

SB

50

MEMORANDUM

State of Alaska

Community and Regional Affairs

TO: Local Boundary Commission


DATE: February 11, 1987

FILE NO.: 0395L/DB/1s

THRU:

TELEPHONE NO.: 561-8586

SUBJECT: Materials for
review

FROM: Dan Bockhorst 
Supervisor
LBC/GAS Components

RECEIVED
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CB Co.

This is to supplement the materials provided to you last week in preparation for your meetings scheduled for February 19 and 20. Enclosed are the following materials:

1. Draft minutes for the meeting of November 22, 1986
2. Draft minutes for the meeting of December 10, 1986
3. DCRA position papers regarding HB 65 and SB 50, relating to dissolution of municipal governments. While the position paper is unsigned, I have been advised that it was approved by DCRA Commissioner David Hoffman and is being circulated to interested parties. The substance of the position paper for both bill is identical.
4. Revised notice of the meetings to reflect the rescheduling of the meetings.
5. Revised draft agenda to reflect the following changes:
 - rescheduled time for the meeting;
 - addition of consideration of minutes of November 22, 1986 and December 10, 1986;
 - addition of opportunity for discussion with representatives of the Division of Elections regarding the issue of elections by mail.

STATE OF ALASKA
LOCAL BOUNDARY COMMISSION
MEETING MINUTES
TELECONFERENCE OF NOVEMBER 22, 1986

DRAFT

MEMBERS PARTICIPATING:

C.B. Bettisworth (via teleconference)
Robert Eder (via teleconference)
Dave Hanson
Bert Greist
Jo Anderson (via teleconference)

PLACE:

949 E. 36th Avenue
Anchorage, Alaska

STAFF PRESENT:

Dan Bockhorst

SUBJECTS:

1) Public hearing and Gene Kane (via teleconference) decisional session on a Carol Akerelrea petition by the City of Pelican for the annexation of approximately 268 acres under provisions of the legislative review process; 2) Decisional session on the petition for annexation of approximately 918.25 square miles of territory to the City of Dillingham; 3) Decisional Session on the petition by the City of Clark's Point for annexation of approximately 242 square miles of territory:

NOTE: These minutes represent a summary of the proceedings of the Local Boundary Commission at its meeting of November 22, 1986. A tape recording of the entire meeting was made and is available for the Department of Community and Regional Affairs.

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(1/1/132) He referenced the standard requiring that the health, welfare and safety of city residents is endangered by conditions existing or developing in the territory, and annexation would enable the city to remove or relieve those conditions. He indicated that the department did not agree with this assertion primarily because the City of Pelican could legally exercise extraterritorial jurisdiction over its watershed. He stated that the city's petition expressed concern over the danger of contamination due to the lack of an adequate sewage collection system either inside or outside the municipal boundaries. He indicated that because the situation existed both within the city and outside the existing city limits, it did not seem particularly relevant to the annexation petition. He stated that the department concluded that if there were an adequate sewage collection system within the city, and none in Pelican Flats, the department's analysis would have very likely resulted in a different conclusion.

(1/1/175) He referenced the standard requiring that annexation is necessary to accomplish a valid public purpose. He noted that the petitioners asserted that annexation would allow the area proposed for annexation to become part of the approved Pelican Coastal Management Plan and help insure protection of Pelican Creek.

He stated that the department felt that this concern was not particularly relevant primarily on the basis of the city's statutory authority to exercise extraterritorial jurisdiction with respect to its watershed.

(1/1/195) He then summarized the department's analysis of the relevant standards which it felt applied to the proposed annexation. He said that these were that the City of Pelican demonstrated that it is capable of and willing to extend full municipal services to the areas proposed for annexation immediately upon annexation, except in those situations where provision of such services is impossible because of a lack of necessary facilities. He noted that this contention was made in the petition and that the department's investigation had resulted in the same conclusion. He indicated that it is the responsibility of the petitioner to satisfy the commission that the City of Pelican would provide full municipal services to the area proposed for annexation within a reasonable time, should the annexation be effected.

(1/1/230) Mr. Kane stated that residents and property owners within the area proposed for annexation are in need of municipal services which the city could provide more efficiently than another municipality. He referenced education, fire protection, trash collection, health clinic, municipal library, small boat harbor, police, snow removal, community center and street maintenance as examples. He stated that these services could be most efficiently provided by the City of Pelican but that the level of delivery of several of the services, such as fire protection, might be limited to portions of the territory to those times when low tide permits vehicular access to those areas.

(1/1/250) He stated that there is a reasonable likelihood that future growth and development will occur within the territory and that annexation of the territory would enable the city to plan for and control that development. He indicated that most notable in this respect is the current shortage of land suitable for residential and recreational development within the City of Pelican. He stated that this consideration most specifically allied to that portion of the area proposed for annexation described as Pelican Flats.

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(1/1/285) Commissioner Anderson requested comments from the petitioner's representative, Mayor Harry Davidson.

(1/1/325) Mayor Davidson stated that the petition had been developed with the long term welfare of the entire community as the highest priority. He stated that city staff had carefully reviewed the department's draft report and recommendation to the Local Boundary Commission and agreed with the findings of the department.

(1/1/360) Commissioner Hanson asked Mayor Davidson why the proposed annexation of Pelican Flats was as large as it was.

(1/1/370) Mayor Davidson stated that it included the city's watershed.

(1/1/380) Commissioner Eder indicated that it also conformed to section lines, which made it a reasonable demarcation for an annexation.

(1/1/380) Commissioner Hanson asked if watershed protection was a major consideration relevant to the annexation.

(1/1/380) Mayor Davidson responded that it was.

(1/1/400) Commissioner Anderson requested comments from other interested parties.

(1/1/405) Carolyn Payden indicated that she wished to be on record as objecting to the proposed annexation primarily on the basis of lifestyle and her belief that the area was not urban in character. She said that she felt it was unfortunate that the people in the area might be required to pay property taxes to receive services. She indicated that her rights were being violated, that she had spent fifteen years paying for a house in the area and that the annexation was being imposed upon her.

(1/1/450) Kay Harrell indicated that she was representing her husband and two children. She stated that until recently, her family had rented property in the area proposed for annexation but were preparing to buy property and therefore had an interest in the annexation. She expressed doubt as to whether the City of Pelican could provide the residents of the area proposed for annexation with full city services within a reasonable period of time.

(1/1/490) At the request of the commission, Gene Kane explained that one of the considerations that the commission applies when reviewing proposed boundary changes is the ability and willingness of the annexing municipality to extend full municipal services to the annexed area except in those situations when extension of service is impossible because of the lack of necessary facilities. He stated that the department was aware of concern of several residents of Pelican Flats regarding access to the area during certain tide stages.

He indicated that the department was convinced that the City of Pelican was prepared to extend virtually every municipal service to the area proposed for annexation and that one service the department carefully considered was fire protection. He acknowledged that department was aware that it was difficult to transport certain types of fire apparatus to the area proposed for annexation during certain times of the day but that the department was convinced that the City of Pelican would make every effort to accommodate the need for fire protection in the "flats" as soon as it is able to do so.

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(1/1/535) Ms. Harrell indicated that the bridge to Pelican Flats could not support the city's fire truck. She stated that she wondered where the money would be found to ensure that that portion of the community would receive fire protection.

(1/1/550) Commissioner Eder asked Gene Kane if Ms. Harrell's concerns were valid.

(1/1/565) Gene Kane stated that the City of Pelican had two pieces of fire fighting apparatus and that the newer piece of equipment was too large for the bridge. He indicated that there are other types of fire fighting apparatus which could utilize the bridge.

(1/1/600) Commissioner Hanson asked Ms. Harrell about the reference to discrimination in point three of the petition submitted by the Section 20 Association. He asked about the "three other areas" referenced in the petition which allegedly received city services.

(1/1/620) Ms. Harrell responded that she was probably referring to the "Phonograph area" the "playground" area, the "Sunnyside" area or the "mine", but was not certain.

(1/1/645) Commissioner Hanson asked Ms. Harrell if the areas referenced were physically separated from Pelican.

(1/1/650) Ms. Harrell stated that the Sunnyside area is accessible by skiff, as were portions of the area proposed for annexation. She stated that there are trails, such as an old bear trail, which could be used to access portions of the areas she referenced.

(1/1/665) Commissioner Hanson asked if those areas were up to one-half mile from the existing boundaries of the City of Pelican.

(1/1/670) Ms. Harrell replied that they were.

(1/1/675) Commissioner Hanson asked if the area in which she lived was adjacent to Pelican's existing boundaries.

(1/1/680) Ms. Harrell replied that the area in which she resided was adjacent to the existing municipal boundaries. She stated that one residence within the area proposed for annexation was accessible by skiff only. She also stated that an island which was not proposed for annexation was more accessible than portions of the area proposed for annexation.

(1/1/729) Ms. Vivian Wierta indicated that she had moved to Pelican Flats with her family in 1951, built a home there and lived there since. She said efforts to annex Pelican Flats had occurred before, but that residents of Pelican Flats did not approve of annexation on the previous occasion and still did not approve. She stated that Pelican was a first class city because it had a half-mile road to the garbage dump.

She stated that the City of Pelican was overstepping its authority by attempting to annex Pelican Flats. She stated that no benefits would accrue to residents of Pelican Flats if the area were annexed to the City of Pelican. She stated that residents of Pelican Flats paid sales taxes when they shopped in Pelican and would consent to pay property taxes, therefore annexation was not warranted.

Commissioner Hanson asked if residents of the area would pay property taxes even if their property was not located within the city limits.

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(1/1/800) Ms. Wierta stated that this was accurate.

(1/1/810) Commissioner Hanson asked if the reluctance of the residents of Pelican Flats to be annexed to the City of Pelican was based upon a reluctance to be placed under the jurisdiction of the city.

(1/1/815) Ms. Wierta stated that annexation would result in a loss of privacy to the residents of Pelican Flats.

(1/1/830) Brad Payden stated that he had been a property owner in Pelican Flats for fifteen years and objected to the proposed annexation. He stated that annexation would impact his rights to own property after paying for it and would therefore result in violation of his civil rights.

(1/1/860) Commissioner Hanson asked if the City of Pelican imposed any zoning restrictions.

(1/1/875) Mr. Payden stated that he did not know of any specific building codes but that he was sure there would be certain codes and guidelines imposed if annexation were effected.

(1/1/900) Ms. Harrell stated that her family was in the process buying property, that she had a garden and she could build as she chose upon her property. She stated that most of Pelican was built upon tide flats and there was limited area upon which to build. She stated her property was desirable because there was room to build and expand her home. She stated that she was not sure if the residents of Pelican were aware of the effect of annexation upon activities on the Flats. She stated that all activities on the flats would be regulated as a consequence of annexation.

(1/1/995) Kenneth Wier stated that he objected to annexation because the dump had already been taken away by the city and he could not ride his bike there. He stated that if the flats were annexed, he could not ride his bike there, either.

(1/1/1025) In response to a question by the commission, Mayor Davidson stated that the City of Pelican had zoning ordinances, building permits were required and restrictions were placed upon development within five feet of the property line. He stated that these were for safety purposes and to ensure reasonable growth and development. He expressed thanks to the department and the Local Boundary Commission.

(1/1/1055) Commissioner Hanson asked Mayor Davidson to distinguish between the area proposed for annexation and the other nearby areas such as Sunnyside.

(1/1/1090) Mayor Davidson stated that there were no plans for further annexation. He indicated that the difference between the area proposed for annexation and other areas was the fact that Pelican Flats was contiguous to the existing municipal boundaries.

(1/1/1125) Commissioner Eder asked if it were legal to ride bikes within the boundaries of the City of Pelican.

(1/1/1130) Mayor Davidson indicated that an individual over the age of sixteen could ride bikes within the city limits.

At this point, it was evident that no other public comments were forthcoming from Pelican teleconference participants.

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(1/1/1150) Commissioner Anderson apologized for the commission's inability, due to weather conditions, to be physically present in Pelican. She adjourned the public hearing and indicated that interested parties in Pelican could remain on the teleconference line to listen to the decisional session.

(1/1/1160) Commissioner Anderson indicated that she would entertain a motion to begin a decisional meeting.

(1/1/1165) M/S: Hanson/Eder: To open a decisional session on the petition for annexation of territory by the City of Pelican. The motion was approved unanimously.

(1/1/1195) M/S: Greist/Hanson: To approve the petition as submitted.

(1/1/1206) Commissioner Hanson stated that the report provided by the department and comments provided by Mayor Davidson indicated that four or five of the standards for annexation were met. He stated that it was clear that city services were provided to the area and that residents of the area proposed for annexation were willing to pay taxes for those services. He stated that those facts comported with standard eight. He noted that at least a portion of the area proposed for annexation was urban in character and was directly adjacent to the city. The territory was in need of municipal services in that the services are, in most cases, already provided. He asked Gene Kane for clarification.

(1/1/1265) Gene Kane indicated that the City of Pelican provided education, fire protection, trash collection, health clinic, municipal library, small boat harbor, police, snow removal, community center and street maintenance to residents of the area proposed for annexation.

(1/1/1333) Commissioner Hanson stated that it was clear that the populated portions of the area proposed for annexation received city services on an extraterritorial basis. He noted that if the services were provided, they must be needed. He stated that information received indicated that there was a likelihood of future growth and development. He stated that the only thing that had not been addressed concerned whether the rest of Pelican Flats met the standard.

(1/1/1400) Gene Kane referenced a proposal under discussion concerning possible lease or purchase of the Pelican Cold Storage electric utility facilities by the City of Pelican. The utility's hydroelectric and diesel generating equipment was located in the area proposed for annexation. If annexation of the area could facilitate an arrangement beneficial to the area's only major private employer, annexation could help secure continued employment for residents of the community and would therefore serve a valid public purpose.

(1/1/1470) Commissioner Hanson indicated that he agreed with conclusions reached in the department's report and would also add that the proposed boundary change, as it related to Pelican Flats, conformed to the standard of "other valid public purpose." He stated that it was obvious that the area referred to as "tract 1" was totally surrounded by the city's boundaries, that "tract 2" was wholly owned by the city. He stated that though there was opposition to the proposed annexation by residents of a portion of the area proposed for annexation, the public interest would be served by the annexation.

(1/1/1500) Chairman Eder stated that he agreed that standards two, three, four, five, eight and nine were met and noted that only one standard needs to be met for the commission to approve an annexation petition.

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(1/1/1530) Commissioner Hanson stated that even though residents of the area were not disposed to annexation, the public interest would be served by the proposed boundary change and therefore the legislative review method of annexation is the appropriate manner to proceed in this situation.

(1/1/1544) Commissioner Greist stated his concurrence.

(1/1/1550) Commissioner Greist called for the question.

The motion was approved unanimously.

The decisional session was concluded. Commissioner Eder resumed the role of chairman of the meeting.

(1/1/1575) Commissioner Eder opened the decisional session on the petition for annexation of approximately 242 square miles to the City of Clark's Point.

(1/1/1600) Commissioner Eder suggested that the teleconference participants in Pelican might no longer wish to audit the proceedings, since the commission had concluded its action on the Pelican annexation. He stated that the petition would be forwarded to the First Session of the Fifteenth Legislature with the commission's recommendation.

(1/1/1625) Commissioner Bettisworth indicated that he was participating via teleconference from Fairbanks.

(1/1/1625) Commissioner Hanson stated that he would not participate in the commission's deliberations on the Clark's Point and Dillingham annexation petitions because of the possible appearance of a conflict of interest. He stated that he was engaged in work for the Bristol Bay Native Corporation. Even though the work was not related to either petition, recent comments by the corporation implied that the corporation might have attitudes about the matter.

(1/1/1659) Commissioner Eder asked if any of the commissioners objected to Commissioner Hanson's withdrawing from the proceedings.

Hearing no objections, Commissioner Hanson was excused from the proceedings.

(1/1/1665) Commissioner Eder asked Dan Bockhorst to summarize materials recently submitted from the Department of Law and other interested parties regarding the proposed annexations.

(1/1/1685) Dan Bockhorst stated that on November 13, an opinion was issued by Assistant Attorney General Susan Cox, discussing the application of the common law principle of "prior jurisdiction" as it relates to the issue of two competing petitions for annexation. He noted that had been suggested by the Department of Law that the commission consider that the doctrine of prior jurisdiction applied to the situation of competing applications from the cities of Clark's Point and Dillingham. Mr. Bockhorst indicated that this meant that the first petition submitted should be the first one considered and acted upon by the Local Boundary Commission. Accordingly, the counsel of the Department of Law was that the Clark's Point petition be the first one acted upon.

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(1/1/1765) Mr. Bockhorst stated that the commission had met in both Clark's Point and Dillingham on October 4. Following the Dillingham hearing, the commission had advised both petitioners to meet and attempt to reach a mutually agreeable compromise which would possibly relieve the competitive aspects of the situation. He indicated that he had attended a meeting in Clark's Point on October 24, at which time the issue of compromise was discussed. The City of Dillingham and the City of Clark's Point had both responded to the commission. He stated that the City of Dillingham did not wish to retract the compromise its representatives had offered at the October 4 hearing of the commission. (That proposal was to reduce the area proposed for annexation to the City of Dillingham from 918 square miles by approximately 50%.) Clark's Point had agreed to reduce some areas. However, the area upon which the conflict centered, the waters of Nushagak Bay, was not one of the areas proposed for reduction by either party. Therefore, the conflict essentially remained. He noted that the commission had been provided with copies of responses from both Clark's Point and Dillingham, along with maps.

(1/1/1827) Mr. Bockhorst stated that other materials had also been provided to the commission. These included a letter dated November 3, 1986, from the Bristol Bay Native Corporation. He noted that commission members had specifically requested comments from the Bristol Bay Native Corporation. Although the corporation did not formally take a position on the issue, a number of issues and concerns were raised in its letter. He stated that the issues paralleled issues raised in the department's report and recommendation, such as concerns regarding the City of Dillingham's ability to respond to solid waste disposal problems and emergency medical responses in portions of the area proposed for annexation.

(1/1/1880) Mr. Bockhorst stated that the commission had also been provided with copies of a supplemental brief from the City of Clark's Point. He noted receipt of a petition which had been signed by approximately 70 individuals residing both within and outside the boundaries of the City of Dillingham objecting the the proposed annexation of territory by the City of Dillingham. He referenced a letter received from Marie Luckhurst providing supplemental information regarding the City of Dillingham petition and also providing an article concerning comments made by John Pearson and his perceived objectives of the City of Dillingham.

(1/1/1912) Mr. Bockhorst also read two letters into the record. (included by reference, a letter from William Johnson to Jeff Labahn, Dillingham City Manager and a letter to the commission from John Pearson, Dillingham City Councilman)

(1/1/2125) Mr. Bockhorst stated that he felt it appropriate to reiterate that the department still stood by its original recommendation, i.e., that neither petition conformed to the standards for annexation. He noted that while the department was sympathetic to the issues raised in the petitions, the issues raised were still considered to be regional in nature. As regional issues, they would be most appropriately be addressed by a borough government. He noted that the two municipalities had failed to reach an agreement concerning a compromise to the boundary proposals. He stated that this further demonstrated that the problems were not community issues, but rather regional ones. He indicated that the department felt that it was important to consider the standards for incorporation as well as the standards for annexation. He noted that the statutes address the incorporation of cities as having a community base and of boroughs as having a regional base. He stated that it is important to recognize that there are two forms of municipal government in Alaska and that it is important not to confuse the two. Boroughs should deal with regional issues.

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(1/1/2190) Commissioner Eder noted that the department's report and recommendation concluded that neither the Clark's Point nor the Dillingham petition met standards warranting annexation.

(1/1/2200) M/S: Bettisworth/Anderson: To accept the recommendation of Susan Cox, Assistant Attorney General, to address the issue of prior jurisdiction by dealing with the petition by the City of Clark's Point first and the petition by the City of Dillingham second.

The motion was approved unanimously.

(1/1/2250) M/S: Bettisworth/Anderson: To accept the petition for annexation of 242 square miles by the City of Clark's Point.

(1/1/2270) Commissioner Bettisworth stated that he regretted not having had the opportunity to attend the hearings in Clark's Point and Dillingham but that he had carefully reviewed the record and was in agreement with the department that none of the standards were met and the petition should be rejected.

(1/1/2300) Commissioner Eder stated that he agreed that none of the standards for annexation were met.

(1/1/2312) Commissioner Anderson expressed her agreement with Commissioner Eder and Commissioner Bettisworth that the none of the standards were met.

(1/1/2320) Commissioner Bettisworth asked about a reference regarding development of a dock and a boat storage area on what appeared to be a 14(c)(3) conveyance.

(1/1/2344) Dan Bockhorst stated that the department had noted that there was some planned development in the land area proposed for annexation by the City of Clark's Point and that if any area were approved for annexation the Queen's Cannery and the Clark's Slough site might warrant consideration by the commission. He suggested that the commission refer to a map submitted by the petitioner which indicated the locations of the Queen's Cannery and the Clark's Slough areas, collectively comprising approximately ten square miles.

(1/1/2380) Discussion followed regarding whether the Queen's Cannery was operating or was inactive. It was concluded that the cannery was in operation.

(1/1/2425) Discussion followed regarding the department's recommendation on whether to annex the Queen's Cannery and Clark's Slough. Dan Bockhorst indicated that testimony provided to the commission appeared to indicate that construction of a boat harbor or dock facility would not likely occur in the near future. He noted that if the Queen's Cannery were annexed to the City of Clark's Point, revenue enhancement would probably result to the City of Clark's Point. It was indicated that nine sections, including sections 7, 8, 9, 16, 17, 18, 20, 21 and the north half of sections 28 and 29 of T 12S R 54W S.M. could probably be termed more likely to experience growth and development.

(1/1/2540) Discussion followed regarding what standards would be applicable to annexation of the Queen's Cannery area. It was noted that the petitioners contended that development was likely in the area and the community would be impacted as a consequence of transportation activity resulting from cannery workers passing through Clark's Point enroute to the cannery. Dan Bockhorst stated that those considerations were similar to arguments put forth in favor of the annexation of Nushagak Bay. He stated that if the projected growth and development did appear imminent at some time in the future, annexation could be effected at that time.

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Commissioner Greist called for the question.

(1/1/2670) The commission voted unanimously against approval of the petition for annexation of approximately 242 square miles to the City of Clark's Point.

Commissioner Eder adjourned the decisional session on the petition for annexation of territory to the City of Clarks Point and called a brief recess.

After a brief recess the Chairman Eder reconveyed the meeting and convened a decisional session on the petition for annexation of approximately 918.25 square miles to the City of Dillingham.

M/S: Bettisworth/Anderson: To accept the City of Dillingham's petition for annexation of approximately 918 square miles of territory.

Discussion followed.

(1/1/2760) Commissioner Bettisworth stated that he had concerns regarding the Dillingham petition similar to those he harbored regarding the Clark's Point petition but that he would like to learn more regarding the populated areas in the vicinity of the existing City of Dillingham boundaries.

(1/1/2790) In response to a question from Commissioner Bettisworth, Dan Bockhorst stated that traditionally the department and the commission had supported annexation of heavily populated areas contiguous to the boundaries of municipalities. He noted that virtually every municipal service provided by the City of Dillingham, with the exception of road maintenance service, was provided to residents of the populated areas contiguous to the existing City of Dillingham boundaries.

(1/1/2875) Dan Bockhorst, in response to a question from Commissioner Bettisworth, noted that the commission had before it a letter from William Johnson regarding the proposed modified boundaries of the city.

(1/1/2945) M/S: Bettisworth/Anderson: To amend the main motion to modify the boundaries of the area proposed for annexation. The motion was approved unanimously. (NOTE: These boundaries were described by the commission as follows:)

Beginning at the northwest corner of Section 7, Township 12 South, Range 56 West, Seward Meridian (S.M.); thence south to the southwest corner of Section 18, Township 12 South, Range 56 West, S.M.; thence east to the southeast corner of Section 18, Township 12 South, Range 56 West, S.M.; thence south to the southwest corner of the northwest one-quarter of Section 29, Township 12 South, Range 56 West, S.M.; thence east to the southeast corner of the northeast one-quarter of Section 28, Township 12 South, Range 56 West, S.M.; thence south to the southwest corner of Section 34, Township 12 South, Range 56 West, S.M.; thence east to the northwest corner of Section 3, Township 13 South, Range 56 West, S.M.; thence south to the southwest corner of Section 34, Township 13 South, Range 56 West, S.M.; thence east to a point at 158 degrees 35 minutes West Longitude; thence due south to a point at 59 degrees 00 minutes North Latitude; thence east to a point on the line of mean low water of Nushagak Bay; thence northerly and easterly along the mean low water line of Nushagak Bay and the Nushagak River to the mean low water line on the right bank of the Wood River; thence northerly along the mean low water line on the right bank of the Wood River to a point on the northern section line of Section 9, Township 12 South, Range 55 West, S.M.; thence west to the northwest corner of Section 9, Township 12 South, Range 55 West, S.M.; thence south to the southwest corner of Section 16, Township 12 South, Range 55 West, S.M.;

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thence west to the northwest corner of Section 24, Township 12 South, Range 56 West, S.M.; thence north to the northeast corner of Section 14 Township 12 South, Range 56 West, S.M.; thence west to the northwest corner of Section 15, Township 12 South, Range 56 West, S.M.; thence north to the northeast corner of Section 9, Township 12 South, Range 56 West, S.M.; thence west to the northwest corner of Section 7, Township 12 South, Range 56 West, S.M.; the point of beginning, excluding the territory presently within the boundaries of the City of Dillingham.

(1/1/3035) Discussion followed regarding a proposal to amend the existing raw fish tax legislation to provide a measure of revenue enhancement to coastal communities impacted by offshore fisheries activity.

(1/1/3170) Dan Bockhorst recommended that the commission apply the standards for incorporation of regional based governments to the petition before it. He stated that the department felt that the populated area proposed for annexation was urban in character, that the area was in need of municipal services and that the City of Dillingham was in a position to provide those services, that given the degree of subdivision of the area and its population, there was a potential for further growth and development and regulation by the City of Dillingham could provide for the necessary regulation of growth in the area, that the residents of the amended area proposed for annexation received virtually all of the services provided by the City of Dillingham and that the City of Dillingham is prepared and capable to provide full municipal services to the area and that the processes for annexation other than the legislative review process were either inappropriate or unavailable to effect the annexation.

(1/1/3290) Commissioner Bettisworth noted that standards 3, 4, 6, 8 and 10 for annexation were met by the amended area proposed for annexation and that the legislative review process was appropriate to effect the boundary change.

(1/1/3370) Chairman Eder called for the question.

(1/1/3375) The motion, as amended, was approved unanimously.

M/S: Anderson/Greist: To approve minutes of the October 4 meetings in Clark's Point and Dillingham.

The motion was approved unanimously.

At this point, Commissioner Eder adjourned the decisional session on the petition for annexation of territory to the City of Dillingham.

At the request of the Commission, it was noted that the petition for annexation of approximately 495 square miles had been withdrawn by the City of Nenana. Discussion followed.

Commissioner Bettisworth indicated that he had reviewed the issue of compensation for the commission and had concluded that in light of the state's budget shortfall and his concern that the request could negatively affect disposition of other issues to be placed before the legislature and governor, that the proposal should be withdrawn.

(1/1/3890) Commissioner Hanson expressed his agreement with Commissioner Bettisworth's statements and suggested that a recommendation for a review of compensation received by all state boards and commissions and urging equity might be the most effective method to bring the matter to the attention of the legislature and the governor. He also noted that if compensation were not provided, it might limit the number of individuals able to serve on the commission.

STATE OF ALASKA
LOCAL BOUNDARY COMMISSION
MEETING MINUTES
TELECONFERENCE OF DECEMBER 10, 1986

DRAFT

MEMBERS PARTICIPATING:

C.B. Bettisworth (via teleconference)
Robert Eder (via teleconference)
Dave Hanson (via teleconference)
Jo Anderson (via teleconference)

PLACE:

949 E. 36th Avenue
Anchorage, Alaska

STAFF PRESENT:

Dan Bockhorst (via teleconference)
Gene Kane
Carol Akerelrea

SUBJECTS:

1) Work session concerning statements of decision regarding petitions by the Cities of Clark's Point, Dillingham and Pelican; 2) review draft letter to the Governor regarding compensation to the Commission:

NOTE: These minutes represent a summary of the proceedings of the Local Boundary Commission at its meeting of December 10, 1986. A tape recording of the entire meeting was made and is available for review at the Department of Community and Regional Affairs. Parenthetical references are included in these minutes to enable one to locate specific portions of the tape recording. The reference consists of the number of the tape (e.g. tape one of one is shown as "1/1"; followed by a four digit number to indicate the specific section of that tape recording using a tape speed of 1.2 cm/sec.)

(1/1/0001) Commissioner Eder called the meeting to order at 4:00 p.m., at the time, date and place scheduled (1/1-0001).

(1/1/0007) M/S: Bettisworth/Anderson: To approve the agenda as submitted.

The motion was approved unanimously.

(1/1/0030) M/S: Bettisworth/Anderson: To approve draft statement of decision regarding the commission's action on the petition for annexation of approximately 242 square miles by the City of Clark's Point.

Commissioner Hanson indicated that he wished to be excused from participating in any commission actions regarding the Clark's Point and Dillingham annexation petition decisions on the basis of a previously declared potential conflict of interest.

Discussion followed. No changes were recommended to the draft statement of decision.

Commissioner Eder called for the question.

The draft statement was approved unanimously. Commissioner Hanson abstained.

(1/1/0085) Commissioner Eder indicated that the next item of business on the agenda was discussion of the draft statement of decision regarding the petition for annexation of territory to the City of Dillingham.

M/S: Bettisworth/Anderson: To approve the draft statement of decision.

Discussion followed. Commissioner Bettisworth asked staff to describe the proposed amended boundaries of the City of Dillingham.

(1/1/105) Dan Bockhorst stated that at the commission's decisional session, the commission had been utilizing a map furnished by the City of Dillingham. The City of Dillingham had indicated that the proposed boundaries followed section lines. Upon subsequent examination, staff had determined that the boundaries drawn on the map furnished by the City of Dillingham did not conform to section lines. Accordingly, staff prepared a separate map which reflected the department's understanding of the proposed amended boundaries. He noted that a copy of the department's map and an explanation of it was provided to the City of Dillingham. Staff of the City of Dillingham had reviewed the map and the DCRA explanation of it. The City of Dillingham had expressed agreement with the department's interpretation of the proposed amended boundaries. He noted that the boundaries, as defined by DCRA, conformed to the open to entry parcel offerings of the Department of Natural Resources. He noted that the new map before the commission reflected the addition of approximately nine square miles, as directed by the commission.

Hearing no further comments, Commissioner Eder called for the question.

(1/1/230) The motion was approved unanimously. (commissioner Hanson abstained.)

Dan Bockhorst noted that the legal description contained in the draft statement of decision had been reviewed and approved by the City of Dillingham. Certain ministerial changes had been suggested. He asked if these changes might be made in the final document to be executed by the chairman. The commission expressed its acceptance of his recommendation.

Commissioner Eder then opened discussion on the draft statement of decision regarding the proposed annexation of territory by the City of Pelican.

Commissioner Bettisworth excused himself from participation in discussion regarding the proposed Pelican annexation.

Commissioner Hanson stated that he would participate in the discussion of the Pelican annexation statement of decision.

(1/1/285) M/S: Hanson/Anderson: To approve the draft statement of decision regarding the proposed annexation of territory to the City of Pelican.

Discussion followed.

At this point, the teleconference was interrupted by technical difficulties with Commissioner Hanson's connection in Hope.

At the request of Commissioner Bettisworth, it was agreed to delay discussion of the draft Pelican annexation statement of decision until such time as the teleconference connection with Commissioner Hanson was reestablished.

While waiting for Commissioner Hanson to rejoin the teleconference, Commissioner Eder suggested discussion of a draft letter to the governor concerning compensation to the Local Boundary Commission. Commissioner Eder stated that he recalled that the commission had agreed upon a specific level of compensation and asked why that figure was not reflected in the letter.

Dan Bockhorst stated that that a figure of \$150 per day plus per diem had been recommended and that provision was included in draft legislation that the department had prepared. A position paper supporting that figure had also been prepared. He stated that he had been advised, subsequent to the commission's November 22 meeting, that the department would no longer actively support the compensation legislation. He stated that this was based upon rumors that the Governor would not be favorably disposed to increased compensation to the commission. He indicated that this rumor had come from several sources. He explained that these considerations were the reasons that staff had not included a specific figure in the letter concerning compensation. He stated that he would add the specific figure to the letter if the commission so desired.

Commissioner Bettisworth stated that he had growing concerns about submitting a request for compensation stemming from the fact that the governor had directed all state agencies to reduce their budgets to reflect the projected decrease of \$900 million in state revenues. Since all state departments would suffer an average of a 40% budget reduction, he did not feel that the time was appropriate for the commission to seek increased compensation. He recommended that the suggestion be withdrawn.

(1/1/465) Commissioner Bettisworth moved that the compensation request be withdrawn. The motion failed for lack of a second.

Commissioner Eder suggested that it might be appropriate to suggest an examination of compensation provided to other boards and commissions in the interest of establishing equitable levels of compensation.

Commissioner Bettisworth stated that such a recommendation might be considered presumptuous.

Commissioner Eder suggested that the letter be submitted as written.

(1/1/575) The teleconference operator interrupted to state that Commissioner Hanson was back on line.

(1/1/585) Commissioner Hanson stated that he had two concerns regarding the draft Pelican statement of decision.

He noted that he could not find reference to watershed protection as a rationale for annexation of tract #3, that he did not find possible future municipal ownership of the dam and power plant referenced and he found no reference to the proximity of the area to the existing City of Pelican boundaries referenced. He indicated that these matters were addressed in the hearing and should be reflected in the statement of decision.

Commissioner Eder requested that these considerations be added to the draft statement of decision.

Commissioner Eder called for the question.

(1/1/630) The motion was approved unanimously, with Commissioner Bettisworth abstaining.

Commissioner Eder informed Commissioner Hanson of the commission's decision regarding the letter to Governor Cowper requesting compensation for the Commission.

Commissioner Hanson asked for an articulation of the department's position on the matter.

Mr. Bockhorst reiterated his previous comments.

Commissioner Hanson asked if Commissioner Bettisworth felt that the letter should be sent.

Commissioner Bettisworth stated that he had moved that the letter not be sent, and that the motion had died for lack of a second.

Commissioner Eder stated that the Commissioner Hanson could second the motion, if he so desired.

(1/1/705) M/S: Bettisworth/Hanson: that the process of requesting compensation for the Local Boundary Commission be terminated.

Commissioner Bettisworth stated that in Juneau, it was apparent that the governor's proposed budget would be \$900 million less than the current budget. Accordingly, each department would be required to reduce its operating expenses by 40%. He stated that for the commission to seek compensation under these circumstances was inappropriate.

Commissioner Hanson stated that the letter was well written and expressed the commission's position effectively. He indicated that he thought it would be useful to communicate to the governor and the legislature that the commission was not compensated in a manner commensurate with other boards and commissions.

Commissioner Anderson recommended that a paragraph be struck from the draft.

(1/1/815) Commissioner Eder stated that he did not expect that the governor would act to secure additional compensation for the commission but that it would be appropriate to inform the governor that the commission served without compensation.

Commissioner Hanson stated that the matter might be more appropriately addressed in the commission's annual report to the legislature.

Commissioner Bettisworth stated that if the letter were sent, some comment indicating the commission's awareness of the state's financial problems should be included.

Commissioner Bettisworth asked if it was critical that the letter be sent promptly.

(1/1/955) Mr. Bockhorst stated that there was no particular urgency.

Commissioner Bettisworth asked when the commission could anticipate meeting next.

Mr. Bockhorst stated that at such time as a new commissioner of DCRA was appointed, the commission would meet with the individual. He noted that an annexation petition had been received from the City of Wasilla and that the City of Houston was expected to submit a petition in the near future.

Commissioner Hanson asked what date the commission's annual report to the legislature would be submitted.

Mr. Bockhorst stated that the law required that the report be submitted between the 19th and the 28th of January.

LOCAL BOUNDARY COMMISSION
DECEMBER 10, 1986
PAGE FIVE

Commissioner Hanson suggested that the issue of compensation be tabled until the commission met with the new commissioner of DCRA and discussed the issue with that individual.

Commissioner Eder suggested that the letter be sent to the governor.

(1/1/1060) M/S: Hanson/Bettisworth: To table action on the issue of compensation for the commission until such time as a meeting was held with the new DCRA commissioner and/or the governor.

Commissioners Anderson, Bettisworth and Hanson voted in favor of the motion.

Commissioner Eder asked if there were any other issues for discussion.

Commissioner Hanson stated that he had learned that DCRA staff had drafted proposed new language relating to dissolution of municipalities. He indicated that he wished to have the record reflect that the Local Boundary Commission did not endorse the proposed new language.

Mr. Bockhorst indicated that while in Juneau on other business, staff had been asked to participate in a meeting with an attorney from the Legislative Affairs Agency, Deputy Commissioner Jeff Smith and Marty Rutherford, MRAD Director. The purpose of the meeting was to discuss proposed language to modify the legislation, in accordance with a request from Senator-elect Binkley. He stated that there was no intention on the part of the department to keep the information from the commission and that the draft legislation would be shared with each member.

Commissioner Eder requested that copies of the draft legislation be provided to members of the commission.

(1/1/1130) Commissioner Hanson stated that the commission had not received a response to the commission's letter requesting information regarding dissolution of municipal governments. He asked Dan Bockhorst for an explanation.

Mr. Bockhorst indicated that the department had not responded to the commission's letter regarding dissolution because of hectic activity resulting from the transition. He indicated that MRAD director Marty Rutherford had planned to meet with the Local Boundary Commission staff component regarding the matter but had been directed to travel to Juneau instead. He indicated that a response would be forthcoming in the immediate future.

(1/1/1260) Commissioner Eder then indicated that the commission's business was completed and adjourned the meeting at 4:40 p.m.

APPROVED:

Robert Eder, Chairman

Date

ATTESTED:

Staff

LOCAL BOUNDARY COMMISSION

AGENDA
MEETING OF FEBRUARY 19, 1987

Department of Community and Regional Affairs
Conference Room (Room 210)
Community Building
Juneau, Alaska

- I. CALL TO ORDER (10:00 a.m.)
- II. APPROVAL OF AGENDA
- III. COMM ✓
III. BRIEFING FROM DEPARTMENT OF LAW ON STATUS OF LAWSUIT INVOLVING THE PROPOSED DISSOLUTION OF THE CITY OF AKIACHAK (MARJORIE ODLAND, ASSISTANT A.G.)
- IV. DISCUSSION CONCERNING SENATE BILL 50 AND HOUSE BILL 65, "AN ACT RELATING TO DISSOLUTION OF A MUNICIPALITY."
(note: the following have been invited to attend:
Mark Ernest, Aide to Senator Binkley
Bob Huron, Aide to Representative Hoffman
McKie Campbell, Staff to Senate C&RA Committee
Terry Hoefferle, Staff to House C&RA Committee
- V. DISCUSSION CONCERNING CONDUCT OF MUNICIPAL INCORPORATION ELECTIONS BY MAIL (AS 15.20.800)
(discussion with representatives of the Division of Elections)
- VI. DISCUSSION REGARDING ISSUES TO BE ADDRESSED AT JOINT MEETING OF HOUSE AND SENATE COMMITTEES ON COMMUNITY AND REGIONAL AFFAIRS
 - A. Recommendations for Legislative Review Annexation
 1. 40 square miles to City of Dillingham
 2. Old Richardson Highway Service Area to the City of Fairbanks
 3. Fairbanks Industrial Park to the City of Fairbanks
 4. Tract S-4A, USS 3218 to the City of Kodiak
 5. 168 acres to the City of Pelican
 - B. Municipal dissolution issues SB
 - C. Conduct of municipal incorporation elections by mail
 - D. Compensation for the Local Boundary Commission
- VII. REVIEW OF DRAFT LETTER TO THE CITY OF PALMER CONCERNING ANNEXATION POLICIES
- VIII. APPROVAL OF MINUTES
 - A. August 28, 1986
 - B. October 10, 1986
 - C. November 22, 1986
 - D. December 10, 1986
- IX. COMMISSIONERS' COMMENTS
- X. ADJOURNMENT

STATE OF ALASKA
LOCAL BOUNDARY COMMISSION
NOTICE OF MEETINGS

Notice is hereby given that the Alaska Local Boundary Commission will meet at 10:00 a.m., February 19, 1987 at the following location:

Department of Community and Regional Affairs
Conference Room (Room 210)
Community Building
Juneau, Alaska

The Commission will deal with the following matters during the meeting:

1. Status of lawsuit involving the proposed dissolution of the City of Akiachak;
2. Discussion concerning SB 50 and HB 65, "An act relating to dissolution of a municipality" and other aspects of municipal dissolution;
3. Discussion concerning conduct of municipal incorporation elections by mail (AS 15.20.800);
4. Current Report of the Commission to the Legislature;
5. Discussion concerning compensation to the Commission;
6. Annexation policies of the City of Palmer;
7. Approval of minutes of previous meetings.

The Commission will also meet with the House and Senate Committees on Community and Regional Affairs to discuss items 1 - 5 listed above and any other issues raised by the Committees. The meetings will be held as follows:

Senate C&RA Committee
Butrovich Room
Second Floor, Capitol Building, Juneau
3:30 p.m.; February 19, 1987

House C&RA Committee
Room 603
Court Building, Juneau
3:00 p.m., February 20, 1987

If, for any reason, (e.g. weather conditions, transportation delays, inadequate meeting room capacity, etc.), the Commission is unable to conduct the meetings at the times and/or places specified in this notice, they will be delayed until later the same day or will be rescheduled to a new time, as early as is practicable. Notice of such delay or rescheduling will be posted by the time and at the location of the meeting as originally scheduled.

For further information or a copy of the meeting agenda, contact Dan Bockhorst at the Department of Community and Regional Affairs in Anchorage at 561-8586.

MEMORANDUM

State of Alaska

TO: Local Boundary
Commission Members

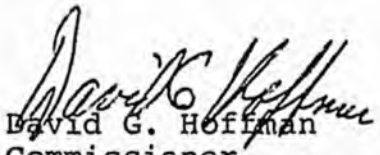
DATE: February 18, 1987

FILE NO.:

THRU:

TELEPHONE NO.: 465-4700

FROM:


David G. Hoffman
Commissioner
Department of Community
and Regional Affairs

SUBJECT: Potential Focus of
Local Boundary
Commission in the
new Administration

One of the primary goals of the Cowper Administration is to help make local government work better, especially in the smaller, rural communities of the state. During his State of the State message, the Governor said:

Over the past few years life has changed a great deal for all of us in Alaska. But no where has the change been felt as deeply as in rural Alaska . . . I believe the villages are fundamentally different culturally and historically from urban Alaska and that we must make an effort to create new forms of government that are appropriate to rural Alaska. Such forms of village government must be democratically managed and consistent with the Alaska Constitution, but they must also be consistent with the realities of village life.

On numerous occasions the Governor has stated that when he first began traveling throughout rural Alaska in 1968, he saw a form of government that seemed to be very integrated into village life. People then felt as if they "owned" their local governments, and they operated them with very little cash. In these times of fiscal crisis where there is a feeling in some communities that local people no longer "own" their local governments, it is important for the state to reexamine local government.

The movement by several communities, primarily in the Yukon-Kuskokwim Delta Area, to dissolve their state-chartered municipal governments is a symptom of discontent with the current form of local government. I have traveled to Bethel, Kasigluk, and Nome since I was appointed Commissioner to gain new insights into how people felt about their local governments. I will be traveling to Barrow, Kotzebue, and Dillingham next week to attempt to gain further insights. It is my hope that the Department of Community and Regional Affairs can assist local people in developing more effective local governments within the context of the Alaska Constitution.

The Local Boundary Commission (LBC) is squarely in the middle of the issue of the dissolution of municipal governments. I would hope that under the new Administration the LBC could take the lead role in helping to solve problems relating to the dissolution of municipal governments. I also hope that the LBC could serve as my primary advisory group in helping me deal with issues relating to local government generally.

The LBC is in a unique position to be a problem solver for several reasons. These reasons include:

- ° The Commission is composed of private citizens who have an independent and objective perspective on governance issues as a result of the fact that they are not government employees.
- ° The Commission has been dealing with local government problems in the past and can provide continuity between administrations with regards to policy relating to local governments.
- ° The Commission has substantial statutory decision making authority with regards to local government issues.

Specific issues that I would like to discuss with you on the 19th include the following:

1. Development of a specific workplan by staff under which the LBC would deal with local government issues;
2. Explore the possibility of getting consulting money to the Commission for an independent study of issues relating to the dissolution of cities;
3. The development of new forms of local government; and
4. The status of the suit filed by Akiachak against the Boundary Commission and ways in which that suit and the underlying dispute might be resolved.

I am sorry that bad weather prevented me from meeting all Commission members on January 21. I look forward to spending a considerable amount of time talking with the Commission members on the 19th, and I hope that we can work together to help focus the role of the Boundary Commission under the new administration. I look forward to providing the staff support and assistance that will allow the Commission to assume an aggressive role as a problem solver with regards to the issues we are now facing.

DGH/gmw

MEMORANDUM

State of Alaska

Community and Regional Affairs

TO: Irene Rowan
Deputy Director
Municipal and Regional
Assistance Division

DATE: January 27, 1987

FILE NO.: 0536L/DB/lc

THRU:


TELEPHONE NO.: 561-8586

SUBJECT: MONTHLY REPORT
JANUARY, 1987

RECEIVED

FEB 0 1987

CB Co.

FROM: Dan Bockherst 
Supervisor:
LBC/GAS

The following is a summary of major activities concerning the Local Boundary Commission component which occurred from December 23, 1986 through January 27, 1987.

A. MAJOR ACTIVITIES

BIG LAKE INCORPORATION

Staff conducted an informational meeting on the proposed municipal incorporation of Big Lake on January 8 at the Big Lake Elementary School. Approximately 250 individuals attended the meeting. A draft report and recommendation to the Local Boundary Commission regarding the proposed incorporation of Big Lake is scheduled to be presented to the commissioner on January 28. Upon approval by the Commissioner, the draft report will be released for public review and comment. The report is expected to be formally issued to the Local Boundary Commission by February 27. The Local Boundary Commission has scheduled a hearing on the petition for 1:00 p.m., March 14, 1987.

