

SB

42

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

GR

DATE: 1/11/93

FURTHER: L&C
FINANCE

Date of 5-Day Notice: 2/25/93
(in accordance with Uniform Rule 23)

DATE TURNED
INTO OFFICE: 3-9-93

CRA Committee considered SENATE BILL NO. 42

"An Act relating to municipal taxation of alcoholic beverages; and providing for an effective date."

and recommends: and recommends it
be replaced with

replace with _____ CS SE 42 CRA

attaches amendment(s)

*+ a mty of the Cmte
rpts it to
w/ no
rec*

- same title
- new title
- technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

OK

FISCAL NOTE INFORMATION

Department	Date	Zero	Fiscal
Dept CRA	2/17/93	0	

Department	Date	Zero	Fiscal

Appropriation No Fiscal Note

Governor's Bill with Previous Fiscal Notes (enter information above)

DO PASS:

OTHER RECOMMENDATIONS:

2 Wick Halford

1 Admin. Taylor NO Rec.

1 Paul F. Halford 2 Halford No Rec

1 Paul E. Phillips No Rec

Chair: Signature and Recommendation

Revision Date: _____ Dept. Affected: Community and Regional Affairs
 Title: Local Sales Tax on Alcoholic Beverages BRU: _____
 Component: _____
 Sponsor: Jacko
 Requestor: _____ COMPONENT SERIAL NO. N/A

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
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 FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current (FY93) Impact \$ _____

ANALYSIS: (Attach a separate page if necessary)
 The bill has no impact on DCRA programs.

Prepared by: Remond Henderson Phone: 465-4708
 Division: Division of Administrative Services Date: 2/17/93
 Approved by Commissioner: [Signature] Deputy Commissioner Date: 2/17/93
 Agency: Community and Regional Affairs

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STATE OF ALASKA
DEPARTMENT OF COMMUNITY
& REGIONAL AFFAIRS

POSITION PAPER

Bill No.: SB 42

DCRA FN: Zero (attached)

Sponsor: SENATOR JACKO

Position: Support

Title: An Act relating to municipal taxation of alcoholic beverages;
and providing for and effective date.

The bill amends AS 04.21.010(c)(2) to allow municipalities to impose a sales tax "on alcoholic beverages equal to or higher than the sales tax imposed on other sales within the municipality, but may not be lower than the sales tax imposed on other sales within the municipality."

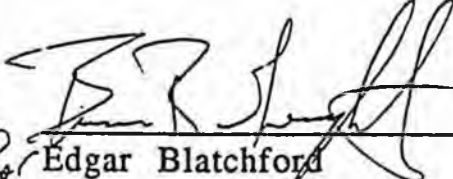
The bill also amends AS 29.45.650(b). This section AS 29.45.650 is the BOROUGH SALES AND USE TAX statute. The amendment removes this section from applying to AS 04.21.010(c). Subsection (b) reads "A borough levying a sales tax may also by ordinance levy a use tax on the storage, use, or consumption of tangible personal property in the borough. The use tax rate must equal the sales tax rate and the use tax shall be levied only on buyers."

The bill has no impact on DCRA programs.

The department supports this legislation for two primary reasons.

- 1) it allows municipalities to place a greater tax on alcoholic beverages; and
- 2) it allows a greater "use" tax to be imposed on alcoholic beverages in communities that do not allow sales of alcohol, but permit importation for personal use.

Alcohol is one of the most destructive drugs in use in rural Alaska today. This bill allows local communities to appropriately discourage its use, and stem the resultant negative impacts on rural families.



Edgar Blatchford
Commissioner

2-18-93
Date



Alaska State Legislature

SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Senator Randy Phillips, Chair
Senator Robin Taylor, Vice Chair
Senator Rick Halford
Senator Al Adams
Senator Fred Zharoff

SESSION:
State Capitol
Juneau, Ak 99801-1182
(907) 465-4989

INTERIM:
P. O. Box 142
Eagle River, Ak 99577
(907) 694-4949

AGENDA

9:00 am

February 25, 1993

1. Call to Order (time and members present)
2. SB 42 - Local Sales Tax on Alcoholic Beverages.
3. Bills held over from 2/16/93 and 2/18/92 meetings
Adopt committee substitute, discussion and adoption of amendments
SB 102 - Municipal Property Tax Exemptions
4. Adjourn



Alaska State Legislature

SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Senator Randy Phillips, Chair
Senator Robin Taylor, Vice Chair
Senator Rick Halford
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SESSION:
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Juneau, Ak 99801-1182
(907) 465-4989

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P. O. Box 142
Eagle River, Ak 99577
(907) 694-4949

AGENDA

9:00 am

March 4, 1993

1. Call to Order (time and members present)
2. SB 102 - Municipal Property Tax Exemptions
Adopt committee substitute proposed by DCRA
 - (1) amendment 1 - exempt the optional taxes from the
from the full and true value determination
by DCRA in the education foundation formula
 - (2) amendment 2 - change the effective date to January 1, 1994
3. Bills Previously heard
 - (a) SB 42 Local Sales Tax on Alcoholic Beverages
Adopt committee substitute
 - (b) SB 88 Capital Matching Grants Program
 - (1) amendment 1 - limit administrative charges
 - (2) amendment 2 - changes the match requirements
(Municipality of Anchorage only wants a
75/25 match requirement)
 - (c) SB 89 Appropriation: Capital Project Matching Grants
- 4 Adjourn

8-LS0248K ✓

Ford

3/3/93

Adopted

CS FOR SENATE BILL NO. 42(CRA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:

Referred:

