HB

245

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Bill Sheffield, Governor

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February 7, 1983

BUDGET REVIEW

FEB 8 1983

MANAGEMENT & BUDGET
OFFICE OF

Gene Dusek, Director of Budget
Office of Management & Budget
Pouch AM
Juneau, AK 99811

Re: Appropriation limit questions
Our file: 366-374-83

Dear Mr. Dusek:

You have asked for our opinion concerning issues relating to the appropriation limit imposed by Alaska Constitution, article IX, section 16. These issues are as follows:

(1) Are appropriations to reimburse a municipality for payment of the principal and interest on general obligation school construction bonds subject to the appropriation limit? We believe they are not.

(2) If the permanent fund dividend law (AS 43.23) is amended or repealed and another plan for the distribution of permanent fund income is enacted, will appropriations to finance the new distribution program be included in the appropriation limit or will those appropriations be outside the limit? Generally, we believe that other distribution plans could qualify as dividends. However, certain limitations should be observed to make sure that the new plan satisfies the intent of the appropriation limit.

(3) How will the appropriation limit be implemented if

anticipated state revenues are less than the limit for a fiscal year? We assume that the appropriation limit will be applied with common sense to empower the legislature to act without regard to allocations imposed by the appropriation limit when economic conditions deplete the state treasury.

(4) How will multi-year appropriations be counted for purposes of the appropriation limit? We believe a multi-year appropriation will be counted against the appropriation limit for the first year in which it could be expended.

(5) What is the definition of "capital project" as that term is used in the appropriation limit? There is some history which supports a liberal interpretation of the term "capital project."

I. BACKGROUND

The appropriation limit, Alaska Const. art. IX, sec. 16, was drafted during a period of anticipated high revenue yields from oil and gas production. In June 1981, the Alaska Department of Revenue forecast that the state would earn approximately $4,895,300,000 during FY 82. Revenue Sources, Alaska Department of Revenue (June 1981). That forecast did not include the revenue dedicated to the Alaska permanent fund under AS 37.-13.010. The revenue actually earned by the state during FY 82, less the permanent fund contribution, was $4,108,400,000. Reve-

nue Sources, Alaska Department of Revenue (Jan. 1983). The legislature had exhibited a proclivity for appropriating all available revenue and more. 1/ Former Governor Jay S. Hammond introduced SJR 4 during the first session of the Twelfth Alaska Legislature. However, the legislature failed to enact a version of SJR 4 during the first regular session and on June 25, 1981, Governor Hammond called a special session of the legislature to consider SJR 4. In his address to the legislature, Governor Hammond cited the following circumstances which required the enactment of SJR 4:

(1) the FY 82 operating budget increased 32 percent over the FY 81 operating budget;

(2) the FY 82 capital budget increased 127 percent over the FY 81 capital budget; and,

(3) for FY 82, the legislature appropriated an amount equal to 59 percent of the total spent for capital projects since statehood. 1981 S. Jour., FSS Jour. Supp. No. 1, p. 3.

A second free conference committee (FCC) initially appointed during the regular session met to continue consideration of SJR 4 during the special session. 1981 S. Jour., p. 1744. A

1/ The $1.8 billion contribution to the Alaska permanent fund (sec. 2, ch. 61, SLA 1981 as amended by sec. 68, ch. 92, SLA 1981 and sec. 16, ch. 101, SLA 1982) is a continuing operating appropriation which literally causes total unobligated appropriations to exceed available state revenues for each fiscal year since enactment.

transcript of the open meetings of the FCC exists and forms a part of the history of the appropriation amendment (the transcript). However, it is evident from review of the transcript that other discussions concerning the intent of the amendment were conducted outside of open committee meetings. While the transcript is helpful, it presents only a partial record of the deliberations of the drafters of the amendment.

The FCC purported to adopt a letter of intent to accompany its report to the house and senate. 1981 S. Jour., FSS, p. 5. However, the letter of intent is not set out in the journal. A search of the bill files of the Department of Law yielded a copy of the missing letter of intent. See Ex. 1.

The campaigns for and against adoption of the appropriation limit began in September of 1982. The Anchorage Daily News criticized the proposed amendment for the following reasons:

(1) the ceiling is too high, revenues will exceed the limit only once before the year 2000; and

(2) the one-third reservation for capital projects and loan appropriations was included because the legislature "failed to make the distinction between a wise public agenda -- on which capital projects and loans surely would appear -- and an effectively timeless state constitution -- in which no such spending demands should be dictated.

