HB
132

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: March 7, 1997 **FURTHER REFERRALS:** **Finance**

Date of Committee Action: 4/11/97

The JUDICIARY Committee considered: **SSHB 132**

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 132 **MUNICIPAL TAXATION OF ALCOHOL**

"An Act relating to municipal taxation of alcoholic beverages."

recommends it be replaced
with the following committee substitute ______________ [ ] 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) ______________

[✓] zero fiscal note(s) [illegible] [ ] zero fiscal note(s) ______________

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
[illegible]	✓			
[illegible]	✓			
[illegible]			✓	
[illegible]			✓	
[illegible]			✓	
[illegible]			✓	

CHAIR'S SIGNATURE [illegible]

STATE OF ALASKA
1997 LEGISLATIVE SESSION

FISCAL NOTE

BILL NO: SSHB 132

Revision Date: April 10, 1997
Title: Municipal Taxation of Alcohol
Sponsor: Rep. Davis
Requestor: (H) JUD

Dept. Affected: Revenue
BRU: Revenue Operations
Component: Income and Excise Audit
COMPONENT SERIAL NO. 113

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUE (decrease)	**	**	**	**	**	**

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	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost $ 0.0

POSITIONS:

POSITIONS	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The Department of Revenue determines the proposed legislation may cause the state to lose a small amount of state alcohol tax revenues. This revenue loss would be due to a factor called "elasticity". Elasticity means that when price of a commodity goes up the consumption goes down. If we assume that some municipalities that currently have no sales tax on alcohol enact one, prices would go up. Our economist located two sources for elasticity of alcohol which indicated that for every 1% increase in price, consumption would decrease 1/3 of 1%. There are numerous variables to consider in estimating the potential revenue loss.
*** Given the uncertainities involved and not knowing which if any municipalities will increase their alcohol tax DOR can not estimate the loss of revenue.

Prepared by: Brett Fried, Economist — Phone: 465-3682
Division: Income & Excise Audit — Date: April 10, 1997
Approved by Commissioner: Wilson L. Condon — Date: April 10, 1997
Agency: Revenue

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STATE OF ALASKA
1997 LEGISLATIVE SESSION

FISCAL NOTE

BILL NO: SSHB 132

Revision Date:
Dept. Affected: Community & Regional Affairs
Title: An Act relating to municipal taxation of alcoholic beverages
BRU: none
Component: none
Sponsor: Rep. Davis
Requestor: House C&RA Committee
COMPONENT SERIAL NO.

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current (FY97) impact $ none

ANALYSIS: (Attach a separate page if necessary)

This legislation would have no fiscal impact on the department.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4708
Division: Division of Administrative Services Date: 3/4/97
Approved by Commissioner: *[signature]* Date: 3/4/97
Agency: Community & Regional Affairs

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STATE OF ALASKA
1997 LEGISLATIVE SESSION

FISCAL NOTE

BILL NO: SSHB 132

Revision Date:

Title: Municipal Taxation of Alcohol

Sponsor: Rep. Davis

Requestor: (H) CRA

Dept. Affected: Revenue

BRU: Revenue Operations

Component: Income and Excise Audit

COMPONENT SERIAL NO. 113

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUE (decrease)	($50.0 - $200.0)	($50.0 - $200.0)	($50.0 - $200.0)	($50.0 - $200.0)	($50.0 - $200.0)	($50.0 - $200.0)

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	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost $ 0.0

POSITIONS:						
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The Department of Revenue determined the proposed legislation may cause the state to lose a small amount of state alcohol tax revenues. This revenue loss would be due to a factor called "elasticity". Elasticity means that when price of a commodity goes up the consumption goes down. If we assume that some municipalities that currently have no sales tax on alcohol enact one, prices would go up. Our economist located two sources for elasticity of alcohol which indicated that for every 1% increase in price, consumption would decrease 1/3 of 1%. There are numerous variables to consider in estimating the potential revenue loss. We reviewed the consumption factors for Anchorage, Kenai and the Aleutians. A three or five percent sales tax in these locations would result in a $90,000 to $150,000 loss in revenue. These cities have no current sales tax, others do. Our overall potential loss is a rough estimate assuming that on a statewide basis some municipalities would enact or raise sales taxes on alcohol.

Prepared by: Brett Fried, Economist — Phone: 465-3682

Division: Income & Excise Audit — Date: March 3, 1997

Approved by Commissioner: Wilson L. Condon — Date: March 3, 1997

Agency: Revenue

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HB 132

Sitka 823 P2 641 (91)

Q for Tam

Isn't footnote seven talking about existing ordinance violating Art 11 Sec 7?

Doesn't Frohne 568 P2d. 3 (1977) resolve issue of application of Art II § 7? to municipalities?
— legis body must have power to enact the legislation which is the subject of the initiative.

Jim Powell re: HB 132

Juneau is grandfathered in.

Allow to tax @ differential rate
Juneau had diff rate befor '85
5% + 3% on alcohol

Juneau supports.

Craig Duncan — 586 5215

0-LS0560\E.1
Ford
3/10/97

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE DAVIS

TO: SSHB 132

1 Page 1, following line 15:

2 Insert a new bill section to read:

3 "* **Sec. 2.** AS 04.21.010 is amended by adding a new subsection to read:

4 (e) If a municipality imposes a tax on alcoholic beverages under (c) of this
5 section and imposes a tax on other sales within the municipality, and the tax imposed
6 on alcoholic beverages is higher than the tax imposed on other sales, the municipality
7 shall comply with the provisions of this subsection. Revenues received from that
8 portion of the tax on alcoholic beverages that is higher than the tax imposed on other
9 sales within the municipality must be appropriated by the municipality for alcohol
10 related social services provided by the municipality."

11 Renumber the following bill section accordingly.

Andy 2693

0-LS0560\E.2
Ford
3/28/97

AMENDMENT #1

OFFERED IN THE HOUSE
TO: SSHB 132

BY REPRESENTATIVE DAVIS

1 Page 1, following line 15:
2 Insert a new bill section to read:
3 "* **Sec. 2.** AS 04.21.010 is amended by adding a new subsection to read:
4 (e) If a municipality imposes a tax on alcoholic beverages under (c) of this
5 section and the tax imposed on alcoholic beverages is higher than the tax imposed on
6 other sales, the municipality shall comply with the provisions of this subsection. A
7 municipality, when holding an election to impose a tax on alcoholic beverage as
8 described under this subsection, shall include a statement on the election ballot
9 indicating that it is the intent of the governing body that revenues, if any, will be
10 appropriated by the municipality for alcohol related services provided by the
11 municipality."

12 Renumber the following bill section accordingly.

Amendment

ty the entire burden of a loss for which two are, by hypothesis, responsible. The negligence of the defendant has played no less a part in causing the damage; the plaintiff's deviation from the community standard of conduct may even be relatively slight, and the defendant's more extreme;....

Id. at 1048 (quoting W. Prosser, *Handbook on the Law of Torts* § 433 (4th ed. 1971)).

The rule that any degree of fault bars all recovery is an anachronism. Comparative negligence has been in effect in this state since the *Kaatz* decision. No special problems have been encountered. In the context of joint tortfeasors, the all or nothing common law rule which forbade one joint tortfeasor from obtaining contribution from another was abolished by statute in 1970 with the enactment of the Alaska Uniform Contribution Among Joint Tortfeasors Act. AS 09.16.010-.060 (repealed eff. 3/5/89). Although under this act joint tortfeasors share equally in the common liability rather than according to the comparative fault of each, this system was nonetheless clearly preferable to the all or nothing common law rule.[1] Under current law, joint tortfeasors are liable for that percentage of total damages which accords to the percentage of fault of each. AS 09.17.080(d). The rule that partial fault of a party precludes all loss shifting has thus been clearly rejected by this court and by the Alaska Legislature in the context of tort law. To announce such a rule in the closely related area of implied contracts is to ignore the legal developments of the last two decades.

We have recognized that in certain cases, especially those involving the performance of professional services, identical claims may reasonably be said to arise both in tort and in implied contract. *Lee Houston & Associates, Ltd. v. Racine*, 806 P.2d 848, 853-54 (Alaska 1991). " 'This court should avoid applications of the law which lead to different substantive results based upon distinctions having their source solely in the niceties of pleading and not in the underlying realities.' " *Id.* at 853 (quoting *Higa v. Mirikitani*, 55 Haw. 167, 517 P.2d 1, 4-5 (1973)). It is therefore appropriate, so far as is possible, to apply rules of law to implied contractual indemnity claims which are similar to those applied to indemnity claims sounding in tort.

If one accepts the conclusion that implied contract claims seeking to shift all or part of a loss to another wrongdoer should be treated similarly to tort claims having the same objective, it is immediately apparent that loss shifting proportional to fault should be allowed under current law because currently a tortfeasor may not suffer a loss which is disproportionate to its fault. AS 09.17.080(d). In my view, loss shifting proportional to fault should also apply to cases, such as the present one, which arose when the Alaska Uniform Contribution Among Joint Tortfeasors Act was in effect, because, as noted, loss shifting proportional to fault is closer to the statutory contribution remedy than no loss shifting at all.

The rule that there can be no partial nonstatutory indemnity between concurrently negligent tortfeasors was adopted by this court in *Vertecs Corp. v. Reichhold Chemicals, Inc.*, 661 P.2d 619, 626 (Alaska 1983).[2] It was largely based on the rationale that since the contribution act allowed a partial loss-shifting remedy among joint tortfeasors, any other partial loss-shifting remedy would necessarily conflict with the statutory remedy. This rationale, however,

1. " 'This act would distribute the burden of responsibility equitably among those who are jointly liable and thus avoid the injustice often resulting under the common law.' " House Judiciary Committee Report, 1970 House Journal 437 (quoting the National Conference's prefatory note to the Uniform Contribution Among Tortfeasors Act). "[S]haring equally, furnished a rough approximation of a just result. For example, it was certainly preferable when two joint tort-feasors were liable, for them to share equally in paying the damages, than for one to go free simply because the plaintiff elected to recover from the other." *Arctic Structures, Inc. v. Wedmore*, 605 P.2d 426, 441 (Alaska 1979) (Boochever, C.J., dissenting).

2. *Vertecs* has since been followed in other tort cases. *Koehring Mfg. v. Earthmovers of Fairbanks*, 763 P.2d 499, 503-04 (Alaska 1988); *D.G. Shelter Prods. v. Moduline Indus.*, 684 P.2d 839, 842 (Alaska 1984).

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

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

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

v.

CITY AND BOROUGH OF SITKA, Appellees.

No. S-4136.

Supreme Court of Alaska.

Dec. 27, 1991.

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

Reversed.

1. Statutes ⟹188

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

2. Statutes ⟹188

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

3. Intoxicating Liquors ⟹91

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

William G. Royce, Anchorage, for appellants.

Theron J. Cole, Sitka, for appellees.

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

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

OPINION

RABINOWITZ, Chief Justice.

I. FACTS AND PROCEEDINGS

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

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

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

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

(1) AS 04.21.010(c) prohibits taxing alcoholic beverage sales at a rate higher than the tax on other sales;

(2) The regulation and taxation of alcohol has been preempted by state law except where such power is specifically conferred on municipalities; and

(3) A municipal tax purporting to dedicate resulting revenues violates Article IX, § 7, of the Alaska Constitution.

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

A municipality may not impose taxes on alcoholic beverages except

(1) property taxes on alcoholic beverage inventories;

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

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

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

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

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

II. DISCUSSION

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

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

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

1. The parties agree that this appeal does not raise any issues of fact, but rather concerns the interpretation of statutes. This court will employ *de novo* review to a grant of summary judgment, *Kollodge v. State*, 757 P.2d 1028, 1032 (Alaska 1988), and will adopt the rule of law which is "most persuasive in light of precedent, reason and policy." *Langdon v. Champion*, 745 P.2d 1371, 1372 n. 2 (Alaska 1987) (citations omitted).

sales taxes on alcoholic beverages are allowed only to the extent sales taxes are imposed on other sales."[2]

We have stated that the goal of statutory construction is:

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

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

[1,2] We do not adhere to the plain meaning rule in interpretation of statutes. *University of Alaska v. Geistauts*, 666 P.2d 424, 428 n. 5 (Alaska 1983). However, we have stated that "where a statute's meaning appears clear and unambiguous, ... the party asserting a different meaning has a correspondingly heavy burden of demonstrating contrary legislative intent." *Id. See also State v. Alex*, 646 P.2d 203, 208 n. 4 (Alaska 1982) (under Alaska's sliding scale approach to statutory interpretation, the plainer the language of the statute the more convincing the evidence of contrary legislative intent must be). In interpreting a statute, we look first to the language of the statute. *Ward v. State*, 758 P.2d 87, 89 n. 5 (Alaska 1988). Here, the language of the statute, on its face, proscribes imposition of a sales tax solely on alcohol. It does not explicitly address rates of taxation.

