

HJR

18

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

BILL NO. HJR 18

Revision Date	Dept. Affected <u>Office of the Governor</u>
Title <u>Const. Amdt.: Changing rate of a tax or license</u>	BRU <u>Elective Operations</u>
Sponsor <u>Representative Ivan</u>	Component <u>General and Primary Elections</u>
Requester <u>House State Affairs</u>	Component Serial No. <u>#22</u>

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Personal Services						
Travel						
Contractual		3.0				
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	3.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES []						
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FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF		3.0				
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	3.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: none

POSITIONS

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Full-time			0			
Part-time			0			
Temporary			0			

ANALYSIS: *(Attach a separate page if necessary)*

This figure includes the cost of providing information about this issue in the Official Election Pamphlet as required by AS 15.58, and the programming costs for counting votes cast on the measure. However, only four measures can be printed on a single ballot card. If this measure requires printing an additional ballot card, the costs will increase by \$56.0.

Prepared by <u>Dana LaTour</u>	Phone <u>465-5347</u>
Division <u>Division of Elections</u>	Date <u>1/31/97</u>
Approved by Co <u>Lt. Governor Fran Ulmer</u>	Date <u>1/31/97</u>
Agency <u>Office of the Lieutenant Governor</u>	

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HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: February 12, 1997

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 2/25/97

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HJR 18

HOUSE JOINT RESOLUTION NO. 18

DEDICATED FUNDS: RATE MAY BE CHANGED

Proposing an amendment to the Constitution of the State of Alaska relating to changing the rate of a tax or license that supports a dedication of its proceeds.

recommends it be replaced with the following committee substitute CS HJR 18 (STA) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) _____

fiscal note(s) Governors / 2/12/97

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Frank Dwyer</i>	✓			
<i>Joseph [unclear]</i>	✓			
<i>Chris Bueckle</i>	✓			
<i>Brian [unclear]</i>	✓			
<i>[unclear]</i>		✓		
<i>[unclear]</i>		✓		

CHAIR'S SIGNATURE *Chris Bueckle*

Alaska State House of Representatives
House District 39



Session

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Representative Ivan M. Ivan

MEMORANDUM

TO: Representative Con Bunde, Chair
House HESS Committee

FROM: Representative Ivan M. Ivan *[Signature]*

DATE: February 21, 1997

RE: Dedicated Funds

The following is a list of dedicated funds, FY 98 balances and funding source. I hope this helps clarify any questions regarding the number of dedicated funds still in existence.

<u>DEDICATED FUND</u>	<u>FY98 BALANCE</u>	<u>FUNDING SOURCE</u>
U of A Trust Fund	3019.2	Mgmt of State Lands & Settlements
FICA Administration Fund	92.8	Fed funds, Social Security beneficiaries
Fish and Game Fund	21,205.7	Fed tax funds received from crew licenses, sale of gear, etc.
School Fund	2,608.4	Tobacco tax revenues
Sick & Disabled Fishermen's Fund	1,304.2	60% of crew licenses
Second Injury Fund	2,854.9	Worker's Comp
Public School Trust Fund	9,300.6	half of 1% of receipts of state land management

The FY 98 balances are operating and capital budget fund sources and are still active.

If there are further questions regarding these dedicated funds, I will try to provide answers. The Office of Management and Budget is also able to provide more information if needed.

Thank you.

IMI/tw

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Representative Ivan M. Ivan

SPONSOR STATEMENT
COMMITTEE SUBSTITUTE for HOUSE JOINT RESOLUTION 18 (STA)

This resolution proposes an amendment to Article IX, Section 7 of the state constitution. The current article allows for the dedication of funds for a specific purpose as long as it existed by April 24, 1956. This resolution would allow a changing of a rate of a tax or license of which the proceeds are dedicated to a special purpose. This proposed amendment would be placed before the voters at the next general election, if approved by the Legislature.

I introduced this resolution because of the differing opinions represented by the attorney general's office and Legal Services in regards to the dedication of a tax increment to a specified purpose. In order to avoid litigation, especially if the proceeds of the tobacco tax are to be placed into the school fund or if the legislature changes any other tax rate or license fee, into which proceeds are to be placed into a dedicated fund, this resolution could be a solution to resolve that potential problem.

In the House State Affairs Committee, an amendment was adopted to make the amendment retroactive to October 1, 1997. This retroactivity coincides with the effective date of the tobacco tax as proposed in CSHB 1 (STA).

Akiachak • Akiak • Aleknagik • Atnautuak • Bethel • Chefornak • Clark's Point • Dillingham • Eek • Ekuk • Ekwook • Goodnews Bay • Kasigluk • Kipnuk • Koliganek • Kongiganak • Kwethluk • Kwigillingok • Manokotak • Napakiak • Napaskiak • New Stuyahok • Nunapitchuk • Oscarville • Platinum • Portage Creek • Quinhagak • Togiak • Tuntutuliak • Twin Hills

SPONSOR STATEMENT

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 26, 1996

SUBJECT: Draft CSHB 431 () (Work Order No. 9-LS1518\F)

TO: Representative Jeannette James, Chair
House State Affairs Committee

FROM: Jack Chenoweth
Legislative Counsel

This is drafted in the alternative.

Until a few weeks ago, based on a very old Opinion of the Attorney General, I would have advised as a matter of course that this proposal to dedicate the tax increment constituted a violation of the dedicated fund prohibition of article IX, section 7. Now, as a result of further research explained in Legislative Counsel Mike Ford's April 3 memorandum, I believe that conclusion is not so certain.

The drafting of the amendment reflects the possibility that the dedication might not be four unconstitutional for the reason given in that memo.

To repeat advice already provided to you:

Under AS 43.50.140, the proceeds derived from the original tobacco tax are required to be paid into the school fund. This fund avoids the constitutional prohibition against dedicated funds contained in Article IX, sec. 7, of the Alaska Constitution because the fund existed at the time the Alaska Constitution was ratified by the voters. Specifically, the Alaska Constitution provides that the dedicated funds prohibition does not "prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska." The two main motivations for the ban on dedicated funds are to maintain the potential of flexibility in budgeting and to ensure that the legislature does not abdicate its responsibility in making budget decisions. Fairbanks v. Convention & Visitors Bureau, 818 P.2d 1153, at 1158 (Alaska 1991).

A question was raised as to whether the Alaska Constitution allows the legislature to change the amount of the tax, without affecting the status of the school fund as an exception to the dedicated fund rule. In 1959, the Attorney General issued opinion No. 7, that concluded that the "legislature has no power to raise or lower the dedication by increasing or decreasing the

tax or license fee or the rate thereof which is set aside." 1959 Opinion No. 7, at page 5. This conclusion is, however, contradicted by the minutes of the constitutional convention. In discussing the language in Article IX, sec. 7, at the constitutional convention, the question arose as to the effect of this section regarding a change to the rate of taxation in a dedicated fund. The committee with the responsibility for writing Article IX was the committee on Finance and Taxation. The spokesman for that committee was Barrie M. White. The following discussion with Delegate White and other delegates illustrates the intent of the framers of the Alaska Constitution:

R. RIVERS: May I make a correction? When I was illustrating the gas tax about the going up to six, no that would be wrong, because absolutely allowing allocations as exist at the time this constitution is ratified would fix the ceiling, I am sure, as to how high they could go. I'll call this the closing, if you wish, Mr. McCutcheon. But certainly they could go through. Now, when Mr. Taylor read my proposed amendment, he said "allocations allowed at the time this goes into effect" and he may have inadvertently omitted "continuance of". All I'm objecting to is this "continuance of". I'm in accord with their idea of not letting any more allocations come along, but when you say "continuance of" allocations I immediately think of the rate of allocations as well as the subject matter. Now if they are only going to allow allocations on particular subjects that are now covered by allocations then I have no quarrel with them whatsoever but I am sure that's not the intent of the Committee. The Committee intends to allow such rates of allocations as will exist when this constitution is ratified but no one may go beyond those rates in the future and if they ever drop down, this continuance business does not allow them to re-enact.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: Mr. President, if as Mr. Rivers deduces, the terminology of this sentence means that the rates are frozen. The principle behind this sentence is not that the rates are frozen, it is the principle of allocating earmarked funds. It is not a matter of percentage wise, it is a theory of earmarked funds and I can't see his argument in this by striking out "continuance". He proposes that this is going to cure the proposition of a freeze. He thinks it is a freeze. It is not a freeze in any respect of the word as far as I can see; it is a matter of a theory of earmarked funds and doesn't have anything to do with dollar and cents or percentages.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. President, I would like to ask the Committee what their intent was on that. I would like to hear what they say.

PRESIDENT EGAN: Do you wish to answer that, Mr. White?

WHITE: I think I can answer for all the Committee on that, Mr. Rivers. It is not the intent of the Committee that this be interpreted to mean a freeze in any way, shape, or form. The Committee feels that the objections raised by Mr. Rivers are covered by the existing language. The reason the Committee resists the deletion of the words "continuance of" is that it would then mean that the legislature could discontinue a presently earmarked fund next year and then 50 years from now bring it back into being. We do not intend that that be the case.

V. RIVERS: If you are not freezing an amount, could they raise an existing allocation under this? On the gasoline tax could they raise that to six per cent according to your thinking on this?

WHITE: Certainly they could.

V. RIVERS. If they lowered it down to three could they then re-enact two more after that?

WHITE: The Committee intends that this not have any reference to rates at all. The Committee intends that this apply to the allocation of particular taxes to a particular propose and no more than that.

V. RIVERS: I just wanted this in the record. Now if they wipe it out altogether, discontinue it, it's gone forever, is that right?

WHITE: That is right.

V. RIVERS: But if you discontinue half of it, you can raise it back up?

WHITE: That would mean that.

(Emphasis added). This discussion indicates a clear intent on the part of the delegates to allow a change to the rate of taxation without affecting the status of a dedication of the proceeds of the tax. While the intent of the constitutional framers has weight, the final decision on interpretation of the Alaska Constitution rests with the Alaska Supreme Court. It is possible that the court would disagree with the intent expressed in the constitutional minutes and find that any change to the rate of tobacco taxation destroys the status of the school fund as an exception the dedicated fund rule. Nonetheless, comments by delegates to the constitutional convention do have some bearing on the decision making process of the Alaska Supreme Court. In Starr v. Hagglund, 374 P.2d 316, 319 (Alaska 1962), the court stated that

Representative Jeannette James

April 26, 1996

Page 4

opinions of individual members of the constitutional convention are not considered to be a safe guide in ascertaining the purpose of a majority of the convention when adopting a particular provision. But reports of committees and statements of chairmen of such committees stand on more solid footing and may be resorted to in determining the intent of the enacting body.