Anchorage Daily News, Sept. 3, 1982, at A14, "opinion." The

Daily News based its opinion concerning revenue forecasts on a report made public by the legislative finance division of the Legislative Budget and Audit Committee. Anchorage Daily News, Sept. 2, 1982, at 1. On September 17, 1982, the Daily News urged Governor Hammond to oppose the adoption of the appropriation limit. The Anchorage Times basically took no position on the amendment. However, on October 19, 1982, the Times reported the results of a poll sponsored by supporters of the amendment. The poll, conducted the week of September 16-23, 1982, showed that the amendment was recognized and favored by the public as a "spending limit." The pollsters asked if the respondents had heard of the proposed amendment to the state constitution which sets a limit on increases on state appropriations. By a three-to-one margin, respondents said they were not familiar with the amendment when it was described as an "appropriation limit." Anchorage Times, Oct. 19, 1982, at A-4. On October 26, 1982, the Juneau Empire editorialized in favor of adoption of the amendment. Juneau Empire, Oct. 26, 1982, at 4.

During the week of October 24, 1982, the major dailies of the state published articles on the amendment. Governor Hammond received coverage in most of those stories by saying "It [the adoption of the appropriation limit] may be our last chance to control the juggernaut which otherwise will likely crush us into bankruptcy." Anchorage Daily News, Oct. 29, 1982, at B3.

On Sunday, October 31, 1982, the Daily News in its forum section, published an article by Governor Hammond in which he again strongly advocated adoption of the amendment because revenue projections and the growing vulnerability of the permanent fund compelled him to plead for the support of the people. Anchorage Daily News, Oct. 31, 1982, at K3. On the preceding Friday, the Daily News quoted Governor Hammond as follows: "Don't let anyone tell you that passage of Proposition 4 won't limit spending." Under recently revised revenue estimates, passage of the ballot issue would bar the legislature from appropriating between $80 million and $380 million in fiscal 1984 alone. Anchorage Daily News, Oct. 29, 1982, at B3.

At the 1982 general election, the voters approved the adoption of SJR 4 by a vote of 110,669 for the amendment and 70,831 opposed to the amendment. State of Alaska Official Returns by Election Precinct General Election Nov. 2, 1982, Div. of Elections, Office of the Governor.

II. EXCEPTIONS FROM THE LIMIT

The appropriation limit contains seven express exceptions. Five of those exceptions are for appropriations which are completely outside the limit and do not require voter approval. They include:

(1) an appropriation for Alaska permanent fund divi-

dends;

(2) an appropriation of revenue bond proceeds;

(3) an appropriation to pay principal and interest on general obligation bonds;

(4) an appropriation of money received from nonstate sources in trust for a specific purpose, including revenues of a public corporation that issues revenue bonds; and

(5) an appropriation to meet a state of disaster declared by the governor.

You have requested our interpretation of exceptions (1) and (3) set out above.

A. Alaska Permanent Fund Dividend Exception

The appropriation limit provides: "Except for appropriations for Alaska permanent fund dividends ... appropriations from the state treasury made for a fiscal year shall not exceed $2,500,000,000...." A question obviously arises as to whether "Alaska permanent fund dividends" means only those cash payments provided to individuals under AS 43.23 or if the word "dividend" encompasses other concepts for the distribution of income earned by the Alaska permanent fund.

We believe the answer to your question concerning appropriations for permanent fund dividends depends on whether the exceptions will be construed strictly or liberally. Usually,

provisions in a state constitution are construed liberally using the same rules of construction prescribed for other laws with regard given to the broader object and scope of the constitution as a charter of popular government. Eghert v. Dunseith, 24 N.W.2d 907 (N.D. 1946); 168 A.L.R. 621. Professor Sutherland explains the modern view for construing express exceptions as follows:

> The older rule strictly interpreted both exceptions and provisos but today the prevailing view favors determining the effects of such provisions according to the usual criteria of decision applicable to other kinds of provisions as well without the use of any artificial presumptions to the effect that qualifying language should be strictly construed.

SUTHERLAND STATUTORY CONSTRUCTION § 47.11 (4th ed. 1974)(footnotes omitted). The FCC did not express an intent to limit this exception to only appropriations to finance cash payments to individuals under AS 43.23.