1. The legislative history

The language requiring a municipality to tax sales of other commodities before taxing sales of alcoholic beverages was added to AS 04.21.010(c) in 1985. Ch. 74, § 20, SLA 1985. Similar language had been deleted from the statute in 1980.[3] Ch. 131, § 4, SLA 1980.

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

2. Before the superior court Lagos argued in part:

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

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

(Emphasis in original.)

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

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

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

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

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

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

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

Additional support for Lagos' position is found in a comment by Senator Ferguson. At the May 7, 1985 proceedings of the Senate Finance Committee, Senator Ferguson asked, "Dillingham is thinking about raising the taxes on alcohol, and would they be allowed to continue their movement? I guess they wouldn't be able to after July 1, 1985?" *Id.* Senator Kerttula in response stated that "[a]s long as their ordinance is fully implemented prior to July 1st, they would be grandfathered in." *Id.* Apparently, both these senators believed that the amendment in question prohibited differential rates on alcohol sales tax.

Subsequently, at the same May 7, 1985 Senate Finance Committee meeting, the strongest statement concerning the subject of differential rates of taxation was made by the then Acting Commissioner of the Department of Community & Regional Affairs, in response to the comment by Senator Ferguson. The Acting Commissioner stated, "I understand then in the amendment that this refers to tax equalization and you cannot set a sales tax for alcohol higher than any other commodity within the community." [4] *Id.*

Sitka counters by noting that

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

Sitka, and the amicus, also rely on an opinion from an Assistant Attorney General and a memorandum from the then Deputy Director of the Division of Legal Services for the Legislative Affairs Agency, both of which concluded that the 1985 amendment to AS 04.21.010(c) did not speak to the rate of taxation.[6]

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

Lagos further argues that the grandfather clause of AS 04.21.010(c)(3), which permits the continuation of "sales taxes on alcoholic beverage sales that were in effect before July 1, 1985," demonstrates that the legislature intended to prohibit differential rates of taxation when it enacted its amendments to AS 04.21.010(c). Lagos asserts that this grandfather clause applied to the communities of Craig, Juneau, and Kotzebue, because those communities had in place differential taxes on the sale of alcoholic beverages at the time the 1985 amendments were enacted. Additionally, Lagos points to the discussions of the Senate Finance Committee which indicate that the committee believed these three communities were the only communities affected by the grandfather clause. From a review of the legislative history of the amendment to AS 04.21.010(c)(3), and the differential sales tax ordinances of Juneau, Craig, and Kotzebue, Lagos concludes that AS 04.21.-010(c)(3) was enacted for the specific purpose of preserving the two-tiered municipal sales taxes on alcohol in these three communities. Thus, Lagos concludes that any ambiguity as to whether AS 04.21.010(c)(2) prohibits discriminatory rates of taxation on sales of alcoholic beverages is resolved by the provisions of AS 04.21.010(c)(3).

The City and Borough of Sitka reply that there is no indication in the wording of AS 04.21.010(c)(3) that it is limited to instances of unequal taxation or that it is limited to the communities of Craig, Juneau, and Kotzebue. "It could just as easily be applied to communities taxing alcohol alone prior to July 1, 1985."

III. CONCLUSION

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

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

REVERSED.[8]

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

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

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

(Emphasis in original.)

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

7. In addition to the text and legislative history surrounding the adoption of AS 04.21.010(c)(3), the legislative history of AS 04.21.010(c)(2) noted above, provides evidence that some members of the Senate Finance Committee, including the amendment's sponsor, intended that there be no discrimination in a municipality's rate of taxation concerning alcoholic beverages.

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

a motor vehicle while intoxicated. The superior court affirmed the district court's rejection of appellant's motion to withdraw his nolo contendere plea and this appeal followed.[2]

In this appeal the State of Alaska has confessed error. In its confession of error, the state notes "a remarkable parallel between the transcript of the proceedings here and the record in *Boykin v. Alabama,* 395 U.S. 238 [89 S.Ct. 1709, 23 L.Ed.2d 274] (1969)." Further, the state explicitly "concedes that the inquiry made of the defendant in the instant case consisted only of a determination that he understood that he could be sentenced on a no contest plea as on a guilty plea." The state concludes its confession of error in the following manner:

> Accordingly, the State of Alaska concedes that error occurred in accepting the defendant's *nolo* plea without at least some inquiry into the voluntariness of that plea, and that the court likewise erred in failing to permit withdrawal of the plea.[3]

We have reviewed the state's confession of error in light of the principles recently enunciated in *Lewis v. State,* 565 P.2d 846 (Alaska, 1977) and *Joe v. State,* 565 P.2d 508 (Alaska, 1977).[4] In our opinion in *Lewis,* this court chose not to adopt the rule of *McCarthy v. United States,* 394 U.S. 459, 89 S.Ct. 1166, 22 L.Ed.2d 418 (1969), which mandates that the failure of a federal trial court to follow the procedures specified in Rule 11(c), Federal Rules of Criminal Procedure, is *per se* reversible error. In *Lewis* we held that the consequences of the trial court's failure to comply with Alaska's parallel Rule 11 "would be better considered on a case-by-case basis."[5] In *Joe* we applied the *Lewis* rule and concluded that "the state met its burden of proof, and that the superior court did substantially comply with Criminal Rule 11 at the time it accepted Harold Harvey Joe's plea."[6]

Based upon our decisions in *Lewis* and *Joe,* we have concluded that the confession of error is supported by the record and has foundation in law.[7] Criminal Rule 11(c) provides in part:

> (c) *Pleas of Guilty or Nolo Contendere.* The court shall not accept a plea of guilty or nolo contendere from a defendant without first addressing the defendant personally and
>
> . . . . .
>
> (3) informing him:
>
> (i) of the mandatory minimum punishment, if any, and the maximum possible punishment provided by the statute defining the offense to which the plea is offered . . . .

2. In its Judgment on Appeal the superior court held in part:

   > While compliance with Criminal Rule 11(c) is, of course, desirable and the court should insure that criminal defendants are properly informed and aware of the consequences of their actions, this court concludes that the District Court Judge did not err in denying appellant's motion to withdraw plea. The appellant was represented by counsel, the plea was openly made with an understanding of the charge and the possibility of the type of punishment that was actually imposed.

3. The government further states in its confession of error that "[i]n *Boykin,* the Supreme Court of the United States held it to be plain and reversible error to accept a guilty plea absent some indication in the record that the plea was offered voluntarily."

4. All of the relevant proceedings which were held in both the district and superior courts in the case at bar antedated our decisions in the *Lewis* and *Joe* cases.

5. *Lewis v. State,* at 851 (Alaska, 1977). Further, in *Lewis,* at 852, we stated:

   > [T]he drafters of the Uniform Rules of Criminal Procedure would apply the *McCarthy* rule of automatic reversal only if '[t]he plea was accepted without *substantial* compliance' with their equivalent of Rule 11(c). Uniform Rule of Criminal Procedure 444(e)(2)(i) (1974).
   >
   > For these reasons, we have determined to treat violations of Criminal Rule 11(c) in the same manner as other errors not of constitutional dimension—reversible only if they affect substantial rights of the defendant. (footnote and citation omitted, emphasis in original)

6. *Joe v. State,* at 514 (Alaska, 1977).

7. *Compare In the Matter of D. P. v. State,* 556 P.2d 1256 (Alaska, 1976).

Since the district court did not comply with the procedural requirement of Criminal Rule 11(c)(3)(i), we conclude that the government's confession of error is appropriate. Given the district court's failure to substantially comply with Criminal Rule 11, the matter is remanded to the superior court with directions to remand to the district court for the purpose of permitting appellant to withdraw his plea of nolo contendere. The state may proceed in its prosecution of appellant for the offense of operating a motor vehicle while under the influence of intoxicating liquor.

BOOCHEVER, Chief Justice, with whom RABINOWITZ, Justice, joins, concurring.

For the reasons stated in the dissent to *Lewis v. State,* 565 P.2d 846, (Alaska, 1977), I would hold that the failure of the trial court to comply with the specified procedures of Criminal Rule 11 was per se reversible error entitling the defendant to plead anew. This approach would not involve reversing a conviction after trial, but would merely permit a defendant who has not been furnished the information required by our rules to replead after being so informed. It is increasingly apparent that the substantial workload of this court is being unnecessarily increased by appeals in cases where Rule 11 has not been followed. As long as the issue is to be decided by appraising the consequences of the error on a case-by-case basis, undue litigation is encouraged. I think that the court should reconsider its position and follow the reasoning adopted by the United States Supreme Court in *McCarthy v. United States,* 394 U.S. 459, 89 S.Ct. 1166, 22 L.Ed.2d 418 (1969).

MUNICIPALITY OF ANCHORAGE, Appellant,

v.

Mary R. FROHNE, Appellee.

Mary R. FROHNE, Cross-Appellant,

v.

George SULLIVAN, Mayor, Municipal Assembly, Anchorage Municipality Commission on Salary and Emoluments, Cross-Appellee.

Nos. 3950, 3104.

Supreme Court of Alaska.

Aug. 26, 1977.

Member of Anchorage Municipal Charter Commission brought action alleging various violations of the Anchorage municipal charter. The Superior Court, Third Judicial District, Victor D. Carlson, J., entered orders from which appeals were taken. The Supreme Court, Rabinowitz, J., held that: (1) since charter was devoid of any express requirement that appropriations be made by ordinance the municipality was not bound to make appropriations exclusively by ordinance, and (2) initiative petition, which was certified as legally sufficient by clerk of greater Anchorage area borough prior to borough's unification with city of Anchorage and which concerned apportionment plans, was not required to be submitted to voters of the resulting municipality of Anchorage.

Affirmed in part, reversed in part.

1. Municipal Corporations ⟹890

Where charter of municipality of Anchorage indicated which actions were required to be carried out by ordinance and subject of appropriations was omitted from charter listing of such actions, the municipality was not required to make appropriations exclusively by ordinance, notwithstanding reference in the section on initiative and referendum to ordinances appropriating funds. AS 29.13.100, 29.68.390; Const. art. 10, § 11; art. 11, § 1 et seq.

2. Municipal Corporations ⟹85

When a charter is silent as to the mode of decision on a matter committed to the legislative body, ordinance procedures are not ordinarily required, particularly where specific parts of the charter mandate ordinance procedures; implication is that other powers may then be exercised without proceeding by ordinance. AS 29.13.100; Const. art. 10, § 11.

3. Municipal Corporations ⟹35

Initiative, which was presented to greater Anchorage area borough prior to its unification with city of Anchorage and which concerned selection of apportionment plans, was not binding on the subsequently created municipality of Anchorage; in any event, initiative could not be deemed an amendment to Anchorage municipal charter without complying with procedural requirements for adoption of charter amendments; if initiative was given effect it would render nugatory statutory directives for charter formulation. AS 29.28.060, 29.28.073, 29.28.080, 29.68.240-29.68.440, 29.68.360; Const. art. 11, §§ 1, 7.

4. Statutes ⟹301, 302

In matters of initiative and referendum the people are exercising a power reserved to them by the Constitution and laws of the state; constitutional and statutory provisions under which they proceed should be liberally construed. Const. art. 11, §§ 1, 7; AS 29.28.060.

5. Statutes ⟹303

Subject of the initiative must constitute such legislation as the legislative body to which it is directed has the power to enact. Const. art. 11, §§ 1, 7; AS 29.28.060.

6. Municipal Corporations ⟹108.2

Since prior to unification with city of Anchorage the greater Anchorage area borough assembly had no power to bind the subsequently created municipality of Anchorage, the people through the initiative process also could not accomplish such result. Const. art. 11, §§ 1, 7; AS 29.28.060.

7. Municipal Corporations ⟹35

Provision of charter establishing municipality of Anchorage as legal successor to greater Anchorage area borough and the city of Anchorage in all rights, titles, actions, suits, franchises, contracts and liabilities did not bind the municipality to a form of government selected by initiative petition which was certified for voter approval by the borough prior to its unification with the city; charter provision referred to contracts and other obligations incurred by the former government prior to unification.

Ted D. Berns, Asst. Municipal Atty. and Richard Garnett III, Municipal Atty., Anchorage, for appellant and cross-appellee.

