

HB

231

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**
DIVISION OF BANKING, SECURITIES & CORPORATIONS

P.O. BOX D
JUNEAU, ALASKA 99801-0800
Banking & Securities (907) 465-2621
Corporation Section (907) 465-2530
ANCHORAGE
Corporation Information (907) 563-2161

February 21, 1991

Mr. Gary Roth
President and CEO
Denali State Bank
P.O. Box 74568
Fairbanks, AK 99707-4568

Dear Mr. Roth:

You have asked if a bank president must be elected director by the shareholders. Alaska Statute 06.05.435 requires directors to be elected by the shareholders and Alaska Statute 06.05.437 requires a bank president to be elected by the board of directors and must also be a director. Although there is confusion in statutory language, it is clear the Legislature did not intend that the president stand for shareholder election.

Research of legislative history and laws has revealed the following:

AS 06.05.300. General Corporate Powers. Upon filing the Articles of Incorporation, a bank becomes a legal corporation and may (1) - (4) . . . (5) elect directors who may appoint officers when necessary or convenient.

AS 06.05.435. Directors. (a) . . . (b) In the first instance, the director shall be elected at a meeting held before the bank is authorized to do business by the department and thereafter at the annual meeting of the stockholders held each year.

~~AS 06.05.437(a) . . . The president of a bank or other chief officer responsible for the management of the bank must be a member of the board of directors. This provision was a result of an amendment in Am. Sec. 29, Ch. 169, SLA 1978. It was the only change made by that amendment. In review of legislative history, we note a letter dated January 28, 1977, to Senator John L. Rader, President of the Senate, in which Governor Hammond wrote: "Section 29 amends AS 06.05.437(a) in order to preclude the possibility that an employee might be given the title of president but have no voice in the overall management of the bank."~~

Mr. Gary Roth

-2-

February 21, 1991

~~It is clearly evident that there was no intent to require the president of a bank to solicit shareholders' votes. Such a practice would jeopardize the ability of the president to be objective in business decisions.~~ This matter could be handled in the Articles of Incorporation. AS 06.05.345(a)(5) requires the Articles of Incorporation to specify the number of directors. At that section of the articles, it could be stated that there shall be X number of directors elected by shareholders and that on appointment of officers, the president/CEO becomes an additional director by virtue of AS 06.05.437(a).

I have been advised that while intent of the Legislature is apparent, construction of law is confusing. ~~The division will take no action if the president does not stand for shareholder election.~~ We urge, however, that you propose an amendment to the banking code to address this confusion. We will also draft corrective legislation for consideration for the second session of the current Legislature.

I hope this will answer the question of a bank president having to be elected by the shareholders.

Sincerely,


Willis F. Kirkpatrick
Director

WFK/TLL/mst2294m
022091a
cc: Anchorage Field Office



DENALI STATE BANK

119 N. Cushman Street • (907) 456-1400 • FAX (907) 456-2140 • P.O. Box 74568 • Fairbanks, Alaska 99707-4568

April 8, 1991

Representative Tom Moyer
Alaska State House of Representatives
P.O. Box V
State Capital
Juneau, Alaska 99811

RE: HB231

Dear Representative Moyer:

Thank you for your introduction and support of House Bill 231. The purpose of this bill is to clarify the election of a State Bank President to the position on the Board of Directors.

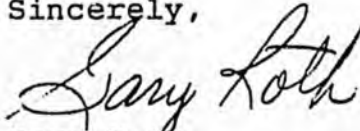
A.S. 06.05.437(a) states "the President of a bank or other Chief Officer responsible for the management of the bank must be a member of the Board of Directors." With this statute in mind, I, as President and Chief Executive Officer, stood for re-election by the shareholders at our first three annual meetings. This posed no problem as the proposed slate of Directors for the Bank was unanimously elected the first three years. However, at the fourth annual shareholders meeting, a nominee for Director was nominated from the floor. Thus a run off election was required. At this point in time we became uncertain as to whether the President or Chief Officer of the Bank had to stand for election to the Board of Directors because of the statutory requirement.