Sponsor(s): **SENATORS JACKO, Lincoln**

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to municipal taxation of alcoholic beverages; and providing for
2 an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * Section 1. AS 04.21.010(c) is amended to read:

5 (c) A municipality may not impose taxes on alcoholic beverages except a

6 (1) property tax on alcoholic beverage inventories;

7 (2) sales tax on alcoholic beverage sales if sales taxes are imposed on

8 other sales within the municipality; a sales tax imposed on alcoholic beverages in a

9 municipality with a population of 2,500 or fewer people or in a municipality that

10 had a population of 2,500 or fewer people on July 1, 1993, may be equal to or

11 higher than the sales tax imposed on other sales within the municipality but may

12 not be lower than the sales tax imposed on other sales within the municipality;

13 (3) sales tax on alcoholic beverage sales that was in effect before

14 July 1, 1985; and

1 (4) sales and use tax on alcoholic beverages if the sale of alcoholic
2 beverages within the municipality has been prohibited under AS 04.11.490.

3 * Sec. 2. AS 29.45.650(b) is amended to read:

4 (b) A borough levying a sales tax may also by ordinance levy a use tax on the
5 storage, use, or consumption of tangible personal property in the borough. The use tax
6 rate must equal the sales tax rate except as otherwise provided under
7 AS 04.21.010(c), and the use tax shall be levied only on buyers.

8 * Sec. 3. This Act takes effect July 1, 1993.

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3/3/93

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CS FOR SENATE BILL NO. 42(CRA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): **SENATORS JACKO, Lincoln**

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8 other sales within the municipality; a sales tax imposed on alcoholic beverages in a

9 municipality with a population of ^{2,500} 2,200 or fewer people may be equal to or higher

10 than the sales tax imposed on other sales within the municipality but may not be

11 lower than the sales tax imposed on other sales within the municipality;

12 (3) sales tax on alcoholic beverage sales that was in effect before

13 July 1, 1985; and

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falter
Crummer

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7 * Sec. 3. This Act takes effect July 1, 1993.



217 Second Street, Suite 200 ■ Juneau, Alaska 99801 ■ Tel (907) 586-1325, Fax (907) 463-5480

February 18, 1993

TO: Senator Randy Phillips, Chair
and Members, Senate Community and Regional Affairs Committee

FROM: Kent E. Swisher, Executive Director

RE: SB 42 - Relating to municipal taxation of alcoholic beverages

The Alaska Municipal League supports SB 42, relating to municipal taxation of alcoholic beverages, to the extent that it would expand the authority of local governments to determine the level and type of taxes appropriate to their communities.

As a general policy, the League, which represents over 100 municipalities throughout the state, recognizes that local governments should be given the maximum amount of authority and flexibility to make use of the resources available to them. Removing artificial obstacles such as the existing limit on the municipal sales tax that can be levied on alcoholic beverages is one way to accomplish that.

The League's *1993 Policy Statement* includes the following goal statement:

AML further wishes to manage public assets in an efficient and effective way by working with all government officials to . . . increase the revenue base to support the provision of services, collect and redistribute resources in a fair and logical manner, and maintain maximum control of financial prerogatives at the local level of government, which is under the highest level of scrutiny by Alaskans. [Part I, Taxation and Finance]

In addition, Part I, D.1, Tax-Levying Authority, in the *Policy Statement* includes the statement "The League supports broader municipal authority to consider alternatives to property taxes."

SB 42 would provide greater flexibility and autonomy to local governments, and the Alaska Municipal League supports it for that reason.

cc: Senator George Jacko

LEG933:sb42.222



Southwest Alaska Municipal Conference

Putting Resources to Work For People

3300 Arctic Blvd., Suite 203 • Anchorage, Alaska 99503 • (907) 562-7380 • FAX (907) 562-0438

RESOLUTION 92-29

A RESOLUTION OF THE SOUTHWEST ALASKA MUNICIPAL CONFERENCE SEEKING REPEAL OF THE LEGISLATIVE PROHIBITION OF HIGHER RATES OF SALES TAX ON THE SALES OF ALCOHOLIC BEVERAGES BY MUNICIPALITIES.

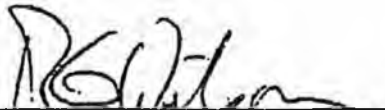
WHEREAS, It is well established that significant sums of money are spent by municipalities as a result of the sale of alcoholic beverages in these municipalities, and

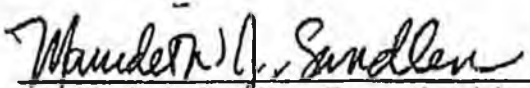
WHEREAS, the members of SWAMC believe that the liquor industry should bear more of the costs associated with such sales, and

WHEREAS, Alaska law apparently does not presently allow the imposition of a sales tax upon alcoholic beverages at a rate higher than the general sales tax rate, now therefore,

BE IT RESOLVED by the Southwest Alaska Municipal Conference that as 4.21.0010(c) be amended to allow a municipality to impose a sales tax on alcoholic beverages only and to allow a sales tax on alcoholic beverages at a higher rate than is imposed on other sales within the municipality.

PASSED this 13th day of September, 1992.


Richard G. Wilson, President


Marideth J. Sandler, Executive Director

LAGOS v. CITY AND BOROUGH OF SITKA Alaska 641

Cite as 823 P.2d 641 (Alaska 1991)

does not apply to partial indemnity claims based on implied contracts since the contribution act has never applied to implied contract cases. The majority opinion's reliance on the *Vertecs* rule is thus difficult to justify. To repeat, the *Vertecs* rule barred partial non-statutory loss shifting in tort cases because there was a partial statutory loss-shifting remedy. There has never been a partial statutory loss-shifting remedy in implied contract cases, and therefore the rationale of the *Vertecs* rule does not apply to such cases.