At its meeting of January 26, the commission discussed the intention of the Division of Elections to conduct any proposed election on municipal incorporation of Big Lake by mail. Under new statutory provisions [AS 15.20.800], state conducted special elections may held by mail-in ballot. The Division of Elections is apparently committed to exercising this option.

Proponents for incorporation feel strongly that the election should be conducted in the conventional manner for the following principal reasons:

1. The referendum on incorporation is a very significant and complex issue. People should take time to learn the pros and cons before voting. If ballots are to be mailed to all qualified voters, experience suggests that those who are not informed on the issue and who would not otherwise vote will likely vote against incorporation (i.e. retain the status quo).

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January 27, 1987
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2. More than 30% of the individuals who would be eligible to vote on this question have mailing addresses other than Big Lake. Intuitively, this suggests that a rather large block of voters would likely vote for the status quo.
3. The potential for voter fraud is far greater if an election is conducted by mail.

At its January 26 meeting, the Local Boundary Commission concurred with these judgments and expressed its intent to formally raise these concerns regarding the situation because of the potential negative ramifications for all future municipal incorporations.

LOCAL BOUNDARY COMMISSION MEETING

On January 26, the commission met and conducted the following business:

Discussed with Dave Soulak, Manager of the City of Palmer, the potential annexations of several properties to Palmer, as well as the historical annexation practices of the city. Since 1972, the city has initiated 35 separate annexation proceedings. The commission has formally expressed concern over these types of numerous, small annexations. It recently addressed this very issue with the City of Kodiak who had submitted no fewer than 25 such petitions since 1978. The commission maintained that these frequent, small annexations impose unnecessary hardships on local governments, they create possible confusion in the delivery of services, and they render long term planning impossible. In this case, the City of Kodiak was formally directed by the commission to review its annexation practices and to revise them so they reflect a more coordinated approach to local boundary changes.

Approved a petition for annexation of 143.2 acres owned by the Alaska Transportation Museum to the City of Wasilla under provisions of the 100% petition process.

Approved a petition for annexation of 4.234 acres (Lot 2 Tachick Subdivision Part Two and Lot 3-A Tachick Subdivision Part Three) to the City of Soldotna under provisions of the 100% petition process.

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Tabled action on a petition for annexation of approximately 2.5 acres (Tract A, U.S.S. 3468) to the City of Kodiak under provisions of the 100 % petition process until such time as supporting documents are provided to the department.

Reviewed and approved the commission's draft report to the legislature.

Discussed municipal dissolution issues, including a review of Senate Bill 50. This bill, prefiled by Senator John Binkley, proposes amending AS 29.06.470 [Municipal Dissolution]. The current law essentially provides that a municipality may petition for dissolution when it is free of debt, or if in debt, all of its creditors are satisfied with arrangements for repayment and it no longer meets minimum standards for incorporation. If the municipality still meets minimum standards for incorporation but wishes to dissolve, it may also petition for dissolution if it is free of debt or debt repayment arrangements are made and it ceases to use each of its mandatory powers. The amendment would require that to petition for dissolution, the municipality no longer meet minimum standards for incorporation and cease to use each of its mandatory powers, or be allowed to petition for dissolution under another condition. This condition is if the dissolution question is approved in an advisory election by the voters within the municipality proposed for dissolution.

Set March 14, 1987 as the date for the public hearing on Big Lake incorporation petition. The commission discussed the wisdom of the Division of Elections intention to conduct the Big Lake incorporation election by mail. The result of the discussion was a decision to formally raise these concerns with the Governor, the Commissioner of DCRA, and the joint House and Senate Committees on Community & Regional Affairs.

Selected tentative dates for a meeting with the House and Senate Committees on Community and Regional Affairs. The preferred date is Monday, February 23, 1987. If this date can be arranged, the commission intends to meet on other matters the day before. The commission intends to discuss the following matters with the committees:

- dissolution issues (including SB 50);
- its formal report to the legislature;
- elections conducted by mail; and
- compensation to the commission.

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PALMER ANNEXATION PROPOSAL

The prevalence of negative comments submitted to the Palmer City Council at its December 23 meeting led the City of Palmer to cease, at least temporarily, consideration of a proposal for annexation of areas to the north, south, east and west of the existing municipal boundaries, including the Equestrian Acres subdivision.

KAKE ANNEXATION PETITION

On January 5, 1987, the department received a petition for annexation, under provisions of the legislative review process, of approximately 48 square miles to the City of Kake. The area proposed for annexation contains a population of approximately 150, according to the petitioner. The petitioner indicates that motivation for annexation is based upon a desire by the City of Kake to exercise greater control over the municipal watershed.

DISSOLUTION TASK FORCE

Local Boundary Commission members C.B. Bettisworth and Bert Greist met with Commissioner Hoffman concerning issues relating to dissolution of municipalities. Commissioner Hoffman indicated that he would like the commission to investigate existing issues regarding dissolution and make recommendations to deal with the issues. A memorandum outlining the commission's role in the process is forthcoming from Commissioner Hoffman. The commission intends to develop a work plan to address the task.

REPORT TO LEGISLATURE

The Local Boundary Commission's report to the First Session of the Fifteenth Legislature was developed and sent to the President of the Senate and the Speaker of the House on January 28, the tenth day of the Session. Copies are being distributed to the Governor, Commissioner Hoffman, House and Senate C & RA Committee members, MRAD supervisors and regional offices and other interested parties.

ALASKA GOLD PROPERTY ANNEXATION

The annexation of approximately 140 acres described as the Alaska Gold property to the City of Fairbanks became effective on January 15, 1987. The Local Boundary Commission approved the petition on August 2, 1986, but delayed the effective date of the boundary change because a negotiated agreement for

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voluntary annexation was reached between the city and the owner of the property. Under terms of the agreement, the boundary change was initiated at the request of the sole owner of the property with the understanding that property taxes would not be levied on the property until 1988, when development of the property will create a demand for municipal services.

Therefore, the annexation petition was originally submitted under provisions of the legislative review process but was amended and has now been effected under the local action process. A certificate of boundaries of the City of Fairbanks has been issued to reflect the annexation.

B. TECHNICAL ASSISTANCE

In addition to the major activities listed above, staff provided technical assistance to the following.

Aleutians East Region: Assistance was provided to the City Administrators of Sand Point and King Cove concerning potential formation in the Aleutians East region.

Anchorage Times: Staff provided information regarding proposed municipal incorporation of Big Lake.

Darbyshire & Associates: Staff provided Ralph Darbyshire with information regarding processes for transition from an REAA to a borough school district.

Deltana: Fairbanks MRAD staff was provided with information regarding borough formation.

Department of Law: Information was provided to the Department of Law regarding development of the Northwest Arctic Borough Charter as it relates to proposed restrictions on the authority to levy property taxes.

Dillingham: A resident was provided information regarding differential tax zones and the pending annexation by the City of Dillingham.

Dillingham: City Manager Jeff Labahn was provided with information regarding the Local Boundary Commission's actions with respect to the pending legislative review annexation by the City of Dillingham.

Division of Community Development: DCD staff was provided with information relating to the municipal dissolution process and

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issues. Meetings were held with DCD staff to discuss these matters.

Division of Elections: Staff discussed with the Division of Elections concerns regarding conducting municipal incorporation elections via mail.

Fairbanks: Information was provided to staff of the City of Fairbanks regarding annexation of the Fairbanks Industrial Park.

Galena: Steve Jones, an attorney involved in litigation with the City of Galena, was provided with information regarding the relationship between a city and its school district. Information was also provided concerning state financial aid provided to cities.

Kasigluk: A letter was drafted at the request of the Kasigluk Corporation to notify financial institutions serving the Yukon-Kuskokwim Region that the corporation is not affiliated with the City of Kasigluk.

Arctic Sounder: Information regarding formation of the Northwest Arctic Borough was provided.

KTUU: Staff responded to questions from KTUU-TV regarding proposed municipal incorporation of Big Lake.

Manakotak: Staff provided assistance in determining the boundaries of the City in relation to a proposed housing project.

Matanuska Susitna Borough: Discussions were conducted with Mat-Su Borough Attorney Lee Sharp regarding provisions for modification of service area boundaries in a Federal Voting Rights Act submission concerning the proposed incorporation of Big Lake. Staff agreed to include provisions for such when we develop the FVRA submission for the proposed City of Big Lake.

Mat-Su Frontiersman: Staff provided information regarding proposed municipal incorporation of Big Lake.

National Geographic Society: Maureen Flynn of National Geographic was provided with information regarding the local government structure of Alaska and the history of local government in Anchorage.

North Slope Borough: Information regarding voting registration was provided to a North Slope Borough resident.

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Northwest Arctic Borough: Staff provided technical information to the borough's charter commission.

Palmer: Technical assistance was provided to the City of Palmer regarding the Federal Voting Rights Act.

Prince William Sound: Assistance was provided to the MRAD technical assistance section concerning the Prince William Sound Borough study.

Port Williams: Information was provided to individuals from Port Williams regarding municipal incorporation.

Sand Point: Assistance was provided to staff of the City of Sand Point regarding annexation.

Southeast Alaska: Maps and legal descriptions of all Southeast Alaska municipalities was provided to MRAD Juneau staff.

Ungalik: A resident of Ungalik was provided information regarding municipal incorporation.

C. TRAVEL

<u>Community</u>	<u>Purpose</u>	<u>Staff</u>
Big Lake (1/8)	Big Lake Incorp. Info Meeting	Dan/Carol
Big Lake (12/30)	Big Lake Incorp. Research	Carol

D. SPECIAL ISSUES

COMMISSION TERM EXPIRATION

Local Boundary Commission Chairman Robert Eder's term expires January 31, 1987. The Department of Law has advised in the past, that even though a term expires the commission member holding the expired term continues to serve in that position.

ORGANIZATIONAL GRANTS

A memorandum was presented to the Division Director identifying the need for proposed appropriations to fund organizational grants for the Northwest Arctic Borough and the possible City of Big Lake. Under AS 29.05.190(a)(3), the Borough should receive its third year grant in the amount of \$100,000. Under AS.29.05.180(a) the prospective City of Big Lake would receive \$50,000 its initial year and \$25,000 its second year. If the city is incorporated prior to June 30, 1987 these appropriations would be needed this legislative session.

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E. ITEMS OF GENERAL INTEREST

FAIRBANKS NORTH STAR BOROUGH UNIFICATION PROPOSAL

Fairbanks North Star Borough Assemblyman Joe Sitton has requested the mayors of Fairbanks, North Pole and the Fairbanks North Star Borough to form a commission to study the potential for unification of the North Star Borough.

ANNEXATION OF VOTING AREAS

The Supreme Court recently upheld a federal court's refusal to approve, under the provisions of the Federal Voting Rights Act, a city's refusal to annex a largely black neighborhood while annexing a white neighborhood. The city argued that proposed annexations of a white area and an unoccupied area intended for white housing during the 1970's did not change the voting rights of minorities because the city had an all white population at the time. The Supreme Court decided the annexations of white areas could be seen as an effort to minimize the likely impact of future black voters, which is "as impermissible a purpose as the dilution of present black voting strength."

F. STATISTICAL INFORMATION

<u>Activity</u>	<u>Total This Month</u>	<u>Total this Year</u>
Commission Meetings	1	1
Annexation Petitions		
Received by Dept.	2	2
Reviewed by staff	1	1
Acted Upon by LBC	2	2

Statistical information can be misleading. The petitions received by the Department this month are not necessarily the same ones reviewed by staff or acted upon by the LBC. The information on the attached data sheet reflects the numbers and specific actions covered by these statistics.

cc: Local Boundary Commission

MONTH OF JANUARY, 1987

<u>ACTIVITIES</u>	<u>DATES</u>
<u>ANNEXATION PETITIONS</u> <u>RECEIVED BY DEPARTMENT</u>	
<u>Kake</u> - legislative review approximately 48 sq. mi.	1/05/87
<u>Kodiak</u> - local action (100% petition) 2.5 acres (Tract A, USS 3468)	1/02/87
<u>ANNEXATION PETITIONS</u> <u>REVIEWED BY STAFF</u>	
<u>Kodiak</u> - local action (100% petition) 2.5 acres (Tract A, USS 3468)	1/02/87
<u>COMMISSION MEETING</u> <u>1/26/87</u>	<u>Anchorage</u>
<u>ANNEXATION PETITIONS</u> <u>ACTED UPON BY LBC</u>	
<u>Wasilla</u> - APPROVED 143.2 acres owned by Alaska Transportation Museum (local action 100% Petition)	1/26/87
<u>Soldotna</u> - APPROVED 4.234 acres (Lot 2 Tachick Subdivision Part 2 and Lot 3-A Tachick Subdivision Part 3) (local action 100% petition)	1/26/87
<u>Kodiak</u> - TABLED until supporting documents provided to Dept. (local action 100% petition)	1/26/87

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT BETHEL

PETITIONERS' REPRESENTATIVE)
WILLIE KASAYULIE,)
)
Appellant,)
)
vs.)
)
LOCAL BOUNDARY COMMISSION,)
)
Appellee.)
_____)

No. 4BE-85-441 CIV

Appeal from the Local Boundary Commission Decision
Regarding the Dissolution of the
Municipality of Akiachak

BRIEF OF APPELLEE

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Superior Court of the State
of Alaska

HILMA SHAVINGS, Clerk

By: _____
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AUTHORITIES PRINCIPALLY RELIED UPON

Alaska Const. art. X, sec. 1

PURPOSE AND CONSTRUCTION. The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

Alaska Const. art. X, sec. 2

LOCAL GOVERNMENT POWERS. All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

Alaska Const. art. X, sec. 12

BOUNDARIES. A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

(All statutory references are to Title 29 as codified before the revision, sec. 4, ch. 74, SLA 1985, eff. Jan. 1, 1986.)

AS 29.18.011

INCORPORATION OF CITIES. (a) A community that meets the following standards may incorporate as a first class city:

- (1) the community has 400 or more permanent residents;
- (2) the boundaries of the proposed city include all areas necessary to provide municipal services on an efficient scale;
- (3) the economy of the community includes the human and financial resources necessary to provide local services; in considering the economy of the community, the Local Boundary Commission shall consider property valuations, economic base, personal income, resource and commercial development, anticipated functions, and the expenses and income of the proposed city, including the ability of the community to generate local revenue;
- (4) the population of the community is stable enough to support local government;

(5) there is a demonstrated need for local government.

(b) A community that meets all the standards established in (a) of this section except (a)(1) may incorporate as a second class city.

AS 29.68.520(a)

STANDARDS. (a) Except as provided in (b) of this section, a municipality may petition for dissolution when

(1) it is free of debt, or if in debt, each of its creditors is satisfied with a method of repayment; and

(2) either it no longer meets the minimum standards prescribed for incorporation by AS 29.18, or it ceases to use each and every one of its mandatory powers.

AS 29.68.560

DECISION. If the Local Boundary Commission determines that the municipality fails to meet the standards for dissolution, it shall reject the petition. If the commission determines that the municipality meets the standards, it shall accept the petition.

19 AAC 10.010(d)

(d) In determining whether there is a demonstrated need for local government in a community for the purposes of AS 29.18.011(a)(5), the commission will, in its discretion and without limitation, consider existing and anticipated social and economic problems, whether major economic development is anticipated, adequacy of existing services, and other factors which reflect the need for local government.

19 AAC 10.130(a)

DISSOLUTION. (a) A city may be dissolved if the city has no indebtedness, bonded or otherwise, or has proposed a method of repayment which will protect the interests of its creditors, and if the following standards are met:

(1) the city has ceased, for two or more consecutive years, to exercise any of the municipal powers set forth in AS 29.48.030 -- 29.48.035;

(2) the city has failed to conduct two or more consecutive regular elections in the manner provided by law; and

(3) the city no longer meets the standards for incorporation as provided by law and regulation.

JURISDICTIONAL STATEMENT

This an appeal from an administrative decision of the Local Boundary Commission dated December 31, 1985. The court has jurisdiction to entertain this appeal under AS 22.10.020(a), AS 43.05.240(d), and Appellate Rule 601, et seq.

ISSUES PRESENTED FOR REVIEW

1. Whether the Local Boundary Commission applied the correct legal standard in determining that the City of Akiachak still meets the minimum standards prescribed for incorporation and thus does not meet the standards for dissolution.

2. Whether the commission was correct in determining that the City of Akiachak has ceased to use each and every one of its mandatory powers.

STATEMENT OF THE CASE

The City of Akiachak has existed as a second class city (municipality) since its incorporation under AS 29.18.011 in 1974. Akiachak has had a Federally-chartered Indian Reorganization Act (IRA) Council since 1948. 25 U.S.C. §§ 476-477. Akiachak was also acknowledged as a Native village under the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1610, in 1971. At issue in this appeal is the Local Boundary Commission's (LBC) denial of Akiachak's petition to dissolve its municipality under AS 29.68.500 -- 29.68.580.

On September 15, 1983, Akiachak's entire city council resigned en mass. However, this did not effect the dissolution of the city. Record (R.) at 46 and 49. The city was informed that the dissolution of the city could only be accomplished by virtue of law and in the manner prescribed by law. Id. At the time of the attempted mass resignation of the city council, the members of Akiachak's IRA Council attempted to take over functions and assets of the municipality by adopting two resolutions which (1) ordered a halt to municipal powers (R. at 437-438); and (2) delegated authority to an administrative team to carry out municipal projects until the city was dissolved. R. Vol. 3 at 53. However, the resolutions adopted by the IRA Council were of no legal effect since it could not act in place of the city government. R. at 266. This is also true of the sales tax which was initiated by the IRA council and voted on by IRA members, effective July 1, 1986. Appellant's Br. at 3. Only cities and

boroughs may impose a tax. Alaska Const. art. X, § 2. The IRA council is not a recognized local government under Alaska's constitution. R. at 266.

In spite of the confusion of the status of an acting city council, the Department of Community and Regional Affairs (DCRA) began working with community representatives in 1983 to assist them with preparation of their dissolution petition. R. at 403. However, DCRA considered there to be an operating city government while the petition process was being pursued. R. Vol. 4 at 112.

On December 10, 1984, DCRA was informed by the Department of Law that the IRA council could not act on behalf of the city council, nor could it be the entity petitioning for dissolution of the city. Only an independent trustee could act in place of the city council, which most likely would be the commissioner of DCRA, his designee or a trustee appointed by the court. R. at 267. DCRA and the Department of Law concurred that the city of Akiachak did not technically satisfy the standards of dissolution and that there was significant activity on the part of the city during the requisite two-year period preceding the petition. R. at 269 and Vol. 4 at 112.

In August 1984, Akiachak submitted its final petition to DCRA. R. at 403. DCRA prepared a report of its findings with recommendations to the LBC pursuant to AS 29.68.550. R. at 339. A hearing on the petition was held by the LBC in Akiachak on March 2, 1985. Testimony was given by Jeff Smith Deputy Commis-

sioner of DCRA, members of Akiachak's IRA Council and local citizens. R. Vol. 3.

On May 18, 1985, the LBC held its first decisional meeting on Akiachak's petition for dissolution. R. Vol. 4 at 107. At that meeting, Marty Rutherford, director of the municipal and regional assistance division, DCRA, was asked by an unidentified commission member if, in actuality, the city of Akiachak was still an operating city. Ms. Rutherford responded, "As far as the state is concerned, absolutely." R. Vol. 4 at 112.

On May 18, 1985, the LBC, by a vote of 2-2, denied Akiachak's dissolution petition. R. at 514. A reconsideration of the vote was granted under AS 44.62.540. During the November 9, 1985 meeting of the LBC to reconsider the petition, Commissioner Bettisworth concluded as follows:

Based on this ... essentially this business of meeting the standards for incorporation where there's a need, demonstrated need for a municipality. Anyway, it's clear from all the data before us that there is a need and they continue to act as a city or a municipality.

R. Vol. 4 at 224. In determining "need," the LBC looked to the statutes and regulations pertaining to this requirement, namely AS 29.18.011 and 19 AAC 10.010(d). R. Vol. 4 at 224-227.

In its December 31, 1985 written decision, the LBC concluded that "the dissolution petition of the City of Akiachak fails to satisfy requirements of Section 29.68.520(a)(2) of the Alaska Statutes. Specifically, the community continues to meet the minimum standards for municipal incorporation and the City of

Akiachak has not ceased to use each and every one of its mandatory powers." R. at 671. The petition was denied and this appeal followed.

SUMMARY OF ARGUMENT

The LBC is an agency created by Alaska Constitution article X, section 7, given the authority to determine all local boundary changes in the state. The LBC must also uphold the fundamental policy of the purpose clause of local government (Alaska Const. art. X, § 1), which is to promote the municipal form of government. This policy governs the decisions of the LBC, especially when it considers whether a dissolution petition meets the standards set out in the statutes and regulations. AS 29.68.520; 19 AAC 10.130.

Appellant petitioned for dissolution of its municipality under AS 29.68.500 -- 29.68.580. The petition failed to comply with all of the requirements of AS 29.68.520. The LBC did find that the petition complied with AS 29.28.520(a)(1), as being free of debt and is not at issue in this appeal. However, the LBC also found that Akiachak's dissolution petition failed to comply with AS 29.68.520(a)(2), as follows:

(2) either it no longer meets the minimum standards for incorporation by AS 29.18, or it ceases to use each and every one of its mandatory powers.

R. at 669. The LBC based its decision on all the evidence presented to it by DCRA and testimony from petitioners.

Appellant complains that the LBC improperly interpreted the minimum standards for incorporation in AS 29.18.011, namely AS 29.18.011(a)(5), which reads, "there is a demonstrated need for local government." Appellant continually asserts that because there is no "desire" for a municipal form of government in Akiachak, that there can be no "need." However, petitioner has overlooked the applicable regulation defining "need for local government" found in 19 AAC 10.010(d). The LBC considered the factors establishing "need" as found in this regulation and concluded, based on the law as applied to the facts in this case, that there continued to be a need for the municipality. R. at 669.

As to the second requirement of AS 29.68.520(a)(2) (mandatory powers), appellant claims that this requirement was satisfied by default based upon DCRA's opinion that second class cities do not have any mandatory powers under AS 29.43.040 -- 29.43.105. R. at 421, 422. This conclusion by DCRA was erroneous. Mandatory powers are found not only in AS 29.43.040 -- 29.43.105, but are found throughout Title 29, the regulations, local charters and ordinances, and the constitution. Akiachak was considered by DCRA as being an active, operating city throughout the petition period. R. Vol. 4 at 112. And, the LBC properly concluded that Akiachak had not ceased to use its municipal powers for the required two-year period as required in the regulations. 19 AAC 10.130(a)(1) states that the municipal powers which must cease for two years are those contained in AS 29.48.030 -- 29.-

48.035. As an active, operating city, Akiachak continued to exercise those powers. Exercise of such powers must have been considered to be "mandatory" powers under this regulation adopted by the LBC. LBC interpretation of "mandatory powers" should be given deference by this court as a matter committed to agency expertise by the constitution and by statutory law allowing the LBC to adopt regulations to implement the dissolution process.

The LBC did not overlook the desire of the citizens of Akiachak in its decision to deny the petition. R. at 670. However, the LBC must base its decision on existing law, as well as the constitutional policy to uphold the municipal form of government. Appellant also asserts that the only "local government" desired in Akiachak is the IRA government. However, Akiachak's IRA Council is not a local government vested with powers nor is it a recognized form of government under the Alaska Constitution. All local government powers must be vested in boroughs and cities. Alaska Const. art. X, § 2. Therefore, this is not a case of Akiachak's residents choosing one form of local government over another. In reality, it concerns only whether the petition for dissolution the municipality, putting Akiachak back to the status of an unincorporated city, met the legal standards for dissolution. The LBC found that the petition did not comply with the requirements of AS 29.68.520 and it was required by law to deny the petition.

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ARGUMENT

I. THE APPLICABLE STANDARD OF REVIEW IS THE REASONABLE BASIS TEST

Appellant urges this court to substitute its judgment for that of the LBC in this case, claiming that this controversy arises from the construction of a state statute and not with issues within the LBC's area of expertise. In particular, appellant claims that the LBC misinterpreted AS 29.18.011 as applied to the facts of this case.

Appellant has completely failed to acknowledge the exclusive powers given to the LBC under Alaska Constitution article X, section 12 and statutory law as the agency committed to make determinations of a petitioner's compliance with dissolution standards. See AS 44.47.569 and AS 29.68.560.

Alaska Constitution article X, section 12 creates the LBC, and gives it exclusive authority to determine all state-level boundary changes. See Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974); Oesau v. City of Dillingham, 439 P.2d 180 (Alaska 1968). Furthermore, article X, section 7 of the Alaska Constitution states that cities "may be ... dissolved in the manner provided by law." The Alaska legislature enacted AS 29.68.500 -- 29.68.580 to provide standards and methods for dissolution of cities. The legislature, in conformity with the Alaska Constitution, designated the LBC as the proper agency to determine compliance of a petition with the dissolution standards. AS 29.68.560. The legislature also granted the LBC, as a

commission in the Department of Community & Regional Affairs (DCRA), the power to adopt regulations to implement AS 29.68.500 -- 29.68.580. AS 44.47.980. The LBC adopted 19 AAC 10.130 -- 19 AAC 10.150, which sets out standards for dissolution of cities.

Based on such overwhelming legal authority, it is apparent that a determination of the adequacy of Akiachak's dissolution petition is an issue which is within the intended scope of the LBC's constitutional and statutory powers.

The Alaska Supreme Court has frequently examined and discussed the reasonable basis standard of review as it applies to administrative decisions. In Matanuska-Susitna Borough v. Hammond, 726 P.2d 166 (Alaska 1986), a case involving DCRA's determination of "population" of municipalities for revenue-sharing and tax-limitation purposes, the Alaska Supreme Court applied the reasonable basis standard of review. The court noted the two standards under which it has reviewed agency interpretations of statutory terms, as follows:

The reasonable basis standard, under which the court gives deference to the agency's interpretation so long as it is reasonable, is applied where the question at issue implicates agency expertise or the determination of fundamental policies within the scope of the agency's statutory functions. The independent judgment standard, under which the court makes its own interpretation of the statute at issue, is applied where the agency's specialized knowledge and experience would not be particularly probative on the meaning of the statute.

Id. (emphasis added, citations omitted).

In summary, the court's rationale for applying the reasonable basis standard was, "[w]e believe that the reasonable

basis standard is the appropriate standard of review here because both agency expertise and fundamental policy decisions are involved in the determination of "population" and because the legislature intended to place the decision in the hands of the department." Id. (emphasis added).

See also Kelly v. Zamarello, 486 P.2d 906 (Alaska 1971). The reasonable basis test requires deference to be given to an administrative determination if it has a reasonable basis in law and fact. Alaska Public Utilities Comm'n v. Chugach Electric Ass'n, 580 P.2d 687, 694 (Alaska 1978), overruled on other grounds.)

Storrs v. State Medical Board, 664 P.2d 547, 554-555 (Alaska 1983). See Hammond v. North Slope Borough, 645 P.2d 750, 758 (Alaska 1982); State, Dept. of Natural Resources v. Universal Education Society, Inc., 583 P.2d 806, 811-812 (Alaska 1978); Union Oil Co. v. Dept. of Revenue, 560 P.2d 21, 23 (Alaska 1977).

The reasonable basis standard of review may be applicable even though a question of law is presented. The supreme court has stated,

We have oftentimes noted that the deferential "reasonable basis" standard of review is appropriate where a question of law implicates the agency's expertise as to complex matters or as to the formulation of fundamental policy. Compare Weaver Bros., Inc. v. Alaska Transportation Comm'n, 588 P.2d 819, 821 (Alaska 1978) (reasonable basis) with State, Commercial Fisheries Entry Comm'n v. Templeton, 598 P.2d 77, 80 (Alaska 1979) (independent judgment). See generally Jager v. State, 537 P.2d at 1107; Kelly v. Zamarello, 486 P.2d 906, 916-917 (Alaska 1971).

As to the fundamental policies which the LBC is to develop and, in this case, uphold, the Alaska Supreme Court in

Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92 (Alaska 1974), held that the reasonable basis standard applied to an appeal from a decision of the LBC because it involved broad judgments of political and social policy and that the LBC had been given a broad power to decide in the unique circumstances presented by each petition whether borough government was appropriate. The court also found that the statement of purpose of article X, section 1 of the Alaska Constitution favors upholding organization of boroughs by the LBC whenever the requirements for incorporation have been minimally met. Id.

The decision by the LBC to deny the City of Akiachak's dissolution petition clearly involves formation and application of fundamental policy and agency expertise. It involves a determination which the framers of the Alaska Constitution and the Alaska legislature clearly intended to place in the hands of the LBC.

Appellant cites Madison v. Alaska Dept. of Fish & Game, 696 P.2d 168 (Alaska 1985), as its authority for this court's application of the substitution of judgment standard. However, the court provided no probative analysis of the facts in that case to base its decision in applying the standard.

Accordingly, this court should apply the reasonable basis standard regarding the LBC's interpretation of AS 29.18.-011.

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II. THE CITY CONTINUES TO MEET THE MINIMUM STANDARDS FOR INCORPORATION

Appellant alleges that the LBC based its decision to deny Akiachak's dissolution petition on an erroneous interpretation of AS 29.18.011(a)(5), claiming there is no longer a "need" for local government.

The LBC must review a dissolution petition to determine if it has met the requirements of AS 29.68.520. See AS 29.68.-560. AS 29.68.520 reads, in pertinent part, "a municipality may petition for dissolution when ... (2) either it no longer meets the minimum standards prescribed for incorporation by AS 29.18 or...." The minimum standards of incorporation are found in AS 29.18.011. Of importance to this section of the argument is paragraph (a)(5), which reads, "there is a demonstrated need for local government." Akiachak must prove there is no demonstrated need for local government.

Appellant argues that the term "need," as used in AS 29.18.011(a)(5), should be equated with the term "desire." Appellant claims the standard for AS 29.18.011(a)(5) is that where there is no desire for municipal government, there can be no need for such government. Appellant supports this argument with a statement from DCRA's report to the LBC, which reads, "The petition request clearly demonstrates that the municipal form of government is not perceived as necessary by a substantial number of residents.... If an incorporation election were held at this time, it would most likely fail." R. at 421. DCRA's conclusion

on this issue is unfounded in law and fails to apply the correct standard. Also, DCRA's conclusion is not binding on the LBC. The "need" for incorporation as used in AS 29.18.011(a)(5) has been defined in the regulations. 19 AAC 10.010(d) reads,

In determining whether there is a demonstrated need for local government in a community for the purposes of AS 29.18.011(a)(5), the commission will, in its discretion and without limitation, consider existing and anticipated social and economic problems, whether major economic development is anticipated, adequacy of existing services, and other factors which reflect the need for local government.

The LBC considered the factors of 19 AAC 10.010(d) in making their decision that there was a continued need for the provision of basic municipal types of local governmental services in Akia-chak. R. Vol. 4 at 226. This was the correct application of the law. The LBC looked at projected revenue losses (R. at 278); community services, debts, and ownership of municipal assets as contained in DCRA's report. R. at 339. While the LBC certainly did acknowledge that the dissolution petition was strongly desired by appellant, it properly concluded that not all of the standards necessary for dissolution under AS 29.68.520 had been met. R. at 671.

One of the factors which is not relevant to a dissolution of a city is whether or not an incorporation election would fail if presently held. Appellant urges this court to read this concept into the statute. Such an interpretation of AS 29.18.011 by this court would be beyond its reviewing powers. As previously noted, the Alaska Constitution and the legislature have placed

the discretionary power of all local boundary issues in the hands of the LBC. In adopting dissolution standards, the legislature did not make "[w]hether or not an incorporation election would fail if presently held" a standard for dissolution under AS 29.-68.500, et seq. This court should not adopt a standard for dissolution which is not included in statutory law. We also note that appellant has cited no legal authority for its argument on this matter.

Appellant alleges that AS 29.68.520 does not authorize the LBC to substitute its subjective judgment for the will of the people. Appellant further alleges that the petition processes are available to affect the needs of the affected citizens, not to restrict local control without good reason.

Appellant is off-point on both of these arguments. AS 29.68.560 clearly mandates the LBC to review a dissolution petition to determine if it meets the necessary standards. The LBC's powers are found throughout Title 29 and in the Alaska Constitution. Furthermore, the LBC is committed by the purpose clause of article X, section 1 of the Alaska Constitution, to uphold organization of boroughs and cities. Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92 (Alaska 1974). If, as appellant suggests, the LBC must approve a dissolution petition merely based upon the will of the people, such an interpretation of AS 29.68.-560 would simply make the LBC a conduit for the division of elections. There would be no purpose for AS 29.68.560. The report and recommendations of DCRA would be sufficient and a review by

the LBC unnecessary. However, the Alaska Supreme Court has held that "[t]here is a presumption that every word, sentence, or provision in a statute was intended for some useful purpose, has some force and effect, and that some effect is to be given to each, and also that no superfluous words or provisions were used." Alaska Transportation Comm'n v. Airpac, Inc., 685 P.2d 1248 (Alaska 1984).

When the legislature adopted AS 29.68.560, it named the LBC, not DCRA or petitioners, as the reviewing agency to determine compliance with the statutory and regulatory standards for dissolution. The LBC must exercise its constitutional and statutory discretion in making this determination. And, contrary to appellant's claim, no right attaches to the petitioners to have an election under AS 29.68.570 unless the petition meets all the standards for dissolution. The LBC found the petition failed to comply with statutory and regulatory law and appropriately denied it.

Where an agency interprets its own regulation, a deferential standard of review properly recognizes that the agency is best able to discern its intent in promulgating the regulation at issue. K. Davis, Administrative Law Treatise § 7.22 at 105-108 (2d ed. 1979).... Accordingly, our inquiry is limited to determining whether there is a reasonable basis to the Commission's interpretation of the regulations.

It follows, further, that once the interpretation of the regulations is resolved, the Commission's application of the "law" to the particular factual circumstances presented ... is a matter committed to the Commission's sound discretion. Consequently, "our scope of review is limited to whether the decision was arbitrary, unreasonable

or an abuse of discretion." State v. Dept. of Administration v. Bowers Office Products, Inc., 621 P.2d 11, 13 (Alaska 1980) quoting North Slope Borough v. LeResche, 581 P.2d 1112, 1115 (Alaska 1978).

Therefore, this court should uphold the LBC's interpretation on the issue of "need," as defined by 19 AAC 10.010(d) under the reasonable basis test and as a matter committed to agency discretion.

III. THE CITY OF AKIACHAK DID NOT CEASE TO USE EACH AND EVERY ONE OF ITS MANDATORY POWERS

Appellant has dismissed the issue of whether or not the city ceased to use each and every one of its mandatory powers by relying solely on DCRA's independent conclusion that Akiachak had no mandatory powers under AS 29.43.040 -- 29.43.105. See R. at 422; Appellant's Br. at 14. Appellant therefore claims that it has met the second requirement of AS 29.68.520(a)(2) by default.

However, DCRA's conclusion that the city had no mandatory powers lacks legal authority. While it is true that DCRA is required under AS 29.68.550 to report its findings to the LBC with its recommendation regarding a dissolution petition, its recommendations and conclusions are not binding upon the LBC. It is the LBC which has been given the constitutional and statutory authority to determine whether or not a dissolution petition meets the standards. Alaska Const. art. X, § 2; AS 29.68.560.

The LBC had a reasonable basis for determining that the city had not ceased to use each and every one of its mandatory powers, and found that DCRA had made an erroneous conclusion to

the contrary.

First of all, the section of the regulations pertaining to dissolution of cities references different municipal powers than those determined by DCRA (AS 29.43.040 -- 29.43.105) as being the only mandatory powers at issue. 19 AAC 10.130(a) reads, in pertinent part, "a city may dissolve ... if the following standards are met: (1) the city has ceased, for two or more consecutive years, to exercise any of the municipal powers set forth in AS 29.48.030 -- 29.48.035." (Emphasis added.) AS 29.-48.030 -- 29.48.035 list a number of municipal facilities and services, garbage collection and solid waste services, and other municipal regulatory powers. Akiachak has continued to exercise such powers as an active, operating city. R. Vol. 4 at 112. Even though 19 AAC 10.130(a)(1) does not specifically refer to the above-referenced statutory powers as being "mandatory," it certainly appears that the intent of the LBC was to consider the exercise of such powers as being "mandatory powers" as defined in 19 AAC 10.840(12), especially, for standards of dissolution. This interpretation of these powers being "mandatory" is supported by legislative history and pertinent statutory law, as discussed further below.

19 AAC 10.840(12) defines "mandator" powers" as "those powers required to be exercised by a municipality under AS 29." (Emphasis added.) "If the legislature considers the provisions sufficiently important that exact compliance is required, then the provision is mandatory. If the statute is merely a guide for

the conduct of business and for orderly procedure rather than a limitation of power, it will be construed as directory." 1A N. Singer, Sutherland Statutory Construction § 25.03 (4th ed. 1985) (footnote omitted). Still, the intent of the legislature is controlling behind what is seemingly, on its face, a mandatory provision. See 2 E. McQuillan, The Law of Municipal Corporations (3d ed. 1979). Key mandatory powers of municipalities are voting, taxation, and planning. See, e.g., AS 29.18.120 and AS 29.23 (election of officials), AS 29.13.070 (adoption and adherence to a charter), and AS 29.13.100 (limits of home rule powers). The legislature also requires certain municipal actions to be by ordinance. AS 29.48.130. And, once a municipality enacts a charter or ordinance creating a power, that charter or ordinance becomes a "mandatory power." Other general powers in AS 29.33 become "mandatory powers" if assumed by a municipality. AS 29.33.010 -- 29.33.070 define mandatory areawide powers as education, assessment and collection of taxes, and planning, platting, and land use regulation. Accord AS 29.48.035, AS 29.-43.010 (powers of cities in and outside of boroughs).

The legislature originally provided for dissolutions in 1955 when it enacted former AS 29.80.020 and defined that a city ceases to function when several acts occur.

WHEN A CITY CEASES TO FUNCTION. A city ceases to function as a city government when (1) no election for officers of the governing body has been held for three or more successive years; (2) no municipal taxes have been levied for at least the last two of those years; and (3) it has no outstanding indebtedness either general or special.

Sec. 2, ch. 35, SLA 1955. While not specifically labeled mandatory powers, the legislature seemed to intend voting, taxes, and indebtedness to be relevant powers in all classes of municipalities.

The legislature's power to provide for municipal dissolution derives from article X of the Alaska Constitution. Article X, while not outlining mandatory powers, does provide that "[a] liberal construction shall be given to the powers of local government units." Alaska Const. art. X, § 1. The legislature is directed to prescribe the powers of boroughs (Id., § 3), and cities have powers "conferred by law or charter." Id., § 7. Local government boundary changes, including dissolution, are provided for in section 12, which establishes the LBC and gives the LBC exclusive powers under the constitution and statutory laws.

In the minutes of the constitutional convention, the framers intended to "just draw the outline of ... local government structure" leaving to the state to set up "the exact boundaries and the exact laws and rules under which they shall operate." 4 Proceedings of the Alaska Constitutional Convention 2611 (1956) (statement of Delegate Rosswog). "The powers of boroughs shall be provided by law." Id. at 2612. An illuminating colloquy between delegates White and Fischer addresses mandatory powers of a municipality as close as anything in the minutes: Delegate White inquired, "Could you construe the words 'shall be conferred by law' on line 15 to mean that the legislature 'must'

confer all powers and functions appropriate to local government?" Id. at 2638-2639 (statement of Delegate White). Delegate Fischer's response was "I think the way that should be interpreted is that they derive their powers through law." Id. at 2639 (statement of Delegate V. Fischer). Thus, it seems reasonable to conclude that a municipality's mandatory powers may be contained in (1) state laws and regulations, (2) local charter or ordinance, and (3) the constitution.

The LBC found that the City of Akiachak continued to exercise mandatory powers as listed in AS 29.48.030 -- 29.48.035 (R. at 669). In fact, even DCRA considered Akiachak to be an active, operating city throughout the petition period. R. Vol. 4 at 112.

Under the reasonable basis test, this court should give deference to the LBC's interpretation of "mandatory powers" in AS 29.68.520(a)(2) as defined by 19 AAC 10.130(a) and 19 AAC 10.840-(12), and, further, find that the LBC had a reasonable basis to conclude that Akiachak failed to satisfy AS 29.68.520(a)(2).

IV. AKIACHAK'S IRA COUNCIL IS NOT A LEGALLY RECOGNIZED LOCAL GOVERNMENT UNDER THE ALASKA CONSTITUTION OR THE FEDERAL GOVERNMENT

In anticipation that appellant may, at a later time in this appeal, attempt to assert that the state should recognize Akiachak's IRA 1/ council, or other types of Native councils, as

1/ 25 U.S.C. § 476; 25 U.S.C. § 473(a).

a local government, the LBC is addressing that potential issue at this time.

Throughout its brief, appellant continually attempts to give the court the impression that there are two existing local "governments" for Akiachak: one being the municipal government (the subject of the dissolution petition) and the other being an IRA government.

Furthermore, appellant asserts that the citizens of Akiachak are, through the dissolution petition, expressing their desire to have an IRA government rather than a municipal form of government as though they are making a choice between two legal governments presently in place. This assertion is simply not true.

Appellant's use of the term "IRA government" is in itself misleading and inaccurate. As will be discussed below, Alaska IRA councils are not legally recognized as local governments under the Alaska Constitution nor are they recognized by the federal government as having governmental powers.

A. Alaska Constitution article X, section 12

Pursuant to article X, section 2 of the Alaska Constitution, "[a]ll local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only." Only boroughs and cities are granted or mandated governmental powers under article X of the Alaska Constitution and Title 29 of the Alaska Statutes. As long

as the subject is state powers of local government, the constitution clearly states that the legislature can grant them only to cities and boroughs.

Appellant references in its brief that Akiachak's IRA Council received community approval pursuant to a general election to collect a two percent sales tax and service tax effective July 1, 1986. Appellant's Br. at 3. This tax is illegal and unenforceable. In State v. Alex, 646 P.2d 203 (Alaska 1982), the Alaska Supreme Court found unconstitutional a legislative delegation of taxing authority to private aquaculture associations. The associations, like IRA councils, were not state-created local governments. The court was explicit. "We think article X, section 2 of the state constitution makes it clear that the legislature may not delegate its taxing power to an entity other than a borough or city." Alex, 646 P.2d at 211 (emphasis added). The IRA's attempt to act as a "government" by imposing the tax will not alter its legal existence nor make it a recognized local government under the Alaska Constitution. The only legal local government of Akiachak is the municipality.

Also of interest is when the IRA council adopted two resolutions respecting affairs of the city. The resolutions specifically ordered a halt to the exercise of municipal powers, forbid the conduction of regular city elections, and delegated authority to an administrative team R. at 437-438.

The IRA council has no authority under the Alaska Constitution or state law to adopt resolutions affecting the City of

Akiachak's municipal powers. Alaska Const. art. X, § 2; AS 29, et seq. In summary, these actions by the IRA council should be disregarded by the court as ineffective and illegal actions having no bearing on the issue of the city's compliance with dissolution standards.

B. Federal Government

Akiachak's IRA Council is also not recognized by the federal government as a government. In a series of Acts, Congress has made clear that Native villages were subject to territorial and state law, not village law. 2/ Later, when it passed the Indian Reorganization Act, Congress made clear that the Act's grant of governmental powers was to apply to IRA councils on reservations, 3/ and the Interior Department issued instructions that IRA constitutions with governmental powers were to be approved only for reservation councils. 4/ Akiachak is not a reservation and, therefore, its IRA council has no governmental powers.

Finally, ANCSA 5/ is permeated with Congress' intent that Alaska Native villages not have independent governments, but

2/ See summary in Report of the Governor's Task Force at 66-100.

3/ Id. at 100-112.

4/ Instructions for Organizations in Alaska under the Reorganization Act of June 18, 1934 (Dec. 22, 1937).

5/ P.L. 92-203, 85 Stat. 688 (1971), 43 U.S.C. § 1601, et seq.

intended all off-reservation communities in Alaska to be fully subject to state law without any independent legal authority.

Throughout ANCSA, Congress provided clear evidence of how it viewed the status of Alaskan Natives and their future relationship to the state. Congress set the tone in the very beginning of the Act, in its "Declaration of Policy."

Congress finds and declares that --

* * *

(b) The settlement should be accomplished rapidly, with certainty, in conformity with economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property, without establishing any permanent racially defined institution, rights, privileges, or obligations, without creating a reservation system or lengthy wardship or trusteeship, and without adding to the categories of property and institutions enjoying special tax privileges or to the legislation establishing special relationships between the United States government and the State of Alaska;

Sec. 2 (emphasis added). The substantive provisions of ANCSA carry out this intention. For example,

- The Act grants fee title to Alaskan Natives of the 44-million-acre Native entitlement, without restrictions, thus ending all existing or potential federal trusteeship over these lands;
- After a temporary period, the Act subjects all of the Native ANCSA lands to state and local taxation, directly inconsistent with the principle of federal Indian law that states may not tax on Indian reservations;

- The Act assumes that every Native village already is or will become a state-chartered municipality. It gives either a municipal government or the state itself a major voice in village life. State regulatory power would not be permitted in Indian country, so Congress must have assumed the villages were not Indian country.
- The Act's definition of "Native village" at section 3(c) is far broader than "tribe," encompassing "groups" and "associations," so the fact that land has been conveyed to a "Native village" cannot be taken as an indication that that village has the self-governing powers of a tribe.
- The Act's legislative history shows that the drafters saw an option between using corporations or state municipalities as vehicles for receiving and holding Native lands, but never considered Native governments to be an option. 6/
- Nowhere in the legislative history is there any hint that unincorporated villages or IRA councils are recognized as having any governmental role at all.