The appropriation limit must be interpreted consistently with the permanent fund amendment contained in article IX, section 15. Section 15 provides that the legislature may dispose of the income of the Alaska permanent fund "as provided by law." Each legislature may reexamine existing law and enact different laws providing for the use of income earned by the Alaska permanent fund. If section 16 were interpreted so that the exception to permanent fund dividends applied only to appropriations to finance cash dividends under AS 43.23, the legislature would essentially be denied the flexibility to adjust to changing philoso-

phies concerning the propriety of making cash payments directly to residents which section 15 expressly reserves to it. 2/ In interpreting and applying the constitution, it must be remembered that the constitution is not a lifeless or static instrument whose interpretation is confined to conditions and outlooks which prevailed at the time of its adoption. Yakus v. United States, 321 U.S. 414 (1944); Warwick v. State, 548 P.2d 384 (Alaska 1976).

The word "dividend" has no precise legal meaning. Trustees of University v. North Carolina R. Co., 13 WORDS AND PHRASES 107 (Permanent ed.); 22 Am. Rep. 671. Webster defines "dividend" as follows: "an individual share of something distributed among a number of recipients." We are not aware of any legal principle which would preclude the characterization of other distribution programs as "dividends." Rather, the words used

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2/ The Thirteenth Legislature may reject direct cash distribution in favor of a plan which it determines will promote public purposes more effectively. During the period of consideration and adoption of the appropriation limit, the permanent fund dividend law was undergoing considerable scrutiny and change by both the legislature and the courts. The legislature adopted the proposed appropriation limit amendment on July 15, 1981. At that time the question of the constitutionality of the permanent fund dividend program as it was then structured was on appeal to the United States Supreme Court. On June 14, 1982, the United States Supreme Court issued an opinion which found the method established for determining the amount of dividends under that program void because the method promoted discrimination based on length of residence in the state. On August 13, 1982, amendments to the dividend law took effect. The people were undoubtedly aware that the dividend law in effect on election day in 1982 was not chiseled in marble.

by the drafters of the amendment afford broad latitude to the legislature to enact new distribution programs which will not be impaired by the appropriation limit.

It is well-settled law that a provision of a state's constitution must receive a liberal, practical construction to meet changed conditions and growing needs of the people. County of Alameda v. Sweeney, 312 P.2d 419, 424 (Cal. 1957). Under the permanent fund amendment, the discretion granted to the legislature to enact, amend, or repeal the present dividend program under AS 43.23 to meet the growing needs of the people is unfettered. However, the operation of exceptions from the appropriation limit must be interpreted consistent with the intent of the framers of the organic law and of the people adopting it. State v. Lewis, 559 P.2d 630, 637 (Alaska 1977).

One important consideration should be carefully observed. The Alaska Supreme Court has found that the purpose of the existing dividend program is to force the legislature to consider the reimposition of taxes when the decline of oil revenue encourages resort to permanent fund income to finance state government. Williams v. Zobel, 619 P.2d 448, 454 (Alaska 1981), rev'd 451 U.S. 905 (1982). The people can be expected to vigilantly protect their dividends by forcing the legislature to seek sources other than the permanent fund to finance state government. If a substitute distribution program accomplishes the same

purpose, it will more likely qualify under the exception in section 16 than if it fails to achieve that purpose. If the constituency benefitted by a dividend is narrow, the dividend may not be a dividend in the sense intended by the drafters of section 16 and the people who adopted it. Proposals soon to be considered by the legislature include replacing the existing distribution to all residents with a distribution of part of the permanent fund income to municipalities and as a substitute for the existing longevity bonus, and use of a part of the income to finance large capital projects.

A vast majority of the population of the state resides in or is served by municipal governments. It is also a fact that we all seek security for our "golden years." The constituents of these proposals seem broad enough to satisfy the purpose of the current dividend law. The use of permanent fund income to finance large capital projects presents a closer question. The character of each project must be considered to determine if it serves a state public purpose, rather than a local special purpose. Additionally, if the project is viewed as merely an alternate way of financing state government operations, the basic intent of the dividend law might not be served.