In summary, where two parties are at fault and are responsible for an indivisible loss, any rule that provides that one of them must bear the entire loss without the opportunity to shift part of the loss to the other is manifestly unjust. What should happen is that the loss should be shared in proportion to the fault of each party. In accord with this, the trial court should be directed on remand to instruct the jury to apportion the damages which the Borough must pay between the Borough and Roen according to the comparative degree of fault of each.



Mike LAGOS and Mei Fong Lagos, Individually, and d/b/a Marina Restaurant, House of Liquors, Inc. d/b/a House of Liquors, an Alaska corporation; and Pioneer Liquor, Inc., d/b/a Pioneer Bar, an Alaska corporation, Appellants,

v.

CITY AND BOROUGH OF SITKA, Appellees.

No. S-4136.

Supreme Court of Alaska.

Dec. 27, 1991.

Owners of business and businesses which sold alcoholic beverages filed com-

plaint for declaratory judgment and injunctive relief against ordinance of city and borough imposing additional tax on alcoholic beverages above and beyond consumer sales tax imposed on other commodities. The Superior Court, First Judicial District, Sitka, Rodger W. Peques, J., granted summary judgment for city, and owners appealed. The Supreme Court, Rabinowitz, C.J., held that statute authorizing municipalities to impose "sales tax on alcoholic beverages if sales taxes are imposed on other sales within the municipality" prohibits municipality from imposing greater tax on sales of alcoholic beverages than on sales made on other commodities.

Reversed.

1. Statutes \Rightarrow 188

Supreme Court does not adhere to plain meaning rule in interpretation of statutes.

2. Statutes \Rightarrow 188

In interpreting statute, Supreme Court looks first to language of statute.

3. Intoxicating Liquors \Rightarrow 91

Statute authorizing municipalities to impose "sales tax on alcoholic beverages if sales taxes are imposed on other sales within the municipality" prohibits municipality from imposing greater tax on sales of alcoholic beverages than on sales made on other commodities. AS 04.21.010(c), (c)(2).

William G. Royce, Anchorage, for appellants.

Theron J. Cole, Sitka, for appellees.

Barbara J. Blasco, Juneau, for amicus curiae, City and Borough of Juneau.

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

OPINION

RABINOWITZ, Chief Justice.

I. FACTS AND PROCEEDINGS

This appeal raises the question of the validity of 4.08.040 of the Sitka General Code. This ordinance provides,

ANCHORAGE LAW LIBRARY

A consumer sales tax is levied on all sales made in the City and Borough of Sitka at the rate of 4% of the selling price. An additional 4% consumer sales tax is placed upon the sale of alcoholic beverages. Normally the burden of this tax rests upon the consumer.

In 1989, the City and Borough of Sitka ("Sitka") had amended this ordinance to include the additional tax on alcoholic beverages in response to a ballot proposition passed by voters on October 3, 1989. The ballot proposition also provided for "the resulting revenue to be dedicated toward the prevention and treatment of alcohol and drug abuse in Sitka." Just prior to the election, appellants, as owners of business and businesses which sold alcoholic beverages, ("Lagos") filed a complaint for declaratory judgment and injunctive relief, seeking to have the ballot proposition invalidated.

Lagos alleged that the ballot proposition and the ordinance were unlawful on three grounds:

- (1) AS 04.21.010(c) prohibits taxing alcoholic beverage sales at a rate higher than the tax on other sales;
- (2) The regulation and taxation of alcohol has been preempted by state law except where such power is specifically conferred on municipalities; and
- (3) A municipal tax purporting to dedicate resulting revenues violates Article IX, § 7, of the Alaska Constitution.

Lagos filed for summary judgment on the first ground; that Sitka's sales tax was illegal under AS 04.21.010(c). This statute provides,

A municipality may not impose taxes on alcoholic beverages except

- (1) property taxes on alcoholic beverage inventories;
- (2) sales taxes on alcoholic beverage sales if sales taxes are imposed on other sales within the municipality; and

1. The parties agree that this appeal does not raise any issues of fact, but rather concerns the interpretation of statutes. This court will employ *de novo* review to a grant of summary judgment, *Kollodge v. State*, 757 P.2d 1028, 1032

- (3) sales taxes on alcoholic beverage sales that were in effect before July 1, 1985.

Lagos read subsection two of this statute to ban discriminatory sales tax rates on alcoholic beverages. In this regard he argued that the legislative history of AS 04.21.010(c) showed that the legislature intended to ban discriminatory rates when it enacted AS 04.21.010(c)(2).

Sitka filed its own motion for summary judgment, requesting the superior court to dismiss Lagos' complaint for declaratory and injunctive relief. Sitka argued that none of the contentions advanced by Lagos raised any "issue as to any material fact and that [Sitka] is entitled to judgment as a matter of law."

The superior court granted summary judgment in favor of Sitka. The court thought Lagos' legislative history argument unpersuasive, and concluded that "[h]ad uniformity in rates of taxation been intended, the language of the legislation could easily have been written to say so.... Some legislators may have opposed a requirement for uniform rates." The superior court did not address Lagos' remaining preemption and unconstitutional dedication arguments. This appeal followed.¹

II. DISCUSSION

In this appeal Lagos raises the same arguments against Sitka's differential alcoholic beverage sales tax as were urged before the superior court.