ANCSA is the most comprehensive and far-reaching federal legislation even to affect Alaska Natives. Yet it does not, in any way, support the view that Congress has permitted Native communities outside reservations to have self-governing enclaves. On the contrary, it mandated involvement by the state or a state-

6/ Report of the Governor's Task Force on Federal-State Tribal Relations at 132-133 (Feb. 14, 1986).

chartered municipality in the life of every single Native village. Should the issue arise in this appeal, this court must find that Akiachak's IRA Council is not a local government in Alaska and cannot serve in place of a state municipality.

V. IN THE EVENT THIS COURT FINDS IN FAVOR OF APPELLANT, THIS CASE SHOULD BE REMANDED TO THE LBC WITH PROPER INSTRUCTIONS

Appellant urges this court to order the LBC to accept Akiachak's dissolution petition without remanding this case to the LBC. Appellant's Br. at 7. Appellant is requesting this court to act beyond its statutory jurisdiction. AS 44.62.570.

Alaska's superior courts possess general appellate authority. AS 22.10.020. In the context of an administrative appeal of a decision of an administrative agency such as this, the Alaska Supreme Court has held that the superior court's authority includes the power to remand a case and direct the entry of an appropriate judgment or order, or to direct the agency to conduct further proceedings as may be appropriate under the circumstances. City of Juneau v. Cropley, 429 P.2d 21, 31 (Alaska 1967). See also City of Nome v. Catholic Bishop of Alaska, 707 P.2d 870, 876-877 (Alaska 1985) (where board misconceived applicable laws, and after clarification by the court, the superior court correctly exercised its equitable power to remand portions of the case). Therefore, this court has the authority to remand the captioned matter with proper instructions, if necessary. Furthermore, if the standard of review is the reasonable basis

test, it limits judicial review of discretionary administrative policy decisions committed to an agency by the Alaska Constitution and the law. See Alaska Const. art. X, § 7; AS 44.47.567.

Analogous provisions of the Alaska Administrative Procedures Act, specifically AS 44.62.570(e), provides, "The court shall enter judgment setting aside, modifying, remanding, or affirming the order or decision, without limiting or controlling in any way the discretion legally vested in the agency." (Emphasis added.) A determination of a petition's compliance with dissolution standards is clearly, legally vested with the LBC.

For the foregoing reasons, the proper course of action by this court (in the event this court finds in favor of appellant) is to remand this case to the LBC with proper instructions.

VI. CONCLUSION

The LBC is not attempting to prevent the dissolution of the City of Akiachak, nor is it attempting to usurp the will of the citizens of Akiachak. To the contrary, the LEC's legal duty in this case is to make certain that a city's application for dissolution complies with applicable law. When the LBC found that Akiachak's petition failed to satisfy the requirements for dissolution, it could not, by law, approve the petition. The issue here is not whether the LBC is preventing Akiachak from choosing an IRA government over a municipal form of government, since IRA councils are not recognized governments in Alaska. It is whether or not Akiachak has satisfied the statutory and regulatory re-

quirements to dissolve. The LEC has been given the authority to make the determination and its determinations are governed by the constitution and statutory law in making that determination.

The court should find that the LBC complied with the existing law in denying Akiachak's dissolution petition, and affirm the LBC's decision.

DATED: December 2, 1986

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IN THE SUPERIOR COURT OF THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT
AT BETHEL

_____)
PETITIONERS' REPRESENTATIVE)
WILLIE KASAYULIE,)
)
APPELLANT,)
)
vs.)
)
LOCAL BOUNDARY COMMISSION,)
)
)
APPELLEE.)
_____)

Case No. 4 BE-85-00441 Civil

Appeal from the Local Boundary Commission Decision
Regarding the Dissolution of the
Municipality of Akiachak

APPELLANT'S REPLY BRIEF

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FILED Jan. 5, 1987 in the
Superior Court of the STATE
OF ALASKA

HILMA SHAVINGS, Clerk
APPELLATE COURTS

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PRIMARY AUTHORITIES RELIED UPON

ALASKA STATUTES

AS 29.89.011 (Repealed eff. Jan. 1, 1986, § 88 ch 74 SLA 1985).

INCORPORATION OF CITIES

(a) A community that meets the following standards may incorporate as a first class city:

- (1) the community has 400 or more permanent residents;
- (2) the boundaries of the proposed city include all areas necessary to provide municipal services on an efficient scale;
- (3) the economy of the community includes the human and financial resources necessary to provide local services; in considering the economy of the community, the Local Boundary Commission shall consider property valuations, economic base, personal income, resource and commercial development, anticipated functions, and the expenses and income of the proposed city, including the ability of the community to generate local revenue;
- (4) the population of the community is stable enough to support local government;
- (5) there is a demonstrated need for local government.

(b) A community that meets all the standards established in (a) of this section except (a) (1) may incorporate as a second class city.

AS 29.68.500-.580 (Repealed eff. Jan 1, 1986 § 88 ch 74 SLA 1985).

DISSOLUTION OF CITIES

Sec. 29.68.500. Methods of dissolution. (a) Two petition methods may be used to initiate dissolution of home rule and general law municipalities:

1 (1) petition to the Local Boundary Commission under regu-
2 lations adopted by the commission; or

3 (2) the local option method specified in AS 29.68.510 -
4 29.68.580.

5 (b) A home rule or general law borough is dissolved when
6 its entire territory is included within a home rule or
7 first class city or cities. A city is dissolved when all
8 its powers become areawide borough powers.

9 (c) The Department of Community and Regional Affairs
10 shall investigate a municipality which it considers to be
11 inactive and shall report to the Local Boundary
12 Commission on the status of the municipality. The com-
13 mission may submit its recommendation to the legislature
14 that the municipality be dissolved in the manner provided
15 for submission of boundary changes in § 12, art. X of the
16 state constitution.

17 Sec. 29.68.510. Petition. (a) Municipal residents may file
18 a dissolution petition with the Department of Community and
19 Regional Affairs in the form prescribed by the department.
20 The petition must be signed by a number of municipal voters
21 equal to at least 25 per cent of the number of votes cast in
22 the last regular municipal election.

23 (b) The petition includes

24 (1) the name of the municipality;

25 (2) maps, documents, and other information showing that
26 the municipality meets the standards for dissolution.

27 Sec. 29.68.520. Standards. (a) Except as provided in (b) of
28 this section, a municipality may petition for dissolution
29 when

30 (1) it is free of debt, or if in debt, each of its credi-
31 tors is satisfied with a method of repayment; and

32 (2) either it no longer meets the minimum standards
33 prescribed for incorporation by AS 29.18, or it ceases to
34 use each and every one of its mandatory powers.

35 Sec. 29.68.530. Review. The Department of Community and
36 Regional Affairs shall review a petition for content and
37 signatures and shall return a deficient petition for correc-
38 tion or completion.

1 Sec. 29.68.540. Investigation. If the petition contains
2 the required information and signatures, the Department of
Community and Regional Affairs shall investigate the proposal.

3 Sec. 29.68.550. Report and hearing.(a)The Department of
4 Community and Regional Affairs shall report its findings to
5 the Local Boundary Commission with its recommendation
6 regarding the dissolution.

7 (b) The Local Boundary Commission shall hold at least one
8 public hearing in the area proposed to be dissolved.

9 Sec. 29.68.560. Decision. If the Local Boundary
10 Commission determines that the municipality fails to meet the
11 standards for dissolution, it shall reject the petition. If
12 the commission determines that the municipality meets the
13 standards, it shall accept the petition.

14 Sec. 29.89.570. Election. (a) The Local Boundary
15 Commission shall immediately notify the lieutenant governor of
16 its acceptance of a dissolution petition. Within 30 days
17 after notification, the lieutenant governor shall order an
18 election within the municipality to determine whether the
19 voters desire dissolution. The election is at least 30 and
20 not more than 90 days after the election order.

21 (b) A person who is a qualified voter of the municipality
22 may vote in the dissolution election.

23 (c) The lieutenant governor shall supervise the election
24 in the general manner prescribed by the Alaska Election
25 code (AS 15). The state shall pay all election costs.

26 (d. The lieutenant governor shall certify the election
results. If dissolution is approved, the lieutenant
governor shall declare that the municipality is dissolved
effective on the date of certification.

 Sec. 29.68.580. Succession. The government succeeding to
a dissolved municipality succeeds to all its rights, powers,
duties, assets, and liabilities as provided in AS 29.18.130
and 29.18.140.

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ARGUMENT

I. THE SUBSTITUTION OF JUDGMENT STANDARD APPLIES IN THIS ACTION ATTACKING THE LOCAL BOUNDARY COMMISSION'S INTERPRETATION OF THE MUNICIPAL DISSOLUTION STATUTE.

Petitioners seek dissolution of the municipality of Akiachak pursuant to the local option method authorized by AS 29.68.500(a)(2) and detailed in AS 29.68.510 - 29.68.580.¹ The standards and procedures for dissolution under the local option method are provided entirely by statute. The legislature authorized the Local Boundary Commission (LBC) to develop its own procedures and standards for the dissolution of municipalities by petition in AS 29.68.500(a)(1).² The legislature did not envision development of agency regulations with respect to the local option method and none exist. The LBC's role in evaluating petitions submitted under the local option method is best described as ministerial. If the statutory standards for dissolution are met, the Commission must accept the petition. AS 29.68.560.

The issue in this case centers on the proper meaning to be given the standards embodied in AS 29.68.520(a). Appellee contends that because it is charged with determining compliance with statutory standards for dissolution, the reasonable basis standard of review is appropriate. As discussed below however,

¹ All statutory references are to Title 29 as codified at the time this appeal was filed.

² Regulations found at 19 AAC 10.130 - 19 AAC 10.150 implement the method of dissolution authorized by AS 29.68.500(c) and

1 the mere fact that the LBC applies statutory standards to
2 particular factual contexts does not remove its action from the
3 independent judgment standard of review. This is especially true
4 where, as here, in applying the statutory standards, the LBC has
5 had to interpret or give meaning to them.

6 It is black letter law in this state that the independent
7 judgment standard of review applies where the asserted agency
8 error is misconstruction of statutory language, the understanding
9 of which neither implicates the agency's special knowledge or
10 expertise in a particular field. As the Supreme Court explained:

11 "The independent judgment standard, under which the
12 court makes its own interpretation of the statute at
13 issue, is applied where the agency's specialized knowl-
14 edge and expertise would not be particularly probative on
15 the meaning of a statute."

16 Matanuska-Susitna Borough v. Hammond, 726 P.2d 166,175 (Alaska
17 1986)(citations omitted). At issue here is the proper meaning to
18 be given the statutes establishing the local option method of
19 municipal dissolution. Among the questions this court must decide
20 are whether any "mandatory powers" exist within the meaning of
21 AS 29.68.520(a)(2), as well as the legislature's intent underlying
22 the statutory authorization for dissolution in the event a com-

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24 impose more stringent standards then provided under the local
25 option method for dissolution. The LBC did not apply these
26 regulatory standards in this action. See Record at 671.

1 munity "no longer meets minimum standards for incorporation." Id.
2 These are purely issues of law. They do not implicate any exper-
3 tise the LBC may have with respect to the alteration of local
4 boundaries. This is not a case where adjustments are being made
5 between two or more state-chartered governmental units so that a
6 neutral party need be involved to protect the state's interests.
7 The LBC was established primarily to settle local boundary dispu-
8 tes which are incapable of settlement at the local level.

9 Oesau v. City of Dillingham, 439 P.2d 180,183-184 (Alaska 1968).

10 Thus, no expertise of the Commission is implicated, no important
11 state policies are at issue and no deference to its action need be
12 given.

13 Because the issues here turn entirely on an analysis of
14 the legislative standards for local option municipal dissolution,
15 as well as the fact that the LBC has no long standing interpreta-
16 tion of those standards, any interpretation offered by the LBC is
17 entitled to little deference. See e.g., Nat. Bank of Alaska
18 v. State, Dep't of Rev., 642 P.2d 811,815 (Alaska 1982). This is
19 especially true since the Department of Community and Regional
20 Affairs (DCRA), which is staff to the LBC, and the LBC differ on
21 the interpretation of the statutory standards for local option
22 municipal dissolution.

23 The situation presented by this case is nearly identical
24 to that in State, Comm'l Fisheries Entry Comm'n v. Templeton, 598
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1 P.2d 77 (Alaska 1979). In that case, the Supreme Court applied
2 the substitution of judgment standard since the challenged agency
3 action was based "solely on the interpretation of a [statute]
4" Id. at 80. Templeton involved the construction of statu-
5 tory standards for issuance of limited entry fishery permits by
6 the Commercial Fisheries Entry Commission. The key issue involved
7 the determination of legislative intent. The court proceeded to
8 substitute its judgment for that of the agency in light of its
9 finding that the agency was not using its "expertise" to define
10 qualifications for the statutory program, "but rather made a
11 judgment" regarding the legislature's concern over the matter at
12 issue. Id. at 80-81. Here, as in Templeton, the agency decision
13 does not involve an application of its expertise. Rather, the
14 record is clear that the LBC was making a judgment, more accura-
15 tely described as a guess, respecting the legislature's intent in
16 enacting the statutory local option dissolution procedure. Record
17 at 229.³

18 Appellee relies heavily on Matanuska-Susitna Borough v.
19 Hammond, 726 P.2d 166 (Alaska 1986) for the proposition that the
20 reasonable basis test ought to be applied on the ground that the
21 matter is committed to agency discretion. That case involved the
22 DCRA's determination of population for various taxing jurisdic-
23 tions. A dispute arose over the method used by the DCRA to deter-

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25 Chairman Eder stated that "apparently the founding fathers
26 never anticipated the city continuing to function wanting to

1 mine population on the North Slope. The statute partially defined
2 "population" and went on to specifically authorize the DCRA to use
3 the statutory method or "other population data which, in the
4 judgment of the department, is reliable." Id. at 169, quoting
5 AS 29.88.015(a). Not surprisingly, the court found that defini-
6 tion of the term was left to agency discretion and the reasonable
7 basis standard of review was appropriate. Id. at 175. Here,
8 however, there is no indication of legislative intent to defer to
9 the agency respecting dissolution standards wholly defined by
10 statute. The LBC's sole function under the local option method is
11 to determine whether the standards are met, not what the standards
12 are.

13 The LBC attempts to distinguish Madison v. Alaska Dep't
14 of Fish and Game, 696 P.2d 168 (Alaska 1985) on the feeble ground
15 that the court provided no probative analysis of the facts in that
16 case. Brief of Appellee at 11. To the contrary, Madison provides
17 solid support for Appellant's position. In Madison the court con-
18 sidered the Board of Fisheries' ten criteria developed to identify
19 subsistence uses of fish which were defined by statute as the
20 "customary and traditional" uses of fish. The regulations were
21 developed based on the Board's interpretation of the subsistence
22 law. Accordingly, the court held that the issues in the case
23 involved statutory interpretation and as such the substitution of

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25 dissolve...." Record, vol. 3 at 229; see also Record at 671.
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1 judgment standard applied because "[s]uch issues fall into the
2 realm of special competency of the courts." Id. at 173 (citations
3 omitted). Here, the LBC erroneously interpreted the statutory
4 criteria for dissolution and thus denied Appellants their right to
5 a dissolution election. Their situation parallels that of the
6 Madison plaintiffs who were denied their statutory subsistence
7 rights by the erroneous agency interpretation of the subsistence
8 law.

9 In sum, the issue presented is whether the LBC correctly
10 interpreted and applied the standards provided by law. No agency
11 expertise is implicated in the challenged decision. Consequently,
12 this court should carefully review the legal authorities presented
13 and substitute its judgment for that of the LBC in giving meaning
14 to the statutory standards for local option municipal dissolution
15 embodied in AS 29.68.510-580.

16
17 **II. THE COMMUNITY NO LONGER MEETS THE MINIMUM STANDARDS
FOR INCORPORATION AND HAS CEASED TO USE ANY MANDATORY
POWERS.**

18
19 **A. Under Any Standard of Review the Local Boundary
Commission Incorrectly Construed the Minimum Standards for
Incorporation in the Context of a Dissolution Petition.**

20 The local option method was enacted by the legislature
21 to provide citizens of unincorporated communities an opportunity
22 to vote on whether to dissolve their municipality. As such, this
23 statute effectuates the policy of local control and
24 self-determination embodied in art. X, sec. 1 of the Alaska
25
26

1 Constitution. That section surely does not mandate forcing
2 unwanted governments upon the citizens of Alaska as the
3 LBC argues. Brief of Appellee at 14. Local control means not
4 only the ability to form a municipality, but also the ability to
5 achieve freedom from such an institution. The LBC decision
6 removes the latter ability and frustrates legislative intent.
7 This court should substitute its judgment for that of the
8 Commission and overturn the LBC's erroneous interpretation of
9 the law.⁴

10 The LBC determined that the standards for dissolution had
11 not been met because the minimum standards for incorporation are
12 still met. Record at 670. The standards provided by the legisla-
13 ture set forth that a community may incorporate as a second class
14 city if, among other things, "there is a demonstrated need for
15 local government." AS 29.18.011(a)(5). The issue presented is
16 whether the LBC correctly construed the meaning of this legal
17 standard for incorporation in the context of a municipal dissolu-
18 tion proceeding. Statutes must be read in light of their purpose
19 and construed in a manner to effect that purpose. Wien Air
20 Alaska v. Arant, 592 P.2d 352,356 (Alaska 1979). The LBC deter-
21 mined the statutory scheme inapplicable to this type of factual
22 setting. See Record Vol. 4 at 227-231; and note 4 supra.

23 The LBC asserts that whenever there is a need for the

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25 The LBC's action so completely frustrates legislative intent
26 that this court should remand with instructions to accept the

1 provision of any local government type services there is
2 necessarily a corresponding need for municipal government. Brief
3 of Appellee at 13; Record at 670. The LBC also found that since
4 revenues would be lost by reverting to unincorporated status there
5 was still a need for local municipal government.⁵ Because of this
6 construction of the statutory standard, no populated municipality
7 will ever be able to dissolve pursuant to the local option method.
8 This is absurd and runs counter to the presumption that every pro-
9 vision in a statute was intended for some useful purpose. Alaska
10 Transportation Comm'n v. Airpac, Inc., 685 P.2d 1248,1253 (Alaska
11 1984). The meaning of a statutory provision is determined by the
12 language of the particular provision construed in light of the
13 purpose of the whole instrument. Wien Air Alaska v. Arant, 592
14 P.2d at 356. Commercial Fisheries Entry Comm'n v. Apokedak, 680
15 P.2d 486,489-490 (Alaska 1984). The LBC's construction of the
16 incorporation standard renders the entire local option dissolution
17 section ineffective and valueless. Surely, that is not what the
18 legislature intended when it provided for the dissolution of muni-
19 cipal governments by the petition process.

20 When the "demonstrated need for local government" provi-
21 sion is read in light of the purpose of the statutory scheme of
22 which it is a part, it is clear that the LBC erred. When citizens
23 petition even if the reasonable basis test is applied.

24 5

25 Because the state revenue sharing scheme provides greater
26 financial aid for incorporated communities, however, this will

1 are petitioning for establishment of a municipal government the
2 fact that there is some need for local government "type services"
3 may be enough to trigger an incorporation election, if the other
4 criteria are met. Here, however, the term is incorporated as part
5 of a statutory scheme designed to permit communities which may no
6 longer desire municipal government to vote on whether to dissolve
7 that local government. As such, the least restrictive construc-
8 tion of the statute which makes sense and gives effect to legisla-
9 tive intent should be adopted.⁶

10 A construction of the standard which equates need with
11 desire in this context most effectively implements legislative
12 intent behind the dissolution statute. Thus, when a substantial
13 demonstration is made by petition that local municipal government
14 is no longer desired, there is no longer a "demonstrated need" for
15 local municipal government within the meaning of the dissolution
16 statute. The LBC's narrow reading of the dissolution standard
17 makes no sense and results in forcing an unwanted form of local
18 government upon a community. When an incorporation election would
19 appear to certainly fail if held, as the DCRA concluded here, it
20 can not fairly be claimed that there is a demonstrated need for
21 local municipal government. This court should reverse the deci-
22 sion of the LBC in order to effect the purpose of the local option

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be the case in any and every instance where the local option
24 dissolution process is initiated. See AS 29.89 et. se

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25 The DCRA adopted such a construction in its Report to the LBC.
26 Record at 42i.

1 method of dissolution and allow the citizens of Akiachak to decide
2 whether to maintain their municipality.

3 B. The Local Boundary Commission Incorrectly Determined
4 that the City of Akiachak Did Not Satisfy the Second
5 Requirement of AS 29.68.520(a)(2) by Default.

6 The Department of Community and Regional Affairs' deter-
7 mined that since the city has no mandatory powers it satisfied the
8 dissolution requirement of AS 29.68.520(a)(2) by default. Record
9 at 422. The DCRA found it appropriate not to read the standard
10 restrictively but in a manner which would facilitate use of the
11 local option method. Record at 422. The LBC, on the other hand,
12 concludes without analysis that the "City of Akiachak has not
13 ceased to use each and every of its manadatory powers." Record at
14 671. The LBC attempts to avoid the force of the DCRA's
15 conclusion by asserting that it "lacks legal authority" and that
16 "its recommendation and conclusions are not binding upon the LBC."
17 Brief of Appellee at 16. Notwithstanding these after the fact
18 protests by the LBC, a plain reading of the statutory standard
19 indicates the construction adopted by the DCRA is correct.
20 Accordingly, this court should substitute its judgment for that of
21 the LBC and construe this statute in the same manner as the DCRA.
22 Additional arguments presentæd in the LBC brief constitute "post
23 hoc rationalizations" of the Commission's action and as such
24 should be disregarded by this court. See State, Comm'l Fisheries
25 Entry Comm'n v. Templeton, 598 P.2d at 80.
26

1
2 Appellee goes on at great length regarding allegedly man-
3 datory powers set forth in regulations governing dissolution.
4 Brief of Appellee at 17. Under the local option method of disso-
5 lution, however, it is the legislature which has set the dissolu-
6 tion standards. Thus, any municipal powers referenced as
7 mandatory in regulatory dissolution standards are simply inap-
8 posite to proceedings brought under the local option method. In
9 any event, Appellee concedes that mandatory powers defined by
10 regulations are those "required" to be exercised by a municipality
11 under AS Title 29. Brief of Appellee at 17. A review of AS Title
12 29 reveals no such powers for second-class cities.

13 It is clear that the legislature knows how to designate
14 certain municipal powers as mandatory when it wishes. Such powers
15 are defined in AS 29.43.030 by directive and through the use of
16 the mandatory "shall" in AS 29.43.040. These statutes apply
17 only to home rule and first class cities. The latter statute goes
18 on to provide that second-class cities may exercise the planning
19 and zoning powers which are mandatory for home rule and first
20 class cities. The LBC references numerous statutes setting forth
21 various governmental powers, apparently on the assumption that
22 such powers are mandatory for second-class cities. Brief of
23 Appellee at 18. Such a claim is unfounded. The general powers
24 found in AS 29.48.010 do not speak in the mandatory "shall," but
25 rather are permissive.⁷ Appellee also cites to AS 29.13.070 and

26 ⁷It is telling that the LBC concedes that powers it argues are

1 29.13.100 which apply to home rule municipalities, not second
2 class cities like Akiachak. Mandatory powers in AS 29.33 apply
3 only to first or second class boroughs and powers outlined in AS
4 29.48.035 may be assumed by second-class cities, but are not
5 required to be exercised.

6 The LBC incorrectly interpreted this alternative dissolu-
7 tion standard. There are no mandatory powers for second class
8 cities. This court should hold that the standard is satisfied by
9 default as the Department of Community and Regional Affairs
10 concluded. Accordingly, petitioners are, as a matter of law,
11 entitled to have their petition accepted.

12
13 III. THE EXISTENCE OF A FEDERALLY RECOGNIZED TRIBAL
14 GOVERNMENT IS RELEVANT TO THE DETERMINATION OF WHETHER
15 THERE IS A NEED FOR LOCAL MUNICIPAL GOVERNMENT.

16 The LBC found "it has been amply demonstrated that
17 dissolution of the City of Akiachak and the vesting of all local
18 government powers in the local IRA council is strongly desired by
19 petitioners...." Record at 670. The existence of such a govern-
20 ment, while not dispositive, is certainly relevant to the issue
21 of whether there is a "demonstrated need" for local municipal
22 government. Appellee, however, erroneously asserts that the
23 Akiachak IRA council is not a government recognized as such by

24 mandatory such as "voting, taxing and indebtedness" are not
25 specifically designated as such by the legislature. Brief of
26 Appellee at 19.

1 either the federal or state governments and that accordingly it is
2 inappropriate to cast this case as involving a choice between
3 alternative local governments. Native governments in the United
4 States exercise inherent powers of self-government which do not
5 depend on a grant from the state or federal governments for their
6 existence. United States v. Wheeler, 435 U.S. 313,323-24 (1978).⁸
7 This court should not labor under the illusion that IRA councils
8 in Alaska lack the same governmental status as lower forty-eight
9 Indian tribes.

10 A recent federal district court decision refutes nearly
11 every argument set forth by the LBC respecting the governmental
12 status of IRA councils. In Native Village of Tyonek v. Puckett,
13 et. al., Civ. No. A82-364, (Dec. 3, 1986) (opinion attached) Judge
14 Fitzgerald considered the status and authority of the Native
15 Village of Tyonek IRA Council, which is organized under the same
16 act as the Native Village of Akiachak. 25 U.S.C. §§ 473a, 476
17 (1982). The Tyonek IRA government passed an ordinance in 1965
18 prohibiting non-members of the village from leasing private
19 housing constructed at the village's expense without the IRA

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21 ⁸
22 The LBC's argument based on the State Constitution and State
23 v. Alex, 646 P.2d 303 (Alaska 1982) are off point. Brief of
24 Appellee at 21-23. Appellant's do not claim the IRA govern-
25 ment's authority to tax or that their existence is based on
26 the grant of such powers from the state, but rather through
the exercise of inherent authority as a federally recognized
tribal government. See Kerr McGee v. Navajo Tribe,
___ U.S. ___, 105 S.Ct. 1900 (1985).

1 government's approval.⁹ The IRA government sought eviction of
2 certain non-members who were leasing homes in Tyonek from members
3 without the IRA council's permission.

4 The tribe's claims for enforcement were dismissed because
5 they arose under tribal law rather than federal law and as such,
6 there was no federal question present to give the federal court
7 jurisdiction pursuant to 28 U.S.C. § 1331 or § 1362.
8 Counterclaims filed by the defendants seeking damages based upon
9 claims of racial discrimination by the tribe were dismissed
10 because the Tyonek IRA "possesses sovereign immunity from suit
11 like that of any other Indian tribes in the contiguous United
12 States." Tyonek at 21. Further, the court reached the issue of
13 whether the IRA council possessed the governmental authority to
14 adopt and enforce ordinances excluding non-tribal members from
15 certain housing. The court held that such powers are possessed by
16 IRA governments, so that the named tribal officers were acting
17 within the scope of their authority and thus were protected from
18 suit by derivative sovereign immunity. Id. at 34.

19 Appellee argues that the Alaska Native Land Claims
20 Settlement Act (ANCSA) somehow indicates that IRA councils such
21 as Tyonek and Akiachak are not governments. The Tyonek court
22 rejected any notion that ANCSA sub silentio wiped out powers of
23 self-government. "The Claims Act did not expressly change the
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25 ⁹
26 Tribal governmental authority as well as federal and state
authority to distinguish between members and non-members

1 status of Tyonek or its IRA village government, nor did the Claims
2 Act expressly revoke or amend Tyonek's Family Plan or Ordinance
3 65-32." Id. at 9. The fallacy in the position that various provi-
4 sions of ANCSA implicitly revoked tribal powers, is that it
5 totally ignores the fundamental canon of construction that tribal
6 powers of self-government cannot be extinguished except by a
7 "clear and plain" expression of intent by Congress. United
8 States ex. rel Hualpai Indians v. Santa Fe Pacific RR., 314 U.S.
9 339,353-354 (1941); see also Bryan v. Itasca County, 426 U.S.
10 373,392 (1976) and see cases cited in Cohen, supra at 221-225.
11 Nowhere in ANCSA are Native governmental powers even mentioned,
12 much less "clearly and plainly" terminated. Since ANCSA, Congress
13 has repeatedly enacted laws to strengthen tribal governments in
14 Alaska.¹⁰

15 The LBC also argues that the legislative history of ANCSA
16 shows that Congress never considered placing the settlement lands
17 in tribal ownership - that the only two options discussed were
18 Native corporations or municipalities. From this silence with
19 respect to tribes the state concludes that Congress intended to

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21 without running afoul of equal protection guarantees is rooted
22 in the fact that Native governments are recognized as politi-
23 cal institutions with governmental powers and not racial
24 institutions. Also, the 5th and 14th amendments to the United
25 States Constitution do not apply to actions of Native govern-
26 ments. See Morton v. Mancari, 417 U.S. 535 (1974); F. Cohen,
Handbook of Federal Indian Law 653-660 (1982 ed.).

10

Every piece of federal legislation passed in recent years
designed to promote tribal existence has expressly included

1 terminate them.¹¹ Again, this argument of implied extinguishment
2 must be rejected since tribal rights may only be extinguished by
3 explicit Congressional action. ANCSA was a land settlement, not a
4 termination act. Further, the declaration of policy in section
5 2(b) of ANCSA is entirely consistent with the continued existence
6 of Native governments. That section, 43 U.S.C. § 1601(b), merely
7 expresses a policy opposed to the establishment of new racial
8 institutions not the continued existence of tribal governments
9 which pre-date statehood.

10 Another defect in the LBC's "implicit extinguishment"
11 argument is demonstrated by that portion of the legislative
12 history which it chooses to ignore. As initially drafted, ANCSA
13 would have terminated all federal services to Alaska Natives
14 at the conclusion of five years. This provision was deleted from
15 the final version after Senator Fred Harris strongly opposed it as
16 terminationist legislation. See 116 Cong. Rec. at 24216,24220-27,
17 24234-35 and 24378-82.

18 The LBC also argues that under the Indian Reorganization
19 Act only IRA councils located on reservations were to have govern-
20 mental powers and that accordingly even the federal government
21

22 Alaska Native tribes. See e.g. Indian Self-Determination Act,
23 25 U.S.C. § 450b(b) the Indian Financing Act, 25 U.S.C. §
24 1452(c); Indian Child Welfare Act, 25 U.S.C. § 1903(8); Indian
Tax Status Act, 26 U.S.C. § 7701(a)(40)(A).

25 11

26 The existence of a municipality within Indian Country is not,
as Appellee infers, inconsistent with the existence of a tri-

1 does not recognize IRA councils as governments. Brief of Appellee
2 at 23. This position is based on an interpretation of departmen-
3 tal instructions published in 1937 providing that tribal constitu-
4 tions with governmental powers were only to be approved for
5 reservation councils. The exercise of inherent tribal powers is
6 not conditioned upon the existence of a reservation. Such powers
7 may be exercised in "Indian Country", which encompasses allotments
8 and dependent Indian communities as well as reservations. 18
9 U.S.C. § 1151; and see Cohen, supra at 27 and 39. Moreover, the
10 Bureau of Indian Affairs did not adopt this interpretation of the
11 IRA or the instructions in question. To the contrary, it approved
12 IRA Constitutions recognizing governmental powers for 69 Alaska
13 villages, only a handful of which had reservations. See Exhibit A
14 to Appellant's opening brief. This contemporaneous administrative
15 interpretation of the IRA, by the agency charged with carrying it
16 out, assumed that tribes had governmental powers regardless of
17 whether they had reservations.¹²

18 That there are federally recognized tribes in Alaska is
19 further confirmed by the ever growing line of federal cases which
20 expressly or implicitly recognize tribes in Alaska. In addition
21 to the Tyonek case, two recent cases granting preliminary injunc-

22 bal government. See Shakopee Mdewakanton Sioux Community v.
23 City of Prior Lake, 771 F.2d 1153, 1158-59 (8th Cir. 1985);
24 cert. denied, 54 U.S.L.W. 3555 (Feb. 25, 1986).

25 12

26 Tyonek has no reservation and yet the governmental authority
of its IRA government was recognized by the federal district

1 tions are directly on point. In Graybeal v. Alaska, Civ. No. A
 2 85-666 (Preliminary Injunction, D. Alaska, Dec. 30, 1985) the
 3 federal district court explicitly recognized the authority of the
 4 Northway village tribal court in domestic relations matters and
 5 enjoined State officials from interfering with a tribal adoption
 6 decree. Three months later, in a case involving the constitu-
 7 tionality of state revenue sharing with tribal governments, the
 8 court held that "Native village councils . . . are beyond any
 9 question federally recognized as . . . quasi-governmental
 10 entities." Akiachak, et al. v. Notti, Civ. No. A 85-503
 11 (Preliminary Injunction, D. Alaska March 3, 1986).

12 The administrative and Congressional actions and court
 13 decisions outlined above provide ample support for the proposition
 14 that Alaska Native tribes have the same political and governmental
 15 status as lower 48 Indian tribes. If there were no "tribes" there
 16 would be no constitutional basis for all of the special Alaska
 17 Native programs -- and the "solemn commitment of the government to
 18 the [Natives] would be jeopardized." Morton v. Mancari, 417 U.S.
 19 535,552 (1974). This commitment is fulfilled through the
 20 numerous BIA and Indian Health Service programs designed to bene-
 21 fit only Alaska Natives. All of these programs assume tribal
 22 existence and thus the corresponding right to single out tribal

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 court.

1 members for special benefits.¹³

2 Residents of many Native villages such as Akiachak view
3 tribal governments as the most desirable form of local government
4 and reject the notion that additional institutions are necessary
5 for local governance. See T. Berger, Village Journey, The
6 Report of the Alaska Native Review Commission at 150 (Hill & Wang
7 1985) (specifically discussing the Akiachak dissolution); cf.
8 State v. Aleut Corp., 541 P.2d 730,737-738 (Alaska 1975). The LBC
9 is wrong in its assertion that there is no such thing as an IRA
10 government in Alaska and the decision in this case should not be
11 made while operating under this unfounded assumption. The
12 existence of such a government is relevant to the inquiry of
13 whether there is a demonstrated need for local municipal govern-
14 ment.

15
16 IV. THIS CASE SHOULD BE REMANDED TO THE LBC WITH
17 INSTRUCTIONS TO ACCEPT THE DISSOLUTION PETITION.

18 Contrary to the contention of the LBC, this court does
19 have authority to order the LBC to accept the dissolution peti-
20 tion. This power is specifically provided for in AS 44.62.570(e)
21 and should be exercised in this case. Such action is not without
22 precedent. In State, Comm'l Fisheries Entry Comm'n v. Templeton,
23 598 P.2d 77,78 (Alaska 1979) the superior court ordered issuance
24 of a limited entry permit following a finding that the Commission

25 ¹³

26 The State of Alaska too, deals with tribal governments through
its revenue sharing program. AS 29.89.050, repealed and reco-

1 erroneously construed statutory standards regarding issuance of
2 permits. If the statutory standards for dissolution are met, the
3 statute directs that the LBC shall accept the petition. AS
4 29.68.560. The LBC decided that the first standard was met. If
5 this court determines that Appellants' construction of either of
6 the remaining alternative standards is correct, there will be
7 nothing for the LBC to decide, since there will be no discretion
8 to be exercised. This court has authority to enter judgment
9 modifying or setting aside the erroneous LBC decision with
10 appropriate instructions. AS 44.62.570(e). The case should be
11 remanded with instructions to accept the petition and notify the
12 lieutenant governor so an election regarding dissolution can be
13 held as provided in AS 29.68.570.

14
15 CONCLUSION

16 For the reasons stated above and in Appellants' opening
17 brief, this court should reverse the decision of the Local
18 Boundary Commission.

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dified at AS 29.68.140, and provides Natives special benefits
26 through many other programs. See e.g. AS 18.10.010-050.

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DATED: Jun. 5, 1987

Respectfully submitted,

Robert T. Anderson

Robert T. Anderson
Attorney for Appellants

1 IN THE SUPERIOR COURT OF THE STATE OF ALASKA
2 FOURTH JUDICIAL DISTRICT
3 AT BETHEL

4 PETITIONERS' REPRESENTATIVE)
5 WILLIE KASAYULIE,)

6 APPELLANT,)

7 vs.)

8 LOCAL BOUNDARY COMMISSION,)

9 APPELLEE.)

Case No. 4 BE-85-00441 Civil

10 REQUEST FOR ORAL ARGUMENT

11 Counsel for Appellant, Robert T. Anderson, hereby
12 requests oral argument in the above captioned appeal pursuant to
13 Alaska Rule of Appellate Procedure 213.
14

15
16 DATED this 5th day of January, 1987.

17
18 By: Robert T. Anderson
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1 IN THE SUPERIOR COURT OF THE STATE OF ALASKA
2 FOURTH JUDICIAL DISTRICT
3 AT BETHEL

4 PETITIONERS' REPRESENTATIVE)
5 WILLIE KASAYULIE,)
6 APPELLANT,) Case No. 4 BE-85-00441 Civil
7 vs.)
8 LOCAL BOUNDARY COMMISSION,)
9 APPELLEE.)

10 ORDER

11 Oral argument in the above captioned case is hereby sche-
12 duled for _____.

13
14 DATED this _____ day of _____, 19____.

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17 _____
18 Superior Court Judge

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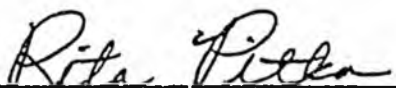
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CERTIFICATE OF SERVICE

I Rita Pitka, legal secretary for Native American Rights Fund certify that on January 5, 1987, I mailed true copies of: Appellant's Reply Brief and Request for Oral Argument in the case captioned Kasayulie v. Local Boundary Commission, postage prepaid to:

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Dated this 5th day of January 1987.



Rita Pitka
Legal Secretary

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT
AT BETHEL

_____)
PETITIONERS' REPRESENTATIVE)
WILLIE KASAYULIE,)
)
) APPELLANT,)
)
vs.)
)
LOCAL BOUNDARY COMMISSION,)
)
)
_____) APPELLEE.)

No. 4 BE-85-00441 Civil

APPEAL FROM THE LOCAL BOUNDARY COMMISSION
DECISION REGARDING THE DISSOLUTION OF THE MUNICIPALITY
OF AKIACHAK

BRIEF OF APPELLANT

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Filed _____, in
in the Supreme Court
STATE OF ALASKA

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PRIMARY AUTHORITIES RELIED UPON

ALASKA STATUTES

AS 29.89.011 (Repealed eff. Jan. 1, 1986, § 88 ch 74 SLA 1985).

INCORPORATION OF CITIES

(a) A community that meets the following standards may incorporate as a first class city:

(1) the community has 400 or more permanent residents;

(2) the boundaries of the proposed city include all areas necessary to provide municipal services on an efficient scale;

(3) the economy of the community includes the human and financial resources necessary to provide local services; in considering the economy of the community, the Local Boundary Commission shall consider property valuations, economic base, personal income, resource and commercial development, anticipated functions, and the expenses and income of the proposed city, including the ability of the community to generate local revenue;

(4) the population of the community is stable enough to support local government;

(5) there is a demonstrated need for local government.

(b) A community that meets all the standards established in (a) of this section except (a) (1) may incorporate as a second class city.

AS 29.68.500-.580 (Repealed eff. Jan 1, 1986 § 88 ch 74 SLA 1985).

DISSOLUTION OF CITIES

Sec. 29.68.500. Methods of dissolution. (a) Two petition methods may be used to initiate dissolution of home rule and general law municipalities:

1 (1) petition to the Local Boundary Commission under regu-
2 lations adopted by the commission; or

3 (2) the local option method specified in AS 29.68.510 -
4 29.68.580.

5 (b) A home rule or general law borough is dissolved when
6 its entire territory is included within a home rule or
7 first class city or cities. A city is dissolved when all
8 its powers become areawide borough powers.

9 (c) The Department of Community and Regional Affairs
10 shall investigate a municipality which it considers to be
11 inactive and shall report to the Local Boundary
12 Commission on the status of the municipality. The com-
13 mission may submit its recommendation to the legislature
14 that the municipality be dissolved in the manner provided
15 for submission of boundary changes in § 12, art. X of the
16 state constitution.

17 Sec. 29.68.510. Petition. (a) Municipal residents may file
18 a dissolution petition with the Department of Community and
19 Regional Affairs in the form prescribed by the department.
20 The petition must be signed by a number of municipal voters
21 equal to at least 25 per cent of the number of votes cast in
22 the last regular municipal election.

23 (b) The petition includes

24 (1) the name of the municipality;

25 (2) maps, documents, and other information showing that
26 the municipality meets the standards for dissolution.

Sec. 29.68.520. Standards. (a) Except as provided in (b) of
this section, a municipality may petition for dissolution
when

(1) it is free of debt, or if in debt, each of its credi-
tors is satisfied with a method of repayment; and

(2) either it no longer meets the minimum standards
prescribed for incorporation by AS 29.18, or it ceases to
use each and every one of its mandatory powers.

Sec. 29.68.530. Review. The Department of Community and
Regional Affairs shall review a petition for content and
signatures and shall return a deficient petition for correc-
tion or completion.

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JURISDICTIONAL STATEMENT

This is an appeal from the decision of the Local Boundary Commission approved December 31, 1985 rejecting the Petition for Dissolution of the City of Akiachak. This Court has jurisdiction to entertain this appeal pursuant to AS 44.62.560 and 22.10.020(a).

ISSUES PRESENTED FOR REVIEW

1. Whether the Local Boundary Commission applied the correct legal standard in determining that the City of Akiachak still meets the minimum standards prescribed for incorporation and thus does not meet the standards for dissolution.
2. Whether the Commission was correct in determining that the City of Akiachak has ceased to use each and every one of its mandatory powers.

STATEMENT OF THE CASE

The Native Village of Akiachak incorporated as a second class municipality through the petition process in 1974 after a vote of sixty-one for and eighteen against. According to the 1980 census it has a population of 438, ninety per cent of whom are Native. The community has had a federally-chartered and recognized Indian Reorganization Act (IRA) government in place since 1948. Record at 408; Constitution and Bylaws of the

1 Akiachak Native Community, Approved August 6, 1948 by the
2 Secretary of Interior (attached as appellant's Exhibit A); See 51
3 Fed.Reg. 25115 (July 10, 1986). In 1971 Akiachak was determined
4 to be a Native Village eligible to participate in the Alaska
5 Native Claims Settlement Act. 43 U.S.C. § 1610 (1985 supp).
6 By 1983 community residents had agreed that the municipal form of
7 government was ill-suited to the needs of Akiachak. The IRA
8 government is the preferred form in Akiachak. Record at 421.

9 On September 15, 1983 a joint meeting of the Akiachak IRA
10 Council and the Akiachak City Council was held at which the entire
11 City Council resigned. The following day the IRA Council adopted
12 two resolutions respecting affairs of the City which had now, in X
13 the eyes of the residents of Akiachak, been dissolved. The first
14 ordered a halt to the exercise of municipal powers and forbade
15 conducting of regular city elections. It also called for nego-
16 tiations with the State of Alaska respecting winding up City
17 affairs. Record at 437-438. As the City still had projects
18 underway and funds in the bank, the IRA Council passed Resolution
19 83-09-02 which delegated authority to an "administrative team" to
20 carry out city projects and services until dissolution was for-
21 mally effected. (Record, Vol. 3 at 53.) Since then, to the extent
22 the City has operated, it "has been functioning as a subsidiary of
23 the IRA" (Record, Vol. 4 at 117.)

24 This "administrative team" set up by the IRA operated
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1 with the approval of the Alaska State Department of Community and
2 Regional Affairs (DCRA) and continues to operate some special pro-
3 jects. The City has not collected a sales tax since September 15,
4 1983, nor has it met or held elections. See Record, Vol. 3 at
5 55-60. The city did not apply for revenue sharing funds in fiscal
6 year 1986 and is considered inactive by the DCRA. Record at 672.

7 The IRA received community approval pursuant to a general election
8 to collect a two percent sales tax and service tax effective July
9 1, 1986. It is the only operating government in the community.¹

10 Following the resignation of the City Council, the IRA
11 Council called a public meeting on November 10, 1983 and a vote
12 was held on the issue of whether the municipality should be
13 dissolved. The vote was 103 in favor of dissolution with 0
14 opposed. Record at 438. All registered voters, Native and
15 non-Native, were allowed to vote in the election and participate in
16 discussions surrounding the dissolution, regardless of membership
17 in the IRA. Record at 48. Willie Kasayulie, President of the IRA
18 Council, received a letter dated October 28, 1983 from the
19 Commissioner of the Department of Community and Regional Affairs,
20 Mark Lewis, informing him that as a matter of State law the
21 resignation of the Akiachak City Council did not dissolve the City
22 government. Additionally, it was Lewis' understanding that the
23 City Council would not rescind its resignation. Record at 49.

24
25 ¹The continued existence of the City as a legal entity,
26 however, has left the community in a no-man's land vis-a-vis the
State. A recent Rural Development grant application was returned

IRA
tax issue
X
Can
IRA
tax?

1 Commissioner Lewis then suggested the Community use the local
2 option method found at AS 29.68.510-580² to dissolve the municipa-
3 lity and outlined the procedures which he believed could result
4 in dissolution of the municipality "within four months". Record
5 at 50. Petitioners seek their right under State law to have
6 an election to determine the fate of the City.

7 A petition for dissolution signed by 62 residents of
8 Akiachak was sub mitted to the DCRA in April of 1984, but returned
9 for proper documentation of the signatures on the petition. The
10 petition was resubmitted in August, 1984 and was determined by the
11 DCRA to be in conformity with submission requirements. Record at
12 403. The DCRA issued a twenty-four page "Report to the Alaska
13 Local Boundary Commission on the Petition for the Dissolution of
14 the City of Akiachak" (Report) in February of 1985. Record at
15 399. The Report recommended that the Local Boundary Commission
16 accept the petition for dissolution with the condition that the
17 petitioners "clearly demonstrate that the municipality will be
18 debt free at dissolution." Record at 423. A hearing regarding
19 the dissolution petition was conducted by the Local Boundary
20 Commission in Akiachak on March 2, 1985. Jeff Smith, Deputy
21 Commissioner of the DCRA, summarized the State administration's
22 to the Akiachak IRA Council because of the "unique legal cir-
23 cumstance of a municipality still existing" Letter to Willie
24 Kasayulie from Marty Rutherford, Director, DCRA Municipal and
Regional Assistance Division, attached as Exhibit B.

