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435

SENATE STATE AFFAIRS COMMITTEE

BILL NUMBER SB 435

SPONSOR COGHILL

BILL TITLE Use of state or municipal funds or facilities
as campaign contributions.

DATE REFERRED 2.6.90

HEARING SCHEDULED 2.21.90

FISCAL NOTE PREPARED Reg: 2.15.90 ✓

SPONSOR CONTACTED ✓ Low -4797

INTERESTED PARTIES CONTACTED

OTHER

Senator John B. (Jack) Coghill

Alaska State Legislature

Juneau, Alaska 99811
(907) 465-4797

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



SPONSOR STATEMENT FOR SB 435

THE FUNDAMENTAL PRINCIPLE OF CONSTITUTIONAL GOVERNMENT IS THAT THE LEGISLATURE ESTABLISHES THE POLICY, DECIDES TAXATION, AND DOES THE APPROPRIATION.

THE ADMINISTRATIVE BRANCH OF GOVERNMENT ADMINISTERS THE LAW, AND SPENDS PUBLIC MONIES AS THE LEGISLATURE DIRECTS IN THE BUDGET.

THE JUDICIAL BRANCH OF GOVERNMENT RESOLVES DISPUTES, BOTH IN THE PUBLIC AND PRIVATE SECTOR.

THE ISSUE OF SB 435, IS DIRECTLY RELATED TO THE STATEMENT OF THE GOVERNOR THAT HE WOULD USE PUBLIC FUNDS FROM ALL AGENCIES TO ESTABLISH A PAC (POLITICAL ACTION COMMITTEE) TO PROMOTE HIS EDUCATIONAL ENDOWMENT. THERE HAS NOT BEEN ANY SPECIFIC APPROPRIATION FOR THAT PURPOSE AND IF EXCESS FUNDS EXIST THEN THE LEGISLATIVE PROCESS SHOULD CLOSE THE LOOPHOLE THAT ALLOWS NON-APPROPRIATED FUNDS TO BE USED BY THE GOVERNOR.

IF WE WENT TO COURT WE WOULD WIN, BECAUSE THE ACTIONS OF THE GOVERNOR WOULD VIOLATE ARTICLE 9, SECTION 6 OF THE ALASKA CONSTITUTION.

WHY SPEND THOUSANDS OF DOLLARS TO DEFEND OUR CONSTITUTIONAL RIGHTS? THE PURPOSE OF THIS ACT IS TO MAKE IT CLEAR THAT UNLESS THE LEGISLATURE OR MUNICIPALITY APPROPRIATES FUNDS, IT IS UNLAWFUL FOR ADMINISTRATIONS TO ARBITRARILY SPEND SUCH MONIES.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 1800

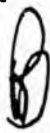
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 2, 1990

SUBJECT: Use of state or municipal funds or facilities
for campaign contributions
(Work Order No. 6-2108)

TO: Senator Jack Coghill

FROM: Richard A. Bradley 
Legislative Counsel

I have provided you the draft as requested by Lewie Reece.

I did not want my failure to comment on the bill lead you to think that we believe that the activities described are appropriate until the enactment of this legislation. Art. IX, sec. 6, of the Alaska Constitution ("Public Purpose") may well achieve this result absent legislation.

If I may be of further assistance, please advise.

RAB:pl
WKE1/093

STATE
of ALASKA

MEMORANDUM

TO: [Randall P. Burns, Executive Director: January 5, 1978
Alaska Public Offices Commission
610 'C' Street, Suite 209 FILE NO: J-66-365-78
Anchorage, Alaska 99501

TELEPHONE NO:

FROM: AVRUM M. GROSS
ATTORNEY GENERAL

SUBJECT: Contribution of
state monies to
Friends of Higher
Education. Your
File No. 77-5.

By: Rodger W. Pegues *RWP*
Assistant Attorney General

At the commission's request, you have asked whether a state agency, here the University of Alaska, may contribute to a private group to influence the outcome of an election. We had previously been asked, in regard to the same subject, whether the University of Alaska (or other state agencies) could expend state money to influence bond propositions.

The law on campaign contributions and expenditures applies to political parties, persons, individuals, candidates and groups. With respect to your question, which focuses on groups, "groups" are defined as being comprised of "persons or individuals". AS 15.13.130(3). The latter is described as a "natural person". AS 15.13.130(5). And a "person" is defined as, in addition to the terms set out in AS 01.10.060(7), including a labor union. AS 15.13.130(7). The definition of "person" in Title 1 includes corporations, partnerships, firms, associations, and the like but it does not include the state or its agencies. Thus, it appears that the law has no application to contributions made by a state agency.

Moreover, we are not at all certain that the so-called "Friends of Higher Education," constitutes a group within the meaning of the law. Given the university's complete control of the organization, its own official's serving as the organization's treasurer, and its funding of the organization's activities, the Friends of Public Higher Education appears to be an agent of the university. As indicated above, a combination of persons as a part of the state government is not covered by the law. Thus, there is a substantial question that the law even applies to this organization. Assuming that it does, it plainly does not apply to contributions from a state agency, because the latter is not covered by the act.

We concur with the staff's recommendation that no

Randall P. Burns

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January 5, 1978

action be taken on this one. If asked to do so, the university and its "Friends" will undoubtedly make full reports. If the commission believes that the university or other state agencies should be covered by the act or that they should be prohibited from spending state funds for campaign purposes, it is peculiarly within its authority, and indeed, among its duties, to make recommendations for a change in the law. AS 15.13.030(9).

RWP/pjg

Alaska State Legislature

Legislative Research Agency



P.O. Box Y
Juneau, AK 99811-3100
Phone: (907) 165-3991
Fax: (907) 163-3351

February 16, 1990

MEMORANDUM

TO: Senator Jack Coghill

FROM: Maureen Weeks^{MW}
Legislative Analyst

RE: Article IX, Section 6, Alaska Constitution
Research Request 90.236

You asked this office to search the journals and proceedings of the Alaska Constitutional Convention to learn what delegates intended when they wrote the public purpose clause of the finance and taxation article (Article IX, Section 6).

Delegates to the convention appear to have spent very little time discussing this section. Notes from meetings of the Committee on Finance and Taxation show that the wording of Section 6 in the Constitution today is almost unchanged from the first version, dated November 22, 1955:

November 22, 1955: "No tax shall be levied, or appropriation of public money or property made, nor shall the public credit be used, directly or indirectly, except for a public purpose."

Final version: "No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose."

A sectional analysis written on December 16, 1955, indicates that delegates saw the public purpose clause as a necessary and perfunctory part of a constitution. "Public purpose clauses are common to most constitutions," the analysis says, "and are included to prevent appropriation of public funds for private purposes." In presenting Article IX to the convention on January 16, 1956, Delegate Leslie Nerland said the public purpose clause was included to "take care of the fact that no public monies, public property, or public credit should be used except for a public purpose." The section was brought up only twice on the floor.

Copies of committee notes on Article IX and relevant copies of convention proceedings are attached to this memorandum. Also attached are two informal Attorney General opinions which refer to public purpose. Finally, the attachments include references to appellate court decisions pertaining to Article IX Section 6, as well as a copy of the comments on this section found in *Alaska's Constitution: A Citizen's Guide*, published by the Institute of Social and Economic Research.

I hope this information is helpful to you.

Attachments

STATE OF ALASKA

STEVE COWPER, GOVERNOR

ALASKA PUBLIC OFFICES COMMISSION

REPLY TO:

- 2221 E. Northern Lights, Room 128
Anchorage, AK 99508
(907) 276-4176
- Juneau Branch Office
Box CO
Juneau, AK 99811-0222
(907) 465-4864

February 12, 1990

Senator Pat Pourchot
Pouch V
Juneau, Alaska 99811

Dear Senator Pourchot:

I am writing with regard to SB 435, a bill which has been referred to the Senate State Affairs Committee and which relates to the use of state or municipal funds or facilities as campaign contributions.

The Alaska Public Offices Commission reviewed this measure at a teleconferenced meeting on February 9, 1990 (Commissioners Annie Laurie Howard, Jane Behlke, Rodman Wilson and Winston Burbank participating).

This bill provides that without specific authority, public funds may not be contributed to a candidate, or used to urge adoption or rejection of a ballot proposition. It further provides that public facilities cannot be used to prepare campaign materials.

The commission is concerned that this language is not sufficiently specific to give guidance to public officials, nor would it give necessary guidance to the commission in administering the law. The commission suggests that the committee consider adopting a law similar to that adopted in Washington state (copy attached), which defines public facilities and which establishes criteria for determining when an unauthorized use of public funds has occurred.

The commission further suggests that the committee consider adopting a specific penalty for violation of this section. Without additional language, the applicable penalty under AS 15.13 would be criminal prosecution for a misdemeanor. This could result in incarceration of borough assemblies and other municipal or state entities which does not seem a rational remedy. The commission proposes including language authorizing the commission to assess a penalty, including personal liability for those persons who have authorized these expenditures, in an amount up to three times the amount expended. This would give the commission the flexibility to provide a penalty which is rationally related to the type of conduct involved. This approach is not unique to APOC; a similar

Senator Pourchot
February 12, 1990
Page 2

treble penalty structure has been proposed for licensees or permittees who violate alcoholic beverage laws (see CSSB 157).

The commission has submitted a fiscal note describing the fiscal impact of this measure.

Thank you for the opportunity to comment. If questions arise, please let me know.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION



Karla L. Forsythe
Executive Director

Attachment

cc: Senator Coghill
Senator Fischer
Senator Frank
Senator Jones
Senator Halford
APOC Members
APOC Senior Staff
Sioux Plummer, Special Assistant
Dept. of Administration
Nancy Gordon, Assistant Attorney General

WASHINGTON STATE STATUTE

USE OF PUBLIC FUNDS IN CAMPAIGNS

RCW 42.17.130 Forbids use of public office or agency facilities in campaigns. No elective official nor any employee of his office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees or the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency: Provided, That the foregoing provisions of this section shall not apply to the following activities:

(1) Action taken at an open public meeting by members of an elected legislative body to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

(2) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;

(3) Activities which are part of the normal and regular conduct of the office or agency.

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: An act relating to the use of
state or municipal funds
 Sponsor: Senator Coghill
 Requestor: _____

Agency Affected: Dept. of Administration
 BRU: Alaska Public Offices Commission

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	120.4	124.3	127.9	131.9	136.0	140.2
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	8.6	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	129.0	124.3	127.9	131.9	136.0	140.2

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

GENERAL FUND	129.0	124.3	127.9	131.9	136.0	140.2
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	129.0	124.3	127.9	131.9	136.0	140.2

POSITIONS:

FULL-TIME	3	3	3	3	3	3
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

SEE ATTACHED

Prepared by: Karla L. Forsythe, Executive Director Phone: 276-4176
 Division: Alaska Public Offices Commission Date: 2/12/90
 Approved by Commissioner: Annie Laurie Howard, Acting Chair Date: 2/12/90
 Agency: Alaska Public Offices Commission

Distribution (by preparer) :

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

NARRATIVE

Administration of this bill would create substantial new responsibilities for the commission. The executive director of the Washington State Disclosure Commission, which is responsible for administering a similar law, indicates that a substantial part of his agency's activities are devoted to issues involving unauthorized use of local funds, particularly at the local level. He states that without question, the provision of law that prohibits the use of public facilities to assist in election campaigns has generated more work than all of the rest of the law combined. He estimates that out of approximately 50 issues dealt with by his agency in the course of a year, from 10 to 25 involve use of public funds. In addition to complaint investigation, a great deal of time is spent providing training and information to localities to help them avoid running afoul of the law.

