

SB

185

3/8/88
REC'D

and non-affiliated loads were mixed and the drivers were paid only the lower, affiliated rate. Cook said, "it appears that the compensation due the owner-operator for non-affiliated LTL was denied . . . and furthermore it appeared that Mukluk blatantly concealed from the owner-operator what the owner-operator was entitled to." He discovered notations on various drivers' payment sheets and on company rate worksheets instructing Mukluk employees "not to include the freight charge computation in the record of the owner-operator settlement." (Emphasis in original). Without a copy of the freight bill a driver is unable to determine whether his portion of the freight charges was computed correctly.

Based upon these discoveries, Cook concluded:

I do not believe that Mukluk can, in good faith, dispute that it owes the owner-operators more than they had paid them. I have read the letter sent to the owner-operators which accompanied checks sent to them. I do not believe, based upon the law which is well known to Mukluk as well as myself, that Mukluk can claim their obligation to pay in dispute in good faith. In terms of the amount to be paid, the exact amount is nearly ascertainable though mathematical application of the correct tariff rates which is what I am currently attempting to do.

[4] We believe the drivers have presented sufficient evidence of Mukluk's bad faith to defeat Mukluk's motion for summary judgment. See *Air Van Lines*, 673 P.2d at 778 n. 2. The statements contained in the Cook affidavit raised a genuine factual dispute over whether Mukluk's refusal to pay the drivers according to published tariffs and written contracts was in good faith. If there is no good faith dispute as to the validity of the drivers' claim, there can be no accord and satisfaction. *Id.* See also 6 A. Corbin, *supra*, § 1287 at 159.

The judgment of the trial court is therefore REVERSED and the case is RE-

2. We need not reach the drivers' arguments that Mukluk's offer was ambiguous or that the trial

MANDATED for further proceedings consistent with this opinion."

MOORE, J., not participating.



John W. STORRS, Appellant,

v.

MUNICIPALITY OF ANCHORAGE, a
municipal corporation, Appellee.

No. S-863.

Supreme Court of Alaska.

July 11, 1986.

Rehearing Granted in Part and
Opinion Amended July 29, 1986.

Discharged police officer filed suit against municipality for reinstatement and back pay, arguing he was deprived of due process because he did not receive a pretermination hearing. The Superior Court, Third Judicial District, Anchorage, Karl S. Johnstone, J., entered summary judgment for the municipality, and officer appealed. The Supreme Court, Moore, J., held that: (1) pretermination procedure followed by municipality comported with minimum federal due process requirements; (2) a post-termination adversarial hearing may satisfy requirements of Alaska's due process clause when a collective bargaining agreement waives the constitutionally mandated pretermination adversarial hearing; and (3) officer was not entitled to back pay from date of discharge to date of posttermination trial.

Affirmed.

court abused its discretion by denying their motion for relief under Civil Rule 60(b).

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1. Constitutional Law ⇨277(2)

Public employees, other than those serving "at will," have a sufficient property interest in continued employment to warrant due process protection prior to termination. U.S.C.A. Const.Amend. 14.

2. Constitutional Law ⇨277(2)

City police officer had a property interest in his continued employment and could not be deprived of his job without due process of law, where a collective bargaining agreement provided that police officers could be dismissed only for just cause. U.S.C.A. Const.Amend. 14.

3. Constitutional Law ⇨278(1.1)

The root of due process is the right to a hearing before a deprivation of property. U.S.C.A. Const.Amend. 14.

4. Constitutional Law ⇨275(1)

Nature of an employee's pretermination rights varies, depending in part on nature of subsequent proceedings available; procedure should provide an initial check against a mistaken decision by employer, ensuring that there are reasonable grounds to believe the allegations against the employee are true; at a minimum, employee must receive oral or written notice of the proposed discharge, an explanation of the employer's evidence and an opportunity to present his position.