Representative Moyer
April 8, 1991
Page 2

To solve the immediate question before the body, I stood for re-election and was elected. However, in so doing, I had to solicit the support of several shareholders at the meeting to assure this re-election. At our next Directors meeting, it was the unanimous consensus of our Board of Directors that the President should not have to solicit such political favors from the shareholders as it could compromise the management of the Bank. A request was made to the Division of Banking, Securities and Corporations to clarify this issue. Willis Kirkpatrick responded to the undersigned on February 21, 1991 indicating that research into the matter by his department indicated that "it was clearly evident that there was no intent to require the President of a Bank to solicit shareholder votes." He also stated, "although there is confusion in statutory language, it is clear the legislature did not intend that the President stand for shareholder election." He also refers to other legislative research which indicates that a vacant board seat should be withheld at the shareholder election which will later be filled by the Board of Directors annually as they elect officers of the Bank, including the President or Chief Executive Officer. He states "this would then preclude the possibility that an employee might be given the title of President but have no voice in the overall management of the Bank."

State statutes require that all officers of a bank be re-elected annually by the Board of Directors. This then would accomplish the placing of the President on the Board of Directors of the Bank in compliance with statute. HB231 properly addresses this scenario and we appreciate your involvement. Thank you.

Sincerely,



Gary Roth
President and Chief Executive Officer

GR/aj

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

April 22, 1991

SUBJECT: Effect of HB 231 on AS 06.05.435 (Work Order No. 7-LS1037)

TO: Representative David Finkelstein
Chair, House Labor & Commerce Committee
Attn: Cliff

FROM: Theresa L. Bannister *TB*
Legislative Counsel

You have asked whether the new language ("amendment") contained in lines 9-10 of HB 231, "An Act relating to the presidents and other chief executive officers of banks" eliminates certain provisions of AS 06.05.435 for the chief executive officer ("CEO") of a bank and the other directors of the bank. In determining which provisions to address in this memo, I have talked with your staff and I have examined Representative Parnell's notations on HB 231.

The amendment reads: "but is not subject to the election requirements under AS 06.05.435". The full sentence containing the amendment reads as follows:

"Upon election to the position by the board of directors, the [THE] president of a bank or other chief officer responsible for the management of the bank becomes [MUST BE] a member of the board of directors, but is not subject to the election requirements under AS 06.05.435 for directors."

First of all, the amendment clearly applies just to the CEO and does not apply to the other directors. The amendment only states that the CEO is not subject to the election requirements for directors. Second, the new language applies only to election requirements, not to other requirements.

Representative David Finkelstein

April 22, 1991

Page 2

In AS 06.05.435(a)^{1/}, the amendment has the effect of saying the CEO is not to be elected by the stockholders. The rest of the directors are still to be elected by the stockholders and hold office for one year and until their successors are elected and have qualified. The amendment does not change the rest of the subsection. The requirement remains that a majority of the board of directors must be bona fide residents of the state.

In AS 06.05.435(b)^{2/}, the amendment has the effect of removing the CEO from the election requirements of the section. The amendment does not change any of these election requirements in the subsection for the other directors.

In AS 06.05.435(c)^{3/}, the amendment does not change any of the provisions, since the subsection does not address the election of directors. Each director, including the CEO, must satisfy the capital stock ownership requirements of the subsection.

If I can be of further assistance, please advise.

TLB:pl
91-284.plm

^{1/}AS 06.05.435(a) reads as follows:

(a) The affairs of every bank incorporated under this chapter shall be managed by not less than five directors, nor more than 25, who shall be elected by the stockholders and hold office for one year and until their successors are elected and have qualified. A majority of the board of directors shall be bona fide residents of the state and a majority constitutes a quorum for the transaction of business.

^{2/}AS 06.05.435(b) reads as follows:

(b) In the first instance the directors shall be elected at a meeting held before the bank is authorized to do business by the department and thereafter at the annual meeting of the stockholders held each year. If no election is held at that time, it may be held at an adjourned meeting or at a subsequent meeting called for that purpose, notice of which shall be given as provided in the bylaws.

^{3/}AS 06.05.435(c) reads as follows:

(c) Each director of a bank shall own in the director's own right free of any encumbrance capital stock of the bank in an amount equal to at least \$1,000 in par value.