(Emphasis added) Therefore, the comments of Mr. White, as chairman of the committee on finance and taxation, may be persuasive to the court.

Please contact me if you have further questions.

JBC:pl:glc:lmb

96-091.lmb

LEGAL SERVICES

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MEMORANDUM

April 3, 1996

SUBJECT: Tobacco Tax - (Work Order No. 9-LS1832)

TO: Representative Jeannette James

FROM: Michael F. Ford
Legislative Counsel

You have asked for an explanation of the effects of an increase of the tobacco tax (AS 43.50.090) on the dedicated fund provision contained in AS 43.50.140. As explained in this memo, it appears that the legislature may be able to increase the tax without affecting the dedicated status of the state school fund.

Under AS 43.50.140, the proceeds derived from the tobacco tax are required to be paid into the school fund. This fund avoids the constitutional prohibition against dedicated funds contained in Article IX, sec. 7, of the Alaska Constitution because the fund existed at the time the Alaska Constitution was ratified by the voters. Specifically, the Alaska Constitution provides that the dedicated funds prohibition does not "prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska." The two main motivations for the ban on dedicated funds are to maintain the potential of flexibility in budgeting and to ensure that the legislature does not abdicate its responsibility in making budget decisions. Fairbanks v. Convention & Visitor Bur., 818 P.2d 1153, at 1158 (Alaska 1991).

The precise question you have raised is whether the Alaska Constitution allows the legislature to change the amount of the tax, without affecting the status of the school fund as an exception to the dedicated fund rule. In 1959, the Attorney General issued opinion No. 7, that concluded that the "legislature has no power to raise or lower the dedication by increasing or decreasing the tax or license fee or the rate thereof which is set aside." 1959 Opinion No. 7, at page 5. This conclusion is, however, contradicted by the minutes of the constitutional convention. In discussing the language in Article IX, sec. 7, at the constitutional convention, the question arose as to the effect of this section regarding a change to the rate of taxation in a dedicated fund. The committee with the responsibility for writing Article IX was the committee on Finance and Taxation. The spokesman for that committee was Mr. Barrie M. White. The following discussion with Mr. White and other delegates illustrates the intent of the framers of the Alaska Constitution:

R. RIVERS: May I make a correction? When I was illustrating the gas tax about the going up to six, no that would be wrong, because absolutely allowing allocations as exist at the time this constitution is ratified would fix the ceiling, I am sure, as to how high they could go. I'll call this the closing, if you wish, Mr. McCutcheon. But certainly they could go through. Now, when Mr. Taylor read my proposed amendment, he said "allocations allowed at the time this goes into effect" and he may have inadvertently omitted "continuance of". All I'm objecting to is this "continuance of". I'm in accord with their idea of not letting any more allocations come along, but when you say "continuance of" allocations I immediately think of the rate of allocations as well as the subject matter. Now if they are only going to allow allocations on particular subjects that are now covered by allocations then I have no quarrel with them whatsoever but I am sure that's not the intent of the Committee. The Committee intends to allow such rates of allocations as will exist when this constitution is ratified but no one may go beyond those rates in the future and if they ever drop down, this continuance business does not allow them to re-enact.

PRESIDENT EGAN: Mr. McCutcheon.

MCCUTCHEON: Mr. President, if as Mr. Rivers deduces, the terminology of this sentence means that the rates are frozen. The principle behind this sentence is not that the rates are frozen, it is the principle of allocating earmarked funds. It is not a matter of percentage wise, it is a theory of earmarked funds and I can't see his argument in this by striking out "continuance". He proposes that this is going to cure the proposition of a freeze. He thinks it is a freeze. It is not a freeze in any respect of the word as far as I can see; it is a matter of a theory of earmarked funds and doesn't have anything to do with dollar and cents or percentages.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. President, I would like to ask the Committee what their intent was on that. I would like to hear what they say.

PRESIDENT EGAN: Do you wish to answer that, Mr. White?

WHITE: I think I can answer for all the Committee on that, Mr. Rivers. It is not the intent of the Committee that this be interpreted to mean a freeze in any way, shape, or form. The Committee feels that the objections raised by Mr. Rivers are covered by the existing language. The reason the Committee resists the deletion of the words "continuance of" is that it would then mean that the legislature could discontinue a presently earmarked fund next year

Representative Jeannette James

April 3, 1996

Page 3

and then 50 years from now bring it back into being. We do not intend that that be the case.

V. RIVERS: If you are not freezing an amount, could they raise an existing allocation under this? On the gasoline tax could they raise that to six per cent according to your thinking on this?

WHITE: Certainly they could.

V. RIVERS. If they lowered it down to three could they then re-enact two more after that?

WHITE: The Committee intends that this not have any reference to rates at all. The Committee intends that this apply to the allocation of particular taxes to a particular propose and no more than that.

V. RIVERS: I just wanted this in the record. Now if they wipe it out altogether, discontinue it, it's gone forever, is that right?

WHITE: That is right.

V. RIVERS: But if you discontinue half of it, you can raise it back up?

WHITE: That would mean that.

We believe that this discussion indicates a clear intent to allow a change to the rate of taxation, without affecting the status of a dedication of the proceeds of the tax. To this extent, we disagree with the 1959 opinion No. 7 issued by the Attorney General, that the framers of the constitution intended that a change to the rate of taxation would destroy the dedicated status of the fund.

It is important to note that while the intent of the constitutional framers has weight, the final decision on interpretation of the Alaska Constitution rests with the Alaska Supreme Court. It is possible that the court would disagree with the intent expressed in the constitutional minutes and find that any change to the rate of tobacco taxation destroys the status of the school fund as an exception the dedicated fund rule. Nonetheless, comments by delegates to the constitutional convention do have some bearing on the decision making process of the Alaska Supreme Court. In Starr v. Haggund, 374 P.2d 316, 319 (Alaska 1962), the court stated that "opinions of individual members of the constitutional convention are not considered to be a safe guide in ascertaining the purpose of a majority of the convention when adopting a particular provision. But reports of committees and statements of chairmen of such committees stand on more solid footing and may be resorted to in determining the

Representative Jeannette James
April 3, 1996
Page 4

intent of the enacting body." (Emphasis added) Therefore, the comments of Mr. White, as chairman of the committee on finance and taxation, may be persuasive to the court.

You have also asked if the rate of taxation is changed, does the additional revenue go into the school fund or the general fund? We believe that any increase in the tax imposed under AS 43.50.090 will not, by itself, affect the disposition of the proceeds of the tax. The increased revenues will still flow into the school fund as required under AS 43.50.140. It is also important to note that to maintain the status of the school fund as an exception to the dedicated fund rule, that disposition of the proceeds of the tobacco tax cannot be changed. To change the disposition of the proceeds of the tax as required under AS 43.50.140 would destroy the dedicated fund exemption granted to the school fund under Article IX, sec. 7, of the Alaska Constitution.

Please contact me if you have further questions.

MFF:klb
96-252.klb

9

1959 Opinions of the
Attorney General, No. 7

March 11, 1959

Reversed in part as to
Sharing of Taxes with Local
Units of Government by Opin-
ion No. 31, December 2, 1960.

The Honorable Hugh J. Wade
Acting Governor of Alaska
State Capitol
Juneau, Alaska

Re: The Prohibition Against Dedicated Funds Contained
in Article IX, Section 7 of the Constitution of
the State of Alaska.

Dear Governor Wade:

I have for consideration your request of February 27, 1959,
for an opinion on § 7, Article IX of the Constitution. You
have specifically requested whether an increase in the tax on
gasoline used in the aviation industry in Alaska could con-
stitutionally be diverted to the Aviation Fund or whether the
excess must go into the general fund.

Section 7 reads as follows:

-al

"DEDICATED FUNDS. The proceeds of any state
tax or license shall not be dedicated to any
special purpose, except when required by the
federal government for state participation in
federal programs. This provision shall not
prohibit the continuance of any dedication for
special purposes existing upon the date of
ratification of this constitution by the
people of Alaska."

Inasmuch as this problem is related to a wide variety of com-
plex revenue dedications which are now law or proposed law and
since the problem is basic to state financing, the scope of
this opinion is broadened beyond the question at hand to a
general review of § 7 of the Constitution.

This section has been diligently researched by recourse
to the minutes of the Constitutional Convention of 1955-1956.

ADDITIONAL INFORMATION

The typed transcripts have been used wherever available. However, § 7 was introduced on the floor of the Convention on the morning of January 17, 1956, and no transcripts are available. For that morning session, the tape recordings of the debates of the delegates were listened to. References to the tapes so as to provide both pertinent quotations and their context would be impossible without extending this opinion to unmanageable length. However, references will be made to the tapes by giving the foot of tape at which the pertinent discussion transpires and then summarizing the occurrences, leaving the context to be verified from the original by interested persons.

To grasp the problem examination of the reasons behind § 7 and the evils to be avoided, thereby, will be necessary.

Prior to the Convention, the Public Administration Service was employed by the Alaska Statehood Committee to prepare Constitutional Studies for the convention delegates. See Vol. 1 of the Constitutional Studies, Sec. IX, pp 27-30. Among the reasons such a prohibition as is found in § 7 was recommended are the following:

1. Flexibility of budgeting.
2. Financial control.
3. Lack of relationship between the tax and purpose.

Percentages of dedicated funds as compared to total revenue were cited for various states.

Listening to the tape recordings of the morning session of January 17, 1956, impels the conclusion that the delegates were desirous of eliminating dedications so that the Legislature would have the greatest flexibility in allocating tax revenues on a basis of need. It was stated that, as a matter of compromise, a grandfather clause had been included in § 7 to permit all dedications existing on the date of ratification of the Constitution (April 24, 1956) to continue. An amendment to this clause, offering a change from the date of ratification to the effective date of the Constitution was defeated. (See the transcripts pp 57 et seq. on January 28, 1956.)