5. Constitutional Law ⇨278.4(5)

Pretermination procedure followed by municipality in discharging police officer comported with minimum federal due process requirements, where officer received notice, an explanation of evidence against him, and a sufficient opportunity to respond during course of investigation. U.S. C.A. Const.Amend. 14.

6. Constitutional Law ⇨278.4(5)

When minimal pretermination procedures are followed, federal law entitles a public employee to a formal evidentiary posttermination hearing within a reasonable time.

7. Constitutional Law ⇨278.4(5)

Delay of more than three years between city police officer's discharge and posttermination hearing in form of scheduled trial did not violate officer's due process rights, where officer never requested a prompt posttermination hearing. U.S. C.A. Const.Amend. 14.

8. Constitutional Law ⇨278.4(5)

Like the Federal Constitution, the Alaska Constitution affords pretermination due process protection to public employees who may only be terminated for just cause. Const. Art. 1, § 7.

9. Administrative Law and Procedure ⇨470

Officers and Public Employees ⇨72.16

A public employee ordinarily has the right to an adversarial hearing before he may be effectively dismissed.

10. Constitutional Law ⇨278.4(5)

A posttermination adversarial hearing may satisfy requirements of Alaska's due process clause when a collective bargaining agreement waives the constitutionally mandated pretermination adversarial hearing; substitution of a posttermination hearing for a pretermination hearing is permissible so long as the negotiated agreement provides fair, reasonable, and efficacious procedures by which employer-employee disputes may be resolved; in such a case, due process has not been offended where a discharged employee can seek posttermination judicial review of his grievance. Const. Art. 1, § 7.

11. Municipal Corporations ⇨185(4)

Discharged city police officer waived his right to a posttermination hearing by not requesting one.

12. Officers and Public Employees ⇨76

When a constitutionally unlawful dismissal is cured by a posttermination hearing, the employee is entitled to be paid for the period between dismissal and the curative hearing.

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Appellant,

ANCHORAGE, a
n, Appellee.

Alaska.

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Officer filed suit
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Admiral judgment
Officer appealed.
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STORRS v. MUNICIPALITY OF ANCHORAGE

1147

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[3.] The root of due process is the right to a hearing *before* a deprivation of property. *Loudermill*, 470 U.S. at —, 105 S.Ct. at 1493, 84 L.Ed.2d at 503. The nature of the employee's pretermination rights varies, depending in part on the nature of subsequent proceedings available. *Loudermill*, 470 U.S. at —, 105 S.Ct. at 1495, 84 L.Ed.2d at 506. The procedure should provide an initial check against a mistaken decision by the employer, ensuring that there are reasonable grounds to believe the allegations against the employee are true. *Id.* At a minimum, the employee must receive oral or written notice of the proposed discharge, an explanation of the employer's evidence and an opportunity to present his position. *Id.* Storrs argues that he was deprived of due process because the Municipality did not explain its evidence nor provide a meaningful opportunity to respond.

[5] We conclude that the pretermination procedure followed by the Municipality comported with minimum federal due process requirements. The Municipality undertook an investigation on November 17 after receiving the complaint against Storrs. The investigation officers took a statement from the woman and examined the scene of the reported incident, taking photographs and casts of tire tracks. They measured the time and distance of various routes from Storrs' point of origin to the woman's residence. The woman submitted to a polygraph examination. Other officers with knowledge of the events in question were interviewed.

On November 24, the investigating lieutenant interviewed Storrs about the incident. Also present were Storrs' shop steward and a police captain. The lieutenant informed Storrs he was conducting a criminal investigation and advised Storrs of his constitutional rights. Storrs agreed to a recorded interview and gave his version of the evening's events. Storrs indicated that he did not know exactly where the woman's house was and that, although she made several advances toward him, no sexual contact occurred.