Timothy H. Stearns, Anchorage, for appellee and cross-appellant.

OPINION

Before BOOCHEVER, C. J., and RABINOWITZ, CONNOR and BURKE, JJ.

RABINOWITZ, Justice.

This appeal and cross-appeal arise from two final orders of the superior court. The first permanently enjoined appellant from "disbursing funds from the treasury of the Municipality of Anchorage except in accordance with appropriations authorized by ordinance." The second ordered that an initiative petition which was circulated by cross-appellant and certified as legally sufficient by the clerk of the Greater Anchorage Area Borough should not be submitted to the voters of the Municipality of Anchorage, and granted summary judgment to cross-appellees. We reverse the superior court as to its first order concerning the method of municipal appropriations required, and affirm with respect to the superior court's grant of summary judgment on the initiative.

Appellee Mary Frohne was a member of the Anchorage Municipal Charter Commission, an eleven member organization responsible for drafting the Anchorage Municipal Charter. The Greater Anchorage

Area Borough and the City of Anchorage unified to become the Municipality of Anchorage upon adoption of the charter on September 9, 1975.[1] Frohne subsequently brought suit alleging various violations of the provisions of the new charter. We will first address the substantive issues concerning the authorized methods of appropriation by the Municipality.

[1, 2] The facts are undisputed in this case. Prior to unification, the City and Borough followed different procedures in authorizing budget revisions, transfers and supplemental appropriations. The Borough was subject to AS 29.48.130 and 29.48.190(c) which prohibit second class and general law municipalities from authorizing expenditures except by appropriation ordinance. The former City of Anchorage, as a home rule municipality, was not subject to these statutory restrictions on expenditures[2] and followed a general practice of processing budget revisions, transfers, appropriations, and supplemental appropriations by council action memoranda. Pursuant to the terms of the Anchorage Municipal Charter,[3] the mayor noted a conflict between the methods of appropriation utilized by the former Borough and City governments. The procedure "designated" by the mayor and approved by the assembly for future appropriations by the Municipality of Anchorage was the informal action memorandum used by the city before unification. Until the imposition of the injunction which is the subject of this appeal,[4] the Municipality was utilizing both ordinances and memoranda for budget revisions, appropriations and supplemental appropriations.

As a preliminary matter, we note that the Alaska Constitution imposes no explicit restrictions on the methods of appropriation available to home rule municipalities.[5] Since the general statutory provisions requiring municipal appropriation ordinances are also inapplicable to home rule governments,[6] disposition of this first issue turns on the construction given to the provisions of the municipal charter.[7]

The charter itself is devoid of any express requirement that appropriations be made by ordinance. Appropriation is defined in the charter as "a unit of funding provided for by the Assembly in the municipal budget."[8] We deem it significant that the subject of appropriations is omitted from a charter listing of "actions requiring an ordinance."[9] Although by its own terms this

1. Anchorage Municipal Charter § 19.02(a). The charter was adopted by a majority vote in accordance with the requirements of AS 29.68.390.

2. AS 29.13.100 applies to home rule municipalities only designated provisions of that chapter. AS 29.48.130, which requires municipalities to perform certain actions by ordinance—including the making of appropriations—is not one of the provisions designated in AS 29.13.100.

3. Anchorage Municipal Charter § 19.06
Conflict in Prior Law. In the event of conflict between the ordinances, resolutions, and regulations of the former governments, affecting the orderly transition of government, the Mayor shall designate in writing which governs. The designation is effective immediately and shall be communicated to the Assembly. The designation is approved unless the Assembly, within twenty-one (21) days, adopts by resolution a contrary designation.

4. A preliminary injunction was issued on June 24, 1976. After oral argument on appellant's motion for a stay or in the alternative for an order dissolving the preliminary injunction, the superior court denied appellant's motion and granted a permanent injunction based on the terms, conditions, and reasons stated in the court's memorandum and order of June 24, 1976.

5. This is in contrast to funds withdrawn from the state treasury, which must be "in accordance with appropriations made by law." Alaska Const. art. IX, § 13. Statutory language implementing this constitutional provision establishes a budgetary system in which all appropriations are made by legislative act. AS 37.07.030, .080, .100.

6. *See* n.2 *supra* and n.7 *infra*.

7. The constitution grants to home rule governments "all legislative powers not prohibited by law or by charter." Alaska Const. art. X, § 11.

8. Anchorage Municipal Charter art. XVII, § 17.13(a).

9. *Id.* art. X, § 10.02.

list is not exhaustive,[10] the text of the charter explicitly indicates throughout where other actions are to be carried out "by ordinance." [11]

When a charter is silent as to the mode of decision on a matter committed to the legislative body, ordinance procedures are not ordinarily required.[12] This is particularly true where, as in the present case, specific parts of a charter mandate ordinance procedures. The clear implication is that other powers may then be exercised without proceeding by ordinance.[13]

With one exception, the Anchorage Municipal Charter consistently refers to the making of appropriations and omits the limitation "by ordinance." In the section on initiative and referendum, however, reference is made to "ordinances . . . appropriating funds." [14] The stated purpose of this provision is to limit the exercise of the powers of initiative and referendum.[15] We do not believe that, standing alone, this section pertaining to initiative and referendum can be used as a basis for imposing a procedure for appropriations not contemplated by the charter as a whole.[16] In our view it evidences an intent to withdraw from the voters the power to directly intervene in appropriations which, like the annual municipal budget,[17] are passed by ordinance. We cannot read this provision to imply an intent on the part of the drafters of the charter that in addition all appropriations must be by ordinance when such a restriction could have been explicitly included in the charter.[18] We therefore reverse the judgment of the superior court on this issue with directions upon remand to dismiss the permanent injunction which required the Municipality of Anchorage to make appropriations exclusively by ordinance.

[3-6] The initiative which is the subject of the instant cross-appeal would have directed the Greater Anchorage Area Borough Assembly to select one of three multiple member district apportionment plans and one of two single member district apportionment plans proposed in the initiative and "give the voters their opportunity to choose between the two by including them in one ordinance and placing them on the same ballot in a special election, to take place within 60 days of enactment of this initiative." The petition was circulated and certified [19] by the municipal clerk on July 25, 1975. Since it was not acted upon by

10. Charter § 10.02 provides for assembly actions "[i]n addition to other actions which require an ordinance . . . ."

11. For example, the assembly "by ordinance" is to determine its own rules and order of business, adopt an administrative code, provide for community councils, and establish procedures for municipal elections. *Id.* §§ 4.04(c), 5.06, 8.01, 11.02.

12. 5 E. McQuillin, *The Law of Municipal Corporations* § 15.06, at 56 (3d ed. 1969); *Board of Education v. De Kay*, 148 U.S. 591, 13 S.Ct. 706, 37 L.Ed 573 (1893); *Meredith v. Connolly*, 68 Misc.2d 956, 328 N.Y.S.2d 719 (App.Div. 1972) *aff'd*, 38 A.D.2d 385, 330 N.Y.S.2d 188 (1972); *Fraser v. Teanack Twp.*, 1 N.J. 503, 64 A.2d 345 (1949); *see* 15 E. McQuillin, *supra* § 39.66, at 188.

13. 5 E. McQuillin, *The Law of Municipal Corporations*, § 15.06, at 57–58 (3d ed. 1969); *Barrington v. Cokinos*, 339 S.W.2d 330 (Tex.Civ.App.1960). *Cf. r.w.d. Jewett et al. v. Luau-Nyack Corp.*, 31 N.Y.2d 298, 338 N.Y.S.2d 874, 291 N.E.2d 123 (1972) (construing statutory language).

14. Anchorage Municipal Charter § 3.02.

15. The Alaska Constitution withdraws from the people the right to initiative and referendum with respect to appropriations. Alaska Const. art. XI.

16. Anchorage Municipal Charter art. XVII, § 17.11(b) cautions against this type of misapplication of charter requirements: "References in this Charter to particular powers, duties and procedures of municipal officers and agencies may not be construed as implied limitations on other municipal activities not prohibited by law."

17. *Id.* art. XIII, § 13.03–.05.

18. A requirement of appropriation ordinance could be included in § 10.02 of the charter, or inserted at the points in the charter where appropriations are discussed. *Id.* § 5.05, 6.05(c), 13.05, 13.06, 13.07, 13.08, 19.12(b).

19. A petition is certified by the municipal clerk pursuant to AS 29.28.073.

the Borough Assembly, the initiative was scheduled for presentation to the voters at the next regular municipal election in October 1976.[20] However, because of the intervening special election on September 9, 1975, in which the municipal charter was adopted and the Borough and City consequently unified under one municipal government, Frohne was informed that the Municipality did not consider the initiative petition binding on it, and that it would not be placed on the 1976 ballot.

In ruling upon cross-appellant Frohne's motion for partial summary judgment, the superior court found no genuine issues of material fact and awarded summary judgment to the Municipality of Anchorage. Specifically, the court held that an initiative filed with the former Greater Anchorage Area Borough could not be used to amend the Anchorage Municipal Charter or bind the Municipality when the Municipality did not exist at the time the petition was filed, that section 19.08 [21] of the Anchorage Municipal Charter does not bind the Municipality to accept the initiative petition, that insofar as it relates to the Municipality the initiative is vague and confusing, and that the initiative petition does not conform to the requirements of section 18.03 [22] of the charter with respect to charter amendments. We will not address all of cross-appellant's arguments for placing the initiative before the people of the Municipality of Anchorage at a regular municipal election [23] in light of our conclusion that the initiative presented to the Borough cannot bind the subsequently created municipality and that, in any case, the initiative cannot be deemed an amendment to the charter without complying with procedural requirements for the adoption of charter amendments.

The Anchorage Municipal Charter, prepared by the charter commission and adopted by the voters, contained an apportionment plan for the new Anchorage Municipal Assembly.[24] The initiative petition was concededly circulated "in contemplation" of adoption of the charter [25] and cross-appel-

20. The procedure is set forth in AS 29.28.080.
Presentation of initiative
(a) When a petition seeks enactment of an ordinance or resolution within the powers of the assembly or council . . . the clerk shall present it to the assembly or council at its next meeting after certification. The assembly or council may reject the petition if the subject matter of the initiative or referendum is within the restrictions of § 60 of this chapter.
(b) Unless the petition is granted within 30 days of its submission to the assembly or council, the clerk shall, with the assistance of the municipal attorney, prepare an ordinance or resolution to implement the petition and shall submit it to the voters at the next regular election. The ordinance or resolution shall be published in full in the notice of election but may be summarized on the ballot to indicate clearly the proposal submitted.
(c) If a majority of those voting favor the proposal, it becomes effective when the election results are officially declared.
(d) The assembly or council may at any time not less than 10 days from the date of election adopt an ordinance or resolution to implement the petition. In that event an election shall not be held.

21. Section 19.08 of the Anchorage Municipal Charter provides:
Existing Rights and Liabilities Preserved
(a) Except as otherwise provided in this Charter, all rights, titles, actions, suits, franchises, contracts, and liabilities and all civil, criminal or administrative proceedings shall continue unaffected by the ratification of this Charter. The new government shall be the legal successor to the former governments for this purpose.

22. *Id.* § 18.03 *Ballot Form*
When an amendment to this Charter is proposed for adoption by the voters, the ballot proposition shall indicate the current wording proposed to be changed, if any, as well as the proposed new wording, if any.

23. In addition to disputing the findings of the superior court, cross-appellant urges that principles of law and equity favor the initiative, since (1) the charter, in section 4.01, specifically contemplates the possibility of modification of district apportionment plans; (2) the voters have a continuing right to choose between different types of apportionment plans; and (3) bringing another petition would be a wasteful duplication of prior efforts.

24. Detailed procedures for preparation and submission of home rule charters are prescribed by AS 29.68.240–.440. AS 29.68.350 requires the charter to provide for apportionment.

25. The Anchorage Municipal Charter contained a multiple member district apportionment plan. Anchorage Municipal Charter art. XIX, § 19.-

lant Frohne now seeks to bind the Municipality to its terms. In matters of initiative and referendum, we have previously recognized that the people are exercising a power reserved to them by the constitution and the laws of the state,[26] and that the constitutional and statutory provisions under which they proceed should be liberally construed. *Boucher v. Engstrom*, 528 P.2d 456, 462 (Alaska, 1974).[27] To that end "all doubts as to technical deficiencies or failure to comply with the exact letter of procedure will be resolved in favor of the accomplishment of that purpose." *Boucher v. Engstrom, supra*, quoting *Cope v. Toronto*, 8 Utah 2d 255, 332 P.2d 977, 979 (1958) (footnote omitted).[28] Nevertheless, the subject of the initiative must constitute such legislation as the legislative body to which it is directed has the power to enact. *Farley v. Healey*, 67 Cal.2d 325, 62 Cal.Rptr. 26, 431 P.2d 650 (1967); *Blotter v. Farrell, supra*, *Gibbs v. City of Napa*, 59 Cal.App.3d 148, 130 Cal.Rptr. 382 (1976). The legislative body to which the present initiative was directed was the Greater Anchorage Area Borough Assembly. The Borough Assembly, however, had no power, through a prior legislative act, to bind a municipal government not yet in existence. Similarly, the people through the initiative process cannot accomplish that result.

