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CS FOR SENATE BILL NO. 56(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 2/10/93
 Referred: JUD, FIN

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE BUDGET AND
 AUDIT COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the budget reserve fund established under art. IX, sec. 17,
 2 Constitution of the State of Alaska; and providing for an effective date."

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

4 * Section 1. AS 37.10 is amended by adding new sections to read:

5 **ARTICLE 6. BUDGET RESERVE FUND.**

6 **Sec. 37.10.410. ADMINISTRATIVE PROCEEDINGS INVOLVING TAXES.**

7 (a) The following money received by the state is considered to be received as a result
 8 of the termination of an administrative proceeding for purposes of applying art. IX,
 9 sec. 17(a), Constitution of the State of Alaska:

10 (1) past due taxes that are received by the state after a request for an
 11 informal conference under AS 43.05.240(a) is made to the Department of Revenue,
 12 together with penalties and interest on the taxes;

13 (2) past due taxes that are received by the state after a request for a
 14 formal hearing under AS 43.05.240(b)(1) is made to the Department of Revenue,

1 together with penalties and interest on the taxes.

2 (b) To the extent that an administrative proceeding involves taxes that are not
3 due at the time the request for the proceeding was made under AS 43.05.240(a) or
4 (b)(1), money received by the state as a result of the proceeding is not considered to
5 be received as a result of the termination of an administrative proceeding for purposes
6 of applying art. IX, sec. 17(a), Constitution of the State of Alaska.

7 Sec. 37.10.420. MONEY AVAILABLE FOR APPROPRIATION. (a) For
8 purposes of applying art. IX, sec. 17(b), Constitution of the State of Alaska, in
9 determining the amount of money appropriated for a previous fiscal year, only money
10 appropriated from the sources used to calculate the money available for appropriation
11 for the current fiscal year shall be considered. For purposes of applying art. IX,
12 sec. 17(b) and (d), money available for appropriation for the current fiscal year does
13 not include federal funds, money in the earnings reserve account established under
14 AS 37.13.145, or money held in trust for a particular purpose. Money available for
15 appropriation for the current fiscal year is money in the general fund, including money
16 from lapsed appropriations, that has not been appropriated during a previous fiscal year

17 (1) for expenditure during any fiscal year; or

18 (2) to a special fund or account established by law.

19 (b) If the amount appropriated from the budget reserve fund has not been
20 repaid under art. IX, sec. 17(d), Constitution of the State of Alaska, the Department
21 of Administration shall transfer to the budget reserve fund the amount of money in the
22 general fund available for appropriation on June 30 of the fiscal year, or as much of
23 it as is necessary to complete the repayment. The transfer shall be made on or before
24 December 16 of the following fiscal year.

25 * Sec. 2. APPLICATION. AS 37.10.410, added by sec. 1 of this Act, applies to taxes that
26 are received by the state after June 30, 1993, together with penalties and interest on the taxes.

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

Retroactive to

583 Pad 381



Official Business


Alaska State Legislature

SENATE STATE AFFAIRS COMMITTEE

State Capitol
Juneau, AK 99801-1182

MEMORANDUM

TO: Senator Loren Leman, Chairman
Senate State Affairs Committee

FROM: Portia Babcock, Committee Staff
Senate State Affairs Committee 

DATE: February 10, 1993

SUBJECT: New Proposed STA Committee Substitute for SB56 (453/O)

The State Affairs subcommittee on SB56 met in work session on February 8, 1993 at 9:00AM and came back with the following proposed changes to STA CS for SB56 (453/E) and these changes have been incorporated in the NEW proposed STA CS for SB56 (453/O):

Sectional Comparison:

Title is amended to include the effective date.

Section 1

Page 1, line 10:

Delete "the subject of"

Insert "received by the state after"

Page 1, line 11:

Delete "and that are received by the state at least six months after the request for the informal conference"

Page 1, line 14

Delete "the subject of a formal hearing held under AS 43.05.240(c) and that are received by the state after the hearing has been requested,"

Insert: "received by the state after a request for a formal hearing under AS 43.05.240(b)(1) is made to the Department of Revenue,"

Page 2, line 10

Delete: "money available for appropriation for a fiscal year does not include money in the earnings reserve account established under AS 37.13.145."

Insert: "in determining the amount of money appropriated for a previous fiscal year, only money appropriated from the sources used to calculate the money available for appropriation for the current fiscal year shall be considered. For purposes of applying art. IX, sec. 17(b) and (d), money available for appropriation for the current fiscal year does not include federal funds, money in the earnings reserve account established under AS 37.13.145, or money held in trust for a particular purpose."