On November 26, Storrs voluntarily submitted to a polygraph examination. Storrs again gave his version of the facts. The state trooper who administered the test told Storrs that he appeared to be lying about certain material facts and urged Storrs to explain what really happened. The trooper informed Storrs about the contents of the woman's statements and that her allegations were supported by mileage and time measurements, the police department radio log, and tire tracks and footprints found at the scene. Storrs was also informed that the statement of another police officer indicated Storrs knew the location of a certain street and therefore Storrs' statement that he got lost on the way was less likely to be true. The trooper again urged Storrs to tell the truth. Storrs maintained that his original version was correct.

On December 6 Police Chief Porter, Storrs and Storrs' shop steward met. Porter again gave Storrs the opportunity to explain any of the evidence gathered, but Storrs merely repeated his blanket denial and did not offer any further information. At the conclusion of the interview, Porter fired Storrs.

We conclude that Storrs received notice, an explanation of the evidence against him and a sufficient opportunity to respond during the course of the investigation. The pretermination requirements of federal due process were therefore satisfied in this case.

B. Post-termination Hearing

[6] When minimal pretermination procedures are followed, federal law entitles a public employee to a formal evidentiary post-termination hearing within a reasonable time. *Kelly v. Smith*, 764 F.2d 1412, 1415 (11th Cir.1985); *Brasslett v. Cota*, 761 F.2d 827, 836 (1st Cir.1985); *DeSarno v. Department of Commerce*, 761 F.2d 657, 660 (D.C.Cir.1985). The collective bargaining agreement provides for prompt review of grievances and binding arbitration of unresolved disputes. However, in the instant case APWA refused to process Storrs'

1149

occurred. In Alaska, Storrs' remedy lies in the courts; he may sue the Municipality for breach of contract. *Casey v. City of Fairbanks*, 670 P.2d 1133, 113S (Alaska 1983).

[7] Storrs was dismissed in December 1982. Trial was scheduled for January 1985. The question is whether, under the circumstances presented here, this delay is so unreasonable as to violate Storrs' due process rights.

Storrs did not file a complaint until June 1983, six months after the dismissal. The complaint did not request an immediate judicial hearing. In November 1983, the Municipality moved for partial summary judgment, claiming that Storrs' remedy was a judicial determination of the merits of the termination decision. Instead of joining in this suggestion and demanding an immediate trial, Storrs opposed it. Judge Johnstone granted partial summary judgment and set trial for January 1985. Storrs at no time requested an earlier trial date; instead he requested the court to enter final judgment against him so that he could appeal.

Under these specific circumstances, we cannot conclude that Storrs' federal due process rights were violated by the delay. The fact is that Storrs never requested a prompt post-termination hearing. When a post-termination hearing was offered, he refused it.

III. STATE DUE PROCESS RIGHTS

A. Pretermination Hearing

[8] Like the federal constitution, the Alaska constitution affords pretermination due process protection to public employees who may only be terminated for just cause. *McMillan v. Anchorage Community Hospital*, 646 P.2d 857, 864 (Alaska 1982). Again we must consider the extent of the process due.

[9] In *Nichols v. Eckert*, 504 P.2d 1359, 1365 (Alaska 1973), the court ruled that a post-termination hearing was constitutionally deficient because the discharged employee was not permitted to call witnesses on her behalf. Although a full judicial

hearing is not required, the employee must be allowed to present a defense by testimonial and other evidence. *Id.* Three justices concurred in an opinion concluding that, absent extraordinary circumstances, the hearing should occur *prior* to termination. *Id.* at 1366. We therefore conclude that a public employee ordinarily has the right to an adversarial hearing before he may be effectively dismissed.

[10] In limited circumstances, however, a collective bargaining agreement may alter the pretermination rights of covered employees. We hold that a post-termination adversarial hearing may satisfy the requirements of Alaska's Due Process Clause when a collective bargaining agreement waives the constitutionally mandated pretermination adversarial hearing. Such a substitution of a post-termination hearing for a pretermination hearing is permissible "so long as the negotiated agreement provides fair, reasonable, and efficacious procedures by which employer-employee disputes may be resolved," *Gorham v. City of Kansas City*, 590 P.2d 1051, 1058 (Kan. 1979). *Accord, Antinore v. State of New York*, 49 A.D.2d 6, 371 N.Y.S.2d 213 (1975), *aff'd* 40 N.Y.2d 921, 389 N.Y.S.2d 576, 358 N.E.2d 268 (1976). Where, as here, a discharged employee can seek post-termination judicial review of his grievance, due process has not been offended.