We cannot advise with certainty whether the financing of large capital projects with permanent fund income would constitute a dividend of the Alaska permanent fund for purposes of

the appropriation limit. Some may argue that the benefits provided by "public works" projects are too localized to approximate the benefits provided by the existing dividend law. However, in State v. Lewis, 559 P.2d 630 (Alaska 1977), the Alaska Supreme Court decided that "[l]egislation need not operate evenly in all parts of the state to avoid being classified as local or special." Lewis at 643. A definite answer will come only when the courts interpret article IX, section 16 of the Alaska Constitution. However, we believe that if the legislature enacts a distribution program which is consistent with the intent of the permanent fund dividend law, any appropriation to implement that program will be exempt from the appropriation limit.

B. Appropriations Required to Pay the Principal and Interest on General Obligation Bonds

Under AS 43.18.100 -- 43.18.135 the state, subject to available appropriations, reimburses municipalities for the payment of a percentage of principal and interest to retire general obligation bonds issued by the municipality to finance school construction costs. Although they have been amended from time to time, these statutes have been in effect since 1971. You have asked whether appropriations to retire municipal general obligation debt are within the exception stated to the appropriation limit.

The exception reads as follows: "Except for ... appro-

priations required to pay the principal and interest on general obligation bonds...." The wording of the exception does not specify whether the bonds must be issued by the state to qualify. Later in section 16, the drafters carefully identified "appropriations of money received from a nonstate source...." Since the drafters could easily have expressly limited this exception to state general obligation bonds, an implication can be drawn that a strict construction limiting the exception to state general obligation bonds was not intended.

The purpose of the exception recognizes that appropriations to retire general obligation bonds may be to the state's "great advantage." Governor's transmittal letter, 1981 FSS S. Jour., p. 16. Presumably the advantage accrues from the state's enhanced credit rating which results in lower debt service charges for subsequent bond issues. It is probable that the existence of the school construction debt assistance provisions of AS 43.18 have the same effect upon the bond rating assigned to municipalities. The identical purpose is achieved by appropriations made to finance the reimbursement program. Less state assistance will be necessary in the future if local bond ratings remain favorable.

There are some considerations which weigh against this construction. Debt service for general obligation bonds is financed by a continuing appropriation. AS 37.15.012. General

obligation bonds are debts of the state secured by contracts (trust indentures); the impairment of contracts is prohibited by the state and federal constitutions. The reimbursement program under AS 43.18 does not transform municipal general obligation bonds into debts of the state. AS 43.18.130(a). However, the financial burden imposed on municipalities, if their local tax effort were increased to compensate for the loss of assistance under AS 43.18, could be devastating to the local taxpayer. According to the Department of Education, for fiscal year 1984 the estimated total entitlement for school debt retirement is $36,900,000. This total is estimated to increase to $44,300,000 by fiscal year 1988.

Accordingly, we believe that appropriations to retire municipal general obligation school bond indebtedness under AS 43.18 are "required" and qualify as an exception to the spending limit. We believe that the appropriation for school bond indebtedness can be represented as a moral obligation of the state for the following reasons:

(1) the appropriation is made under a statute of general application;

(2) the statute has been in effect since 1971; and

(3) the reimbursement program is heavily relied upon by municipalities when they establish the local tax effort necessary to support local bonded indebtedness.

III. REVENUE SHORTFALL

You have also asked how to interpret the appropriation limit if the amount of state revenues subject to the limit is less than the amount determined to be the limit for a fiscal year, as provided in section 16. You wish to know specifically how the allocations within the limit for operating expenses and capital projects would be interpreted. As we have indicated, section 16 imposes an appropriation limit rather than a spending limit. We have earlier advised that the legislature may make appropriations which exceed available revenues. 1981 Inf. Op. Att'y Gen. (June 24; J77-159-81). However, obligations may not be paid under those appropriations unless there is enough surplus money available in the treasury.

Theoretically, the amount of anticipated state revenue should have no effect on the operation of the appropriation limit. However, under AS 37.07.020(c), the governor's proposed budget may not exceed estimated revenues for the succeeding fiscal year. Also, the amount of surplus revenues anticipated to be received by the state was an issue hotly publicly debated before adoption of section 16. The newspaper articles written about the appropriation limit before the election commonly referred to the amendment as a "spending limit." These articles were undoubtedly instrumental in forming the voters' understanding of the effect of the proposed amendment.