State Affairs Memorandum
Committee Staff, SB56
Page 3

Page 2, line 18:

Delete "Revenue"

Insert "Administration"

Page 2, line 21:

Delete "November 15"

Insert "December 15"

Page 2, line 25:

Add a new section:

"*Sec.2. APPLICATION. AS 37.10.410, added by sec. 1 of this Act, applies to taxes that are received by the state after June 30, 1993, together with penalties and interest on the taxes."

Page 2, line 27:

Add a new section:

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

Representative Kay Brown and Jerry Burnett, Senator Randy Phillip's office will be available to explain changes.

STATE OF ALASKA

THE LEGISLATURE

1990

Source
HCS C555JR 5(Fin) am H

Legislative
Resolve No.

129



Proposing an amendment to the Constitution of the State of Alaska relating to the budget reserve fund; depositing into the budget reserve fund, except for money deposited into the permanent fund, all money received by the state after July 1, 1990, as a result of the termination, through settlement or otherwise, of an administrative proceeding or of litigation in state or federal court involving mineral lease bonuses, rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments or bonuses, or involving taxes imposed on mineral income, production or property; allowing an appropriation from the fund only if the amount available for appropriation for a fiscal year is less than the amount appropriated for the previous fiscal year or upon the affirmative vote of three-fourths of the members of each house of the legislature.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1, Article IX, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 17. BUDGET RESERVE FUND. (a) There is established as a separate fund in the State treasury the budget reserve fund. Except for money deposited into the permanent fund under Section 15 of this article, all money received by the State after July 1, 1990, as a result of the termination, through settlement or otherwise, of an administrative proceeding or of litigation in a State or federal court involving mineral lease bonuses, rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments or bonuses, or involving taxes imposed on mineral income, production, or property, shall be deposited in the budget reserve fund. Money in the budget reserve fund shall be invested so as to yield competitive market rates to the fund. Income of the fund shall be retained in the fund. Section 7 of this article does not apply to deposits made to the fund under this subsection. Money may be appropriated from the fund only as authorized under (b) or (c) of this section.

(b) If the amount available for appropriation for a fiscal year is less than the amount appropriated for the previous fiscal year, an appropriation may be made from the budget reserve fund. However, the amount appropriated from the fund under this subsection may not exceed the amount necessary, when added to other funds available for appropriation, to provide for total appropriations equal to the amount of appropriations made in the previous calendar year for the previous fiscal year.

(c) An appropriation from the budget reserve fund may be made for any public purpose upon affirmative vote of three-fourths of the members of each house of the legislature.

(d) If an appropriation is made from the budget reserve fund, until the amount appropriated is repaid, the amount of money in the general fund available for appropriation at the end of each succeeding fiscal year shall be deposited in the budget reserve fund. The legislature shall implement this subsection by law.

* Sec. 2. The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

Sen. Randy Phillips
Chairman
Rep. Terry Martin
Vice Chairman
Sen. Al Adams
Sen. Steve Frank
Sen. Steve Rieger
Sen. Bert Sharp
Rep. John Davies
Rep. Mark Hanley
Rep. Ron Larson
Rep. Eileen MacLean

State of Alaska



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Legislative Budget and Audit Committee

Memorandum

TO: Senator Loren Leman, Chairman
Senate State Affairs Committee

FROM: Senator Randy Phillips, Chairman ^{R.E.P.}
Legislative Budget and Audit Committee

DATE: February 1, 1992

RE: Sponsor Statement for: Senate Bill 56,
"An Act relating to the budget reserve fund established under
art. IX, sec. 17, Constitution of the State of Alaska."

In November 1990, the voters passed a ballot issue amending the Alaska State Constitution and establishing the Constitutional Budget Reserve Fund. This Constitutional Amendment provided that "all money received by the state after July 1, 1990, as a result of the termination, through settlement or otherwise, of an administrative proceeding or of litigation in a State or federal court involving mineral lease bonuses, rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments of bonuses, or involving taxes imposed on mineral income, production, or property, shall be deposited in the budget reserve fund."

The term "administrative proceeding" is not defined which leaves the possibility that each Administration may define this term and decide at which point money should be deposited to the Constitutional Budget Reserve Fund. The Hickel Administration has defined "administrative proceeding" as a formal adjudicatory proceeding and has determined that

Sponsor Statement

only money from disputes that have gone to the formal hearing stage should be deposited to the Constitutional Budget Reserve Fund.

Senate Bill 56 is the end product of work done by a subcommittee of the Legislative Budget and Audit Committee. Senate Bill 56 is an attempt to establish legislation that will clarify how and when oil and gas royalty settlements are deposited into the Constitutional Budget Reserve Fund established under Article IX, Section 17 of the Alaska State Constitution. It provides a statutory definition of "administrative proceeding" as used in the Constitution.