Although it is difficult to quantify the potential workload impact on APOC, it is anticipated that complaints and advisory requests will increase significantly, perhaps by as much as 50%. At current staffing levels there are delays in completing investigations, and minimal outreach activity. Existing commission staff cannot absorb additional investigative and outreach duties.

To administer this law, the commission would require funding for a Range 16 paralegal investigator to investigate additional complaints, a Range 16 research analyst II (who would provide advice, assistance, and training, and would help revise APOC manuals and regulations), a Range 10 secretary (since the commission is currently staffed with only one secretary who cannot absorb additional duties,) and with funds necessary to provide

equipment for these positions. Even if this law became effective immediately, staff could not be hired until July, so no costs are anticipated for FY 90.

<u>Position</u>	<u>Salary and Benefits</u>
Range 16 Paralegal	\$44,382
Range 16 Research Analyst II	\$44,382
Range 10 Secretary	\$31,645

Equipment:

1 Personal Computer, laser printer	\$3993
1 Personal Computer, dot matrix printer	\$2440
2 Desks/Chairs	\$1750
Moveable Partitions	\$ 400

CROWELL & MORING

MEMORANDUM*From Coghill -
Not in Comm.
Packet.*

TO: Broadcast Clients
 FROM: Crowell & Moring
 DATE: March 26, 1986
 SUBJECT: FCC Rules On Political Broadcasting

Political activity in 1986 promises to be heavy. All of the 435 seats in the House of Representatives and one-third of the 100 seats in the Senate will come up for election. Voters in 40 states will elect new governors. Independent political action committees are likely to be active. Now is the time for station personnel who will deal with candidates' requests for airtime to review the political broadcasting rules.

The FCC's 1978 "Primer," The Law of Political Broadcasting and Cablecasting, provides a generally comprehensive explanation of the FCC's rules and policies concerning political broadcasting. (If you do not have a copy, we will send you one.) Since the Primer was published, however, a number of important decisions have been issued by the FCC and the courts that either refine or change some of these rules and policies. Broadcasters should be aware of those decisions, and of how they affect what can or cannot be done with respect to political broadcasting. This memorandum is a general review of the current political broadcasting rules, and includes the most recent court and FCC decisions.

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The Communications Act and the Commission's Rules place many requirements on broadcasters relating to political broadcasts. There are four basic purposes for these requirements: 1) to prevent broadcast licensees from discriminating among competing candidates for public office; 2) to ensure that candidates are allowed to speak freely without censorship; 3) to guarantee rates for political time at least as favorable as those broadcasters offer their most favored commercial advertisers; and 4) to ensure that candidates for federal office are given or sold reasonable amounts of time for their campaigns. Keeping these purposes in mind will help you understand and apply the rules.

A. THE EQUAL OPPORTUNITIES RULE

The "equal opportunities" rule is designed to prevent discrimination among competing candidates for public office. Under the rule, once a "legally qualified candidate" for public office "uses" a station during his or her campaign, the station must grant "equal opportunities" to all other legally qualified candidates for the same office.

1. Legally Qualified Candidates

Generally, a person is a legally qualified candidate for a particular office only if he or she (a) has publicly announced an intention to run for the office, (b) is qualified under the applicable federal, state or local law to hold the office, and (c)

JUN 21 1986
ALASKA

has qualified for a place on the ballot or made a "substantial showing" that he or she is a bona fide candidate.

For example, in 1979 the Commission held that Ronald Reagan was not a legally qualified candidate for President even though he had consented to the formation of a campaign committee, the committee had filed with the Federal Election Commission (FEC), and he had not responded to an FEC notice that he would be deemed a candidate absent a response within 30 days. The decisive factor was that Mr. Reagan had not made a public announcement of his candidacy. The Commission noted, however, that a person might be considered a legally qualified candidate, even in the absence of a formal declaration of candidacy, if he "engage[s] to a substantial degree in activities commonly associated with political campaigns." These activities include making campaign speeches, distributing campaign literature, issuing press releases, maintaining a campaign committee and establishing campaign headquarters.

A station can confirm that a person who has publicly announced his or her candidacy is a legally qualified candidate by contacting the local, county or state board of elections.

2. Use By A Candidate

A legally qualified candidate "uses" a station if he appears in a recognizable manner, either by voice or picture, in any program or announcement. Regardless of what the candidate speaks about (if anything), any such appearance is a "use" entitling the person's opponents to equal opportunities on the station.

Moreover, the equal opportunities rule is triggered even if the candidate appears in a network or syndicated show, rather than in a program originated by the station.

Thus, for example, once a film star such as Ronald Reagan becomes a legally qualified candidate for public office, a station airing one of his movies must give equal opportunities to his opponents. Similarly, if a person who appears in a commercial for his own business is a legally qualified candidate, his appearance is a use. And, because "use" is so broadly defined, stations with regularly identifiable on-air employees such as disc jockeys and announcers who become legally qualified candidates must either remove the employee from on-air duties for the duration of his or her candidacy, or be prepared to afford equal opportunities to opposing candidates.

Exceptions: There are, nonetheless, several well-recognized exceptions to the general rule that any "use" by a candidate triggers a station's equal opportunities obligations. Each of these exceptions will be discussed briefly below.

a. News Interview Programs

A candidate does not "use" a station when he or she appears as part of a newscast, news interview, news documentary, or on-the-spot coverage of a news event. To determine whether a particular program falls within this exception, the Commission considers (a) whether the program is regularly scheduled, (b) how long it has been broadcast, (c) whether the broadcaster produces and

controls it, and (d) whether the selection of interviewees and topics is based on the broadcaster's journalistic judgment and on their newsworthiness.

For many years, the Commission drew a rough line between news interview shows such as "Meet the Press", which it held exempt from the equal opportunities doctrine, and talk shows such as "Tomorrow", which it held non-exempt. Over the last few years, however, the Commission has broadened the news program exception. For example, in 1982 the Commission held that the "Donahue" show was not a bona fide news interview program because it found that the host did not maintain full control over the show's content, and that the selection of topics and interviewees was not clearly based on newsworthiness. Three years later, however, the Commission reversed this decision. It concluded that Mr. Donahue's interviewing techniques, which allowed some level of audience participation, constituted sufficient control over content. It then found that because the program included regularly scheduled news interviews, the fact that some segments did not discuss politics or current events did not undermine the exempt status of the news interview segments.

Other programs which have been held exempt from the equal opportunities doctrine under a similar analysis include "American Parade," "The Constitution: That Delicate Balance," and "Summer Sunday USA."

The Commission has also recently modified its position on the exempt status of news interview programs that premier during a

federal campaign. In the past, the Commission had held that such programs were not exempt from the equal opportunities doctrine because they were not "regularly scheduled" programs. In 1984, however, Commission staff concluded that a news interview program should not automatically be excluded from exempt status simply because it is scheduled to begin during an election season. Rather, as long as the program otherwise qualifies for the news program exception, exempt status will be granted unless it appears that the program is designed as a vehicle to promote a particular candidacy.

b. Candidate Debates

In the past, under the so-called "Aspen" doctrine, the broadcast of a candidate debate was considered a bona fide news event (and thus not a candidate "use") only if the debate was arranged by an outside party (such as the League of Women Voters), took place outside the broadcaster's studio, was broadcast live and in its entirety, and was covered because of the broadcaster's reasonable, good faith judgment that it was newsworthy.

The Aspen doctrine was recently modified, however, by the Commission. Under the new ruling, a station may itself arrange and sponsor a debate without triggering equal opportunities obligations as long as the debate is a bona fide news event, i.e., has genuine news value and is not designed to advance the candidacy of any particular individual.

The Commission's ruling also now permits stations to broadcast or rebroadcast debates and other bona fide news events more than one day after the event without incurring equal opportunities obligations. The event, however, must have occurred in the "reasonably recent" past, and its delayed broadcast or rebroadcast must be intended in good faith by the broadcaster to inform the public, not to favor or disfavor any candidate.

c. Press Conferences

Opponents of incumbent candidates have argued unsuccessfully that the equal opportunities rule should apply to press conferences, which would otherwise give unfair advantages to an incumbent. The Commission has held that as long as the station decides, prior to coverage, that the press conference would be newsworthy, and does not cover the conference in order to favor one candidate over another, the conference will not be considered a "use" of the station, even if it is used for clearly political purposes.

d. Fleeting Uses

As noted above, the general rule is that any appearance by a legally qualified candidate on a broadcast station constitutes a "use" for equal opportunities purposes. The so-called "fleeting use" exception, however, permits a station to air certain de minimus candidate appearances without triggering equal opportunity obligations.

Thus, for example, the Commission has held that the 2-3 second appearances of legally qualified candidates on Time magazine covers, shown during commercial advertisements for the magazine, would not be considered "uses" of the station. Similarly, a four-second appearance in which the candidate was seen at long range in a crowd of 100 persons did not fall within the scope of the equal opportunities doctrine.

3. Equal Opportunities

Once a "legally qualified candidate" "uses" a station, the station must grant "equal opportunities" to all other legally qualified candidates for the same office. During the pre-nomination period, only those candidates seeking nomination for the same office by the same party are deemed opposing candidates entitled to equal opportunities.

"Equal opportunities" does not mean simply equal time. The broadcaster must make equal time available to opposing candidates in periods that normally have comparable audiences, at equal rates and under equal terms and conditions. Indeed, in one recent case, the FCC held that comparable treatment extends to promotional announcements as well. If a station promotes an upcoming program in which a candidate makes an appearance, the opposing candidate may be entitled to comparable promotion of his subsequent use.

A station need not, however, provide identical opportunities in order to satisfy its equal opportunities obligations. In 1984, for example, the Commission dismissed a complaint filed by the

Independent Democrats for LaRouche against CBS, NBC and ABC. The complaint alleged that the networks had failed to provide equal opportunities to Lyndon LaRouche when they sold Ronald Reagan simultaneous 30-minute time slots, but refused to sell Mr. LaRouche comparable simultaneous time slots. The Commission held that the Reagan time slots resulted from good faith negotiations by his campaign committee, and not from favorable treatment by the networks. Thus, each network fulfilled its equal opportunity obligations by offering LaRouche a 30-minute prime time slot to air his broadcast, even though it was not simultaneous with those offered by the other networks.

A station does not have an obligation to inform a candidate that an opponent's "use" of the station has triggered his equal opportunities rights. Rather, to be entitled to equal opportunities, the candidate himself must make a request within seven days of his opponent's "use" of a station. In part because of this requirement, the obligation of stations to maintain current, publicly available records of requests for time by candidates (discussed below at page 21) is very important.

B. CENSORSHIP

Broadcasters are expressly prohibited from censoring in any way a "use" by a legally qualified candidate, even if the use contains patently libelous remarks. Indeed, the Commission has made it clear that a station may not (1) refuse a political spot because of its content, (2) edit a political spot because of its

content, or (3) impose requirements that have a "chilling effect" on a candidate's freedom to use his political time as he or she sees fit. Stations may, however, ask for an advance script or tape of a proposed "use" in order to review it for compliance with sponsorship identification requirements and broadcast technical standards.

Because broadcasters are prohibited from censoring candidate "uses", they are granted immunity from defamation actions based on such uses. They are also not subject to fairness doctrine or personal attack rule obligations as a result of the uses. However, the protection against censorship (and the corresponding immunity) applies only to appearances made by legally qualified candidates, and not to statements made by their supporters or by independent political action committees where the candidate does not appear by voice or picture.

C. RATES FOR POLITICAL BROADCASTS

The rate that a station is permitted to charge a political candidate for an individual spot or program may never exceed the charge it would make to any commercial advertiser for the same amount, class and period of time. In addition, candidates are entitled to a station's "lowest unit charge" -- including volume discounts even if only a single spot is purchased -- during the 45 days preceding a primary or primary runoff election and during the 60 days preceding a general or special election. The lowest unit charge rule also applies to the 45-day period preceding a party

caucus which nominates a candidate, if members of the public may participate in the caucus. A recent federal court decision held that states may not lengthen the 45- or 60-day periods to provide candidates with lower rates for longer periods of time.