STATE OF ALASKA

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**
DIVISION OF BANKING, SECURITIES & CORPORATIONS

WALTER J. HICKEL, GOVERNOR

P.O. BOX D
JUNEAU, ALASKA 99801-0800
Banking & Securities (907) 465-2521
Corporation Section (907) 465-2530
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Corporation Information (907) 563-2161

DATE: April 23, 1991

TO: Honorable Tom Moyer
House of Representatives *Willis*

FROM: Willis F. Kirkpatrick, Director
Division of Banking, Securities and Corporations
Department of Commerce and Economic Development

SUBJECT: Representative Kevin Parnell's Concerns of HB 231

The purpose of HB 231 as you stated is to correct the dichotomy inadvertently created by an amendment to the banking code in 1978 (Sec. 29, Ch. 169, SLA 1978). This amendment provided that ". . . the president of a bank or other chief officer responsible for the management of the bank must be a member of the board of directors." When Governor Hammond transmitted the proposed amendments in 1978 to Senator Rader, President of the Senate, he wrote "Sec. 29 amends AS 06.05.437(a) in order to preclude the possibility that an employee might be given the title of president but have no voice in the overall management of the bank." (Emphasis added.) It is apparent that the intent is to give the employee who is hired as a chief officer (CEO) a vote (voice) on the board.

In the administration of the Alaska Banking Code, we recognize that in corporate powers and structure shareholders elect the board of directors who in turn appoint (elect) the officers of the bank. It is not the focal point that management (CEO) has a voice on the board and is successful in a shareholders' election but rather than whether he is successful in safe and sound bank management. If the CEO is elected by the shareholders and is not a good manager, can he be removed by the board action "at any time" as is provided by AS 06.05.437(a).

It is clear that HB 231 offers a simple solution to a confusing situation created by an ambiguous amendment to the Alaska Banking Code in 1978. While exempting the CEO from shareholder election provisions, the law retains the requirements of oath of office and qualifying shares as for other directors.

We applaud your effort in trying to correct this inadvertent dichotomy.

WFK/sh9273M
042391b

REPRESENTATIVE TOM MOYER

DISTRICT 19 • 119 N. CUSHMAN ST., SUITE 203 • FAIRBANKS, AK 99701 • (907) 456-8161
International Trade & Tourism, Chair • State Affairs, Vice Chair • Resources, Member

MEMORANDUM

To: Representative Dave Donley
Chair, Judiciary Committee

April 25, 1991

From: Representative Tom Moyer 

Re: HB231, relating to bank presidents

With this memo, I would like to request the Judiciary Committee to hold a hearing on HB231 at your earliest convenience.

The bill is designed to clarify confusion in current statutes about whether a bank president or other chief executive officers must be elected in a shareholder election. As indicated in the attached material, the intent of the legislature is that such officers should be elected by their boards and not in shareholder elections. This bill would eliminate the confusion.

I am happy to testify at your convenience or supply additional information if necessary.

REPRESENTATIVE TOM MOYER

DISTRICT 19 • 119 N. CUSHMAN ST., SUITE 203 • FAIRBANKS, AK 99701 • (907) 456-8161
International Trade & Tourism, Chair • State Affairs, Vice Chair • Resources, Member

MEMORANDUM

To: Representative Dave Donley
Chair, House Judiciary

May 10, 1991

From: Representative Tom Moyer

Re: HB231, relating to the election of bank presidents *TAM*

With this memo, I am submitting for your bill files additional letters of support for HB231. Additionally, I would like to request a hearing on the bill at your earliest convenience.

Key Bank of Alaska

A KeyCorp Bank



101 West Benson Boulevard
Post Office Box 100420
Anchorage, Alaska 99510-0420
(907) 564-0250 or (907) 562-6100

Michael J. Burns
President and
Chief Executive Officer

RECEIVED MAY 08 1991

May 2, 1991

The Honorable Tom Moyer
119 N. Cushman St., Suite 203
Fairbanks, Alaska 99701

Dear Representative Moyer,

Please accept my apologies for the tardiness of this letter of support for HB 231 which you recently introduced. Key Bank of Alaska, as the largest state chartered bank, and the Alaska Bankers Association, of which I am currently serving as President, both whole heartedly support the intent of this legislation. Your interests in the well being of the banking system is greatly appreciated.

