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FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act..suspension or a municipal ordinance.."
 Sponsor: House C&RA Committee
 Requestor: _____

Agency Affected: Community & Regional Affairs
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
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	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Jim Plasman

Prepared by: Jim Plasman, Deputy Director
 Division: Municipal & Regional Assistance

Phone: 465-4750
 Date: April 3, 1989

Approved by Commissioner: [Signature]
 Agency: Community & Regional Affairs

Date: 4-3-89

Distribution (by preparer):

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



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

TO: ALL MEMBERS
HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

FROM: REPRESENTATIVE EILEEN P. MACLEAN, CHAIRMAN *Eileen P. Maclean*
HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

DATE: February 13, 1989

RE: Proposed Committee Legislation

Please review the enclosed legislation and information pertaining to it. I plan to introduce this legislation on Wednesday, February, 15th as a committee bill unless there is objection from members on the committee. The legislation would clarify in statute that an ordinance or resolution is suspended if a referendum petition is filed before the operative date of the ordinance or resolution.

cc: Representative Peter Goll, Co-Chair
Representative Max Gruenberg, Co-Chair
House Judiciary Committee

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 1, 1989

SUBJECT: Municipal Referendums
(Work Order No. 16-0722A)

TO: Representative Eileen MacLean, Chairman
Community and Regional Affairs Committee

FROM: Tamara Brandt Cook *TBC*
Director
Division of Legal Services

You have asked for a draft bill that incorporates the substance of the decision, Interior Taxpayers Association, Inc. v. Fairbanks North Star Borough, 742 P.2d 781 (Alaska 1987). A copy of that case is enclosed for your reference. That case held, in essence, that even when a referendum petition is filed against an ordinance that has already gone into legal effect, that ordinance is suspended if it has not yet become operative. At issue was a sales tax which had been enacted, but collection of the tax had not yet begun at the time the referendum petition was filed.

Existing law now provides for suspension when a petition is filed before the effective date. This draft expands that section to provide for suspension of ordinances or resolutions to when a petition is filed before the operative date of the ordinance or resolution. Please contact me if you would like any changes.

TBC:gc
W6/071

Enclosure(2)

AS 29.26.180(b)

THE EFFECTIVE DATE OF THE SUSPENSION OF AN ORDINANCE BEING REFERRED IS EXAMINED.

The Supreme Court of Alaska held that "effective date of the matter referred" refers to the date when the ordinance becomes operative rather than the date when the ordinance becomes law; the law requires that when a petition for a referendum is filed, the ordinance that is the subject of the referral is suspended pending the referendum vote if the "petition is certified before the effective date of the matter referred". The court noted that the term "effective date of the matter referred" can reasonably have at least two meanings: either when the ordinance becomes law or when the ordinance becomes operative. The ordinance in question had become law but did not yet require the collection of the new sales tax. The court noted that under the procedure of the borough, an ordinance takes effect as an ordinance on the first business day after it is adopted; the automatic suspension procedure would be completely meaningless unless the effective date is interpreted to mean when the ordinance becomes operative. The court also agreed that the term "matter referred" is vague." Interior Taxpayers Ass'n. Inc. v. Fairbanks North Star Borough, 742 P.2d 781.

While the decision of the court clarifies the vague phrase, review is recommended.

INTERIOR TAXPAYERS ASSOCIATION, INC., an Alaska non-profit corporation, Petitioner,

v.

FAIRBANKS NORTH STAR BOROUGH, Respondent.

No. S-2315.

Supreme Court of Alaska.

Sept. 15, 1987.

After borough refused to suspend collection of sales tax pending referendum on sales tax ordinance that had been scheduled, suit was brought to enjoin collection. The Superior Court denied motion for preliminary injunction and review was sought. The Supreme Court held that "effective date of the matter referred," within meaning of statute requiring suspension of ordinance against which petition for referendum is filed if such petition is certified before such date, refers to when ordinance becomes operative, rather than when ordinance becomes law.

Order reversed, case remanded with instructions.

1. Statutes \S 301, 341

Initiative and referendum powers set forth in Alaska Constitution, and laws implementing those powers, should be liberally construed.

2. Municipal Corporations \S 108.10

"Effective date of the matter referred," within meaning of statute requiring suspension of ordinance or resolution against which a petition for referendum is filed if petition is certified before such date, refers to when ordinance becomes operative such that compliance with its terms is required, rather than when ordinance becomes effective. AS 29.26.180(b).

See publication Words and Phrases for other judicial constructions and definitions.

Peter J. Aschenbrenner, Fairbanks, for petitioner.

Eugene P. Hardy, Asst. Borough Atty., Fairbanks, for respondent.