25 ²The revision of Title 29 of the Alaska Statutes resulted
26 in the codification of the local option method of dissolution at
AS 29.06.460-.520. All statutory references are to Title 29 as

1 position respecting dissolution as follows:

2 In summary, let me say that the department very
3 much appreciates the efforts which you have made in
4 addressing this important question through the pro-
5 cess provided in state law, your leadership of
6 Willie Kasayulie and Sam George and the other ones
7 have worked, I feel, very closely with the depart-
8 ment to ensure that the proper process was followed
9 and they are to be commended for that. We strongly
10 believe in the concept of citizens petitioning the
11 government for a hearing and asking for an election
12 to be held which will provide the residents of this
13 community with the opportunity to clearly
14 demonstrate their desire on the issue. The depart-
15 ment has recommended that the Akiachak petition be
16 accepted by the Local Boundary Commission and they
17 will provide for an election on the question should
18 the municipality of Akiachak be dissolved. While
19 we feel very strongly that dissolving your municipi-
20 ality is not the right thing to do, we argue stren-
21 uously that it's only you, the citizens of
22 Akiachak, who can make that choice. If the municipi-
23 pality is to continue or if it is to be dissolved
24 must be made by you. And us in Juneau or in
25 Anchorage or anywhere else besides Akiachak cannot
26 make that decision for you. That's why we are
urging the Local Boundary Commission to accept your
petition, let the election be held and let your
voice be heard. Whatever that decision is, the
state will support you in that decision and will
work with you whether it is to continue your muni-
cipality or to dissolve it to unincorporated sta-
tus (sic).

19 Record, Vol. 3 at 23 (emphasis added).

21 The Local Boundary Commission held a decisional session
22 on May 18, 1985 and by a 2-2 vote decided not to accept the Peti-
23 tion for dissolution. Record at 514. A Motion for

25 codified prior to the revision.

1 Reconsideration was granted pursuant to AS 44.62.540 and a second
2 decisional session was held on November 9, 1985. The Commission
3 found that Petitioners had clearly demonstrated the City was free
4 of debt, thereby complying with the first requirement for dissolu-
5 tion under AS 29.68.520(a). Record at 667. Turning to the
6 alternative dissolution standards constituting the second half of
7 the test, however, it found the City still met the minimum stan-
8 dards for incorporation and had not ceased to use each and every
9 one of its mandatory powers. It accordingly rejected the dissolu-
10 tion petition by a 3-1 vote. The Notice of Appeal was filed on
11 December 16, 1985.

12 13 SUMMARY OF ARGUMENT

14 Petitioners have been attempting to dissolve the municipi-
15 pal government in Akiachak since September of 1983. The wisdom of
16 dissolving a municipality is not at issue. That is for the people
17 of Akiachak to decide. The only issues before this Court are
18 whether the two standards for dissolution prescribed by statute
19 are met. The first standard requires that the municipality
20 demonstrate "it is free of debt." AS 29.68.520(a)(1). The
21 Local Boundary Commission found that this standard was met.
22 Record at 669. The second standard requires a demonstration that
23 "either [the city] no longer meets the minimum standards
24 prescribed for incorporation by AS 29.18, or [the city] ceases to
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1 use each and every one of its mandatory powers." AS
2 29.68.520(a)(2). The DCRA, in its Report to the Commission,
3 concluded that both of these requirements had been satisfied in
4 that (1) the community no longer meets minimum incorporation stan-
5 dards and (2) that the second portion of this standard was
6 satisfied by default because second class cities have no mandatory
7 powers. Record at 421, 422. As noted, the Commission found to
8 the contrary.

9 The uncontradicted allegations in Petitioners' dissolu-
10 tion petition, the undisputed testimony at the Local Boundary
11 Commission hearing on March 2, 1985 and the unanimous decision of
12 the voters at the dissolution election in 1983, clearly demonstra-
13 te that there is no need or desire for local municipal govern-
14 ment. This was also the conclusion of the Department of Community
15 and Regional Affairs. This Court should find that the Commission
16 incorrectly interpreted the applicable legal standards for disso-
17 lution by concluding there is [no available means by which a quasi-
18 functional municipality may dissolve]. In the face of such
19 overwhelming rejection of municipal government this Court should
20 find that the Commission abused its discretion in finding that
21 there is a demonstrated need for municipal government as required
22 for incorporation under AS 29.18.011(a)(5). Thus, the Local
23 Boundary Commission is required to accept the Petition and permit
24 an election on the issue to be held. This Court should so order.
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2 There is no need to remand for further fact finding.

3 ARGUMENT

4
5 I. The Applicable Standard Of Review Permits The Substitution Of
6 The Judgment Of This Court For That Of The Local Boundary
7 Commission.

8 This controversy arises over the construction of a State
9 statute, not with issues within the Commission's area of exper-
10 tise. In cases where the application of agency expertise is not
11 involved courts may freely substitute their judgment for that of a
12 state agency. Madison v. Alaska Dep't. of Fish and Game, 696 P.2d
13 168 (Alaska 1985) (citations omitted). "Application of this stan-
14 dard allows the reviewing court to substitute its judgment about a
15 statute's meaning for the [agency's] interpretation even if the
16 [agency's] interpretation had a reasonable basis in law." Id. at
17 173. "It is the courts which have the specialized knowledge and
18 experience in statutory construction and [courts] need not defer
19 to an agency's construction of a statute." Alaska Transp. Comm.
20 v. Airpac, 688 P.2d 1248 (Alaska 1984).

21 The Local Boundary Commission Decision of Dec 31, 1985
22 concludes that "there is a demonstrated need for local government
23 services in Akiachak" within the meaning of AS 29.18.011. Record
24 at 670. The evidence in the Record is overwhelming to the effect
25 that there is no desire to retain the municipality, yet the
26 Commission's interpretation of the law prevents an election from

1 being held. The Commission and the DCRA Report express confusion
2 respecting the meaning of this statute and its applicability to
3 this situation. See Record at 422-423 and 670-671. Accordingly,
4 this Court need give no deference to the agency in its construc-
5 tion of the law.

6
7 II. The Minimum Standards For Incorporation Are No Longer Met.

8 The Local Boundary Commission refused to accept the peti-
9 tion for the dissolution of the City of Akiachak on November 9,
10 1986. The written opinion dated December 31, 1985 sets forth the
11 rationale for denial of the petition. Record at 669. The
12 Commission interpreted the statute incorrectly as a matter of law,
13 and abused its discretion in its application of the facts to its
14 construction of the law.

15 It concluded that the City continued to meet the minimum
16 standards for incorporation. Those standards are as follows:

17 Sec. 29.18.01. Incorporation of cities. (a) A com-
18 munity that meets the following standards may incor-
19 porate as a first class city:

20 (1) the community has 400 or more permanent
21 residents;

22 (2) the boundaries of the proposed city include all
23 areas necessary to provide municipal services on
24 an efficient scale;

25 (3) the economy of the community includes the human
26 and financial resources necessary to provide local
services, in considering the economy of the com-
munity, the Local Boundary Commission shall con-
sider property valuations, economic base, personal

1 income, resource and commercial development, anti-
2 cipated functions, and the expenses and income of
3 the proposed city, including the ability of the
community to generate local revenue;

4 (4) the population of the community is stable
enough to support local government;

5 (5) there is a demonstrated need for local
6 government.

7 (b) A community that meets all the standards
8 established in (a) of this section except (a)(1)
may incorporate as a second class city.

9 The DCRA in its Report found that "[t]here is
10 demonstrably very little, if any, support for the municipal form
11 of government in Akiachak." Record at 421. Accordingly, the DCRA
12 concluded that the minimum standards for incorporation were no
13 longer met:

14 The determination of whether or not the petitioners
15 satisfy this dissolution standard rests upon an
16 interpretation of the last of the above minimum
17 standards for incorporation. The petition request
18 clearly demonstrates that the municipal form of
19 government is not perceived as necessary by a
20 substantial number of community residents. In
21 fact, the opposite is apparently the case. If an
22 incorporation election were held at this time, it
23 would most likely fail. On that basis, DCRA
24 concludes that the minimum incorporation require-
25 ments would not be met, and consequently the disso-
26 lution standard is satisfied.

*this is
G.S. ↓*

22 Record at 421 (emphasis added).

23 The Commission's written decision, on the other hand, states that
24 "it was determined that there is a continued need for the provi-
25 sion of basic municipal types of local government services in
26

1 Akiachak." Record at 670. Accordingly, since the other four stan-
2 dards for incorporation were still met, the Commission found that
3 the second standard for dissolution was not satisfied. The
4 Commission is wrong. When there is no desire for municipal
5 government, there can be no need for such government.

6 The local government clause of the State Constitution
7 expresses a policy favoring "maximum local self-government with a
8 minimum of local government units" Alaska Const. Art. I, sec.
9 1. The citizens of Akiachak obviously feel that a government
10 in addition to their IRA government is not necessary. See Record
11 at 47. If that is their will, statutes permitting dissolution of
12 overlapping units should be liberally construed in accordance with
13 this Constitutional preference for local control and decision
14 making. A liberal construction was not adopted by the Local
15 Boundary Commission. Further, under the Commission's decision
16 there appears to be no way a functioning government may dissolve.
17 Record at 227. If that is so, the "local option method" of disso-
18 lution is reduced to a meaningless provision. The local option
19 method is intended to allow local residents the option of
20 dissolving their functioning municipality. W.O. L.B.C.?

21 Whether a "demonstrated need for local government" exists
22 cannot be determined in a vacuum. It must take into account the
23 views and wants of the citizenry. Otherwise, functioning munici-
24 palities could never dissolve -- because, viewed objectively,
25
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1 there will always be a need for some "municipal type services."
2 Again, the dissolution statute would simply be a nullity. The
3 people of a city might, however, prefer to provide "municipal
4 type" services through other organizations, such as volunteer fire
5 departments, co-ops, private enterprise or as in the case of
6 Akiachak, through their IRA government. The Commission, however,
7 threw up its hands and found that if there is a need for the type
8 of services ordinarily provided by a municipality, dissolution is
9 prohibited. This construction of the law could not even withstand
10 the "reasonable basis" test much less pass muster under the
11 "substitution of judgment" standard.

12 Former Local Boundary Commission Chairperson Smythe noted
13 that "the process of incorporation and dissolution of cities is
14 sort of like getting married and divorced, it's a lot easier to
15 get into than out." Record, Vol. 4 at 114. Chairman Etter and
16 members Hanson and Bettisworth of the Commission, each of whom
17 voted to reject the Petition, expressed their views at the deci-
18 sional session on November 9 that a change in State law would be
19 necessary to allow villages such as Akiachak to dissolve their
20 municipalities. Record at 228, 230, 232. The Commissioners are
21 in error. Under a proper interpretation of the law, dissolution } +
22 should have been permitted without additional legislation. The
23 existing statutory scheme was obviously intended to make the
24 dissolution of municipalities a matter of local choice, just as
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26

1 the decision to incorporate.

2 The Commission itself noted that it has been "amply
3 demonstrated that dissolution of the City of Akiachak and the
4 vesting of all local government powers in the local IRA Council is
5 strongly desired by petitioners" Record at 670. The DCRA
6 concluded that an incorporation election would certainly fail if
7 held at this time. Record at 421. If this were equally clear
8 when evaluating a petition for incorporation, surely the Local
9 Boundary Commission would determine that the minimum standards for
10 incorporation were not met. This would be true even if the
11 Commission members sensed a need for the provision of municipal
12 services. AS 29.68.520 does not authorize the Local Boundary
13 Commission to substitute its subjective judgment for the will of
14 the people. Petition processes are available to effect the needs
15 of the affected citizens, not to restrict local control without
16 good reason.³

17 This Court should hold that if a petition demonstrates a
18 likelihood that an incorporation election would fail if held, the
19 minimum standards for incorporation are not met within the meaning
20 of this statute. Thus, a dissolution election may be held to
21 determine the actual will of local residents. Where there is no
22 will to have a city, there is no need. The fact that local
23 leaders were responsible enough to negotiate with the State and
24

25 ³The State does have an interest in looking out for the
26 creditors of cities which dissolve, both because of the State's
obligation to protect creditors and because the State is the suc-

1 walk through the charade of having a "functioning city" in order
2 to wind up city affairs, should not preclude community members
3 from having a vote on the question.

4
5 III. The City Has Ceased To Use Each And Every One Of Its
6 Mandatory Powers.

7 In addition to requiring acceptance of a petition for
8 dissolution when the minimum standards for incorporation are no
9 longer met, a petition may be accepted if a City has ceased to use
10 each and every one of its mandatory powers. The DCRA, in its
11 Report, concluded that this standard was satisfied by default
12 since second-class cities have no "mandatory powers." Record at
13 422. Under the statutory scheme only home rule cities and first
14 class cities have mandatory powers. See AS 29.43.040 -.105 (now
15 codified at AS 29.35.250-260). The second-class city of Akiachak
16 has demonstrated it is free of debt and has not exercised any man-
17 datory powers. Accordingly, as the DCRA concluded, under the
18 terms of the statute, the community residents are entitled to a
19 vote on the dissolution question.

20
21 CONCLUSION

22 The residents of the community of Akiachak have no desire
23

24
25 cessor government to dissolved cities. AS 29.68.580. This legi-
26 itimate interest was satisfied here since the city was found to be
free of debt.

1 to maintain a municipal government. The State municipal govern-
2 ment code provides for incorporation by a petition and election
3 process and for dissolution by the same process. Where there is
4 no desire for municipal government there necessarily is no need
5 for it. The City has operated under the auspices of the IRA
6 government in a limited capacity since 1983, but according to the
7 Local Boundary Commission, that will prevent it from ever meeting
8 the standards for dissolution under the local option method. As a
9 result the community is in legal limbo. The City must be
10 dissolved to enable the community to participate in programs for
11 unincorporated areas and manage its affairs in an orderly fashion.

12 The Local Boundary Commission's construction of the sta-
13 tute is unreasonable and thwarts the ability of communities to
14 determine their local form of government. This Court should
15 reverse the Local Boundary Commission decision and order accep-
16 tance of the petition for dissolution. At that point the eligible
17 voters of Akiachak may decide whether to maintain their municipa-
18 lity.

19
20 DATED Sept. 10, 1986

21
22 Respectfully submitted,

23
24 By: Robert T. Anderson

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

+

CONSTITUTION AND BY-LAWS
OF THE
AKIACHAK NATIVE COMMUNITY

+

APPROVED AUGUST 6, 1948



• UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1960

Appellant's Exhibit A p.1

If there is a governing body already set up in the Community at the time this Constitution is accepted, the membership may decide to keep that governing body, or it may choose a new form of government.

SEC. 2. *Choice of Officers.*—The Community shall at the same time decide how members and officers of the governing body shall be chosen and how long they shall serve. The Community shall then choose the members to serve on the governing body and such officers as may be thought necessary.

SEC. 3. *Meetings of Membership and Governing Body.*—The Community shall decide when and how often there should be meetings of the whole Community membership as well as of the governing body; also it shall decide what notice shall be given for the calling of meetings and how many members must be present at such meetings in order to do business; and it may make any other rules necessary for the holding of meetings. A general meeting of the whole membership shall be held at least once a year.

SEC. 4. *Record and Report of Community Decisions.*—A record shall be made and kept of all the rules made under sections 1, 2, and 3 of this Article, which record shall be called the Record of Organization of the Native Community of Akiachak. Copies of this record shall be given to the teacher or other representative of the Bureau of Indian Affairs serving the Community. There shall be put in the record the names of all persons chosen to be officers of the Community.

ARTICLE IV—POWERS OF THE COMMUNITY

SECTION 1. *Powers F.eld.*—The Community shall have the following powers:

To do all things for the common good which it has done or has had the right to do in the past and which are not against Federal law and such Territorial law as may apply.

To deal with the Federal and Territorial Governments on matters which interest the Community, to stop any giving or taking away of Community lands or other property without its consent, and to get legal aid, as set forth in the act of June 18, 1934, as amended.

To control the use by members or nonmembers of any reserve set aside by the Federal Government for the Community and to keep order in the reserve.

To guard and to foster native life, arts and possessions and native customs not against law.

SEC. 2. *Grants of More Powers.*—The Community may have and use such other powers as may be given to it by the Federal or Territorial Government.

SEC. 3. *Use of Powers.*—The governing body shall put into use such of the powers of the Community as the Community may give to it at general meetings of the membership and shall make reports of its actions to the membership at general meetings.

SEC. 4. *Rule-Making Powers.*—The Community may make rules which are not against law to carry out the words of this Constitution.

ARTICLE V—RIGHT OF MEMBERS

SECTION 1. *Right to vote.*—All members of the Community 21 years of age or over shall have the right to vote in Community meetings and elections.

SEC. 2. *Right to speak and meet freely.*—Members of the Community shall have the right to speak and meet together freely in a peaceable way.

SEC. 3. *Right to share in benefits.*—Members of the Community shall have equal chance to share in the benefits of the Community.

ARTICLE VI—CHANGES IN THE CONSTITUTION

Changes in this Constitution and By-laws may be made if the changes are approved by the Secretary of the Interior and by majority vote of the Community members voting in an election called by the Secretary of the Interior in which at least 30 percent of the voting membership take part.

BY-LAWS OF THE AKIACHAK NATIVE COMMUNITY

ARTICLE I—OFFICERS AND THEIR DUTIES

SECTION 1. *Community records.*—The Community or the governing body shall choose one or more members who shall have the duty of keeping records of all actions and decisions of the Community and of the governing body and of giving copies of the records to the representative of the Bureau of Indian Affairs serving the Community.

SEC. 2. *Community funds.*—The Community or the governing body shall choose one or more members who shall have the duty of caring for the Community funds and keeping records of all funds taken in and paid out and giving copies of the records to the representative of the Bureau of Indian Affairs.

SEC. 3. *Officers and agents.*—The Community or the governing body may choose as many officers and agents as it may need to carry out its duties and shall state the length of service and the duties of each officer or agent when he is chosen.

ARTICLE II—ADOPTION

This Constitution and By-laws shall be in effect when it is agreed to by a majority vote of the Community members voting in an election called for the purpose by the Secretary of the Interior, provided, that at least 30 percent of the voting membership take part. The persons entitled to vote are all the adult native residents in the Akiachak Native Community.

APPROVAL

This Constitution and By-laws is hereby approved by the Assistant Secretary of the Interior and submitted for acceptance or rejection by the group of Eskimos having a common bond of living together in the Akiachak Native Community, Alaska, in an election called and held under the Instructions of the Secretary of the Interior.

All rules and regulations heretofore promulgated by the Interior Department or by the Bureau of Indian Affairs, so far as they may be incompatible with any of the provisions of the said Constitution and By-laws will be inapplicable to the Community of Akiachak, Territory of Alaska, from and after the date of adoption of this Constitution.

All officers and employees of the Interior Department are ordered to abide by the provisions of the said Constitution and By-laws.

WILLIAM E. WARNE,
Assistant Secretary of the Interior.

WASHINGTON, D. C., August 6, 1948.

CERTIFICATION OF ADOPTION

Pursuant to an order, approved August 6, 1948, by the Assistant Secretary of the Interior, the attached Constitution and By-laws was submitted for ratification to the group of Eskimos having a common bond of residence in the Akiachak Native Community, Territory of Alaska, and was on December 3, 1948, duly ratified by a vote of 74 for, and 0 against, in an election in which over 30 percent of those entitled to vote cast their ballots, in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) as amended by the acts of June 15, 1935 (49 Stat. 378) and May 1, 1936 (49 Stat. 1250).

ROBERT WASSILI,
Chairman, Election Board.

JOSEPH LOMACK,
Secretary, Election Board.

JACK G. OSKOLKOFF,
Government Representative.

○

BILL SHEFFIELD, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

MUNICIPAL & REGIONAL ASSISTANCE DIVISION

POUCH BH
JUNEAU, ALASKA 99811
PHONE: (907) 465-4707

949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508
PHONE: (907) 561-8586
PHONE: (907) 561-8182

August 18, 1986
CERTIFIED # P186066353

PO BOX 348
BETHEL, ALASKA 99559
PHONE: (907) 543-3475

PO BOX 41
NOME, ALASKA 99762
PHONE: (907) 443-5457

PO BOX 280
KOTZEBUE, ALASKA 99752
PHONE: (907) 442-3675

1514 CUSHMAN STREET, ROOM 201
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-7126

PO BOX 10041
DILLINGHAM, ALASKA 99576
PHONE: (907) 842-2245

Mr. Willie Kasayulie
Chairman
Akiachak IRA Council
P.O. Box 70
Akiachak, AK 99551

Dear Mr. Kasayulie:

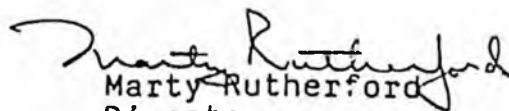
This is to inform you that your Rural Development Assistance grant application has been reviewed by the Department of Community and Regional Affairs. Unfortunately, because of the unique legal circumstance of a municipality still existing, the IRA Council is not eligible to apply for RDA funds. Therefore, your RDA application was not evaluated by the Grant Review Committee.

You may be interested to know that applications for funds totalled in excess of \$6 million, while funding for this round of applications was limited to 28% of that.

If you choose, you may appeal this decision to the Commissioner of the Department of Community and Regional Affairs within thirty days pursuant to 19 AAC 60.130.

Please call Pauline T. Valha at 561-8586 should you have any questions regarding this matter. You may call collect. Thank you for your interest in the Rural Development Assistance grant program.

Sincerely,


Marty Rutherford
Director

Rcvd 12/10/86

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

BEFORE: THE HONORABLE JAMES M. FITZGERALD, JUDGE

NATIVE VILLAGE OF TYONEK,

Plaintiff,

vs.

DONALD PUCKETT, ERNA PUCKETT,
ALEXANDRA KALOA, ESTHER KALOA,
FRED SLAWSON, VIRGINIA
SLAWSON, ALEC CONSTANTINE,
and OLGA CONSTANTINE,

Defendants.

NO. A82-369 Civil

FRED SLAWSON, VIRGINIA
SLAWSON, DONALD PUCKETT,
and ERNA PUCKETT,

Third-Party
Plaintiffs,

vs.

DONALD STANDIFER, BONNIE
McCORD, AL GOOZMER, and
EMIL McCORD, SR.,

Third-Party
Defendants.

RECEIVED

VOLLINTINE, TAYLOR & CAREY

REPORTER'S TRANSCRIPT

Wednesday, December 3, 1986

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND DECISION

REPORTED BY: JANIS G. ROLLER, CSR, CP

P R O C E E D I N G S

1
2 THE COURT: I want to place of record now my
3 decision in Native Village of Tyonek vs. Puckett, et al. and
4 Slawson, et al., third-party plaintiffs, vs. Standifer, et
5 al., third-party defendants, A82-369 Civil.

6 This case was argued on motions quite some time
7 ago. In the course of their arguments, both counsel made
8 claims of racial discrimination. In reviewing the case, I
9 have found the issues to be both complex and difficult.
10 Indeed, the research required on these issues exceeds that
11 of any other case which comes to mind. It is my purpose now
12 to place the decision on the record with the hope that, if
13 time permits, a published decision will be filed in the case.
14 A transcript of the decision will be prepared and placed in
15 the record of the case setting forth the reasons upon which
16 I reach my decision. The parties, if a copy of the
17 transcript is desired, may order the transcript from the
18 reporter. It is my intention, upon the filing of the
19 transcript, to direct the clerk to enter the final order in
20 this case.

21 Now, turning to the decision, approximately 43 air
22 miles southwest of Anchorage, on the northwest shore of Cook
23 Inlet, lies the Village of Tyonek. Tanana Indians, a
24 subgroup of the Athabaskans, are reported to have inhabited
25 the surrounding area as early as the eighteenth century,

1 when white explorers and settlers from Russia discovered and
2 first colonized Alaska. The British navigator Captain James
3 Cook reportedly observed Athabaskans in the region around
4 1778 when he mapped Alaska's coastline and explored the
5 inlet that bears his name. See Darbyshire and Associates,
6 Tyonek Community Profile (1981); R. D. Arnold, Alaska Native
7 Land Claims 13 (1978); Federal Field Commission for
8 Development and Planning, Alaska Natives and The Land 255-57
9 (1968); see also Claus M. Naske and H. E. Slotniok, Alaska:
10 A History of the Forty-Ninth State, 18, 27, 31-42, (1979).

11 This proceedings centers around an attempt by
12 native residents of Tyonek, acting through the Village's
13 native government established pursuant to the Indian
14 Reorganization Act of 1934, 25 U.S.C. §§ 473a, 476 (1982),
15 referred to as the "Native Village of Tyonek," to enforce
16 two Village ordinances: one prohibiting non-members of the
17 Village from leasing housing constructed at the Village's
18 expense, and the other prohibiting non-members from remaining
19 in Tyonek more than 24 consecutive hours.

20 Tyonek initiated the action by requesting this
21 court to enforce the two ordinances against four families --
22 two composed of Village members who "own" Village-subsidized
23 houses and two composed of non-members seeking to lease those
24 houses. The four families challenge the validity of the
25 Village's ordinance prohibiting leasing of the houses,

1 claiming that it violates the federal constitution, the
2 federal civil rights and fair housing laws, and Alaska law.
3 The respondents have filed counterclaims against Tyonek and
4 third-party claims against four of Tyonek's officers.
5 I conclude that this court lacks subject-matter jurisdiction
6 over Tyonek's claims, which are based on the Village
7 ordinances, and, therefore, do not "arise under" federal law.
8 I further conclude that this court lacks subject-matter
9 jurisdiction over the respondents' counterclaims and third-
10 party claims because they are barred by Tyonek's tribal
11 sovereign immunity and the derivative immunity of its
12 officers. I, therefore, dismiss Tyonek's claims and the
13 claims of the respondents.

14 The Tanana Indians, who currently inhabit Tyonek,
15 have reportedly occupied the surrounding area from as early
16 as the eighteenth century, when white settlers first
17 arrived in Alaska. Tyonek appears to have been the site of
18 a Russian trading settlement in the late eighteenth century
19 where natives supplied fox pelts to the Russians in
20 exchange for items of Russian manufacture. That settlement
21 was destroyed, apparently, because of conflicts between
22 local natives and the Russians.^{1/} See Darbyshire and

23
24 ^{1/} The Russian trading settlement was known as
25 "Tuiunuk," and authorities have indicated that this was
probably an alternative spelling of Tyonek. See Darbyshire
and Associates, Tyonek Community Profile (1981). "Tyonek"
is a Siberian Yakut word meaning "little chief," while
"Ti-i-u'-nuk" is an Eskimo word meaning the "marsh people."
Id.

1 Associates, Tyonek Community Profile (1981). Following the
2 purchase of Alaska in 1867, by the United States, the
3 American-based Alaska Commercial Company established a new
4 trading headquarters at Tyonek for the entire upper Cook
5 Inlet. The post was operating by 1875, and became a major
6 disembarking point for people and supplies when gold was
7 discovered at Resurrection Creek near Turnagain in the 1880s.
8 See id. Although Tyonek has been moved twice since that
9 time, the village has remained in essentially the same
10 location. See Darbyshire and Associates, Tyonek Community
11 Profile (1981).

12 President Woodrow Wilson, in 1915, withdrew over
13 25,000 acres surrounding the Village of Tyonek and
14 established the Moquawkie Reservation "for the benefit of
15 Alaskan Natives of that region." Executive Order 2141,
16 February 27, 1915. In 1939, the Natives living in the
17 Village established the "Native Village of Tyonek" by
18 adopting a constitution and bylaws under section 16 of the
19 Indian Reorganization Act of 1934, 25 U.S.C. §§ 473a, 476
20 (1982), and a corporation charter under section 17 of the
21 act, 25 U.S.C., § 477 (1982), both of which were approved
22 by the Secretary of the Interior.

23 Article II of the Village constitution and bylaws
24 limited membership in Tyonek to those individuals then on
25 the official list of Native residents maintained by the

1 Village, the children of Tyonek members, and other Alaska
2 Natives who established homes in the Village and were
3 accepted as members. The constitution provided that Tyonek
4 members could willingly renounce their membership, could
5 have it revoked for good cause, or could lose their
6 membership if they "moved[d] away from the Village,
7 intending not to return." Article II also authorized Tyonek
8 to establish any further rules concerning membership as
9 might be from time to time required.

10 Tyonek's Village counsel, in 1942, adopted Village
11 Rule No. 4, which prohibits non-members of the Village
12 (other than government employees) from remaining in the
13 Village more than twenty-four consecutive hours without
14 Tyonek's consent.^{2/}

15 In 1965, several oil companies paid Tyonek
16 approximately twelve million dollars for oil and gas

17
18 ^{2/} According to official Tyonek records, the precise
19 wording of Rule No. 4 is as follows:

20 Any white men except government men
21 or outsider coming in is allow [sic] to
22 stay only 24 hrs. If weather permits
23 them to go [sic]. And is not allowed to
24 bring any liquor [sic]. Article No. 4
25 have [sic] to be put up in posters. And
anyone destroying these papers will be
subject to penalty. Twenty-five dollars
fine if caught destroying the poster
[sic].

25 Laws of Native Village of Tyonek, Rule No. 4, May 18, 1942.

1 exploration rights in the area surrounding the Village.
2 The Tyonek council allocated part of those proceeds to
3 construct approximately sixty houses in the Village and
4 established a "Family Plan" under which families comprised
5 of Village members could apply to the Village for "housing
6 allowances" to build and furnish new homes. On October 5,
7 1965, during the construction of the "Family Plan" houses,
8 the Tyonek council unanimously passed Village Ordinance No.
9 65-32, which provided that:

10 [T]he interests of members of the
11 Village in houses which are acquired by
12 such members by virtue of the Family
13 Plan of the Village cannot be sold,
14 conveyed, leased, mortgaged, or
15 otherwise alienated by any member of the
16 Village to a person, corporation, or
17 other legal entity which or who is not a
18 enrolled member of the Village of
19 Tyonek, Alaska. It is the purpose of
20 this [ordinance] to insure that private
21 interests in houses in the Village or in
22 the Moquawkie Reservation may only be
23 held by enrolled members of the Village.
24 Should any alienation be attempted in
25 violation of this resolution, the same
shall be void.

19 Tyonek Village Ordinance No. 65-32, October 5, 1965.^{3/}

20
21 ^{3/} Ordinance No. 65-32 was amended in 1981 by Tyonek
22 Ordinance No. 81-1, which retained most of the original
23 ordinance's language, but added an express prohibition
24 barring Tyonek members from bequeathing or devising their
25 interests in Family Plan houses (and the land on which those
houses are located) to non-members of Tyonek. Tyonek
Ordinance No. 81-1 provides that:

(Footnote Continued)

1 Title to all houses acquired under the Family Plan was
2 taken subject to the conditions imposed by Village
3 Ordinance No. 65-32.

4 Congress, in 1971, enacted the Alaska Native Claims

5
6 3/ (Footnote Continued)

7 The interests of the tribal members
8 of the Native Village of Tyonek in
9 houses acquired by such members by
10 virtue of the Family Plan, and the land
11 upon which such houses are located,
12 shall not be sold, conveyed, leased,
13 mortgaged, encumbered, bequeathed,
14 devised, or otherwise alienated, by any
15 member or any other person or entity, to
16 a person, corporation, or other entity
17 which is not or who is not an enrolled
18 member of the Native Village of Tyonek.
19 The purpose of this ordinance is to
20 ensure that private interests in houses
21 in Tyonek village or in the former
22 Moquawkie reservation may be held only
23 by enrolled members of the Native
24 Village of Tyonek. Any alienation or
25 disposition in violation of this
ordinance shall be void. No non-member
may inherit any member's interest in the
property described herein, whether by
testamentary disposition or intestate
succession, or otherwise. Any such
purported disposition shall be void, and
in such event, the village council may
dispose of the deceased member's
interest in such property to such of his
or her heirs who are enrolled members of
the Native Village of Tyonek as it may
in its discretion decide, giving
preference to the heir or heirs who live
in the village.

24 Tyonek Village Ordinance No. 81-1, July 7, 1981. Tyonek is
25 not seeking to enforce the provisions added by the 1981
amendments in this action, nor are the defendants and
third-party plaintiffs challenging those provisions.

1 Settlement Act, 43 U.S.C., §§ 1601-1628 (1982). Section 19
 2 of the Claims Act, 43 U.S.C. § 1618, revoked almost all
 3 native reservations in Alaska, including the Moquawkie
 4 Reservation. Section 8, 43 U.S.C. 1607, authorized the
 5 Native residents of each Village or city in Alaska to
 6 establish a Village corporation, through which they would
 7 receive land and other benefits under the Claims Act.
 8 Shortly after the passage of the Claims Act, the Native
 9 residents of Tyonek formed the for-profit Tyonek Native
 10 Corporation, to which was conveyed all the lands formerly
 11 in the Moquawkie reservation.^{4/} The Claims Act did not
 12 expressly change the status of Tyonek or its IRA Village
 13 government, nor did the Claims Act expressly revoke or
 14 amend Tyonek's Family Plan or Ordinance 65-32. Tyonek
 15 Native Corporation has not been directly involved in
 16 administering Tyonek's Family Plan housing, although it
 17 currently holds the surface estate of the lands on
 18 which that housing is located.

19 The present dispute arose in 1981-1982 when two
 20 Tyonek-member families leased their Family Plan houses to
 21 two families not composed of Tyonek members. From
 22 approximately 1977 until 1981, Donald and Erna Puckett and
 23

24 ^{4/} Although Tyonek's residents have established an ANCSA
 25 village corporation, Tyonek has not organized as a
 municipality under Alaska law. The village lies within the
 boundaries of Alaska's Kenai Peninsula Borough, and the
 Tyonek Village Council is the only village governing body.

*

1 their four children lived at the Tyonek Timber Camp outside
2 the Village. Donald Puckett worked at the timber camp.
3 Erna was employed part of that time as the secretary at the
4 R. L. Bartlett School in Tyonek, and their children
5 attended the Bartlett School. In September 1981, most of
6 the operations of the timber camp were closed down, and,
7 on September 30, 1981, the Pucketts requested permission
8 in writing from Tyonek's village council to reside in the
9 village for the remainder of the 1981-1982 school year.
10 The council granted permission, and on October 8, 1981, the
11 Pucketts signed a lease agreement with Esther Kaloa, a
12 Village member, to lease her Family Plan house until
13 June 15, 1982.

14 On April 28, 1982, Tyonek Village president Donald
15 Standifer wrote the Pucketts on behalf of Tyonek to notify
16 them that they must vacate the Kaloa house at the end of
17 the school year, which was May 27, 1982. However, the
18 Pucketts and Kaloa, on April 30, 1982, renewed their lease
19 agreement for an additional year, until June 25, 1983.
20 They included a provision in the agreement that: "[S]hould
21 the Native Village of Tyonek, by act of the council, vote
22 to remove lessees, by court action, this lease is
23 automatically voided." on June 8, 1982, Standifer again
24 wrote the Pucketts on behalf of Tyonek to remind them that
25 the school year had ended and that their authorization to

1 rent the Kaloa house had, therefore, elapsed. The Pucketts
2 refused to vacate the Kaloa house.

3 In December, 1981, Fred and Virginia Slawson
4 sought permission from the Tyonek council to reside in the
5 Village, but were denied permission. Fred Slawson is a
6 shareholder of Tyonek Native Corporation and Cook Inlet
7 Region, Inc., and he and his wife have family in Tyonek;
8 but the Slawsons are not enrolled members of the Village.
9 On May 29, 1982, the Slawsons leased the Family Plan house
10 of Village members Alec and Olga Constantine, and made the
11 house their residence. The Slawsons, on June 2, 1982,
12 made a written request to the Tyonek council for permission
13 to remain in the Constantine house, but they were again
14 denied permission. The Slawsons continued to reside in
15 the Constantine house.

16 Tyonek brought this action in 1982 to evict the
17 Pucketts and Slawsons and to enjoin the Kaloas and
18 Constantines from leasing or otherwise alienating their
19 Family Plan houses to non-members of the Village. Tyonek
20 seeks to enforce Village Ordinance 65-32 against the Kaloas
21 and Constantines, contending that it subsidized the
22 construction and furnishing of their houses on the express
23 condition that the houses be used exclusively by Village
24 members. Tyonek also seeks to enforce Village Rule No. 4
25 against the Pucketts and Slawsons because they have remained

1 in the Village for more than twenty-four hours without the
2 consent of Tyonek.

3 By answer, the respondents have challenged the
4 validity of Tyonek Ordinance 65-32 under federal and
5 Alaska law,^{5/} and have brought claims for damages and
6 injunctive relief against Tyonek and several of its
7 officers. The Pucketts claim that in addition to filing
8 this action, Tyonek and its president Standifer, vice
9 president Bonnie McCord, secretary-treasurer Al Gozmer,
10 and Village administrator Emil McCord, Sr., have engaged in
11 other actions intended to drive them from the Village.
12 According to the Pucketts, these included circulating
13 petitions demanding that the Pucketts leave Tyonek,
14 spreading rumors impugning the character of Erna Puckett,
15 and changing Tyonek's policy to require all non-members of
16 the Village to pay for their electricity, although Tyonek
17 members receive free electricity. The Pucketts also allege
18 that their property has been damaged by vandals and that
19 their house was once stoned by unidentified persons, but
20 they do not allege that Tyonek's officers were personally
21 involved in either of these activities.

22 5/

23 The defendants challenge the validity of Village
24 Ordinance No. 65-32, and do not specifically challenge the
25 validity of either Village Rule No. 4 or Village Ordinance
No. 81-1.

1 premised entirely upon Village Ordinance 65-32 and Village
2 Rule No. 4. Tyonek has failed to identify any federal law,
3 treaty, or constitutional provision upon which it is
4 relying.^{6/} See, generally, Price v. Hawaii, 764 F.2d 623,
5 628 (9th Cir. 1985).

6 To the extent that Tyonek's ordinances are
7 equivalent to municipal or borough ordinances, Tyonek's
8 claims plainly do not "arise under" federal law. See 28
9 U.S.C., 1331. Even assuming that Tyonek qualifies as an
10 "Indian tribe" and that its complaint therefore alleges
11 violations of "tribal" ordinances, this alone is not
12 sufficient to establish "federal question" jurisdiction
13 under section 1331. The Ninth Circuit Court of Appeals has
14 expressly ruled that actions brought to enforce tribal laws
15 and ordinances do not constitute actions "arising under"
16 the laws of the United States, and therefore do not qualify
17 for section 1331 jurisdiction. See Boe v. Fort Belknap
18 Indian Community, 642 F.2d 276, 279-80 (9th Cir. 1981).

19 _____
20 ^{6/} While Tyonek's amended complaint indicates that it is
21 seeking to enforce Village Ordinance No. 65-32 and Rule No.
22 4, Tyonek's action could also be characterized as one to
23 enforce the terms of its Family Plan housing contracts with
24 the Kaloa and Constantine families. Yet even if viewed as a
25 contract action, Tyonek's action still arises under Alaska
state contract law and therefore does not provide a basis
for federal subject-matter jurisdiction. See Gila River
Indian Community v. Henningson, Durham & Richardson, 626
F.2d 708, 714-15 (9th Cir. 1980), cert. denied, 451 U.S. 911
(1981).

1 Moreover, the fact that Tyonek has an IRA
2 government and that the ordinances involved in this case
3 were "promulgated . . . under the authority of the IRA"
4 does not automatically transform this into an action
5 "arising under" the IRA, since Tyonek's claims "do not
6 involve a dispute or controversy respecting the validity,
7 construction, or effect of the IRA" itself. See Boe v.
8 Fort Belknap Indian Community, at 279; also Littell v. Nakai,
9 344 F.2d 486, 488 (9th Cir. 1965), cert. denied. 382 U.S.
10 986 (1966). I conclude the IRA does not provide a basis
11 for invoking section 1331 jurisdiction over Tyonek's claims.

12 Indian Tribes Jurisdiction

13 Tyonek also contends that this court has subject-
14 matter jurisdiction over its claims based upon the
15 "Indian tribes" jurisdictional provision, 28 U.S.C. 1362,
16 which provides that:

17 [D]istrict courts shall have original
18 jurisdiction of all civil actions,
19 brought by any Indian tribe or band with
20 a governing body duly recognized by the
21 Secretary of the Interior, wherein the
matter in controversy arises under the
Constitution, laws, or treaties of the
United States.

22 28 U.S.C., 1362.

23 The Ninth Circuit has noted that the "arises
24 under" proviso contained in section 1362 is virtually
25 identical to the "arises under" language found in section

1 1331. See Gila River Indian Community v. Henningson,
2 Durham and Richardson, 626 F.2d 708, 710, 714 (9th Cir.
3 1980), cert. denied, 451 U.S. 911 (1981). Section 1362's
4 legislative history indicates that Congress passed the
5 provision in 1966 specifically to enable Indian tribes to
6 bring "federal question" cases, of the type normally brought
7 under section 1331, in federal court without having to
8 satisfy section 1331's then existing \$10,000 amount-in-
9 controversy requirement. The legislative history does not
10 indicate that Congress intended to broaden Indian tribes'
11 access to federal courts in any other respect. See Gila
12 River Indian Community v. Henningson, Durham and Richardson
13 at 710-714; accord Arizona v. San Carlos Apache Tribe, 463
14 U.S. 545, 559-60 n.10 (1983); see also S. Rep. No. 1507,
15 89th Cong., 2d Sess. 2-3 (1966); H. Rep. No. 2040, 89th
16 Cong., 2d Sess. 2, 4 (1966); [1966] U.S. Code Cong. and
17 Admin. News 3145; see also Dillon v. Montana, 634 F.2d 463,
18 469 (9th Cir. 1980); Housing Authority of the City of
19 Seattle v. Washington Department of Revenue, 629 F.2d 1307,
20 1312 (9th Cir. 1980). Hence, in order to interpret the
21 "arises under" language of section 1362 consistently with
22 the similar language contained in section 1331, and in
23 order to fulfill Congress' intent as revealed in section
24 1362's legislative history, the Ninth Circuit has expressly
25 ruled that if an action does not qualify as "arising under"

1 federal law for purposes of section 1331, it cannot be
2 brought in federal court under section 1362.^{7/} Gila River
3 Indian Community v. Henningson, Durham and Richardson,
4 626 F.2d at 714.

5 Because Tyonek's claims in this action do not
6 "arise under" federal law for purposes of section 1331, they
7 also cannot be brought under section 1362.- I conclude that
8 section 1362 does not provide federal subject-matter
9 jurisdiction over Tyonek's claims.

10 Federal Declaratory Judgment Act Jurisdiction

11 Finally, Tyonek contends that this court has
12 subject-matter jurisdiction over its claims under the
13 Federal Declaratory Judgment Act, 28 U.S.C., 2201, which
14 provides that:

15 In a case of actual controversy
16 within its jurisdiction . . . any court
17 of the United States, upon the filing of
18 an appropriate pleading, may declare the
rights and other legal relations of any

19 ^{7/} It should be noted that section 1362 does provide
20 certain jurisdictional advantages to Indian tribes over
21 section 1331, even now that section 1331's
22 amount-in-controversy requirement has been eliminated.
23 Section 1362 provides Indian tribes with an exemption to the
24 Anti-Injunction Act, 28 U.S.C. section 1341 (1982), and thus
25 permits them to seek injunctions in federal district court
against the assessment or collection of state taxes, see Moe
v. Confederated Salish and Kootenai Tribes, 425 U.S. 463,
474-75 (1976), and at least one court has held that section
1362 removes states' eleventh amendment immunity to suit in
actions brought by Indian tribes. Oneida Indian Nation v.
New York, 691 F.2d 1070, 1079-80 (2d Cir. 1982).

1 interested party seeking such
2 declaration, whether or not further
relief is or could be sought

3 28 U.S.C., 2201.

4 It is firmly established that "[t]he Declaratory
5 Judgment Act does not provide an independent jurisdictional
6 basis for suits in federal court." Fiedler v. Clark, 714
7 F.2d 77, 79 (9th Cir. 1983) (citing to Skelly Oil Co. v.
8 Phillips Petroleum Co., 339 U.S. 667, 671-74 (1950)).

9 Instead, the act "merely provides an additional remedy where
10 the court has an otherwise valid jurisdictional basis to
11 consider the case." Karmali v. INS, 707 F.2d 408, 409 (9th
12 Cir. 1983) (citing Skelly Oil); accord Fiedler, 714 F.2d at
13 79; Milner-Wohl Co. v. Commissioner of Labor and Industry,
14 685 F.2d 1083, 1090 (9th Cir. 1982); Alton Box Board Co. v.
15 Espirit De Corp. 682 F.2d 1267, 1274 (9th Cir. 1982);
16 Janakes v. United States Postal Service, 768 F.2d 1091, 1093
17 (9th Cir. 1985); see also Franchise Tax Board v. Construction
18 Laborers Vacation Trust, 463 U.S. 1, 15-16 (1983). (quoting
19 from Skelly Oil). "Since there is no basis for this court to
20 exercise subject-matter jurisdiction over Tyonek's claims
21 under sections 1331 or 1362, or under any other provision,
22 the Court has no subject-matter jurisdiction over Tyonek's
23 claims under section 2201.

24 Lacking subject-matter jurisdiction over Tyonek's
25 claims under section 1331, 1362, or 2201, or under any other

1 provision, I dismiss Tyonek's claims for lack of subject-
2 matter jurisdiction. 8/

3 Subject-Matter Jurisdiction over the Pucketts'
4 and Slawsons' Counterclaims and Third-Party Claims

5 The Pucketts and Slawsons 9,10/ have brought counter-
6 claims against the Village and third-party claims against
7 its officers Standifer, Goozmer, and the McCords, claiming
8 that these parties violated the United States Constitution,
9 federal civil rights and fair housing laws, the Indian
10 Civil Right Act, 25 U.S.C., § 1302 (1982), and Alaska law by
11 attempting to enforce Ordinance 65-32 11/ against them and

12
13 8/ I note, without deciding the issue, that Tyonek would
14 appear to be entitled to pursue its claims in the Alaska
15 state courts. The Alaska courts are courts of general
16 jurisdiction, and are therefore authorized to resolve claims
17 based on local or village ordinances and Alaska contract
18 law. Moreover, even if the village of Tyonek is considered
19 to be "Indian country", as Tyonek maintains, and its
20 ordinances are considered to be "tribal" ordinances, the
21 Alaska state courts are still authorized to exercise
22 jurisdiction over Tyonek claims. See 28 U.S.C. § 1360(a),
23 (c) (1982).

