustee has the following powers and duties:

All lands granted to the Territory of Alaska under this section, together with the income therefrom and the proceeds from any dispositions thereof, shall be administered by the Territory of Alaska as a public trust and such proceeds and income shall first be applied to meet the necessary expenses of the mental health program of Alaska. Such lands, income, and proceeds shall be managed and utilized in such manner as the legislature of Alaska may provide. Such lands, together with any property acquired in exchange therefor or acquired out of the income or proceeds therefrom, may be sold, leased, mortgaged, exchanged, or otherwise disposed of in such manner as the legislature of Alaska may provide, in order to obtain funds or other property to be invested, expended, or used by the Territory of Alaska. The authority of the legislature of Alaska under this subsection shall be exercised in a manner compatible with the

conditions and requirements imposed by the provisions of this Act.

Under this provision, the state is given broad discretion in administering mental health lands, including the express power to sell them. Where such discretionary power is conferred expressly, the trustee may properly sell trust property, Restatement (Second) of Trusts § 190 (1959), and a court will not interfere with the exercise of that power except to prevent an abuse of discretion. Restatement (Second) of Trusts §§ 187, 382 (1959).

Under § 202(e) of the Act, the proceeds of any mental health land sales may be "invested, expended, or [otherwise] used" by the state. The restrictions on the state's use of those proceeds are that (1) they must be "administered by [the state] as a public trust," and (2) they "shall first be applied to meet the necessary expenses of the mental health program of Alaska."

Under the second restriction, it might be argued that no proceeds from mental health land sales may be deposited in a permanent mental health trust fund until after they first had been made available to meet the necessary operating expenses of the state's mental health program. We believe this would be too literal a reading of the restriction. In particular, the Congressional authorization for the state to sell lands in order to obtain funds to be invested strongly suggests that the state has discretion, under federal law, to deposit proceeds from the sale of mental health lands (or, indeed, other income from mental health lands) in a permanent mental health trust fund.

At the same time, the broad discretion vested in the state by the Act certainly permits the state to spend proceeds from the sale of mental health lands on the necessary operating expenses of the state's mental health program. It undoubtedly was in recognition of this authorized use of such proceeds that the Alaska Supreme Court held in State v. Weiss, 706 P.2d 681, 684 (Alaska 1985), that the state is entitled to a set-off for mental health expenditures when the state's liability for previously-sold mental health lands is computed.

Under federal law, then, it is permissible for the state either to invest permanently the proceeds of mental health land sales or to spend such proceeds as authorized by the Act, which means making them available first to meet the necessary operating expenses of the state's mental health program. Unfortunately, it appears that only the second option is permissible under state law.

The state law analysis necessarily begins with article IX, section 7, of the Alaska Constitution, which provides:

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 [relating to 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.

(Emphasis added.)

There is no question that some dedication of the proceeds from mental health lands is "required by the federal government for state participation" in a federal program, the state participation in this case being the receipt of lands under the Act. As we have seen, § 202(e) requires, as a condition of the state's acceptance of the land grant, that the income and the proceeds from mental health lands first be applied to funding Alaska's mental health program. 1/

1/ Once the "necessary expenses" of that program have been met, the federal legislation permits any remaining income and proceeds to be spent for other public purposes. See, e.g., S. Rep. No. 2053, 84th Cong., 2nd Sess. 3-4, reprinted in 1956 U.S. Code Cong. & Ad. News 3637, 3639-40 (emphasis added):

The income and proceeds from disposition of these lands must be administered as a public trust, with the expenses of the mental health program having first call on such funds. Amounts not needed for the mental health program can be used for other public purposes as the legislature may determine.

....

The purpose of the grant is to afford revenues to the Territory [of Alaska] for the support of its mental-health program. If such revenues are in excess of needs for the program, they may be used, as a public trust, for other public purposes.

The problem with seeking to preserve proceeds from sales of mental health lands in perpetuity -- i.e., establishing a permanent mental health trust fund -- is that such preservation is not required by the Alaska Mental Health Enabling Act as a condition of the state's acceptance of the land grant. As a result, such preservation is not (in the language of article IX, section 7, of the Alaska Constitution) "required by the federal government for state participation in federal programs."