Should you have any questions about Key Bank's or the Association's position on legislation, please contact me at your convenience.

Sincerely,

Michael J. Burns
President

MJB: jr



Northrim Bank

May 1, 1991

Mr. Tom Moyer,
Representative
District 19
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

RE: HOUSE BILL NO. 231

Dear Mr. Moyer:

Thank you very much for your letter of April 11, 1991 and the copies of pertinent information concerning House Bill No. 231.

Your legislative efforts to clarify the current statutes with regard to the election of bank presidents and chief executive officers have our total support.

Sincerely,

Marc Langland
President

RECEIVED MAY 06 1991



**STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS**

DEPARTMENT Commerce & Econ. Dev.	DIVISION: Banking, Securities & Corporations	BILL NUMBER HB 231	SPONSOR Rep. Moyer
SHORT TITLE OF BILL Presidents and other chief executive officers of banks			
DEPARTMENT POSITION Strongly support passage			
PREPARED BY Willis F. Kirkpatrick	DATE 4/5/91	COMMISSIONER'S SIGNATURE <i>[Signature]</i> Asst. Comm.	DATE 4/5/91

SUMMARY

OTHER AGENCIES AFFECTED BY BILL None	CONSTITUENT GROUP(S) AFFECTED BY BILL State-Chartered Banks
ORGANIZATIONAL SUPPORT FOR BILL State Banks	ORGANIZATIONAL OPPOSITION TO BILL None

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND LEGISLATIVE INTENT

AS 06.05.437(a) of the Alaska Banking Code was amended in 1978 to provide that a president or CEO who was appointed by the Board of Directors has a voice on the board as a member. This amendment was not consistent with Section 06.05.435 which requires a board member to be elected. This bill corrects this inconsistency by allowing the appointment of the president or CEO and gives the appointee voice on the board without standing for election.

ANALYSIS OF BILL PROGRAM EFFECTS

Section 1 - Causes the president of a bank or other chief officer responsible for the management of a bank to become a member of the Board of Directors not subject to election requirements of AS 06.05.435.

AMENDMENTS PROPOSED

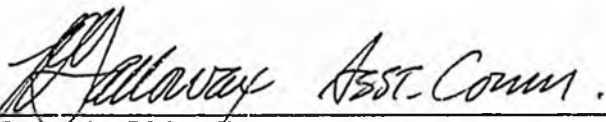
None proposed.

WFK/KP/dg19255D-3/040591 ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS

HB 231: "An Act relating to the presidents and other chief executive officers of banks."

The department strongly supports passage of HB 231. This legislation will clear up confusion created by an amendment in AM, Sec. 29, Ch. 169, SLA 1978, which intended to give the president a voice in overall management via board membership. This 1978 amendment has inadvertently created a question as to whether or not a president of a bank has to be elected by shareholders as a board member because of his appointment as president (head of management) of the bank.

Mr. Kirkpatrick, Director of the Division of Banking, Securities and Corporations, has taken a position that it would be unwise for the management head of a bank to solicit votes to maintain his position. It could appear that there would be some pressure of influence by those who seated him. Mr. Kirkpatrick's policy letter dated February 21, 1991 concerning this subject is attached.



Glenn A. Olds, Commissioner

Date: 4/8/91

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 231

Revision Date: _____ Department Affected: Commerce & Economic Dev.
 Title: Presidents and other chief BRU: Banking, Securities & Corporations
executive officers of banks Component: Banking
 Sponsor: Rep. Moyer
 Requestor: _____ COMPONENT SERIAL NO.

1	2	3	3
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Willis

Prepared By: Willis F. Kirkpatrick, Director Phone: 465-2521
 Division: Banking, Securities & Corporations Date: 4/5/91
 Approved by Commissioner: Glenn A. Olds *Glenn A. Olds* Ass. Comm.
 Agency: Department of Commerce & Economic Development Date: 4/5/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 231

Revision Date: _____ Department Affected: Commerce & Economic Dev.
 Title: Presidents and other chief BRU: Banking, Securities & Corporations
executive officers of banks Component: Banking
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
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CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Willis

Prepared By: Willis F. Kirkpatrick, Director Phone: 465-2521
 Division: Banking, Securities & Corporations Date: 4/5/91
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