The present initiative, by its own terms, would restrict the Borough Assembly to presenting the voters with a choice of district apportionment plans from among the five selected by the initiative. It does not in any way affect the process of preparation, submission and adoption of the charter. The detailed statutory procedures prescribed for unification of local governments continue to apply to the determination of the method of district representation in the same manner as they apply to the other provisions of the charter.[29] Thus, if this initiative is given full effect it would render the statutory directives for charter formulation in this area nugatory. Furthermore, it would open the way for grave interferences with the entire process of charter adoption. The statute regarding unification of local governments provides for public hearings both before and after drafting of the proposed charter by the charter commission.[30] If a small minority of the voters[31] could in addition interject themselves into the implementation of specific charter provisions by circulating petitions for initiative embodying alternative proposals, a charter legally adopted by the majority of the voters of a municipality could be held in abeyance indefinitely. The power of initiative cannot be used to frustrate the formation of a new local government in such a manner.

[7] Frohne argues nevertheless that the right to have the initiative presented to the voters "vested" at the time the petition was certified as sufficient by the Borough clerk, and that under section 19.08 of the charter,[32] the right was preserved. Thus, cross-appellant would have us view the contents of the initiative as a proposed amendment to the municipal charter,[33] even though it was not expressly addressed to the Municipal Assembly.[34] We cannot agree to this construction of section 19.08(a), which merely establishes the Municipality as the legal successor to the Borough and City governments in all "rights, titles, actions, suits, franchises, contracts, and liabilities . . . ."[35] The charter does not bind the Municipality to a form of government selected by an initiative petition which was certified as sufficient prior to its existence. Section 19.08 refers rather to contract and other obligations incurred by the former governments prior to unification.[36]

Therefore this superior court's grant of summary judgment for cross-appellees in this issue is affirmed.

Affirmed in part, Reversed in part.

02(c). Opinion polls which prompted circulation of the petition, however, indicated that the majority of the voters in the area preferred single member districts. The initiative petitioned both the Greater Anchorage Area Borough and the Charter Commission to present voters with a choice between single and multiple member district plans.

26. Alaska Const. art. XI, § 1 provides:

The people may propose and enact laws by the initiative, and approve or reject acts of the legislature by the referendum.

AS 29.28.060 declares:

The powers of initiative and referendum are reserved to the residents of municipalities except the powers do not extend to matters restricted by § 7, art. XI, of the state constitution.

Where relevant, art. XI, § 7 states:

The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation.

27. Accord, *Blotter v. Farrell*, 42 Cal.2d 804, 270 P.2d 481, 484 (1954); *State ex rel. Voss v. Davis*, 418 S.W.2d 163 (Mo.1967).

28. See *Associated Home Builders of the Greater Eastbay, Inc. v. City of Livermore*, 18 Cal.3d 582, 135 Cal.Rptr. 41, 557 P.2d 473 (1976) (not applying notice and hearing requirements of zoning law to zoning initiatives).

29. The legislature has provided for an elected charter commission which is to hold open, public meetings in which a charter is to be prepared and public hearings on the proposed charter, followed by a public election. AS 29.68.280-.390.

30. AS 29.68.360.

31. A petition for initiative must be signed by at least ten per cent (10%) of the qualified voters who cast ballots in the last regular mayoral election. Anchorage Municipal Charter art. III, § 13.03-.05.

32. Anchorage Municipal Charter art. XIX, § 19.08(a) is set out at note 21, *supra*.

33. Cross-appellants insist that the initiative does not constitute a charter amendment until it is passed and the choice of district plans is presented to the voters. However, in selecting five specific apportionment plans the initiative actually commences the amendment process, and there is no reason for separating it from the subsequently narrowed choices presented to the voters.

34. The petition was directed to the Greater Anchorage Area Borough Assembly and the Charter Commission.

35. *See* n.21, *supra*.

36. *See Anderson v. Boise City*, 91 Idaho 527, 427 P.2d 574 (1967) where the court held that language in a statute relating to the continuation of rights and privileges did not apply to charter provisions for initiative after the city had become organized under general municipal laws.

FROHNE

Leonard Corwin BIBLER, Appellant,

v.

STATE of Alaska, Appellee.

No. 3353.

Supreme Court of Alaska.

Sept. 2, 1977.

Defendant was convicted before the Superior Court, Third Judicial District, Anchorage, Victor D. Carlson, J., of robbery and sentenced to three years' imprisonment, and he appealed. The Supreme Court held that it could not, despite defendant's youth and lack of prior record, say that trial judge was clearly mistaken in imposing sentence of three years' imprisonment.

Affirmed.

1. Criminal Law ⚿1134(8)

Standard of Supreme Court for review of sentences is to ascertain whether trial judge was clearly mistaken in imposing particular sentence.

2. Robbery ⚿30

On appeal from sentence of three years' imprisonment for robbery, Supreme Court could not, despite defendant's youth and lack of prior record, say that trial judge was clearly mistaken in imposing sentence. AS 11.15.240.

R. Samuel Pestinger, Pettyjohn & Pestinger, Anchorage, for appellant.

Charles M. Merriner, Asst. Dist. Atty., and Joseph D. Balfe, Dist. Atty., Anchorage, Avrum M. Gross, Atty. Gen., Juneau, for appellee.

of these two issues which Donald concedes are outside the original points.

Donald raises two issues in his Statement of Points on Appeal relating to valuation of collectible coins. However, he concedes in his reply brief that, by stipulation of the parties, the trial court was not to consider the coins.

[12] Donald also contends, in point number six, that the court erred in finding that Donald had taken a gun from the custody of Sylvia and requiring him to replace the gun. However, Donald does not argue this point in his briefs. Because Donald has abandoned the issue, we will not consider it. *Wetzler v. Wetzler*, 570 P.2d 741, 742 n. 2 (Alaska 1977).

IV. CONCLUSION

The trial court did not make findings of fact or conclusions of law explaining the basis of the award of interim spousal maintenance in the amount of $1,000 per month. Because we cannot determine the grounds on which the award rests, we cannot determine whether the court abused its discretion in entering the award. Therefore, the maintenance award must be VACATED and the case REMANDED for an explanation of the grounds for the award. In all other respects, the judgment of the court is AFFIRMED.

Joseph SONNEMAN, Appellant,

v.

Governor HICKEL, the State of Alaska, and other State Officers and Employees, Appellees.

No. S-4372.

Supreme Court of Alaska.

Aug. 14, 1992.

Action was brought challenging statute which created the Marine Highway System Fund from revenues of the state's ferry system. The Superior Court, First Judicial District, Juneau, Larry R. Weeks, J., entered judgment from which plaintiff appealed. The Supreme Court, Matthews, J., held that: (1) provision of statute that legislature may appropriate amounts from the fund to the Marine Highway System does not preclude appropriation of amounts from the fund for any other purpose; (2) as so construed, most of the statute is constitutional, but the provision restricting executive authority to seek appropriations from the fund violates the constitutional prohibition against dedicating the proceeds of any state tax or license to any special purpose; and (3) the unconstitutional provision is severable.

Affirmed in part, reversed in part, and remanded.

1. States ⟹127

Statutory provision that legislature may appropriate amounts from Marine Highway System Fund to the Marine Highway System which operates the state's ferries did not by implication preclude the legislature from appropriating amounts from the fund for any other purpose, under maxim expressio unius est exclusio alterius, particularly in light of further provision that nothing in the statute dedicates Fund money for specific purpose and the fact that such a restriction would amount to dedication of the Fund for a special purpose in violation of the State Constitution. AS 19.65.060(b), 19.65.080(a, b), 37.07.010 et seq., 37.07.030; Const. Art. 9, § 7.

2. Statutes ⟹195

While maxim expressio unius est exclusio alterius is often a useful and logical guide to the meaning of enactment, it does not always apply.

3. Constitutional Law ⟹48(1)

Statutes should be construed, if reasonably possible, so as to avoid conclusion that they are unconstitutional.

4. Statutes ⟹217.4

Mixed legislative history, with conflicting statements of intent by different legislators, is insufficient to require construction of statute in variance with its apparent plain meaning.

5. States ⟹127

Statutes ⟹64(8)

While most of the act creating the Marine Highway System Fund is not unconstitutional under provision precluding dedication of the proceeds of a state tax or a license to any special purpose, the section which restricts executive authority to seek appropriations from the Fund does violate such constitutional provision; however, the unconstitutional section is severable from the rest of the act. AS 01.10.030, 19.65.080(b); Const. Art. 9, § 7.

6. Statutes ⟹64(1)

Key question in determining the severability of unconstitutional provision of statute is whether the portion remaining is independent and complete in itself so that it may be presumed that the legislature would have enacted to the valid parts without the invalid part. AS 01.10.030.

Joseph A. Sonneman, pro se.

Jack B. McGee, Asst. Atty. Gen., Charles E. Cole, Atty. Gen., Juneau, for appellees.

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

OPINION

MATTHEWS, Justice.

This case challenges the act which created the Alaska Marine Highway System Fund, ch. 193, § 1, SLA 1990, AS 19.65.050–100, on the grounds that the fund is dedicated to a special purpose in violation of article IX, section 7 of the Alaska Constitution. The trial court ruled that the act was constitutional because it merely " 'allows' the legislature to appropriate funds from the fund to the Alaska Marine Highways but does not require it." We conclude that most of the act is constitutional, that the limitation on departmental power to request that the fund be appropriated for capital improvements violates article IX, section 7, and that this section is severable from the rest of the act.

Briefly, the act [1] establishes the Alaska Marine Highway System Fund as a special

1. AS 19.65.050 provides in part:

(b) It is the purpose of AS 19.65.050–19.65.100 to

(1) enable the Alaska marine highway system to manage and operate in a manner that will enhance performance and accountability by allowing the system to account for and spend its generated revenue;

(2) provide the management tools necessary to efficiently operate the Alaska marine highway system;

(3) within constitutional constraints, provide for a predictable funding base for system operations, and

(4) provide for predictability and stability in the service level furnished to communities served by the system.

AS 19.65.060 provides:

(a) There is created, as a special account in the general fund, the Alaska marine highway system fund, into which shall be deposited

(1) the gross revenue of the Alaska marine highway system;

(2) money that is appropriated to the Alaska marine highway system fund by the legislature in an amount that is consistent from year to year and is the amount necessary ... to provide stable services to the public ...; and

(3) any other money that is appropriated to the Alaska marine highway system fund by the legislature ....

(b) Nothing in this chapter exempts money deposited into the Alaska marine highway system fund from the requirements of AS 37.07 (Executive Budget Act) or dedicates that money for a specific purpose.

AS 19.65.080 provides:

[O]n an annual basis and under AS 37.07 (Executive Budget Act), the legislature may appropriate amounts from the Alaska marine highway system fund to the Alaska marine highway system.

(b) The Department of Transportation and Public Facilities may request the legislature to appropriate money from the Alaska marine highway system fund to the marine highway system for capital improvements, if

(1) the appropriation under (a) of this section has been made;

(2) the amount in the fund, without regard to the appropriation under (a) of this section, exceeds the total of gross revenue deposited in the fund and the general fund appropriations under AS 19.65.060(a)(2) by 10 percent; and

(3) the amount requested for appropriation under this subsection does not exceed 50 per-

account in the general fund. AS 19.65.060(a). The Alaska Marine Highway System, the entity responsible for the state's ferries, must deposit the gross revenue obtained from operating the ferry system into this account. The legislature "may appropriate" amounts from the fund back to the Alaska Marine Highway System. AS 19.65.080(a). In addition, the Department of Transportation and Public Facilities (DOTPF), within which the Marine Highway System is contained, may request that the legislature appropriate money from the fund to the Marine Highway System for capital improvements if certain conditions are met. First, the legislature must have made an annual appropriation from the fund. Second, the fund, without regard to the appropriation, must exceed the total of gross revenues plus non-lapsable general fund appropriations by ten percent. Finally, the request for capital appropriations may not exceed fifty percent of the balance remaining after the annual appropriation is made. AS 19.65.080(a) & (b).