Where dedication in perpetuity is not required by federal law, the prohibition on dedicated funds in the Alaska Constitution prohibits such dedication as a matter of state law. Cf. 1986 Inf. Op. Att'y Gen. 5 (May 28; 883-86-0126) (once federal condition satisfied, provisions of state law control remaining funds). Under the federal law, the federal condition would be satisfied once the income and proceeds are first applied to the state's mental health program. After the "necessary expenses" of that program have been met, any income and proceeds remaining could (under the federal law) be used for other public purposes. Under the article IX, section 7, prohibition on dedicated funds in the Alaska Constitution, those other public purposes cannot include dedication in perpetuity into a mental health permanent fund. In short, where dedication in perpetuity of "proceeds" from the sale or other disposal of mental health lands is not "required" by federal law, it is not permitted under the prohibition on dedicated funds contained in article IX, section 7, of the Alaska Constitution.

At the same time, arguments can be made that the establishment of a permanent mental health trust fund is, or at least ought to be, constitutionally permissible. First, § 202(e) of the Act requires that the state administer mental health lands and the proceeds therefrom, including the proceeds of mental health land sales, as a "public trust." It is an axiom of private trust law that "[t]he trustee is under a duty to the beneficiary to use reasonable care and skill to preserve the trust property." Restatement (Second) of Trusts § 176 (1959). If the state has the authority to sell the land but lacks the authority to preserve the proceeds of such sales in perpetuity, it might be argued that the state would not be exercising "reasonable care and skill" by selling the land.

However, that duty generally relates to protecting the trust property from loss or damage; it does not mean that trust property cannot be sold and the proceeds of such sales used for purposes authorized by express provisions of the trust itself. Compare Restatement (Second) of Trusts § 128 comment i (1959) (trustee may be authorized, expressly or by implication, to spend

George Rogers, Chairman
Interim Mental Health Trust Commission
File No. 663-87-0093

September 10, 1986
Page 5

part of principal)). Again, it undoubtedly was in recognition of this authority that the Alaska Supreme Court authorized the set-off for state mental health expenditures when the state's liability for previous mental health land sales is calculated.

A stronger argument in this regard is that it elevates form over substance to acknowledge that the state permissibly may refuse to sell mental health lands and authorize only leases, a mechanism by which the mental health trust could be preserved in perpetuity, but may not sell the lands and deposit the sales proceeds in a permanent mental health trust fund. Nonetheless, because such dedication in perpetuity is not required by the federal Act, the prohibition on dedicated funds in article IX, section 7, of the Alaska Constitution precludes that approach.

The foregoing represents our best analysis of the question presented. Of course, we encourage members of the commission or other interested parties to provide additional analysis for our consideration.

GTK:md

STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM

September 24, 1986

SUBJECT: Limitations on expenditures of the income from
mental health land (Work Order No. 15-0071)

TO: Senator Rick Halford
Co-Chairman, Mental Health Land Committee

FROM: Richard A. Bradley
Legislative Counsel

Roger Porter has asked that we comment on the possibility that the proceeds from the management of Alaska mental health trust land might be managed in such a way that the income is protected from legislative appropriation. The suggestion is that this might be done through the vehicle of a permanent fund; implicitly, then, your request is that we comment on the legislative power to establish a dedicated fund for the income from mental health trust land. The legislature may generally take action unless a constitutional provision prohibits such a result.

In our view, several constitutional provisions are germane to the question.

The provisions of the Alaska Constitution prohibiting the establishment of a dedicated fund is found in art. IX, sec. 7. The provision provides:

SECTION 7. DEDICATED FUNDS. 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 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.

As we comment on this question, you have asked that we consider the September 10, 1986 opinion of the attorney general

to George Rogers as chairman of the Interim Mental Health Trust Commission on this same question.

The attorney general concluded that the Alaska Constitution precludes the establishment by statute of a permanent fund in this situation because there is nothing in the Alaska Mental Health Enabling Act that requires the establishment of such a fund. Since it is a requirement of state constitutional law (art. IX, sec. 7) that such a fund not be established by law unless it is required by Federal law for state participation in a federal program, it necessarily follows that the fund may not be established by law.

We have carefully reviewed the opinion and we join in it. We believe that it states the present view of the Alaska Supreme Court on the question.