Other than the grandfather clause which permits existing dedications, there is a further exception to the prohibition. Any dedications "required" for participation in Federal programs are permitted. Federal conservation statutes presently require certain license fees to be diverted to special purposes in order for states to receive matching funds. (For instance, see 16 USCA 669 and 16 USCA 777.) Only those dedications which

March 11, 1959

-3-

re "required" will be permitted. Any attempted dedication of funds after April 26, 1956, which is not absolutely required for participation in Federal programs must be covered into the general fund, any statute notwithstanding.

The prohibition against dedications should be read in conjunction with § 7 of Article XI of the Constitution which deals with restrictions on the initiative and referendum. Therein it is stated that the initiative and referendum shall not be used to create or apply to dedications of "revenue." Note that the prohibition in § 7, Article XI is against dedications of "proceeds of any state tax or license." This seeming contradiction is resolved by reference to the typed transcripts on page 31 of January 24, 1956. There it was explained to be the intent that "revenues" is a broader term than "tax or license" and means all proceeds coming to the State. Consequently, it is proper for a legislature to dedicate any revenues that are proceeds of either taxes or licenses.

The grandfather clause is stated as an exception to the general prohibition in the following language:

" . . . This provision shall not prohibit the continuation of any dedication for special purposes existing upon the date of ratification. . . ."

The question you pose is whether or not the rate of the dedication can be raised. In other words, if a tax proceed or portion thereof is dedicated to a special purpose, may the rate of tax be or the proportion of the proceeds be raised, thereby increasing the amount of dedicated funds.

It is my opinion that no action by the Legislature is permissible which would (1) tend to increase or decrease the percentage of the total tax and license proceeds which are dedicated, or (2) which would tend to increase or decrease the amount of proceeds which are dedicated.

The exception permits only the "continuation" of dedications "existing" on the date of ratification. To raise the station gas tax from 5 to 7 cents and dedicate the whole amount would constitute another and further dedication of tax proceeds. The only prior existing dedication is one for 5 cents and not one for 7 cents. To permit existing dedications to be raised would "open end" all of them existing upon the date of ratification. The purpose of the prohibition would be defeated. Existing dedications could be raised to inordinate percentages of the total revenue, thus denying the financial stability sought by the constitutional framers.

Hon. Hugh J. Wade
Acting Governor of Alaska

March 11, 1959

-4-

The foregoing opinion is born out by the taped recordings of the Convention proceedings. (Refer to tapes 2, 3 and 4 of January 17, 1956.)

At foot 540, tape 3, Delegate Johnson proposed to amend the present § 7 by striking the words, "prohibit the continuance of" and inserting in their place the words "apply to."

At foot 600, tape 3, Delegate Ralph Rivers spoke in favor of the amendment because he felt it would permit repeal and re-enactment of existing dedications. Delegates Johnson and Nolan at foot 640, tape 3, indicated their understanding of the amendment was that the Legislature would be powerless to repeal an existing dedication. (Note: Delegates Johnson and Rivers were for the amendment, but disagree as to its meaning. However, both they and Delegate Nolan indicate that the section without the amendment could not be repealed and re-enacted at a later date.)

At foot 55, et seq., tape 4, Delegate Victor Rivers says Delegate Johnson's amendment should be supported because it would permit existing dedications to be raised, lowered, replaced or eliminated by the Legislature. He stated that the amendment would therefore give greater flexibility than the present wording.

At foot 125, tape 4, Delegate Nerland stated that he spoke for the Committee on Finance and Taxation, and that it was their intent that present dedications be allowed until repealed; but that once it was repealed, it could not be later re-enacted.

At foot 215, tape 4, this amendment was defeated 40 to 13.

At foot 330, tape 4, Delegate Ralph Rivers offered an amendment to § 7 which would delete the words "the continuance of."

Delegate Ralph Rivers at foot 345, says the present wording freezes the exact rates of the dedications allowed upon the date of ratification of the Constitution. He advocated his amendment so as to give more flexibility. He stated that his amendment would not allow the rate to be raised but would allow it to be lowered or temporarily discontinued.

At foot 395, tape 4, Delegate Coghill supported the amendment to § 7 because if adopted, it would permit the dedication to be temporarily done away with or suspended downward; thereby allowing the Legislature more flexibility for growth or decline in financial problems.

March 11, 1959

-5-

At foot 420, tape 4, Delegate Gray challenged the amendment on the grounds that it was, in substance, the same amendment as the earlier one offered by Delegate Johnson at foot 540 of tape 3.

Delegate Ralph Rivers answered Delegate Gray by saying that the purpose of Delegate Johnson's amendment was to permit doubling the dedications or the rate involved, and the purpose of his own amendment was to permit lowering of rates while still prohibiting the rates from being raised by the Legislature. Delegate Ralph Rivers' amendment was also defeated, leaving § 7 substantially as it appears in the Constitution after re-drafting by the Committee on style and drafting.

Consequently, the intent of the drafters of the Constitution of the State of Alaska, was to permit the continuance of existing dedications at the then existing rates until the Legislature saw fit to exercise the only power retained in relation to them: that is, the power to repeal.

A dedication must be continued, if at all, in exactly the same form. Any attempted alteration short of repeal is a nullity. A dedication encompasses (1) proceeds or part of the proceeds of a tax or license (2) set aside at a certain rate (3) for a particular purpose. The Legislature has no power to raise or lower the dedication by increasing or decreasing the tax or license fee or the rate thereof which is set aside. Also, there is no power to broaden or reduce the purposes for which an existing dedication is made, for to do so is to alter the dedication itself.

I have for further consideration, two questions submitted by the Director of the Legislative Council. For purposes of continuity and clarity, these questions and their answers will be set out herein.

(1957) (1957)

The first question is whether H.B. 120, which is substantially a re-enactment of Ch. 10, SIA 1949, the Alaska Property Tax Act, violates § 7 of the Constitution by providing in § 4 of the bill that the tax levied by the State shall be turned over to the local political subdivision wherein collected.

You are advised that it is my opinion that such a provision violates the Constitution and is a prohibited dedication. This is a tax proceed which at the time it is collected is earmarked for a special purpose (political subdivisions). There is, however, nothing to prevent each legislature from annually making an appropriation to the political subdivisions of the monies already collected under the Act. To be sure, this is the

Hon. Hugh J. Wade
Acting Governor of Alaska

March 11, 1959
-6-

express intent of the constitutional framers: that each obligation of government be judged both on its own merits and in comparison with the merits of others in the computation of the budget. (See page 31 et seq. of the written transcripts from the January 24, 1956, session of the Convention for the proposition that a dedication is present when a tax proceed is earmarked from the time it is collected.) Also note that at foot 118, tape 3, it is indicated that the return of liquor license fees and business license fees to political subdivisions constituted a dedication, but since they were earmarked at the time of ratification, they would continue to be dedicated.

The second problem posed by the Director of the Legislative Council is whether or not the raw fish tax refund to political subdivisions could be raised from the present 10% to 50%. In view of the foregoing expressions, the answer is in the negative.

You are further apprised that since the ratification date of the Constitution was April 26, 1956, all dedications made in the 1957 session of the Territorial Legislature are nullities as of January 3, 1959. Any monies due and owing prior to January 3rd may be covered to their earmarked purposes, but receipts due and owing after that which fall into the prohibited category must be covered into the general fund. Also note that any repeal or repeal and re-enactment of a dedication during that session takes the dedication from under the protection of the grandfather clause and a re-enactment either in 1957 or later is a nullity unless the dedication is required by the Federal Government for participation in Federal programs.

Very truly yours,

J. GERALD WILLIAMS
ATTORNEY GENERAL

By
Jack O'Hair Asher
Assistant Attorney General

JO'HA:bb

Addendum: On page 5, paragraph 6, after H.B. 126, insert "introduced in the 1957 Legislature."

cc: Department of Finance
Alaska Office Building
Juneau, Alaska

STATE OF ALASKA

DEPARTMENT OF LAW

JAY S. HAMMOND, GOVERNOR

OFFICE OF THE ATTORNEY GENERAL

POUCH 4 - STATE CAPITOL
JUNEAU 99811

June 2, 1978

Honorable Terry Gardiner
Chairman, House Judiciary Committee
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Re: Legislation on Fisher-
men's Fund
Our File: J-66-580-78

Dear Chairman Gardiner:

This responds to your inquiry of May 3, 1978, with respect to the legislation enacted last year based on advice from this office which we now believe to have been in error. */

In brief, one of our attorneys who was relatively unfamiliar with the nuances of the prohibition against dedicated funds, Alaska Const., art. IX, §7, worked with your committee last year to develop legislation which would eliminate the double fee paid by commercial fishermen who are also holders of limited entry permits. The results are contained in sections 8 and 14, chapter 105, SLA 1977. In effect, they exempted permit holders from license fees and

*/ You also requested advice on the proper disposition of interest earned from the Fishermen's Fund. We have not yet reached a conclusion on that point but we are now convinced that no legislation is required on it, i.e., either the interest is already a part of the dedication or it is not. When our researches lead us to a conclusion, we will advise.

Hon. Terry Gardiner
June 2, 1978
Page #2

provided for payment into the Fishermen's Fund from monies collected for permit fees of an amount equal to the amount which would have been paid into the fund from collections for commercial licenses. It was then believed that this arrangement would not offend the constitutional prohibition. We now conclude otherwise.

The Alaska Constitution, art. IX, §7, provides in relevant part as follows:

The proceeds of any state tax or license shall not be dedicated to any special purpose [with exceptions not here relevant]. . . . This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of the ratification of this section [1956] by the people of Alaska.

There can be no question that the framers of the constitution fully intended, with only the exceptions expressly stated, to bar for all time the additional dedication of any new or different state revenues for special purposes. 3, 4, and 5 MINUTES, ALASKA CONSTITUTIONAL CONVENTION 2297-2301, 2361-2390, 2401-2416, 3415-3420. The reasons for their doing this were many, but basically the reasons came down to the proposition that neither the chief executive (as the State's chief budget officer) nor the legislature (as the State's only appropriating body) should have its hands tied financially by a myriad of dedicated funds for a myriad of

Hon. Terry Gardiner
June 2, 1978
Page #3

diverse programs and that each program must compete annually with all others for its fair share of available money. Id.