The stated purposes of the fund are to "enhance performance and accountability," "provide the management tools necessary to efficiently operate" and, "within constitutional constraints, provide for a predictable funding base for system operations." AS 19.65.050(b). The legislature evidently intended that the Marine Highway System operate under constraints and incentives based partially on the revenues generated by the Marine Highway System. In order for this to work, there must be a reasonable expectation that the revenues generated by the system can be used by the system.

Section 7 of article IX of the Alaska Constitution provides: "The proceeds of any state tax or license shall not be dedicated to any special purpose...."[2] The question is whether the act violates this constitutional prohibition.[3]

The constitutional convention committee which drafted the prohibition on the dedication of funds commented that the reason for the prohibition is to preserve control of and responsibility for state spending in the legislature and the governor.

> Even those persons or interests who seek the dedication of revenues for their own projects will admit that the earmarking of taxes or fees for other interests is a fiscal evil. But if allocation is permitted for one interest the denial of it to another is difficult, and the more special funds are set up the more difficult it becomes to deny other requests until the point is reached where neither the governor nor the legislature has any real control over the finances of the state. In one Rocky Mountain state the legislature is free to appropriate only 17 per cent of the tax collections; the rest are dedicated. In Alaska at present, 27 per cent of territorial funds are earmarked, primarily for school construction and roads.

6 Proceedings of the Alaska Constitutional Convention (PACC) Appendix V at 111 (Dec. 16, 1955).

Without earmarked funds, the constitutional framers believed that the legislature would be required to decide funding priorities annually on the merits of the various proposals presented. Delegate Barrie White, the spokesman for the committee which drafted section 7, stated in the convention debates:

> [t]he Committee feels that if you accept the principle of not earmarking, it puts everyone in the same position and that the legislature will then be in the position being able to decide each case on its merits. If you go the other route and allow for earmarking or start drawing up all the exceptions that everybody would want to have drawn up, you are then back to the situation that most states now find themselves in, where an ever-increasing percentage of their revenues are earmarked for special purposes and an ever-decreasing amount is available to the general fund.

4 PACC 2364 (Jan. 17, 1956). Delegate White was then engaged in a colloquy about the appropriation of funds collected through licenses to agencies which had collected them:

> Delegate Gray: "It doesn't earmark it but the talking point that these organizations have for the use of this money that is rightfully theirs, why, they haven't been precluded, they just have to sell their viewpoint to the legislature and if they need the money, why they probably could get it if they could talk them into it."
>
> Delegate White: "They have to sell their viewpoint along with everybody else."

Id. at 2367.

The principle on which the act is based, that the administrators of the Alaska Marine Highway System and the legislature will treat the fund as if the Marine Highway System had a right to its proceeds, is inconsistent with the model contemplated by the anti-dedication clause, under which the disposition of all revenues will be decided anew on an annual basis. Nevertheless, the expectations created by the act are merely a "talking point" because they impose no legal restraint on the appropriation power of the legislature.

The act clearly states that the fund is part of the general fund and it may not be spent until and unless it is appropriated by the legislature. AS 19.65.060(b).[4] However, Sonneman argues that the act prohibits the legislature from appropriating money from the fund to government purposes other than the Marine Highway System. Although there is no explicit prohibition, Sonneman contends that there is an implicit one based on a maxim of statutory construction and on various expressions of intent found in the legislative history. The State contends that the act does not prohibit the legislature from using money in the fund for any purpose and, more generally, that the act is basically only an accounting tool designed to give a clear picture of Marine Highway System revenues to the legislature and to the Marine Highway System administrators. We turn first to Sonneman's statutory construction argument.

[1-3] Since the act states that "the legislature may appropriate amounts from the ... fund to the ... marine highway system," AS 19.65.080(a), Sonneman argues that by implication the legislature may not appropriate amounts from the fund for any other purpose. This argument is based on the maxim *expressio unius est exclusio alterius*, meaning the expression of one thing implies the exclusion of others. While this maxim is often a useful and logical guide to the meaning of an enactment, it does not always apply. We declined to apply it in *Chevron USA, Inc. v. LeResche*, 663 P.2d 923, 930-31 (Alaska 1983), finding that the limitation which would result if the maxim were utilized was contrary to the purpose of the statute. Similarly, in the present case it seems clear that the enactment was not intended to legally restrict the power of the legislature to appropriate money from the fund for any purpose. Such a restriction would

cent of the balance remaining after the appropriation for annual management and operations is made under (a) of this section.

(c) The unexpended and unobligated balance of money appropriated from the Alaska marine highway system fund lapses into the Alaska marine highway system fund at the end of the fiscal year for which it was appropriated.

2. The section proceeds: "except as provided in section 15 of this article [creating 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." Alaska Const. art. IX, § 7.

3. Even though the revenues generated by the Marine Highway System are derived from the transportation of passengers and freight and not from state taxes or licenses as those terms are usually understood, the State does not argue that section 7 does not apply to the Marine Highway Fund. This is doubtlessly because this court in *State v. Alex*, 646 P.2d 203 (Alaska 1982), construed section 7 to prohibit the dedication of "any source of revenue." *Id.* at 210. We have no occasion to question this construction in the present case.

4. AS 37.07.030, which is part of the Executive Budget Act referred to in AS 19.65.060(b), requires that the legislature annually adopt a budget authorizing all proposed expenditures of the state government. Expenditures by the Marine Highway System from the Marine Highway System Fund are within this requirement.

amount to a dedication of the fund for a special purpose, and given the holding in *Alex*, the fund would be in violation of the anti-dedication clause. Alaska Statute 19.65.060(b), however, states that nothing in the act "dedicates [Fund money] for a specific purpose." Therefore AS 19.65.080(a) is best read as not implying a prohibition on legislative appropriation of fund money to other than Marine Highway System purposes. This conclusion is bolstered by the rule of interpretation that statutes should be construed if reasonably possible so as to avoid a conclusion that they are unconstitutional. *State v. Fairbanks North Star Borough*, 736 P.2d 1140, 1142 (Alaska 1987).

[4] Sonneman also argues that various comments made by legislators in the process of enactment of the act indicate an intent to use fund revenues only for marine highway purposes. *See* AS 19.65.050(b)(1), *infra* note 1. While there are many such comments,[5] there are also a number of statements that the fund would be legally unrestricted and could be appropriated by the legislature for any purpose.[6] As noted, the act expressly states that it does not dedicate money for a specific purpose. The mixed legislative history is insufficiently persuasive to require a construction of the act at variance with its apparent plain meaning. *See Alex*, 646 P.2d at 208–09 n. 4 ("the plainer the language, the more convincing contrary legislative history must be").

[5] While the act as we construe it does not restrict the authority of the legislature to appropriate money from the fund, the act is more than merely a legislatively mandated system of accounting. It does restrict executive authority to seek appropriations from the fund. *See* AS 19.65.080(b). This restriction on DOTPF's authority to request the appropriation of money for capital improvements violates article IX, section 7.

One method of dedicating funds is to preclude the legislature from appropriating designated funds for any reason other than a designated purpose. Another less direct method would be to preclude agencies from requesting monies from designated funds or revenue sources. The constitutional 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. As the debates make clear, all departments were to be "in the same position" as competitors for funds with the need to "sell their viewpoint along with everyone else." 4 PACC 2364–67 (Jan. 17, 1956). We conclude therefore that the limitations on the ability of DOTPF to ask for funds from the Marine Highway System Fund expressed in AS 19.65.080(b) amount to a dedication in violation of article IX, section 7.

The question which follows is whether the entire act should be declared unconstitutional or whether AS 19.65.080(b) may be severed from the rest of the act.

[6] The Alaska Statutes contain a general severability clause:

> Any law heretofore or hereafter enacted by the Alaska legislature which lacks a severability clause shall be construed as though it contained the clause in the following language, "If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application to other persons or circumstances shall not be affected thereby."

AS 01.10.030. This clause is held to create a weak presumption in favor of severability. *Lynden Transport, Inc. v. State*, 532 P.2d 700, 712 (Alaska 1975). "A provision will not be deemed severable 'unless it appears both that, standing alone, legal effect can be given to it and that the legislature intended the provision to stand, in case others included in the act and held bad should fall.'" *Id.* at 713 (quoting *Dorchy v. Kansas*, 264 U.S. 286, 290, 44 S.Ct. 323, 324, 68 L.Ed. 686 (1924). The key question is whether the portion remaining, once the offending portion of the statute is severed, is independent and complete in itself so that it may be presumed that the legislature would have enacted the valid parts without the invalid part. *Jefferson v. State*, 527 P.2d 37, 41 (Alaska 1974). In our view, the enactment in question clearly meets this test. After AS 19.65.080(b) is deleted, the remainder of the act still has the same meaning that it had with that subsection included. The deleted subsection is a minor part of the overall act and it is difficult to imagine any reason why the legislature which passed the act would not have also favored the act with .080(b) deleted.

For the foregoing reasons, we affirm the judgment in part, reverse the judgment in part, and remand for entry of a judgment declaring that AS 19.65.080(b) violates article IX, section 7 of the Alaska Constitution, but the remainder of the act does not.[7]

5. The bill's prime sponsor testified that "[t]he intent of the bill is to allow the Marine Highway System to use the revenues it generates...." Sen. Jim Duncan, Senate Transp. Comm. Hearings on Senate Bill (SB) 428, Feb. 20, 1990, Legislative Storage and Information Retrieval System (STAIRS) No. STRA90022013 at 11. Chairman of the Senate Transportation Committee Lloyd Jones commented that he felt better about the fact that the legislature would be able to earmark the program receipts. Sen. Lloyd Jones, *id.* at 20. The House Finance Co-Chairman noted that the purpose of the legislation would be to create a restricted fund within the general fund. The restricted fund would originate from proceeds of the program receipts earned by the state ferry system in order to be used the following year. Rep. Ron Larson, House Fin. Comm. Hearings on House Bill (HB) 439 & SB 428, April 29, 1990, STAIRS No. HFIN90042912 at 4.

6. Sen. Jim Duncan, Senate Fin. Comm. Hearings on SB 428, March 8, 1990, STAIRS No. SFIN90030809 at 29; Alaska Marine Highway System Director Jim Ayers, *id.* at 19; Gov. Cowper's Transmittal Letter to Legislature, Jan. 24, 1990.

7. The other points raised on appeal by Sonneman, including his claim under 42 U.S.C. 1983, clearly lack merit.

BIG K GROCERY and Alaska National Insurance Co., Petitioners,

v.

Patsy GIBSON and Industrial Indemnity, Respondents.

No. S–4521.

Supreme Court of Alaska.

Sept. 4, 1992.

Workers' Compensation Board concluded that claimant had not proven that her employment was substantial factor in bringing about her present disability. Claimant appealed. The Superior Court, Third Judicial District, Anchorage, Joan M. Katz, J., vacated its initial decision in favor of the Board and ruled in favor of claimant. Employer petitioned for review. The Supreme Court, Matthews, J., held that qualified expert's testimony that, in his opinion, claimant's work was probably not substantial cause of her disability was sufficient affirmative evidence that injury was not work connected so as to overcome presumption of compensability.

Reversed and remanded.

Workers' Compensation ⚷1492

Testimony of qualified expert that in his opinion, claimant's work was probably not substantial cause of disability was affirmative evidence that injury was not work connected sufficient to overcome presumption of compensability. AS 23.30.120(a)(1).

Robert J. McLaughlin, Faulkner, Banfield, Doogan & Holmes, Seattle, for petitioners.

Joseph A. Kalamarides, Kalamarides & MacMillan, Anchorage, for respondent Gibson.

CITY OF FAIRBANKS, Appellant,

v.

FAIRBANKS CONVENTION AND VISITORS BUREAU, an Alaskan Non-Profit Corporation, Appellee.

No. S-3663.

Supreme Court of Alaska.

Oct. 11, 1991.

City convention and visitors bureau sought declaratory and injunctive relief to prevent placement on ballot of voter initiative to create new arrangements for allocating hotel bed tax revenues. The Superior Court, Fourth Judicial District, Fairbanks, Mary E. Greene, J., found proposed initiative unconstitutional and issued permanent injunction. City appealed. The Supreme Court, Compton, J., held that proposed initiative would leave use of tax revenues to discretion of city council and thus did not restrict power to distribute bed tax revenues so that it was not unconstitutional.

Reversed and remanded.