SB 56 also defines the terms "amount available for appropriation" as it is used in part (b), Article IX, Section 17 of the Alaska State Constitution. Currently, the "amount available for appropriation" includes permanent fund earnings and possibly the corpus of some state owned corporations such as AIDEA and AHFC. This broad definition was not intended by the sponsors of the Constitutional Amendment that established the Constitutional Budget Reserve Fund. The result of such a broad definition is that the Constitutional Budget Reserve Fund might not be available for the purposes for which it was established.

If you have any questions or comments do not hesitate to call me at 4949. Your cooperation is appreciated.

Sen. Randy Phillips
Chairman

Rep. Terry Martin
Vice Chairman
Sen. Al Adams
Sen. Steve Frank
Sen. Steve Rieger
Sen. Bert Sharp
Rep. John Davies
Rep. Mark Hanley
Rep. Ron Larson
Rep. Eileen MacLean

State of Alaska



Legislative Budget and Audit Committee

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February 2, 1993

Sectional Analysis

SB 56

Section 1: AS 37.10.410

This section clarifies what is meant by the term "administrative proceeding" in article IX, section 17 of the Alaska Constitution, which creates the Constitutional Budget Reserve Fund.

It specifies that revenues gained from tax cases that remain in "informal hearing status" for a period exceeding six months would be deposited in the Constitutional Budget Reserve Fund. Revenues gained from tax disputes settled before the six month deadline would revert to the general fund. This section also specifies that revenues gained from tax disputes that advance to "formal hearing" status would be deposited into the Constitutional Budget Reserve Fund.

Language in this section also specifies that only tax settlement revenues that relate to past-due taxes and penalties would be deposited into the Constitutional Budget Reserve Fund. In the event that a tax settlement resolves a dispute with a taxpayer that relates to payments in future years, those future payments would go into the general fund.

Section 1: AS 37.10.420

This section defines "amount available for appropriation" for the purposes of determining if an appropriation from the Constitutional Budget Reserve may be made.

The amount available for appropriation is defined as those revenues that are considered general funds, which would include oil revenues, tax revenues and general fund program receipts. The section also specifies that the earnings reserve account of the Permanent Fund and revenues contained in other special funds or accounts, such as AHFC and AIDEA revenues, would not be considered as money available for appropriation.

This section provides direction to the administrative branch on repayment of funds to the Constitutional Budget Reserve Fund. It specifies that if money is owed to the reserve fund and if a general fund surplus exists at the end of a fiscal year, a repayment to the Constitutional Budget Reserve Fund must be made by November 15 of the following fiscal year.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

April 24, 1992

The Honorable Darrel J. Rexwinkel
Commissioner
Department of Revenue
P. O. Box 110400
Juneau, AK 99811

RE: Interpretation of Budget
Reserve Fund (Alaska Const.
art. IX, § 17)
Our File #'s: 663-91-0298
663-92-0189; -0256; -0107
Opinion No. 1

Dear Commissioner Rexwinkel:

This is in reply to your request for our views on several questions which you raise concerning Article XI, Section 17 of the Alaska Constitution. This constitutional provision, which became effective on January 2, 1991, following its ratification by the voters as an amendment to the Alaska Constitution, creates a budget reserve fund and requires that the proceeds of certain tax and mineral revenue disputes be deposited into the fund. This amendment also establishes limitations on the legislature's ability to spend money from the budget reserve fund.

The questions which you have presented to us and our views on them are as follows:

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

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The Honorable Darrel J. Rexwinkel
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I. SUMMARY

1. Does the dedication required by the amendment apply to the proceeds received from the termination of administrative proceedings and lawsuits before the effective date of the amendment?

Yes. The amendment applies to all such proceeds received after July 1, 1990.

2. Does the amendment repeal the statutory budget reserve fund established by AS 37.05.340?

No. The preexisting statutory budget reserve fund remains a viable depository of public funds after the adoption of the amendment.

3. Does the amendment supersede other valid dedications of proceeds that are within the scope of the amendment?

No. Under the amendment, other dedications of revenue may apply to settlement proceeds prior to the dedication of revenue to the fund created by the amendment.

4. What is the meaning of the term "administrative proceeding" in the amendment as applied to tax disputes pending before the Department of Revenue?

"Administrative proceeding," in the amendment, means formal adjudicatory proceedings.

II. ANALYSIS

- A. Does the dedication required by the amendment apply to proceeds received by the state before the effective date of the amendment?

The amendment in pertinent part provides:

Except for money deposited into the permanent fund under Section 15 of this article, all money received by the state after July 1, 1990, as a result of the termination, through settlement or otherwise, of an administrative proceeding or of litigation in a State or federal court involving mineral lease bonuses, rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments of bonuses, or involving taxes imposed on mineral income, production, or property, shall be deposited in the budget reserve fund.

Alaska Const. art. IX, § 17 (emphasis added). The amendment expressly applies to revenues received before its effective date.