A. *Does AS 04.21.010(c) prohibit taxing sales of alcoholic beverages at a higher rate than other commodities?*

AS 04.21.010(c)(2) authorizes municipalities to impose a "sales tax on alcoholic beverages if sales taxes are imposed on other sales within the municipality." Lagos interprets this provision to mean "that

(Alaska 1988), and will adopt the rule of law which is "most persuasive in light of precedent, reason and policy." *Langdon v. Champion*, 745 P.2d 1371, 1372 n. 2 (Alaska 1987) (citations omitted).

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LAGOS v. CITY AND BOROUGH OF SITKA Alaska 643

Cite as 823 P.2d 641 (Alaska 1991)

sales taxes on alcoholic beverages are allowed only to the extent sales taxes are imposed on other sales.”²

on alcohol. It does not explicitly address rates of taxation.

We have stated that the goal of statutory construction is:

1. The legislative history

[T]o give effect to the legislature's intent, with due regard for the meaning the statutory language conveys to others. In this respect, we have repeatedly stated that unless the words have acquired a peculiar meaning, by virtue of statutory definition or judicial construction, they are to be construed in accordance with their common usage.

The language requiring a municipality to tax sales of other commodities before taxing sales of alcoholic beverages was added to AS 04.21.010(c) in 1985. Ch. 74, § 20, SLA 1985. Similar language had been deleted from the statute in 1980.³ Ch. 131, § 4, SLA 1980.

Tesoro Alaska Petroleum Co. v. Kenai Pipeline Co., 746 P.2d 896, 905 (Alaska 1987).

Lagos argues that the legislative history supports his interpretation of the 1985 amendments to AS 04.21.010(c). Senator Eliason sponsored the amendment to AS 04.21.010(c), and the Senate Finance Committee deliberated over the merits of the amendment. In proceedings before the Senate Finance Committee, Senator Eliason asked Senator Ray to “testify on the background of this particular amendment.” Proceedings of the Senate Finance Committee, May 8, 1985 (“Proceedings”) (testimony of Senator Eliason). Senator Ray testified as to his involvement with the 1980 recodification of the code dealing with alcoholic beverages. He noted that the 1980 elimination of the language in the amendment was inadvertent. He then stated, “[i]n fact, two or three years after the bill had passed when ... Juneau ... considered adding an additional tax, it surprised me immensely, and I said, ‘Well, they can't do that.’” *Id.* Senator Ray went on to explain, “It would seem to me it would be discriminatory to have an additional tax on anything.” *Id.* Because Ju-

[1,2] We do not adhere to the plain meaning rule in interpretation of statutes. *University of Alaska v. Geistauts*, 666 P.2d 124, 428 n. 5 (Alaska 1983). However, we have stated that “where a statute's meaning appears clear and unambiguous, ... the party asserting a different meaning has a correspondingly heavy burden of demonstrating contrary legislative intent.” *Id.* See also *State v. Alex*, 646 P.2d 203, 208 n. 4 (Alaska 1982) (under Alaska's sliding scale approach to statutory interpretation, the plainer the language of the statute the more convincing the evidence of contrary legislative intent must be). In interpreting a statute, we look first to the language of the statute. *Ward v. State*, 758 P.2d 87, 89 n. 5 (Alaska 1988). Here, the language of the statute, on its face, proscribes imposition of a sales tax solely

2. Before the superior court Lagos argued in part

within the municipality—thus requiring an equality of rate.

If one restricts the analysis to the language amending (c)(2), one may argue (as Sitka does) that the statute allows Sitka to tax alcoholic beverages at any rate, so long as sales taxes are imposed on some other sales within the municipality. It is true that (c)(2) contains no discussion regarding the rates of taxation on alcoholic beverage sales. Thus, so long as the analysis is restricted to (c)(2), one could argue (as Sitka does) that municipalities are free to single out sales of alcoholic beverages for taxation at a rate greater than taxes imposed on other sales. Others could argue with equal convincing force that sales taxes on alcoholic beverages are allowed only to the extent sales taxes are imposed on other sales

Thus, it is necessary to consider the meaning and intended effect of (c)(3) adopted as part of the 1985 amendment....

(Emphasis in original.)

3. The original language read, “nor shall any municipality impose taxes other than property taxes on liquor inventories and sales taxes on liquor sales when such taxes are levied on other property and sales within the community.” Ch. 86, § 1, SLA 1960. Apparently, the language requiring taxes on all commodities was inadvertently eliminated when the code was revised in 1980. See Senate Finance Comm. Proceedings, May 7, 1985 (testimony of Sen. Eliason); *id.*, May 8, 1985 (testimony of Senator Ray).

ANCHORAGE LAW LIBRARY

neau did in fact enact a tax which taxes sales of alcohol at a higher rate than it taxes other commodities, Lagos concludes that Senator Ray was interpreting the missing language to prohibit enactment of differential sales taxes on sales of alcohol.

After listening to Senator Ray's testimony, Senator Eliason explained,

The only limitations we're imposing on local governments is the fact that they cannot take a specific sales tax on a specific industry. What we're saying is that if you want to tax liquor and whatever else you might want to tax, that's alright. But we want to—it's keeping any specific industry—going out and point and saying, "We're going to tax you and no one else." ... They can ... impose a ten percent tax on liquor and tobacco—that wouldn't be in violation of this provision.... If the proposition read, "Shall we impose a ten percent tax on tobacco only?" they couldn't under this provision.

Id. Earlier in the proceedings, Senator Eliason had stated,

Under this language, no they can't discriminate between alcohol or food or clothing or any other commodity that's sold in the market. Its reasoning being that the state does regulate very stringently the alcoholic program in Alaska, so that's what the intent of the legislation is to treat them all equally.

Id. This history suggests that both senators intended to eliminate differential rates of taxation on sales of alcohol.