Under the lowest unit charge rule, legally qualified candidates must be given all discounts, based on volume, frequency or any other factor, that are offered to the station's most favored commercial advertiser for the same class and amount of time during the same period, regardless of how few spots or programs the candidate buys. The station must offer rates actually given to commercial advertisers or, if they are lower, rates published on the station's rate card. In short, candidates are entitled to the lowest real end rate (considering both national and local rates) that a broadcaster charges or offers. Note, however, that the lowest unit charge provision applies only to the "use" of a station (personal appearance on the air) by a candidate in connection with his campaign, and only during the pre-election time periods mentioned above.

If a candidate purchases time directly from the station and not through an agency, the lowest unit charge must exclude the amount usually paid for the agency commission. Sales commissions to sales representatives may, however, be included.

The lowest unit charge rule entitles candidates to run-of-schedule ("ROS") spots when those spots are offered to commercial advertisers, but any ROS time purchased by a candidate is subject to all of the same scheduling unpredictability as ROS time

purchased by a commercial sponsor. Thus, for example, if one candidate's ROS spots happen to include prime time, and his opponent's ROS spots end up running late-night because of the normal operation of the station's ROS scheduling, equal opportunities will have been provided.

The lowest unit charge rule does not apply to barter and trade-out agreements, because the effective charge for the ads covered by such agreements is difficult to determine. The rule also does not apply to "per inquiry" advertising, in which the charge for an ad is based on the number of responses to it that the station receives from its audience, because the effective rate for per inquiry ads is hard to predict.

A station may require political candidates to pay in advance for time purchased, even if it extends credit to commercial advertisers. If, however, the station extends credit to a candidate, it cannot then require opposing candidates to pay in advance.

The Commission has made it clear in recent cases that it continues to take the lowest unit charge rule seriously. It has imposed forfeitures of several thousand dollars each on stations for violations, and has required refunds to all candidates who were not given the proper rate. A station will not be excused from liability simply because it misunderstands the lowest unit charge rule.

D. REASONABLE ACCESS

Broadcasters must allow legally qualified candidates for federal elective office "reasonable access" to their stations. Should a station willfully or repeatedly fail to afford such access, its license may be revoked by the Commission. The reasonable access rule does not apply to candidates for state or local office.

"Reasonable access" may require a station to preempt spots or even programs in order to make room for political broadcasts. How much access is reasonable depends on a number of factors, including station size, coverage and viewing areas, as well as the number of elections and candidates within the viewing area. Generally, the Commission will rely on the reasonable, good faith judgment of a licensee as to what constitutes reasonable access under all of the circumstances.

Some guidelines, however, have been developed. (1) A station is not required to provide a federal candidate free time to meet its reasonable access obligations, as long as it makes time available for purchase. (2) Both commercial and non-commercial stations must make available program time during prime time or drive time if requested by a federal candidate, unless unusual circumstances exist. (3) Commercial stations must also make prime-time or drive-time spot announcements available to federal candidates. (4) Broadcasters may not adopt a policy that flatly bans federal candidates from access to any of the types, lengths, or classes of

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time that they sell to commercial advertisers. (5) Broadcasters also may not have a blanket policy prohibiting political ads by federal candidates more than a certain number of days before an election. (6) Because the right to reasonable access is personal to the federal candidate, independent political action committees have no right to demand such access.

Although the statutory reasonable access rule applies only to candidates for federal office, the FCC considers political broadcasting one of the most important services a station can provide to the public. Accordingly, it expects stations to allocate reasonable amounts of time to state and local political races as well. It will generally defer to the licensee's good-faith judgment as to which state and local races the station will cover, and as to the forms, amounts and classes of time that will be made available for the races to be covered. Once a station decides to provide time for a particular race, however, all of the usual equal opportunities, non-censorship and lowest unit charge requirements will apply.

If a station fails to make any time available for state and local races, the Commission will examine the practice in light of the station's public interest responsibilities, including that of fostering an informed electorate. The Commission has implied in recent decisions that it would not approve a blanket refusal to sell time to non-federal candidates.

E. POLITICAL EDITORIALS AND PERSONAL ATTACKS

If a station broadcasts an editorial endorsing one candidate in a race, it must notify all opposing candidates of the editorial within 24 hours of the time of broadcast and offer them or their supporters an opportunity to respond. The same notice and offer must be given to any candidate opposed by a station editorial. If the editorial is broadcast within 72 hours of the election, the station must notify the candidate or candidates in advance of its broadcast.

Should the honesty, character or integrity of a person or group be attacked during discussion of a controversial issue of public importance, the Commission's "personal attack rule" requires the station to notify the individual or group attacked within one week of the broadcast at issue, and offer them a reasonable opportunity for rebuttal. The personal attack rule does not apply, however, to attacks by candidates (or their associates) on other candidates (or their associates), to attacks that occur during "uses" by candidates, or to attacks made during newscasts, news interviews or on-the-spot coverage of news events. The news exemption includes commentary or analysis broadcast as part of an exempt news program, but not station editorials or news documentaries.

The Commission has proposed repealing the political editorial and personal attack rules. Until the Commission takes further action, however, the rules remain in effect.

F. FAIRNESS DOCTRINE

The fairness doctrine requires that broadcasters address controversial issues of public importance and provide a reasonable balance among different opinions on those issues. The fairness doctrine should not be confused with equal opportunities requirements, which apply to appearances by candidates, not issues.

Although the fairness doctrine generally does not cover issues raised in "uses" by candidates, it may apply where the "use" occurs in a news-type interview or similar program exempted from the equal opportunities requirements.

1. The Quasi Equal Opportunities Doctrine

The Commission will employ the fairness doctrine in a way similar to the equal opportunities rule in one specific situation. Under the so-called "Zapple" or "quasi equal opportunities" doctrine, a station that provides time to supporters of a legally qualified candidate who urge that candidate's election, discuss campaign issues, or criticize an opponent must provide comparable time to supporters of opposing legally qualified candidates, even though the broadcast does not qualify as a "use" by the candidate because he does not personally appear. Supporters of all candidates must be treated equally, so if free time was given to the first group of supporters, free time would have to be given to the second group as well. However, the lowest unit charge rule does

not apply, and time for both appearances may be sold at full commercial rates.

The quasi equal opportunities doctrine does not apply to programs exempt from the equal opportunities rule, that is, newscasts, news interview programs or documentaries, and coverage of news events. The Commission has held, for example, that CBS did not err when it refused during the 1982 Congressional elections to grant the Democratic National Committee quasi equal opportunities rights to respond to a political speech in which President Reagan supported various Republican Congressional candidates. The Commission held that because CBS had made a good faith determination that the President's speech would be a bona fide news event, the quasi equal opportunities doctrine did not apply.

2. The Cullman Doctrine

One aspect of the fairness doctrine that usually does not apply to political broadcasting is the so-called Cullman doctrine. Under this doctrine, broadcasters may be required to provide free time to proponents of one side of an issue if no paid sponsor can be found to balance disproportionate coverage of the other side of the issue. The Commission has held that political spots occurring during campaign periods (not just the 45-day or 60-day pre-election periods) do not trigger any Cullman obligations. However, when political spots are provided outside campaign periods by groups or by individuals who are not yet legally qualified candidates, broadcasters may have to provide free response time

under the Cullman doctrine. For these purposes, a campaign period begins when there is a legally qualified candidate.

3. Current Status Of The Fairness Doctrine

In a recent report, the Commission concluded that the fairness doctrine is no longer a necessary or appropriate means of ensuring that broadcast audiences will have access to diverse sources of information concerning controversial issues of public importance. The Commission found that diverse viewpoints are provided by the multiplicity of voices in the marketplace, and that the fairness doctrine, if anything, restricts the journalistic freedom of broadcasters and actually inhibits the presentation of controversial issues.

Notwithstanding these conclusions, the Commission stated that it would not eliminate the fairness doctrine, in part because it was unsure that it had the legal authority to do so. Rather, given the intense legislative interest in the doctrine, the Commission decided that it would defer to the courts or to Congress to take any such action.

Broadcasters thus remain subject to the doctrine, despite the Commission's criticism of it. Indeed, in 1984 the Commission held that a Syracuse television station violated its fairness doctrine obligation when it broadcast numerous commercial spots advocating the construction of a nuclear plant but failed to carry spots opposing construction. The Commission found that the station did not provide a reasonable opportunity for the presentation of

contrasting viewpoints on an issue that the Commission held was controversial in the station's community. The station has appealed the Commission's decision to the courts. In addition, the Radio-Television News Directors Association has challenged the constitutionality of the fairness doctrine generally.

G. POLITICAL ACTION COMMITTEES

It is likely that political action committees ("PACs") will spend millions of dollars in support of candidates during the 1986 elections. Because PACs are, by definition, independent from any candidate, they are treated differently from candidates under the political broadcasting rules. These differences are described briefly below.

1. PACs and the Equal Opportunities Doctrine

A PAC spot triggers the equal opportunities doctrine only if it includes an appearance of the candidate, by voice or picture, that constitutes a "use" of the station. If the spot is not a "use", the candidate's opponents are not entitled to equal opportunities. Many PAC spots, nonetheless, may invoke the "quasi equal opportunities" doctrine because they are presented by supporters of a particular candidate. In such a case, the station must provide comparable time to supporters of opposing candidates.

On occasion, a PAC spot will not only be presented by supporters of a candidate but will also include an appearance by the candidate that becomes a use. If, in response to such a spot,

both the candidate and his supporters exercise their respective rights to request equal or quasi equal opportunities, the station need only provide the time requested by the candidate.

A special problem is raised by a PAC spot which attacks, rather than supports, a legally qualified candidate, and which includes an appearance, by voice or picture, of the attacked candidate. Under a literal interpretation of the equal opportunities rule, such an appearance would constitute a "use" that entitles the candidate's opponents to equal opportunities. The Commission's staff, however, has conceded that it would be nonsensical to allow a group attacking a candidate to gain "response" time to that candidate simply by including an appearance of the attacked candidate in one of their own spots.

Senator Danforth (R-Mo.) has introduced legislation that would require stations to provide free response time to opponents of candidates endorsed by PAC's, as well as to candidates who are the targets of "negative" political advertising. Congress has taken no action on his proposal.

2. PACs and the No-Censorship Rule, the
Lowest Unit Charge Rule and the Reason-
able Access Rule

PACs, "independent committees" and other persons not authorized by candidates are not entitled to the no-censorship, lowest unit charge, and reasonable access protections of the Communications Act. These rights are intended to benefit the candidates themselves, and are therefore personal to them.

Thus, for example, PACs are not entitled to a station's lowest unit rate. It should be noted, however, that if a PAC spot constitutes a "use" by a candidate which triggers his opponent's equal opportunities rights, any response time requested would have to be offered at the station's lowest unit charge. In contrast, if the spot does not include an appearance by a candidate, the supporters of candidates opposing the one endorsed by the PAC could be charged at the full rate for their response time.

Of course, a station is free to refuse a PAC's request to purchase time in the first place. Only legally-qualified candidates for federal office have a right of reasonable access to broadcast stations; PACs do not. Similarly, PACs generally do not have the right to insist that a station not censor any material in their spots, because the no-censorship rules applies only to legally-qualified candidates.