Section 16 provides, in part: "Within this limit, at least one-third shall be reserved for capital projects and loan appropriations." This wording is ambiguous when applied for a year in which revenue available for appropriations falls short of the adjusted limit for that year. Under those circumstances, it is not clear whether the reservation for capital projects and loan appropriations is calculated based on the total amount actually appropriated for that fiscal year (i.e., less than the limit) or on the limit amount ($2.5 billion for that fiscal year) adjusted for population and inflation. Apparent ambiguities contained in the state constitution may be resolved by the contemporaneous construction by law or by the administrative agency charged with implementation of the provision. Amador Valley Joint Union High School District v. State Board of Equalization, 583 P.2d 1281 (Cal. 1978).

A review of the FCC transcript reveals no discussion of the intention of the drafters when they used the phrase "within this limit." Revenue projections at the time painted a rosy picture for the future. No history is available to indicate that the FCC even considered the effect of the amendment if the state suffers a sharp decline in revenue. Former Governor Hammond was clearly concerned by the possibility of a spendthrift legislature with an overflowing treasury at its disposal.

Under the circumstances, we believe it would be unwise

to blindly apply the allocations imposed by the appropriation limit when conditions impose an even more stringent limit than intended by the FCC. 3/ The appropriation limit drastically alters the most significant power of the legislature: the power to appropriate. The power to enact general law is largely nullified unless the money to finance enforcement or implementation of the law is appropriated. Consequently, we believe that an interpretation which restricts the legislature's power to respond to the needs of the state during unanticipated periods of revenue decline will not be endorsed by the courts. See State ex rel. Columbus v. Keterer, 189 N.E. 252 (Ohio 1934). Rather, we believe that the courts will recognize that the evil which the appropriation limit was designed to remedy does not exist when revenues are below the limit. Under those circumstances, a court would probably affirm an interpretation that restores the full lawmaking powers of the legislature to make appropriations in the best interests of the state. We believe the best way to resolve the ambiguity is to disregard the one-third allocation reserved for

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3/ The reservation for capital projects and loan appropriation effectively restricts appropriations to finance the operating budget without restricting the relative share for capital projects. The operating budget finances all manner of essential programs for the preservation of the public health, safety, and welfare. Some of these expenditures are for so-called entitlement programs (aid for families with dependent children, for example) which for fiscal year 1982 comprised 42 percent of the operating budget.

capital projects and loan appropriations when economic conditions impose a limit which is more restrictive than that set out in section 16. 4/ The literal language of the constitution may be disregarded to avoid absurd results and to fulfill the apparent intent of the framers. Sturges v. Crowninshield, 17 U.S. 122, 202 (1819). Where the general welfare is involved, constitutional questions should be approached from the pragmatic, rather than from a legalistic point of view. State v. Board of Administration, 25 So. 2d 880 (Fla. 1946).

IV. ATTRIBUTION OF CAPITAL APPROPRIATION TO A FISCAL YEAR

Another question you have raised is how the words "appropriation ... made for a fiscal year" should be applied to appropriations for capital projects. AS 37.25.020 provides "An appropriation made for a capital project is valid for the life of the project and the unexpended balance shall be carried forward to subsequent fiscal years." This provision recognizes that capital projects often span more than one fiscal year before completion. The balance of the appropriation remains available in sub-

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4/ Another possible interpretation would limit the operating budget allocation for a fiscal year to two-thirds of the total limit ($2.5 billion) adjusted for inflation and population. This interpretation is consistent with our earlier observation that there may be no relationship between appropriations and revenue. However, even under this interpretation, in a fiscal year with depressed revenues, the one-third reservation for capital projects is meaningless.

sequent fiscal years and is carried forward to those succeeding fiscal years. According to the Department of Administration, as of June 30, 1982, the total of all "carry forward" capital appropriations was: approximately $1,591,000,000, and the total of all "carry forward" operating appropriations was $1,862,000,000.

The FCC debated the intent of the limit concerning this issue. Transcript at 47-55. It is clear that the FCC was aware that multi-year appropriations are made. There was an attempt by Representative Hugh Malone to amend the proposal so that a legislature could not appropriate for a fiscal year subsequent to the upcoming fiscal year. This amendment was not adopted. Senator Bill Ray observed that the intent of the amendment was to include only those appropriations which are expended during the fiscal year. According to Senator Ray, appropriations which remain unexpended at the end of a fiscal year should lapse. Transcript at 52. Representative Rick Halford interpreted the proposed amendment to make multi-year appropriations count against the limit each year because each succeeding legislature could amend or repeal these appropriations at will. During all of these discussions, no distinction was made between operating and capital appropriations. However, these comments probably referred only to multi-year operating appropriations. See Transcript at 65-66.