Some years ago, this office read the introductory phrase: "proceeds of a state tax or license" fairly narrowly and we would then have concluded that state income not fairly described as a "state tax or license" was outside the prohibition. The Supreme Court's decision in State v. Alex, 646 P.2d 203 (Alaska 1982) resolved this matter. In our view, it is clear now that the "sources of any public revenues" [Alex, at 210], including the proceeds from leases or sales of state mental health land are within the prohibition.

One other point raised in your request to us merits comment. The suggestion was that the funds derived from the lease or sale of the mental health trust land be protected from legislative appropriation. I take this suggestion to mean, particularly in the context of your question apropos a dedicated fund, that the income be managed without the need for legislative appropriations by some as yet unestablished board or commission for the purposes stated in the Alaska Mental Health Enabling Act: the support, "first", of the "mental health program of Alaska" and then after these needs have been met, "other public purposes as the legislature may determine." See sec. 202(e), P.L. 84-830 and its legislative history at 1956 USCC&AN 3637, 3639-3640.

I see no suggestion in the federal law that the legislature not participate in the management of the funds. I believe that affirmative language in an Act of Congress would be required to deprive the legislature of its constitutionally required obligation to approve expenditures. The provisions of art. IX, sec. 13 provide, in part, that "No money shall

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be withdrawn from the treasury except in accordance with appropriations made by law."

To the contrary, the Enabling Act provides that "the income . . . shall be managed and utilized in such manner as the legislature of Alaska may provide, . . ." [Sec. 202(3) of the Enabling Act, P. L. 84-830].

However, having said all this, I believe that it is possible for the legislature to appropriate to a separate fund an amount to be ascertained by reference to receipts from the sale or lease of mental health trust land. We have advised the legislature of this option in different contexts in the past and we note that the attorney general apparently agrees; see the opinion of the attorney general of November 30, 1982 to that effect.

If I may be of further assistance, please advise.

RAB:mk
m6/114

**ALTERNATIVE D
COURT ORDERED SETTLEMENT PROVIDING FOR MINIMUM MENTAL HEALTH
FUNDING LEVELS**

REPRESENTS A RETURN TO A SCHEME SIMILAR TO THAT ESTABLISHED BY STATUTE IN 1978. PROVIDES FOR A COURT SETTLEMENT WHEREBY THE STATE AGREES TO APPROPRIATE A PERCENTAGE OF STATE LAND REVENUES TO MENTAL HEALTH PROGRAMS.

Lands to be in Trust
None.

Compensation for Lands Removed From Trust.

The state would agree to a court-approved schedule of minimum expenditures for increasing funding for mental health programs:

FY 88	\$10 million
FY 89	\$ 8 million
FY 90	\$ 5 million
FY 91	\$ 5 million

The state would also agree that an amount equal to 1.5% of revenues of all state lands would be expended on mental health programs if that amount exceeds the above minimum schedule.

Enforcement

1. Establishment of a mental trust health board to ensure compliance.
2. Legislation enacted by the state legislature.
3. Consent decree entered in Alaska federal district court.
4. Board empowered to seek court enforcement if the state does not comply with the court settlement. Remedies available would specifically include; (1) contempt of court, (2) the court could appoint a receiver to manage the state mental health program similar to the enforcement procedure the Alabama federal district court has used to manage that state's prison system when the state officials refused to obey court orders, (3) other available legal remedies. The statute could also provide additional remedies.

Land Management
Not applicable.

Funding Management

The mental health board will establish guidelines to determine qualifying mental health expenditures and prioritization between mental health programs. The mental health board will also review revenue production from state lands and make recommendations to the Legislature on an annual basis.

Legislative Intent

To maintain state compliance with the court settlement.

The duties and appointment of a Mental Health Board.

1. Mental Health Board duties shall include:
 - a. Creating and amending guidelines to determine which mental health programs funded by the state apply to the minimum expenditures agreed to in the mental health land trust settlement.
 - b. Ensure that the state complies with the terms of the mental health settlement, seeking court enforcement if necessary.
 - c. Creating and amending guidelines for prioritization between state funded mental health programs.
 - d. Review income production from state lands and report to the legislature on a yearly basis.
2. Changes in the way that board members are appointed include:
 - a. Nomination by the mental health community.
 - b. Appointments by the Governor limited to mental health community nominees.
 - c. Appointments subject to approval by the state legislature in joint session.
3. Full time staff provided.