H. MISCELLANEOUS POLITICAL BROADCASTING RULES

1. Documentation of Political Broadcasts

Stations must maintain a political file as part of their public inspection files. In this file, a station must record all requests for time made by or on behalf of political candidates, as well as the outcome of the request. If the program or spot is broadcast, the file must reveal when it aired and what charges, if any, were made by the station. All requests must be recorded, regardless of whether they are granted or denied, or whether the

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stations received payment for them. Free time granted to candidates whether requested or not, must also be documented. The documentation must be kept in the public file for two years.

The actual contracts for sales of political time need not be placed in the public file, so long as all necessary information is recorded. All records of requests for time or gifts or sales of time must be entered in the political file as soon as possible, so that opposing candidates can exercise their equal opportunities right to request time within seven days of the first candidate's "use." In a recent decision, the Commission reprimanded a station for updating its political file only once a week, concluding that this practice was "clearly inconsistent with the purpose and spirit" of the record-keeping rules.

When a political broadcast is paid for or furnished by a corporation, committee, or another entity, the station must obtain a list of the chief executive officers, members of the executive committee or board of directors of such entity and maintain it in the station's public inspection file (along with the other required information) for two years. For political broadcasts originated by a network, however, the lists may be retained at the network's headquarters. Commission staff has held that a radio "rep network," a group of stations whose time is sold collectively by a national sales representative, may be considered a "network" for the purpose of the political documentation requirements, thus relieving individual stations from the obligation to keep certain documentation. Stations must still, however, keep in their own

political files information concerning the candidate's name, the office sought, and the nature and length of the broadcast.

2. Sponsorship Identification

A station must announce at the time a political program or spot is broadcast that it has been paid for and by whom it has been paid for. Even if the broadcast is not paid for, such a sponsorship announcement must be made if broadcast material is provided for free, or if a service, such as use of a camera crew, is provided by the candidate to help the station air the political material.

On occasion, a station may be challenged about the "real" sponsor of certain political advertisements. When confronted with such a challenge or with other grounds for doubting the validity of the sponsor identification, the station need not conduct a full-scale investigation. Rather, it is enough if the station makes inquiries to the party paying for the spots, and then accepts its plausible representations that it is the real party in interest.

Several states have enacted statutes which impose stricter sponsorship identification requirements for state and local political spots than those required by federal law. A federal court held in 1983 that these statutes are constitutional and are not preempted by federal regulations. Broadcasters should therefore familiarize themselves and comply with the applicable state sponsorship identification requirements for political broadcasts.

Senator John B. (Jack) Coghill

Alaska State Legislature

Juneau, Alaska 99811
(907) 465-4797

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



SPONSOR STATEMENT FOR SB 435

THE FUNDAMENTAL PRINCIPLE OF CONSTITUTIONAL GOVERNMENT IS THAT THE LEGISLATURE ESTABLISHES THE POLICY, DECIDES TAXATION, AND DOES THE APPROPRIATION.

THE ADMINISTRATIVE BRANCH OF GOVERNMENT ADMINISTERS THE LAW, AND SPENDS PUBLIC MONIES AS THE LEGISLATURE DIRECTS IN THE BUDGET.

THE JUDICIAL BRANCH OF GOVERNMENT RESOLVES DISPUTES, BOTH IN THE PUBLIC AND PRIVATE SECTOR.

THE ISSUE OF SB 435, IS DIRECTLY RELATED TO THE STATEMENT OF THE GOVERNOR THAT HE WOULD USE PUBLIC FUNDS FROM ALL AGENCIES TO ESTABLISH A PAC (POLITICAL ACTION COMMITTEE) TO PROMOTE HIS EDUCATIONAL ENDOWMENT. THERE HAS NOT BEEN ANY SPECIFIC APPROPRIATION FOR THAT PURPOSE AND IF EXCESS FUNDS EXIST THEN THE LEGISLATIVE PROCESS SHOULD CLOSE THE LOOPHOLE THAT ALLOWS NON-APPROPRIATED FUNDS TO BE USED BY THE GOVERNOR.

IF WE WENT TO COURT WE WOULD WIN, BECAUSE THE ACTIONS OF THE GOVERNOR WOULD VIOLATE ARTICLE 9, SECTION 6 OF THE ALASKA CONSTITUTION.

WHY SPEND THOUSANDS OF DOLLARS TO DEFEND OUR CONSTITUTIONAL RIGHTS? THE PURPOSE OF THIS ACT IS TO MAKE IT CLEAR THAT UNLESS THE LEGISLATURE OR MUNICIPALITY APPROPRIATES FUNDS, IT IS UNLAWFUL FOR ADMINISTRATIONS TO ARBITRARILY SPEND SUCH MONIES.

P.2d 508 (Alaska 1988).

Land leased from government and buildings subsequently constructed leased back. — Where taxpayer has leased land on an air force base from the federal government and has leased back to the government the housing project

taxpayer constructed on the land, taxpayer's leasehold interest as well as its interest in the buildings are subject to taxation. *Ben Lomond, Inc. v. Fairbanks N. Star Borough Bd. of Equalization*, 760 P.2d 508 (Alaska 1988).

Section 6. Public Purpose.

Opinions of attorney general. — The use of public resources for a partisan election campaign is not per se prohibited by the public purpose doctrine. However, the power of state officials to expend state

money or use state property in support of a partisan position in an election campaign must be narrowly construed. April 15, 1986 Op. Att'y Gen.

NOTES TO DECISIONS

Determination of public purpose. — Use of state aid for reimbursement of a guarantor who has had to pay a hospital construction loan did not violate the public purpose clause of this section. *Lake Otis Clinic, Inc. v. State*, 650 P.2d 388 (Alaska 1982).

Customer telephone equipment. — Anchorage Telephone Utility's lease, rental, and sale of customer telephone equipment is not an unlawful use of pub-

lic funds in violation of this section. Marketing of customer telephone equipment fulfills a public purpose; the Municipality of Anchorage's providing telephone services through the utility promotes access and convenience and fulfills a need for reliability. *Comtec, Inc. v. Municipality of Anchorage*, 710 P.2d 1004 (Alaska Ct. App. 1985).

Quoted in *Meiners v. Bering Strait School Dist.*, 687 P.2d 287 (Alaska 1984).

Section 7. Dedicated Funds.

Cross references. — For an exception to the prohibition against dedicated funds, see § 15 of this article which establishes the permanent fund.

Opinions of the attorney general. — The practice of appropriating to a separate fund an amount to be ascertained by reference to receipts from a specified source does not violate the dedication prohibition of the constitution. November 30, 1982 Op. Att'y Gen.

Language of this section prohibiting dedication of proceeds of any state tax or license must be read as embodying certain implied exceptions, specifically, pension contributions, proceeds from bond issues, sinking fund receipts, revolving fund receipts, contributions from local government units for state-local cooperative programs, and tax receipts which the state might collect on behalf of local govern-

ment units. November 30, 1982 Op. Att'y Gen.

There is no unlawful dedication involved in the return to a revolving loan fund of principal payments on loans. The initial appropriation would suffice to authorize the use of that money for other loans until the legislature reappropriates the unobligated assets of the fund or abolishes the fund. November 30, 1982 Op. Att'y Gen.

For discussion of issues involved in question of whether dedication prohibition applies to interest or other income earned by money appropriated to revolving funds and other funds and accounts, see November 30, 1982 Op. Att'y Gen.

The provisions of AS 16.43.310 and 16.43.320, which authorize the Commercial Fisheries Entry Commission to establish and administer a buy-back program, offend the state constitutional prohibition

government, state, county, or municipal, and does not relieve those in whose favor such exemption exists from the obligation to pay special assessments for local improvements which are charged upon property on the theory that such property is specially benefited thereby. 1966 Op. Att'y Gen., No. 10.

Special assessments are usually distinguished from general taxation. Special assessments are levied for improvements which benefit particular individuals or property and are levied with reference to, and in proportion to, the special benefit conferred. General taxes, on the other hand, are imposed for the purpose of raising monies to be expended for governmental purposes without regard to special benefits conferred on a particular group or class of persons or property. 1966 Op. Att'y Gen., No. 10.

Third sentence of section authorizes exemptions similar to exemptions granted to state. — The third sentence of this section authorizes the legislature to grant exemptions similar to the exemptions granted to the state by the first sentence of this section. Such exemptions may thus be for both real and personal property. *City of Nome v. Block No. H, Lots 5, 6 & 7, Sup. Ct. Op. No. 839* (File No. 1652), 502 P.2d 124 (1972).

Section 5. Interests in Government Property. Private leaseholds, contracts, or interests in land or property owned or held by the United States, the State, or its political subdivisions, shall be taxable to the extent of the interests.

Taxation of leaseholds by cities. — This section does not say in so many words that leaseholds shall be taxable by cities. But neither has that power been

Thus, AS 44.59.300 is constitutional. — AS 44.59.300, according an exemption to the Alaska State Development Corporation, has been upheld as constitutional under the third sentence of this section. *City of Nome v. Block No. H, Lots 5, 6 & 7, Sup. Ct. Op. No. 839* (File No. 1652), 502 P.2d 124 (1972).

When the legislature chose to exempt the Alaska State Development Corporation from "all taxes and assessments," it meant to draw upon its full powers under the third sentence of this section, and thereby to grant ASDC an exemption for both its real and personal property. *City of Nome v. Block No. H, Lots 5, 6 & 7, Sup. Ct. Op. No. 839* (File No. 1652), 502 P.2d 124 (1972).

Alaska State Development Corporation held exempt. — Where actions of the Alaska State Development Corporation to keep a foreclosed property saleable by continuing operation of its hotel-restuarant-bar complex were in conformance with the ASDC's powers and in furtherance of the valid public purpose of the ASDC and therefore constituted use of the property for a public purpose, the ASDC did not lose its tax exemption. *City of Nome v. Block No. H, Lots 5, 6 & 7, Sup. Ct. Op. No. 839* (File No. 1652), 502 P.2d 124 (1972).

specifically denied to cities. *City of Anchorage v. Baker, Sup. Ct. Op. No. 113* (File No. 210), 376 P.2d 482 (1962).

Section 6. Public Purpose. No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose.

This section is a general measure and expresses a very definite policy. *Matthews v. Quinton, Sup. Ct. Op. No. 31* (File No. 48), 362 P.2d 932 (1961), cert. denied, 368 U.S. 517, 82 S. Ct. 530, 7 L. Ed. 2d 522 (1962).

Its proscription is against the appropriation of "any public money." *Matthews v. Quinton, Sup. Ct. Op. No. 31* (File No. 48), 362 P.2d 932 (1961), cert.

denied, 368 U.S. 517, 82 S. Ct. 530, 7 L. Ed. 2d 522 (1962).

The phrase "public purpose" represents a concept which is not capable of precise definition. *DeArmond v. Alaska State Dev. Corp., Sup. Ct. Op. No. 116* (File No. 285), 376 P.2d 717 (1962); *Walker v. Alaska State Mtg. Ass'n, Sup. Ct. Op. No. 353* (File No. 669), 416 P.2d 245 (1966).

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It would be a disservice to future generations for the supreme court to attempt to define "public purpose." Wright v. City of Palmer, Sup. Ct. Op. No. 605 (File No. 1192), 468 P.2d 326 (1970).

It is a concept which will change as changing conditions create changing public needs. DeArmond v. Alaska State Dev. Corp., Sup. Ct. Op. No. 116 (File No. 285), 376 P.2d 717 (1962); Walker v. Alaska State Mtg. Ass'n, Sup. Ct. Op. No. 353 (File No. 669), 416 P.2d 246 (1966); Wright v. City of Palmer, Sup. Ct. Op. No. 605 (File No. 1192), 468 P.2d 326 (1970).