The Alaskan constitution provides that, "unless otherwise provided in the amendment, [the amendment] becomes effective thirty days after the certification of the election returns by the lieutenant governor." Alaska Const. art. XIII, § 1 (emphasis added). The state constitution is construed using the same rules that apply to the construction of statutes. 2 Norman J. Singer, Sutherland Statutory Construction § 41.04 (rev. 4th ed. 1986).

Under most circumstances, a constitutional amendment should be construed to avoid retroactive effects. Cf. AS 01.10.090 ("No statute is retrospective unless expressly declared therein"). However, "the electorate may nonetheless achieve retroactive

effects by clear and unambiguous language." State ex rel. Maloney v. McCartnev, 223 S.E.2d 607, 613 (W. Va. 1976) (citing 1 T.M. Cooley, Cooley's Constitutional Limitations (136-37 (8th ed.))); see also Matthews v. Quinton, 362 P.2d 932 (Alaska 1961), cert. denied, 368 U.S. 517 (1962) (constitutional provision may retroactively validate statute previously held unconstitutional, since constitutional provision contained reference to statute intended to be validated). Here, since the amendment clearly and unambiguously states that it applies to revenues received after July 1, 1991, it applies retrospectively to settlement proceeds received after the beginning of fiscal year 1991, even though the amendment did not take effect until January 2, 1991.

B. Does the amendment repeal the statutory budget reserve fund established by AS 37.05.54?

1. Status of the 1991 appropriation to the statutory fund

The same legislative session that adopted the constitutional budget reserve fund also purported to appropriate settlement revenues into a statutory fund established in AS 37.05.540. The statutory fund appropriation provided:

That portion of the money received by the state on or after the effective date of this Act as a result of the termination, through settlement or otherwise, of an administrative proceeding or litigation involving mineral lease rentals, royalties, royalty sale proceeds, or federal mineral revenue sharing payments or bonuses that is not dedicated to the permanent fund under art. IX, sec. 15, Constitution of the State of Alaska, or to

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the public school trust fund under AS 37.14.150 is appropriated to the budget reserve fund (AS 37.05.540).

Ch. 194, SLA 1990.

However, this appropriation was not obligated after it took effect. In fact, the appropriation was not encumbered or expended pending voter ratification of the budget reserve fund amendment. Upon ratification, all amounts covered by the appropriation were deposited in the fund created by the amendment.

Thus, the legislature did not intend to have the chapter 194 appropriation processed if the amendment was ratified by the voters. This appropriation was a backup measure designed to ensure that known settlement proceeds were reserved to cover future budgetary shortfalls.

2. Continued viability of the statutory budget reserve fund

The Department of Administration has asked whether the constitutional budget reserve fund operates to impliedly repeal the statutory fund. In deciding what constitutes a repeal in a conflict between a state statute and a state constitutional provision, we apply the same considerations as in conflicts between two state statutes. Fine & Son v. Hall, 21 P.2d 697 (Cal. App. 1933); see also 16 C.J.S. Constitutional Law § 41, at 117-20. In Alaska, a repeal by implication is not a favored construction. Warren v. Thomas, 568 P.2d 400 (Alaska 1977). Where the provisions

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are irreconcilable, the later act, to the extent of conflict, constitutes an implied repeal of the earlier one. If the later act covers the entire subject of the earlier one and is intended as a substitute, it will operate to repeal the earlier act. Peter v. State, 531 P.2d 1263 (Alaska 1975).

Here no irreconcilable differences exist between the amendment and the statute. Moreover, no evidence has come to light that the framers of the amendment intended to subsume the statutory fund within the constitutional fund. Therefore, the statutory fund continues in effect until amended or repealed by the legislature.

C. Does the amendment supersede other valid dedications of proceeds that are within the scope of the amendment?

Although the amendment expressly allows dedications to the Alaska Permanent Fund, there are other dedications for which no provision is made by the amendment. Specifically, the amendment does not resolve conflicts with certain dedications of revenue established by statute to satisfy trust obligations imposed by federal law.

Under AS 37.14.150, one-half of one percent of state revenue derived from settlements subject to the amendment must be deposited in the public school trust fund (AS 37.14.110). They may also be subject to a conditional dedication in favor of the Mental Health Trust Income Account (AS 37.14.011), if the settlement

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proceeds constitute "unrestricted general fund revenue." These two trust funds are statutory dedications of state revenue required by federal law. See, e.g., 1985 Inf. Op. Att'y Gen. (Aug. 13; 366-403-85). The state constitution permits dedications that existed before statehood or that are required for participation in a federal program. Alaska Const. art. IX, § 7.

The amendment must be construed to avoid conflict with other provisions of the Alaska Constitution. Abrams v. State, 534 P.2d 91 (Alaska 1975). Whenever reasonably possible, related provisions of an enactment should be harmonized and given their full meaning and effect. Park v. State, 528 P.2d 785 (Alaska 1974). Absent a clear expression of intent that the amendment must take precedence over other valid dedications required by federal law, these pre-existing dedications should be excluded from the reach of the amendment. Research into the history of the amendment reveals no evidence of such an intent.