B. Post-Termination Hearing

[11] The post-termination proceeding contemplated by the collective bargaining agreement did not take place in this case because the union declined to pursue the termination grievance. At that point Storrs had the right to a prompt and full post-termination hearing in the superior court. *Casey v. City of Fairbanks*, 670 P.2d 1133 (Alaska 1983). However, as we have previously explained, Storrs did not request a post-termination hearing and in fact refused one when it was offered. We therefore conclude that Storrs waived his right to a post-termination hearing by not requesting one. *See Graham v. State*, 638 P.2d 211, 216 (Alaska 1981).

IV. STORRS' WAGE

Storrs also seeks back pay from scheduled trial. It tends that Storrs to reinstatement had demonstrated was terminated.

[12, 13] Where a wrongful dismissal is without hearing, the employee is entitled to back pay for the period of the curative hearing. *See Board of Education v. Board of Education*, 670 P.2d 1034, 1038, 646 P.2d at 86. In this case, Storrs refused his termination hearing. We therefore find that Storrs' termination was lawful. We therefore award Storrs two months' back pay for these circumstances.

The decision is **FIRMED**.

Michael F. J.
Clinic, Inc.
Corporation, et al.

STORRS
Appell
No
Suprem

Before R.
BURKE, MAJ

1. Rabinowitz, et al.
appellee, would request
reversal of the
Service's review.

IV. STORRS' RIGHT TO INTERIM WAGES

Storrs also argues that he is entitled to back pay from the date of discharge to the scheduled trial date. The Municipality contends that Storrs would have been entitled to reinstatement and back pay only if he had demonstrated at trial that his employment was terminated without just cause.

[12, 13] When a constitutionally unlawful dismissal is cured by a post-termination hearing, the employee is entitled to be paid for the period between dismissal and the curative hearing. *Kenai Peninsula Borough Board of Education v. Brown*, 691 P.2d 1034, 1039 (Alaska 1984); *McMillan*, 646 P.2d at 867. However, in the instant case, Storrs received all process due, therefore his termination was constitutionally lawful. We therefore conclude that awarding Storrs two years of back pay under these circumstances would be an unwarranted extension of *Brown* and *McMillan*.

The decision of the superior court is AFFIRMED.



Michael F. BEIRNE, and Lake Otis Clinic, Inc., a nonprofit Alaska Corporation, Appellants/Cross Appellees,

v.

STATE of Alaska, Appellee/Cross Appellant.

Nos. S-912, S-913.

Supreme Court of Alaska.

July 11, 1986.

Before RABINOWITZ, C.J., and BURKE, MATTHEWS and MOORE, JJ.

1. Rabinowitz, Chief Justice, and Matthews, Justice, would reverse the superior court's affirmation of the Department of Health and Social Services' revocation of appellants' certificate of

ORDER

IT IS HEREBY ORDERED:

The judgment of the superior court is AFFIRMED by an evenly divided court.¹

Entered by direction of the court at Anchorage, Alaska, this 11th day of July, 1986.

COMPTON, J., not participating.



PROVIDENCE WASHINGTON INSURANCE COMPANY, Appellant,

v.

Watson BUSBY, Deceased, Louise Busby, Widow, Ruth M. Richardson, and State of Alaska (Second Injury Fund), Appellees.

No. S-1154.

Supreme Court of Alaska.

July 18, 1986.