Determination of public purpose. — Whether a public purpose is being served must be decided as each case arises and in the light of the particular facts and circumstances of each case. DeArmond v. Alaska State Dev. Corp., Sup. Ct. Op. No. 116 (File No. 285), 376 P.2d 717 (1962); Walker v. Alaska State Mtg. Ass'n, Sup. Ct. Op. No. 353 (File No. 669), 416 P.2d 246 (1966); Wright v. City of Palmer, Sup. Ct. Op. No. 605 (File No. 1192), 468 P.2d 326 (1970).

The technique used by most courts is that of looking to the entire factual and governmental context to determine whether a particular plan of action serves a public purpose. Wright v. City of Palmer, Sup. Ct. Op. No. 605 (File No. 1192), 468 P.2d 326 (1970).

Depends upon character of use. — The test of whether a public purpose is being served does not depend on the religious or nonreligious nature of the agency that will operate property leased from city, but upon the character of the use to which the property will be put. Lien v. City of Ketchikan, Sup. Ct. Op. No. 146 (File No. 275), 383 P.2d 721 (1963).

It is not essential that the entire community or any particular number of persons should benefit from remedial legislation in order that a public purpose be served. Suber v. Alaska State Bond Comm., Sup. Ct. Op. No. 344 (File No. 651), 414 P.2d 546 (1966).

Court will not set aside finding of legislature. — Where the legislature has found that a public purpose will be served by the expenditure or transfer of public funds or the use of the public credit, the court will not set aside the finding of the legislature unless it clearly appears that such finding is arbitrary and without any reasonable basis in fact. DeArmond v. Alaska State Dev. Corp., Sup. Ct. Op. No. 116 (File No. 285), 376 P.2d 717 (1962); Walker v. Alaska State Mtg. Ass'n, Sup.

Ct. Op. No. 353 (File No. 669), 416 P.2d 245 (1966).

The courts will not interfere with the exercise of legislative discretion unless it is clearly shown that the legislative determination that a public purpose will be served by the means chosen is arbitrary and without any reasonable basis in fact. Suber v. Alaska State Bond Comm., Sup. Ct. Op. No. 344 (File No. 651), 414 P.2d 546 (1966).

Industrial development. — It is recognized that the location of an industry in a particular community may have widespread economic benefits and that these do fulfill the public purpose and the general welfare of the community, broadly conceived. Wright v. City of Palmer, Sup. Ct. Op. No. 605 (File No. 1192), 468 P.2d 326 (1970).

The test which the supreme court must apply is whether a plan for the development of industry within a municipality is so unreasonable as to transgress the limitations of the Alaska Constitution. Wright v. City of Palmer, Sup. Ct. Op. No. 605 (File No. 1192), 468 P.2d 326 (1970).

A general obligation bond issue for the purpose of encouraging industrial development within a municipality was held valid in Wright v. City of Palmer, Sup. Ct. Op. No. 605 (File No. 1192), 468 P.2d 326 (1970).

Relief and support of the poor has long been recognized as an obligation of government and a public purpose. Suber v. Alaska State Bond Comm., Sup. Ct. Op. No. 344 (File No. 651), 414 P.2d 546 (1966).

Relieving economic distress. — It is a public purpose to expend public moneys to relieve economic distress by aiding those persons in the state who have suffered a substantial financial burden as a result of a natural disaster. Suber v. Alaska State Bond Comm., Sup. Ct. Op. No. 344 (File No. 651), 414 P.2d 546 (1966).

The issuance of the debenture certificates by Alaska State Development Corporation does not constitute a transfer of public funds and the use of public credit for other than a public purpose. DeArmond v. Alaska State Dev. Corp., Sup. Ct. Op. No. 116 (File No. 285), 376 P.2d 717 (1962).

The expenditure of state money in the construction of a hospital operated by a religious nonprofit group under the terms and conditions imposed by the federal government under the Hill-Burton

Act is a public purpose and not prohibited by the constitution or laws of the state. 1959 Op. Att'y Gen., No. 19.

The Utility Reimbursement Law is constitutional. 1961 Op. Att'y Gen., No. 12.

Alaska Mortgage Adjustment Program and SLA 1964, Sp. Sess., cha. 1, 2 and 3, held constitutional. — See *Suber v. Alaska State Bond Comm.*, Sup. Ct. Op. No. 344 (File No. 651), 414 P.2d 546 (1966).

The purpose of the Alaska Mortgage Adjustment Program is no less public because its benefits may be limited by circumstances to a comparatively small part of the public. *Suber v. Alaska State Bond Comm.*, Sup. Ct. Op. No. 344 (File No. 651), 414 P.2d 546 (1966).

Alaska State Development Corporation. — The announced purpose of the act creating the Alaska State Development Corporation (AS 44.59.430) has a sound basis in fact and the dominant purpose is a public one. *DeArmond v. Alaska State Dev. Corp.*, Sup. Ct. Op. No. 116 (File No. 285), 376 P.2d 717 (1962).

Alaska State Mortgage Association. — Since the Alaska State Mortgage Association (AS 44.83.010 — 44.83.240) was created for a public purpose within the meaning of this section, the use of public grants and loans is constitutionally permissible. *Walker v. Alaska State Mtg.*

Ass'n, Sup. Ct. Op. No.353 (File No. 669), 416 P.2d 245 (1966).

The purposes for which the Alaska State Mortgage Association 44.83.010 — 44.83.240) was created are public purposes within the ambit of this section. *Walker v. Alaska State Mtg. Ass'n, Sup. Ct. Op. No. 353 (File No. 669), 416 P.2d 245 (1966).*

Ketchikan hospital. — The moneys used to construct the Ketchikan hospital were spent for a public purpose, since a community hospital serves the general welfare. That purpose does not become nonpublic when the hospital is turned over to a charitable, nonprofit corporation for operation, rather than being operated by the city itself. The public purpose remains unchanged. *Lien v. City of Ketchikan, Sup. Ct. Op. No. 146 (File No. 275), 383 P.2d 721 (1963).*

Quoted in *City of Juneau v. Hixson, Sup. Ct. Op. No. 93 (File No. 201), 373 P.2d 743 (1962).*

Cited in *Ault v. Alaska State Mtg. Ass'n, Sup. Ct. Op. No. 179 (File No. 366), 387 P.2d 698 (1963).*

ALR2d reference. — Validity, construction and effect of statutes authorizing public funds for urban redevelopment by private enterprise, 44 ALR2d 1400, 1431.

Quoted in *Sheldon Jackson College v. State, Sup. Ct. Op. No. 1916 (File No. 3978, 4002), 599 P.2d 127 (1979).*

Section 7. Dedicated Funds. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska [Amendment effective February 21, 1977].

Effect of amendment. — The amendment effective February 21, 1977 (9th Legislature's HJR 39) inserted "as provided in section 15 of this article or" in the first sentence.

Reasons for section. — Among the reasons such a prohibition, as is found in this section, was recommended are the following: (1) flexibility of budgeting; (2) financial control; and (3) lack of relationship between the tax and purpose. 1959 Op. Att'y Gen., No. 7.

Delegates to the constitutional convention were desirous of eliminating dedications so that the legislature would

have the greatest flexibility in allocating tax revenues on a basis of need. 1959 Op. Att'y Gen., No. 7.

This section had two interrelated purposes: (1) to prevent any future dedication of revenues for special purposes, and (2) to prevent the creation of new special funds separate from the general fund. May 2, 1975, Op. Att'y Gen.

What dedication encompasses. — A dedication encompasses (1) proceeds or part of the proceeds of a tax or license (2) set aside at a certain rate (3) for a particular purpose. 1959 Op. Att'y Gen. No. 7.

Article IX

litigation over the definition of "nonprofit religious, charitable, cemetery or educational purposes" by property owners seeking to qualify for the various exemptions.

Section 5. Interests in Government Property

Private leaseholds, contracts, or interests in land or property owned or held by the United States, the State, or its political subdivisions, shall be taxable to the extent of the interests.

This section says that if a private person leases government land (to build a house on or to run a business from, for example) the value of the lease may be taxed even though the land is otherwise not taxable because the government retains ownership.

Section 6. Public Purpose

No tax shall be levied, or appropriation of public money made, or public property transferred, nor shall the public credit be used, except for a public purpose.

This is a traditional constitutional safeguard that is, on its face, reasonable and understandable. The question is, however, what is a "public purpose"? Like the concept of the public interest, it seems to change with the times. The contemporary notion of public purpose in Alaska—which includes loan programs for private businesses and various other subsidies, welfare payments, and "longevity bonuses" (cash payments to old-timers)—is undoubtedly much broader than the view held fifty or a hundred years ago. Courts have generally given the legislature wide latitude to define public purpose. These points have been stated clearly by the state supreme court:

... the phrase "public purpose" represents a concept which is not capable of precise definition. We believe that it would be a disservice to future generations for this court to attempt to define it. It is a concept which will change as changing conditions create changing public needs. . . . Where the legislature has found that a public purpose will be served by the expenditure or transfer of public funds or the use of public credit, the court will not set aside the finding of the legislature unless it clearly appears that such finding is arbitrary and without any reasonable basis in fact. (DeArmond v. Alaska State Development Corp., 376 P.2d 717; 1962).

Section 7. Dedicated Funds

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Alaska's Constitution: A Citizen's Guide

Article IX

Convention delegates prohibited the dedication, or "earmarking," of funds for specific purposes so that the legislature would not tie its own hands in providing for the public needs of the day. The phrase "as provided in section 15 of this article" in the second sentence was added by an amendment in 1976 to allow creation of the Alaska Permanent Fund (see Section 15). Two exceptions to the prohibition against earmarking were allowed by the convention delegates. One exception is a dedicated fund that was already in existence, such as the school fund of A.S. 43.50.130, which receives proceeds from the tobacco tax for use of school repair and construction. The other exception allows new earmarking when it is required by federal law to participate in a federal revenue-sharing program. This is the case with the fish and game fund of A.S. 16.05.100, to which sport hunting and license fees are dedicated.

One legislature cannot bind a future legislature (only the constitution can), especially with respect to the fundamental power to appropriate money. The problem with a statutory dedication of money is that a governor's veto could block a future legislature's effort to repeal the dedication. Also, a statutorily created fund tends to be perpetuated, since the money involved is usually "off-budget" and the finance committees do not review the annual appropriations involved.

Legal debate has surrounded the meaning of the phrase "proceeds of any state tax or license," in the first sentence. Did the authors of the constitution use the phrase to mean all state revenue, or did they want to exclude from the prohibition against dedication those state revenues that are not derived from a tax or license? The question became important when Alaska began to receive substantial income from oil lease bonuses and royalties, which are not proceeds from a tax or license.

An opinion of the attorney general of an early administration said that oil lease royalty income was outside the prohibition against earmarking in this section. A later opinion reversed this interpretation and held that the historical record of the convention made it clear that the delegates intended to bar the dedication of all state revenue, whether or not they derive strictly from a tax or license. Consequently, a constitutional amendment was required to create the Alaska Permanent Fund.

In 1982 the state supreme court held that the phrase "proceeds of any state tax or license" should be construed broadly to include all sources of public revenue (State v. Alex 646 P.2d 203; 1982). Still unsettled, however, is whether the framers of the constitution intended there to be certain exceptions, such as pension contributions, proceeds from bond issues, revolving fund receipts, and sink-

STATE OF ALASKA
THE LEGISLATURE

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


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 20, 1990

SUBJECT: State or municipal funds/ facilities used as
campaign contributions (SB 435)

TO: Senator Jack Coghill

FROM: Richard A. Bradley
Legislative Counsel 

You have requested a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 of the bill adds a new subsection to AS 15.13.070 ("contributions and expenditures"). The section provides that "public funds of the state or of a municipality may not be contributed to the support of a political campaign or used to urge the adoption or rejection of a ballot question or ballot proposition". [Sec. 15.13.070(i)(1)]. It also provides that "public facilities of the state or of a municipality may not be used for the preparation of materials that will be used . . . in a political campaign . . . or . . . to urge the adoption or rejection of a ballot issue or question". [Sec. 15.13.070(i)(2)]. I note that the phrase "ballot issue" should be replaced with "ballot proposition"; see the definitions of "ballot proposition" and "ballot question" under AS 15.60.010(23) and (26).