1. Statutes ⇐303

Although voter initiatives are usually construed broadly so as to preserve them whenever possible, initiative is illegal if it makes or repeals appropriation or dedicates funds. AS 29.10.030(c); Const. Art. 11, § 7.

2. Statutes ⇐303

For purposes of determining whether voter initiative attempts to enact appropriation, which is prohibited by State Constitution, "appropriation" includes transfers of nonmonetary assets such as land and need not involve public revenues, as long as it compels transfer of government asset. AS 29.10.030(c); Const. Art. 11, § 7.

See publication Words and Phrases for other judicial constructions and definitions.

3. Municipal Corporations ⇐986

City code section which designated bed tax revenues for purposes of tourist and entertainment facilities and other economic development, was not "appropriation" for purposes of prohibiting voter initiative to repeal city code section; code section did not reflect action taken by government body after annual approval of budget, nor could it be construed in any sense to be supplemental or emergency act of governing body. AS 29.35.100.

4. Municipal Corporations ⇐986

Voter initiative which would set aside hotel bed tax revenues for deposit in city council discretionary fund was "appropriation" which, under State Constitution could not be enacted or repealed by voter initiative. AS 29.35.100.

5. Municipal Corporations ⇐985

Voter initiative to set aside revenues of hotel bed tax for deposit in city council discretionary fund would not restrict power of city council in distributing bed tax revenues and thus was constitutional so that it had to be placed on ballot. AS 29.35.100; Const. Art. 11, § 7.

Herbert P. Kuss, City Atty., Fairbanks, for appellant.

James D. DeWitt, Guess & Rudd, Fairbanks, for appellee.

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

OPINION

COMPTON, Justice.

In 1979 the City of Fairbanks (city) enacted a motel and hotel tax (bed tax) as part of its municipal code.[1] Up to seventy percent of the revenues from this tax supports the Fairbanks Convention and Visitors Bureau (FCVB). In 1989 the city certified for inclusion on the general election ballot a voter initiative to create a new arrangement for allocating the bed tax revenues. FCVB sought declaratory and in-

1. Fairbanks General Code Ordinance (FGCO) 5.401 (1979).

junctive relief against the initiative in superior court, and was granted a preliminary injunction barring the initiative from appearing on the ballot. The court then declared the proposed initiative unconstitutional, concluding it repealed an appropriation, and issued a permanent injunction. The city appeals. We reverse.

I. FACTUAL AND PROCEDURAL BACKGROUND

Under Fairbanks General Code Ordinance (FGCO) 5.402 (1988),[2] up to seventy percent of the revenues from the city's bed tax go to the FCVB unless the city council votes otherwise. There is no evidence in the record of any occasion when the council has voted to give the FCVB less than seventy percent. The FCVB received approximately $750,000 from the bed tax during 1989; this was about eighty-five percent of its total budget.

In the summer of 1989 the Interior Taxpayers Association (ITA), a citizens' group, proposed an initiative for the October 3rd general election ballot. The proposed initiative would substantially change FGCO 5.402.[3] It would expand the purposes for

2. FGCO 5.402 states:

(a) The tax on the daily rental of hotel and motel rooms levied by this article is for the purpose of and shall be limited to the funding of tourist and entertainment facilities for the general public and to promote the tourist industry and other economic development of the city. It is recognized that various public and private businesses and organizations in the community, including but not limited to the chamber of commerce, the Fairbanks Convention and Visitors Bureau and other bureaus, organizations and commissions organized and existing for these same purposes, may be areawide in scope and the promotion and economic development of the greater Fairbanks area, whether within or without the corporate limits of the city, has a direct and major impact on the city itself.

(b) Revenues collected under this article in the (12) month period ending October 31st of the calendar year shall be available for appropriation for the next calendar year as follows:

(1) Ten percent (10%) for the funding of the Fairbanks Industrial Development Corporation;

(2) Seventy percent (70%) for the funding of the Fairbanks Convention and Visitors Bureau;

(3) Fifteen percent (15%) for the discretionary funding of proposals which clearly demonstrate a direct relationship to the purposes and objectives set forth in this section; three percent (3%) of this amount shall be dedicated to the funding of beautification and littering projects;

(4) Five percent (5%) for forward funding of this tax account;

(5) All residual funds shall be made available for the council's discretionary funding.

(6) Any and all overhead costs relating to auditing and tax collection, as determined by the finance department, shall be subtracted from the gross amount of tax collected before disbursement as provided above.

(c) The Fairbanks Industrial Development Corporation and the Fairbanks Convention and Visitors Bureau shall submit their annual and maximum operating budget to the council for approval no later than October 31st of the current calendar year. The council shall review these budgets no later than December 1st of the current calendar year and, if approved, may appropriate revenues in accordance with the scheduled and maximum percentages. In the event the council fails to review these budgets by December 1st, the budgets shall be deemed approved and the scheduled percentages shall be appropriated to them.

In addition, in their budget submissions the Fairbanks Industrial Development Corporation and the Fairbanks Convention and Visitors Bureau shall provide the council with a financial statement including both income and expenditures for the current calendar year.

(d) Any organization, public or private, or any person may submit an application and proposal, if any, to the council prior to October 31st of the current calendar year which seeks funding from the capital project fund or the discretionary fund. The council shall establish the criteria for selection and publish the same no later than August 1st of the current calendar year. A committee shall be appointed by the mayor to review proposals and make recommendations to the council. Two (2) members of the visitor industry (Fairbanks Convention and Visitors Bureau or Alaska Visitors Association) shall sit on this committee. Nothing in this subsection shall require the council to fund any proposal.

3. The ITA-sponsored initiative provides:

Shall FGCO sec. 5.402 which limits the use of the hotel/motel tax ... be repealed and reenacted as follows:

Sec. 5.402. Purpose and limitation.

(a) The tax on the daily rental of hotel and motel rooms levied by this article is for the purpose of funding city facilities and services for the general public and to promote the tourist industry and other economic development of the city.

(b) Any organization, public or private, or any person may submit an application and proposal, if any, to the council no later than two (2) months prior to the expiration of the current fiscal year which seeks funding from the discretionary fund for the following fiscal year. The council shall establish standards and criteria for selection and publish the same for a reasonable period before the applications are to be submitted. A committee shall be appointed by the mayor with council concurrence to review the proposals and make recommendations to the council.

which bed tax revenues can be used, not limiting funding to tourist and entertainment activities. In addition, it would delete the maximum percentage level of funding specified for FCVB and other groups, leaving FCVB to compete for tax revenues. FCVB would no longer automatically receive a particular share, or any share at all.[4] As the superior court noted, "[t]he current Section 5.402 operates to tie the City Council's hands in the spending of revenue generated from the hotel/motel bed tax and earmarks funds for specific purposes. The initiative would remove almost all of those restrictions." *Fairbanks Convention & Visitors Bureau v. Roberson*, No. 4FA-89-1478 Civ., mem. decision and order at 6 (Alaska Super. Sept. 18, 1989). On August 29, 1989, the city clerk certified the initiative for placement on the ballot.

FCVB filed suit on September 1, seeking declaratory and injunctive relief. FCVB argued that the initiative was an unconstitutional attempt to appropriate money, dedicate tax revenues to a specific purpose, and repeal an existing appropriation. The city responded that the initiative did not make or repeal an appropriation, or dedicate funds. Alternatively, the city argued that if the court determined that the initiative dedicated funds unconstitutionally, the court could cure the initiative by severing any unconstitutional portions. The court concluded that the proposed initiative repealed an existing appropriation. It did not reach the other issues. It granted FCVB's motion for summary judgment and issued a permanent injunction.

There are no genuine issues of material fact in this case. The parties do not dispute that the Fairbanks City Council has the power to enact a municipal ordinance identical to the proposed initiative. This appeal is not about whether the city council could do what the initiative petition seeks; rather, the issue is whether this goal can be attained through an initiative.

II. DISCUSSION

[1] The usual rule applied by this court is to construe voter initiatives broadly so as to preserve them whenever possible. *Thomas v. Bailey*, 595 P.2d 1, 3 (Alaska 1979). However, initiatives touching upon the allocation of public revenues and assets require careful consideration because the constitutional right of direct legislation is limited by the Alaska Constitution. Article XI, section 7 of the Alaska Constitution states in part:

> The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules or enact local or special legislation.

The City of Fairbanks is a home-rule municipality, and the initiative limitation has been extended by statute to home-rule municipalities. AS 29.10.030(c).[5] Therefore, the proposed initiative is illegal if it makes or repeals an appropriation or dedicates funds.

By its own language, the initiative repeals FGCO 5.402.[6] Therefore, to decide

4. The initiative may also affect what organizations can obtain the revenues. Under the existing ordinance, tourist organizations and other organizations which promote economic development in Fairbanks but operate outside the corporate limits of the city can be funded from bed tax revenues. The proposed initiative is silent on whether such organizations could be funded, but the deletion of the language in the first paragraph of the existing ordinance indicates that the proponents of the initiative intend to change the way organizations operating outside the city limits are to be treated.

5. AS 29.10.030(c) reads: "A charter may not permit the initiative and referendum to be used for a purpose prohibited by art. XI, sec. 7 of the state constitution."

6. The city argues that even if the ordinance is an appropriation, the initiative merely amends it and does not repeal it, despite its use of the term "repeal and reenactment." Amending an appropriation through an initiative, the city argues, is not unconstitutional.

whether the initiative violates the Alaska Constitution, we must first determine whether FGCO 5.402 is an appropriation. The superior court concluded that FGCO 5.402 is an appropriation, and that the proposed initiative is an unconstitutional attempt to repeal this appropriation. We disagree, for reasons hereafter stated.

Since we conclude that the initiative does not repeal an appropriation, we must consider whether it makes an appropriation or dedicates funds. These issues were not considered by the superior court but have been raised by FCVB as alternative grounds for affirming the judgment. This is procedurally proper as, "[t]his court may affirm a judgment of the superior court on different grounds than those advanced by the superior court and even on grounds not raised by the parties in the superior court." *Sisters of Providence v. Municipality of Anchorage*, 672 P.2d 446, 448 n. 2 (Alaska 1983). On questions of law, we "adopt the rule of law that is most persuasive in light of precedent, reason, and policy." *Guin v. Ha*, 591 P.2d 1281, 1284 n. 6 (Alaska 1979). We conclude that the initiative neither makes an appropriation nor dedicates funds.

A. *Does the initiative repeal an appropriation?*

Our prior cases defining "appropriation" in the context of article XI, section 7 have concentrated on the two parallel purposes for preventing the making of appropriations through the initiative process. First, initiatives should not be "used to enact give-away programs, which have an inherent popular appeal, that would endanger the state treasury." *Thomas v. Bailey*, 595 P.2d 1, 7 (Alaska 1979). This is because "[i]nitiatives for the purpose of requiring appropriations were thought to pose a special danger of 'rash, discriminatory, and irresponsible acts.'" *Id.* (quoting V. Fischer, Alaska's Constitutional Convention 80–81 (1975)). The second "reason for prohibiting appropriations by initiative is to ensure that the legislature, and *only* the legislature, retains control over the allocation of state assets among competing needs." *McAlpine v. Univ. of Alaska*, 762 P.2d 81, 88 (Alaska 1988).

[2] In the context of an initiative that would repeal an appropriation, only the second of these purposes—retention of control of the appropriation process in the legislative body—is relevant. We have ruled on a number of cases involving initiatives which arguably made appropriations. In those cases we construed the term "appropriations" broadly so that the intent of our constitutional framers in prohibiting appropriations by initiative would be fully met. Thus, in *Thomas v. Bailey*, 595 P.2d 1, 7 (Alaska 1979), we extended the definition of appropriation to include transfers of non-monetary assets such as land. In *Alaska Conservative Political Action Committee v. Municipality of Anchorage*, 745 P.2d 936, 938 (Alaska 1987), we held that an appropriation need not involve public revenues if it compelled transfer of a government asset. Most recently, in *McAlpine v. University of Alaska*, 762 P.2d 81, 89 (Alaska 1988), we concluded that the prohibition against appropriations by initiative applied to initiatives which "simply designate[d] the use of assets."

[3] In a broad sense, FGCO 5.402 is arguably an appropriation because it designates bed tax revenues for the purpose of tourist and entertainment facilities and other economic development.