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

ORDER

This petition for review involves a referendum petition on a sales tax for the Fairbanks North Star Borough. The petition for referendum was certified as meeting the requirements of law by the clerk of the borough on July 23, 1987. AS 29.26.180(b) provides:

If a petition is certified before the effective date of the matter referred, the ordinance or resolution against which the petition is filed shall be suspended pending the referendum vote.

The referendum vote is scheduled for October 6, 1987. However, the borough refused to suspend the collection of the sales tax which was to begin on August 1, 1987. The petitioner sued to enjoin collection and moved for a preliminary injunction. The trial court denied the motion for a preliminary injunction on the grounds that the effective date of the ordinance reimposing the sales tax was June 15, 1987 even though the sales tax was not to go into effect until August 1. Thus, the court reasoned, certification of the referendum petition occurred after, rather than before, the effective date of the matter referred and suspension was not required under the statute. Petitioner seeks review of this ruling.

The court has previously stayed collection of the sales tax pending a decision on the petition for review. We now grant the petition and order entry of a preliminary injunction for the reasons that follow.

The term "effective date of the matter referred" can reasonably have at least two meanings. Under one meaning the term may refer to when the ordinance becomes law. Alternatively, the term may refer to when the ordinance becomes operative, that is, when compliance with its terms is

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required.¹ The trial court adopted the first meaning. In our view the second meaning is to be preferred for several reasons.

[1,2] First, initiative and referendum powers are set forth in our constitution and the laws implementing them should be liberally construed. *Municipality of Anchorage v. Frohne*, 568 P.2d 3, 8 (Alaska 1977). "To that end 'all doubts as to technical deficiencies or failure to comply with the exact letter of procedure shall be resolved in favor of the accomplishment of that purpose.'" *Id.* (citing *Boucher v. Engstrom*, 528 P.2d 456, 462 (Alaska 1974), quoting *Cope v. Toronto*, 8 Utah 2d 255, 332 P.2d 977, 979 (1958) (footnote omitted)).

Second, the referendum process can not start without having an ordinance which has been passed by the municipality in question. Under the Fairbanks North Star Borough procedure, an ordinance takes effect on the first business day following the day it is passed. There is obviously no case where AS 29.26.180(b) could operate with respect to Fairbanks North Star Borough ordinances if "effective date" means merely when the ordinance becomes law. Thus, the automatic suspension statute could be made completely meaningless if we interpret "effective date" as did the trial judge.

Third, the purpose of the "before the effective date" limitation on suspension seems to be to avoid public confusion, as where the public first must comply with a new law, then the need for compliance is eliminated because of certification of a referendum petition, and then compliance is required because of voter approval at the referendum election. Interpreting effective date in the sense of operative date is consistent with this purpose.

Fourth, "matter referred" is a vague term. Its use suggests that the legislature did not mean that it would be necessarily synonymous with "ordinance or resolution against which the petition is filed." If so, the distinction is between the ordinance on the one hand and its subject matter on the

other. Accepting this distinction, one may readily say in the context of this case that while the effective date of the ordinance is the day after it was passed, the effective date of the subject matter, the tax, is when the tax is first levied.

The petition for review is granted, the order denying the motion for preliminary injunction is reversed, and this case is remanded to the superior court with instructions to grant the motion for preliminary injunction and for further proceedings.



Douglas A. CARSON, Petitioner.

v.

STATE of Alaska, Respondent.

No. S-2262.

Supreme Court of Alaska.

Sept. 17, 1987.

Appeal from the District Court, Third Judicial District; James C. Hornaday, Judge.

Kevin F. McCoy, Asst. Public Defender, Kenai, Dana Fabe, Public Defender, Anchorage, for petitioner.

James V. Gould, Asst. Atty. Gen., Anchorage, Grace Berg Schaible, Atty. Gen., Juneau, for respondent.

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

ORDER

On consideration of the petition for hearing filed July 6, 1987, and response thereto,

IT IS ORDERED:

The petition for hearing is denied.

comes operative, is *City of Plantation v. Mason*, 170 So.2d 441, 442 (Fla.1964).

6-0722A /
Cook
2/1/89

1 IN THE HOUSE

BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to suspension of a municipal ordi-
7 nance or resolution against which a referendum peti-
8 tion is filed."

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

10 * Section 1. AS 29.26.180(b) is amended to read:

11 (b) If a petition is certified before the effective date of the
12 ordinance or resolution against which the petition is filed or before
13 the operative date when compliance with the ordinance or resolution is
14 required [MATTER REFERRED], the ordinance or resolution [AGAINST WHICH
15 THE PETITION IS FILED] shall be suspended pending the referendum vote.
16 During the period of suspension, the governing body may not enact an
17 ordinance or resolution substantially similar to the suspended mea-
18 sure.