Additional support for Lagos' position is found in a comment by Senator Ferguson. At the May 7, 1985 proceedings of the Senate Finance Committee, Senator Ferguson

4. After hearing the testimony of the Acting Commissioner, the committee then questioned the drafter of the amendment, Tamara Cook (of the legislative affairs committee staff). She stated, "[a]s I read this language, if a municipality, whether it be a city or a borough, in fact imposed a sales tax on anything other than alcohol, it would be free to then also include alcohol within its sales tax structure." Proceedings, May 7, 1985.

5. The amicus, City and Borough of Juneau, argues in part as follows:

son asked, "Dillingham is thinking about raising the taxes on alcohol, and would they be allowed to continue their movement? I guess they wouldn't be able to after July 1, 1985?" *Id.* Senator Kerttula in response stated that "[a]s long as their ordinance is fully implemented prior to July 1st, they would be grandfathered in." *Id.* Apparently, both these senators believed that the amendment in question prohibited differential rates on alcohol sales tax.

Subsequently, at the same May 7, 1985 Senate Finance Committee meeting, the strongest statement concerning the subject of differential rates of taxation was made by the then Acting Commissioner of the Department of Community & Regional Affairs, in response to the comment by Senator Ferguson. The Acting Commissioner stated, "I understand then in the amendment that this refers to tax equalization and you cannot set a sales tax for alcohol higher than any other commodity within the community." *Id.*

Sitka counters by noting that

the Lagos' are relying upon the statements of individual legislators made in a single committee. There are no committee findings, no report, no journal entries, no indication that the whole legislature knew of or considered the statements or even considered anything beyond the words of the amendment that was part of a much larger bill.... Since there is no indication that the statements made in the committee were before the legislature, the legislature's intent must be presumed to be that expressed in the words of the statute.⁵

Sitka, and the amicus, also rely on an opinion from an Assistant Attorney General

Under the statute, a preexisting sales tax on alcoholic beverages was "grandfathered" regardless of whether the tax was part of a two-tiered sales tax system (such as Juneau's sales tax on alcoholic beverages) or part of a single-tiered system which imposed a tax on the sales of alcoholic beverages only. Thus, the only sales tax system proscribed by the statute is one which would impose a tax on the sales of alcoholic beverages only and which was not in effect before July 1, 1985.

(Emphasis in original.)

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Lagos further clause mits the alcoholic be before July legislature rates of amendment serts that to the com Kotzebue, in place di alcoholic b amendment Lagos poin ate Finance the commit nities were by the gra of the legis to AS 04.2 sales tax c Kotzebue, 010(c)(3) w pose of pre sales taxes munities. ambiguity prohibits on sales o by the pr

The City there is no 04.21.010 of unequa the comm

6. In supplements 5 sources : nn. 6 & 7 of Fisher ("Opinion: controllion arc

7. In add surround

LAGOS v. CITY AND BOROUGH OF SITKA Alaska 645

Cite as 823 P.2d 641 (Alaska 1991)

al and a memorandum from the then Deputy Director of the Division of Legal Services for the Legislative Affairs Agency, both of which concluded that the 1985 amendment to AS 04.21.010(c) did not speak to the rate of taxation.⁶

2. The effect of AS 04.21.010(c)(3)

Lagos further argues that the grandfather clause of AS 04.21.010(c)(3), which permits the continuation of "sales taxes on alcoholic beverage sales that were in effect before July 1, 1985," demonstrates that the legislature intended to prohibit differential rates of taxation when it enacted its amendments to AS 04.21.010(c). Lagos asserts that this grandfather clause applied to the communities of Craig, Juneau, and Kotzebue, because those communities had in place differential taxes on the sale of alcoholic beverages at the time the 1985 amendments were enacted. Additionally, Lagos points to the discussions of the Senate Finance Committee which indicate that the committee believed these three communities were the only communities affected by the grandfather clause. From a review of the legislative history of the amendment to AS 04.21.010(c)(3), and the differential sales tax ordinances of Juneau, Kotzebue, Lagos concludes AS 04.21.010(c)(3) was enacted for the purpose of preserving the two-tier sales taxes on alcohol in the communities. Thus, Lagos concludes there is no ambiguity as to whether AS 04.21.010(c)(3) prohibits discriminatory rates of taxation on sales of alcoholic beverages by the provisions of AS 04.21.010(c)(3).

letter to Mayor

The City and Borough of Sitka reply that there is no indication in the wording of AS 04.21.010(c)(3) that it is limited to instances of unequal taxation or that it is limited to the communities of Craig, Juneau, and Kotzebue.

6. In support of its reliance on these two documents Sitka cites *State, Dep't of Natural Resources v. City of Haines*, 627 P.2d 1047, 1049 nn. 6 & 7 (Alaska 1981) and *Carney v. State, Bd. of Fisheries*, 785 P.2d 544, 548 (Alaska 1990) ("Opinions of the Attorney General, while not controlling on matters of statutory interpretation are entitled to some deference.").

7. In addition to the text and legislative history surrounding the adoption of AS 04.21.010(c)(3),

zebue. "It could just as easily be applied to communities taxing alcohol alone prior to July 1, 1985."

III. CONCLUSION

[3] Our review of the merits leads us to the conclusion that Lagos' position is the more persuasive one. We therefore hold that the Sitka ordinance which taxes the sales of alcoholic beverages at a 4% higher rate than sales made on other commodities within the City and Borough of Sitka is violative of AS 04.21.010(c).