24 9/ The Kaloas and Constantines have not filed
25 counterclaims against Tyonek or third-party claims against
Tyonek's officers.

10/ The Kaloas and Constantines have not filed
counterclaims against the Village or third-party claims
against its officers.

11/ The Pucketts and Slawsons have not raised any
claims based upon alleged attempts of the Village or its
officers to enforce Ordinance No.4, which prohibits white
persons and, presumably, other non-members of the Village,

(Footnote continued)

1 attempting to evict them from the Family Plan houses where
2 they reside.^{12/} The Pucketts and Slawsons seek declaratory
3 and injunctive relief, as well as compensatory and punitive
4 damages.

5 Tyonek and its officers maintain that the Pucketts'
6 and Slawsons' counterclaims are jurisdictionally barred by the
7 Village's tribal sovereign immunity and that respondents'
8 third-party claims against Standifer, Goozmer and the McCords
9 are barred by those individuals' derivative immunity as
10 Village officers. I agree. I conclude, based upon Tyonek's
11 history and the manner in which the federal government has
12 dealt with Tyonek, that the Village possesses sovereign

13

14 (Footnote Continued)
15 from remaining in Tyonek for twenty-four consecutive hours
16 without Village permission. Thus, my analysis of Ordinance
17 No. 4 in the context of reviewing the Pucketts' and
18 Slawsons' counterclaims and third-party claims is merely for
19 purposes of explaining the extent and limitations of the
20 Village's sovereign powers, as well as to provide guidance
21 to the parties regarding future actions they may undertake.

22 ^{12/} The Pucketts and Slawsons allege specifically that
23 the Village and its officers violated article IV, section 2
24 of the United States Constitution, the first and fourteenth
25 amendments to the Constitution, the Civil Rights Act of
1871, 42 U.S.C. §§ 1981-1983, 1985 (1982), the Fair Housing
Act, 42 U.S.C. §§ 3604, 3617 (1982), the Indian Civil Rights
Act, 25 U.S.C. § 1302 (1982), and Alaska Statutes §
18.80.210 (1985) (guaranteeing the right to obtain housing
accommodations without discrimination based on race, color,
or national origin). The Village also allege that Tyonek
and its officers intentionally and tortiously interfered
with their contractual agreement to lease the Kaloas' and
Constantines' houses and with Erna Puckett's employment
contract with the school, all in violation of Alaska law.

1 immunity from suit like that of any other Indian tribes
2 in the contiguous United States. I further conclude that
3 neither the federal government nor Tyonek has waived the
4 Village's immunity in this case or consented for the Pucketts
5 and Slawsons to bring counterclaims against it. I also
6 conclude that the claims of the Pucketts and Slawsons against
7 Tyonek's officers are based upon conduct within the scope
8 of these officers' official capacities and within the scope
9 of the authority that the Village is capable of bestowing
10 upon them. I conclude that the claims of the Pucketts
11 and Slawsons, including their third-party claims, should be
12 dismissed for lack of subject-matter jurisdiction.

13 Tyonek's Immunity From Suit

14 Tyonek maintains that the counterclaims against it
15 are all barred by its sovereign immunity as an "Indian
16 tribe" or as an entity similar to an Indian tribe. The
17 Supreme Court and other courts have consistently held that
18 Indian tribes "possess[] the common-law immunity from suit
19 traditionally enjoyed by sovereign powers." Santa Clara
20 Pueblo v. Martinez, 436 U.S. 49, 58 (1978); Puyallup Tribe,
21 Inc. v. Department of Game of Washington, 433 U.S. 165,
22 172-73 (1977); A.K. Management Co. v. San Miguel Board of
23 Mission Indians, _____ F.2d _____, _____ (9th Cir. 1986);
24 Squaxin Island Tribe v. Washington, 781 F.2d 715, 723
25 (9th Cir. 1986); Quantum Exploration, Inc. v. Clark, 780

1 F.2d 1457, 1459 n.4 (9th Cir. 1986); Hardin v. White
2 Mountain Apache Tribe, 779 F.2d 476, 478 (9th Cir. 1985);
3 Big Spring v. United States Bureau of Indian Affairs, 767,
4 F.2d 614, 617 (9th Cir. 1985); Chemehvevi Indian Tribe
5 v. California State Board of Equalization, 757 F.2d 1047,
6 1050 (9th Cir.) rev'd on other grounds, 106 S.Ct. 2890
7 (1985); see also Three Affiliated Tribes of Fort Berthold
8 Reservation v. Wold Engineering, 106 S.Ct. 2305, 2313 (1986);
9 Felix Cohen, Handbook of Federal Indian Law 324 (2d ed. 1982);
10 W.C. Canby, Jr., American Indian Law 73 (1981)
11 Indian Tribes possess immunity from suit "because
12 they are sovereigns predating the Constitution," American
13 Indian Agricultural Credit Consortium, Inc. v. Standing
14 Rock Sioux Tribe, 780 F.2d 1374, 1378 (8th Cir. 1985);
15 United States v. United States Fidelity and Guaranty Co.,
16 309 U.S. 506, 512-13 (1940), and it is considered "a
17 necessary corollary to Indian sovereignty and self-
18 governance," Wold Engineering, 106 S.Ct. at 2313, essential
19 "to preserve [tribes'] autonomous political existence . . .
20 [and] tribal assets," Chemehvevi, 757 F.2d at 1051, as well
21 as "to promote the federal policies of tribal self
22 determination, economic development, and cultural autonomy
23 Standing Rock Sioux Tribe, 780 F.2d at 1378; Maryland
24 Casualty Co. v. Citizens National Bank, 361 F.2d 517, 521-22
25 (5th Cir.), cert. denied, 385 U.S. 918 (1966); Adams v.

1 Murphy, 165 F. 304, 308-09 (8th Cir. 1908); Atkinson v.
2 Haldone, 569 P.2d 151, 169 (Alaska 1977) (because of their
3 limited revenue base, Indian tribes find lost assets more
4 difficult to replace than other governmental bodies; Felix
5 Cohen, Federal Indian Law, at 324-28; Note, In Defense of
6 Tribal Sovereign Immunity, 95 Harv. L. Rev. 1058 (1982).
7 Tribes have been held to possess this immunity even when they
8 have not been officially recognized as Indian tribes by the
9 federal government, when they have no prolonged course of
10 dealing with federal or state governments, when they do not
11 reside on reservations or in "Indian country," and "'even
12 after dissolution of the[ir] tribal government[s].'"
13 Bottomly v. Passamaguoddy Tribe, 599 F.2d 1061, 1065 and
14 nn.5-6 (1st Cir. 1979) (quoting United States Fidelity and
15 Guaranty Co., 309 U.S. at 512); Maryland Casualty Co., 361
16 F.2d at 521-22; Hailr v. Saunooke, 246 F.2d 293, 296 (4th
17 Cir. 1957). The matter of Tyonek's immunity from suit in
18 this action is jurisdictional. See Big Spring, 767 F.2d at
19 617; Chemehvevi, 757 F.2d at 1051; Kennerly v. United States,
20 721 F.2d 1252, 1259 (9th Cir. 1983); Puyallup Tribe 444 U.S. at
21 172-73; United States Fidelity and Guaranty Co., 309 U.S. at
22 512-13, and must therefore be "address[ed] first and
23 resolve[d] irrespective of the merits of the [Pucketts' and
24 Slawsons'] claim[s]." See Chemehvevi, 757 F.2d at 1051;
25 Rehner v. Rice, 678 F.2d 1340, 1351 (9th Cir. 1982), rev'd

1 on other grounds, 463 U.S. 713 (1983); California ex rel.
 2 California Department of Fish and Game v. Quechan Tribe of
 3 Indians, 595 F.2d 1153, 1154 (9th Cir. 1979).

4 The Pucketts and Slawsons maintain that even if
 5 the Village constitutes a tribe possessing immunity from
 6 suit, Congress and Tyonek have taken actions that have
 7 waived Tyonek's immunity as to the present action. They
 8 suggest that three specific actions have waived Tyonek's
 9 immunity: (1) Tyonek's initiation of the present
 10 litigation; (2) Congress' enactment of the Indian Civil
 11 Rights Act of 1968, 25 U.S.C. §§ 1301-1341; and (3) Tyonek's
 12 adoption of a "sue and be sued" clause in its corporate
 13 charter. 13/

14
 15 13/ As noted above, the Puckett's and Slawson's do not
 16 appear to contend that Congress's enactment of ANCSA has
 17 waived the Village's immunity from suit. The Ninth Circuit
 18 has consistently "rejected the contention that congressional
 19 enactments unrelated to immunity may implicitly grant
 20 authority to bring suit against Indian tribes." Chemehuevi
Indian Tribe, 757 F.2d at 1053; see Rehner v. Rice, 678 F.2d
 21 1340, 1351 (9th Cir. 1982), rev'd on other grounds, 463 U.S.
 22 713 (1983). ANCSA does not contain any provisions
 23 explicitly mentioning or waiving the immunity of village
 24 governments organized under IRA section 16. See generally
 25 43 U.S.C. §§ 1601-_____.

21 Similarly, the Puckett's and Slawson's do not contend
 22 that Congress's enactment of 28 U.S.C. § 1360, commonly
 23 known as Public Law 280, operates to waive the Village's
 24 immunity from suit. Public Law 280 authorizing particular
 25 states to exercise civil and criminal jurisdiction over the
 Indian country within their boundaries, and it was extended
 to cover Alaska in 1958. See Wold Engineering, 106 S.Ct. at
 2314 ("We have never read Pub. L. 280 to constitute a waiver
 of tribal sovereign immunity").

1 The Supreme Court and other courts have
2 consistently ruled that while Congress and individual tribes
3 have the authority to waive a tribe's immunity from suit,
4 such waivers "'cannot be implied but must be unequivocally
5 expressed.'" Santa Clara Pueblo, 436 U.S. at 58; A.K.
6 Management Co., ____ F.2d at ____; Big Spring, 767 F.2d at
7 617; Chemehuevi Indian Tribe, 757 F.2d at 1052-53;
8 Kennerly, 721 F.2d at 1258-59; Rehner v. Rice, 678 F.2d
9 1340, 1351 (9th Cir. 1982), rev'd on other grounds, 463 U.S.
10 713 (1983); Standing Rock Sioux Tribe, 780 F.2d at 1378;
11 Ramey Construction Co. v. Apache Tribe, 673 F.2d 315, ____
12 (10th Cir. 1982); Parker Drilling Co. v. Metlakatla Indian
13 Community 451 F. Supp. 1127, 1136 (D. Alaska 1978); see
14 also Wold Engineering, 106 S.Ct. at 2313, Puyallup Tribe, 433
15 U.S. at 172-73; Squaxin Island Tribe, 781 F.2d at 723 n.11.
16 I conclude that none of the claims for waiver asserted by
17 the Pucketts and Slawsons is sufficient to waive Tyonek's
18 immunity from suit.

19 The Indian Civil Rights Act

20 The Pucketts and Slawsons contend, based upon the
21 Tenth Circuit's decision in Dry Creek Lodge, Inc. v.
22 Arapahoe and Shoshone Tribes, 623 F.2d 682 (10th Cir. 1980),
23 cert. denied, 449 U.S. 1118 (1981), and its progeny, that
24 the Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1301-1341,
25 "constitutes a waiver of [Tyonek's] sovereign immunity under

1 the facts in this case." I do not agree.

2 The Supreme Court held in Santa Clara Pueblo
3 that "[n]othing on the face of . . . the Indian Civil Rights
4 Act purports to subject tribes to the jurisdiction of the
5 federal courts in civil actions for injunctive or
6 declaratory relief," and that "suits against a tribe under
7 the Act are barred by its sovereign immunity from suit."
8 Santa Clara Pueblo, 436 U.S. at 59. However, in Dry Creek
9 Lodge, the Tenth Circuit interpreted the decision in Santa
10 Clara Pueblo to apply only to actions involving "internal
11 [disputes] between tribal members and . . . tribal govern-
12 ment[s]," and held that the Indian Civil Rights Act, in
13 effect, waives tribal immunity in cases brought against
14 tribes by non-Indians who "have no remedy within the tribal
15 machinery nor with the tribal officials in whose election
16 they can . . . participate." Dry Creek Lodge, 623 F.2d at 685;
17 see also White v. Pueblo of San Juan, 728 F.2d 1307, 1312
18 (10th Cir. 1984) ("the Dry Creek decision ought to be
19 interpreted to provide a narrow exception to the traditional
20 sovereign immunity bar from suits against Indian tribes in
21 federal courts," in light of Santa Clara Pueblo and because
22 an "expansive interpretation of Dry Creek [would] open[]
23 up the scope of lawsuits against the tribes"); Jicarilla
24 Apache Tribe v. Andrus, 687 F.2d 1324, 1346 (10th Cir. 1982).
25 The respondents contend that because they are not members

1 of the Village and because they have raised "'particularly
2 egregious allegations of personal restraint and deprivation
3 of personal rights,'" against Tyonek and its officers, their
4 counterclaims and third-party claims qualify under the
5 exception created in Dry Creek Lodge, and are, therefore,
6 not barred by Tyonek's immunity.

7 However, the exception carved out in Dry Creek
8 Lodge does not appear to be authorized explicitly by the
9 language or legislative history of the Indian Civil Rights
10 Act or by the Supreme Court's analysis in Santa Clara
11 Pueblo. See Santa Clara Pueblo, 436 U.S. at 58-72 (noting
12 that "it is highly unlikely that Congress would have
13 intended a private cause of action for injunctive and
14 declaratory relief to be available in the federal courts to
15 secure enforcement of section 1302," and that the Indian
16 Civil Rights Act legislative history "indicates that the
17 Indian Civil Rights Act was generally understood to
18 authorize federal judicial review of tribal actions only
19 through the habeas corpus provisions of 25 U.S.C. § 1303").
20 Since, as has been noted, "waiver[s] of [tribal] sovereign
21 immunity "'cannot be implied but must be unequivocally
22 expressed,'" id. at 58, the policy justifications
23 articulated by the Tenth Circuit in Dry Creek Lodge seem
24 insufficient to establish a waiver of tribal immunity under
25 the Indian Civil Rights Act. See Dry Creek Lodge, 623 F.2d

1 at 685-86 (Holloway, J., dissenting) (concluding that
2 Santa Clara Pueblo's "broad" language and far-reaching
3 conclusions preclude the result reached by the majority).
4 Moreover, the Ninth Circuit has expressly rejected the
5 Tenth Circuit's analysis in Dry Creek Lodge and has
6 "recognized that the Santa Clara Pueblo holding 'foreclosed
7 any reading of the Indian Civil Rights Act as authority for
8 bringing civil actions in federal court to request . . .
9 forms of relief [other than habeas corpus]:" R.J. Williams
10 Co. v. Fort Belknap Housing Authority, 619 F.2d 979, 981
11 (9th Cir. 1983); accord National Farmers Union Insurance Co.
12 v. Crow Tribe of Indians, 736 F.2d 1320, 1322-23 (9th Cir.
13 1984) ("Congress has expressly limited federal court review
14 of a claimed violation of the Indian Civil Rights Act to
15 encompass a single remedy: the writ of habeas corpus . . .
16 A civil suit to enjoin violations of the Indian Civil Rights
17 Act is not cognizable in federal court.") rev'd on other
18 grounds, 105 S.Ct. 2447, 2450 and n.3 (1985); Williams v.
19 Pyramid Lake Paiute Tribe, 625 F. Supp. 1457, 1458 (D. Nev.
20 1986). I reject respondent's contention that the Indian
21 Civil Rights Act waives Tyonek's immunity for the purposes
22 of the present litigation.

23 The respondents also contend that Tyonek waived its
24 sovereign immunity by initiating the present litigation.
25 I disagree. The Ninth Circuit has held that an Indian

1 tribe's initiation of an action against a party does not
2 waive the tribe's immunity from suit as to counterclaims
3 brought by that party. Squaxin Island Tribe, 781 F.2d at
4 723; Chemehuevi, 757 F.2d at 1053; and see also United States
5 Fidelity and Guaranty Co., 309 U.S. at 513. According to
6 the Ninth Circuit, it would be necessary for the tribe to
7 consent to be sued under the counterclaim, - see Squaxin
8 Island Tribe, 781 F.2d at 723 n.11, in order to find that
9 a tribe has waived its immunity as to the counterclaim and
10 for a court to require subject-matter jurisdiction over that
11 counterclaim. Tyonek did not consent to be sued on the
12 counterclaims raised by the Pucketts and the Slawsons.
13 I reject respondents' contention that Tyonek waived its
14 sovereign immunity as to their counterclaims by initiating
15 the present lawsuit.

16 Finally, the respondents contend that Tyonek's
17 adoption of a "sue and be sued" clause in its corporate
18 charter effectively waived its sovereign immunity for the
19 purposes of this action. I reject this contention.
20 Although the tribes clearly have the capacity to waive their
21 sovereign immunity by adopting "sue and be sued" clauses in
22 their corporate charters, see, e.g., Standing Rock Sioux
23 Tribe, 780 F.2d at 1379; Fontenelle v. Omaha Tribe of
24 Nebraska, 430 F.2d 143, 147 (9th Cir. 1970); Maryland
25 Casualty Co. v. Citizens National Bank, 361 F.2d 517, 521-22

1 (5th Cir.), cert. denied, 385 U.S. 918 (1966), such clauses
2 waive the tribes' immunity only with regard to actions
3 taken by the tribe in its corporate capacity under section
4 17, of the Indian Reorganization Act and not the actions it
5 takes in its governmental capacity under section 16 of the
6 Indian Reorganization Act. See Ramey Construction Co. v.
7 Apache Tribe, 673, F.2d 315, 320 (10th Cir.-1982); Parker
8 Drilling, 451 F. Supp. 1127, 1131, 1136-37; Kenai Oil and
9 Gas, Inc. v. Department of Interior, 522 F. Supp 521, 528-29
10 (D. Utah 1981); Atkinson v. Haldane, 569 P.2d 151, 175
11 (Alaska 1977).

12 Since Tyonek is being sued in its section 16,
13 governmental capacity, rather than its section 17, corporate
14 capacity, the "sue and be sued" clause contained in its
15 corporate charter does not operate to waive its sovereign
16 immunity in this action. I reject the respondents' claims
17 that the "sue and be sued" clause contained in Tyonek's
18 corporate charter nullifies the tribal government's defense
19 of sovereign immunity.

20 For all of these reasons, I reject the
21 respondents' waiver claims. I conclude that Tyonek
22 possessed sovereign immunity as to those counterclaims, and
23 that the counterclaims against Tyonek must be dismissed for
24 lack of subject-matter jurisdiction.

25 I turn now to the derivative immunity of Tyonek's

1 officers.

2 The four Tyonek officers, whom the Pucketts and
3 Slawsons have sued in this action, contend that the third-
4 party claims against them are barred for lack of
5 jurisdiction, and they further contend that the third-party
6 claims are barred by their derivative immunity as officers
7 of an Indian tribe. I agree with the contentions of
8 Tyonek's officers. The officers of an Indian tribe possess
9 immunity from suit so long as they are acting in their
10 representative capacity and within the scope of the
11 authority that the village is capable of bestowing upon
12 them. See Hardin, 779 F.2d at 479. Thus to the extent that
13 Tyonek, acting in its section 16 sovereign governmental
14 capacity, possessed the authority to exclude nonmembers of
15 the Village from its "Family Plan" housing, and to the extent
16 that Tyonek officers, who have been named in this action,
17 did not exceed the scope of their delegated authority, those
18 officers have derivative immunity from suit in their actions
19 to enforce Tribal Ordinance 65-32.

20 There is no basis in the record for a conclusion
21 that the four Tyonek officers acted beyond the scope of
22 their delegated authority in their attempts to enforce the
23 ordinance. Their actions consisted of letter writing,
24 circulating petitions, engaging in public criticism of the
25 Pucketts and the Slawsons, attempting to terminate the

1 leases of the respondents, and, finally, in initiating
2 this lawsuit. Although the Pucketts and the Slawsons have
3 alleged in their pleadings that certain acts of vandalism
4 occurred to their property, there is no evidence in the
5 record or even any express allegation that any of the four
6 third-party defendants was personally responsible for these
7 acts. I conclude that the Tyonek officers did not act
8 beyond the scope of their delegated authority as elected
9 representatives of Tyonek's section 16 government entity.

10 Whether Tyonek's officials possess derivative
11 immunity from suit centers around a single question: Did
12 Tyonek, acting in its section 16, governmental capacity,
13 have authority to exclude non-members of the Village from
14 its "Family Plan" housing? I conclude that it did.

15 The record indicates the "Family Plan" houses were
16 constructed with funds that the Village obtained from oil
17 and gas leasing in part of the Moquawakie Reservation during
18 the 1960s. The secretary of the Interior issued those
19 leases in 1963 pursuant to his authority under 25 U.S.C.
20 § 398(a), which authorizes oil and gas leasing of unallocated
21 lands within executive order reservations such as the
22 Moquawakie Reservation:

23 Unallotted lands within the limits
24 of any reservation or withdrawal created
25 by Executive Order for Indian purposes
or for the use or occupancy of any
Indians or tribe may be leased for oil

1 and gas mining purposes in accordance
2 with the provisions contained in [25
U.S.C. § 398].

3 25 U.S.C. § 398a: Fondahn v. Native Village of Tyonek, 450
4 F.2d 520, 521 (9th Cir. 1971); Ollestead v. Native Village
5 of Tyonek, 560 P.2d 31, 33 (Alaska 1977).

6 Pursuant to 25 U.S.C. § 398b, the proceeds from
7 the oil and gas leases were held by the federal government
8 in trust "for the use and benefit of the Tyonek Indians,
9 who [were] to be consulted regarding the expenditure of
10 funds." Fondahn, 450 F.2d at 522; Ollestead, 560 P.2d at
11 33. Section 398b provides that:..

12 The proceeds from rentals,
13 royalties, or bonuses of oil and gas
14 leases upon lands within Executive Order
15 Indian reservations or withdrawals shall
16 be deposited in the Treasury of the
17 United States to the credit of the tribe
18 of Indians for whose benefit the
19 reservation or withdrawal was created or
20 who are using and occupying the land,
21 and shall draw interest at the rate of 4
22 per centum per annum and be available
for appropriation by Congress for
expenses in connection with the
supervision of the development and
operation of the oil and gas industry
and for the use and benefit of such
Indians: Provided That said Indians, or
their tribal council, shall be consulted
in regard to the expenditure of such
money, but no per capita payment shall
be made except by act of Congress.

23 25 U.S.C. § 398b. Thus, by the express terms of section
24 398b, the funds obtained from Tyonek's oil and gas leases
25 were held in trust for members of the Village alone. It was

1 completely logical, therefore, for Tyonek to use those funds
2 in 1965 to build housing for Village members only, and to
3 attempt to restrict the extent to which these houses would
4 benefit or be used by non-members of Tyonek. I conclude
5 that a section 16 Indian governmental entity, such as
6 Tyonek, possesses the authority to impose restrictions
7 upon the use of property held in trust for the benefit of
8 its members, and to prevent that property from being
9 alienated or diminished. I conclude that Ordinance 65-32
10 constituted a valid exercise of Tyonek's powers as a
11 section 16 governmental entity, and that the attempts by
12 Tyonek's officers to enforce that ordinance that have been
13 challenged by the Pucketts and the Slawsons in this action
14 did not exceed the scope of Tyonek's sovereign power.

15 Since the third-party defendant officers all were
16 acting in their representative capacities and within the
17 scope of their authority as validly delegated by Tyonek, I
18 conclude that the claims against them are barred by their
19 derivative immunity as officers of the tribe. See Hardin,
20 779 F.2d at 479-80. Therefore, I dismiss the Pucketts' and
21 the Slawsons' third-party claims against Tyonek's officers
22 for lack of subject-matter jurisdiction.

23 That will complete this decision, which, as I
24 have indicated, will be filed with the Clerk, and will
25 constitute the decision in this case.

(

1 I also direct the Clerk, upon the filing of
2 the decision to prepare a final order dismissing the
3 claims of Tyonek and the counterclaims of the respondents
4 and to dismiss the third-party claims against Tyonek's
5 officers. The approval of the final order prepared by the
6 Clerk shall constitute the final judgment in this case.

7 (Court adjourned.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL REPORTER OF THE
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA,
DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, PAGES NUMBERED 1
THROUGH 35 INCLUSIVE, CONSTITUTES A TRUE, FULL AND
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS SUCH
OFFICIAL REPORTER OF THE PROCEEDINGS HEREINBEFORE
AND REDUCED TO TYPEWRITING TO THE BEST OF MY ABIL



JANIS G. RØLLER

MEMORANDUM

Kasayukie
State of Alaska

TO: Ernst Mueller, Commissioner
Department of Environmental
Conservation

DATE: May 11, 1982

FILE NO: 366-654-82

TELEPHONE NO: 365-3600

FROM: WILSON L. CONDON *WLC*
ATTORNEY GENERAL

SUBJECT: Indian Reorganization
Act Councils and Village
Safe Water Projects

By:
Douglas K. Mertz
Assistant Attorney General

You have asked our advice on certain questions raised by representatives of the Indian Reorganization Act Council of the Village of Minto. Specifically you have asked whether and under what conditions the state may contract with or make grants to an IRA council to carry out projects under the Village Safe Water Act, AS 46.07.010 -- 080. That act is a means of funding water and sewer projects in small unincorporated communities and second class cities. A number of the unincorporated communities have IRA councils, which are organizations set up pursuant to the Indian Reorganization Act, 25 USC §476-477. Membership in IRAs is restricted to natives living within the community. In the past there has been some confusion as to whether the state could make grants to or contract with IRA councils or whether a different entity to receive the grant for the community, such as a non-profit corporation, would be required.

The Village Safe Water Act calls for two separate phases to the contract process, the construction phase and the operation phase of the facilities. For the construction of facilities under the Act, AS 46.07.040 permits the department to contract with "public agencies or private non-profit organizations, or otherwise." There is no language in the statute itself which limits the discretion of the department in choosing among these alternatives, and the use of the phrase "or otherwise" makes the department's discretion indeed broad. The only conceptual difficulty we perceive in using the "otherwise" category to include IRA councils, is the fact of the racially exclusive make-up of such organizations. Art. I, sec. 3 of the Alaska Constitution prohibits discrimination on the basis of race or color; this and other constitutional provisions can be read as prohibiting the expenditure of public funds to the benefit of a racially exclusive group. However, we have opined in the past that there is no bar to the use of a restricted organization for delivery of essentially public services so long as that organization agrees to perform the services in a way which is in fact non-discriminatory (see Memorandum of

Advice by Assistant Attorney General Rodger Pegues, April 27, 1981). Thus, as a mere conduit for the delivery of state benefits, we believe an IRA council could properly receive such a contract so long as it agreed to a clear non-discrimination clause which applied to the execution and delivery of all services rendered under the contract.

Another possible difficulty is the fact that some IRA councils have claimed that under federal law they are entitled to sovereign immunity for certain aspects of their functions. As a matter of sound public policy and good sense, the state could not, we believe, contract where the possibility of such a claim existed. Therefore, before a contract were entered into with an IRA council, it would be necessary to have a clear and explicit waiver of sovereign immunity for all purposes connected with that contract. This office would be happy to provide model language for such a waiver.

Under the above conditions, it would be proper for the department to contract with an IRA council for construction of a Village Safe Water facility. We do not mean to imply, however, that the department is under the obligation to do so. From the words of the statute, it is clear that the department has discretion as to which type of grantee it will choose to contract with. We have already had discussions with your department as to developing a policy on this matter, and we see no legal impediment to a policy which permitted contracts with IRA councils if those councils were indeed representative of the community as a whole, but which declined IRA participation if a substantial portion of the community considered itself excluded from representation by that council. We would be happy to participate with you further in development of such a policy.

The second, and more difficult, question involves the proper entity for operation of the facility once it is completed. Under AS 46.07.050, it is the responsibility of the village "governing body" to operate the facility. Under subsection (c) of that section, the commissioner may "when necessary" require the creation of a non-profit corporation for that purpose. And in any case, when an unincorporated community becomes incorporated under state law, whatever entity is operating the facility is then obligated to turn over its powers and duties to the new municipal corporation. The statute does not define "governing body," so the initial question is whether an IRA council fits within that category and is therefore eligible to contract with the state for operation of the facility. Since AS 46.07.050(c) hypothesizes a situation where the "governing body" would turn over the facilities to a newly-created municipal incorporation,

then clearly "governing body" was intended to encompass more than state-chartered municipalities. However, we can find no record of any consideration by the legislature of whether IRA councils would qualify. There is no doubt that in certain communities, an IRA council may, in fact, perform functions which to some degree parallel those usually performed by a regularly-constituted local government. In other communities, an IRA council may be much more limited in its activities and may, in fact, coexist with other bodies which arguably fit within the definition of "governing body". Thus, if IRA councils were always to be considered "governing bodies" within the meaning of the Village Safe Water Act, anomalous situations could result in which the council, as representative of part of the community, would in effect compete with other entities representing other portions of the community.

We believe the above difficulties can be resolved by reference to the discretion, embodied in AS 46.07.050(c), of the commissioner to contract with non-profit corporations rather than governing bodies "when necessary." The general intent of the legislature would be fulfilled by a process in which the department made an initial determination of the actual demographic and political situation in the community in order to determine whether any particular entity claiming status as "governing body" truly represented the community as a whole. Thus, as in the analysis suggested above in reference to the construction phase, the department would look toward whether any substantial portion of the community considered itself unrepresented by or excluded by that entity. If so, by definition, that entity would not qualify as the "governing body" of the entire community, and the department would, of necessity, have to find another organization such as a non-profit corporation to operate the facility on behalf of the entire community.

To put it in more concrete terms, the result is that in villages with IRA councils where the population is overwhelmingly native and no other organization but the IRA council performs functions parallel to those of a local government, the IRA council could be said to be, for the limited purposes of the Village Safe Water Act, the defacto "governing body" of that community; and the IRA council would then be eligible for a contract for operation of the facilities. In contrast, in a community where a substantial portion of the population is not eligible for membership in the IRA council or where a substantial portion of the population through some means makes clear that it does not consider the council as representative of themselves, then the council could not be considered the "governing body" of the entire

community and it would not be eligible to hold a contract for operation of the facilities. In the latter situation, creation of a non-profit corporation would be the statutorily-mandated alternative. In either case, at such time as a state-chartered municipality was created, operation of and title to the facilities would have to be turned over to the new municipality.

We do not mean to imply by the above that an IRA council which was found by the department to be the defacto equivalent of a "governing body" would, in the eyes of the state, actually have the status of a self-government. Instead, we merely believe that because an IRA council may, in some instances, perform functions which would be performed by an actual local government if such existed, it is within the intent of the legislature to consider such a council a "governing body" of the community within the limited meaning given to that term by the legislature in AS 46.07.050. And finally we repeat what should be clear, that to qualify as a "governing body" for purposes of receiving state authority to operate the Village Safe Water facilities, the council would once again have to agree to operate the facilities and deliver the services without discrimination and would have to waive whatever sovereign immunity they enjoy.

Please let us know if you have any further questions.

DKM:cdd

MEMORANDUM

State of Alaska

TO: Marty Rutherford, Director
Municipal & Regional Asst. Div.
Dept. of Community &
Regional Affairs

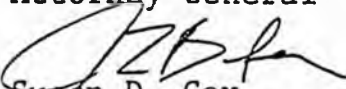
DATE: July 15, 1986

FILE NO.: 663-86-0548

THRU: TELEPHONE NO.: 465-3600

SUBJECT: Transfer of nonprofit
corporation's assets
acquired with unin-
corporated community
aid grant money

FROM: Harold M. Brown
Attorney General

By: 
Susan D. Cox
Assistant Attorney General
Governmental Affairs-Juneau

You have asked us whether a nonprofit corporation formed to receive and spend aid to unincorporated communities under ch. 60, SLA 1981 may, upon dissolution, convey its assets to a Native council. We have concluded that once aid money has been distributed to and spent properly by a qualified corporate entity, neither the community aid legislation nor the department's regulations prohibit a conveyance of the corporation's assets. While we encourage the transfer of assets to another nonprofit corporation, we believe that, under the provisions of the corporations code pertaining to the dissolution of nonprofit corporations, a Native council could receive the assets along with the liabilities of the nonprofit corporation. However, in no event should a transfer be approved unless the recipient agrees to use the assets in a nondiscriminatory way for the benefit of the community and for a public purpose, to waive sovereign immunity with respect to the corporation's liabilities and the operation of the assets, and to transfer capital projects financed under ch. 60, SLA 1981 to a municipality if one is later incorporated.

I. BACKGROUND

When the legislature created the unincorporated community aid program in ch. 60, SLA 1981, it specified that only "an incorporated entity or a federally chartered entity that does not possess sovereign immunity" could receive and spend an unincorporated community's aid entitlement. Sec. 2(c). Where more than one entity from a community qualified, preference was given to a nonprofit corporation organized for receipt of the aid. Id.

The legislature directed that the aid money be spent for social services, capital projects, or operating expenses of capital projects. Sec. 2(d), ch. 60, SLA 1981. Before receiving aid money, a qualified entity was required to submit a resolution adopted by it that identified how the money would be spent under the program, identified each party owning a capital project for which money would be spent or that would be responsible for the

Marty Rutherford, Director
Municipal & Regional Asst. Division
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maintenance and operation of a capital project, and agreed that each capital project for which money would be spent under the program would be operated on a nondiscriminatory basis for the benefit of the public. Sec. 2(e) (emphasis added).

Although the legislature anticipated that nonprofit corporations would be formed to receive and spend the unincorporated community aid, it made no provision in ch. 60, SLA 1981 for the disposition of assets of such corporations upon dissolution. This is problematic because the corporations were expressly authorized to spend the aid money on capital projects (defined as public facilities or equipment that may be necessary to construct, operate or maintain a public facility or service). Capital projects, unlike social services or operating expenses, are tangible assets that continue to exist after the money has been spent. The general question is what should be done with these assets if the nonprofit corporation that paid for them with aid money under the ch. 60 program is dissolved; specifically, you ask whether a Native council, an entity that could not receive or spend the aid money, can nevertheless be the recipient of assets purchased with aid money in a corporate dissolution. */

II. THE COMMUNITY AID PROGRAM

It is clear that a Native council could never have qualified to receive and spend the aid money under ch. 60, SLA 1981, as long as they maintained that they possessed sovereign immunity. See 1982 Inf. Op. Att'y Gen. (July 12; 663-82-0767); 1981 Inf. Op. Att'y Gen. (Oct. 2; J66-0192-82). However, the unincorporated community aid program legislation is silent on the subject of whether such a council can later assume control of property purchased by a community nonprofit corporation with aid dollars. The only limitation of any kind on ownership of capital projects is found in a program regulation, 19 AAC 44.045(d), which provides

*/ The situation before you involves the Black River Corporation in the village of Chalkyitsik. The corporation received \$83,491.45 before it was involuntarily dissolved April 15, 1986 for failure to file a required biennial report with the commissioner of commerce and economic development. We understand the Tanana Chiefs Conference has proposed on behalf of the corporation that the corporate assets, but not the liabilities, be transferred to the Native council of Chalkyitsik. The corporation will not be receiving any further aid payments because it is not in good standing and the program ended June 30, 1986.

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Municipal & Regional Asst. Division
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(d) Before receiving a grant from the unincorporated community aid account, the entity must agree in writing to transfer ownership of capital projects financed under this chapter to the municipal government if the community incorporates as a city under AS 29.18.

This limitation is reflected in the boilerplate of your grant agreements, in Article 19 of Attachment A. In the instant situation, however, no municipality has been formed and the capital project financed by the aid program has remained in the control of the local nonprofit corporation, which is now involuntarily dissolved.

Your regulations appear to contemplate an end to departmental oversight over the use of aid money upon complete expenditure of a community's aid entitlement and submission of a final financial report. 19 AAC 44.085. While the department is obligated to pay the aid only to a qualified entity and to see that the money is spent in accordance with the regulations and the entity's resolution, neither the legislation nor the regulations direct the department to manage ongoing use of the facilities or equipment once purchased. Consequently, unless there is relevant language in your grant agreements of which we are unaware, we conclude that disposition of these assets by a nonprofit corporation upon dissolution is generally controlled by AS 10.20.290 -- 10.20.452, subject to a few specific conditions.

III. THE CORPORATIONS CODE

The law governing formation, operation, and dissolution of nonprofit corporations is found in the corporations code, AS 10.20. Article 5, specifically AS 10.20.290 -- 10.20.452, covers dissolution. The law clearly provides a procedure for distributing the assets of a nonprofit corporation in the process of dissolution. First, all liabilities and obligations of the corporation must be paid and discharged, or adequate provision for them must otherwise be made. AS 10.20.295(1). This requires the corporation to take care of all liabilities and obligations before transferring any assets, or to make some other provision (such as having the transferee assume the liabilities with the assets). Second, in the case where some condition requires return, transfer, or conveyance of assets in the event of dissolution, the assets must be returned, transferred, or conveyed accordingly. AS 10.20.295(2). Because there is no express language governing transfer of corporate assets in the program's legislation, regulations, or grant agreements, we do not believe this section mandates any specific transfer, to the state or to any other party, upon dissolution.

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Third, and most significantly,

The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

....

(3) assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, under a plan of distribution adopted as provided in this chapter;

AS 10.20.295(3) (emphasis added). In this case, the assets were received and held by the corporation subject to the legislative limitation that they be operated on a nondiscriminatory basis for the benefit of the public. Sec. 2(e), ch. 60, SLA 1981. Similarly, the grant agreement required that expenditure of the aid money be for a public purpose. For these reasons, the capital project funded by aid money can only be transferred or conveyed by the corporation "to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation." AS 10.-20.295(3).

We would encourage transfer to another Alaskan nonprofit corporation, although we believe that a Native council can qualify to receive assets under the definition above. However, in no event should the transfer of assets to a Native council be allowed without a waiver of sovereign immunity with respect to the operation of those assets. The waiver must be broad enough to protect the rights of any creditors of the dissolved corporation. Additionally, any successor in interest to the nonprofit corporation is bound to operate or use those assets on a nondiscriminatory basis for the benefit of the public and for a public purpose. Finally, the transferee must agree to transfer any capital projects financed under the ch. 60 program to a municipality if one is later incorporated. We will ask the Department of Commerce and Economic Development to confer with you upon receipt of

Marty Rutherford, Director
Municipal & Regional Asst. Division
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a plan of distribution for the corporation at issue to verify that these conditions are met.

In closing, we make several final observations. A dissolved corporation that owns real or personal property continues to exist through its board of directors for five years after the date of dissolution for the purpose of conveying, transferring, or releasing the real or personal property. AS 10.20.452. Additionally, a dissolved corporation continues to exist through its board of directors for the purpose of being made a party in any action or proceeding arising before dissolution and involving the title to real or personal property. Id. In no case would a transfer of assets be legal without first making some provision for liabilities in a plan of distribution. AS 10.20.295(1). If the dissolving corporation does not submit a plan of distribution to the commissioner of commerce and economic development, the assets will eventually escheat to the state. AS 38.95.200(b), sec. 12, ch. 133, SLA 1986.

We hope this helps you in dealing with future dissolutions of nonprofit community corporations, whether voluntary or involuntary.

SDC/pjg

cc: Willis Kirkpatrick, Director
Div. of Banking, Securities & Corporations
Dept of Commerce & Economic Development

Jeff Bush, Assistant Attorney General
Dept of Law - Commercial Section

Doug Mertz, Assistant Attorney General
Dept of Law - Natural Resources Section

February 17, 1987

Honorable Arliss Sturgulewski
Chair, Community & Regional
Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: SB 50; dissolution of a municipality

Dear Senator Sturgulewski:

You have requested our opinion on several questions regarding sec. 2 of SB 50. The questions will be answered individually below.

1. Are there statutory or constitutional problems with the distribution of public assets to a group which may limit the decision making process on how those assets are used to only members of the group, or to some portion of the population of the former municipality less than all the registered voters?

The basic constitutional problem in this section arises because it would have public assets of a dissolved municipality distributed to nonpublic entities, i.e., private nonprofit corporations and Native councils organized under the Indian Reorganization Act. Article IX, sec. 6 of the Alaska Constitution says, "No ... public property shall be transferred, ... except for a public purpose." Article X, sec. 2 requires all local government power to be vested in cities and boroughs. Both private corporations and IRA councils (whose membership is restricted by federal law to Natives) are not elected by or responsible to the entire electorate. We believe it would be unconstitutional to transfer public assets to private organizations which may not serve as substitute local governments under the Alaska Constitution, and to allow those organizations to make discretionary decisions about assets which belong to the entire population of the dissolved municipality. The concern here is responsibility to the entire population of the former municipality, not just to registered voters.

However, occasionally a local nonprofit or Native council may be in the best position to administer local assets, par-

Hon. Arliss Sturgulewski, Chair
Community & Regional Affairs Committee
Alaska State Legislature

February 17, 1987
Page #2
Re: SB 50, dissolution

ticularly when it has broad support from the community. In such cases, it may be possible to accomplish almost the same and despite the restrictions noted above, through the device of retaining title to the assets -- and ultimate control -- in the state, but contracting with a local organization to administer assets. Such delegations must be subject to strict controls to insure public access to facilities and state oversight, and truly discretionary governmental authority may not be delegated. But, day-to-day operation of the former municipality's assets may be turned over to a local private entity. We believe this can be accomplished under present law.

2. Are there statutory or constitutional problems with the distribution of public assets to a group which may expand the decision making process on how those assets are used to include members of the group who are not registered voters?

Please see the answer to question 1.

3. Does the Local Boundary Commission (LBC) have the power to place binding conditions on the assignment of assets and the provision of services?

Yes. The powers and duties of the LBC are listed in AS 44.47.567. Furthermore, sec. 2 of SB 50 gives the LBC the specific power needed to provide for the distribution of assets and liabilities upon dissolution of a municipality.

We hope this memorandum adequately addresses your concerns. Please do not hesitate to contact this office if you have further questions.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:
Marjorie L. Odland
Assistant Attorney General

MLO/pjg

cc: Hon. David Hoffman, Commissioner
Department of Community &
Regional Affairs

February 1987

Dan Bockhorst
Div. of Municipal & Reg. Assistance
Dept. of Community & Regional Affairs
Anchorage, Alaska 99508
949 East. 36th Ave. Suite 404

Unorganized Borough
POB 19
Aleknagikm Alaska
99555

Dan Bockhorst:

We the people of the Unorganized Borough including the 40 square mile area northwest of the City of Dillingham Petition our Unorganized Borough Assembly to be called into session..

On April 24, 1986 the City Council of the City of Dillingham passed a resolution authorizing the filing of a petition for annexation of 918.25 square miles of territory under the provisions of 29.06.040(b). On May 1, 1986, the Department of Community of Regional Affairs received the authorized petition. Under 19 AAC 10.530, the City published notice of the filing of its petition on June 27 and July 4, 1986, in the Bristol Bay Times but not in commonly understood terms and during time when most people were fishing or cut off from the City of Dillingham by heavy rains and the resulting marshy conditions. Most of the people outside of the City of Dillingham and many of those city residents never to this day have seen the map published at that time and those who did found it confusing and misleading in that it was fuzzy and titled Existing & Proposed Boundary but with no clarity as to where the existing boundaries were nor any listing of territory covered by the proposal.

On April 23, 1986, the City of Clark's Point submitted a petition for annexation of area included within the territory proposed for annexation by the City of Dillingham. The State of Alaska Department of Community and Regional Affairs received this petition and passed it on to the Local Boundary Commission.

Opposition to the City of Dillingham's proposal lined up:

- May 25: Saguyak Incorporated (Clark's Point Native Corporation)
- June 12: Choggiung Limited (Dillingham Native Corporation)
(objecting to certain points. What these points are, may only now, in February 1987, be coming to the surface)
- July 24: Secretary for the City council of Manokotak

On October 4, 1986, a public hearing was conducted by the Local Boundary Commission in Dillingham and one in Clark's Point. There does not appear to have been an attempt to contact property owners in the areas of annexation before these hearings, at least not in the area proposed to be annexed. Many people were totally ignorant of fact that they had been included and even upon hearing of the hearings though they were for Clark's Point residents and Dillingham residents only. The attitude was one of "Gee, I hope these two cities work out their differences."

After the public hearings, rumors were that the City of Dillingham had left out Warehouse Mountain Remote Parcel/Open to Entry State Land.

At this point it became apparent that the submission of competing annexation requests was motivated by the desire of Dillingham and Clark's Point to obtain the revenue generated by raw fish taxes. This would be available to them only through annexation of at least a portion of Nushagak Bay. In order to justify reaching out that far as a city, Dillingham had to take into it's boundaries what was in between to make it contiguous territory to its boundaries. (19 AAC 10.070(1))

The Local Boundary Commission told the two cities to compromise and revise their boundary requests with how they could share revenues and municipal services. October 24th, the two cities met with the Department of Community and Regional Affairs, but even with help they could not come to a resolution of their conflicts.

By now it was November. After the meetings with Clark's Point the City of Dillingham City Council Members passed Resolution #86-66 requesting the Local Boundary Commission to judge the competing annexation petitions on their own merits.

It is difficult to say how many people actually ever saw the petitions to evaluate their accuracy as to facts.

Questions arose raising concerns of a regional nature:

- November 3: The Bristol Bay Native Corporation (the regional corporation) raises issues.
- November 4: 70 landowners submitted a petition in opposition Department of Community and Regional Affairs
- November 21: John Pearson, City Council Member in the City of Dillingham representing himself submitted a letter rebutting the arguments against annexation presented by Marie Luckhurst and the 70 landowners petitioners
- November 21: William P. Johnson's letter arrived in the Department of Community and Regional Affairs questioning the revised western boundaries of the annexation area. It noted that "the City Council pulled back the boundaries sufficiently to exclude all City Council and immediate family members who staked land within the State Open to Entry Area."