Therefore, the amendment applies to proceeds net of dedications otherwise permitted under Article IX, Section 7.

D. What is the meaning of the term "administrative proceeding" in the amendment as applied to tax disputes pending before the Department of Revenue?

Dedicated to a budget reserve fund by the amendment are disputed mineral lease bonuses, rentals, royalties, royalty sale proceeds, federal revenue sharing of bonuses, and the proceeds

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taxes imposed on mineral income, production, or property received "as a result of the termination, through settlement or otherwise, of an administrative proceeding or of litigation in a state or federal court."

Dedications to the budget reserve fund from the termination of "litigation in a state or federal court" are readily identifiable. Since litigation is initiated with the filing of a complaint, the proceeds from resolution of mineral revenue disputes received following the filing of a complaint involving the disputed liability must be deposited in the budget reserve fund. As a general rule, litigation is the only formal vehicle for resolving disputes involving mineral revenues other than taxes, so normally money received by the state from these revenues will be dedicated to the budget reserve fund.

No ambiguity exists as to whether revenues received as the result of the termination of formal adjudicatory hearings conducted by the Department of Revenue pursuant to statute are dedicated to the budget reserve fund. They fall squarely within the ambit of the amendment. Whether the informal conference process established by AS 43.05.240 for the resolution of tax disputes is an "administrative proceeding" is a question which requires detailed analysis.

1. The conference process for tax disputes

Alaska Statute 43.05.240, enacted in 1976, provides both formal and informal mechanisms for the resolution of state tax disputes. The informal procedure furnishes the taxpayer an opportunity to present objections to a departmental official at an informal conference. AS 43.05.240(a). Corrections to the assessment or penalty are required to be made by the Department if, as a result of the informal conference, the Department determines that a correction is warranted. Taxpayers dissatisfied with the outcome of the informal conference may request a formal conference.¹

Under the formal hearing procedure, an adversarial hearing is held at which the taxpayer may present evidence and argument relevant to the amount of the tax and penalty owing the state. AS 43.05.240(b). The hearing officer is empowered to issue subpoenas, administer oaths, and make inquiries necessary to determine the amount of tax or penalty due, and, following the hearing, is required to issue a written, final decision adjudicating the taxpayer's liability. AS 43.05.240(c). Only after exhausting the formal hearing procedure may the taxpayer appeal to the superior court. AS 43.05.240(d).

¹ An aggrieved taxpayer may bypass the informal conference by immediately requesting a formal hearing. AS 43.20.240(b)(1).

2. Rules of construction to determine meaning of "administrative proceeding"

a. Common meaning of "administrative proceeding"

The Alaska Supreme Court recently noted that an "important right of the people implicated in all cases of constitutional construction" is the "right to have the constitution upheld as the people ratified it." Citizens Coalition for Tort Reform v. McAlpine, 810 P.2d 162, 168 (Alaska 1991). See also Thomas v. Bailey, 595 P.2d 1 (Alaska 1979). At issue in Citizens Coalition was the meaning of "rule" in the context of the constitutional provision defining the rule-making power of the Alaska Supreme Court. The proper approach to the analysis of constitutional provisions, the court explained, is as follows:

Because of our concern for interpreting the constitution as the people ratified it, we generally are reluctant to construe abstrusely any constitutional term that has a plain ordinary meaning. Rather, absent some signs that the term at issue has acquired a peculiar meaning by statutory definition or judicial construction, we defer to the meaning the people themselves probably placed on the provision. Normally, such deference to the intent of the people requires "adherence to the common understanding of words."

Id. at 169 (citations omitted). Applying this approach, the court looked to a standard dictionary to determine the common understanding of the word at issue.

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This approach is appropriate here to ascertain the meaning the people themselves probably placed on the term "administrative proceeding" when they ratified the proposed amendment.² In a legal context, "proceedings" is defined in Webster's Third New International Dictionary at 1807 (Unabridged 1976) as "the course of procedure in a judicial action or in a suit in litigation: legal action . . . (2) a particular action at law or case in litigation"

Since this definition makes reference to "litigation," and "cases or actions at law," the plain, ordinary meaning of these words is important, too. "Litigate" is defined as "to carry on a legal contest by judicial process . . . to contest in law." Webster Ninth New Collegiate Dictionary at 698 (1987). Thus, in the legal context, the common understanding of the term "proceeding" leads to the conclusion that only those administrative actions which can be analogized to legal contests are within the amendment.