The prohibition, however, is against new dedications, i.e., those dedications of revenues which did not exist on April 24, 1956, the date of the constitution's ratification. The dedication of license fees for the Fishermen's Fund was first made in 1951 and later amended in 1955. §4, ch. 100, SLA 1951; am §1, ch. 99, SLA 1955; now codified as AS 23.35.060. Hence, when the constitution was ratified there existed a dedication of

60 percent of the money derived by the state from all commercial fishermen's licenses, including clam diggers' licenses. . . .

"[T]he continuation of any dedication . . . existing" is not prohibited. In an early opinion by this office, we opined that the legislature could neither increase the percentage of the dedication nor the amount of the levy so as to increase the amount to be dedicated. 1959 Op. Atty. Gen. No. 7. To do so would alter the dedication, not continue it. To do so would also increase the dedication, i.e., dedicate still more of the source of revenue and thereby constitute still another dedication in violation of the constitution. Nor, of course, could a new source of revenue be tapped if the dedicated source were lost or abandoned.

Hon. Terry Gardiner
June 2, 1978
Page #4

Amendments which could have allowed such alterations were expressly rejected by the framers. 4 MINUTES 2378-2390, 2401-2411. In sum, it was concluded that, with respect to dedicated funds, the only power left to the legislature is the power to repeal the existing dedications. Id. */

In 1977, AS 23.35.060, which provides for the Fishermen's Fund dedication, was amended to read, in relevant part, as follows:

60 percent of the money derived by the state from each crewmember fishing license issued under AS 16.05.480, an equal amount of the money derived by the state from each commercial fisherman who is issued a permit under AS 16.43 [the Limited Entry Act]. . . .

The effect of the amendment is to add a dedication of a new and different revenue source, i.e., the annual fee for a commercial fisheries entry permit. It does not continue an existing dedication. **/

*/ It goes without saying that this lack of power to alter does not apply to the other exceptions, the permanent fund and dedications required under federal law.

**/ Arguably, the Buy-Back Fund established under AS 16.43.-310-320 is also a new and prohibited dedication. However, the wording of the constitution's prohibition was designed to exclude certain kinds of dedications, e.g., sinking funds, retirement funds, employment security funds. 4 MINUTES 2363 (dialogue between delegates Davis and White). The Buy-Back Fund might fall into this excepted class. We are inclined to think not, but the answer is uncertain.

Hon. Terry Gardiner
June 2, 1978
Page #5

It can be argued that the annual fee for a commercial fisheries entry permit supplants the annual fee for a commercial fisheries license for gear operators. That is, those persons no longer pay the latter, AS 16.05.480 as amended by §8, ch. 105, SLA 1977, effective January 1, 1978, but rather only the former. AS 16.43.160; 20 AAC §05.220. Not only is this argument essentially the same as those resoundingly rejected by the framers of our constitution, 4 MINUTES 2378-2390, 2401-2412, but it is simply not correct. The 1977 amendment to AS 23.35.060 unquestionably makes a dedication from a new and different source of revenue. It does not matter that the amount is the same.

When the license fee for gear operators was eliminated, the dedication for the Fishermen's Fund was reduced to 60 percent of the money received thereafter under AS 16.05.480 from crewmen's license sales. The purported dedication from fees collected from permit sales and renewals is a nullity -- without any force or effect.

The exception from the prohibition against dedicated funds is for the "continuance" of "existing" dedications. Reducing a dedication makes it different from that which existed, i.e., an existing dedication is not continued when it is reduced any more than it is when it is increased. Under the plain language of the constitution, any change is

Hon. Terry Gardiner
June 2, 1978
Page #6

prohibited. The prior opinion referred to above, 1959 Op. Atty. Gen. No. 7, basing its conclusion on the framers' rejection of a proposed amendment which would have allowed for reductions in existing dedications, concluded that any alteration was a nullity. That conclusion is logically sound. There is some contradictory material in the Convention minutes, however. 4 MINUTES 2405 (dialogue between delegates V. Rivers and White, the latter acting as spokesman for the committee). How the courts would rule is uncertain, but they will give some weight to remarks of committee spokesmen. Walters v. Cease, 388 P.2d 263, 265-266 (Alaska 1964).

Here there was no reduction in the amount to be dedicated, i.e., 60 percent of a certain source, but rather an alteration -- partial elimination -- in the source. The license fees for commercial fishermen were changed to exempt persons who hold permits. Thus, the present dedication is not a "continuance" of an "existing" dedication. This office issued still another opinion soon after Statehood in which we opined that the reduction of the source invalidates the remaining dedication. 1959 Op Atty. Gen. No. 14. A reduction of the source was deemed to be, in effect, a repeal of the entire dedication.

This result is admittedly drastic, but there can be no question that it is logically correct. The framers

Hon. Terry Gardiner
June 2, 1978
Page #7

rejected every effort to amend the exception language so as to allow a dedication to be altered. 4 MINUTES 2401-2405 (Rivers amendment), 2409-2412 (Kilcher amendment). Delegate White, however, acting as a spokesman for the committee, assured the delegates that, despite the logical implications of the constitution's language, an existing allocation of funds from a given source could be raised or lowered, i.e., say, from 3 percent to 6 percent, that the "continuance" did not apply to rates. He also specified that it did apply so as to prevent the legislature from discontinuing an allocation and then starting it up again sometime in the future. And he said, "The committee intends that this apply to the allocation of particular taxes to a particular purpose and no more than that." Id., at 2405. How much of his remarks, if any, will be judicially accepted is unknown. But we are inclined to the view that the dedication is not repealed in its entirety by the partial elimination of its source but rather that it is reduced to provide for a dedication solely from crewmember commercial licenses -- all that is left of the source. */

*/ The convention expressly rejected an amendment that said, "but discontinuance shall not preclude reinstatement," and therefore, reinstatement of a commercial license fee for operators would not ordinarily allow reinstatement of that dedication. 4 MINUTES 2409-2412 (Kilcher amendment).

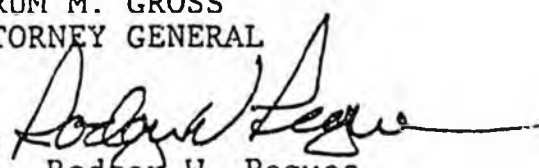
Hon. Terry Gardiner
June 2, 1978
Page #8

The problem now is whether the legislature's mistaken action last year, which resulted from our incorrect advice, can be cured. We believe that legislation retroactive to the first of this year -- the effective date of the applicable amendments from last year -- will supersede last year's legislation and cure the mistaken action. We have prepared legislation to accomplish this. It can, as you have suggested, be added to CSSB 428 am. A copy is enclosed. Last year's discontinuance of a portion of the source of the dedication was so obviously based on a mistake as to its legal effect, and its purpose could so easily have been accomplished in the manner we have proposed here that the courts should give this curative legislation its effect.

We hope this answers the committee's questions.

Sincerely yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: 
Rodger W. Pegues
Assistant Attorney General

RWP/pjg

Enc: Proposed Legislation

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, GOVERNOR

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

November 30, 1982

ATTY GEN OP #13

Gerald L. Wilkerson, C.P.A.
Legislative Auditor
Legislative Audit Division
Legislative Affairs Agency
Pouch W
Juneau, Alaska 99811

Honorable Carole J. Burger
Commissioner
Department of Administration
Pouch C
Juneau, Alaska 99811

Re: The dedicated funds
prohibition applied to various
funds and accounts. Our Files
Nos. J66-785-81 and J66-649-80

Dear Mr. Wilkerson and Commissioner Burger:

You have both asked for a broad review of the application of the constitutional dedicated funds prohibition to various state funds and accounts. Alaska Const. art. IX, § 7. Because of the factual complexities presented by the various funds, accounts, and appropriations and because of the paucity of judicial precedent, we are not able to advise you with absolute certainty regarding the constitutionality of state practices. However, some of the issues raised by your request may be resolved in litigation which is now pending concerning the administration of

Mr. Gerald L. Wilkerson
Honorable Carole J. Burger
J66-785-81 and J66-649-80

November 30, 1982
Page 2

certain appropriations and funds by the Alaska Power Authority. 1/

In response to your request, we have identified and analyzed several categories of funds, accounts, and transactions which raise dedication questions. Our approach in dealing with these questions will be to first discuss the purpose and meaning of the dedication prohibition. We will then focus on the implications of a recent Alaska Supreme Court case that deals specifically with the dedicated funds prohibition. Next we will consider the probable legal status of several general categories of funds, accounts, and appropriations which raise dedication questions. Lastly, we will consider the dedication prohibition in reference to specific funds and appropriations.

We should point out that the advice given in this opinion could have a significant effect upon the state budget. This results from the recent adoption of Article IX, section 16 of the Alaska Constitution (the spending limit). Under the reasoning of this opinion, it may be that income earned by a loan fund or public enterprise must be appropriated to that fund or

1/ The legal issues in this litigation are the validity of the deposit of interest and principal payments on loans in a revolving loan fund and of the appropriation to the Power Development Fund of interest to be received on specific amounts appropriated to that fund (§ 1 ch. 90, SLA 1981 as reenacted by § 69 ch. 69 SLA, 1981 and amended by § 236 ch. 141, SLA 1982.). Trustees for Alaska, et al. v. State of Alaska and Alaska Power Authority, No. 3AN-492-82 Civ. (Alaska Super., Jan. 21, 1982)

Mr. Gerald L. Wilkerson
Honorable Carole J. Burger
J66-785-81 and J66-649-80

November 30, 1982
Page 3

enterprise if that income is to be retained by it. If the Alaska Supreme Court adopts that reasoning, the necessity for these appropriations would have to be considered by the administration and the legislature in developing a state budget which conformed to the spending limit.. This concern would also become important if independent authorities for operation of entities like the State Ferry System or the Alaska Railroad were to be considered.

I. THE PURPOSE OF THE PROHIBITION

Article IX, Section 7 provides:

DEDICATED FUNDS. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article [establishing the Permanent Fund] or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

There are essentially two views of the meaning of this provision. Under the first interpretation the dedicated funds prohibition would require that every dollar received by the state be deposited and remain unrestricted in the general fund until it is withdrawn pursuant to an appropriation authorizing the expenditure of a specific dollar amount for a specific pur-

Mr. Gerald L. Wilkerson
Honorable Carole J. Burger
J66-785-81 and J66-649-80

November 30, 1980
Page 4

pose (absent a contrary federal requirement or a statutory dedication which existed prior to ratification of the Constitution). This is known as the strict interpretation view.