Right after this, the Alaska Attorney General's office was requested to provide advice on how the Local Boundary Commission should handle two proposals for annexation where the proposals overlap in the area to be annexed.

On November 13th, the Attorney General advised the Department of Community and Regional Affairs that the common law doctrine of "prior jurisdiction" should be applied in this instance. This meant the Local Boundary Commission should act on Clark Point's petition first and on November 22nd they did and then acted upon the proposed annexation request from the City of Dillingham.

By December most people did not know what was going on with the

proposed boundaries for annexation. The only two year round residents of the Warehouse Mountain Remote Parcel/Open to Entry Land (Township 12 South, Range 56 West, Seward Meridian, Alaska/Warehouse Mountain Remote Parcel Area 9051/Open to Entry Land) received rumors that they "may have been left in the boundaries" and Roslyn Gallagher went to the City Manager's office and asked the secretary "Are we in the boundaries?" The secretary said, "I don't believe so." There in the in/out box was the map so Roslyn made a copy and took it home where her husband Gary Gallagher compared it to the survey map. Even then it was difficult to be sure because the map was so small, that was used to send in on the proposed boundaries, and there was no mention of the Warehouse Mountain area in terms the Gallaghers could understand. This was the day before the revised boundaries went to the Local Boundary Commission.

Almost immediately after this the Gallaghers learned, also, from rumor that Council had pushed back boundaries to exclude Council members and immediate members of their families who staked land within the Open to Entry Land. The Gallaghers and other members of Dillingham and the adjacent communities and areas were offended that this had taken place and considered this behavior unworthy of those who hold public office. They also felt that the Warehouse Mountain area is rural and separating part of it into city boundaries was not warranted.

In January, Gary Gallagher went to Anchorage where he met with Tom Hawkins, a Land Manager. Hawkins referred him to Dan Bockhorst, Supervisor of Grants Administration Section/Local Boundary Commission Staff, Department of Community and Regional Affairs, Municipal and Regional Assistance Division. Dan Bockhorst sent Gary a copy of a page from the government municipal code which reads as follows:

Sec. 29.45.580. Differential tax zones. A city may by ordinance establish, alter, and abolish differential tax zones to provide and levy property taxes for services not provided generally in the city or a different level of service than that provided generally in the city. (12 ch 74 SLA 1985)

Dan Bockhorst also sent the Gallaghers a copy of the Statement of Decision for Annexation of Territory to the City of Dillingham that by then had already gone to the State Legislature. It had a date of December 10, 1986 on it and was signed by Alaska Local Boundary Commission Robert Eder, Chairman and attested to by Staff Member Gene Ksni (spelling is hand written and unclear).

Mr. & Mrs. Gallagher live in Warehouse Mountain, an area that begins about three miles from the present boundaries of the City of Dillingham and is marshy tundra with occasional outcroppings of high spruce covered ground capable of sustaining human settlement. The area is commonly called Warehouse Mountain and appears as Warehouse Mountain on National and State maps. The Gallaghers are the only year round settlers in the Warehouse Mountain area. They travel the 4 3/4 miles from the Aleknagik Lake Road by three-wheeler, snow machine or on foot. There is only a short road through Choggiung Native Corporation land and most of the year, this road is impassable. The land after this road drops down hill where the Gallaghers travel across marshy tundra and open springs, forced to follow a different route than that planned by the designers of the "Warehouse Mountain Paper Road." (referred to herein as "paper road" because that is where

' it will probably stay "on paper in a State engineer's office.") There are places where the road is planned over areas where the bottom drops out. Local contractors who are familiar with the cost of filling holes with gravel in the building of roads estimate that to build the planned road could cost as much or more than 3.5 million dollars.

The Gallaghers by February were reading the State Constitution, the State Statutes and the State Administrative Codes trying to figure out how to remedy what had happened.

It was obvious to them, upon reading the Conclusions of Law and the Findings of Fact of the Alaska Local Boundary Commission, that the case for annexation of the approximate 40 square mile area northwest of the City of Dillingham that included part of the Warehouse Mountain Remote Parcel/Open to Entry Land was falsely represented.

The boundary also includes land that extends Dillinghams boundaries to include a remote area of Wood River. There is a small settlement of homes in the area. These people are also opposed to the annexation. They have had their homes in the area for years and do not feel the City can extend services to them without access to the area by roads. They also must get to their homes by three-wheelers, snow machines, (or skiffs, summer only).

The land the City identifies as developed land immediately adjacent to the Aleknagik Lake Road has also, been included. Those residents that bought property in the 4 subdivisions known as Ahklun View Estates, Ahklun View Estates North, Ahklun Sub-division III and Lars D. Nelson Subdivision, were aware of the fact that their Lots were outside City Limits. These people bought property "Out the Road" to get away from the City Limits and were told by Choggiung at the time that they would be informed if the City planned to annex them and that it would go to a vote of the affected people. These people were not personally informed of the City's plans to annex them. Services out the road are last on the list because the City small maintenance crew has priority to take care of City Streets.

CRITIQUE OF FINDINGS OF FACT:

Item 10, "The annexing city has demonstrated that it is capable of and willing to extend full municipal services to the identified 40 square mile area northwest of the City of Dillingham in immediately upon annexation." The Gallaghers find it morally repugnant to see others endure hardship in the City of Dillingham in order to provide the cost of gravel to fill up the bog to make a road for them so that they may enjoy municipal services. But, they say, "We are not going to be "in" a "City" and expect less.

At a recent City Council Meeting, Gary Gallaher challenged Mary Darling, City Council Member, to get a fire truck and he'd borrow a set of checkered flags to start her off just to see how long it would take her to get into his cabin at Warehouse Mountain.

Two days later someone tried to drive some kind of a truck in

and make it, only six feet or so from the Aleknagik Lake Road before they were stuck. Whoever it was broke down a large spruce tree to the base, using it and a winch to get pulled out. the City Council may be willing to provide services out there but that willingness on paper does not make them capable.

Item 14. "Using of a method other than legislative review for annexation of the identified 40 square mile area northwest of the City of Dillingham would have been in appropriate." In this item, the report indicates 'There is no indications they want to do so, or will do so' when mentioning the option the Local Boundary Commission has in Place: LOCAL ACTION/ELECTION. Even though the decision may not rest with the people of the area to be annexed, the people have the right to know and the right to representation.

The people of the State of Alaska when delegating authority, do not in doing so give their agencies the right to decide what is good for people to know and what is not good for them to know.

It is the policy of the State of Alaska to encourage settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest. (State Constitution, Article VIII, Section 1)

The Gallaghers plan a small scale farm on their little five acre ridge but so far have been unable to get their garden to grow. They are not clear now that they can go on with their development plans and are puzzled that the Department of Natural Resources was not involved in the decision making process since most of the land is presently subject to this agency's protection.

A local boundary commission or board shall be established by law in the executive branch of the state government...The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action. (State Constitution, Article X, Section 12)

Neither year round residents nor land owners were informed regarding the changes in boundaries nor were they informed regarding the options they could exercise according to the procedures established by the Boundary Commission itself.

Because the people of the approximate 40 square mile area northwest of the City of Dillingham have been mis-represented either to or by the Boundary Commission and have not been privy to full disclosure of matters affecting service delivery and economic development of natural resources, we believe we have a right to democratic representation from a regional form of government which might better serve us than a city government.

The Legislature shall provide for the performance of services it deems necessary or advisable in unorganized borough, allowing for maximum local participation and

responsibility. The legislature may also exercise any power or function in any unorganized borough which the assembly may exercise in an organized borough.
(State Constitution, Article X, Section 6)

We the people call our unorganized borough into session.

As proud members of the State of Alaska we want nothing less than responsible democracy.

February 4, 1987, Roslyn Gallagher sent the following telexed message to each legislature, representative and each committee:

SUBJECT: Unorganized Borough Assembly

Annexation 40 Square Mile area Northwest of Dillingham Warehouse Mountain Open to Entry Remote Parcel Area 9051 Local Boundary Commission Facts item 1, 10 and 14 mis-represented. We call our unorganized borough assembly (State legislature) into session (Constitution Article X, Section 6, Section 12, Article VIII, Section 1)

February 5, 1987, Thomas Tilden, P.O.Box 786, Dillingham-- signed the petition being circulated against the City of Dillingham's proposed annexation. This is significant in that Tilden is one of Dillingham's City Council Members and he is one who has actually traveled into the territory proposed for annexation, into Warehouse Mountain in the area of the Gallagher area 5 acres, and Wood River Remote area.

February 6, 1987 an article appeared in the Bristol Bay Times, on page 3 under petition Drive "The commission denied both cities claims to the water, but gave Dillingham the 40 square miles of land including 9 square miles of the Open to Entry Land the City never asked for."

February 9, 1987, Marie Luckhurst sent the following telex;

SUBJECT: proposed Annexation by the City of Dillingham

To our Senators and Representatives-matter of annexation of City of Dillingham -Request you to support and present our personal letters, Petition by landowners and petition to the State Legislature. (in-route) during final decision by the Legislature on Feb 20, 1987.

Letters and landowners petition sent to Herrman-Petition to Legislature in-route Herrman, Sturgelewski, Zaroff, Springer.

We believe the City Council of Dillingham is not acting responsibly in their decision to annex the identified 40 square mile area northwest of the City of Dillingham. The enclosed petition supports the beliefs of the citizens of Dillingham and the area residents who will be affected. A whole community is being affected by the few City Council Members decision.

We hope you will Consider the evidence and truths.

Written and Signed "by the people" and make your decision to Disapprove the Petition for Annexation of territory to the City of Dillingham known as "the identified area 40 square miles northwest of the City of Dillingham.;"

Gary Gallagher
Marie Luckhurst

CLERKS, UNORGANIZED BOROUGH

PEOPLE'S COLUMN

City manager writes on annexation

The proposed land area to be annexed to the City of Dillingham may become official by March, 1987. The recent Local Boundary Commission decision to approve the annexation of approximately forty square miles of land area will now be forwarded to the Alaska Legislature for final authorization during this session.

What does this mean for the residents and property owners within the annexed area? Municipal services including police, fire, and emergency medical will be provided to this area. The residents will also be included within the Dillingham School District. Residents will continue to have access to the existing "downtown" facilities including the library/museum, dock, harbor and the streets and sidewalks.

What will this cost me? It takes money to provide services and operate and maintain facilities. The City of Dillingham property tax provides revenues to defer some of these costs.

Property owners within the annexed area will have the city-wide 3 mill tax levy ap-

plied to their properties, too. However, specific exemptions apply such as Native allotments, which are not taxed.

Based on the existing mill rated, an owner of a \$100,000 house (including land) would have an annual property tax bill of \$300. This 3 mill rate is among the lowest in the state at this time. Also, the eligible properties will not be taxable until the 1988 tax year.

Will all of the existing city laws and regulations apply to the annexed area? The Dillingham Municipal Code applies to the entire city. However, the City Council does have the authority to amend the existing code and will undertake a review of the code as it applies to the annexation area.

Comments or questions can be directed to City Hall (842-5211) or the City Council members.

by Jeff Labahn
Dillingham City Manager

Unorganized Borough Proclamation to our Proclaimed 1987 Feb/8 SouthWest Region/Alaska in the interest of the general good.

Citizens do make this solemn proclamation that there be no passing into law of the annexation of the approximate forty square miles northwest of the City of Dillingham without there first being a meeting of the Assembly of the Unorganized Borough Representative Warehouse Mountain Open to Entry Land Remote Parcel Area 9051 Wood River Hanson Point, the Cities ~~of Dillingham and Dillingham~~ and Dillingham, and all other areas of disputed boundaries within the approximate 40 square miles northwest of the City of Dillingham and the approximate 9.8 miles disputed between the two cities and any other territories the State Legislature deems appropriate to be included acting in the public interest.

The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. (State of Alaska Constitution, Article X, Section 6)

WHEREAS; The legislature may also exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough; (State of Alaska Constitution, Article X, Section 6)

WHEREAS; The people of Alaska do not lose their sovereignty by legislative authority to an agency of the government and in delegating authority do not in so doing give their agencies the right to decide what is good for people to know and what is not good for them to know;

a local boundary commission or board shall be established by law in the executive branch of the state government (State of Alaska Constitution, Article X, Section 12)

WHEREAS; The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action;

WHEREAS; The local boundary commission did not make option local action/election available and yet had established such procedures;

WHEREAS; The people of the approximate 40 square miles northwest of Dillingham have been mis-represented either by city government to state agency or by a state agency to the state legislature and have not been privy to full disclosure of matters affecting service delivery and development.

We the people of the Unorganized Borough believe our problems of service delivery, revenue enhancement, public health and welfare threats, and management of development might better be served were we to have representation in a regional government than a city government.

Attn: Dan Bockhorst

PETITION TO THE STATE LEGISLATURE

Please copy and distribute to Com. Members.

Thank You.

We the undersigned, petition the Legislature to disapprove the Proposal by the City of Dillingham to annex land that will extend Dillinghams boundaries 11 1/2 miles on the Aleknagik Lake Road, up Wood River to include the State Land Disposal area south of Belt Creek to the North-west to include State Open to Entry (OTE) land from 11 mile to Warehouse Mountain.

This land includes parcels that are remote and without access to roads. The City does not intend to provide roads to the area but does plan to collect property taxes from the property owners. The City would be obliged to provide equal services to all land owners but cannot possibly expect to provide Police, Fire, EMT, and School Busing to these remote areas.

We are also concerned about the City's ordinance that bans the discharge of firearms within the City limits. The area has traditionally been used by local hunters and trappers and would adversely affect the right of the traditional use of the land for that purpose.

Dillingham has plenty of land to grow within the existing city limits. We believe adding the proposed land to the city boundary will only cost the city more money and could eventually end up costing the taxpayer more in increased taxes to pay for added services to the remote areas to be annexed.

PLEASE PRINT NAME

WRITTEN SIGNATURE

ADDRESS

Richard G. Tubbs Richard G. Tubbs Box 848 Dillingham AK 99576

Phillip C. Charley, Jr. Phillip C. Charley, Jr. Box 861 Dillingham AK 99576

Arlene J. Hambley Arlene J. Hambley Box 903 Dillingham, AK. 99576

Leon L. Kanan Leon L. Kanan P.O. Box 1250 DILLINGHAM

Rhonda McLeod Rhonda McLeod Box 961 Dillingham 99576

Shirley Marshall Shirley Marshall Box 501 Dillingham, AK

Valerie Sittles Valerie Sittles Box 783 Dillingham, Ak.

Lorna L. Sisco LORNA L SISO Box 15 Dillingham

Kathy Johnson Kathy Johnson Box 865 Dillingham

PETITION TO THE STATE LEGISLATURE

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PLEASE PRINT NAME

WRITTEN SIGNATURE

ADDRESS

PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
JAN R ALEXANDER	<i>[Signature]</i>	P.O. Box 690 Dillingham, AK
John B FLYNN	<i>[Signature]</i>	P.O. Box 1550 Dillingham, AK
Alan K Johnson	ALAN K JOHNSON	P.O. Box 352 Dillingham, AK
Suegan Nielsen	SUEGAN NIELSEN	Box 103 Dillingham, AK
Alice Ruby	Alice Ruby	Box 121 Dillingham, AK
Kathleen Anderson	KATHLEEN ANDERSON	Box 1530 Dillingham, AK
Shirley Schreeder	Shirley Schreeder	Box 116 Dillingham, AK
Lawrence F. Curtis	<i>[Signature]</i>	Box 796 Dillingham, AK
Joe Scandera	JOE SCANDERA	Box 133 Dillingham, AK
Bessie A. Wahl	BESSIE A. WAHL	Box 44 Dillingham, AK
Katie M. Andersen	KATIE M. ANDERSEN	Box 125 Dillingham, AK
Eina Martiniuk	EINA MARTINIUK	Box 886 Dillingham, AK
Jeri Nelson	JERI NELSON	Box 636 Dillingham, AK
<i>[Signature]</i>	<i>[Signature]</i>	Box 386 Dillingham, AK

Petition to State Legislature Regarding Dillingham Land Annexation Proposal.

PLEASE PRINT NAME

WRITTEN SIGNATURE

ADDRESS

Frank S. ...
John ...
P.O. Box 355

Schools before police; city spends too much

I read with dismay, in your Feb. 6 issue, of the proposed doubling of our property tax to pay for a shortfall in the school budget. Before any consideration is given to raising taxes, let's look at an area where existing monies may be available.

Presently we have approximately \$800,000 in the Public Safety budget. I feel this should be cut in half and contribute \$400,000 to the school budget. In 1974-1975 when I was serving as mayor, we had a public safety budget of approximately \$50,000 — and a population of about 1600. In slightly over ten years our population increased by about 500 while our Public Safety budget increased by \$750,000.

Do we need that much Public Safety? I think not. The national average of police officers is approximately 1.5 officers per 1000 people. The City of Dillingham has about 5 per 1000, double the national

average. It seems to me are buying new police cars every year, and I saw an officer with a radar gun! Is this really needed?

Before the city raises our taxes they should and must look at this and other options. Or will the Public Safety ask for more money to patrol the 40 square miles of annexed land?

I am against the annexation, by the way.

Freeman Roberts
Dillingham

[As one of the 500 who washed up on the beach after Freeman's term as mayor, I apologise to all concerned for my part in making the city such a tough place to live that the council had to multiply the police budget so outrageously. A point of clarification, however: state bureaucrats, not local school officials, are the authors of the tax proposal headlined last week, which tax we'll have our legislators to thank for if it's approved. — Ed.]

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PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
ARLEN E. RUBY	<i>Arlen E Ruby</i>	Box 121 DILLINGHAM, AK
BARBARA S. LOUW	<i>Barbara Louw</i>	Box 64 Dillingham, Alaska
Freeman A. Roberts	<i>Freeman A Roberts</i>	Box 252 Dillingham AK
Carole R. McMurray	<i>Carole R. McMurray</i>	Box 794, Dillingham, AK
Janice K. McCartney	<i>Janice K McCartney</i>	Box 566 Dillingham, AK
MATTHIAS M. O'CONNOR	<i>Matthias M O'Connell</i>	Box 331 DLG, AK 99576
Charles Arns	<i>C Arns</i>	Box 1609 DLG
Emily M. ROBERTS	<i>Emily M. Roberts</i>	Box 252 DLG AK 99576
ROGER S. SCHUYLER	<i>Roger S Schuyler</i>	Box 676 DLG 99576
JAMES L. FOLBORN, SR.	<i>James L Folborn Sr</i>	Box 444 DLG 99576
John Mulholland	<i>John Mulholland</i>	Box 76 - 99576
WILLIAM O'CONNOR	<i>William O'Connell</i>	Box 133 Dillingham 99576
JAMES L. O'CONNOR	<i>James L O'Connell</i>	Box 65 Dillingham AK 99576

Petition to State Legislature Regarding Dillingham Land Annexation Proposal.

PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
George Andrew	George Andrew	Box 197 Dlg. AK.
Mike merlino	Mike Merlino	Box 306 DLG AK
John Owens	John Owens	Box 894. DLG, AK
NEIS G JOHNSON	Neis G Johnson	Box 197 DLG, AK
Charles E Wattier	Charles E Wattier	Box 784 DLG AK
Robert Rossi	Robert Rossi	P.O. 151 Dlg AK
Dennis Olson	Dennis L Olson	Box 537 Dlg AK
Emily Olson	Emily Olson	Box 537 Dlg AK
Scott J. White	Scott J White	Box 326 DLG- AK.
ANTHONY REX GWYTHER	Anthony Rex Gwyther	Box 728 DLG- AK.
Ira Katchak	Ira Katchak	Box 473 Dlg AK
Maureen L wentz	Maureen Wentz	Box 286 Dlg
CM KEESOM	CM Keesom	Box 453 Dlg
Chris Carby	Chris Carby	Box 653 DLG
Jean K Schlosser	Jean K Schlosser	Box 123
Karen Smeaton	Karen Smeaton	Box 768
Rose M Heyano	Rose Heyano	Box 1409 DLG, AK 99576
Sandra E. Nelson	Sandra E Nelson	Box 477 Dlg. AK.
Bob Pritchard	Bob Pritchard	Box 1249 Dlg AK
Jean Pritchard	Jean Pritchard	Box 1249 DLG, AK.
Sharon M. Bloniarz	Sharon M. Bloniarz	Box 352 DLG, AK
LEE FLYNN	Lee Flynn	Box 1530
James L Johnson Sr	James L Johnson Sr	Box 144 Dlg
Mike VanVeenburg	MIKE VANVEENBURG	P.O. Box 1064
LINDA C Hilders	Linda Charles	Box 10 - DLG
Anna Marie Akelkole	Anna Marie Akelkole	Box 644 Dlg.
Della Clark	Della Clark	Box 184 Dlg. AK. 99576

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PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
Mike Taghara	<i>[Signature]</i>	Box 122 Dlg.
Karen Smeaton	<i>[Signature]</i>	Box 768
Alvin Gordon	<i>[Signature]</i>	Box 331
Emily L. Olsen	<i>[Signature]</i>	Box 537
Carol Shade	<i>[Signature]</i>	Box 871
Karen Corty	<i>[Signature]</i>	Box 653
Nannie M. Jordan	<i>[Signature]</i>	Box 142 Dlg.
Ernie W. Silset	<i>[Signature]</i>	Box 1449 Dlg.
Hilda M. Shade	<i>[Signature]</i>	Box 765 Dlg.
Theresa A. Mueh	<i>[Signature]</i>	Box 481 Dlg.
Alexandra Backford	<i>[Signature]</i>	P.O. Box, Dlg.
Mary F. Havel	<i>[Signature]</i>	Box 104 Dlg.
Jeanne M. Luvina	<i>[Signature]</i>	Box 866 Dlg.

Petition to State Legislature Regarding Dillingham Land Annexation Proposal.

PLEASE PRINT NAME

WRITTEN SIGNATURE

ADDRESS

PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
Carl E. Gleditsch	Carl E. Gleditsch	Box 10026 DLG
Dorothy M. Fleck	Dorothy M. Fleck	Box 43 DLG 99576
Michael Sognmoen	Michael Sognmoen	Box 437 DLG, AK 99576
Bill Linn	Bill Linn	Box 271 DLG, AK 99576
Anuska Olson	Anuska Olson	Box 456
Wanda Fulton	Wanda Fulton	Box 522, DLG
June Ingram	JUNE INGRAM	Box 851 DLG
Roxanne Christensen	Roxanne Christensen	Box 371 DLG
Raymond Christensen	Raymond Christensen	Box 371 DLG
Frank Monty O'Connor	Frank Monty O'Connor	Box 312 DLG

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PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
Gail Kurtz	Gail Kurtz	Box 416 Dlg. AK
John R. Kurtz	John R. Kurtz	Box 416 Dlg AK
Teresa Flensburg	Teresa Flensburg	Box 77 Dlg. Ak.
PAUL KROFOVA	Paul Krofova	BOX 10155 DLG AK
MARK JOHNSON	Mark Johnson	" 628 " "
Dale Huffman	Dale Huffman	Box 394 Dlg
Wayne F. Schroeder	Wayne F. Schroeder	Box 126 Dlg 99526
Sam Ah	SAM AHKINS	Box 425 DLG 995
Sassa A. Dunn	SASSA DUNN	Box 778-Dlg. AK
Norman Johnson	Norman Johnson	Box 865 Dlg. AK
Gust Bachtel	(Box 806) Gust Bachtel	Dillingham, AK 99523
M R Kauter	Box 803	DILLINGHAM AK
George L. Nelson II	George L. Nelson II	P.O. Box 85
Kevin M. Johnson	Kevin M. Johnson	P.O. Box 907 DLG, AK

Petition to State Legislature Regarding Dillingham Land Annexation Proposal.

PLEASE PRINT NAME

WRITTEN SIGNATURE

ADDRESS

PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
Genie Schlosser	Genie Schlosser	Box 945 DLG AK
John A. Heyano	John A. Heyano	Box 523 DLG AK
Nick F. Smootson	Nick F. Smootson	Box 895 DLG AK
Senia K. Brunson	Senia K. Brunson	Box 557 DLG AK
JAYLE FREUND	Jayle Freund	Box 282 DLG
Jesse T Smootson	Jesse T Smootson	Box 10000 DLG
LYNN BRUX	Lynn Brux	Box 885 DLG
JACK ASANO	Jack Asano	Box 378 DLG
ERIZ SHADE	Eriz Shade	Box 2
Jean Barrett	Jean Barrett	Box 55
Marina Jo Nelson	Marina Jo Nelson	Box 108 DLG AK
LAURENCE Sorenson	Laurence Sorenson	Box 191 DLG
HELESA TURNER	Helena Turner	Box 627 Dillingham
Michael Branch	Michael Branch	Box 733 DLG
CLINT REINTGES	Clint Reintges	Box 1490 DLG
KENNETH M ROULLIER	Kenneth M Roullier	Box 233 DLG
Dorothy M Flensburg	Dorothy M Flensburg	Box 43 DLG
RACHAEL D. KOHLER	Rachael D. Kohler	Box 757, DLG, AK

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PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
JUDY PATTERSON	<i>Judy Patterson</i>	Box 198 Dillingham
Denise Olson	<i>Denise Olson</i>	Box 2825 - 10 mil - Lake
WESLEY A. BUCHER	<i>Wesley Bucher</i>	P.O. Box 668 Dillingham
Herman E. Schroeder, Jr	<i>Herman E. Schroeder, Jr</i>	Box 236 Dillingham
Rebecca h. Nelson	<i>Rebecca h. Nelson</i>	Box 36 Dillingham
FAY SHORT	<i>Fay Short</i>	Box 843 Bethel AK
Jack J. Rupp	<i>Jack J. Rupp</i>	Box 366 Dillingham
Bill A. Maines	<i>Bill A. Maines</i>	Box 494 Dlg Ak 99576
Mark D. Curtin	<i>Mark D. Curtin</i>	Box 387 Dlg Ak 99576
HOWARD B. GRAYBOFF	<i>Howard B. Grayboff</i>	Box 228 Dlg Ak 99576
James Wiley	<i>James Wiley</i>	Box 604 Dlg Ak 99576
Charles Kussakoff	<i>Charles Kussakoff</i>	Box 47 Dlg Ak 99576
Isaac Kussakoff	<i>Isaac Kussakoff</i>	P.O. 171 Dlg Ak 99576
Andrew Nielsen	<i>Andrew Nielsen</i>	Box 892 Dlg, Ak 99576
Katherine A. Nielsen	<i>Katherine A. Nielsen</i>	Box 892 Dlg, Ak 99576

Petition to State Legislature Regarding Dillingham Land Annexation Proposal.

PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
Patti Darden	Patti Darden	Box 251, Dlg.
Richard E. Womack	Richard E. Womack	Box 392 DLS
Martin Kilmer	Martin Kilmer	Box 1189 Dlg
Stephen A. Lemmon	Stephen A. Lemmon	Rm 930, Dlg
Walter Haran	Walter Haran	Box 824 Dlg
F. J. Tuttle	FREDDY TUTTLE	Box P.O. 302 DLG
Deanna E. Hardin	Deanna E. Hardin	Box 597 Dlg.
Ronald K. Coleman	RONALD K. COLEMAN	Box 601 DLG
Frank Wilber	FRANK WILBER	Box 221
Jack Wilber	Jack Wilber	Box 160
Betty Wilber	Betty Wilber	Box 168
Carol L. Myhre	CAROL L. MYHRE	Box 482 DLG
John R. Hurley	John R. Hurley	Box 484
Julie Kelf	Julie Kelf	Box 681
DAGEN H. NELSON	DAGEN H. NELSON	Box 477
ELLAMAE CHANEY	Ellamae Chaney	Box 13

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Dillingham has plenty of land to grow within the existing city limits. We believe adding the proposed land to the city boundary will only cost the city more money and could eventually end up costing the taxpayer more in increased taxes to pay for added services to the remote areas to be annexed.

PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
ROSLYN GALLAGHER	<i>Roslyn Gallagher</i>	Warehouse Mountain T12S, R56W Seward Meridian P. O. Box 19, Aleknagik
<i>Carla Merriner</i>	<i>Carla Merriner</i>	Box 284 DLG.
THOMAS TILDEN	<i>Thomas Tilden</i>	Box 786 DLG.
RUSS ROFF	<i>Russ Roff</i>	Box 681 Dillingham
GARY GALLAGHER	<i>Gary Gallagher</i>	Box 19 ALEKNAGIK AK.
IRMA R. SCHROEDER	<i>Irma R. Schroeder</i>	Box 236 DILLINGHAM MILE 22 1/2 ALEX.
Myrtie Carty	<i>Myrtie Carty</i>	Box 358 Dillingham AK.
Steve D. Hardin	<i>Steve D. Hardin</i>	mile 9 1/2 outside city limits
Vick WAHL	<i>Vick Wahl</i>	Mile 6, Lake Rd Dillingham AK 995
JIM McMURRAY	<i>J. McMurray</i>	MILE 6 1/2 LAKE ROAD DLG.
Verna Schmitt	<i>Verna Schmitt</i>	Mile 10 Lake Rd Dillingham Aleknagik
Jack N. Jordan	<i>Jack N. Jordan</i>	P. O. Box 173

Petition to State Legislature Regarding Dillingham Land Annexation Proposal.

PLEASE PRINT NAME

WRITTEN SIGNATURE

ADDRESS

Paul Ribick

Paul Ribick

P.O. Box 755 D.L.C.

Henry E. Skads

Henry E. Skads

P.O. Box 2 D.L.C.

PETITION TO THE STATE LEGISLATURE

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PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
JAMES CARTY	<i>James M. Carty</i>	Box 358 Dillingham Ak. 99576
JAMES A WARD	<i>James A Ward</i>	Box 124 DLG AK 99576
STEVE NICHOLSON	<i>Steve Nicholson</i>	Box 912 DLG AK 99576
VERL LUCKHEART	<i>Verl Luckheart</i>	Box 140 DLG AK 99576
LLOYD F. O'CONNOR	<i>Lloyd F. O'Connor</i>	Box 65 DLG
JEAN L. O'CONNOR	<i>Jean L. O'Connor</i>	Box 65 Dillingham AK 99576
MARIO FERRARO	<i>Mario Ferraro</i>	Box 253 Dillingham
DANA CUTTINS	<i>Dana S. Cuttins</i>	Box 670 DLG
JACK E. PARKIN	<i>Jack E. Parkin</i>	Box 515 DLG
THOMAS E. WILSON JR	<i>Thomas E. Wilson Jr</i>	Box 385 DLG
GORDON L. JENSEN	<i>Gordon L. Jensen</i>	Box 764 - DLG
Josephine A. Jensen	<i>Josephine A. Jensen</i>	Box 764 - DLG
Shannon's Pond	<i>Shannon's Pond</i>	

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PLEASE PRINT NAME

WRITTEN SIGNATURE

ADDRESS

PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
Joe Hiratsuka	<i>Joe Hiratsuka</i>	P.O. Box 736 Dlg.
MARGUERITE B. KALLSTROM	<i>M. (Marguerite) Lorde Kallstrom</i>	Box 550 Dlg.
DAN WIARD	<i>Daniel P. Wiard</i>	Box 917 Dlg.
<i>Mark W. Hill</i>	<i>Mark W. Hill</i>	Dlg. Ak.
Brymond N. Gregoire	<i>Brymond N. Gregoire</i>	Box 426 P.O. AK
R. Burkowski	<i>R. Burkowski</i>	Box 382 DL
Raymond N. Gregoire Jr	<i>Raymond N. Gregoire Jr</i>	Box 326 P.O.
Bruce Hansen	<i>Bruce Hansen</i>	Box 1209
Rob Carpenter	<i>Rob Carpenter</i>	Box 701
Phillip R. Carpenter	<i>Phillip R. Carpenter</i>	P.O. Box 761
<i>Phillip R. Carpenter</i>	<i>Phillip R. Carpenter</i>	Box 713
<i>Milt P. Filipich</i>	<i>Milt P. Filipich</i>	Box 185 DLG
Wanda M. Oberholzer	<i>Wanda M. Oberholzer</i>	Box 285 Dlg.
Mae B. Lemmon	<i>Mae B. Lemmon</i>	Box 712 Dlg.

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PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
ANNAMARIA FERRARO	<i>Annamaria Ferraro</i>	Box 253 Dillingham, Ak. 99576
Dorothy B. Angasan	<i>Dorothy B. Angasan</i>	Box 623 Dillingham, AK 99576
Zacharias Brink	<i>Zacharias Brink</i>	Box 666 Dillingham, AK 99576
Cristy Willer Tilden	<i>Cristy Willer Tilden</i>	P.O. Box 786 Dillingham, AK 99576
Jacqueline Dennis Greedling	<i>Jacqueline Dennis Greedling</i>	P.O. Box 565 Dillingham, AK 99576
Brenda Akelkok	<i>Brenda Akelkok</i>	P.O. Box 134 Dillingham, AK 99576
Wassiliusia Pennis	<i>Wassiliusia Pennis</i>	Box 406 Dillingham, AK 99576
Ilean Sylvester	<i>Ilean Sylvester</i>	P.O. Box 915 Dillingham, 99576
Alan Backford	<i>Alan Backford</i>	P.O. Box 22 Dillingham, AK
Adolph Johnson	<i>Adolph Johnson</i>	P.O. Box 264 Dillingham, AK
Debbie Lee	<i>Debbie Lee</i>	P.O. Box 634 Dillingham, AK
DARYL MOORE	<i>Daryl Moore</i>	BOX 662 DILLINGHAM, AK
Elizabeth S. Dettler	<i>Elizabeth S. Dettler</i>	Box 554 Dillingham, AK 99576
D. L.	<i>D. L.</i>	

Petition to State Legislature Regarding Dillingham Land Annexation Proposal.

PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
Shirley Higgins	Shirley Higgins	Ln. 1229 Dlg. AK
DAVID M. JACKSON	David M. Jackson	Box 3 Dillingham, AK
KATHERINE C. JACKSON	Katherine C. Jackson	Box 3 Dlg, AK 99576
MARY D. SAGMOEN	Mary D. Sagmoen	Box 54 Dlg. AK 99576
RONALD J. Kihle	Ronald J. Kihle	Box 447 Dlg. Id.
IVIE C. LONG	Ivie C. Long	Box 1310 Dlg. AK
ANNA K. LONG	Anna K. Long	Box 1310 Dlg. AK
MARY B. WATTS	Mary B. Watts	Box 543 Dlg. AK
HENRY J. KILMER	Henry J. Kilmer	Box 1189, Dlg. AK
DOUGLAS A. TURNER	Douglas A. Turner	Box 904 Dlg. AK
E. FAYE JORDIS	E. Faye Jordis	Box 362, Dlg. AK
DOROTHY S. WILSON	Dorothy S. Wilson	Box 142 Dlg.
MARJORIE A. NELSON	Marjorie A. Nelson	Box 572 Dlg.
MARIO FERRARO	Mario Ferraro	Box 253 Dlg.
George M. Flensburg	George M. Flensburg	Box 72 Dlg.
MARILYN SHULER	Marilyn Shuler	Box 266 Dlg.
BEZ PETERSEN	Bez Petersen	Box 397 Dlg.
SAM EVELAGE	Sam Evelage	Box 314 Dlg.
JOAN EVELAGE	Joan Evelage	Box 755 Dlg.
SHELLEY FARLER	Shelley Farler	Box 130 Dlg.
DAVID FARLER	David Farler	Box 618 Dlg.
STEVEN SHADER	Steven Shader	Box 871 Dlg.
CHUCK WALLACE	Chuck Wallace	Box 431 Dlg.
ROY W. WALLACE	Roy W. Wallace	Box 47 Dlg.
ROY W. WALLACE	Roy W. Wallace	Box 752 Dlg.
DANA CLARK	Dana Clark	Box 110-110
ELIYNE INGRAN	Eliyne Ingram	Box 355 Dlg.

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PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
Martin L. Smeaton	<i>Martin L. Smeaton</i>	Box 768 DLG AK 99576
Marie A. Luckhurst	<i>Marie A. Luckhurst</i>	10 mile
Marie A. Luckhurst	<i>Marie A. Luckhurst</i>	P.O. Box 637 Dillingham Ak
Uic. A. Luckhurst	<i>Uic. A. Luckhurst</i>	P.O. Box 637 Dillingham Ak
Carolyn Hoge	<i>Carolyn Hoge</i>	Box 183 DLG AK 99576
Virgil Luckhurst	<i>Virgil Luckhurst</i>	Box 409 DLG AK 99576
Virgil Luckhurst	<i>Virgil Luckhurst</i>	Box 895 DLG AK 99576
Robert D. Kallstrom	<i>Robert D. Kallstrom</i>	Box 550 DLG AK 99576
Diane E. Folsom	<i>Diane E. Folsom</i>	Box 444 DLG AK 99576
MARK R. DIXON	<i>Mark R. Dixon</i>	Box 1064 DLG AK 99576
Willa C. Luckhurst	<i>Willa C. Luckhurst</i>	Box 633 DLG AK 99576
Gay Buckles	<i>Gay Buckles</i>	Box 133 DLG AK 99576
LARRY WILSON	<i>Larry Wilson</i>	Box 298 DLG AK 99576
Russ Brown	<i>Russ Brown</i>	Box 183 DLG AK 99576
...

Petition to State Legislature Regarding Dillingham Land Annexation Proposal.

PLEASE PRINT NAME

WRITTEN SIGNATURE

ADDRESS

PLEASE PRINT NAME	WRITTEN SIGNATURE	ADDRESS
Paula F. Brown	Paula F. Brown	Box 567 Dlg. AK
Jackson M. Cormick	Jackson M. Cormick	PO Box 157 Dlg. AK
Keith A. Roullet	Keith A. Roullet	DLG.
Patricia Roullet	Patricia Roullet	Box 333 Dlg. AK
VERN B. LUCKHURST	Vern B. Luckhurst	Box 11 Dlg. AK
George Skire	George Skire	Box 1R Dlg. AK
Joe Charney	Joe Charney	Box 13
VERL LUCKHURST	Verl Luckhurst	Box 16 Dlg. AK, 99576
Gloria Bernatze	Gloria Bernatze	Simpson Estates
Rick Murphy	Rick Murphy	Box 732 Dlg.
Richard C. Schoester	Richard C. Schoester	Box 1409 Dlg.
Richard C. Schoester	Richard C. Schoester	Box 915 Dlg.
Mystice Noden	Mystice Noden	Box 47 Dlg.
Tatiana R. McCormick	Tatiana R. McCormick	Box 157, Dlg. AK
Jerry Libby	Jerry Libby	Box 646 - Dlg. AK
FRED NODEN	FRED NODEN	#7 Dlg.
Amelia Christensen	Amelia Christensen	P.O. Box 203 Dlg. AK
Nick Christensen	Nick Christensen	P.O. Box 203, Dlg. AK
Eunice WAHL	Eunice Wahl	P.O. Box 17 Dlg. AK
Cheryl Shade	Cheryl Shade	Box 172 Dlg. AK
Betty Lopez	Betty Lopez	Box 25 Dlg.
Evelyn J. Barrett	Evelyn J. Barrett	P.O. Box 55
Ronald W. Caldwell	Ronald W. Caldwell	P.O. Box 694
Charles N. Backford	Charles N. Backford	Box 414
Leo S. Aguilar Jr.	Leo S. Aguilar Jr.	Box 138
Louie P. Jones	Louie P. Jones	

BRISTOL

BayTimes

Vol. 7 No. 6

Dillingham, Alaska

February 6, 1987

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Petitioners protest city annexation

by Bruce Baltar
BayTimes staff

Residents of the area proposed for annexation to the City of Dillingham have mounted a petition drive aimed at stopping the city's expansion.

"Why should we be part of the city when we don't even have road access to our homes?" asked one resident who is helping circulate the petition, initiated by V.A. and Marie Luckhurst.

Opposition to the annexation attempt became vocal following a Nov. 22 Local Boundary Commission decision which approved city annexation of 40 square miles north of its existing boundaries.

The addition includes several areas without road access, such as the state Open To Entry (OTE) land west of 11 Mile on the Lake Road, and settled Native allotments along Wood River.

Gary and Rosyln Gallagher, the only year-round OTE residents, oppose the annexation, and are particularly incensed by lack of prior notice that their cabin near Warehouse Mountain might be included. They say they did not know their area was under consideration when the boundary commission held hearings here last August.

"We simply don't feel what's happened over these boundaries is responsible representative government," Rosyln Gallagher said.

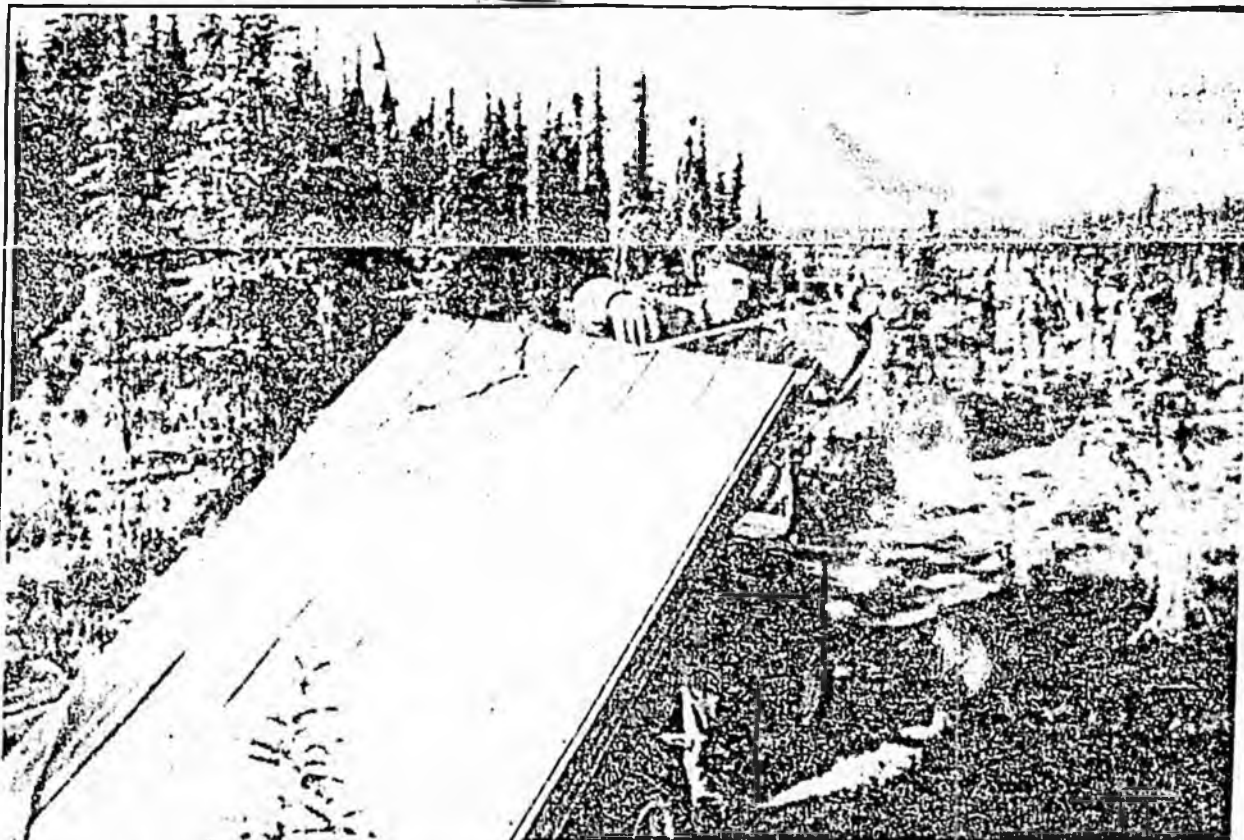
"What's worse is that facts have been misrepresented to the Local Boundary Commission by the City of Dillingham, and worse yet, the commission has included absolutely preposterous statements in its findings of facts," she said.

Specifically, Gallagher objects to an LBC finding that the city is capable of extending "full municipal services" to the annexation area.

Both Gallaghers ridicule the notion that the city will be able to provide any services to their cabin, which is located nearly five miles off the Lake Road and is accessible only by foot or off-road vehicles.

AnnaMaria Ferraro, whose home is within the annexation area at Hanson Point on Wood River, also opposes the annexation. She says that preservation of lifestyle is her chief concern.

"I don't believe that without road access to our homes,



By three-wheeler in summer and sled in winter, Gary Gallagher packed materials nearly 5 miles to build his cabin on the state open-to-entry land.

(OVER)

See PETITION-Page 3

Petition drive

Cont'd from Page 1

we should be part of any city ordinances," she says.

Ferraro adds that her opposition to the annexation has nothing to do with city taxation, pointing out that her tax burden would not increase. Her house on Wood River is on a Native allotment and would not be subject to property taxes, she says. And she already pays taxes on her property in town.

Ferraro said Wednesday that as of her last count 246 local residents had signed the petition, which then had been circulating less than a week. She estimated that about 100 additional signatures were on copies of the petition still in circulation.

She says that many people who live within existing city boundaries have signed the petition because they fear city resources will be spread too thin if it attempts to provide services to the annexations.

"There have been a lot of comments that (city residents) are not getting proper service as it is," she said.

Organizers will send the signatures to the legislature in the hope that it will vote

down the annexation. The commission's decision was submitted to the legislature last week, and that body has 45 days to act on the proposal. If it does nothing the annexation will go into effect.

The annexation effort began last spring. The main objective was to obtain Nushagak Bay waters so that the city would receive a share of the fish taxes floating processors pay the state.

But the village of Clarks Point was also seeking to annex the bay, and Dillingham officials feared that if they did not respond in kind, the Dillingham might permanently lose out on the fish revenues.

The commission denied both cities' claims to the water, but gave the Dillingham the 40 square miles of land — including 9 square miles of OTE land the city never asked for.

Procedurally, officials say there is no way to modify the LBC decision. The legislature can only approve or deny it. City officials have offered no indication that they might be considering withdrawing support for the annexation.