The bill would permit the legislature or the municipal governing body to provide otherwise by law.

Senator Jack Coghill
Page 2
February 20, 1990

Section 2 of the bill establishes an immediate effective date.

If I may be of further assistance, please advise.

RAB:pl
WKP2/066

Constitutional Convention
November 22, 1955
Finance/

Memorandum
Finance Committee

The committee has tentatively adopted the following:

1. No tax shall be imposed by the state upon any lands or other property now owned or hereafter acquired by the United States except insofar as Federal law may allow, and such immunity to taxation shall extend to all property owned by natives which may be held in trust by the United States, or over which the United States has complete jurisdiction, ^{BUT IF} ~~Such immunity~~ does not apply to property of individual natives when held in fee without restrictions on alienation. (Kodiak lands ?)

2. The debts and liabilities of the Territory of Alaska shall be assumed and paid by the State of Alaska and debts owed to the Territory of Alaska shall be collected by the State.

3. The lands and other property belonging to citizens of the United States ^{NOT RESIDENTS OF} ~~residing without~~ the State of Alaska, shall never be taxed at a higher rate than the lands and other property belonging to residents ~~thereof.~~ OF ALASKA

4. The power of taxation shall never be surrendered, *and shall never be suspended or contracted away except as hereinafter provided,*

5. No tax shall be levied, or appropriation of public money or property made, nor shall the public credit be used, directly or indirectly, except for a public purpose.

6. The property of the State, municipal corporations, and

so much of it as
all for

other political subdivisions, both real and personal,

portion
with

other property used exclusively for non-profit religious, chari-
table, cemetery or educational purposes is hereby exempt from

as defined by law

taxation. Exemption from taxation may be granted only by general

Other

Except that

laws. Until otherwise provided by law, all exemptions from tax-

ation ~~validly granted~~ now in existence shall be continued.

~~and no exemption may be added, altered or repealed.~~

Barrie M. White, Jr., Sec.

A
1. No...
2. No...
3. Local...

12
W

Elliott
Linton
McKean
Merrill
Sauls

Constitutional Convention
XI/Finance & Taxation
December 9, 1955

Preliminary Draft

ARTICLE ON FINANCE AND TAXATION

Taxing 1 Section 1. The power of taxation shall never be surren-
Power 2 dered, and shall never be suspended, or contracted away,
3 except as provided herein.

Taxation 4 Section 2. The lands and other property belonging to
of 5 citizens of the United States residing without the State
Nonresi- 6 shall never be taxed at a higher rate than the lands and
dents 7 other property belonging to residents.

Assessment 8 Section 3. The legislature shall ^{establish the standards for} ~~provide for the method~~
and taxa- 9 ~~of~~ assessment of all ~~real~~ property assessed locally or by
tion of 10 the state. ~~according to the same standard of value.~~ ^{Keep in cooperation}

property 11 Section 4. ~~The property of the State, municipal corpor-~~
Exemp- 12 ~~ations, and other political subdivisions, both real and-~~
tions 13 ~~personal,~~ and all or any portion of other property used
14 exclusively for non-profit religious, charitable, ^{corporately} or

15 educational purposes as defined by law, is exempt from
16 taxation. ^{at l.c. on 4-1-56} Other exemptions may be granted ^{only?} by general
17 law, and until otherwise provided by law, all exemptions
18 from taxation ^{retained} validly granted are extended.

Taxation 19 Section 5. No tax shall be imposed upon any lands or
of U. S. 20 other property owned or acquired by the United States,
property 21 except as ^{allowed} ~~permitted~~ by Federal Law. Immunity - to tax-
prohibited 22 ation extends to all property owned by natives, which

→
No...
prohibited

4

12/9/55 (II)

1 is held in trust by the United States, or over which
2 the United States has complete jurisdiction. Immunity
3 to taxation does not apply to property of ~~individuals~~
4 natives when held in fee without restrictions on aliena-
5 tions!

Taxation of 6 Section 6. ~~Persons~~ ^{Private} holding leaseholds, contracts, or
interests 7 other interests in land ~~held~~ ^{owned or held by} the United States shall
in U. S. 8 be taxable to the extent of ~~their respective~~ ^{the} interests;
property. 9

Taxation 10 Section 7. No tax shall be levied or appropriation of
for public 11 public money ^{made public} or property ^{transferred} made, nor shall the public credit
purpose 12 be used, except for a public purpose.

Earmarking 13 Section 8. ^{Except where} Unless state participation in Federal programs
Restricted 14 will thereby be denied, all tax revenues shall be deposi-
15 ted in a ~~general fund~~. ^{existing} This provision shall not prohibit
16 the continuance of any special fund for special purposes
17 upon the date of ratification of this Constitution by the
18 people of Alaska.

Debt 19 Section 9. No debt shall be contracted by or in behalf of
20 the state unless such debt shall be authorized by law for-
21 a single capital improvement ^{such} distinctly specified therein;
22 and no law shall, except for the purpose of repelling in-
23 vasion, suppressing insurrection, defending the state in
24 war, meeting natural catastrophes, or redeeming the in-
25 debtedness of the state outstanding at the time this con-
stitution becomes effective, take effect until it shall

1 have been submitted to the qualified voters and have
2 received a favorable majority of all votes cast upon
3 such question; ~~except that~~ the state may by law borrow
4 money to meet appropriations for any fiscal year in anti-
5 cipation of the collection of the revenues of that year,
6 but all debts so contracted shall be paid within one
7 year; ~~and except that~~ the state may create in any fiscal
8 year liabilities of the state, which together with any
9 previous liabilities shall not exceed at any time _____
10 percent of the total amount appropriated by the last
11 general appropriation law, provided that such liabilities
12 shall be discharged within five years.

13 The provisions of this section shall not apply to in-
14 debtedness incurred under revenue bond statutes by a
15 public enterprise of the state or political subdivision,
16 or by a public corporation, when the only security for
17 such indebtedness is the revenues of such enterprise or
18 public corporation, or to indebtedness incurred under
19 special improvement statutes when the only security for
20 such indebtedness is the properties benefited or im-
21 proved or the assessments thereon.

Governor's
Budget

22 Section 10. ~~Within such time prior to the opening of~~
23 ~~each regular session~~ as may be prescribed by law, the
24 governor shall submit to the legislature a budget setting
25 forth a complete plan of proposed expenditures and anti-

COPY TO
HIS EXCEL.

1 cipated income of all departments, offices and agencies
 2 of the state for the next ensuing ^{fiscal} year. At the time of
 3 submitting the budget to the legislature, the governor
 4 shall also submit a general appropriation bill to auth-
 5 orize all proposed expenditures set forth in the budget.
 6 At the same time he shall submit to the legislature a
 7 bill or bills covering all recommendations in the budget
 8 for new or additional revenues.

*Wade's
 13*

9 Section 14. The legislature shall appoint an auditor,
 10 who shall be a certified public accountant and who shall
 11 serve during its pleasure. It shall ^{be} the duty of the
 12 auditor to conduct ^{such (copies)} post-audits ^{as may be prescribed by law} ~~in the manner provided by~~
 13 ~~the legislature~~ and to report to the governor and the
 14 legislature.

15 Section 15. The debts and liabilities of the Territory
 16 of Alaska shall be assumed and paid by the State of
 17 Alaska and debts owed to the Territory of Alaska shall
 18 be collected by the State.

*Transitional
 13
 Copies
 12/25/54*

*ASSET
 school
 48 USC*

Preliminary Draft

ARTICLE ON FINANCE AND TAXATION

Taxing 1 Section 1. The power of taxation shall never be surren-
Power 2 dered, and shall never be suspended, or contracted away
3 except as provided herein.

Taxation 4 Section 2. The lands and other property belonging to
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Nonresi- 6 shall never be taxed at a higher rate than the lands and
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Assessment 8 Section 3. The legislature shall provide for the method
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property 11 Section 4. The property of the State, municipal corpor-
Exemp- 12 ations, and other political subdivisions, both real and
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14 exclusively for non-profit religious, charitable, or
15 educational purposes as defined by law, is exempt from
16 taxation. Other exemptions may be granted by general
17 law and until otherwise provided by law, all exemptions
18 from taxation validly granted are extended.

Taxation 19 Section 5. No tax shall be imposed upon any lands or
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property 21 except as permitted by Federal Law. Immunity to tax-
prohibited 22 ation extends to all property owned by natives, which

12/9/55

1 is held in trust by the United States, or over which
2 the United States has complete jurisdiction. Immunity
3 to taxation does not apply to property of (individual)
4 natives when held in fee without restrictions on aliena-
5 tions.

Taxation of 6 Section 6. Persons holding leaseholds, contracts, or
interests 7 other interests in land held by the United States shall
in U. S. 8 be taxable to the extent of their respective interests.
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Taxation 10 public money or property made, nor shall the public credit
for public 11 be used except for a public purpose.

purpose 12 Section 8. Unless state participation in Federal programs
13 will thereby be denied, all tax revenues shall be deposi-
Earmarking 14 ted in a general fund. This provision shall not prohibit
Restricted 15 the continuance of any special fund for special purposes
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17 people of Alaska.

Debt 18 Section 9. No debt shall be contracted by or in behalf of
19 the state unless such debt shall be authorized by law for
20 a single capital improvement distinctly specified therein;
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22 vasion, supressing insurrection, defending the state in
23 war, meeting natural catastrophes, or redeeming the in-
24 debtedness of the state outstanding at the time this con-
25 stitution becomes effective, take effect until it shall

1 have been submitted to the qualified voters and have
2 received a favorable majority of all votes cast upon
3 such question; except that the state may by law borrow
4 money to meet appropriations for any fiscal year in anti-
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6 but all debts so contracted shall be paid within one
7 year; and except that the state may create in any fiscal
8 year liabilities of the state, which together with any
9 previous liabilities shall not exceed at any time _____
10 percent of the total amount appropriated by the last
11 general appropriation law, provided that such liabilities
12 shall be discharged within five years.

13 The provisions of this section shall not apply to in-
14 debtedness incurred under revenue bond statutes by a
15 public enterprise of the state or political subdivision,
16 or by a public corporation, when the only security for
17 such indebtedness is the revenues of such enterprise or
18 public corporation, or to indebtedness incurred under
19 special improvement statutes when the only security for
20 such indebtedness is the properties benefited or im-
21 proved or the assessments thereon.

Governor's
Budget

22 Section 10. Within such time prior to the opening of
23 each regular session as may be prescribed by law, the
24 governor shall submit to the legislature a budget setting
25 forth a complete plan of proposed expenditures and anti-

Constitutional Convention
Committee Proposal/9
December 16, 1955

ALASKA CONSTITUTIONAL CONVENTION

Commentary on the Article on Finance and Taxation

(Sec. 1 Taxing Power)

The power to tax is never to be surrendered, but under terms that may be established by the legislature, it may be suspended or temporarily contracted away. This could include industrial incentives, for example.

(Sec. 2 Taxation of Non-residents)

This section and its wording is required by the latest proposed enabling act, H.R. 2535.

(Sec. 3 Uniform Standards for Assessment)

The legislature is authorized to set up, notwithstanding home rule or any system for the selection of assessors, uniform standards of assessment.

(Sec. 4 Exemptions from Taxation)

All property owned by the state and its subdivisions is exempt from taxation unless the legislature directs otherwise. An exception from tax immunity might be appropriate if a government engaged in what is normally a private business, such as operating a ski resort, a moving picture theater, or a swimming pool.