Under the strict view, the phrase "proceeds of any state tax or license" would encompass every dollar paid to the state (or to a public corporation or authority established by the state) for whatever purpose. State loan repayments (both principal and interest), enterprise receipts (e.g., airport lease revenues, parking garage receipts, etc.), program receipts (e.g., Ferry System ticket sales, University of Alaska tuition receipts, etc.), as well as all other revenues (e.g., taxes, natural resource revenues such as royalties, etc.), would be required to be deposited in the state treasury and retained there until the expenditure is authorized by appropriation of a specific dollar amount.

An argument can certainly be made that this is the proper interpretation of the dedicated funds prohibition. As set out in 1975 Op. Atty. Gen. No. 9 at 2 (Alaska May 2, 1974), "Section 7 of Article IX had two interrelated purposes: (1) to prevent any future dedication of revenues for special purposes [i.e., 'earmarking'] and (2) to prevent the creation of new special funds separate from the general fund." The rationale underlying each of these two purposes is "that the widespread existence of dedicated revenues lodged in special funds deprives

both the governor and the legislature of 'any real control over the finances of the state.'" Id. at 3 (citation omitted). Requiring all monies received by the state to be deposited into the general fund clearly would satisfy both interrelated purposes of the prohibition. The strict interpretation view of the dedication prohibition would preclude the use of public monies to establish a standing or revolving loan fund or any other program which would be self-sustaining. 2/

However, a second approach in interpreting the meaning of Article IX, section 7 is also very plausible. Under this view, the dedication prohibition is not to be construed to require a blanket prohibition of self-sustaining programs set up by the legislature. As noted in 1975 Op. Atty. Gen. No. 9 at 6-8 (Alaska, May 2, 1975), the constitutional framers substituted the phrase "[t]he proceeds of any state tax or license" for the phrase "[a]ll public revenues" to avoid having to state a number of intended exceptions to the prohibition on dedicated funds. Examples of these exceptions were pointed out in a January 4, 1956, 3/ memorandum by the Public Administration Service (PAS) to

2/ Of course, even under the strict view, there would be some kinds of monies received by the state which it could not, for independent legal reasons, deposit into the general fund. These monies would include trust funds, restricted gifts, and funds subject to restrictions by contract.

3/ The actual date shown on the memorandum is "January 4, 1955". However, considering the timing of the constitutional convention, this was certainly a typographical error.

Mr. Gerald L. Wilkerson
Honorable Carole J. Burger
J66-785-81 and J66-649-80

November 30, 1982
Page 6

the Constitutional Convention: "pension contributions, proceeds from bond issues, sinking fund receipts, revolving fund receipts, contributions from local government units for state-local cooperative programs, and tax receipts which the state might collect on behalf of local government units." 4/

Some of those examples were specifically mentioned by the court in State v. Alex, 646 P.2d 203 (Alaska 1982), which held that the phrase "proceeds of any state tax or license" was to be broadly construed to include all sources of public revenues. The court noted that the drafters intended to permit the establishment of certain special funds, (e.g., sinking funds for the repayment of bonds), but to prohibit the earmarking of any special tax to such a fund. Alex, supra at 210. The court did not elaborate on the application of the dedicated funds prohibition in these situations.

4/ The Public Administration Service prepared a publication entitled "Alaska Statehood Commission, Constitutional Studies (1955)" at the request of the Alaska Territorial Legislature for use at the constitutional convention. Ch 108 SLA 1949. This publication collected research papers on other state constitutions. Copies were mailed to all delegates, and it was often referred to in the convention proceedings. Alaska Statehood Committee, "Handbook for Delegates to the Alaska Constitutional Convention" 4 (1955). Referred to in State v. Alex, 646 P.2d 203, 209 n. 5 (Alaska 1982). The memorandum of January 4, 1956 contained comments by the PAS on the proposed draft of the Finance and Taxation article. Constitutional Convention Finance Committee minutes, Jan. 13, 1956.

Mr. Gerald L. Wilkerson
Honorable Carole J. Burger
J66-785-81 and J66-649-80

November 30, 1982
Page 7

II. MEANING OF THE PHRASE "PROCEEDS OF ANY STATE TAX OR LICENSE"

There has been continuing controversy over the proper construction of the phrase "proceeds of any state tax or license." In a number of earlier opinions, this office concluded that the dedicated fund prohibition did not reach all public revenues but, under its plain language, only the actual "proceeds of any state tax or license." See 1969 Op. Atty. Gen. Nos. 3 (Alaska, April 4, 1969) and 5 (Alaska, April 15, 1969); and 1959 Op. Atty. Gen. No. 7 (Alaska, March 11, 1959). This conclusion also was reached by the Division of Legal Services in the Legislative Affairs Agency. See September 1, 1977 memorandum from Bill G. Berrier, Director, to Subcommittee on Alaska Renewable Resources Development Fund of Alaska Permanent Fund (House).

Those opinions all concluded that the prohibition did not reach revenues derived from the disposal of state-owned natural resources. Given this conclusion, it followed that the legislature was free to dedicate all or a certain portion of such revenues to specific purposes. An example of this is found in AS 37.11.020, which requires that not less than five percent of state mineral lease receipts be deposited in the Alaska Renewable Resources Development Fund. (This statutory dedication was the subject of Mr. Berrier's September 1, 1977, memorandum).

Mr. Gerald L. Wilkerson
Honorable Carole J. Burger
J66-785-81 and J66-649-80

November 30, 1982
Page 8

On the other hand, 1975 Op. Atty. Gen. No. 9 at 24 (Alaska, May 2, 1975) reached the opposite conclusion:

Section 7 of Article IX of the state Constitution can be given its intended effect and serve its repeatedly expressed purpose only if the words "proceeds of any tax or license" are interpreted to mean what their framers clearly intended, i.e., the sources of any public revenues.

Accordingly, it is our conclusion that the dedication of any source of public revenue: tax, license, rental, sale, bonus-royalty, royalty, or whatever is limited by the state Constitution to those existing when the Constitution was ratified or required for participation in federal programs.

(Emphasis added.)

In State v. Alex, 646 P.2d at 210, the Alaska Supreme Court adopted the position set out in 1975 Op. Atty. Gen. No. 9 (Alaska, May 2, 1975). ^{5/} It now is clear that the term "proceeds of any state tax or license" is to be construed broadly to reach all public revenues, including public revenues from the development of state-owned natural resources, and not just the proceeds of taxes and license fees.

^{5/} Alex involved a challenge by commercial fishermen to the collection by a private aquaculture association of a special assessment authorized by statute and imposed on the sale of salmon. The court held that the statute improperly delegated the legislature's taxing authority, and that the assessment constituted "proceeds of a state tax or license" within the meaning of Article IX, section 7. State v. Alex, 646 P.2d at 210, 213.

Mr. Gerald L. Wilkerson
Honorable Carole J. Burger
J66-785-81 and J66-649-80

November 30, 1982
Page 9

After the decision in Alex we can now reach some definite conclusions regarding some of the funds and accounts you have asked us to review. The answers to other questions, however, are not as clear.

III. IMPLICATIONS OF THE ALEX DECISION

There is no question that the dedicated funds prohibition in Article IX, section 7 flatly prohibits the legislature from dedicating future unrestricted general revenues to any particular purpose unless the dedication is required for participation in a federal program or the dedication existed before ratification of the Constitution. Alex, supra at 208-210. This confirms the view expressed in our April 1, 1981 memorandum opinion to the legislative auditor that the requirement in AS 37.11.020 that not less than five percent of state mineral revenues be placed in the Alaska renewable resources development fund is unconstitutional. This would be true of any statutory requirement that a specified percentage of revenues derived from the development of state-owned resources be deposited in a fund or earmarked for a particular purpose.

The Alex decision, however, does not provide answers to a number of additional questions. For example, does the dedicated funds prohibition apply (1) to money received through the sale of bonds (either general obligation bonds of the state or

Mr. Gerald L. Wilkerson
Honorable Carole J. Burger
J66-785-81 and J66-649-80

November 30, 1982
Page 19

revenue bonds of a public corporation); (2) to receipts from operation of facilities constructed with bond proceeds; or (3) to interest or investment income earned on money appropriated for a specific purpose? In short, are there any exceptions to the prohibition beyond those expressly set out in the Constitution? The section immediately following discusses this question.

IV. POSSIBLE EXCEPTIONS TO THE DEDICATED FUND PROHIBITION

A. Implied Exceptions.

An early draft of what is now Article IX, section 7 (but which was at that time numbered section 8) read as follows: "All public revenues shall be deposited in the state treasury . . ." Subsequent to this early draft, the Committee on Finance and Taxation of the Constitutional Convention requested comments from the Public Administration Service on this wording. The PAS responded with the January 4, 1956 memorandum in which it warned that a strict interpretation of section 7 (then section 8) would prohibit the segregation of state money without regard to the source. The PAS then suggested that certain exceptions be identified in section 7. These exceptions included pension contributions, proceeds from bond issues, sinking fund receipts, revolving fund receipts, contributions from local government units for state-local cooperative programs, and tax receipts

Mr. Gerald L. Wilkerson
Honorable Carole J. Burger
J66-785-81 and J66-649-80

November 30, 1982
Page 11

which the state might collect on behalf of local government units.

After considering the PAS memorandum, the committee deleted the phrase "all public revenues shall be deposited ..." and substituted the phrase "The proceeds of any state tax or license ...". 3 Alaska Const. Conv. Proceed. at 2361. The record of the committee debate makes it clear that the purpose of this change was to meet the problems raised by the PAS in its January 4 memorandum. See 1975 Op. Atty. Gen. No. 9 at 8 (Alaska, May 2, 1975).

Given this drafting history, a very good case can be made that the present language of Article IX, section 7 must be read to include certain implied exceptions, such as those that are set out in the January 4 PAS memorandum, i.e., pension contributions, proceeds from bond issues, sinking fund receipts, revolving fund receipts, contributions from local government units for state-local cooperative programs, and tax receipts which the state might collect on behalf of local government units. We believe this implied exception approach is the better interpretation of the dedicated fund prohibition and would be adopted by the Alaska Supreme Court if the question is presented to it.