Telecommunication
#0078

TO: C.B. BETTISWORTH

FROM: DAN BOCKHORST

RE: MUNICIPAL INCORPORATIONS BY MAIL

Please substitute the attached draft letter on the above referenced subject for the one provided to you previously. After discussing the matter further with Division of Elections, I am still convinced that elections by mail are inappropriate for incorporation matters. I substantially rewrote the letter to add some other thoughts on the matter and to address issues raised by the Division of Elections. I think the letter in its present form is more persuasive.

RECEIVED

FEB 17 1987

GB Co.

February 19, 1987

The Honorable Stephen McAlpine
Lieutenant Governor
State of Alaska
P.O. Box AA
Juneau, Alaska 99811

Dear Lieutenant Governor McAlpine:

We have recently learned that the state election code was amended to allow selected state elections to be conducted by mail (AS 15.20.800). It seems certain that the effect of the amendment will be to increase voter participation at such elections. While that might generally be considered a desirable effect, we do have reservations regarding such elections as they relate to issues involving the Local Boundary Commission.

Before presenting our concerns, however, we wish to note that state elections may be conducted by mail only if they are held "at a time other than when the general, party primary, or municipal election is held." Because of this limitation, we conclude that the goal of this new provision is probably more to reduce the cost of conducting special elections than it is to enhance voter participation in state elections. If it was the latter, certainly all state elections would be conducted in that fashion.

The Division of Elections conducts several types of elections relating to issues involving the Local Boundary Commission. These consist of municipal incorporation, dissolution, merger and consolidation elections. At this time, our reservations concerning elections by mail are limited to municipal incorporation elections (AS 29.05.110). Our specific concerns are twofold:

- I. How will an election conducted by mail affect the outcome of an incorporation proposition?
 - A. Voting by "uninformed" voters
 - B. Voting by "qualified non-resident" voters

- II. Is there greater opportunity for abuse of voting privileges (through electioneering and fraud) during an election conducted by mail?

A discussion of these two concerns follows.

The Honorable Stephen McAlpine
February 19, 1987
Page Two

I. EFFECT OF AN ELECTION CONDUCTED BY MAIL ON THE OUTCOME OF THE INCORPORATION PROPOSITION

Our experience has been that typically fifty to sixty percent of the individuals qualified to vote in municipal incorporation elections actually do so. Further, incorporation propositions are typically decided by fairly narrow margins. For example, 55% of the eligible voters participated in the last municipal incorporation election (Northwest Arctic Borough). At least 3,140 individuals were qualified to vote on that proposition, while only 1,727 actually did vote. Of those that voted, 983 (56.9%) voted in favor of incorporation while 744 (43.1%) voted against incorporation. Thus, the issue was decided by a margin of 239 votes, less than eight percent of the total number of registered voters.

Given the typical narrow margin in deciding incorporation elections, we are certain you will appreciate our concern over a change in procedures which might influence the outcome of such elections. As indicated earlier, we feel that an incorporation election conducted by mail will result in greater voter participation. However, we are concerned that the increase in voter participation may come largely from "uninformed" voters and individuals who are qualified to vote but who do not live in the community or region. For reasons stated later in this letter, we speculate that the majority of these individuals will cast ballots to maintain the status quo (i.e. vote against incorporation).

Such circumstances would make future incorporations less likely. The Local Boundary Commission has always been a strong advocate for the formation of municipal governments whenever we judge that they have met the minimum standards set out in law. The basis for this position is Article X, § 1 of the Alaska Constitution which states:

The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions. A liberal construction shall be given to the powers of local government units.

In Mobil Oil Corp. v. Local Boundary Comm'n, 518 P.2d 92 (Alaska 1974), the Alaska Supreme Court found that this provision of the constitution favors upholding organization of boroughs [and by implication, cities -- at least those in the unorganized borough] whenever the requirements for incorporation have been minimally met.

The Honorable Stephen McAlpine
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Page Three

Since incorporation elections have always been conducted in "the conventional fashion", we have no data to support our concerns over the possible effects of voting by mail. However, we offer the following as their basis.

A. Voting by "uninformed" voters

Incorporation elections invariably involve issues which are among the most complex and significant facing a community or region. In addition to deciding the proposition on incorporation, voters select the entire governing body of the municipality. Except in extremely unusual circumstances, this is the only time when the entire governing body is elected simultaneously. Typically, each year only one-third of the seats on a municipal governing body will be vacated. Further, the incorporation election may also deal with complex propositions such as the authority to levy taxes.

Since these elections are so significant and complex, they require a substantial effort on the part of voters to examine all aspects of the issues and the qualifications of the candidates. Those registered voters who have not studied the issues and candidates, probably make up a large percentage of the individuals who do not vote at conventional elections.

To the extent that elections by mail would increase the number of "uninformed" voters who participate in the election, we speculate that most of those individuals would vote against change (i.e. against incorporation).

B. Voting by "qualified non-resident" voters

We acknowledge that under the eyes of the law a qualified voter must reside in the election district in which he seeks to vote for at least 30 days prior to the election. As such, technically there can be no "qualified non-resident" voters. The fact remains, however, that there are often large numbers of individuals who are qualified to vote at a particular place but who have not lived there for substantial periods of time. Reasons for this circumstance no doubt vary. Hopefully, in most cases these individuals are bona fide residents.

As you are aware, there is a possibility that an election for the incorporation of Big Lake may be conducted this summer. We understand that more than thirty percent of the individuals who currently appear on the Big Lake precinct voter registration list have mailing addresses other than Big Lake. Some are located as far away as Falls Church, Virginia and Salt Lake City, Utah.

The Honorable Stephen McAlpine
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Page Four

In a conventional election, voting would be limited to those qualified voters who were physically present at the polling place or who had received absentee ballots. It is unlikely that an individual from Falls Church, Virginia will travel to Big Lake to vote on a proposition for municipal incorporation.

While such an individual would presumably qualify to vote by absentee ballot, he/she may not even be aware of the election since he/she is apparently not living in the community. We acknowledge that state law permits qualified voters to request an absentee ballot for each state election held within a particular calendar year for which the voter is eligible to vote. We speculate, however, that few would have made such requests in time to vote on municipal incorporation elections. This speculation is based upon the presumption that most requests for absentee ballots are received in the fall, prior to state primary or general elections. Most of the municipal incorporation elections are held in the spring and early summer. Seventy-five percent of the municipal incorporations held this decade have been held by August.

With an election by mail every individual on the official registration list prepared under AS 15.07.125 would receive a ballot. As we expect in the case of "uninformed" voters residing within the community, we anticipate that "qualified non-resident" voters would vote against change.

II. POTENTIAL FOR ABUSE OF VOTING PRIVILEGES THROUGH ELECTIONEERING AND FRAUD

Our second concern relates to the potential abuse of voting privileges. State law currently prohibits "political persuasion near election polls" (AS 15.15.170). In a conventional state election voters appear at a polling place which is carefully monitored by election judges and/or other officials. Further, poll watchers and others have the opportunity to monitor the election and to challenge ballots.

If voting is conducted by mail, this level of public review is substantially diminished. Certainly, there is no way to ensure against inappropriate "political persuasion" at the time individuals cast their ballots by mail. Further, while we are aware that the safeguards for elections by mail are identical to those for absentee ballots [AS 15.20.081(d)-(e)], we fear that these procedures do not offer the protection provided by conventionally conducted elections.

To the extent that it may represent a problem in the prospective incorporation election in Big Lake, you should be

The Honorable Stephen McAlpine
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Page Five

aware of current allegations of fraud. Allegations have been made that the signatures of individuals whose names appear on the Big Lake precinct voter registration list, but who have been absent from the community for many months, have been forged to a petition opposing the incorporation. Further, it appears that many of the signatures on the petition were penned in the same handwriting.

Summary

While the concerns expressed in this letter apply generally to all municipal incorporation elections, we are presently most concerned about the prospective election in Big Lake. We understand that the Division of Elections intends to conduct the prospective Big Lake incorporation election by mail. Because of our concerns, we urge you to consider a policy of conducting this and any other municipal incorporation election in the conventional fashion.

With respect to Big Lake, if the intention of the state is to conduct the incorporation election by mail in an effort to save money, we assume you have been advised that qualified election judges in the community have volunteered to donate their time for such an election. Thus, in the case of Big Lake, a conventional election would likely be less costly than an election by mail.

We hope that you will carefully consider the issues and concerns raised in this letter. We look forward to your response.

Sincerely,

Robert Eder, Chairperson
Alaska Local Boundary Commission

cc: The Honorable Steve Cowper, Governor, State of Alaska
David Hoffman, Commissioner, Department of Community
And Regional Affairs
Sandi Stout, Director, Division of Elections
Marty Rutherford, Director, Department of Community
And Regional Affairs
Dale Hennings, Petitioners' Representative, Big Lake

February 19, 1987

DRAFT

The Honorable George W. Carte'
Mayor, City of Palmer
231 West Evergreen Avenue
Palmer, Alaska 99645

Dear Mayor Carte':

On January 26, the Local Boundary Commission met with Mr. Soulak, Palmer City Manager, to discuss pending and potential future annexations by the City of Palmer. We appreciated the opportunity to discuss these matters with a representative of the city.

During the course of the meeting, it was noted that the City of Palmer has 34 petitions for annexation since 1972. We understand most of these annexations were undertaken to accommodate individuals desiring to be annexed in order to receive utility service from the city. Nonetheless, as we have advised other municipalities, "piecemeal" annexations can be burdensome to individuals and agencies. In this case, such parties may include the City of Palmer, the Matanuska-Susitna Borough, state agencies (particularly the Department of Community and Regional Affairs), the Local Boundary Commission, the U.S. Department of Justice and most importantly, the affected residents. The difficulties caused by such actions typically include:

1. onerous administrative efforts dealing with all aspects of municipal boundary changes (e.g. preparation and processing of petitions; processing decisions by the Commission, revising municipal records such as tax accounts and zoning maps, submission of Federal Voting Rights Act preclearance material, et cetera);
2. impediments to long-term planning by the affected local governments; and
3. difficulty in the delivery of services.

We acknowledge that the preparation of a long-term annexation plan may be difficult and even controversial. Nevertheless, we feel that it is vital for the city and the borough to work together to develop a plan addressing long-term service delivery by the city in a more comprehensive fashion. Development of such a plan should also entail an examination of the legitimacy of the several "non-jurisdictional enclaves" (e.g. Palmer cemetery) which presently exist within the boundaries of the City of Palmer.

The Honorable George W. Carte'
February 19, 1987
Page Two

DRAFT

We wish to make it clear that our intent is not to discourage the city from seeking legitimate extensions of its boundaries, but rather to encourage careful and more comprehensive implementation of such proposals. I hope that you find these comments helpful.

Sincerely,

Robert Eder
Chairman

cc: Local Boundary Commission Members
The Honorable Dorothy Jones, Mayor, Matanuska-Susitna Borough
Vern Roberts, Acting Manager, Matanuska-Susitna Borough
Dave Soulak, Palmer City Manager
Dan Bockhorst, Programs Supervisor, LBC/Grants

MEMORANDUM

State of Alaska

Community and Regional Affairs

TO: Local Boundary Commission

DATE: February 6, 1987

FILE NO.: 0395L/DB/1

THRU:

TELEPHONE NO.: 561-8586

SUBJECT: Materials for
2/19-20/87 Meetings

FROM:

DB
Dan Bockhorst
Supervisor
LBC/CAS Components

RECEIVED

FEB 10 1987

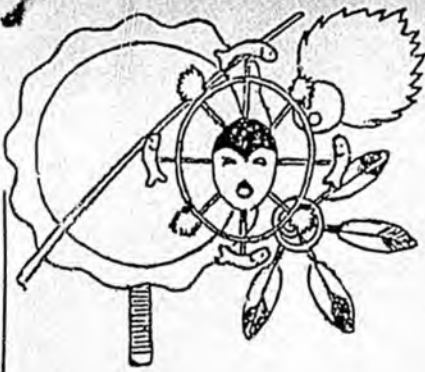
MRAD
DEPT. OF COMMUNITY
AND REGIONAL AFFAIRS

Attached for your information and/or review are the following materials:

1. Public notice of the 2/19-20/meetings
2. Draft agenda for meeting of 2/19/87
3. Briefs in A lachak v. LBC, specifically:
 - 9/10/86 brief by Robert Anderson (Appellant)
 - 12/2/86 brief by Marjorie Odland, (State)
 - 1/5/87 reply brief by Robert Anderson
 - transcript of Tyonek v. Slawson, et al
4. Copy of HB 65 (same as SB 50) "An Act relating to dissolution of a municipality."
5. Memorandum from me with attachments concerning elections by mail (attachments as follows):
 - AS 15.20.800
 - Summary of Ch. 85, SLA 1986
 - draft letter opposing municipal incorporations elections by mail
6. Copy of LBC Report to the First Session of the Fifteenth Legislature
7. Copy of draft letter regarding compensation for the Commission
8. Draft letter to City of Palmer re annexations
9. Draft minutes
 - August 28, 1986
 - October 10, 1986

Also enclosed for your information is a memorandum of 1/12/87 from Randall P. Burns, Department of Law, concerning the Executive Branch Ethics Act (attachments as follows):

- AS 39.52.010 - 39.52.960
- Ethics - A Handbook for Members of Boards and Commissions
- Ethics Disclosure Form - Notification of Potential Violation
- Ethics Disclosure Form - Notification of Grants, Contracts, Leases and Loans
- Ethics Disclosure Form - Notification of Gift



Toksook Bay Traditional Council

Senator John Binkley
Senate Finance Committee
Pouch V
Juneau, Alaska 99811

October 20, 1987

Dear Mr. Binkley,

Thank you for sending me the copy of the SB 50 which you have introduced to make things easier for dissolving the City type form of government.

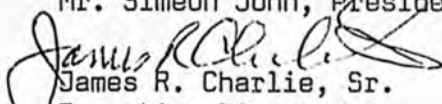
I do not have the copy of the original bill on dissolution of the municipalities but in looking over the SB 50, I find that there is a need to identify other forms of government operating in most of our communities and that is the Traditional Council, formed traditionally by the Native communities.

We are suggesting that the traditional form of government be included under Sec. 29.06.520. SUCCESSION adding the wording: "OR NATIVE COUNCIL OPERATING UNDER THE TRADITIONAL FORM OF GOVERNMENT" and also under same section under subsection (b), the wording should also be added to the last paragraph: " OR A TRADITIONALLY FORMED LOCAL GOVERNMENT."

We are suggesting the additional wording since most of the villages that are not organized under 25 U.S.C. 476 will be forced to become IRA Councils under this law and since there are more Traditional Councils than IRA Councils, the additional wording is necessary in order to make things easier for small rural villages in which you represent in your district.

We hope that it is not too late to submit the requested entries and we count on you for your help and support.

Sincerely,
TOKSOOK BAY TRADITIONAL COUNCIL
Mr. Simeon John, President


James R. Charlie, Sr.
Executive Director

cc: Committees on: Community & Regional Affairs ✓
Judiciary
Finance

1 IN THE SENATE

BY BINKLEY

2

SENATE BILL NO. 50

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 dissolution of a municipality."

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

8 * Section 1. AS 29.06.470(a) is amended to read:

9 (a) Except as provided in (b) of this section, voters of a
10 municipality may petition for dissolution when the municipality is
11 free of debt, or, if in debt, each of its creditors is satisfied with
12 a method of repayment and

13 (1) it no longer meets the minimum standards prescribed for
14 incorporation by AS 29.05, or former AS 29.18.030 if it is a third
15 class borough; [OR]

16 (2) the municipality ceases to use each of its mandatory
17 powers; or

18 (3) dissolution is approved in an advisory election held on
19 the question by the municipality proposed to be dissolved.

20 * Sec. 2. AS 29.06.520 is repealed and reenacted to read:

21 Sec. 29.06.520. SUCCESSION. (a) The Local Boundary Commission
22 shall provide for the distribution of assets and liabilities of a
23 municipality upon its dissolution. Assets and liabilities may be
24 distributed to the state, another municipality, a nonprofit corpora-
25 tion formed under the laws of the state, ~~a~~ a Native council organized
26 under 25 U.S.C. 476. OR NATIVE COUNCIL OPERATING UNDER TRADITIONAL FORM
27 OF GOVERNMENT.

28 (b) In determining how to distribute the assets of a municipali-
29 ty upon its dissolution, the Local Boundary Commission shall consider
the manner in which the assets will be best used to continue to

1 provide services to the area of the dissolved municipality. Prefer-
2 ence in the distribution of the assets shall be given to the state,
3 another municipality, a nonprofit corporation, OR A TRADITIONALLY FORMED
LOCAL GOVERNMENT.

SENATE AMENDMENT ##/

BY: Halford

TO: SB 50 SENATE BILL NO. _____
TO: Fin cs HOUSE BILL NO. _____

*Page 2, line 4
add*

* Sec. 5. AS 29.06.520 is amended to read:

SUCCESSION. The government succeeding to a dissolved municipality succeeds to all its rights, powers, duties, assets, and liabilities. No part of a dissolved municipality's rights, powers, duties, or assets may be granted or delegated to any entity other than a municipality incorporated under this Title.

- ① Technical reading wouldn't allow state
- ② Bar grants - non-profit to receive grants

(TURN IN ORIGINAL AMENDMENT TO SENATE SECRETARY'S OFFICE. THE AMENDMENT WILL BE NUMBERED, COPIED AND DISTRIBUTED.)

SENATE BILL NO. 50 by Senator Binkley, entitled:

"An Act relating to dissolution of a municipality."

was read the first time and referred to the Community and Regional Affairs Committee, the Judiciary Committee and the Finance Committee.

The Community and Regional Affairs Committee considered SENATE BILL NO. 50 (An Act relating to dissolution of a municipality) and recommended it be replaced with

CS FOR SENATE BILL NO. 50 (C&RA)

and a majority do pass. The report was signed by Senator Sturgulewski, Chairman and concurred in by Senators Szymanski and Zharoff. Senator Halford signed "do not pass".

Zero fiscal note published today from Department of Community and Regional Affairs.

SENATE BILL NO. 50 was referred to the Judiciary Committee.

The Judiciary Committee considered SENATE BILL NO. 50 (dissolution of a municipality) and a majority of the committee recommended adoption of the Community and Regional Affairs Committee Substitute and do pass with the following amendment:

Page 2, line 2: insert a new Section 3 to read:

* Sec. 3. AS 29.06.510(a) is amended to read:

(a) The Local Boundary Commission shall immediately notify the director of elections of its acceptance of a dissolution petition. Within 30 days after notification, the director of elections shall order an election in the municipality to determine whether the voters desire dissolution. The election must be held at least 30 and not more than 90 days after the election order (unless such timing would cause the election to be held between May 1 and November 1.) (If the director of elections receives notification (after April 1, but before October 1, the election) shall be held within 60 days after November 1.) A person who is a voter of the municipality may vote

in the dissolution election.

Renumber existing section accordingly.

The report was signed by Senator Kerittula, Chairman and concurred in by Senators Josephson and Sturgulewski.

The committee adopted:

Legislative Intent
CSSB 50 (C&RA)

Existing laws apparently will not permit the dissolution of a city government in a community unless that community suffers drastic reductions in its population and/or economy. The legislature recognizes that there are other circumstances under which the dissolution of a city government may be warranted. Such circumstances include those where:

1. the residents of a community have abandoned their city government;

SB 50 SENATE JOURNAL - PAGE 814- 1 4/ 3/87

2. alternative entities exist through which essential services* may be delivered in the absence of city government; and

3. dissolution would not be adverse to the interests of the community served by the city, the region in which the city is located, and the state, i.e., dissolving primarily to void a viable tax base.

It may be considered to be in the best interest of the state, under the provisions of Section 2 of this Act, for any city to be dissolved where such circumstances exist.

* Definition of "essential services": Basic municipal services providing for the health, safety, and welfare of the residents, such as police and fire protection services and maintenance of public facilities, i.e., water and sewer systems; washeterias; community buildings, etc.

SENATE BILL NO. 50 was referred to the Finance Committee.

SB 50 SENATE JOURNAL - PAGE 847- 1 4/ 7/87

The Finance Committee considered SENATE BILL NO. 50 (dissolution of a municipality) and a majority of the committee recommended it be replaced with

CS FOR SENATE BILL NO. 50 (FIN)

and do pass. The report was signed by Senator Binkley, Co-chairman and concurred in by Senators Zharoff, Duncan,

Hensley and Uehling.

Letter of Intent
CSSB 50 (FIN)

Existing laws apparently do not permit the dissolution of a city government unless that community suffers drastic reductions in its population or economy. The legislature recognizes that there are other circumstances under which the dissolution of a city government may be warranted. Such circumstances include those where:

1. the residents of a community have abandoned their city government;
2. alternative entities exist through which essential services* may be delivered in the absence of city government; and
3. dissolution would not be adverse to the interests of the region in which the city is located and the state (e.g., dissolving primarily to avoid a viable tax base, returning education function to the state).

It may be considered to be in the best interest of the state, under the provisions of Section 2 of this Act, for any city to be dissolved where such circumstances exist.

* Definition of "essential services": Basic municipal services provided for the health, safety, and welfare of the residents, such as police and fire protection services and maintenance of public facilities, e.g., water and waste disposal systems, community buildings, etc.

SENATE BILL NO. 50 was referred to the Rules Committee.

SB 50 SENATE JOURNAL - PAGE 896- 4 4/10/87

The Rules Committee considered SENATE BILL NO. 50 (dissolution of a municipality) and recommended calendar April 13. The report was signed by Senator Eliason, Chairman and concurred in by Senators Hensley, Binkley and Bennett.

SENATE BILL NO. 50 will be on the April 13 calendar.

SB 50 SENATE JOURNAL - PAGE 906- 2 4/10/87

At the request of the Rules Committee, SENATE BILL NO. 50 (dissolution of a municipality) was taken from the April 13 proposed calendar and returned to the Rules Committee.

SB 50 SENATE JOURNAL - PAGE 1170- 2 5/ 4/87

The Rules Committee considered SENATE BILL NO. 50 (dissolution of a municipality) and a majority of the committee recommended calendar May 4. The report was signed by Senator Eliason, Chairman and Senators Faiks, Bennett and Hensley.

SENATE BILL NO. 50 is on the calendar.

SB 50

SENATE JOURNAL - PAGE 1172- 2 5/ 4/67

Senator Halford moved and asked unanimous consent that SENATE BILL NO. 50 (dissolution of a municipality) be held until the May 5 calendar. Without objection, it was so ordered and SENATE BILL NO. 50 will be on the May 5 calendar.

Senator Johne Binkley

Alaska State Senate
P.O. Box V • Juneau, Alaska 99811 • (907) 465-4985



Finance Committee
Co-Chairman

M E M O R A N D U M

May 4, 1987

TO: ALL SENATORS

FROM: SENATOR JOHN E BINKLEY *Johne*

Subj: CSSB 50(Fin): "An Act relating to the dissolution of a municipality."

Residents and local elected officials of several small cities in Alaska have expressed an interest or desire in dissolving their municipal government. State laws provide standards and procedures for dissolution. However, existing regulations do not specifically address voluntary dissolution of active municipalities.

Existing regulations only pertain to dissolution of a community which effectively ceases to function as a governmental entity. State statutes require that, in order to dissolve, a municipal government must be free of debt and must cease to exercise its mandatory powers or it must be determined to no longer meet the standards of incorporation. Administrative regulations require that all three standards must be met in order for a municipal government to dissolve.

In 1984, residents of the City of Akiachak initiated a petition for the dissolution of their city. The matter was brought before the Alaska Local Boundary Commission twice (once upon reconsideration) in 1985. The Commission denied the petition principally because it found that Akiachak failed to meet two of the standards of dissolution of a municipality: (1) the community did not fall below the minimum standards for incorporation; and (2) the city must cease for two or more consecutive years to exercise virtually any of its municipal powers. The Commission determined that the City of Akiachak continued to function in certain respects (e.g., administration of grants). Akiachak has appealed the Commission's decision to the State Superior Court.

Senate Members
May 4, 1987
Page 2

Section 1 of this bill amends the standards by which the Local Boundary Commission is petitioned by requiring a petition signed by a number of voters of the municipality greater than 50 percent of the number of votes cast in the previous general election in that community.

Section 2 of this bill provides provides that the Local Boundary Commission determines whether the municipality meets the standards for dissolution and the dissolution is "in the best interest of the state."

Section 3 amends Sec. 29.06.510 pertaining to dissolution elections. The dissolution election could not be held between May 1 and November 1. This amendment serves two purposes: (1) given the high standard for the dissolution election (a majority of the number of registered voters in the municipality), it often would not be possible to obtain a turnout large enough to satisfy the election requirements because of conflicts with summer employment such as cannery, fire fighting, and construction, and subsistence activities in rural Alaska; and (2) the dissolution election would not interfere with the regular municipal election; that is, the dissolution issue would be resolved long before the subsequent municipal election.

Section 4 of this bill establishes standards for the election process for dissolution by requiring approval by a number of voters greater than 50 percent of the number of people registered to vote in that municipality.

The assets of the dissolved municipality are to be distributed either to another municipality or to the state. If the assets are to remain within the community, the state would enter into contracts regarding the use of the assets with any person or organization, including a nonprofit corporation formed under the laws of the state or a Native council (JRA or traditional) formed under 25 U.S.C. 476. The contracting entity would be required, under existing state regulations, to waive sovereign immunity (if applicable) and be accountable for the use and maintenance of the assets, with a provision in the contract that: (1) the assets be used for a specified purpose; (2) the assets be used to provide services to residents without regard to race, color, creed, religion, or national origin; and (3) the contracting entity is liable for claims arising out of the use or management of the assets.

The Senate Finance Committee passed CSSB 50(Fin) with a letter of intent.

Original sponsor: Binkley

1 IN THE SENATE BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 50 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 BILL

6 For an Act entitled: "An Act relating to dissolution of a municipality."

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

8 * Section 1. AS 29.06.470(a) is amended to read:

9 (a) Except as provided in (b) of this section, voters of a
10 municipality may petition for dissolution when the municipality is
11 free of debt, or, if in debt, each of its creditors is satisfied with
12 a method of repayment and

13 (1) the municipality [IT] no longer meets the minimum
14 standards prescribed for incorporation by AS 29.05, or former AS 29.-
15 18.030 if it is a third class borough; [OR]

16 (2) the municipality ceases to use each of its mandatory
17 powers; or

18 (3) dissolution is requested by petition on a form provided
19 by the department signed by a number of voters of the municipality
20 proposed to be dissolved greater than 50 percent of the number of
21 votes cast in the last general election in that municipality.

22 * Sec. 2. AS 29.06.500(a) is amended to read:

23 (a) If the Local Boundary Commission determines that a munic-
24 ipality fails to meet the standards for dissolution, it shall reject
25 the petition. If the commission determines that the municipality
26 meets the standards under AS 29.06.470(a)(1) or (2), it shall accept
27 the petition. If the commission determines that the municipality
28 meets the standards under AS 29.06.470(a)(3) and that dissolution of
29 the municipality is in the best interest of the state, it shall accept

1 the petition.

2 * Sec. 3. AS 29.06.510(a) is amended to read:

3 (a) The Local Boundary Commission shall immediately notify the
4 director of elections of its acceptance of a dissolution petition.
5 Within 30 days after notification, the director of elections shall
6 order an election in the municipality to determine whether the voters
7 desire dissolution. The election must be held at least 30 and not
8 more than 90 days after the election order unless such timing would
9 cause the election to be held between May 1 and November 1. If the
10 director of elections receives notification after April 1, but before
11 October 1, the election shall be held within 60 days after November 1.
12 A person who is a voter of the municipality may vote in the dissolu-
13 tion election.

14 * Sec. 4. AS 29.06.510(c) is amended to read:

15 (c) The director of elections shall certify the election re-
16 sults. If dissolution is approved by a number of voters greater than
17 50 percent of the number of people registered to vote in the munici-
18 pality, the director of elections shall declare that the municipality
19 is dissolved effective on the date of certification.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

LOCAL BOUNDARY COMMISSION

949 EAST 36TH AVENUE, SUITE 404
ANCHORAGE, ALASKA 99508
PHONE: (907) 561-8586

February 27, 1987

The Honorable Henry Springer, Chairman
House Committee on Community &
Regional Affairs
Pouch V
Juneau, AK 99811

Dear Representative Springer:

The Alaska Local Boundary Commission convened last evening to formally consider the version of draft CS HB 65 which was discussed during the February 20, meeting of your committee. I am pleased to inform you that the Local Boundary Commission considers the draft revision to be a significant improvement to the original bill. All five members of the commission voted unanimously to strongly support the legislation embodied in the draft CS HB 65.

While the Local Boundary Commission unanimously supports the draft CS HB 65, we do feel that there are two changes that might be made that would strengthen the bill. These are the inclusion of a "best interest" standard and the prohibition of conducting dissolution elections by mail. The suggested additions are explained below.

BEST INTEREST STANDARD

The Commission believes that amending the proposed AS 29.06.470(a)(3) to add a requirement that "dissolution is determined by the Local Boundary Commission to be in the best interests of the state, the region and the territory served by the municipality proposed to be dissolved" would strengthen the bill. This additional standard would apply in those instances where dissolution has been requested by a majority of the registered voters.

The reason the Commission desires this addition is simple. The Alaska Constitution and state laws have, since statehood, uniformly recognized the need and importance of a state commission to deal with the creation of municipal governments, modifications of municipal government boundaries and the dissolution of municipal governments. The language of the draft CS HB 65 currently does not ensure a deliberative role for the state in dissolution proceedings.

The Honorable Henry Spinger
February 27, 1987
Page Two

Without language such as that suggested by the Local Boundary Commission, no safeguards exist against wholesale dissolution of municipalities. Conceivably, any and every current and future municipal government could easily meet the standards set out in the draft CS HB 65. While the Commission does not suggest that a significant number of the 159 municipalities in the state would seek to dissolve if this bill became law, we do feel it would enhance the bill to include a reasonable safeguard.

We suggest that situations will arise which will require discretionary application and deliberation of state level concerns. Thus, it seems prudent to include provision of language which would allow the commission to serve this legitimate role. We feel a "best interest" standard does just this.

ELECTIONS BY MAIL

The commission would also like to see the inclusion of statutory provisions to preclude the conduct of municipal dissolution elections by mail under AS 15.20.800. While it may be appropriate to conduct certain state elections by mail, the Commission opposes elections by mail either for municipal incorporation or dissolution. Our objections to conducting such elections by mail are numerous and have been conveyed to the Division of Elections. In general, we find that the significance of such elections and public preference warrant conducting municipal incorporation and dissolution elections in the conventional manner.

Thank you for this opportunity to comment on the proposed CS HB 65. We feel that the draft CS HB 65 will permit the Local Boundary Commission to respond fully to the current issues relating to dissolution. However, we do feel that our two suggestions will further improve the bill. Please feel free to contact the Local Boundary Commission should you require clarification of any points.

Sincerely,



For

Robert O. Eder, Chairman
Local Boundary Commission

The Honorable Henry Spinger
February 27, 1987
Page Three

cc: The Honorable Arliss Sturgulewski
Chair, Senate C&RA
The Honorable John Binkley
sponsor SB 50
The Honorable Lyman Hoffman
sponsor HB 65
C.B. Bettisworth, Member, LBC
Bert Greist, Member, LBC
Dave Hanson, Member, LBC
Jo Anderson, Member, LBC
David G. Hoffman, Commissioner, DCRA
Marty Rutherford, Director, MRAD/DCRA

CSSB 50(FIN)

LEGISLATIVE INTENT

Existing laws apparently do not permit the dissolution of a city government unless that community suffers drastic reductions in its population or economy. The legislature recognizes that there are other circumstances under which the dissolution of a city government may be warranted. Such circumstances include those where:

1. the residents of community have abandoned their city government;
2. alternative entities exist through which essential services* may be delivered in the absence of city government; and
3. dissolution would not be adverse to the interests of the region in which the city is located and the state (e.g., dissolving primarily to avoid a viable tax base, returning education function to the state).

It may be considered to be in the best interest of the state, under the provisions of Section 2 of this Act, for any city to be dissolved where such circumstances exist.

* Definition of "essential services": Basic municipal services provided for the health, safety, and welfare of the residents, such as police and fire protection services and maintenance of public facilities, e.g., water and waste disposal systems, community buildings, etc.

MEMORANDUM

State of Alaska

TO: Local Boundary
Commission Members

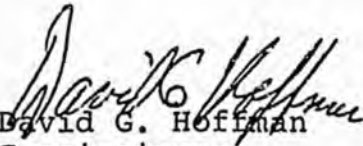
DATE: February 18, 1987

FILE NO.:

THRU:

TELEPHONE NO.: 465-4700

FROM:


David G. Hoffman
Commissioner
Department of Community
and Regional Affairs

SUBJECT: Potential Focus of
Local Boundary
Commission in the
new Administration

One of the primary goals of the Cowper Administration is to help make local government work better, especially in the smaller, rural communities of the state. During his State of the State message, the Governor said:

Over the past few years life has changed a great deal for all of us in Alaska. But no where has the change been felt as deeply as in rural Alaska . . . I believe the villages are fundamentally different culturally and historically from urban Alaska and that we must make an effort to create new forms of government that are appropriate to rural Alaska. Such forms of village government must be democratically managed and consistent with the Alaska Constitution, but they must also be consistent with the realities of village life.

On numerous occasions the Governor has stated that when he first began traveling throughout rural Alaska in 1968, he saw a form of government that seemed to be very integrated into village life. People then felt as if they "owned" their local governments, and they operated them with very little cash. In these times of fiscal crisis where there is a feeling in some communities that local people no longer "own" their local governments, it is important for the state to reexamine local government.

The movement by several communities, primarily in the Yukon-Kuskokwim Delta Area, to dissolve their state-chartered municipal governments is a symptom of discontent with the current form of local government. I have traveled to Bethel, Kasigluk, and Nome since I was appointed Commissioner to gain new insights into how people felt about their local governments. I will be traveling to Barrow, Kotzebue, and Dillingham next week to attempt to gain further insights. It is my hope that the Department of Community and Regional Affairs can assist local people in developing more effective local governments within the context of the Alaska Constitution.

February 18, 1987

The Local Boundary Commission (LBC) is squarely in the middle of the issue of the dissolution of municipal governments. I would hope that under the new Administration the LBC could take the lead role in helping to solve problems relating to the dissolution of municipal governments. I also hope that the LBC could serve as my primary advisory group in helping me deal with issues relating to local government generally.

The LBC is in a unique position to be a problem solver for several reasons. These reasons include:

- ° The Commission is composed of private citizens who have an independent and objective perspective on governance issues as a result of the fact that they are not government employees.
- ° The Commission has been dealing with local government problems in the past and can provide continuity between administrations with regards to policy relating to local governments.
- ° The Commission has substantial statutory decision making authority with regards to local government issues.

Specific issues that I would like to discuss with you on the 19th include the following:

1. Development of a specific workplan by staff under which the LBC would deal with local government issues;
2. Explore the possibility of getting consulting money to the Commission for an independent study of issues relating to the dissolution of cities;
3. The development of new forms of local government; and
4. The status of the suit filed by Akiachak against the Boundary Commission and ways in which that suit and the underlying dispute might be resolved.

I am sorry that bad weather prevented me from meeting all Commission members on January 21. I look forward to spending a considerable amount of time talking with the Commission members on the 19th, and I hope that we can work together to help focus the role of the Boundary Commission under the new administration. I look forward to providing the staff support and assistance that will allow the Commission to assume an aggressive role as a problem solver with regards to the issues we are now facing.

DGH/gmw

- (1) Dissolution - what would happen at larger communities
- (2) Dist of assets - LRA's - Council
- (3) Grants - more to non-profit's

E. Smith
Healey
A. G's

Original sponsor: Binkley

1 IN THE SENATE BY THE COMMUNITY AND
2 REGIONAL AFFAIRS COMMITTEE
3 CS FOR SENATE BILL NO. 50 (C&RA)
4 IN THE LEGISLATURE OF THE STATE OF ALASKA
5 FIFTEENTH LEGISLATURE - FIRST SESSION
6 A BILL.

7 For an Act entitled: "An Act relating to dissolution of a municipality."

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13 a method of repayment and

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15 standards prescribed for incorporation by AS 29.05, or former AS 29.-
16 18.030 if it is a third class borough; [OR]

17 (2) the municipality ceases to use each of its mandatory
18 powers; or

19 ~~(3) dissolution is requested by petition on a form provided~~
20 ~~by the department signed by a number of voters on the municipality~~
21 ~~proposed to be dissolved greater than 50 percent of the number of~~
22 ~~votes cast in the last general election in that municipality.~~

23 * Sec. 2. AS 29.06.500(a) is amended to read:

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26 the petition. If the commission determines that the municipality
27 meets the standards under AS 29.06.470(a)(1) or (2), it shall accept
28 the petition. ~~If the commission determines that the municipality~~
29 ~~meets the standards under AS 29.06.470(a)(3) and that dissolution of~~
~~the municipality is in the best interest of the state, it shall accept~~

1 ~~the petition.~~

2 * Sec. 3. AS 29.06.510(c) is amended to read:

*was election
required.*

3 (c) The director of elections shall certify the election re-
4 sults. If dissolution is approved ~~by a number of voters greater than~~
5 ~~50 percent of the number of people registered to vote in the municipi-~~
6 ~~pality,~~ the director of elections shall declare that the municipality
7 is dissolved effective on the date of certification.

Hold until after mtg w/ L.B.C. See H. schedule
5-01638 *date*

Referred: Community & Regional Affairs,
Judiciary and Finance

(1) call attention to *Sen. Ben Kluy's memorial*
(2) " " " *Dept of LRA.*
(3) " " " *A.G.*

1 IN THE SENATE BY BINKLEY

2 SENATE BILL NO. 50

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 dissolution of a municipality."

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

8 * Section 1. AS 29.06.470(a) is amended to read:

9 (a) Except as provided in (b) of this section, voters of a
10 municipality may petition for dissolution when the municipality is
11 free of debt, or, if in debt, each of its creditors is satisfied with
12 a method of repayment and

13 (1) it no longer meets the minimum standards prescribed for
14 incorporation by AS 29.05, or former AS 29.18.030 if it is a third
15 class borough; [OR]

16 (2) the municipality ceases to use each of its mandatory
17 powers; or

18 (3) dissolution is approved in an advisory election held on
19 the question by the municipality proposed to be dissolved.

20 * Sec. 2. AS 29.06.520 is repealed and reenacted to read:

21 Sec. 29.06.520. SUCCESSION. (a) The Local Boundary Commission
22 shall provide for the distribution of assets and liabilities of a
23 municipality upon its dissolution. Assets and liabilities may be
24 distributed to the state, another municipality, a nonprofit corpora-
25 tion formed under the laws of the state, or a Native council organized
26 under 25 U.S.C. 476.

27 (b) In determining how to distribute the assets of a municipali-
28 ty upon its dissolution, the Local Boundary Commission shall consider
29 the manner in which the assets will be best used to continue to

*repeal under
constitution
as far to
population*

1 provide services to the area of the dissolved municipality. Prefer-
2 ence in the distribution of the assets shall be given to the state,
3 another municipality or a nonprofit corporation.

SENATE AMENDMENT

BY: _____

TO: _____ CS for SENATE BILL NO. 50 (C+RA)

TO: _____ HOUSE BILL NO. _____

SECTION 4

Sec 29.06.51(a) Election is amended to read:

(a) The Local Boundary Commission shall immediately notify the director of elections of its acceptance of a dissolution petition. Within 30 days after notification, the director of elections shall order an election in the municipality to determine whether the voters desire dissolution.

The election must be held at least 30 and not more than 90 days after the election order unless such timing would cause the election to be held between May 1 and November 1. If

SENATE AMENDMENT

BY: _____

TO: _____ SENATE BILL NO. _____

TO: _____ HOUSE BILL NO. _____

the director of elections receives
notification after April 1, but before
October 1, the election shall be
held within 60 days after November

1. A person who is a voter
of the municipality may vote in
the dissolution election.

(TURN IN ORIGINAL AMENDMENT TO SENATE SECRETARY'S OFFICE.
THE AMENDMENT WILL BE NUMBERED, COPIED AND DISTRIBUTED.)

SENATE AMENDMENT

BY: _____

TO: _____ CS for SENATE BILL NO. 50 (C+RA)

TO: _____ HOUSE BILL NO. _____

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(TURN IN ORIGINAL AMENDMENT TO SENATE SECRETARY'S OFFICE.
THE AMENDMENT WILL BE NUMBERED, COPIED AND DISTRIBUTED.)

Original sponsor: Binkley

1 IN THE SENATE

BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

2 CS FOR SENATE BILL NO. 50 (C&RA)

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 dissolution of a municipality."

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

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10 municipality may petition for dissolution when the municipality is
11 free of debt, or, if in debt, each of its creditors is satisfied with
12 a method of repayment and

13 (1) the municipality [IT] no longer meets the minimum
14 standards prescribed for incorporation by AS 29.05, or former AS 29.-
15 18.030 if it is a third class borough; [OR]

16 (2) the municipality ceases to use each of its ma... lory
17 powers; or

18 (3) dissolution is requested by petition on a form provided
19 by the department signed by a number of voters of the municipality
20 proposed to be dissolved greater than 50 percent of the number of
21 votes cast in the last general election in that municipality.

22 * Sec. 2. AS 29.06.500(a) is amended to read:

23 (a) If the Local Boundary Commission determines that a munic-
24 ipality fails to meet the standards for dissolution, it shall reject
25 the petition. If the commission determines that the municipality
26 meets the standards under AS 29.06.470(a)(1) or (2), it shall accept
27 the petition. If the commission determines that the municipality
28 meets the standards under AS 29.06.470(a)(3) and that dissolution of
29 the municipality is in the best interest of the state, it shall accept

1 the petition.

2 * Sec. 3. AS 29.06.510(c) is amended to read:

3 (c) The director of elections shall certify the election re-
4 sults. If dissolution is approved by a number of voters greater than
5 50 percent of the number of people registered to vote in the municipi-
6 pality, the director of elections shall declare that the municipality
7 is dissolved effective on the date of certification.
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SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 2/12/87 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: JUDICIARY
FINANCE

**FISCAL NOTE(S) ATTACHED yes **
IN ACCORDANCE WITH AS 24.08/035
(see below)

1/19/87

DATE TURNED INTO OFFICE

3/11/87

Mr. President:

COMMUNITY & REGIONAL AFFAIRS Committee considered SB 50

relating to dissolution of a municipality,

and recommended:

replace with CS SB 50 (C+RA)

same title
 new title

attached amendment(s) and

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted and attached

** Committee attached or adopted fiscal note(s)
 zero fiscal impact

MEMBERS SIGNING DO PASS

[Signature]
[Signature]
[Signature]

OTHER RECOMMENDATIONS

Rick Halford DO NOT PASS

Arlos Sturgulowski
Chairman signature and recommendation

Committee Backup Attached

Do Pass

STATE OF ALASKA

STEVE COWPER, GOVERNOR

LOCAL BOUNDARY COMMISSION

949 EAST 36TH AVENUE, SUITE 404
ANCHORAGE, ALASKA 99508
PHONE: (907) 561-8586

February 27, 1987

The Honorable Henry Springer, Chairman
House Committee on Community &
Regional Affairs
Pouch V
Juneau, AK 99811

Dear Representative Springer:

The Alaska Local Boundary Commission convened last evening to formally consider the version of draft CS HB 65 which was discussed during the February 20, meeting of your committee. I am pleased to inform you that the Local Boundary Commission considers the draft revision to be a significant improvement to the original bill. All five members of the commission voted unanimously to strongly support the legislation embodied in the draft CS HB 65.

While the Local Boundary Commission unanimously supports the draft CS HB 65, we do feel that there are two changes that might be made that would strengthen the bill. These are the inclusion of a "best interest" standard and the prohibition of conducting dissolution elections by mail. The suggested additions are explained below.

BEST INTEREST STANDARD

The Commission believes that amending the proposed AS 29.06.470(a)(3) to add a requirement that "dissolution is determined by the Local Boundary Commission to be in the best interests of the state, ~~the region and the territory served by the municipality proposed to be dissolved~~" would strengthen the bill. This additional standard would apply in those instances where dissolution has been requested by a majority of the registered voters.

The reason the Commission desires this addition is simple. The Alaska Constitution and state laws have, since statehood, uniformly recognized the need and importance of a state commission to deal with the creation of municipal governments, modifications of municipal government boundaries and the dissolution of municipal governments. The language of the draft CS HB 65 currently does not ensure a deliberative role for the state in dissolution proceedings.

The Honorable Henry Spinger
February 27, 1987
Page Two

Without language such as that suggested by the Local Boundary Commission, no safeguards exist against wholesale dissolution of municipalities. Conceivably, any and every current and future municipal government could easily meet the standards set out in the draft CS HB 65. While the Commission does not suggest that a significant number of the 159 municipalities in the state would seek to dissolve if this bill became law, we do feel it would enhance the bill to include a reasonable safeguard.

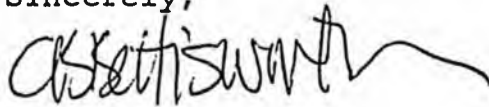
We suggest that situations will arise which will require discretionary application and deliberation of state level concerns. Thus, it seems prudent to include provision of language which would allow the commission to serve this legitimate role. We feel a "best interest" standard does just this.

ELECTIONS BY MAIL

The commission would also like to see the inclusion of statutory provisions to preclude the conduct of municipal dissolution elections by mail under AS 15.20.800. While it may be appropriate to conduct certain state elections by mail, the Commission opposes elections by mail either for municipal incorporation or dissolution. Our objections to conducting such elections by mail are numerous and have been conveyed to the Division of Elections. In general, we find that the significance of such elections and public preference warrant conducting municipal incorporation and dissolution elections in the conventional manner.

Thank you for this opportunity to comment on the proposed CS HB 65. We feel that the draft CS HB 65 will permit the Local Boundary Commission to respond fully to the current issues relating to dissolution. However, we do feel that our two suggestions will further improve the bill. Please feel free to contact the Local Boundary Commission should you require clarification of any points.