The second sentence of this section is intended to exempt from taxation that part of the property of religious, charitable, cemetery, or educational organizations which is actually used for these purposes, as the legislature may direct. But their property used for other

purposes would be taxable, for example, an office building owned by a college as part of its endowment.

The legislature is authorized to make further tax exemptions to encourage, among other purposes, new industry, and all valid current exemptions are continued.

(Sec. 5 Taxation of United States Property)

This section is required by the latest proposed enabling act, H.R. 2535. Even if it were not included, the state could not, under a long line of U.S. Supreme Court cases, tax federal property.

(Sec. 6 Taxation of Private Interests in U.S. Property)

Taxation is permitted of private interests in land or property owned or held by the United States.

(Sec. 7 Public Purpose Clause)

Public purpose clauses are common to most constitutions, and are included to prevent appropriation of public funds for private purposes.

(Sec. 8 Earmarking of Revenues Restricted)

The allocation of certain revenues to special purposes is prohibited, with two exceptions: (1) if required in order to participate in a federal program or (2) if the earmarking is in existence at the time of ratification of the constitution. Even those persons or interests who seek the dedication of revenues for their own projects will admit that the earmarking of taxes or fees for other interests is a fiscal evil. But if allocation is permitted for one interest the denial of it to another is difficult, and the more special funds are set up the more difficult it becomes to deny other requests until the point is reached where neither the governor nor the legislature has any real control over the finances of the state. In one Rocky Mountain state the legislature

is free to appropriate only 17 per cent of the tax collections; the rest are dedicated. In Alaska at present, 27% of territorial funds are earmarked, primarily for school construction and roads.

(Sec. 9 Debt Contraction)

This section forbids state or local debt except in special emergencies or for the purpose of making capital improvements, the proposals for which must be approved by the voters.

(Sec. 10 Tax Anticipation Notes)

This section permits the state to borrow in anticipation of taxes in any fiscal year money to meet appropriations.

(Sec. 11 Refunding and Revenue Debt)

In a period when interest rates fall, a government may save large amounts of money if it can pay off its old high-rate obligations with new funds borrowed at lower rates. This process, here permitted, is called refunding, and the restrictions on the contraction of original debt are unnecessary; they are here made inapplicable. When the state or its subdivisions can contract debts for special purposes (for example, to build a toll bridge) without pledging more than the improvement or the revenues from the enterprise, such debt is permitted without referendum. This provision is sometimes necessary if a state is to take advantage of federal loans at particularly favorable rates.

(Sec. 12 Budget)

This section requires the governor to submit a complete budget and an appropriation bill to authorize the expenditures he proposes. This process is now standard.

(Sec. 13 Expenditures)

The requirement of appropriation before expenditure is also standard. The second sentence requires the recapture of unexpended balances.

(Sec. 14 Auditor)

The auditor is commonly regarded as a legislative officer, and his appointment is here vested in the legislature.

(Sec. 15 Debts and Assets)

This section provides for the state to take over the debts to and of the Territory of Alaska, as well as its assets.

Constitutional Convention of Alaska

COMMITTEE PROPOSAL NO. 9

Introduced by Committee on Finance and Taxation

ARTICLE ON FINANCE AND TAXATION

RESOLVED, that the following be agreed upon as part
of the Alaska State Constitution

Taxing Power 1 Section 1. The power of taxation shall never be
2 surrendered; and shall never be suspended or con-
3 tracted away, except as provided herein.

Taxation of 4 Section 2. The lands and other property belonging
non-residents 5 to citizens of the United States residing without the
6 State shall never be taxed at a higher rate than the
7 lands and other property belonging to the residents
8 of the State.

Assessment of 9 Section 3. The legislature shall establish the
Property 10 standards for assessment of all property assessed
11 locally or by the State.

Exemptions 12 Section 4. The real and personal property of the
from 13 State and of its political subdivisions shall be ex-
Taxation 14 empt from taxation under such conditions and with
15 such exceptions as the legislature may direct. All
16 or any portion of property used exclusively for

12/16/55

1 non-profit religious, charitable, cemetery, or educa-
2 tional purposes as defined by law, is exempt from
3 taxation.

4 Other exemptions of like or different kind may be
5 granted by general law; and until otherwise provided
6 by law, all exemptions from taxation validly granted
7 are retained.

Taxation of 8 Section 5. No tax shall be imposed upon any lands
U.S. Property 9 or other property owned or acquired by the United
Prohibited 10 States, except as allowed by Federal law. Immunity to
11 taxation extends to all property owned by natives which
12 is held in trust by the United States, or over which
13 the United States has complete jurisdiction. Immunity
14 to taxation does not apply to property of individual
15 natives when held in fee without restrictions on
16 alienation.

Taxation of 17 Section 6. Private leaseholds, contracts, or other
Interests in 18 interests in land or property owned or held by the
U.S. property 19 United States shall be taxable to the extent of the
20 interests.

Taxation for 21 Section 7. No tax shall be levied or appropriation
Public 22 of public money made or public property transferred,
Purpose 23 nor shall the public credit be used, except for a
24 public purpose.

Earmarking 25 Section 8. All revenues shall be deposited in the
Restricted 26 State treasury without allocation for special purposes,

1 except where state participation in Federal programs
2 will thereby be denied. This provision shall not pro-
3 hibit the continuance of any allocation for special
4 purposes existing upon the date of ratification of this
5 Constitution by the people of Alaska.

Debt 6 Section 9. No debt shall be contracted by or in
Contraction 7 behalf of the State, or any political subdivision
Restricted 8 thereof, unless the debt shall be authorized by law
 9 for capital improvements specified therein and be
10 approved by a majority of the qualified voters of the
11 State or of the respective political subdivision voting
12 on the question, provided that the State may by law
13 contract debt for the purpose of repelling invasion,
14 suppressing insurrection, defending the State in war,
15 meeting national catastrophies, or redeeming outstand-
16 ing indebtedness of the State at the time this
17 Constitution becomes effective.

Tax 18 Section 10. The State may by law borrow money to
Anticipation 19 meet appropriations for any fiscal year in anticipation
Notes 20 of the collection of the revenues of that year, but all
 21 debt so contracted shall be paid within one year.

Revenue Debt 22 Section 11. The restrictions in this Constitution
 23 on the contraction of debt do not apply to refunding
 24 indebtedness of the State or any political subdivision
 25 thereof; to indebtedness incurred under revenue bond

1 statutes by a public enterprise of the state or politi-
2 cal subdivision, or by a public corporation, when the
3 only security for such indebtedness is the revenues of
4 the enterprise or public corporation; or to indebted-
5 ness incurred under special improvement statutes when
6 the only security for such indebtedness is the pro-
7 perties benefited or improved or the assessments
8 thereon.

Governor's
Budget

9 Section 12. At such time as may be prescribed by
10 law, the governor shall submit to the legislature a
11 budget setting forth a complete plan of proposed ex-
12 penditures and anticipated income of all departments,
13 offices and agencies of the State for the next fiscal
14 year. At the time of submitting the budget to the
15 legislature, the governor shall also submit a general
16 appropriation bill to authorize all proposed expendi-
17 tures set forth in the budget. At the same time he
18 shall submit to the legislature a bill or bills cover-
19 ing all recommendations in the budget for new or
20 additional revenues.

Expenditure
of Money

21 Section 13. No money shall be withdrawn from the
22 treasury except in accordance with appropriations
23 made by law, nor shall any obligation for the payment
24 of money be incurred except as authorized by law. All
25 appropriated funds unexpended at the end of a period of

1 . time specified by law shall be returned to the state
2 treasury.

legislative
post-audit

3 Section 14. The legislature shall appoint an audi-
4 tor who is a certified public accountant and who shall
5 serve during its pleasure. It is the duty of the
6 auditor to conduct such post-audits as may be pre-
7 scribed by law and to report to the governor and the
8 legislature.

territorial
debt Assumed

9 Section 15. The debts and liabilities of the Terri-
10 tory of Alaska shall be assumed and paid by the State
11 of Alaska, and debts owed to the Territory of Alaska
12 shall be collected by the State. Assets of the
13 Territory of Alaska shall become assets of the State.

1 cipated income of all departments, offices and agencies
2 of the state for the next ensuing year. At the time of
3 submitting the budget to the legislature, the governor
4 shall also submit a general appropriation bill to auth-
5 orize all proposed expenditures set forth in the budget.
6 At the same time he shall submit to the legislature a
7 bill or bills covering all recommendations in the budget
8 for new or additional revenues.

Legislation 9 Section 11. The legislature shall appoint an auditor,
Post-audit 10 who shall be a certified public accountant and who shall
11 serve during its pleasure. It shall be the duty of the
12 auditor to conduct post-audits in the manner provided by
13 the legislature and to report to the governor and the
14 legislature.

Territorial 15 Section 12. The debts and liabilities of the Territory
debt assumed 16 of Alaska shall be assumed and paid by the State of
17 Alaska and debts owed to the Territory of Alaska shall
18 be collected by the State.

ention of Alaska

PROPOSAL NO. 9

tee on Finance and Taxation

~~AND FINANCE~~ 2.2)

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Alaska State Constitution

~~AND FINANCE~~

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Com. 400 (Prop. 1/1)
Date

1/16/56

Journal
Constitutional Convention

Committee Proposal No. 12 was read the second time. Mr. V. Rivers explained the proposal and discussion followed.

Mr. V. Rivers announced a meeting of the Committee on the Executive Branch on recess.

Mr. Sundborg announced a meeting of the Committee on Style and Drafting during the recess. Mr. Sundborg also called attention to the new rule regarding the discussing of amendments to proposals with the committee during a recess.

The President declared the Convention at recess for the usual fifteen-minute break.

AFTER RECESS

Mr. V. Rivers suggested that Committee Proposal No. 12 be held in abeyance until after the basic articles had been acted on, and called attention to a proposed amendment regarding the University of Alaska.

The President asked that all those in favor of deferring action on Committee Proposal No. 12 until such time as all the substantive proposals have been considered do so by a show of hands. A majority of the delegates favored this action, and the President ordered Committee Proposal No. 12 referred back to the Committee on the Executive Branch until such time as the Committee deemed it proper to bring it out.

Mr. Nerland asked permission for the members of the Committee on Finance to sit together. Permission was granted.

Committee Proposal No. 9 was read the second time.

Mr. Nerland asked unanimous consent that the following committee amendments be accepted and incorporated as part of the committee proposal:

1. Page 2, Section 5: Strike Section 5 and renumber subsequent Sections.
2. Page 2, Section 8, line 25: After the word "all", insert the word "public."
3. Page 3, Section 9, line 15: Strike the word "national" and insert in lieu thereof the word "natural."
4. Page 3, Section 10, line 21: Strike "within one year" and insert in lieu thereof "prior to the end of the next fiscal year."
5. Page 4, Section 13, line 24: Strike the last sentence and insert in lieu thereof, "All appropriations outstanding at the end of a period of time specified by law shall be void."

Mr. R. Rivers objected and asked to discuss the amendments. Mr. V. Fischer rose to a point of order that since the amendments had been approved by the Committee they should be accepted now as part of the report and amendments by delegates could be presented later. The President stated the point of order was well taken.

Mr. V. Rivers asked a question regarding the amendment. Miss Awes rose to a point of order that questions were not in order at this time. The President stated Miss Awes' point of order was well taken.

Mr. Nerland moved that the amendments offered by the committee become a part of the original committee report relative to Committee Proposal No. 9. Mr. Johnson seconded. On voice vote, the amendments were adopted.

Mr. Nerland discussed the Committee's thinking on the Proposal. A question and answer period followed.