The text of AS 04.21.010(c)(2) is ambiguous in that it fails to clearly indicate whether it prohibits the imposition of discriminatory rates of sales taxes on sales of alcoholic beverages. On the other hand, the text of AS 04.21.010(c)(3) and the relevant legislative history concerning this 1985 amendment to AS 04.21.010(c), indicate that the legislature intended its amendments to prohibit the imposition of discriminatory sales taxes, whether in the form of sales tax rate differentials or a sales tax imposed solely on the sale of alcoholic beverages.⁷ Thus, we conclude that AS 04.21.010(c)(2) and AS 04.21.010(c)(3) when read together, bar a municipality from taxing only the sale of alcoholic beverages and further require that if sales taxes are imposed on other commodities, the rate of taxation on sales of alcoholic beverages may not be higher than the rate of taxation on sales of other commodities.⁸

REVERSED.⁸



the legislative history of AS 04.21.010(c)(2) noted above, provides evidence that some members of the Senate Finance Committee, including the amendment's sponsor, intended that there be no discrimination in a municipality's rate of taxation concerning alcoholic beverages.

8. Our holding that the ordinance in question is unlawful makes it unnecessary to address any of the remaining issues in this appeal.

DISTILLED
SPIRITS
COUNCIL
OF THE
UNITED
STATES

February 4, 1993

The Honorable George Jacko
Senate Finance Committee
State of Alaska
State Capitol *SBH*
Juneau, Alaska 99801

Dear Senator Jacko:

The Distilled Spirits Council of the United States (DISCUS) represents the producers and marketers of over 85 percent of the liquor sold in this country.

As a result of the nation's sluggish economy, the state of Alaska is facing difficult budget issues. You will probably hear it said that your budget problems can be solved in 1993 by increasing excise taxes on distilled spirits. The seductive argument will be that "it's easy, it's politically expedient and no one will care since it is only the liquor industry that is being taxed."

The fact is that whether one supports or opposes the liquor industry on any given social issue, excise taxes on liquor should be opposed for these fundamental public policy positions -- they are regressive, hitting hardest those least able to pay; they hurt your state by costing jobs (especially in small businesses); reduce state economic activity; increase state costs and have repeatedly produced less revenue than forecast.

The National Governor's Association and the National Conference of State Legislators' draft study "Financing State Government in the 1990's" examined every avenue to help states cope with budget issues in the 90's: business taxes, individual taxes, retail sales and use taxes, value-added taxes and property taxes.

Excise taxes were not mentioned as an avenue of future financial help for the states, perhaps because they do not meet the five principles of good tax policy that are consistently recognized in economics and public administration:

...they do not provide: (1) "appropriate and timely revenues"; they do not (2) "distribute burdens equitably"; they do not (3) "promote economic efficiency and growth"; and a strong case can be made that they are not (4) "easily administered"; and (5) "ensure accountability".

It has been well documented that excise taxes on distilled spirits do not produce the expected revenue. At the Federal level, the eight percent tax increase on liquor passed in 1990 was estimated to produce an additional \$104 million by the end of FY-91. In fact, for the first time ever the Federal government received no new taxes. The eight percent increase actually resulted in \$87 million less in revenues than before the tax. The point of diminishing returns has occurred. The resulting loss in revenue had to be made up by cuts in other parts of the budget, or by increasing the Federal deficit.

Clearly the 1991 excise tax increase did not provide "appropriate and timely revenue." It is not hard to picture the problems Alaska would have if it depended on such an unstable revenue base for a program like Medicaid or universal health care.

Excise taxes are unfair to Alaska residents because they do not "distribute burdens equitably." An excise tax, Federal or state, is paid equally by all regardless of income levels. The poor and middle class pay a larger percentage of their income for the excise tax than do the wealthy. In a word, excise taxes are unfair and heavily regressive since the largest burden falls on those least able to pay.

Excise taxes act as a drag on the state's economy by costing jobs, income, state revenue and increased costs through unemployment compensation.

The 1991 excise tax increase did not "promote economic efficiency and growth." It not only lost revenues for the Federal government, it lost an estimated 26,000 jobs nationwide, because of business cut-backs; it cost state government an extra \$25 million in unemployment compensation; state and local governments lost an additional \$60 million in direct and indirect revenues and state economies overall lost \$1.4 billion in economic output. 30 of those jobs and \$3 million of those dollars belonged to Alaska.

Let me close with a warning from another report by the National Governor's Association and the National Association of State Budget Officers, "The Fiscal Survey of States: October 1992":

"Alcohol taxes. Two states changed alcohol taxes. This category accounts for a net revenue reduction. After both state and Federal increases the past several years, states have reached the limit in the revenue capacity of this tax."

Sincerely,



F. A. Meister
President/CEO

FAM:bp
Attachments

ALASKA VS THE EXCISE TAX

Fact

The beverage alcohol industry in Alaska contributes \$710 million to the gross state product; generates \$5,700 in wages annually; accounts for 6,000 direct and indirect jobs and provides \$36 million in state and local revenues.

Public Policy Question

Recent facts at the Federal and state level indicate that any future excise tax increase in distilled spirits will hurt the residents of Alaska through increasing unemployment, reducing state economic activity and increasing unemployment compensation costs.

Is it good public policy, or does it make political sense, to pass a tax law with this kind of negative economic impact if experience shows it will cost the state jobs; will curtail economic activity; will not meet revenue estimates; and is very regressive by favoring the rich at the expense of low and middle income tax payers?

Excise Tax Increases

Regardless of any social issues concerning beverage alcohol, the fact is that a state hurts itself when it increases the excise tax on distilled spirits.

As the result of an 8% increase in the Federal excise tax on liquor in 1991, the Federal government collected \$87 million less in liquor excise taxes after the tax went into effect than it had in FY-90, before the increase was passed. Alaska lost 30 jobs and \$3 million in economic activity.