Informal conferences fall outside the ambit of the common understanding of litigation or legal contests. A conference, in the common understanding of the word, is inapposite to a legal

² Since the term "administrative proceeding" has not acquired a particular meaning by statutory definition or judicial construction, reference to a standard dictionary should be employed. See State v. Woods, 345 N.W.2d 457, 474 (Wis. 1984) ("[t]he common and approved usage of [proceeding] in a statute may be ascertained by reference to a recognized dictionary").

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contest. For example, Tormont Webster's Dictionary defines a conference as "a meeting for consultation or discussion." The Tarrant Webster's Illustrated Encyclopedia Dictionary 367 (1990). This common understanding of the word squares with the statutory process for informal resolution of tax disputes. By statute, the informal conference is a meeting between the taxpayer (or the taxpayer's representative) and a department "appeals officer." 15 AAC 05.020. The "appeals officer" at the informal conference is not a judicial or quasi judicial officer. The written decision of the appeals officer following an informal conference simply sets out the points of disagreement between the parties. It is not a process which results in the protection of a legal right, or redresses or prevents a wrong, as does a judgment or other order enforceable by judicial process. Labeling the statutory conference as "informal" supports the conclusion that the "informal conference" is a process inherently different than a legal contest.

Application of well recognized tenets of statutory construction also yields the conclusion that the informal conference procedure is not an "administrative proceeding." Constitutional provisions are interpreted under the same principle as those applied in the interpretation of the statutes. See Citizens Coalition at 169 ("the basic principles of statutory interpretation apply to constitutions"). A "widely applied tenet

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of statutory interpretation [is] that if the legislative intent or general meaning of a statute is not clear, the meaning of doubtful words may be determined by reference to their association with other associated words and phrases." State, Real Estate Commission v. Johnston, 682 P.2d 383, 386-87 (Alaska 1984) (quoting 2A C. Dallas Sands, Sutherland Statutory Construction § 47.16 at 101 (4th ed. 1973)). Another rule of statutory construction applicable here is that provisions relating to the same subject matter should be read as a whole so that a total scheme evolves which maintains the integrity of each provision and avoids ignoring one provision over another. Conner v. State, 696 P.2d 680, 682 n.3 (Alaska App. 1985). Since in the amendment the term "administrative proceeding" appears in association with the phrase "litigation in a state or federal court," the electorate must have understood that the term "administrative proceeding" was used to express a process akin to litigation. This conclusion is supported by reference to the words "termination" and "settlement" used earlier in the amendment; these are words commonly used in reference to lawsuits, not conferences or meetings.

b. Harmonizing the amendment with the constitutional preference for unrestricted revenues

A preference for unrestricted revenues is implicit in the general prohibition against dedicated funds contained in the Alaska Constitution. Art. IX, § 7. However, under the amendment money required to be deposited into the budget reserve fund is dedicated, and is not available for the unfettered exercise of the legislative power of appropriation. The divergence between these provisions is minimized by construing "administrative proceeding" to avoid an expansive interpretation of the budget reserve amendment. See Abrams, 534 P.2d at 95 (if possible, conflicting provisions of constitution should be harmonized).

3. Legislative and electoral history

In determining the meaning of a term in the constitution, courts also scrutinize the history of the constitutional provision at issue. Citizens Coalition, 810 P.2d at 170. Unfortunately, here the history of the amendment provides little guidance for interpretation of "administrative proceeding."³

³ All tax disputes arising out of revenues from the development of the North Slope have been resolved through the administrative process. These informal conferences and formal hearings are confidential by law. AS 43.05.230. However, prior to enactment of the amendment, two settlements were publicly announced by the taxpayer and the state jointly because of the magnitude of the dollars involved. Both cases involved tax disputes with Atlantic Richfield Company. Both cases were administrative proceedings in formal hearing before the Department of Revenue. It appears that
(continued...)

- a. The legislative history of the amendment provides no assistance in interpreting "administrative proceeding."

Article IX, section 17, was adopted by the 1990 legislature as Legislative Resolve No. 129. Although the vehicle for the Resolve was a Senate Resolution, SJR 5, that Resolution had earlier been drafted largely by the House Finance Committee as CSHJR 66 (Fin). An amendment adopted on the House floor essentially replaced the original Senate Resolution with CSHJR 66 (Fin), and the Senate later concurred with this amendment.

The original version of SJR 5 that came to the House from the Senate provided:

Except for money deposited into the permanent fund under Section 15 of Article IX, all money received by the State as a result of the termination through settlement or otherwise, of litigation in State or federal court involving mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue sharing payments and bonuses shall be deposited in the budget reserve fund.

CSSSSJR 5 (Fin). The House Finance Committee modified this Resolution by, inter alia, including the reference to "an administrative proceeding" and adding "or involving taxes imposed on mineral income, production, or property."

The additional language was proposed to the House Finance Committee by Representative Kay Brown, and was drafted by the House

³(...continued)
these settlements were part of the inspiration for the amendment.