Appeal was taken from decision of Worker's Compensation Board concerning Second Injury Fund's reimbursement of carrier. The Superior Court, Third Judicial District, Anchorage, Douglas J. Serdahely, J., affirmed, and appeal was taken. The Supreme Court held that term "compensation," as used in workers' compensation statute mandating reimbursement by Second Injury Fund of carrier for workers' compensation benefits paid, is limited to disability benefits paid to claimant and does

need to build Lake Otis Hospital. In their view, appellants demonstrated good cause for their failure to complete the activities authorized by the certificate of health.

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STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

MAR 26 1987

REQUEST:

Bill Version : SB 185
Publish Date : _____

Revision Date: _____
Title: "An Act relating to individual rights of peace officers."
Sponsor: Senator Rodey
Requestor: Senate Judiciary Committee

Agency Affected: Department of Law
BRU: Prosecution
Legal Services
Components: Prosecution - Admin. & Support; Legal Services - Operations

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-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Date: March 25, 1987
Richard I. Pegues / FDR
Approved by Commissioner: Grace Berg Schaible, Atty. Gen. Date: March 25, 1987
Agency: Department of Law

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 185

This bill amends AS 18.65 by adding new sections that grant substantive rights to peace officers that are not usually accorded to public employees, concerning investigation of complaints against peace officers, and punitive and disciplinary actions taken as a result of such complaints. Absent outright, flagrant misconduct that occurs in plain view, few investigations, if any, would result in disciplinary action requiring the Department of Law's assistance, because of the employee rights granted by the bill. Consequently, it is doubtful that investigations could proceed to the stage where discharge, salary suspension, or other serious disciplinary actions occur. The department's civil division defends the state in suits brought by current and former Department of Public Safety employees involving disciplinary and salary matters. The department's criminal division represents the staff of the Alaska Police Standards Council in administrative revocation proceedings. The department's involvement in these matters may, in the long-term, diminish for the reasons stated above. The department currently handles about one lawsuit each year, brought as a result of a Department of Public Safety disciplinary action, and it also handles three or four revocation proceedings each year. Therefore, this bill will not have any fiscal impact on the Department of Law.

It should be noted that the bill extends these rights to peace officer employees of public agencies, which we read to include the state, boroughs, municipalities, and cities. It should also be noted that the bill does not include a definition of peace officer, and none is currently provided in Title 18. AS 11.81.900(b)(38) and AS 01.10.060(7) give differing definitions of a peace officer, and it appears that under certain circumstances these definitions may include airport security officers, park rangers, DEC inspection and enforcement employees, correctional officers, fish and game biologists, municipal harbor masters, village public safety officers, and others, in addition to police officers.

BILL NO: SB 185

DATE: 3/19/87

TITLE: "An Act relating to individual rights of Peace Officers."

CONTACT: Major Walter J. Gilmour
Acting Director
Alaska State Troopers

APR 3 1987

Provides for specific treatment of investigations of conduct of Peace Officers subject to criminal liability or punitive actions.

Investigation of conduct of Peace Officer subject to criminal activity: Peace Officers now enjoy the same rights as any other citizen under the U.S. Constitution and an Alaska law reiterating these rights would be redundant.

Investigation of Peace Officer subject to punitive action: This appears to place Peace Officers in the category of receiving "special privileges or treatment" through legislation specifying how allegations of charges which may result in punitive or disciplinary action should be handled. Other categories of employees have no special legislation affecting their treatment by the employer. There have been no miscarriages of justice due to lack of this type of legislation for Peace Officers. Consequently, there appears to be no compelling reason to legislate "rights" covered in most bargaining unit contracts.

The Division of Alaska State Troopers opposes this legislation.



William R. Nix
Acting Commissioner

POSTOFFICE
DEPARTMENT OF
PUBLIC SAFETY

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: SB 185

REQUEST
Revision Date: _____
Title: "An Act relating to individual
rights of Peace Officers."
Sponsor: Sen. Rodey
Requestor: Sen. Judiciary

Publish Date: _____
Agency Affected: Public Safety
BRU: Alaska State Troopers
Components: Detachments & CIB

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 FUNDS	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)

No fiscal impact is anticipated.