The same experience holds in the states as well. Numerous states have found out the hard way that increased liquor taxes are a tax failure.

Excise taxes also are regressive and unfair. They fall heaviest on low and middle income taxpayers. They favor the rich.

Excise taxes are a demonstrated unstable source of revenue and they are hidden from the public because they are paid by manufacturers.

Alaska Considerations

Any decreased revenues, lost jobs and reduced economic activity is especially critical for the State of Alaska, since the liquor tax burden in Alaska already is virtually at the point of diminishing returns and any future increase could produce substantially negative results for Alaska.

Is it good government to hurt your own low and middle income taxpayers, put your own people out of work and run the risk of having to cut other beneficial state programs because revenue estimates are not met? The answer is no, no matter how "easy" or how "popular" it seems to be to raise so-called sin taxes. Economically and politically, the "sin" is in the tax:

Alaska's liquor tax burden is exceptionally high – another increase would be counterproductive:

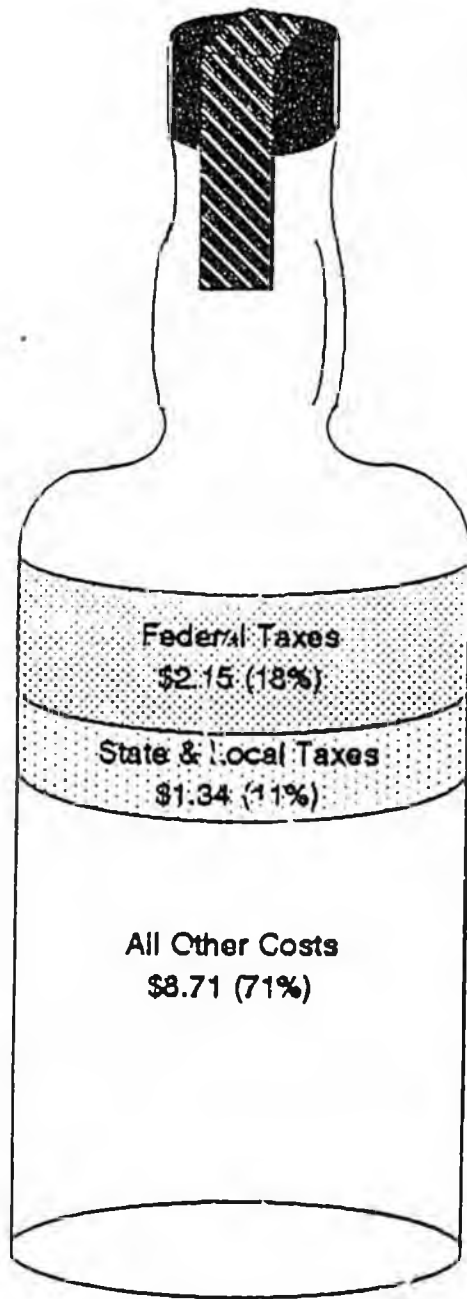
- Federal, state and local taxes now account for 29% of the 1992 retail price of a typical bottle of liquor (\$3.49 of the \$12.20 price for a 750 ml bottle at 80 proof).
- State and local taxes alone account for 11% of the Alaska price. Federal taxes account for 18% (\$2.15/750 ml bottle) after the 1991 federal excise tax (FET) increase.
- Liquor taxes constitute 50% of state revenues from all beverage alcohol, but liquor accounts for less than 37% of total alcohol consumed in the state. The liquor revenue burden per gallon of actual alcohol is \$14.70.
- At \$5.60 per gallon, Alaska's revenue burden on liquor is 55% higher than the U.S. license state average.

Liquor tax hikes already have caused sales to fall decreasing state revenues:

- It is estimated that the January, 1991, 8% Federal tax increase cost the state \$210,000 in state revenue and cut employment in the state by 30 jobs.
- In 1983, when Alaska raised the excise tax rates on liquor to \$5.60 per gallon, liquor consumption in the state declined 11%.
- The 19% liquor FET increase of October, 1985, was followed by a 5.6% decline in the tax base nationwide. Alaska citizens paid an additional \$1.6 million to the federal government in higher liquor taxes.

Alaska's liquor industry is in a persistent downturn – this means lost revenue:

- Apparent consumption of liquor is down 21% in Alaska since 1983, an average drop of 2.9% per year. Liquor consumption declined 5.6% in 1991 alone.
- Nationwide, liquor apparent consumption has fallen an average of 2.0% annually from 1981 to 1990.



Excessive Tax Burden Distilled Spirits, 1992

ALASKA

\$3.49 (29%) Goes
to Taxes and Fees

Retail Price of a Typical
750-ml Bottle of
80 Proof Spirits:
\$12.20

Alaska State Legislature

FEB 15 1993

Telephone Number:
(907) 465-4942

FAX Number:
(907) 465-2997

Session Address:
State Capitol, Room 125
Juneau, Alaska 99801-1182



Chair:
Rules Committee

Vice-Chair:
Finance Committee

Member:
Judiciary Committee
Legislative Council

Senator George Jacko

MEMORANDUM

TO: Senator *Handy* Philips, Chair
Senate Community and Regional Affairs Committee

FROM: Senator *George* Jacko, Chair
Senate Rules Committee

DATE: February 15, 1993

RE: Scheduling request -- SB 42

=====
This memo is to respectfully request that Senate Bill 42 be scheduled for a hearing at your earliest convenience.

SB 42 will enable communities to hold local elections to impose an alcohol sales tax at a higher rate than other commodities subject to sales tax. Currently, Alaska law does not give municipalities this option.