The debate on this issue discloses that the FCC was confused about the operation of carry forward appropriations.

They formulated the $2.5 billion base by taking the fiscal year 1982 appropriation total and reducing that amount by $60 million. Transcript at 2-5. However, 1982 appropriations were made based on forecasts of anticipated surplus for that fiscal year, reduced by expected expenditures for "carry forward" appropriations. We assume, therefore, that the drafters did not intend to count carry forward appropriations in the limit established for each fiscal year.

We believe that a commonsense way to interpret the appropriation limit, which is supported by past practice, is to count appropriations that are available for expenditure in a fiscal year only against the limit for the first fiscal year during which they could be completely expended. This should be done even if an unexpended balance is carried forward into the next fiscal year. That balance must be considered obligated for the purposes of the appropriation limit. Unexpended balances of a prior year appropriation should not be counted with the current year appropriations in complying with the limit for the current year. If the legislature provides that an appropriation may not be expended until a later fiscal year, the appropriation should be counted only against the limit for that later fiscal year.

V. DEFINITION OF THE TERM "CAPITAL PROJECT"

The appropriation limit amendment introduces the term

"capital project" to the glossary of words used in the Alaska Constitution. This new term causes some concern because a similar term, "capital improvement," is used in other sections of article IX setting out the general obligation bonding authority for local governments and the state. There are two Alaska Supreme Court cases which address the meaning of "capital improvement." See City of Juneau v. Hixon, 373 P.2d 743 (Alaska 1962); Wright v. City of Palmer, 468 P.2d 326 (Alaska 1970). The supreme court did not adopt an all-inclusive definition of capital improvement in those cases. Rather, the court concluded that there was nothing in the history of municipal bonding in Alaska or in the minutes of the constitutional convention that indicates that the term "capital improvement" was intended to denote projects radically different than those for which municipalities had been permitted to incur bonded indebtedness in the past.

When former Governor Hammond first introduced SJR 4, the proposed amendment consistently used the term "capital improvement." It was not until the second FCC took up consideration of the proposal that the term capital project was used. Senator Ray defined capital projects to be "what the definitive judgment of a majority of the legislature determines they are." Transcript at 22. This was in response to an observation by Representative Malone that many appropriations designated as capital differ little from items set out in the operating budget. Tran-

script at 21. Former assistant attorney general Rodger W. Pegues explained to the FCC that "we're using the term capital project which pretty much means the capital budget - areas where you are dealing with capital investment or long-term financing and the bulk of your spending. That's a broader term than 'capital improvement.'"

There appears to be support in the history for an interpretation of "capital project" which includes more objects of expenditure than "capital improvement," which traditionally has been limited to public works of a permanent nature. 5/ It is possible, though, that the two terms will be construed to have the same meaning. The supreme court left room for the term "capital improvements" to acquire new meanings to accommodate the changing activities of state government. However, the appropriation limit implies that a general obligation bond may be issued for capital projects. 6/ It is probable that a court would find that not all capital improvements may be characterized as capital

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5/ In recent years, opinions of the attorney general have somewhat broadened this interpretation to permit the use of bond proceeds to finance some unique activities under the Village Safe Water Act, see Inf. Op. Att'y Gen. (April 2; J-99-078-81); and to rehabilitate a leased jail facility. See Inf. Op. Att'y Gen. (Mar. 19; A66-398-78).

6/ Article IX, section 16 provides: "The legislature may exceed this limit in bills for appropriations to the Alaska permanent fund and in bills for appropriations in capital projects, whether of bond proceeds or otherwise, ..." (Emphasis added.)

projects. A distinguishing factor may be that the constitution requires some permanent thing of value to show for the public debt incurred. A more liberal construction may be warranted when public debt is not incurred.

VI. CONCLUSION

The wording of the appropriation limit does not begin to live up to the high standards of clarity and simplicity adopted by the original framers of the Alaska Constitution. There are many who will regard this opinion as mere justification to exploit "loopholes" woven into the fabric of the amendment. However, we hope this opinion will provide the impetus to either adopt amendments to clarify the ambiguities noted or to enact legislation which interprets the amendment so that the ambiguities are avoided. We hope this opinion has answered your questions.