Fiscal Policy Subcommittee in conjunction with the Office of Management and Budget. Mary Halloran, former Governor Cowper's budget officer, urged the committee to establish a budget reserve fund that included not only amounts received from the pending litigation--including the Amerada Hess and the Dinkum Sands cases--but also amounts received for "back taxes still under consideration in the Department of Revenue." House Finance Committee, Committee Tape 90-95, side 1 (May 1, 1990).⁴

These few historical items shed no light on interpretation of "administrative proceeding," and nothing else in the legislative process shows that a committee, subcommittee, or legislator directly considered the question of what constitutes an "administrative proceeding."⁵

- b. The ballot summary provided to the electorate before ratification provides no guidance in the interpretation of the term

When a proposed constitutional amendment is to be presented to the electorate for ratification, the official

⁴ Amerada Hess is a longstanding dispute in state court over the value of royalty oil to which the state was entitled; the original amount in dispute approached a billion dollars. Dinkum Sands, litigation in the United States Supreme Court, involves the location of the boundary between state and federal offshore mineral rights in the oil-rich Beaufort Sea; several hundred million dollars are at issue.

⁵ Subsequent pronouncements of legislators regarding the legislative intent in enacting a provision "are irrelevant to a determination of legislative intent." Lynden Transport, Inc. v. State, 532 P.2d 700, 716 (Alaska 1975).

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elections pamphlet must include the full text of the proposed amendment, the ballot title and summary of the proposal prepared by the director of the Division of Elections or the lieutenant governor, a neutral summary of the amendment prepared by the Legislative Affairs Agency, and statements in support of and in opposition to the amendment. AS 15.58.020(6).

The ballot summary for the budget reserve fund amendment described the revenue source for the fund as "money the state receives from mineral revenue lawsuits or administrative actions." The neutral summary, prepared by the Legislative Affairs Agency uses the term "administrative proceeding" to explain one of the sources of potential funding. Neither summary described or defined the reach of the amendment with respect to "administrative proceedings." Nor did the statement in support of the amendment, authored by Senator Faiks and Representatives Brown and Phillips, distinguish between the two types of administrative processes involved in resolution of tax disputes.⁶ All statements in the

⁶ This statement in the voter pamphlet makes three oblique references to administrative proceedings:

Revenues from mineral or oil and gas legal settlements and administrative proceedings will be deposited into the Budget Reserve.

. . . .

Legal settlements involving mineral or oil and gas revenues received after July 1, 1990, will be
(continued...)

voter pamphlet associate the terms "administrative actions" or "administrative proceedings" with "lawsuits," providing additional support for the view that the "administrative action" referred to was a process in the nature of a legal contest or litigation.

c. The terms "windfalls" and "back taxes" are not helpful in resolving the issue

Although the terms "windfalls" and "back taxes" appear several times in the history of the amendment, they are of no real value to this inquiry. First, these terms do not appear in the text of the amendment, and cannot be grafted into it. See Gray v. State, 463 P.2d 897, 904 (Alaska 1970) (it is not for the court to rewrite statutes). Second, the amendment itself clearly places within the budget reserve fund proceeds of tax disputes that are neither longstanding nor "windfalls." For example, tax revenues arising from the early settlement of litigation initiated by the state to recover taxes cannot properly be called either "windfalls" or "back taxes."⁷ "Windfalls" are commonly understood to be

⁶(...continued)

deposited into the Budget Reserve. . . . If approved, the Budget Reserve Fund will help hold down spending by removing from the table the oil and gas revenue "windfalls" that result from pending litigation and tax disputes.

⁷ It would not be permissible to exclude settlement proceeds clearly within the scope of the amendment merely because those proceeds did not spring from "back taxes" or represent a
(continued...)

sudden and unexpected pieces of good fortune in financial form.⁸ Recoveries of assessed taxes are not unexpected nor, generally, sudden. "Back taxes" would encompass all assessed taxes not paid upon receipt of the tax bill, and surely the amendment was not intended to sweep within its purview all disputed taxes. If such were the case, virtually all major tax assessments would be required to be placed in the budget reserve fund. Further, patently clear is that the amendment snares "future taxes" as well as "back taxes."

In sum, there is no firm evidence that either the legislature or the public directly considered the question of what constitutes an administrative proceeding for the purposes of the amendment. Accordingly, no conclusions on the proper interpretation of the amendment can be drawn from its history.

4. Judicial decisions

While the interpretation of the amendment advanced here is based principally on an analysis of the text of the amendment, judicial decisions construing the phrases "administrative

⁷(...continued)

"windfall." The amendment clearly requires some tax recoveries for other than long-standing back taxes to be placed in the budget reserve fund.