JWR
4/2/87

Prepared by: Francis C. Allan *FCA*
Division: Alaska State Troopers

Phone: 269-5691
Date: 3/20/87

Approved by Commissioner: William R. Nix *WRN*
Agency: Public Safety

Date: 4/2/87

Distribution (by preparer):

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

Palmer Police Department

423 SOUTH VALLEY WAY
PALMER, ALASKA 99645

PHONE: (907) 745-4811

JOHN L. McKIBBEN
CHIEF OF POLICE

April 2, 1987

Senator Jay Kerttula
P.O. Box V
Juneau, Ak 99811

John McKibben?
Beth

APR 6 1987

Dear Senator Kerttula,

I would like to express an opinion on Senate Bill 185, the Police Officers Rights Bill.

I feel that Police officers are already guaranteed all of the rights of other citizens in most matters.

The people of Alaska have a right to expect a high standard of conduct from their Police Officers. Internal investigations within Police Departments are very difficult investigations to conduct. It is my belief that the passage of Senate Bill 185 would make those investigations impossible to conduct.

It is my feeling that ~~this bill would do an immense amount of harm to the police profession within Alaska and I request that you do not support this Bill.~~

Very truly yours,

John L. McKibben
John L. McKibben
Chief of Police

JLM/pb



KENAI POLICE DEPT.

107 SOUTH WILLOW ST., KENAI, ALASKA 99611

TELEPHONE 283-7879

March 31, 1987

State Senator Jay Kerttula
Pouch V
Juneau, AK 99811

APR 3 1987

Dear Senator Kerttula:

This letter is to request that you oppose adoption of S.B. 185, "An Act relating to individual rights of peace officers."

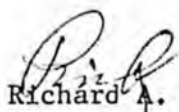
Peace officers are protected by the same basic rights as any other citizen when being investigated for, or charged with a criminal offense. There is no justifiable reason to pass special legislation for this purpose.

Administrative investigations that could result in punitive actions are subject to the personnel regulations of the agency and governing body involved. This is further regulated by case law and subject to judicial review. Unions and bargaining associations are also often involved in these processes. This is true for all employees of a governmental group. This legislation attempts to set up the procedural rules to be applied in administrative investigations, as well as regulate the results of those investigations. There is no justification for this type of special legislation that pre-empts the local governing bodies personnel system. Local governments would then be faced with two different personnel procedures -- a statutory one for peace officers and a local ordinance for all other employees. This is neither workable nor appropriate.

The Alaska State Constitution has very strong guarantees for all its citizens. State courts have not hesitated to review personnel actions of State and Local governments. The only purpose this type of legislation would serve is to establish peace officers as a separate class of employee, and establish into statute provisions that Unions had been unable to obtain through collective bargaining. These matters are better left to the local governments, personnel review boards, and the courts.

I appreciate your consideration of the request that you oppose this Bill and would appreciate your response and position on this subject.

Sincerely,


Richard A. Ross
Chief of Police
Kenai Police Dept.

RAR:lh

Soldotna Police Department

P. O. Box 2499
Soldotna - Alaska 99669

APR 2 1987



SB 185 - police

Duane Udland
Chief of Police

March 27, 1987

Senator Jalmar Kerttula
Pouch V
Juneau, AK 99811

Dear Senator Kerttulla,

I want to take a moment and express my opinion about Senate Bill No. 185 which deals with the rights of peace officers. This is similar to another bill that was introduced into the legislature about four years ago. I opposed it then and I oppose it now.

The City of Soldotna has an excellent internal system for handling investigations concerning police officers. We are careful to protect the rights of our officers and at the same time balance them with the rights of the public. We have never had any problem with our procedure nor, has there ever been any complaint from the officers about the way we have conducted the investigations.