Sincerely yours,

Norman C. Gorsuch
Attorney General

James L. Baldwin
Assistant Attorney General

JLB:NCG:pjg

LETTER OF INTENT

2nd Free Conference Committee on SJR 4

The basic problem faced by Alaska is runaway growth in spending for state government operations and for capital projects. This growth is generated by revenues from resources which are nonrenewable and finite. Some limitation is therefore essential. The constitutional amendment proposed by the 2nd Free Conference Committee will provide a realistic limitation and yet allow, by popular approval, for expenditures in excess of the limitation for capital projects and for contributions to the permanent fund. Those who favor such expenditures can have no reasonable objection to the voters determining which capital projects and contributions are worthwhile and which are not.

The term "capital project" is used rather than the term "capital improvement" in order to have a broader reach. Capital improvements are pretty much limited to public facilities having a more or less permanent nature. Highways, airports, buildings, and ferries are examples. Capital projects include capital improvements and also other expenditures which require a multi-year investment or otherwise tend to fall into the category of capital costs as opposed to day-to-day expenses. Computers, large-scale resources inventories, and high-cost special equipment and instruments for libraries, schools, and museums are some examples.

In addition to limiting the excess appropriations to capital projects and contributions to the permanent fund, the proposed amendment requires bills for capital projects to be confined to capital projects of the same type. This is somewhat more narrow than the single-subject rule. It will require projects in a bill to be parts of an overall system. This will inhibit the packaging of diverse projects into one bill. As a further restraint on logrolling, the bills for excess appropriations are subject to the item veto, including the appropriation of general obligation bond proceeds which are in excess of the limit. Bond proceeds which are not in excess of the limit are not subject to an item veto.

There are three exclusions from the limitation. Debt service is necessarily excluded. An additional exclusion is provided for appropriations for permanent fund dividends. Non-state money, that is, money received from the United States or others to be used for specific purposes, is also excluded. This exclusion includes revenue bond proceeds, the revenues generated by the international airports, and other public enterprises which operate on revenue bonds. The first exclusion is required by the federal constitution's prohibition against impairing contracts. The other exclusions are provided because the use of the money for those purposes is not a part of the problem.

The proposed amendment requires the governor to cause any unexpended and unappropriated balance to be invested

so as to yield competitive rates to the treasury. The words "as prescribed by law" were not included so that the clause will be self-executing. However, the governor performs all executive functions in the manner prescribed by law, and the statutes on loan programs and investments will control here so long as they are consistent with the constitution s requirements.

Additionally, so as to eliminate any reasonable grounds for opposition by those who wish to relocate the capital, the resolution includes a transitional measure to exclude relocation costs, if they are approved at the 1982 general election, from the requirement of additional voter approval under the amendment. Another transitional measure provides for the amendment to take effect beginning with the budget for fiscal year 1984.

Finally, still another transitional measure places the amendment on the ballot again at the 1986 general election to allow it to be repealed by the electorate should it prove to be unworkable. If it is unworkable, the people will repeal it. If it works, they will not.

Sen. Bill Ray	Rep. Richard W. Halford
Sen. Donald E. Gilman	Rep. Robert H. Bettisworth
Sen. Frank R. Ferguson	Rep. Hugh Malone

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: HB 245 Date on Bill: 3/9/83
Title: advisory vote on continuation of permanent fund dividend distribution prgm
Sponsor: M.M. Miller, Malone et al
Requestor: House State Affairs Committee 3/24/83 1pm Rm. 102

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

			FY 83	FY 84	FY 85	FY 86		
Capital								
Operating				-0-	-0-			
Total								

b. Revenues:

Revenue								

2. Source of funds to offset fiscal impact of bill:

3. Assumptions: The cost to count the results of one ballot question is small compared to the overall costs of the General Election.

4. Disclaimer:
This statement has not been reviewed by the OMB in the Office of the Governor. It does not represent the policy of the Sheffield Administration or the final estimate of fiscal impact.

Prepared By: TPThoma, Information Officer Phone: 4611
Division: Elections Date: 3/23/83

Approved by Commissioner: Date:
Department:

5. Distribution:
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