⁸ According to William Safire, "'windfall' is a 400-year-old word that means an unexpected benefit, graphically describing the good fortune that falls to a passer-by when a piece of fruit is blown off a tree." William Safire, On Language 144 (1981).

proceeding" and "proceeding" provide helpful guidance for its interpretation. Research has revealed cases adopting an expansive definition of these terms as well as cases adopting a narrow definition of them. Generally, the outcomes in these cases turn on the context in which the term "administrative proceedings" is used. No cases were found interpreting "administrative proceeding" in a context similar to that of the amendment.

The more persuasive view expressed in the judicial decisions supports the conclusion that, in this context, "administrative proceeding" means "adjudicatory proceeding." See, e.g., Telco Communications v. Carbaugh, 885 F.2d 1225, 1227-30 (4th Cir. 1989) (an informal administrative fact-finding conference that was not "judicial in nature" was not an administrative proceeding for purposes of the Younger abstention doctrine); Manders v. Oklahoma ex rel. Dep't of Mental Health, 875 F.2d 263 (10th Cir. 1989) (a state agency's internal grievance procedure was not an "action or proceeding" within the meaning of § 706(k) of the 1964 Civil Rights Act, 42 U.S.C. § 2000e-5(k), governing awards of attorney's fees); American Centennial Ins. Co. v. EEOC, 722 F. Supp. 180 (D.N.J. 1989) ("proceeding" under § 709(e) of the 1964 Civil Rights Act, 42 U.S.C. § 2000e-8(e), which prohibits the disclosure of EEOC-obtained information "prior to the institution of any proceeding" under Title VII, did not include the EEOC's informal conference, conciliation, and persuasion process,

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undertaken after a charge is filed); Roosevelt-Wabash Currency Exchange v. Fornelli, 364 N.E.2d 449, 452-53 (Ill. App. 1977) (judiciary will review only an "administrative decision," defined as a decision "which terminates the proceedings before the administrative agency").

5. Conclusion

The amendment applies only to the proceeds of disputes that have progressed to an adjudicatory stage of the dispute resolution process. The amendment does not apply to the proceeds of disputes settled at the informal conference stage.⁹

Very truly yours,

Charles E. Cole
Attorney General

⁹ Nothing in this memorandum alters the previous advice given to the Department of Revenue concerning the power of the attorney general to approve the compromise of tax claims. In a 1990 formal opinion, we explained the extent of the attorney general's and the department's power to correct or compromise tax claims at various stages of assessment or administrative appeal. 1990 Op. Att'y Gen. No. 1 (Dec. 3, 1990) (the attorney general's approval of a settlement that has the effect of compromising a tax claim is mandatory, even if the settlement of the dispute occurs before the matter is considered an administrative proceeding for purposes of allocating the recovery to the budget reserve fund).

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STATE OF ALASKA

THE LEGISLATURE

1990

Source

HCS CSSSSJR 5(Fin) am H

Legislative
Resolve No.

129



Proposing an amendment to the Constitution of the State of Alaska relating to the budget reserve fund; depositing into the budget reserve fund, except for money deposited into the permanent fund, all money received by the state after July 1, 1990, as a result of the termination, through settlement or otherwise, of an administrative proceeding or of litigation in state or federal court involving mineral lease bonuses, rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments or bonuses, or involving taxes imposed on mineral income, production, or property; allowing an appropriation from the fund only if the amount available for appropriation for a fiscal year is less than the amount appropriated for the previous fiscal year or upon the affirmative vote of three-fourths of the members of each house of the legislature.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. Article IX, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 17. BUDGET RESERVE FUND. (a) There is established as a separate fund in the State treasury the budget reserve fund. Except for money deposited into the permanent fund under Section 15 of this article, all money received by the State after July 1, 1990, as a result of the termination, through settlement or otherwise, of an administrative proceeding or of litigation in a State or federal court involving mineral lease bonuses, rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments or bonuses, or involving taxes imposed on mineral income, production, or property, shall be deposited in the budget reserve fund. Money in the budget reserve fund shall be invested so as to yield competitive market rates to the fund. Income of the fund shall be retained in the fund. Section 7 of this article does not apply to deposits made to the fund under this subsection. Money may be appropriated from the fund only as authorized under (b) or (c) of this section.

(b) If the amount available for appropriation for a fiscal year is less than the amount appropriated for the previous fiscal year, an appropriation may be made from the budget reserve fund. However, the amount appropriated from the fund under this subsection may not exceed the amount necessary, when added to other funds available for appropriation, to provide for total appropriations equal to the amount of appropriations made in the previous calendar year for the previous fiscal year.

(c) An appropriation from the budget reserve fund may be made for any public purpose upon affirmative vote of three-fourths of the members of each house of the legislature.

(d) If an appropriation is made from the budget reserve fund, until the amount appropriated is repaid, the amount of money in the general fund available for appropriation at the end of each succeeding fiscal year shall be deposited in the budget reserve fund. The legislature shall implement this subsection by law.

* Sec. 2. The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.