However, the purposes of the constitution are not met by construing the term "appropriations" broadly in the context of an initiative which arguably repeals an appropriation. The purpose of the prohibition on repeal of appropriations by initiative is to ensure that the legislative body remains in control of and responsible for the budget. A broad construction of "appropriations" is not necessary to accomplish this purpose. Repealing a particular law that is an appropriation in a broad sense, because, for example, it permanently designates assets for a special purpose, does not disempower the legislative body from making annual spending decisions. It follows that the general rule that the initiative power will be construed broadly should control in the repeal context, and result in a more narrow construction of the term "appropriations." In our view, in the context of the prohibition on repealing "appropriations," the term should be used in the same sense as the legislature has used it in the municipal code, AS 29.35.100, that is as an act which accompanies the approval of the annual budget or is supplemental to that act:

> The governing body shall establish the manner for the preparation and submission of the budget and capital program. After a public hearing, the governing body may approve the budget with or without amendments and shall appropriate the money required for the approved budget. (b) The governing body may make supplemental and emergency appropriations. Payment may not be authorized or made and an obligation may not be incurred except in accordance with appropriations.

FGCO 5.402 is not an appropriation in the sense of the term used in AS 29.35.100 because it does not reflect an action taken by the governing body after annual approval of the budget, nor can it be construed in any sense to be a supplemental or emergency act of the governing body.

B. *Does the initiative itself make an appropriation?*

[4] The FCVB argues that even if the initiative does not repeal an existing appropriation in FGCO 5.402, it itself makes an appropriation. It claims that the setting aside of bed tax revenues for deposit in a city council discretionary fund meets the "classic definition" of appropriation, comparing this use of funds to the attempt to convey state property to a new community college in *McAlpine* and the attempt to convey state utilities in *ACPAC*. The city, on the other hand, argues that the initiative would not allocate funds specifically any more than the present FGCO 5.402 does, but rather broadens the city council's authority to appropriate bed tax funds.

We find the city's argument persuasive. Applying the same test to the initiative as we did to the existing ordinance, we must ask whether the initiative would set aside a certain specified amount of money or property for a specific purpose or object in such a manner that is executable, mandatory, and reasonably definite with no further legislative action. The initiative does not meet these requirements.

Under the terms of the initiative, any public or private organization or any person can apply to the city council for funding from the discretionary fund for a particular fiscal year. These applications are to be reviewed by a committee appointed by the mayor with council concurrence, and then voted on by the council before any funds are distributed. The initiative specifies no sums that must be distributed, no specific purpose that must be funded, and no mandatory process that must be followed.

A reference to the dual purposes behind the prohibition of initiatives which make appropriations is instructive. First, the initiative is not a give-away program. No particular group or person or entity is targeted to receive state money or property, nor is there any indication that by passing this initiative, the voters would be voting themselves money. Second, this initiative does not reduce the council's control over the appropriations process. Instead, the initiative allows the council greater discretion in appropriating funds than does the current law. It is axiomatic that if FGCO 5.402 does not make an appropriation, then the initiative, which affords greater legislative discretion and is not a give-away program, cannot make an appropriation.

We do not find this argument persuasive. The language of the initiative includes the word "repeal," not "amend," and this language determines the intent of the initiative. A comparison of the ordinance and the initiative section by section demonstrates that the initiative effectively replaces most of the existing ordinance. As this court has noted previously, "[a]n amendment of an act operates as a repeal of its provisions to the extent that they are materially changed by, and rendered repugnant to, the amendatory act." *Warren v. Thomas*, 568 P.2d 400, 402 (Alaska 1977) (quoting *Meyers v. Bd. of Supervisors*, 110 Cal.App.2d 623, 243 P.2d 38, 42 (1952)). It would be unreasonable to consider the initiative to be a continuation of the existing ordinance when it so completely emasculates that ordinance.

C. *Does the initiative dedicate revenues?*

[5] The city concedes that FGCO 5.402 as currently written is a dedicated fund.[7] The question is whether the initiative, which would repeal and reenact that ordinance, itself dedicates revenues. We have not had occasion to review the clause in article XI, section 7 of the Alaska Constitution prohibiting initiatives which dedicate revenues. However, we have reviewed a similar provision in article IX, section 7, which prohibits the dedication of the proceeds of any state tax or license to any special purpose. Because the language of these two provisions is similar, we adopt a similar analysis of the meaning of each provision and the purposes behind them.

This court has considered the meaning of dedicated revenues only once before. In *State v. Alex*, 646 P.2d 203 (Alaska 1982), we held that a mandatory tax on the sale of salmon, the proceeds of which were to be allocated to regional associations for enhancement of salmon production, was an unconstitutional dedication of revenues. In reaching that conclusion, we relied on the fact that the allocation of revenues to the regional associations was mandatory, leaving no discretion to the legislature to spend the money in any other way. We also noted that other provisions of the statute entitled the regional associations to rely on the receipt of the salmon tax funds as collateral for state loans or as evidence of their ability to establish sufficient equity in their hatcheries. As we said, "[t]hese provisions are nonsensical if the assessments are not earmarked in some way so that the association has a 'right' to them." *Alex*, 646 P.2d at 208.

The questioned initiative would not create any similar "right" for any person or group. It would not earmark any funds for any particular organizations. Nor does it create any mandatory expenditures. In the context of the current law, it actually broadens, rather than limits, the council's discretion to spend money for the benefit of the city. FCVB nevertheless argues that the initiative would require the dedication of revenues to a specific purpose. We disagree. The initiative's statement of purpose cannot be characterized as a dedication. Indeed, the phrase used in the initiative, "for the purpose of funding city facilities and services for the general public," is so broad as to include any city expenditures.

Analysis of the purposes behind the prohibition of dedicated revenues confirms our conclusion. In *Alex*, 646 P.2d at 209–10, we cited the Alaska Statehood Commission's studies on dedicated revenues as the motivation for the inclusion of article IX, section 7 in the Alaska Constitution:

> Even those persons or interests who seek the dedication of revenues for their own projects will admit that the earmarking of taxes or fees for other interests is a fiscal evil. But if allocation is permitted for one interest the denial of it to another is difficult, and the more special funds are set up the more difficult it becomes to deny other requests until the point is reached where neither the governor nor the legislature has any real control over the finances of the state.

3 Alaska Statehood Commission, Constitutional Studies pt. IX, at 111 (1955). Thus the two main motivations behind the ban on dedicated revenues were to maintain the potential of flexibility in budgeting and to ensure that the legislature did not abdicate responsibility for the budget. In the initiative context, only the former motivation is relevant.

The initiative in this case does not infringe on flexibility in the budget process. Indeed, it removes existing restraints on the city council's flexibility. Under the current law, the city council is encouraged, if not obligated, to appropriate certain percentages of the city's bed tax revenues to certain groups. In addition, all appropriations of bed tax revenues must be "for the purpose of and shall be limited to the funding of tourist and entertainment facilities." The initiative eliminates each of these dedications. Under the initiative, bed tax revenues could be used to fund any city facility or service, not just tourist and entertainment facilities, and there is no organization "entitled" to receive funds simply upon approval of its budget. By no means would the initiative restrict the power of the city council in distributing the bed tax revenues. The initiative might be better described as an "undedication" than a dedication.

III. CONCLUSION

For the above reasons, we hold that the initiative is constitutional, and should be placed on the ballot. The decision of the superior court granting summary judgment for FCVB and a permanent injunction against the initiative is REVERSED and the case REMANDED with directions to enter judgment on behalf of the city and to dismiss FCVB's complaint.

7. We note that neither party addressed the issue of whether the ordinance itself violates article XI, section 7 of the Alaska Constitution, prohibiting dedicated revenues. Our decision today should not be read as expressing any opinion on that question.

Michael T. DUNKIN, Appellant,

v.

STATE of Alaska, Appellee.

No. A-1543.

Court of Appeals of Alaska.

Oct. 11, 1991.

Defendant was convicted in the Superior Court, Third Judicial District, Palmer, Beverly W. Cutler, J., of first-degree murder. Defendant appealed. The Court of Appeals, Coats, J., held that: (1) omission of bench conferences from record was not "substantial and significant portion of the record" and, therefore, did not mandate reversal; (2) prosecutor's voir dire question and closing argument were not plain error; and (3) judge's parole recommendation was not binding on parole board.

Affirmed.

1. Criminal Law ⟹1109(3)

Omission of bench conferences from record was not "substantial and significant portion of the record" and, therefore, did not mandate reversal, even if Court of Appeals applied principle that absence of substantial and significant portion of record is sufficient to mandate reversal; defendant's appellate attorney had complete record of trial except bench conferences.

See publication Words and Phrases for other judicial constructions and definitions.

2. Criminal Law ⟹1035(6), 1037.1(2)

No plain error arose from prosecutor's question during voir dire whether jurors could give State and defendant fair trial knowing that murder victim was black and from prosecutor's closing argument that victim had right to justice.

3. Jury ⟹131(8)

State could ask prospective jurors on voir dire whether they would be racially prejudiced against black murder victim.

4. Pardon and Parole ⟹54

Sentencing judge's recommendation not to parole defendant until he served 50 years of imprisonment was not binding on parole board. AS 12.55.115.

Averil Lerman, Preston, Thorgrimson, Shidler, Gates and Ellis, Anchorage, for appellant.

Cynthia M. Hora, Asst. Atty. Gen., Anchorage, and Charles E. Cole, Atty. Gen., Juneau, for appellee.

Before BRYNER, C.J., COATS, J., and ANDREWS, Superior Court Judge.*

* Sitting by assignment made pursuant to article IV, section 16 of the Alaska Constitution.

MUNICIPAL OFFICIAL BALLOT
REGULAR ELECTION
APRIL 19, 1994

DD

MUNICIPALITY OF ANCHORAGE **DD**

SAMPLE BALLOT

MUNICIPAL OFFICIAL BALLOT DD
REGULAR ELECTION
APRIL 19, 1994

MUNICIPAL OFFICIAL BALLOT DD

PROPOSITION 38

ALCOHOLIC BEVERAGE SALES TAX

Part I

Shall Article XIV of the Anchorage Home Rule Charter be amended by the addition of a new Section 14.04 to read:

Section 14.04 Alcoholic Beverage Sales Tax

(a) Section 14.01(a) not withstanding, a special sales tax of 8% is levied on the retail sale of alcoholic beverages within the Municipality of Anchorage.
(b) All persons or business entities licensed for the retail sale of alcoholic beverages shall collect the special tax imposed by this section. The tax shall apply to alcoholic beverages sold for consumption both on or off premises. The tax shall be due and payable at the time of the sale and shall be remunerated to the Municipality on a monthly basis.
(c) Tax increases under this section shall be added to the base amount which is used in Section 14.03(a) for purposes of calculation of subsequent year tax increase limits under Section 14.03 of the Charter.
(d) The Assembly by law shall implement this section.
(e) If any provision of this section conflicts with any other provision of the Charter, this section shall govern. If any portion of this section is declared invalid by a court of competent jurisdiction, the remaining portions shall remain in effect and shall not be affected thereby.

TURN BALLOT OVER
AND CONTINUE VOTING

I HAVE VOTED

HAVE YOU?

MUNICIPAL OFFICIAL BALLOT DD

Part II

The following statement of intent is added to the Commission commentary on the Anchorage Municipal Charter:

Section 14.04

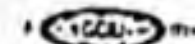
The retail sale of alcoholic beverages within the Municipality, while beneficial to certain elements of private industry, requires the substantial expenditure of public funds for public health, education, and safety.

Accordingly, the intent of this section is to levy a special alcohol sales tax on alcoholic beverages and, to the maximum extent allowed by law to, use the revenues derived to expand health, education, recreation and public safety within the Municipality of Anchorage.

It is also the intent of this section to add to, rather than to replace, existing tax revenues through the levy of the special tax under this section. (petition)

YES +
NO +

Lejane Ferguson
Municipal Clerk
April 19, 1994



MUNICIPAL OFFICIAL BALLOT
REGULAR ELECTION
APRIL 18, 1995

C

C

MUNICIPALITY OF ANCHORAGE

SAMPLE BALLOT

MUNICIPAL OFFICIAL BALLOT C
REGULAR ELECTION
APRIL 18, 1995

I HAVE VOTED

HAVE YOU?

MUNICIPAL OFFICIAL BALLOT C

Proposition 3

CHARTER AMENDMENT
ALCOHOLIC BEVERAGES SALES TAX

Part I

Shall Article XIV of the Anchorage Home Rule Charter be amended by the addition of a new Section 14.04 to read:

Section 14.04 Alcoholic Beverage Sales Tax

(a) Section 14.01 (a) notwithstanding, a sales tax of 8% is levied on the retail sale of alcoholic beverages within the Municipality of Anchorage.