I do not think that it is necessary for the state to impose standards on municipalities such as those contained in SB 185. The procedures a municipality uses should be a matter of local choice, so long as those procedures do not violate existing state and federal rights.

I agree with the concept that a police officer has rights that must be protected. However, I think, SB 185 goes to far and it is tantamount to discouraging citizen complaints and subsequent investigation. The whole concept of SB 185 concerning the answering of questions and searches of an officers work space all work against a thorough investigation. It is also illogical to remove from an officers personnel file all material relating to an investigation after one year, regardless of the reason for the investigation in the first place.

I urge you to use your power and influence to do away with this bill. As now written, SB 185 would serve neither the public or good law enforcement. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Duane S. Udland".

Duane S. Udland
Chief of Police

FISCAL NOTE

REQUEST:

Revision Date: March 7, 1987
Title: "An Act relating to individual rights of peace officers."
Sponsor: Senator Rodev
Requestor: Senate Judiciary

Agency Affected: Department of Law
BRU: Prosecution
Legal Services
Components: Prosc.- Crim. Just. Liti-
gation: Legal Svcs. - Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

MAR 7 1988

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

CAPITAL						
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REVENUE						
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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)

Please see attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director
Division: Administrative Services

Phone: 465-3672
Date: March 7, 1988

Approved by Commissioner: Richard I. Pegues
Grace Berg Schafble, Atty. Gen.
Agency: Department of Law

Date: March 7, 1988

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CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 185

This bill amends AS 18.65 by adding new sections that grant substantive rights to peace officers that are not usually accorded to public employees, concerning investigation of complaints against peace officers, and punitive and disciplinary actions taken as a result of such complaints. Absent outright, flagrant misconduct that occurs in plain view, few investigations, if any, would result in disciplinary action requiring the Department of Law's assistance, because of the employee rights granted by the bill. Consequently, it is doubtful that investigations could proceed to the stage where discharge, salary suspension, or other serious disciplinary actions occur. The department's civil division defends the state in suits brought by current and former Department of Public Safety employees involving disciplinary and salary matters. The department's criminal division represents the staff of the Alaska Police Standards Council in administrative revocation proceedings. The department's involvement in these matters may, in the long-term, diminish for the reasons stated above. The department currently handles about one lawsuit each year, brought as a result of a Department of Public Safety disciplinary action, and it also handles three or four revocation proceedings each year. Therefore, this bill will not have any fiscal impact on the Department of Law.

It should be noted that the bill extends these rights to peace officer employees of public agencies, which we read to include the state, boroughs, municipalities, and cities. It should also be noted that the bill does not include a definition of peace officer, and none is currently provided in Title 18. AS 11.81.900(b)(38) and AS 01.10.060(7) give differing definitions of a peace officer, and it appears that under certain circumstances these definitions may include airport security officers, park rangers, DEC inspection and enforcement employees, correctional officers, fish and game biologists, municipal harbor masters, village public safety officers, and others, in addition to police officers.

PUBLIC OPINION MESSAGE

MAR 7 1988

DEAR: SENATOR KERTTULA

NAME: PATRICK J. PAUL SR. & LAWRENCE PAUL

TITLE:

ADDRESS: 705 SIRSTAD ST.

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BILL NO: SB 185

SUBJECT: RIGHTS OF PEACE OFFICERS

MESSAGE: THESE RIGHTS ARE ALL ALREADY GUARANTEED BY THE DUE PROCESS CLAUSE OF THE STATE CONSTITUTION. THEY ARE AVAILABLE TO ALL PERSONS AND REQUIRED BY THE ALASKA SUPREME COURT TO BE PROTECTED BY MALLOT RULE. THE POLICE SHOULD ONLY HAVE THE SAME RIGHTS THAT THEY RECOGNIZE FOR OTHER PERSONS. EQUAL JUSTICE TO ALL.

POMID: 12133446

DATE: 03/04/88

TIME: 13:34:46

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FAIKS
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