Mr. Gerald L. Wilkerson
Honorable Carole J. Burger
J66-785-81 and J66-649-80

November 30, 1982
Page 12

B. Dedication of Money to Specific Purposes on a Continuing Basis When Appropriated

A question of the proper application of the dedicated funds prohibition arises when money is appropriated to a revolving loan fund or other special reserve fund or account. Revolving loan funds provide for the return to the fund of repayments by borrowers of the principal (and frequently the interest on that principal) 6/ which was loaned to them from the fund so that new loans can be made on a continuing basis. Special reserve funds involve essentially the setting aside of money for certain specified future needs or conditions which may or may not occur. 7/ When this is done, it might be argued that the legislature has made an impermissible dedication with respect to the future use of the money placed in those funds and accounts.

We believe the better view is that the dedication prohibition does not apply to money once appropriated by the legislature, regardless of whether the appropriation contemplates that the money will be expended. Usually appropriations authorize money to be spent. In other cases, however, the legis-

6/ We discuss the dedication of interest earned by revolving loan funds and other separate funds and accounts in the next portion of this opinion which begins below at p. 14.

7/ The "Rainy Day Account," AS 37.05.179, is an example of such an account.

Mr. Gerald L. Wilkerson
Honorable Carole J. Burger
J66-785-81 and J66-649-80

November 30, 1982
Page 13

lature may prefer to establish by general law a continuing loan program and finance it through a one-time appropriation or to reserve money in a special fund or account for future use for limited purposes. A strong argument can be made that money once appropriated, regardless of the mechanism utilized, loses its character as revenue for the purpose of the dedicated funds prohibition because the purpose of the prohibition, i.e., that the legislature retain control over state revenues, has been satisfied.

Under this reasoning there would be no unlawful dedication involved in the return to a revolving loan fund of principal payments on loans. The initial appropriation would suffice to authorize the use of that money for other loans until the legislature reappropriates the unobligated assets of the fund or abolishes the fund.

Support for this position is found in the Alaska Supreme Court's analysis in the Alex case. In Alex, the court took note of the drafting change of Article IX, section 7 referred to earlier. This change, said the court, "did not seek to exempt some sources of revenue from the prohibition, but was intended instead to allow necessary dedication of funds once they were received and placed in the general fund." State v. Alex, supra at 210.

Mr. Gerald L. Wilkerson
Honorable Carole J. Burger
J66-785-81 and J66-649-80

November 30, 1982
Page 14

The Alaska Supreme Court has thus recognized that the dedication prohibition of Article IX, section 7 does not operate to prohibit all dedications whatever their nature. Rather, the court seems to be saying that Article IX, section 7 must be read to allow certain necessary dedications of money by the legislature after that money is received and placed in the state treasury (i.e., general fund). This analysis by the Supreme Court gives support to the argument that the dedication prohibition does not apply to money once it has been lawfully appropriated from the general fund and that the legislature can, without violating Article IX, section 7, create "necessary dedications" out of that money.

C. Income Generated by Specific Funds or Accounts

A question separate from that just discussed arises concerning the application of the dedicated fund prohibition to the interest or other income earned by money appropriated to revolving funds and other funds and accounts. Is that derivative income revenue which, under the prohibition, must be deposited in the general fund, or may it accrue directly to the fund or account which "earned" it, increasing the amount of money in that fund or account which may be spent without further appropriation?

Mr. Gerald L. Wilkerson
Honorable Carole J. Burger
J66-785-81 and J66-649-80

November 30, 1982
Page 15

We are advised by the Department of Administration that the National Committee on Governmental Accounting has defined a fund to be:

A fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances, and changes therein, which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations.

Municipal Finance Officers Association of the United States and Canada, "Governmental Accounting, Auditing, and Financial Reporting," 1980, Appendix B.

From the point of view of generally accepted accounting principles, then, income generated by a fund accrues to that fund unless a transfer is authorized. Economic theory also leads to that result, arguing that the interest or investment income on a particular fund is simply an increase in the value of the fund which offsets inflation and reflects the gradual growth of our economy. Under either approach, such derivative income ought not to be considered revenue subject to the dedicated funds prohibition.

Derivative income such as interest and investment income is not a traditional source of public revenue. It is generated by public revenue which has been received and appropriated and would not be generated if the legislature had

Mr. Gerald L. Wilkerson
Honorable Carole J. Burger
J66-785-81 and J66-649-80

November 30, 1982
Page 16

simply spent the money rather than appropriated it to a separate fund. Thus, a statutory dedication of the interest or investment income of a separate fund would not impair the ability of future legislatures to control the spending of general revenues. Rather, it would create a new pool of resources to be used under the statutory guidelines applicable to a particular fund until a future legislature amended or repealed those guidelines. There is no indication in the minutes of the Constitutional Convention that the drafters considered the treatment of separate funds which are endowed in this manner.

A difficulty that arises from the view that the dedicated funds prohibition is not applicable to interest or investment income on separate funds is that it permits steadily increasing amounts of money to be received and used by state departments and agencies without legislative control through the annual budget process. This is precisely the problem posed by the dedication of revenue sources which the drafters sought to avoid. For this reason, while we are not certain about the likely outcome, we doubt that a blanket exception for derivative income would be approved by the courts.

After all, the Alaska Constitution was not written for accountants and economic theorists. Although not expressly addressed by them, the framers were very much aware of the boom-bust cycle of Alaska's economy. In fact, a driving force

Gerald L. Wilkerson
Honorable Carole J. Burger
J66-785-81 and J66-649-80

November 30, 1982
Page 17

behind statehood was the desire of Alaskans themselves to be able to manage the income derived from those brief periods -- as Prudhoe Bay bears witness -- when the state may receive enormous sums of money which are then immediately available for expenditure or placement, by appropriation, into a variety of funds and accounts for various permissible purposes. Depending on the number and size of those funds and accounts, the interest earned on the money placed in them could itself be substantial and would almost certainly be of a magnitude which is far greater than that likely envisioned by the National Committee on Government Accounting in the above-quoted standard. Moreover, the significance of that interest income in properly managing the state's budget leads us to the conclusion that our framers would have considered it to be within the dedicated fund prohibition. As we have indicated, however, the answer to this question is not free from doubt. Consequently, until the question is ruled on by the courts, we will defend legislative action dedicating, by general law, derivative income to the funds which "earned" them.

In the absence of valid general law dedications of derivative income, we believe there would still be a way to maintain legislative control over revenues through the budgetary process while achieving the efficient accounting organization provided by separate funds. This would be if the legislature appropriated to the separate fund for a fixed period the amount

Mr. Gerald L. Wilkerson
Honorable Carole J. Burger
J66-785-81 and J66-649-80

November 30, 1982
Page 18 2

of interest or investment income received by that fund. Since each legislature has implicit budgetary authority for a maximum period of only two years, this practice would not impair the ability of future legislatures to dispose of those derivative revenues. Under this line of reasoning, the interest on a loan fund or other separate fund is public revenue which must be transferred to the treasury, unless the fund is authorized by appropriation to retain it for a specific period. Although it may be possible to argue in favor of a longer period, our recommendation is that these appropriations of derivative income to the fund which "earns" them be made annually, for each fiscal year.)

D. Appropriations Stated in General Terms, Rather than Specific Amounts.

The annual budget has traditionally included certain appropriations not stated in specific dollar amounts but rather in terms of money to be received from certain sources during the fiscal year. Such an appropriation, for example, would authorize the risk management division of the Department of Administration to spend the anticipated proceeds from any insurance settlement.)

or judgment arising from the damage or loss of state property. 8/
This practice ensures effective legislative control over state finances while, at the same time, it provides for budgeting flexibility which is especially useful for programs like risk management, the needs of which are necessarily unpredictable.

We have consistently advised that an appropriation is valid if it states a public purpose, has a source, states or implies a time period, and states an amount which is ascertainable by reference to specified information. Under this view a "revolving" loan fund could be established and operated, even if both principal and interest payments on loans are considered to be revenues which may not be dedicated, as long as there is an annual appropriation to the fund of all principal and interest payments received by the fund during the fiscal year. The fund would continue to revolve as long as it was included in the budget.

8/ See, for example, Sec. 7 ch. 113, SLA 1978 which provides:

Amounts equivalent to the amounts to be received in settlement of insurance claims for property losses are appropriated from the general fund to the affected agency for the purpose of replacing the facility or service lost as a result of the incident giving rise to the insurance claim.

Under this language, the state could undertake immediate repair or reconstruction of a school, maintenance facility, or other property damaged by fire or other cause covered by insurance without having to wait for actual settlement and payment by the insurer.

Mr. Gerald L. Wilkerson
Honorable Carole J. Burger
J66-785-81 and J66-649-80

November 30, 1982
Page 20

The practice of appropriating to a separate fund an amount to be ascertained by reference to receipts from a specified source during a definite period accommodates the need and desire of each legislature for budgetary flexibility without impairing the ability of future legislatures to control and dispose of public revenues. In fact, since the legislature maintains control of the appropriation by means of the budget, it could be argued that this practice does not even create a dedication in the first place since a true dedication must function to take control away from the legislature. If legislative control is present, then a dedication does not exist.

We do not think that this practice violates the dedication prohibition.

V. APPLICATION OF DEDICATION PROHIBITION TO SPECIFIC FUNDS,
ACCOUNTS AND APPROPRIATIONS

We have identified the following categories of funds, accounts, and appropriations which raise dedicated funds questions.

A. Allocation of a revenue source by statute to a fund or account from which it may be withdrawn only for limited purposes by appropriation.

1. Tobacco Tax (School) Fund (AS 43.50.140). This fund existed before ratification of the Alaska

Constitution and is therefore authorized to continue under Article IX, section 7. This tax and dedication have not been changed, but the legislature has imposed an additional tax on cigarettes which is deposited in the general fund. Although we have issued several opinions on the subject, there has been no judicial review, and it remains unclear to what extent the legislature may change the dedication or the underlying revenue source within the limit of "continuing" the dedication. 9/

2. Fish and Game Fund (AS 16.05.100 et seq.). The dedication of proceeds of fishing and hunting licenses to the operation of a Department of Fish and Game is required by federal law for participation in federal programs and is therefore authorized by Article IX, section 7. See 16 U.S.C. § 669. However, as discussed earlier, it is not clear whether a dedication of interest

9/ See Atty. Gen. Op. Nos. 7, 9, and 14; inf. memo (Alaska, March 10, 1966); Atty. Gen. Op. No. 22 (Alaska, June 2, 1978); inf. memo (June 30, 1981).

earned on investments in a fund such as that made by AS 16.05.110(5) is constitutional.