Many communities in my district are supportive and view this legislation as a potential source for increased revenue. As oil production continues to decline it is apparent that local governments will have to generate more local revenue. SB 42 offers municipalities another revenue tool to work with.

Please contact Bryce Edgmon of my staff at 4942 for further information. Thank you for considering this request.

GJ/be

enclosure

SOUTHWEST ALASKA MUNICIPAL CONFERENCE

RESOLUTION NO. _____
Sales tax on alcohol

A RESOLUTION OF THE SOUTHWEST ALASKA MUNICIPAL CONFERENCE
SEEKING REPEAL OF THE LEGISLATIVE PROHIBITION OF HIGHER RATES
OF SALES TAX ON THE SALES OF ALCOHOLIC BEVERAGES BY
MUNICIPALITIES.

WHEREAS, it is well established that significant sums of money are
spent by municipalities as a result of the sale of alcoholic
beverages in these municipalities, and

WHEREAS, the members of SWAMC believe that the liquor industry
should bear more of the costs associated with such sales, and

WHEREAS, Alaska law apparently does not presently allow the
imposition of a sales tax upon alcoholic beverages at a rate higher
than the general sales tax rate, now therefore,

BE IT RESOLVED by the Southwest Alaska Municipal Conference that
AS 4.21.0010(c) be amended to allow a municipality to impose a
sales tax on alcoholic beverages only and to allow a sales tax on
alcoholic beverages at a higher rate than is imposed on other sales
within the municipality.

SOUTHWEST ALASKA MUNICIPAL CONFERENCE

DATED: _____

By: _____

Alice J. Ruby
P.O. Box 121

Dillingham, Alaska 99576

November 11, 1992

Senator George Jacko
Alaska State Legislature
3111 C Street, Suite 200C
Anchorage, Alaska 99503-3957

Dear Senator Jacko,

I was given copies of your letters to Mr. Graper and Mr. Torrisi in my recent Council packet. I was very happy to be made aware of your willingness to work on the alcohol taxation issue during the upcoming legislative session. As you may be aware, a resolution submitted by the City of Dillingham supporting this effort was adopted by the Southwest Alaska Municipal Conference during their Fall Conference.

I would like to offer my support for the effort to amend the statute. Thank you for your time and interest.

Sincerely,



Alice Ruby

TORRISI & SNYDER
ATTORNEYS AT LAW
Box 210 DILLINGHAM, AK 99576
(907) 842-5608

FREDERICK TORRISI

September 14, 1992

DAVID B. SNYDER

George Jacko
Box 47001
Pedro Bay, Alaska 99647

Dear George:

Enclosed is a copy of a draft resolution that I prepared for SWAMC seeking amendment of AS 4.21.010(c), the issue we discussed when you were in Dillingham. Lagos v. City of Sitka was the court decision that made it plain that this statute is an obstacle to taxing the sale of booze at a rate higher than other items.

I'm sure you will be receiving the official version of this from SWAMC later. It is an issue that merits attention, and it will be interesting to see who leads the opposition. Please let me know if I can help on this.

Sincerely,
TORRISI & SNYDER



Fred Torrison
Attorney

FT:ilk
enclosure

cc: Henry E. Graper, Jr., City Manager

jury instruction defining sale as requiring a transfer of title from the defendant to the consumer. *Herrera v. State*, 753 P.2d 150 (Alaska Ct. App. 1988).

Conviction and sentence affirmed.

In accord with main pamphlet. *Tuckfield v. State*, 805 P.2d 982 (Alaska Ct. App. 1991).

Sentence of six months' incarceration as a condition of receiving a suspended imposition of sentence, upon conviction of one

count of selling intoxicating beverages without a license in a local option area, was not clearly mistaken, where defendant had set up a commercial enterprise, although of short duration, and sold a pint of whiskey to a man who murdered a woman shortly after buying the whiskey. *Wassille v. State*, 790 P.2d 1385 (Alaska Ct. App. 1990).

Cited in *Cleland v. State*, 759 P.2d 553 (Alaska Ct. App. 1988).

Chapter 21. General Provisions.

Section

- 10. Municipal regulation
- 15. Private manufacture of alcoholic beverages

Section

- 65. Posting of warning signs
- 80. Definitions

Sec. 04.21.010. Municipal regulation. (a) A municipality may adopt ordinances governing the importation, barter, sale, and consumption of alcoholic beverages within the municipality and may ban possession of alcoholic beverages under AS 04.11.498(d) or (e). An ordinance adopted under this section may not be inconsistent with this title or regulations adopted under this title.

(b) If, as a result of an election held in accordance with AS 04.11.502 in a municipality, the board is prohibited from issuing, renewing, or transferring a license between holders or locations or if the importation of alcoholic beverages is prohibited in the municipality, the municipality may adopt an ordinance making the sale or importation of alcoholic beverages a misdemeanor. The ordinance may not be inconsistent with this title or the regulations adopted under this title.

(c) A municipality may not impose taxes on alcoholic beverages except a

- (1) property tax on alcoholic beverage inventories;
- (2) sales tax on alcoholic beverage sales if sales taxes are imposed on other sales within the municipality;
- (3) sales tax on alcoholic beverage sales that was in effect before July 1, 1985; and
- (4) sales and use tax on alcoholic beverages if the sale of alcoholic beverages within the municipality has been prohibited under AS 04.11.490.

(d) At least 10 days before the date set for municipal action on an application for the issuance, renewal, relocation, or transfer of ownership of a proposed license, the municipality shall provide written notice of the proposed action and the time and place for a hearing to a community council that

- (1) is established by municipal charter or ordinance to advise the municipal governing body; and