Miss Awes moved and asked unanimous consent that the Convention recess until 7 p.m. to give the Committee an opportunity to meet with delegates and discuss proposed amendments.

The following committee announcements were made: Style and Drafting on recess; Ordinances on recess; Finance on recess.

There being no objection to the unanimous consent request, the Convention recessed until 7 p.m.

AFTER RECESS

Further discussion of Committee Proposal No. 9 continued.

Mr. Nerland moved and asked unanimous consent for the adoption of the following Committee amendment to Section 3: line 10, strike "assessment" and insert "appraisal". There being no objection, it was so ordered.

Mr. Johnson moved the adoption of the following amendment to Section 3: line 9, page 1, strike the word "the" at the end of the line and insert in lieu thereof the word "uniform". Mr. Knight seconded. After discussion by Mr. Hurley, Mr. Johnson, Miss Awes, Mr. R. Rivers, Mr. White, Mr. Hinckel and Mr. Metcalf the question was called. On voice vote the amendment failed.

Mr. V. Fischer moved the adoption of the following amendment to Section 3 and asked unanimous consent: Line 9, strike "establish the" and substitute "provide for the establishment of". Mr. McCutcheon objected. Mr. R. Rivers seconded. After discussion by Mr. Fischer, Mr. White and Mr. McCutcheon, the question was called. On voice vote the amendment failed.

Mr. Hellenthal moved the adoption of the following amendment to

Section 4: page 2, line 1, strike "cemetery". Mr. Knight seconded. After discussion by Mr. Hellenenthal, Mr. Harston, Mr. Harris, Mr. White, Mr. V. Rivers, Mr. McLaughlin, Mr. Barr and Mr. Armstrong, Mr. Hellenenthal closed the argument and the question was called. On voice vote the amendment failed.

Mr. Nerland asked unanimous consent for the adoption of the following committee amendment to Section 5: line 19, after word "States" insert a comma and add "the State and its political subdivision,". There being no objection, the amendment was ordered adopted.

Mr. Barr moved to strike "U. S." in the title to Section 5 and insert in lieu thereof the word "government". Mr. V. Rivers suggested that the word "public" be used in place of "government".

The President declared a short recess.

AFTER RECESS

Mr. Hurley rose to a point of order to state that he didn't believe the titles in the articles should be amended by delegates but that Style and Drafting should make appropriate changes.

The President stated that the point of order was well taken.

Mr. Barr withdrew his amendment to the title of Section 5.

Mr. Nerland asked that action on Section 7 be postponed until the Committee has its amendments ready. There being no objection, it was so ordered.

Mr. V. Fischer moved the adoption of the following amendment to Section 8: page 3, lines 7 and 8, strike "or any political subdivision thereof" and line 11, strike "or of the respective political subdivision". Mr. Rosswog seconded. After discussion by Mr. V. Fischer, Mr. McNees, Mr. Nerland, Mr. Hinckel, Miss Awes, Mr. Rosswog, Mr. Barr, Mr. Coghill, Mr. Hellenenthal, Mr. V. Rivers, Mr. McNealy, Mr. Riley, Mr. White, Mr. Lee, Mr. Davis, and Mr. Buckalew, Mr. V. Fischer closed the argument. The question was called. Mr. V. Rivers requested a roll call. The roll was called with the following result:

Yeas	17	Awes, Buckalew, Cross, Emberg, V. Fischer, Harris, Hinckel, Hurly, Kiicher, Lee, McNealy, Nordale, Riley, R. Rivers, Rosswog, Smith, Mr. President
Noes	33	Armstrong, Barr, Boswell, Coghill, Collins, Cooper, Davis, Doogan, H. Fischer, Gray, Hellenenthal, Hermann, Hilscher, Johnson, King, Knight, Laws, Londborg, McCutcheon, McLaughlin, McNees, Harston, Metcalf, Nerland, Nolan, Peratrovich, Poulsen, Reader, V. Rivers, Sweeney, Walsh, White, Wien.
Absent	5	Robertson, Stewart, Sundborg, Taylor, VanderLeest.

and so the amendment failed.

Mr. Johnson moved the adoption of the following amendment to Section 3: Page 3, line 10, after the word "voters" add the following "whose names appear on the current tax rolls." Mr. McNealy seconded. After discussion by Mr. Johnson, Mr. Gray and Mr. Nerland, Mr. Davis read his proposed amendment for information purposes.

After further discussion by Mrs. Nordale and Mr. R. Rivers, Mr. Johnson asked unanimous consent to withdraw his amendment. There being no objection, it was so ordered.

Mr. R. Rivers asked that Section 8 be held back by the Committee until it could be clarified.

Mr. Kilcher moved the adoption of the following amendment to Section 8: line 10 after word "majority" insert: "set by law" and strike "voters" and substitute "votes cast".

After discussion, Mr. Kilcher asked unanimous consent to withdraw his amendment and that it be referred to the Committee.

Mr. V. Rivers served notice of reconsideration of his vote on Mr. V. Fischer's amendment to Section 8.

Further action on Section 8 was deferred until the Committee gave it further consideration.

Mr. Nerland asked unanimous consent for the adoption of the following amendment to Section 9: line 12 after "state" add "and its political subdivisions". There being no objection, it was so ordered.

Mr. McLaughlin moved that the words "by law" on line 18, page 3 be stricken. Mr. Metcalf objected. Mr. McLaughlin withdrew his amendment.

Mr. Buckalew stated he had an amendment to Section 9, but would hold it until the next Convention day.

Mr. Nerland asked unanimous consent for the adoption of the following committee amendment to Section 10: page 4, line 4, after the "and" following "corporation" strike the rest of the section and substitute "or to special assessments". There being no objection, it was so ordered.

Mr. Doogan moved the adoption of the following amendment to Section 13: line 7 strike "governor and the". Mr. McCutcheon seconded. After discussion by Mr. Doogan, Mr. Nolan, Mr. McCutcheon, Mr. R. Rivers and Mr. Barr, the question was called. On voice vote, the amendment failed.

The President declared a short recess.

AFTER RECESS

The President welcomed the Fairbanks Chapter of the American Association of University Women who were present in the gallery.

Mr. Smith asked unanimous consent that the Convention revert to the introduction of Committee Proposals. There being no objection, it was so ordered.

Committee Proposal No. 8a by the Committee on Resources, entitled STATE LANDS AND NATURAL RESOURCES, was introduced, read the first time and referred to the Rules Committee for assignment to the calendar.

Mr. R. Rivers moved the adoption of the following amendment to Section 12: page 4, line 25, insert "unobligated" before the word "appropriations". Mrs. Nordale seconded. After discussion by Mr. R. Rivers, Mr. Barr, Mr. McNealy, Mr. Hellenthal and Mr. McCutcheon, the question was called. Mr. McNees requested a roll call before the voice vote was announced. After discussion Mr. McNees withdrew his request and the President announced that on voice vote the amendment had been adopted.

Mr. Kilcher moved and asked unanimous consent that the words "governor and legislature" on lines 7 and 8 of Section 13, page 5, be transposed. There being no objection, it was so ordered.

Mr. McNealy rose to a point of inquiry regarding Section 14, and stated he believed it should be in the miscellaneous provisions of the constitution.

Mr. Nerland stated he had no objection to where it appeared in the constitution.

There being no further amendments to Committee Proposal No. 9 at this time, the President entertained a motion for adjournment.

Mr. Johnson asked unanimous consent that the Convention adjourn until 9 a.m. Tuesday. There being no objection, the Convention adjourned at 9:25 p.m. until 9 a.m. Tuesday.

THOMAS B. STEWART
Secretary

Attested:

WILLIAM A. EGAN
President

1/16/56
Convention
Proceedings.

or the amount. Section 4, the thought was to exempt the state in its political subdivisions from taxations under such provisions and such exceptions as the legislature may direct. There are certain conditions under which these properties might be subject to taxation, and the more or less standard phrase of all or any portion probably used exclusively for nonprofit, charitable, cemetery, or educational purposes as defined by law is exempt from taxation and this is the provision that allows for some exemption or inducement to industries or similar things. Section 5 has been stricken as explained. There are certain interests in leaseholds, contracts and other interests in United States lands that are subject to taxation, and Section 6 provides for such instances. Section 7 is to take care of the fact that no public monies, public property, or public credit should be used except for a public purpose. Section 8, "all public revenues shall be deposited in the state treasury without allocation for special purposes, except where state participation in federal programs will thereby be denied." There are some federal participation programs which do require specific things that might conflict with a total prohibition on this subject. You will notice also that we have provided that any funds, which are allocated at the time this constitution is approved, do not come under this provision; as most of you probably know, these particular provisions now are for the tobacco fund for schools and also highway and, I believe, some airports are earmarked. Section 9 is one regarding the contracting of bonded indebtedness, and it was the opinion of the Committee that this should be allowed by law on capital improvements only and should in each case be approved by a majority of the qualified voters of the state in the respective political subdivision to which the question refers, eliminating the exceptions -- in case of repelling invasion, repressing insurrection or defending the state in war, any natural catastrophe, or redeeming any outstanding indebtedness at the time the constitution becomes effective. Our thinking on this particular case was the result of a good deal of consideration. There was some thought of leaving it entirely to the legislature, perhaps with a two-thirds or three-quarters vote, but it was finally decided by the Committee that a referendum be called for and that in each case where the state or political subdivision desire to bond themselves, that the approval by the qualified voters be obtained. I would like to diverge just a minute, along that line; Delegate Ralph Rivers, early in the Convention, gave me some correspondence he had had with a firm of bond attorneys in New York, Wood, King, and Dawson, who had done some work on bond issues for the City of Fairbanks, and, I believe, for other cities in the Territory, and they very kindly offered to make any comments and offer any assistance or suggestions that they were able to from their past experience and all would be done without any charge. As a result, the Committee sent our completed proposal to them before the recess and we have had a reply from them which reads as follows, in part: "We received a copy of the report of the Committee on Finance and Taxation

the Style and Drafting Committee.

PRESIDENT EGAN: If there is no objection, it is so ordered, and the proposed amendment has been withdrawn. Are there amendments to the new Section 6? Mr. Smith.

SMITH: Mr. President, once again I don't have an amendment, and I ask the question merely to get the Committee thinking into the record. Was it the intent of the Committee here to prohibit the sale of public property for other than public purposes? I see that you have here: "No tax shall be levied or appropriation of public money made or public property transferred, except for a public purpose." And, of course, in the resources article we make it possible to transfer property from the state public domain to private individuals. I simply wanted to either get this before Style and Drafting or get the Committee thinking on the record.

NERLAND: Mr. Smith, the Committee took into consideration Section 9 of resources, and it was the feeling of the Committee that the transfer of public property, when money was being received for it, would constitute a public purpose. It was not the intent of this Committee to interfere with the operation of your Section 9 in resources.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: Mr. President, I'd like to ask a question. Mr. Nerland, the same answer would apply to surplus property which the state is putting up for sale, would it not?

NERLAND: I would say it would, Mr. Rivers.

PRESIDENT EGAN: Are there amendments to Section 6? Are there amendments to the new Section 7? Mr. Nerland.

NERLAND: Mr. President, the Committee would request that further consideration of Section 7 be temporarily postponed until we have our proposed changes ready for it.

PRESIDENT EGAN: If there is no objection, the Convention will adhere to the Committee's request and proceed to other sections. Are there amendments to the new Section 8? Mr. Fischer.

V. FISCHER: I have an amendment, Mr. President.

PRESIDENT EGAN: Will the Chief Clerk please read the proposed amendment to Section 8.

CHIEF CLERK: You mean Section 8 instead of Section 9?

PRESIDENT EGAN: That's right. It's Section 8 now.