3. Reserves for Capital Outlay (AS 37.05.157) and Energy Facilities Development (AS 37.05.158).

By statute there is allocated to each of these accounts a fixed percentage of annual receipts from minerals on state land. Both of these funds appear to be unconstitutional dedications to the extent that they restrict the purpose for which money may be spent. We are informed that the Department of Administration has recorded the amounts to be allocated to each account but has not retained that money for expenditures related to capital outlay or energy facilities development. We also understand that the legislature has not made any appropriations from these two accounts. We suggest that AS 37.05.157 and AS 37.05.158 be repealed.

4. Renewable Resources Fund (AS 37.11.010-090). As

we advised in our 1975 Attorney General Opinion No. 9, this statutory dedication is unconstitutional. We understand that the Department of Administration has followed our advice and has disregarded AS 37.11.010-090. We suggest that these statutes be repealed.

B. Allocation by Statute of Revenue to a Fund or Account
From Which it may be Spent or Used Without Further Ap-
proportionation

1. Public Employees Retirement System Fund (AS 39.35)

This fund receives money from employees and employers who participate in the system. State employer contributions are paid to the fund monthly. AS 39.35.280. State employee contributions are statutorily required to be withheld from wages and transferred to the funds. AS 39.39.170. Participating political subdivisions make similar contributions on behalf of their employees. Benefits are paid to members of the retirement systems according to statute AS 39.35.370 et seq. Expenses of administering the system are also paid from the fund but are specifically required by statute to be included in the annual operating budget. AS 39.35.100(b)(4). The Teacher's Retirement System is accounted for in the same manner.

Although this is clearly a dedication of money received by the state, we believe that it is permissible under the implied exception theory

Mr. Gerald L. Wilkerson
Honorable Carole J. Burger
J66-785-81 and J66-649-80

November 30, 1982
Page 24

discussed earlier. It is our opinion that there is an implied exception to the dedicated funds prohibition for pension fund contributions. 10/

2. International Airport Funds (AS 37.15.420, 430, 440)

The fund established under AS 37.15.420 contains money received from the sale of general obligation bonds for airport improvements and other grants or money provided for the same purpose for which the bonds were authorized. The fund established under AS 37.15.430 contains revenues received by the state from ownership and operation of its airports. The fund established under AS 37.15.440 contains interest earned on money in the section 420 fund and revenues transferred from the section 430 fund for the purpose of redeeming airport revenue bonds.

Although each fund provides for a dedication of state revenue, we believe that they are permissible under the implied exception theory discussed earlier at pp. 5 and 6. It is our opinion that there is an implied exception to the

10/ The constitutional provision for state employee retirement systems supports such an implied exception. Alaska Constitution, Article XII, section 7.

dedicated funds prohibition for revenue derived from bond issues and for revenue derived from facilities constructed with bond proceeds, at least to the extent that it is necessary to satisfy the debt obligation or maintain the facility so that it continues to generate revenues for that purpose. To the extent that revenues are dedicated for purposes which are not related to satisfying the debt or maintaining the facility 11/, we believe that dedication would

11/ AS 37.15.430(a) authorizes use of funds dedicated to the International Airport Revenue Fund for six purposes providing, in pertinent part, as follows:

The money in the revenue fund shall only be used for the purpose of paying or securing the payment of the principal of and interest on the bonds and of and on any other revenue bonds issued by authorization of the legislature to provide funds to acquire, equip, construct and install additions and improvements to, and extensions of and facilities for, the airports and to be payable out of the revenue fund, the purpose of paying the normal and necessary costs of maintaining and operating the airports and all of the improvements and facilities of them, the purpose of paying the costs of renewals, replacements and extraordinary repairs to the airports and all of the improvements and facilities of them, the purpose of redeeming before their fixed maturities any and all revenue bonds issued for the purposes of the airports, the purpose of providing funds to acquire, construct and install necessary additions and improvements to and extensions of and facilities for the airports and all of their facilities, and the purpose of providing funds to pay any and all other costs relating to the ownership, use and operation of the airports.

violate Article IX, section 7 unless it either existed prior to ratification of our Constitution or is required by federal law. 12/

3. Continuing Debt Service Appropriation (AS 37.15-.012)

This statute purports to create a continuing annual appropriation from the general fund of the amount necessary to pay debt service on all outstanding general obligation bonds. This may be a dedication of revenues for a specific purpose. 13/ Even if it is, it is our opinion that there would be an implied exception to the dedicated fund prohibition for bond obligations.

4. Rural Electrification Revolving Loan Fund (AS 44-.83.361)

This fund received an initial appropriation from which the Alaska Power Authority is authorized to make loans. Principal and interest

12/ A dedication of airport revenues did exist prior to ratification. § 32-3A-15 ACLA 1949. However, it was repealed in 1968 by § 2 ch. 14, SLA 1968. On the other hand, it may be that 49 U.S.C. § 1718, adopted in 1970 and amended in 1982 by Section 511 of the Tax Equity and Fiscal Responsibility Act of 1982, P.L. 97-760, would be interpreted to require dedication of all airport revenues to construction, maintenance and operation of airports.

13/ Our uncertainty on this point arises from the fact that the statute does not purport to dedicate a particular revenue source.

..r. Gerald L. Wilkerson
Honorable Carole J. Burger
J66-785-81 and J66-649-80

November 30, 1982
Page 27

payments on loans made from the fund are required by law to return to the fund. As we pointed out above, at n. 1, the questions of whether the principal and/or interest payments are revenues which may not be dedicated in this manner is now a matter in litigation in a suit filed by the Trustees for Alaska.

We will be defending the legislature's action in making both those dedications. In doing so, we will present in more detail a number of the arguments discussed above in support of the legislature's action. In addition, we will discuss the presumption of constitutionality of statutes and the deference due to the administrative and legislative interpretation of the dedicated funds prohibition. As indicated above, we believe that the return of principal payments to a loan fund does not offend the Constitution and that the return of interest payments to the loan fund may be permissible. However, we cannot predict with certainty the position that the court will adopt.

C. Appropriation of an amount from a specific revenue source (e.g., program receipts).

From time to time the legislature, by means of an annual operating budget appropriation, authorizes an agency to spend money that is generated out of one of the agency's programs. The appropriation also sets an upper limit on the amount that can be spent. Although program receipts are clearly state revenues which may not be dedicated, the practice of identifying program receipts as an appropriation source does not in any way limit legislative control over the expenditure of revenues because the legislature maintains control of the appropriation by means of the budget. Therefore, we believe that this practice is not affected by the dedicated funds prohibition.

D. Appropriation of an amount which is ascertainable only by reference to specified information.

Appropriations are regularly made to the risk management division, Department of Administration, of all proceeds during a fiscal year from claims, settlements or judgments arising from damage to or loss of state property. As pointed out above, at 18, this permits the state to repair or replace damaged property without specific appropriations, which would probably be either more or less than the actual property damage in any fiscal year.

Mr. Gerald L. Wilkerson
Honorable Carole J. Burger
J66-785-81 and J66-649-80

November 30, 1982
Page 29

The only difference between this and a typical appropriation is in the determination of the amount appropriated. When a fixed amount is appropriated, obligations incurred against it may be honored as long as there is cash available in the treasury. When an appropriation is made for an amount to be received from a certain source during a specific period, obligations may be honored only if a sufficient amount of money has been received from that source and there is cash available in the treasury. However, the amount of the appropriation remains determinable. Consequently, it is our opinion that these kinds of appropriations do not violate the dedicated fund prohibition. 14/

14/ The pending litigation discussed earlier (Trustees for Alaska v. State, *supra*) also includes a claim that an appropriation to the Alaska Power Authority of the interest to be received on money separately appropriated to the Power Development Fund violates the dedicated funds prohibition. § 1 ch. 90, SLA 1980, as reenacted by § 69 ch. 92, SLA 1981 and amended by § 236 ch. 141, SLA 1982. The questioned appropriation does not state a specific time period during which the interest is to be accrued. Consideration by the court of this particular question might not occur since, by informal memo dated April 19, 1982, we advised the Treasury Division of the Department of Revenue that the interest must be returned to the general fund because of a specific statutory requirement, AS 44.83.388(b). We are informed that no interest has accrued to the Power Development Fund.

E. Other Miscellaneous Dedications

1. Appropriations to the Permanent Fund. Since the constitution (Article IX, section 15) specifically authorizes dedications to the Permanent Fund of "at least" 25 percent of certain revenues, we believe any additional dedication to the fund by statute 15/ or by appropriation is also permissible.
2. Rainy day account. AS 37.05 179 creates a reserve fund to which money is appropriated and authorizes it to be spent for certain necessary emergency operating expenses at some future time. It is our opinion that this practice is permissible under the theory discussed above beginning at p. 12 that money once it is appropriated loses its character as revenue for purposes of the dedicated funds prohibition. A contrary view would severely restrict flexibility in state budgeting and accounting, and we doubt that such a view would be adopted by the courts.

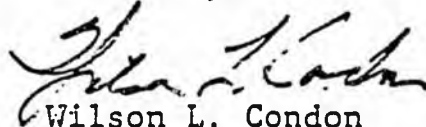
15/ In 1980, the legislature increased the percentage dedication applicable to most new mineral leases to 50 percent. AS 37.13.010(a)(2).

Mr. Gerald L. Wilkerson
Honorable Carole J. Burger
J66-785-81 and J66-649-80

November 30, 1982
Page 31

We hope you find this analysis helpful in determining the nature of the problems presented by the dedicated fund prohibition and the various statutory programs which may or may not run afoul of it. We expect to be able to advise you with greater certainty on some of these questions at the conclusion of the pending litigation described above.

Sincerely,



Wilson L. Condon
Attorney General

WLC:jf

cc: Ron Lehr, Director
Division of Budget and Management

Jay Hogan, Director
Division of Legislative Finance
Legislative Affairs Agency

Section 9.7 - DEDICATED FUNDS.

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

Cross References -

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

Amendment Notes -

The amendment effective February 21, 1977 (9th Legislature's SCS CSSHJR 39 (Res) am S (1976)) inserted "as provided in section 15 of this article or" in the first sentence.

AG Opinions -

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

Delegates to the constitutional convention were desirous of eliminating dedications so that the legislature would have the greatest flexibility in allocating tax revenues on a basis of need. 1959 Op. Att'y Gen. No. 7.