Sincerely,



For

Robert O. Eder, Chairman
Local Boundary Commission

The Honorable Henry Spinger
February 27, 1987
Page Three

cc: The Honorable Arliss Sturgulewski
Chair, Senate C&RA
The Honorable John Binkley
sponsor SB 50
The Honorable Lyman Hoffman
sponsor HB 65
C.B. Bettisworth, Member, LBC
Bert Greist, Member, LBC
Dave Hanson, Member, LBC
Jo Anderson, Member, LBC
David G. Hoffman, Commissioner, DCRA
Marty Rutherford, Director, MRAD/DCRA

Alaska State Legislature

ARLISS STURGULEWSKI, Chairman
TIM KELLY, Vice Chairman
RICK HALFORD
MIKE SZYMANSKI
FRED ZHAROFF



P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-4961

Senate Community and Regional Affairs Committee

TO: Senate C&RA Members

March 10, 1987

FROM: Senate C&RA Staff 

RE: CSSB 50 (C&RA) - Dissolution of a municipality

At the last hearing on this bill a number of concerns were raised. This CS addresses those concerns.

An attempt has been made to have the process mirror the incorporation process. Citizens wishing to dissolve a municipality could file a petition with the Local Boundary Commission (LBC).

If the the petition was signed by a number of voters of the municipality greater than 50 percent of the votes cast within the municipality at the last general election and if the LBC determined that the dissolution was in the state's best interest, it would accept the petition.

If the LBC accepted the petition, the director of elections would then conduct an election on the question and if dissolution was approved by a majority of the registered voters in the municipality, the dissolution would take effect.

The section of the original bill that dealt with succession has been deleted. Existing law would remain and assets could be handled through existing contracting procedures as suggested by the Department of Law.

Existing law is attached.

Sec. 29.06.460. Petition. (a) Voters of a municipality may file a dissolution petition with the department in the form prescribed by the department. The petition must be signed by a number of voters equal to at least 25 percent of the number of votes cast in the last regular election in that municipality.

(b) The petition must include

- (1) the name of the municipality;
- (2) maps, documents, and other information showing that the municipality meets the standards for dissolution. (§ 5 ch 74 SLA 1985)

Sec. 29.06.470. Standards. (a) Except as provided in (b) of this section, voters of a municipality may petition for dissolution when the municipality is free of debt, or, if in debt, each of its creditors is satisfied with a method of repayment and

(1) it no longer meets the minimum standards prescribed for incorporation by AS 29.05, or former AS 29.18.030 if it is a third class borough; or

(2) the municipality ceases to use each of its mandatory powers.

(b) Voters of a city in a borough may petition for dissolution of the city if the borough consents to assume the city's rights, powers, duties, assets, and liabilities. The consent must be ratified by a majority of borough voters voting on the question. (§ 5 ch 74 SLA 1985)

Sec. 29.06.480. Review. (a) The department shall review a dissolution petition for content and signatures, and shall return a deficient petition for correction or completion.

(b) If the petition contains the required information and signatures, the department shall investigate the proposal. (§ 5 ch 74 SLA 1985)

Sec. 29.06.490. Report and hearing. (a) The department shall report its findings to the Local Boundary Commission with its recommendation regarding the dissolution of a municipality.

(b) The Local Boundary Commission shall hold at least one public hearing in the municipality proposed to be dissolved. (§ 5 ch 74 SLA 1985)

Sec. 29.06.500. Decision. (a) If the Local Boundary Commission determines that a municipality fails to meet the standards for dissolution, it shall reject the petition. If the commission determines that the municipality meets the standards, it shall accept the petition.

(b) A Local Boundary Commission decision under this section may be appealed under the Administrative Procedure Act (AS 44.62). (§ 5 ch 74 SLA 1985)

Sec. 29.06.510. Election. (a) The Local Boundary Commission shall immediately notify the director of elections of its acceptance of a dissolution petition. Within 30 days after notification, the director of elections shall order an election in the municipality to determine whether the voters desire dissolution. The election must be held at least 30 and not more than 90 days after the election order. A person who is a voter of the municipality may vote in the dissolution election.

(b) The director of elections shall supervise the election in the general manner prescribed by the Alaska Election Code (AS 15). The state shall pay all election costs.

(c) The director of elections shall certify the election results. If dissolution is approved, the director of elections shall declare that the municipality is dissolved effective on the date of certification. (§ 5 ch 74 SLA 1985)

Sec. 29.06.520. Succession. The government succeeding to a dissolved municipality succeeds to all its rights, powers, duties, assets, and liabilities. (§ 5 ch 74 SLA 1985)

Sec. 29.06.530. Application. AS 29.06.450 — 29.06.530 apply to home rule and general law municipalities. (§ 5 ch 74 SLA 1985)

Chapter 08. Classification of Municipalities.

Section

10 — 50. [Repealed]

Secs. 29.08.010 — 29.08.045. Classification of municipalities. [Repealed, § 88 ch 74 SLA 1985, effective January 1, 1986.]

Sec. 29.08.050. Transition. [Repealed, § 44 ch 21 SLA 1985, effective May 10, 1985.]

Chapter 10. Home Rule Municipalities.

Article

1. Charters (§§ 29.10.010 — 29.10.100)
2. Home Rule Limitations (§ 29.10.200)

Effective date of chapter. — Section 90, ch. 74, SLA 1985 provides: "This Act takes effect January 1, 1986."

2.B.

5-0428L ✓

Cook

2/13/87

Original sponsor: Hoffman

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 65 ()

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 dissolution of a municipality."

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

8 * Section 1. AS 29.06.470(a) is amended to read:

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10 municipality may petition for dissolution when the municipality is
11 free of debt, or, if in debt, each of its creditors is satisfied with
12 a method of repayment and

13 (1) it no longer meets the minimum standards prescribed for
14 incorporation by AS 29.05, or former AS 29.18.030 if it is a third
15 class borough; [OR]

16 (2) the municipality ceases to use each of its mandatory
17 powers; or

18 (3) dissolution is requested by petition on a form provided
19 by the department signed by a majority of the ^{members} voters of the municipal-
20 ity proposed to be dissolved. *persons req'd to vote*

21 * Sec. 2. AS 29.06.510(c) is amended to read:

22 (c) The director of elections shall certify the election re-
23 sults. If dissolution is approved by a majority of the ^{persons req'd to vote in} voters of the
24 municipality, the director of elections shall declare that the munic-
25 ipality is dissolved effective on the date of certification.

26 * Sec. 3. AS 29.06.520 is repealed and reenacted to read:

27 Sec. 29.06.520. SUCCESSION. (a) The Local Boundary Commission
28 shall provide for the distribution of assets and liabilities of a
29 municipality upon its dissolution. Assets and liabilities may be

1 distributed to the department or another municipality.

2 (b) In determining how to distribute the assets of a municipali-
3 ty upon its dissolution, the Local Boundary Commission shall consider
4 the manner in which the assets will be best used to continue to pro-
5 vide services to the area of the dissolved municipality. If assets
6 are received by the department under this section, the department
7 shall, to the maximum extent possible, use the assets to provide
8 services to the area of the dissolved municipality. To carry out this
9 subsection, the department may enter into contracts regarding the use
10 of the assets with any person or organization, including a

11 (1) nonprofit corporation; or

12 (2) Native council organized under 25 U.S.C. 476 or
13 traditional village council.

14 (c) A contract may not be executed under (b)(2) of this section
15 unless the council waives immunity from suit for claims arising out of
16 activities relating to the use and management of the assets. A con-
17 tract entered into under (b) of this section must contain provisions
18 holding the contractor accountable for the use and maintenance of the
19 assets, including a provision that the

20 (1) assets be used for a specified public purpose;

21 (2) assets be used to provide services to residents without
22 regard to race, color, creed, religion, or national origin; and

23 (3) contractor is liable for claims arising out of the use
24 or management of the assets.
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28
29

February 2, 1987

Hon. Lyman Hoffman
Alaska House of Representatives
P.O. Box V
Juneau, AK 99811

Re: House Bill 65 -- dissolution
of a municipality

Dear Representative Hoffman:

Per your request, we have reviewed HB 65 relating to the requirements for dissolution of a municipality under the local option method and providing for the distribution of assets and liabilities of a municipality upon its dissolution.

Section 1. This section is amended by adding a third alternative by which a municipality can qualify its petition to dissolve under the local option method, AS 29.06.470(a). The new subsection, AS 29.06.470(a)(3) reads: "dissolution is approved in an advisory election held on the question by the municipality proposed to be dissolved." The terminology "approved in an advisory election ..." is not defined in this bill. In order for such an election to be useful to the Local Boundary Commission when it considers the adequacy of a municipality's petition for dissolution under AS 29.06.500, we believe that the advisory election alternative in AS 29.06.470(a)(3) should be more definitive.

Section 2. The basic problem in this section arises because it would have public assets of a dissolved municipality distributed to nonpublic entities, i.e., private nonprofit corporations and Native councils organized under the Indian Reorganization Act. Article IX, section 6 of the Alaska Constitution says, "No ... public property shall be transferred, ... except for a public purpose." Article X, section 2 requires all local government power to be vested in cities and boroughs. Both private corporations and IRA councils (whose membership is restricted by federal law to Natives) are not elected by or responsible to the entire electorate. We believe it would be unconstitutional to transfer public assets to private organizations which may not serve as substitute local governments under the Alaska Constitution, and to allow those organizations to make discretionary

Hon. Lyman Hoffman
Alaska House of Representatives
Re: HB 65 -- Dissolution of municipality

February 2, 1987
Page #2

decisions about assets which belong to the entire population of the dissolved municipality.

However, occasionally a local nonprofit or Native council may be in the best position to administer local assets, particularly when it has broad support from the community. In such cases, it may be possible to accomplish almost the same and despite the restrictions noted above, through the device of retaining title to the assets -- and ultimate control -- in the state, but contracting with local organization to administer the assets. Such delegations must be subject to strict controls to insure public access to facilities and state oversight, and truly discretionary governmental authority may not be delegated. But day-to-day operation of the former municipality's assets may be turned over to local private entities. We believe this can be accomplished under present law and does not require amending Title 29.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:
Marjorie L. Odland
Assistant Attorney General

MLO/pjg

cc: Bob Evans
Acting Legislative Liaison
Office of the Governor



Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

TO: Senate C&RA Members

Feb 17, 1987

FROM: Senate C&RA Staff

A handwritten signature in dark ink, appearing to be "N. E. L.", written over the "FROM" line.

RE: SB 50 - Dissolution of a municipality

Enclosed in this packet is a memo from Senator Binkley, the bill's sponsor, a position statement and zero fiscal note from DC&RA, a letter to the Attorney General asking several legal questions regarding section 2 and the Attorney General's response.

The AG's opinion points out a constitutional difficulty with section 2 as now written. The DC&RA memo also mentions some proposed changes for section 1.

There will be a public hearing on the bill, but it is not anticipated that action will be taken on the bill today. On Thursday, February 19th, the Local Boundary Commission will be meeting with the committee and there will be an opportunity to discuss dissolution and related issues with the Commission.

It is anticipated that the bill, probably in the form of a proposed committee substitute, will back before the committee next week for action.

Senator John Binkley

Alaska State Senate
P.O. Box V • Juneau, Alaska 99811 • (907) 465-4985




Finance Committee
Co-Chairman

M E M O R A N D U M

February 16, 1987

TO: SENATOR ARLISS STURGULEWSKI, CHAIRPERSON
Senate Community and Regional Affairs Committee

FROM: SENATOR JOHN BINKLEY 

Subj: Senate Bill 50: "An Act relating to the dissolution
of a municipality."

Residents and local elected officials of certain cities in Alaska have expressed an interest or desire in dissolving their municipal government. State laws provide standards and procedures for dissolution. However, the current regulations do not specifically address voluntary dissolution of active municipalities.

Existing regulations only pertain to dissolution of a community which effectively ceases to function as a governmental entity. State statutes require that, in order to dissolve, a municipal government must be free of debt and that it must cease to exercise its mandatory powers or it must be determined to no longer meet the standards of incorporation. The administrative regulations require that all three standards must be met in order for a municipal government to dissolve.

In 1984, residents of the City of Akiachak initiated a petition for the dissolution of their city. The matter was brought before the Alaska Local Boundary Commission twice (once upon reconsideration) in 1985. The Commission denied the petition principally because it found that Akiachak failed to meet two of the standards of dissolution of a municipality: (1) the community did not fall below the minimum standards for incorporation; and (2) the city must cease for two or more consecutive years to exercise virtually any of its municipal powers. The Commission determined that the City of Akiachak continued to function in certain respects (e.g., administration of grants). Akiachak has appealed the Commission's decision to the State Superior Court.

In addition to Akiachak, residents and elected officials of at least nine other cities have expressed varying

Senator Arliss Sturgulewski
February 16, 1987
Page 2

degrees of interest in dissolution. Most of these communities are merely examining the consequences of and procedures for dissolution. However, the city councils of both Atmautluak and Akiachak have taken action which has resulted in de facto dissolution for those communities.

Section 1 of this bill amends the standards by which the Local Boundary Commission is petitioned in dissolution cases by allowing the community to hold an advisory election.

Section 2 of this bill provides statutory guidelines for the distribution of a municipality's assets and liabilities upon its dissolution. The bill provides that assets and liabilities may be distributed to the state, another municipality, a nonprofit corporation, or a Native council.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700

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

February 6, 1987

POSITION PAPER

RE: SB 50 -- "An Act relating to dissolution of a municipality."

SPONSOR: Senator Binkley

Program Effects of Bill:

Section 1 of the bill amends the standards by which the Local Boundary Commission (LBC) judges a petition allowing a municipality to dissolve by adding an advisory election option.

Section 2 of the bill designates to the Local Boundary Commission (LBC) the responsibility to distribute the assets of a dissolved municipality and sets out some general guidelines for this distribution. The designation of the LBC as the executor of a dissolved municipality's assets and liabilities is a new role for this constitutionally mandated body.

Comments:

The creators of the existing statutes pertaining to municipal dissolution apparently only envisioned the need for dissolving municipal government in those cases in which communities essentially ceased to exist (i.e., became ghost towns). Consequently, the existing statutory dissolution standards do not adequately address the situation in which the residents of a "viable" community, presently incorporated as a municipality, choose to dissolve their municipality and return to an unincorporated status. The existing standards which the LBC uses to judge a dissolution petition are:

1. It (the municipality) is free of debt, or it has satisfied its creditors with a method of repayment; and
2. it no longer meets the minimum standards for incorporation; or
3. it ceases to use its mandatory powers.

Clearly these standards were constructed to apply to the case in which a community's population has moved away and the municipality has ceased to function. With the exception of the debt standard, these standards become quite subjective, ambiguous, and generally strained when applied to the case of a thriving community. It is virtually impossible for a still existing community to satisfy the last two standards.

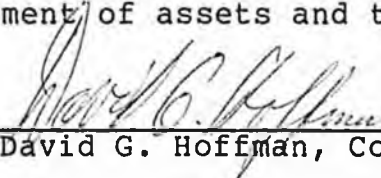
This situation thwarts the will of local residents to determine the type of local organization they will have represent and govern them. The proposed amendment, providing for a local advisory vote as an optional standard for dissolution, creates an objective and easily measured means to determine whether a municipal government should be allowed to dissolve. The Department advocates local control of government to the extent practical and, therefore, supports the purpose and intent of this legislation.

The bill does raise a number of questions concerning the mechanics of implementation. The Department recommends three technical amendments to clarify and strengthen new procedures set out in the bill:

- The Department recommends that the "advisory election" process provided for in this bill be clarified so that it is clear that the election is a municipal election by secret ballot and meets State procedural requirements.
- The Department also recommends the insertion of a requirement that the dissolution advisory vote, and the final vote on the question after LBC approval, be approved by a majority of residents registered to vote (this would require amendment of AS 29.06.510 which pertains to the dissolution election). Dissolution is clearly one of the most critical actions that residents of a municipality can take. It is therefore essential that such an election represent the broadest reasonable measure of community sentiment.
- It is recommended that the bill be amended to clearly state that the LBC shall require, in conjunction with the distribution of municipal assets, that facility use and services provided by such assets be provided equally to all residents and that the trustee of such assets be liable and accountable for the expenditure of public funds.

The Department believes these changes would strengthen the bill by more clearly defining the dissolution process and by making the trustee of local assets more accountable for public funds and services.

The proposed legislation presumes the LBC's ability to "provide for the distribution of assets and liabilities" and "consider the manner in which assets will best be used." However, it is not clear that the LBC has the power to place binding conditions on the assignment of assets and the provision of services.



David G. Hoffman, Commissioner

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

REQUEST: SB 50

Bill Version: SB 0050A
Publish Date: 01/22/87

Revision Date: _____
Title: "An Act relating to dissolution
of a municipality."
Sponsor: Senator Binkley
Requestor: Senate C&RA

Agency Affected: Community & Regional Affairs
BRU: Local Government Assistance
Components: Local Boundary Commission

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	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Douglas B. Griffin
Division: Municipal and Regional Assistance

Phone: 465-4750
Date: 02/06/87

Approved by Commissioner: _____
Agency: Community and Regional Affairs

Date: 2-6-87

Distribution (by preparer) :

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



Alaska State Legislature

SENATE

P.O. Box V
State Capitol
Juneau, Alaska 99811

Feb. 11, 1987

Grace Berg Schaible
Department of Law
P.O. Box K
Juneau, Alaska, 99811

Dear Attorney General Schaible:

Senate Bill 50, "An Act relating to the dissolution of a municipality," is currently in the Senate Community and Regional Affairs Committee. A copy of the bill is enclosed.

Section 2 of the bill states, in part, that the Local Boundary Commission (LBC) shall provide for the distribution of assets and liabilities of a municipality upon its dissolution. The bill further states that assets and liabilities may be distributed to the state, another municipality, a nonprofit corporation formed under the laws of the state, or a Native council organized under 25 U.S.C. 476.

Would you please give me your opinion on several question this section has raised?

1 - Are there statutory or constitutional problems with the distribution of public assets to a group which may limit the decision making process on how those assets are used to only members of the group, or to some portion of the population of the former municipality less than all the registered voters?

2 - Are there statutory or constitutional problems with the distribution of public assets to a group which may expand the decision making process on how those assets are used to include members of the group who are not registered voters?

3 - Does the LBC have the power to place binding conditions on the assignment of assets and the provision of services?

4 - Can the state government delegate governmental powers formerly exercised by a dissolved municipality to a entity that is not a political subdivision of the state?

If you have additional comments on the bill I would welcome them. Unfortunately, it was necessary to advance the hearing date on this bill to Tuesday, February 16th. If you could supply your answer by that date or before, it would be most appreciated. Thank you.

Sincerely,



Arliss Sturgulewski,
Chairman,
Community and Regional
Affairs Committee

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 16-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

February 17, 1987

Honorable Arliss Sturgulewski
Chair, Community & Regional
Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: SB 50; dissolution of a municipality

Dear Senator Sturgulewski:

You have requested our opinion on several questions regarding sec. 2 of SB 50. The questions will be answered individually below.

1. Are there statutory or constitutional problems with the distribution of public assets to a group which may limit the decision making process on how those assets are used to only members of the group, or to some portion of the population of the former municipality less than all the registered voters?

The basic constitutional problem in this section arises because it would have public assets of a dissolved municipality distributed to nonpublic entities, i.e., private nonprofit corporations and Native councils organized under the Indian Reorganization Act. Article IX, sec. 6 of the Alaska Constitution says, "No ... public property shall be transferred, ... except for a public purpose." Article X, sec. 2 requires all local government power to be vested in cities and boroughs. Both private corporations and IRA councils (whose membership is restricted by federal law to Natives) are not elected by or responsible to the entire electorate. We believe it would be unconstitutional to transfer public assets to private organizations which may not serve as substitute local governments under the Alaska Constitution, and to allow those organizations to make discretionary decisions about assets which belong to the entire population of the dissolved municipality. The concern here is responsibility to the entire population of the former municipality, not just to registered voters.

However, occasionally a local nonprofit or Native council may be in the best position to administer local assets, par-

Hon. Arliss Sturgulewski, Chair
Community & Regional Affairs Committee
Alaska State Legislature

February 17, 1987
Page #2
Re: SB 50, dissolution

ticularly when it has broad support from the community. In such cases, it may be possible to accomplish almost the same and despite the restrictions noted above, through the device of retaining title to the assets -- and ultimate control -- in the state, but contracting with a local organization to administer assets. Such delegations must be subject to strict controls to insure public access to facilities and state oversight, and truly discretionary governmental authority may not be delegated. But, day-to-day operation of the former municipality's assets may be turned over to a local private entity. We believe this can be accomplished under present law.

2. Are there statutory or constitutional problems with the distribution of public assets to a group which may expand the decision making process on how those assets are used to include members of the group who are not registered voters?

Please see the answer to question 1.

3. Does the Local Boundary Commission (LBC) have the power to place binding conditions on the assignment of assets and the provision of services?

Yes. The powers and duties of the LBC are listed in AS 44.47.567. Furthermore, sec. 2 of SB 50 gives the LBC the specific power needed to provide for the distribution of assets and liabilities upon dissolution of a municipality.

We hope this memorandum adequately addresses your concerns. Please do not hesitate to contact this office if you have further questions.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: *Marjorie L. Odland*
Marjorie L. Odland
Assistant Attorney General

MLO/pjg

cc: Hon. David Hoffman, Commissioner
Department of Community &
Regional Affairs

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 2/12/87 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: JUDICIARY
FINANCE

**FISCAL NOTE(S) ATTACHED yes **
IN ACCORDANCE WITH AS 24.08/035
(see below)

1/19/87

DATE TURNED INTO OFFICE 3/11/87

Mr. President:

COMMUNITY & REGIONAL AFFAIRS Committee considered SB 50
relating to dissolution of a municipality.

and recommended:

replace with CS SB 50 (C+RA) same title
 attached amendment(s) and new title

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

letter of intent adopted and attached

** Committee attached or adopted fiscal note(s)
 zero fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature]
[Signature]
[Signature]

Rick Helford DO NOT PASS

Arless Sturgulewski
Chairman signature and recommendation

Committee Backup Attached

Do Pass

NO. 114

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: ^{CS} SB 50 (C+RA) M&A

Bill Version: CS SB 0050 (C+RA)
Publish Date: 02/22/87 5-116 87

Revision Date: _____
Title: "An Act relating to dissolution
of a municipality."
Sponsor: Senator Binkley
Requestor: Senate C&RA

Agency Affected: Community & Regional Affairs
BRU: Local Government Assistance
Components: Local Boundary Commission

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	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS :

[Empty box for analysis]

Prepared by: Douglas B. Griffin *[Signature]* Phone: 465-4750
Division: Municipal and Regional Assistance Date: 02/06/87
Approved by Commissioner: *[Signature]* Date: 2-6-87
Agency: Community and Regional Affairs

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

CSSB 50 (C&RA)

LEGISLATIVE INTENT

Existing laws apparently will not permit the dissolution of a city government in a community unless that community suffers drastic reductions in its population and/or economy. The legislature recognizes that there are other circumstances under which the dissolution of a city government may be warranted. Such circumstances include those where:

1. the residents of a community have abandoned their city government;
2. alternative entities exist through which essential services* may be delivered in the absence of city government; and
3. dissolution would not be adverse to the interests of the community served by the city, the region in which the city is located, and the state, i.e., dissolving primarily to void a viable tax base.

It may be considered to be in the best interest of the state, under the provisions of Section 2 of this Act, for any city to be dissolved where such circumstances exist.

- * Definition of "essential services": Basic municipal services providing for the health, safety, and welfare of the residents, such as police and fire protection services and maintenance of public facilities, i.e., water and sewer systems; washeterias; community buildings, etc.

§ 29.06.450

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§ 29.06.460

MUNICIPAL GOVERNMENT

§ 29.06.490

NOTES TO DECISIONS

Legislature empowered to construct constitutional scheme for dissolution. — Since Alaska Const., art. X, § 7, says dissolved "in the manner" provided by the legislature, it empowers the legislature to construct any otherwise constitutional scheme for dissolution, rather than requiring the legislature to perform the dis-

solution. *City of Douglas v. City & Borough of Juneau*, Sup. Ct. Op. No. 672 (File No. 1379), 484 P.2d 1040 (1971), decided under former, similar law.

Collateral references. — 5G Am. Jur. 2d, *Municipal Corporations, Counties, and Other Political Subdivisions*, §§ 89-97.

Sec. 29.06.460. Petition. (a) Voters of a municipality may file a dissolution petition with the department in the form prescribed by the department. The petition must be signed by a number of voters equal to at least 25 percent of the number of votes cast in the last regular election in that municipality.

(b) The petition must include

(1) the name of the municipality;

(2) maps, documents, and other information showing that the municipality meets the standards for dissolution. (§ 5 ch 74 SLA 1985)

Sec. 29.06.470. Standards. (a) Except as provided in (b) of this section, voters of a municipality may petition for dissolution when the municipality is free of debt, or, if in debt, each of its creditors is satisfied with a method of repayment and

(1) it no longer meets the minimum standards prescribed for incorporation by AS 29.05, or former AS 29.18.030 if it is a third class borough; or

(2) the municipality ceases to use each of its mandatory powers.

(b) Voters of a city in a borough may petition for dissolution of the city if the borough consents to assume the city's rights, powers, duties, assets, and liabilities. The consent must be ratified by a majority of borough voters voting on the question. (§ 5 ch 74 SLA 1985)

Sec. 29.06.480. Review. (a) The department shall review a dissolution petition for content and signatures, and shall return a deficient petition for correction or completion.

(b) If the petition contains the required information and signatures, the department shall investigate the proposal. (§ 5 ch 74 SLA 1985)

Sec. 29.06.490. Report and hearing. (a) The department shall report its findings to the Local Boundary Commission with its recommendation regarding the dissolution of a municipality.

(b) The Local Boundary Commission shall hold at least one public hearing in the municipality proposed to be dissolved. (§ 5 ch 74 SLA 1985)

A M E N D M E N T

#1

Offered in the SENATE

By Binkley

TO: CSSB 50 (Rules)

Page 1, lines 18 - 19:

Delete "dissolution is requested by petition on a form provided by the department"

Insert "the dissolution petition filed under AS 29.06.460 is"

Original sponsor: Binkley

IN THE SENATE

BY THE RULES COMMITTEE

CS FOR SENATE BILL NO. 50 (Rules)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to dissolution of a municipality."

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

* Section 1. AS 29.06.470(a) is amended to read:

(a). Except as provided in (b) of this section, voters of a municipality may petition for dissolution when the municipality is free of debt, or, if in debt, each of its creditors is satisfied with a method of repayment and

(1) the municipality [IT] no longer meets the minimum standards prescribed for incorporation by AS 29.05, or former AS 29.-18.030 if it is a third class borough; [OR]

(2) the municipality ceases to use each of its mandatory powers; or

(3) dissolution is requested by petition on a form provided by the department signed by a number of voters of the municipality proposed to be dissolved greater than 50 percent of the number of votes cast in the last general election in that municipality.

* Sec. 2. AS 29.06.500(a) is amended to read:

(a) If the Local Boundary Commission determines that a municipality fails to meet the standards for dissolution, it shall reject the petition. If the commission determines that the municipality meets the standards under AS 29.06.470(a)(1) or (2), it shall accept the petition. If the commission determines that the municipality meets the standards under AS 29.06.470(a)(3) and that dissolution of the municipality is in the best interest of the state, it shall accept

§ 29.06.450

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MUNICIPAL GOVERNMENT

§ 29.06.490

NOTES TO DECISIONS

Legislature empowered to construct constitutional scheme for dissolution. — Since Alaska Const., art. X, § 7, says dissolved "in the manner" provided by the legislature, it empowers the legislature to construct any otherwise constitutional scheme for dissolution, rather than requiring the legislature to perform the dis-

solution. *City of Douglas v. City & Borough of Juneau*, Sup. Ct. Op. No. 672 (File No. 1379), 484 P.2d 1040 (1971), decided under former, similar law.

Collateral references. — 56 Am. Jur. 2d, *Municipal Corporations, Counties, and Other Political Subdivisions*, §§ 89-97.

Sec. 29.06.460. Petition. (a) Voters of a municipality may file a dissolution petition with the department in the form prescribed by the department. The petition must be signed by a number of voters equal to at least 25 percent of the number of votes cast in the last regular election in that municipality.

(b) The petition must include

(1) the name of the municipality;

(2) maps, documents, and other information showing that the municipality meets the standards for dissolution. (§ 5 ch 74 SLA 1985)

Sec. 29.06.470. Standards. (a) Except as provided in (b) of this section, voters of a municipality may petition for dissolution when the municipality is free of debt, or, if in debt, each of its creditors is satisfied with a method of repayment and

(1) it no longer meets the minimum standards prescribed for incorporation by AS 29.05, or former AS 29.18.030 if it is a third class borough; or

(2) the municipality ceases to use each of its mandatory powers.

(b) Voters of a city in a borough may petition for dissolution of the city if the borough consents to assume the city's rights, powers, duties, assets, and liabilities. The consent must be ratified by a majority of borough voters voting on the question. (§ 5 ch 74 SLA 1985)

Sec. 29.06.480. Review. (a) The department shall review a dissolution petition for content and signatures, and shall return a deficient petition for correction or completion.

(b) If the petition contains the required information and signatures, the department shall investigate the proposal. (§ 5 ch 74 SLA 1985)

Sec. 29.06.490. Report and hearing. (a) The department shall report its findings to the Local Boundary Commission with its recommendation regarding the dissolution of a municipality.

(b) The Local Boundary Commission shall hold at least one public hearing in the municipality proposed to be dissolved. (§ 5 ch 74 SLA 1985)

SENATE BILL NO. 50 by Senator Binkley, entitled:

"An Act relating to dissolution of a municipality."

was read the first time and referred to the Community and Regional Affairs Committee, the Judiciary Committee and the Finance Committee.

The Community and Regional Affairs Committee considered SENATE BILL NO. 50 (An Act relating to dissolution of a municipality) and recommended it be replaced with

CS FOR SENATE BILL NO. 50 (C&RA)

and a majority do pass. The report was signed by Senator Sturgulewski, Chairman and concurred in by Senators Szymanski and Zharoff. Senator Halford signed "do not pass".

Zero fiscal note published today from Department of Community and Regional Affairs.

SENATE BILL NO. 50 was referred to the Judiciary Committee.

The Judiciary Committee considered SENATE BILL NO. 50 (dissolution of a municipality) and a majority of the committee recommended adoption of the Community and Regional Affairs Committee Substitute and do pass with the following amendment:

Page 2, line 2: Insert a new Section 3 to read:

* Sec. 3. AS 29.06.510(a) is amended to read:

(a) The Local Boundary Commission shall immediately notify the director of elections of its acceptance of a dissolution petition. Within 30 days after notification, the director of elections shall order an election in the municipality to determine whether the voters desire dissolution. The election must be held at least 30 and not more than 90 days after the election order (unless such timing would cause the) (election to be held between May 1 and November 1.) (If the director of elections receives notification) (after April 1, but before October 1, the election) (shall be held within 60 days after November 1.) A person who is a voter of the municipality may vote

in the dissolution election.

Renumber existing section accordingly.

The report was signed by Senator Kerttula, Chairman and concurred in by Senators Josephson and Sturgulewski.

The committee adopted:

Legislative Intent
CSSB 50 (C&RA)

Existing laws apparently will not permit the dissolution of a city government in a community unless that community suffers drastic reductions in its population and/or economy. The legislature recognizes that there are other circumstances under which the dissolution of a city government may be warranted. Such circumstances include those where:

1. the residents of a community have abandoned their city government;

SB 50 SENATE JOURNAL - PAGE 814- 1 4/ 3/87

2. alternative entities exist through which essential services* may be delivered in the absence of city government; and

3. dissolution would not be adverse to the interests of the community served by the city, the region in which the city is located, and the state, i.e., dissolving primarily to void a viable tax base.

It may be considered to be in the best interest of the state, under the provisions of Section 2 of this Act, for any city to be dissolved where such circumstances exist.

* Definition of "essential services": Basic municipal services providing for the health, safety, and welfare of the residents, such as police and fire protection services and maintenance of public facilities, i.e., water and sewer systems, washaterias, community buildings, etc.

SENATE BILL NO. 50 was referred to the Finance Committee.

SB 50 SENATE JOURNAL - PAGE 847- 1 4/ 7/87

The Finance Committee considered SENATE BILL NO. 50 (dissolution of a municipality) and a majority of the committee recommended it be replaced with

CS FOR SENATE BILL NO. 50 (FIN)

and do pass. The report was signed by Senator Binkley, Co-chairman and concurred in by Senators Zharoff, Duncan,

[REDACTED]

Existing laws apparently do not permit the dissolution of a city government unless that community suffers drastic reductions in its population or economy. The legislature recognizes that there are other circumstances under which the dissolution of a city government may be warranted. Such circumstances include those where:

1. the residents of a community have abandoned their city government?
2. alternative entities exist through which essential services* may be delivered in the absence of city government? and
3. dissolution would not be adverse to the interests of the region in which the city is located and the state (e.g., dissolving primarily to avoid a viable tax base, returning education function to the state).

It may be considered to be in the best interest of the state, under the provisions of Section 2 of this Act, for any city to be dissolved where such circumstances exist.

* Definition of "essential services": Basic municipal services provided for the health, safety, and welfare of the residents, such as police and fire protection services and maintenance of public facilities, e.g., water and waste disposal systems, community buildings, etc.

SENATE BILL NO. 50 was referred to the Rules Committee.

SB 50

SENATE JOURNAL - PAGE 896- 4 4/10/87

The Rules Committee considered SENATE BILL NO. 50 (dissolution of a municipality) and recommended calendar April 13. The report was signed by Senator Eliason, Chairman and concurred in by Senators Hensley, Binkley and Bennett.

SENATE BILL NO. 50 will be on the April 13 calendar.

SB 50

SENATE JOURNAL - PAGE 906- 2 4/10/87

At the request of the Rules Committee, SENATE BILL NO. 50 (dissolution of a municipality) was taken from the April 13 proposed calendar and returned to the Rules Committee.

SB 50

SENATE JOURNAL - PAGE 1170--2 5/ 4/87

The Rules Committee considered SENATE BILL NO. 50 (dissolution of a municipality) and a majority of the committee recommended calendar May 4. The report was signed by Senator Eliason, Chairman and Senators Faiks, Bennett and Hensley.

SENATE BILL NO. 50 is on the calendar.

SB 50

SENATE JOURNAL - PAGE 1172- 2 5/ 4/87

Senator Halford moved and asked unanimous consent that SENATE BILL NO. 50 (dissolution of a municipality) be held until the May 5 calendar. Without objection, it was so ordered and SENATE BILL NO. 50 will be on the May 5 calendar.

SB 50

SENATE JOURNAL - PAGE 1192- 2 5/ 5/87

Senator Halford moved and asked unanimous consent that SENATE BILL NO. 50 (dissolution of a municipality) which was held from May 4 be returned to the Rules Committee. Without objection, SENATE BILL NO. 50 was returned to Rules.



Alaska State Legislature

Senate

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

TO: Senate C&RA Members

Feb 17, 1987

FROM: Senate C&RA Staff *MEC*

RE: SB 50 - Dissolution of a municipality

Enclosed in this packet is a memo from Senator Binkley, the bill's sponsor, a position statement and zero fiscal note from DC&RA, a letter to the Attorney General asking several legal questions regarding section 2 and the Attorney General's response.

The AG's opinion points out a constitutional difficulty with section 2 as now written. The DC&RA memo also mentions some proposed changes for section 1.

There will be a public hearing on the bill, but it is not anticipated that action will be taken on the bill today. On Thursday, February 19th, the Local Boundary Commission will be meeting with the committee and there will be an opportunity to discuss dissolution and related issues with the Commission.

It is anticipated that the bill, probably in the form of a proposed committee substitute, will be back before the committee next week for action.

Senator John Binkley

Alaska State Senate
P.O. Box V • Juneau, Alaska 99811 • (907) 465-4985



Finance Committee
Co-Chairman

M E M O R A N D U M

February 16, 1987

TO: SENATOR ARLISS STURGULEWSKI, CHAIRPERSON
Senate Community and Regional Affairs Committee

FROM: SENATOR JOHN BINKLEY

Subj: Senate Bill 50: "An Act relating to the dissolution
of a municipality."

Residents and local elected officials of certain cities in Alaska have expressed an interest or desire in dissolving their municipal government. State laws provide standards and procedures for dissolution. However, the current regulations do not specifically address voluntary dissolution of active municipalities.

Existing regulations only pertain to dissolution of a community which effectively ceases to function as a governmental entity. State statutes require that, in order to dissolve, a municipal government must be free of debt and that it must cease to exercise its mandatory powers or it must be determined to no longer meet the standards of incorporation. The administrative regulations require that all three standards must be met in order for a municipal government to dissolve.

In 1984, residents of the City of Akiachak initiated a petition for the dissolution of their city. The matter was brought before the Alaska Local Boundary Commission twice (once upon reconsideration) in 1985. The Commission denied the petition principally because it found that Akiachak failed to meet two of the standards of dissolution of a municipality: (1) the community did not fall below the minimum standards for incorporation; and (2) the city must cease for two or more consecutive years to exercise virtually any of its municipal powers. The Commission determined that the City of Akiachak continued to function in certain respects (e.g., administration of grants). Akiachak has appealed the Commission's decision to the State Superior Court.

In addition to Akiachak, residents and elected officials of at least nine other cities have expressed varying

Senator Arliss Sturgulewski
February 16, 1987
Page 2

degrees of interest in dissolution. Most of these communities are merely examining the consequences of and procedures for dissolution. However, the city councils of both Atmautluak and Akiachak have taken action which has resulted in de facto dissolution for those communities.

Section 1 of this bill amends the standards by which the Local Boundary Commission is petitioned in dissolution cases by allowing the community to hold an advisory election.

Section 2 of this bill provides statutory guidelines for the distribution of a municipality's assets and liabilities upon its dissolution. The bill provides that assets and liabilities may be distributed to the state, another municipality, a nonprofit corporation, or a Native council.

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700

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

February 6, 1987

POSITION PAPER

RE: SB 50 -- "An Act relating to dissolution of a municipality."

SPONSOR: Senator Binkley

Program Effects of Bill:

Section 1 of the bill amends the standards by which the Local Boundary Commission (LBC) judges a petition allowing a municipality to dissolve by adding an advisory election option.

Section 2 of the bill designates to the Local Boundary Commission (LBC) the responsibility to distribute the assets of a dissolved municipality and sets out some general guidelines for this distribution. The designation of the LBC as the executor of a dissolved municipality's assets and liabilities is a new role for this constitutionally mandated body.

Comments:

The creators of the existing statutes pertaining to municipal dissolution apparently only envisioned the need for dissolving municipal government in those cases in which communities essentially ceased to exist (i.e., became ghost towns). Consequently, the existing statutory dissolution standards do not adequately address the situation in which the residents of a "viable" community, presently incorporated as a municipality, choose to dissolve their municipality and return to an unincorporated status. The existing standards which the LBC uses to judge a dissolution petition are:

1. It (the municipality) is free of debt, or it has satisfied its creditors with a method of repayment; and
2. it no longer meets the minimum standards for incorporation; or
3. it ceases to use its mandatory powers.

Clearly these standards were constructed to apply to the case in which a community's population has moved away and the municipality has ceased to function. With the exception of the debt standard, these standards become quite subjective, ambiguous, and generally strained when applied to the case of a thriving community. It is virtually impossible for a still existing community to satisfy the last two standards.

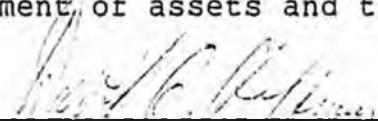
This situation thwarts the will of local residents to determine the type of local organization they will have represent and govern them. The proposed amendment, providing for a local advisory vote as an optional standard for dissolution, creates an objective and easily measured means to determine whether a municipal government should be allowed to dissolve. The Department advocates local control of government to the extent practical and, therefore, supports the purpose and intent of this legislation.

The bill does raise a number of questions concerning the mechanics of implementation. The Department recommends three technical amendments to clarify and strengthen new procedures set out in the bill:

- The Department recommends that the "advisory election" process provided for in this bill be clarified so that it is clear that the election is a municipal election by secret ballot and meets State procedural requirements.
- The Department also recommends the insertion of a requirement that the dissolution advisory vote, and the final vote on the question after LBC approval, be approved by a majority of residents registered to vote (this would require amendment of AS 29.06.510 which pertains to the dissolution election). Dissolution is clearly one of the most critical actions that residents of a municipality can take. It is therefore essential that such an election represent the broadest reasonable measure of community sentiment.
- It is recommended that the bill be amended to clearly state that the LBC shall require, in conjunction with the distribution of municipal assets, that facility use and services provided by such assets be provided equally to all residents and that the trustee of such assets be liable and accountable for the expenditure of public funds.

The Department believes these changes would strengthen the bill by more clearly defining the dissolution process and by making the trustee of local assets more accountable for public funds and services.

The proposed legislation presumes the LBC's ability to "provide for the distribution of assets and liabilities" and "consider the manner in which assets will best be used." However, it is not clear that the LBC has the power to place binding conditions on the assignment of assets and the provision of services.



David G. Hoffman, Commissioner

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: SB 50

Bill Version: SB 0050A
Publish Date: 01/22/87

Revision Date: _____
Title: "An Act relating to dissolution of a municipality."
Sponsor: Senator Binkley
Requestor: Senate C&RA

Agency Affected: Community & Regional Affairs
BRU: Local Government Assistance
Components: Local Boundary Commission

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	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Douglas B. Griffin *DBG* Phone: 465-4750
Division: Municipal and Regional Assistance Date: 02/06/87

Approved by Commissioner: [Signature] Date: 2-6-87
Agency: Community and Regional Affairs

Distribution (by preparer):

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



Alaska State Legislature

SENATE

P.O. Box V
State Capitol
Juneau, Alaska 99811

Feb. 11, 1987

Grace Berg Schaible
Department of Law
P.O. Box K
Juneau, Alaska, 99811

Dear Attorney General Schaible:

Senate Bill 50, "An Act relating to the dissolution of a municipality," is currently in the Senate Community and Regional Affairs Committee. A copy of the bill is enclosed.

Section 2 of the bill states, in part, that the Local Boundary Commission (LBC) shall provide for the distribution of assets and liabilities of a municipality upon its dissolution. The bill further states that assets and liabilities may be distributed to the state, another municipality, a nonprofit corporation formed under the laws of the state, or a Native council organized under 25 U.S.C. 476.

Would you please give me your opinion on several question this section has raised?

1 - Are there statutory or constitutional problems with the distribution of public assets to a group which may limit the decision making process on how those assets are used to only members of the group, or to some portion of the population of the former municipality less than all the registered voters?

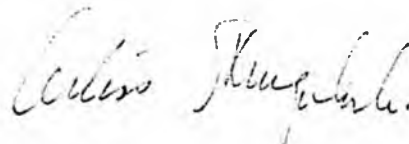
2 - Are there statutory or constitutional problems with the distribution of public assets to a group which may expand the decision making process on how those assets are used to include members of the group who are not registered voters?

3 - Does the LBC have the power to place binding conditions on the assignment of assets and the provision of services?

4 - Can the state government delegate governmental powers formerly exercised by a dissolved municipality to a entity that is not a political subdivision of the state?

If you have additional comments on the bill I would welcome them. Unfortunately, it was necessary to advance the hearing date on this bill to Tuesday, February 16th. If you could supply your answer by that date or before, it would be most appreciated. Thank you.

Sincerely,



Arliss Sturgulewski,
Chairman,
Community and Regional
Affairs Committee

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

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February 17, 1987

Honorable Arliss Sturgulewski
Chair, Community & Regional
Affairs Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Re: SB 50; dissolution of a municipality

Dear Senator Sturgulewski:

You have requested our opinion on several questions regarding sec. 2 of SB 50. The questions will be answered individually below.

1. Are there statutory or constitutional problems with the distribution of public assets to a group which may limit the decision making process on how those assets are used to only members of the group, or to some portion of the population of the former municipality less than all the registered voters?

The basic constitutional problem in this section arises because it would have public assets of a dissolved municipality distributed to nonpublic entities, i.e., private nonprofit corporations and Native councils organized under the Indian Reorganization Act. Article IX, sec. 6 of the Alaska Constitution says, "No ... public property shall be transferred, ... except for a public purpose." Article X, sec. 2 requires all local government power to be vested in cities and boroughs. Both private corporations and IRA councils (whose membership is restricted by federal law to Natives) are not elected by or responsible to the entire electorate. We believe it would be unconstitutional to transfer public assets to private organizations which may not serve as substitute local governments under the Alaska Constitution, and to allow those organizations to make discretionary decisions about assets which belong to the entire population of the dissolved municipality. The concern here is responsibility to the entire population of the former municipality, not just to registered voters.

However, occasionally a local nonprofit or Native council may be in the best position to administer local assets, par-

Hon. Arliss Sturgulewski, Chair
Community & Regional Affairs Committee
Alaska State Legislature

February 17, 1987
Page #2
Re: SB 50, dissolution

ticularly when it has broad support from the community. In such cases, it may be possible to accomplish almost the same and despite the restrictions noted above, through the device of retaining title to the assets -- and ultimate control -- in the state, but contracting with a local organization to administer assets. Such delegations must be subject to strict controls to insure public access to facilities and state oversight, and truly discretionary governmental authority may not be delegated. But, day-to-day operation of the former municipality's assets may be turned over to a local private entity. We believe this can be accomplished under present law.

2. Are there statutory or constitutional problems with the distribution of public assets to a group which may expand the decision making process on how those assets are used to include members of the group who are not registered voters?

Please see the answer to question 1.

3. Does the Local Boundary Commission (LBC) have the power to place binding conditions on the assignment of assets and the provision of services?

Yes. The powers and duties of the LBC are listed in AS 44.47.567. Furthermore, sec. 2 of SB 50 gives the LBC the specific power needed to provide for the distribution of assets and liabilities upon dissolution of a municipality.

We hope this memorandum adequately addresses your concerns. Please do not hesitate to contact this office if you have further questions.

Sincerely yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: *Marjorie L. Odland*
Marjorie L. Odland
Assistant Attorney General

MLO/pjg

cc: Hon. David Hoffman, Commissioner
Department of Community &
Regional Affairs