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

As a matter of compromise, a grandfather clause was included in this section to permit all dedications existing on the date of ratification of the constitution (April 24, 1956) to continue. 1959 Op. Att'y Gen. No. 7.

The intent of the drafters of the state constitution was to permit the continuance of existing dedications at the then existing rates until the legislature saw fit to exercise the only power retained in relation to them: That is, the power to repeal. 1959 Op. Att'y Gen. No. 7.

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

This section of the state constitution can be given its intended effect and serve its repeatedly expressed purpose only if the words "proceeds of any tax or license" are interpreted to mean what their framers clearly intended, i.e., the sources of any public revenues. May 2, 1975, Op. Att'y Gen.

The dedication of any source of public revenue: tax, license, rental, sale, bonus-royalty, royalty, or whatever, is limited by the state constitution to those existing when the constitution was ratified or required for participation in federal programs. May 2, 1975 Op. Att'y Gen.

The real concern at the constitutional convention was about earmarked funds, not taxes or licenses, but funds. May 2, 1975 Op. Att'y Gen.

Dedication of the revenues from the lease or sale of state natural resources offends the state constitutional prohibition against dedicated funds. May 2, 1975 Op. Att'y Gen.

The practice of appropriating to a separate fund an amount to be ascertained by reference

to receipts from a specified source does not violate the dedication prohibition of the constitution. November 30, 1982 Op. Att'y Gen.

Language of this section prohibiting dedication of proceeds of any state tax or license must be read as embodying certain implied exceptions, specifically, pension contributions, proceeds from bond issues, sinking fund receipts, revolving fund receipts, contributions from local government units for state-local cooperative programs, and tax receipts which the state might collect on behalf of local government units. November 30, 1982 Op. Att'y Gen.

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

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

If the moneys in the general fund must be applied in a particular way and the amount to be applied is determined by a set formula, rather than by each legislature's judgment, the intent of this section has been thwarted. The legislature's hands are tied as effectively as in the case where the proceeds of a particular tax are dedicated. 1969 Op. Att'y Gen. No. 5, overruled in part on other grounds, May 2, 1975 Op. Att'y Gen.

As to constitutionality of requiring a portion of the general fund to be allocated to local governments each year in accordance with a fixed formula, see 1969 Op. Att'y Gen. No. 5, overruled in part on other grounds, May 2, 1975 Op. Att'y Gen.

The prohibition of this section is against new dedications, i.e., those dedications of revenues which did not exist on April 24, 1956, the date of the constitution's ratification. June 2, 1978 Op. Att'y Gen.

Existing dedications may be continued but may not be revised upward or downward by means of altering the tax, the rate of dedication or the purpose for which the dedication will be used. 1959 Op. Att'y Gen., No. 9; 1959 Op. Att'y Gen. No. 7; 1959 Op. Att'y Gen. No. 14.

No action of the legislature is permissible which would (1) tend to increase or decrease the percentage of the total tax and license proceeds which are dedicated, or (2) which would tend to increase or decrease the amount of proceeds which are dedicated. 1959 Op. Att'y Gen. No. 7; 1959 Op. Att'y Gen. No. 14.

Reducing a dedication makes it different from that which existed, i.e., and existing dedication is not continued when it is reduced any more than it is when it is increased. June 2, 1978 Op. Att'y Gen.

Any attempted alteration short of repeal is a nullity. 1959 Op. Att'y Gen., No. 7.

Legislation developed to eliminate the double fee paid by commercial fishermen who are also holders of limited entry permits, which in effect, exempted permit holders from license fees and provided for payment into the fishermen's fund from moneys collected for permit fees of an amount equal to the amount which would have been paid into the fund from collections for commercial fishing licenses offends this section since it did not continue an existing dedication. June 2, 1978, Op. Att'y Gen.

The 1957 amendment to AS 43.40.010, which reduced the tax on motor fuel used in commercial fishing crafts for purposes of commercial fishing from five cents to two cents per gallon, effected no change in the dedication inasmuch as the reduction in the tax is coupled with an exemption from the refund of three cents per gallon formerly allowed to users of fuel in

commercial fishing craft for commercial purposes. Nothing has been done which increases or decreases the dedication. 1959 Op. Att'y Gen. No. 14.

When the tax is lowered the entire dedication falls and all tax proceeds are covered into the general fund. This result is compelled by a realization that the lowering of the tax irretrievably lowers the dedication because insufficient revenues are available to maintain the present rate of the dedication. Since the only power retained by the legislature with respect to a dedication (other than administrative alterations in the management of the dedication) is the power of repeal, such irretrievable action is tantamount to a repeal of the dedication. 1959 Op. Att'y Gen., No. 14.

When the legislature raises the tax, the excess tax simply goes into the general fund. 1959 Op. Att'y Gen. No. 14.

A dedication is not repealed in its entirety by the partial elimination of its source but rather that it is reduced to provide for a dedication solely from all that is left of the source. June 2, 1978 Op. Att'y Gen.

The prohibition against dedications should be read in conjunction with Alaska Const., art. XI, Sec. 7, which deals with restrictions on the initiative and referendum. Therein it is stated that the initiative and referendum shall not be used to create or apply to dedications of "revenue." 1959 Op. Att'y Gen., No. 7.

Pre-existing dedications of revenue established by statute to satisfy trust obligations imposed by federal law are excluded from the reach of Alaska Const., art. IX, Sec. 17. That section applies to proceeds net of dedications otherwise permitted under this section, which permits dedications that are required for participation in a federal program. 1993 Op. Att'y Gen. No. 1.

Any attempted dedication of funds after April 26, 1956, which was not absolutely required for participation in federal programs, had to be covered into the general fund, any statute notwithstanding. 1959 Op. Att'y Gen. No. 7, issued prior to the 1977 amendment of this section.

Although fourth class cities may now be incorporated cities within the intent of AS 43.70.080, they would not be entitled to any refunds under such section, since if this were the case, the effect of ch. 79, SLA 1959 would be to make a new dedication of a state tax or license for a special purpose. Any such dedication would be invalid under the provisions of this section. 1960 Op. Att'y Gen., No. 5.

Any repeal or repeal and re-enactment of a dedication during the 1957 session takes the dedication from under the protection of the grandfather clause, and a re-enactment either in 1957 or later is a nullity unless the dedication is required by the federal government for participation in federal programs. 1959 Op. Att'y Gen., No. 7, issued prior to the 1977 amendment of this section.

Employees' retirement system and emoluments of office for all commissioners, heads of state agencies and the members of the judiciary and legislature are authorized by the Alaska Constitution and are implied exceptions to the prohibition of this section. 1969 Op. Att'y Gen., No. 5 overruled in part on other grounds, May 2, 1975 Op. Att'y Gen.

The Violent Crimes Compensation Board is authorized by statute to recover, receive, and collect receipts; however, under the Alaska Constitution, all receipts must revert to the general fund. September 25, 1980 Op. Att'y Gen.

The provisions of AS 16.43.310 and 16.43.320, which authorize the Commercial Fisheries Entry Commission to establish and administer a buy-back program, offend the state constitutional prohibition against dedicated funds. May 23, 1985 Op. Att'y Gen.

Decisions -

This clause prohibiting dedicated funds seeks to - preserve an annual appropriation model which assumes that not only will the legislature remain free to appropriate all funds for any purpose on an annual basis, but that government departments will not be restricted in requesting funds from all sources. *Sonneman v. Hickel*, 836 P.2d 936 (Alaska 1992).

Assessments authorized by former AS 16.10.530 were "proceeds of a state tax or license." - Since the constitution prohibits the dedication of any source of revenue, including both "taxes" and "special assessments," the assessments authorized by former AS 16.10.530 were "proceeds of a state tax or license," within the meaning of this section, whether or not the salmon assessments fit the definition of "special assessments." *State v. Alex*, 646 P.2d 203 (Alaska 1982).

Coastal protection fund held invalid. - As provided for in ch. 266, SLA 1976, the coastal protection fund in former AS 30.25, which regulated the transfer of crude oil, refined petroleum products, or by-products of oil terminal facilities, was a dedication of the proceeds of a tax or license and invalid under this section. *Chevron U.S.A., Inc. v. Hammond* (A77-195 Civil), F. Supp. (D. Alaska 1978).

Risk charges for each classification of certificate issued under former AS 30.25, which were deposited in the coastal protection fund, were the proceeds of a license or tax within the meaning of this section, which prohibits the dedication of any state tax or license to any special purpose with certain exceptions. *Chevron U.S.A., Inc. v. Hammond* (A77-195 Civil), F. Supp. (D. Alaska 1978).

Attorney general could not save provisions of former AS 30.25 from unconstitutionality under this section by directing promulgation of regulations inconsistent with statute. - See *Chevron U.S.A., Inc. v. Hammond* (A77-195 Civil), F. Supp. (D. Alaska 1978).

Deposit of Alaska Power Authority revenues into state general fund. - Net proceeds from the Alaska Power Authority's operations in excess of actual debt payments are deposited into the state general fund, the Authority receiving money for maintenance and operation of its facilities from legislative appropriations. *M-K Eng'g Co. v. Alaska Power Auth.*, 662 F. Supp. 303 (D. Alaska 1986).

Based upon this article, funds left over from Alaska Power Authority projects are lapsed into the state's general fund for later reappropriation. *M-K Eng'g Co. v. Alaska Power Auth.*, 662 F. Supp. 303 (D. Alaska 1986).

Cited in *State v. Anthony*, 810 P.2d 155 (Alaska 1991).

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Representative Ivan M. Ivan

MEMORANDUM

TO: Representative Con Bunde, Chair
House HESS Committee

FROM: Representative Ivan M. Ivan 

DATE: February 11, 1997

RE: Scheduling of House Joint Resolution 18

Please consider this request to hear House Joint Resolution 18: Dedicated Funds; Rates May be Changed, before the House HESS Committee at your earliest possible convenience.

This proposed constitutional amendment will allow voters in the next general election to decide if the legislature can change the rate or license the proceeds of funds dedicated for a special purpose. The dedicated fund had to be in existence as of April 24, 1956. The resolution has a retroactive date of October 1, 1997, in the event the legislature decides to place the additional revenues from the tobacco tax into the school fund.

Thank you for your consideration of my request. Please do not hesitate to contact either myself or Tom Wright of my staff if you have questions or need further information.