(b) All persons or business entities licensed for the retail sale of alcoholic beverages shall collect the tax imposed by this section. The tax shall apply to alcoholic beverages sold for consumption both on and off premises. The tax shall be due and payable at the time of sale and shall be remunerated to the Municipality on a monthly basis.

(c) The tax levied under this section shall not be added to the base amount which is used in Section 14.03(a) for purposes of calculation of subsequent years' tax increases under Section 14.03 of the Charter.

(d) The Assembly by law shall implement this section.

(e) If any provision of this section conflicts with any other provision of the Charter, this section shall govern. If any portion of this section is declared invalid by a court of competent jurisdiction, the remaining portions shall remain in effect and shall not be affected thereby.

Part II

The following statement of intent is added to the Commission commentary on the Anchorage Municipal Charter:

Section 14.04
This section is intended to generate additional revenues within the "Tax Cap" of Section 14.03(a) of the Charter, thereby providing a measure of tax relief to property owners. (petition)

YES +
NO +

TURN BALLOT OVER
AND CONTINUE VOTING

VOTE BOTH SIDES

MUNICIPAL OFFICIAL BALLOT C

Proposition 4

ADVISORY VOTE
INCREASE TAX RATES ON TOBACCO PRODUCTS

Should Sections 4 and 5 of Anchorage Ordinance 94-182(S), respectively increasing the tax rate on cigarettes and other tobacco products from the present 6.57 mills (6.57 tenths of one cent) per cigarette to 13 mills (1 and 3 tenths of one cent) per cigarette and from the present 10% of the wholesale price on other tobacco products to 15% of the wholesale price be implemented by the Municipal Assembly?

Cigarettes and other tobacco products acquired in or brought into the Municipality are currently taxed at the rates indicated in the preceding paragraph under existing Municipal ordinances. The new ordinance referred to above would increase the *rate* of taxation on those tobacco products as indicated.

Any additional revenues raised by the increase in tax rates under this ordinance would be subject to (within) the tax increase limitation of Charter Section 14.03 (the "Tax Cap") and would effect a reduction in property taxes. The amount of the reduction in property taxes is estimated to be $2.9 million in the first year.

The vote on this Proposition is an advisory vote only and does not bind the Municipal Assembly to act or refrain from acting to increase or not increase the tax rates or to choose a different tax rate on the specified tobacco products. (AO 94-182 (S))

YES +
NO +

Proposition 5

$400,000 GO BONDS
EAGLE RIVER-CHUGIAK PARKS AND RECREATION SERVICE AREA CAPITAL IMPROVEMENT PROJECTS

Shall the Municipality of Anchorage incur debt and issue general obligation bonds not to exceed Four Hundred Thousand Dollars ($400,000) for paying a portion of the costs of planning and designing a recreation facility and ice rink and related capital improvement projects in the Eagle River-Chugiak Parks and Recreation Service Area? The approximate annual amount of taxes on $100,000 of assessed real and personal property value (based on the estimated total 1995 assessed valuation in the Eagle River-Chugiak Parks and Recreation Service Area) to retire the proposed debt is $3.16. The bonds shall be paid first from individual and business property (general ad valorem) taxes levied and collected within the Eagle River-Chugiak Parks and Recreation Service Area and be secured by a pledge of the full faith and credit of the Municipality. Voter approval authorizes taxes to be levied within the Eagle River-Chugiak Parks and Recreation Service Area to pay the principal of and interest on the bonds notwithstanding any mill rate limitation in Anchorage Municipal Code Section 27.30.090. (AO 95-53(S))

YES +
NO +

Lynne Ferguson
Municipal Clerk
April 18, 1995

VOTE BOTH SIDES

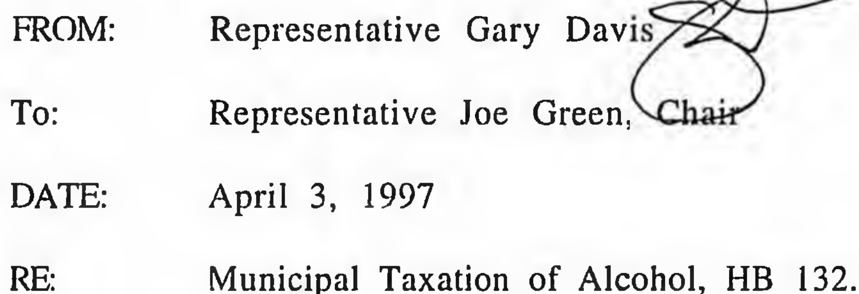
Alaska State Legislature

Interim:
145 Main Street Loop #223
Kenai, Alaska 99611
(907) 283-7095
(907) 283-3075 (fax)
(907) 262-7574 (h)

Session:
State Capitol
Juneau, Alaska 99801
(907) 465-2693
(fax) (907) 465-3835

Representative Gary L. Davis

MEMORANDUM



FROM: Representative Gary Davis

To: Representative Joe Green, Chair

DATE: April 3, 1997

RE: Municipal Taxation of Alcohol, HB 132.

I requested from Kevin Richie of the Municipal League a sample copy of actual ballot propositions as to demonstrate the type of language used in the allocation intent of tax revenues. As Mr. Richie states, the intent statements are not whimpy, while avoiding a legal issue with regards to dedicated funds. The language used in the following ballot propositions avoids a constitutionality problem, while making the intent of the municipality explicitly clear to the citizens.

Walt Wilcox

To: Andy Peterson

From: Kevin Ritchie

Date: April 3, 1997

Re: HB 132 amendment

We have discussed the amendment to require municipalities to use the funds for services related to mitigating the impacts of alcohol abuse. Municipal leaders I have spoken to do not object to an amendment committing municipalities to using the revenues to mitigate the impacts of alcohol abuse. The impacts on local taxpayers (police, emergency medical services, school programs, treatment, etc.) are so costly, it is unlikely that sales tax revenue could ever exceed the costs.

The question is simply, how do we avoid any legal problems with the Constutional prohibition against dedicating funds. Attached are examples of sales tax ballot issues from Juneau to give you an idea of how they look. They are not at all wimpy, but avoid legal dedication issues. However, they create a committment that has been as inviolate as a dedication.

As Representative James, (and other legislators who have been in local government know), a committment to the voters, while not a dedication, cannot be violated without unthinkable retribution from local voters that a local elected official comes into contact with on a daily basis.

C:legcomm\hb 132 amendment

NOW THEREFORE, BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the city and borough code.

Section 2. Amendment of Subsection. Subsection (a) of CBJ 69.05.020, "Imposition of Rate," is amended to add a new paragraph (4) to read:

(4) Effective January 1, 1997, until September 30, 1998, within the entire city and borough .... an additional 1%

This paragraph (4) is repealed on September 30, 1998.

Section 3. Amendment of Subsection. CBJ 69.05.020 "Imposition of Rate," is amended by renumbering subsection (d) as (e) and inserting a new subsection (d) to read:

(d) Subsections (a)(4) and this subsection (d) are repealed on September 30, 1998.

Post-it® Fax Note 7671	Date 4/2/97	# of pages ▸ 7
To Kevin Ritchie	From Sue	
Co./Dept.	Co. CBJ Law	
Phone #	Phone # 586-5242	
Fax # 463-5480	Fax #	

Presented by: The Manager
Introduced: 08/05/96
Drafted by: J.R.C.

ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 96-33

An Ordinance Providing for the Levy and Collection of a Temporary One Percent Areawide Sales Tax on the Sale Price of Retail Sales, Rentals, and Services Performed Within the City and Borough of Juneau, Such Tax to be Effective on January 1, 1997, for a Period of 21 Months Only, the Proceeds of Which are to be Allocated for the Construction of a Police Station; and Calling for an Election on Whether Such Sales Tax Should be so Levied.

WHEREAS, the current police station is inadequate to meet the current and future needs of the city and borough, and

WHEREAS, the assembly finds that the acquisition, construction and equipping of a new police station is in the public interests of the city and borough, and

WHEREAS, the present four percent areawide sales tax rate in the city and borough consists of a permanent one percent tax and a temporary three percent tax, and

WHEREAS, the best way to provide funds for acquiring, constructing and equipping a new police station, is to levy an additional one percent areawide sales tax to be effective for a period of 21 months only;

NOW THEREFORE, BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the city and borough code.

Section 2. Amendment of Subsection. Subsection (a) of CBJ 69.05.020, "Imposition of Rate," is amended to add a new paragraph (4) to read:

> (4) Effective January 1, 1997, until September 30, 1998, within the entire city and borough .... an additional 1%

This paragraph (4) is repealed on September 30, 1998.

Section 3. Amendment of Subsection. CBJ 69.05.020 "Imposition of Rate," is amended by renumbering subsection (d) as (e) and inserting a new subsection (d) to read:

> (d) Subsections (a)(4) and this subsection (d) are repealed on September 30, 1998.

Section 4. Submission of Questions to Voters.

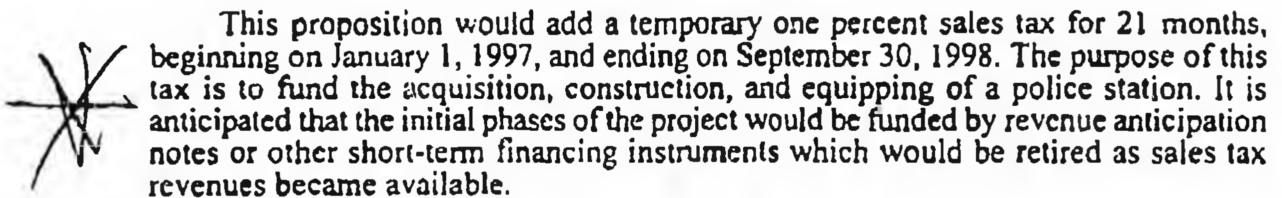
(a) In accordance with Article IX, Section 9.17, of the Charter of the City and Borough of Juneau, the question of whether or not the temporary one percent areawide sales tax herein provided shall be levied and collected effective January 1, 1997, for a period of 21 months only, shall be submitted to the qualified voters of the city and borough at the regular municipal election to be held on October 1, 1996.

(b) The city and borough clerk shall prepare the ballot proposition to be submitted to the qualified voters of the city and borough for their ratification of the temporary one percent areawide sales tax set forth in this ordinance. The city and borough clerk shall further perform all necessary steps in accordance with law to conduct the election and place the proposition before the qualified voters at the regular municipal election.

Section 5. Ballot Proposition. The proposition to be submitted to the qualified voters of the city and borough as required by Section 4 above shall read substantially as follows:

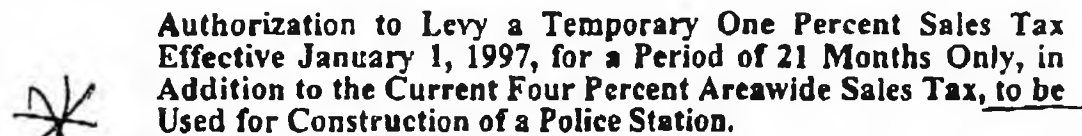
Explanation

Juneau currently has a permanent one percent sales tax and a temporary three percent sales tax. The temporary three percent sales tax is automatically repealed on July 1, 2002. The total of all sales taxes is currently four percent.



This proposition would add a temporary one percent sales tax for 21 months, beginning on January 1, 1997, and ending on September 30, 1998. The purpose of this tax is to fund the acquisition, construction, and equipping of a police station. It is anticipated that the initial phases of the project would be funded by revenue anticipation notes or other short-term financing instruments which would be retired as sales tax revenues became available.

PROPOSITION NO. ___



Authorization to Levy a Temporary One Percent Sales Tax Effective January 1, 1997, for a Period of 21 Months Only, in Addition to the Current Four Percent Areawide Sales Tax, to be Used for Construction of a Police Station.

Shall the City and Borough of Juneau levy and collect a temporary one percent areawide sales tax on retail sales, services, and rentals within the city and borough, effective January 1, 1997, for a period of 21 months only, in addition to the current four percent sales tax?

It is the intention of the Assembly that this sales tax be used only to fund the acquisition, construction, and equipping of a police station.

YES [ ]

NO [ ]

Section 6. Effective Date. (a) Sections 2 and 3 of this ordinance shall become effective if the proposition set forth in Section 5 is approved by the voters.

(b) Sections 4 and 5 of this ordinance authorizing the submission of the ballot proposition to the qualified voters of the city and borough, shall be effective thirty days after adoption.

Adopted this 23rd day of August, 1996.

Mayor

Attest:

Clerk

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

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

M E M O R A N D U M   February 25, 1997

SUBJECT: Dedication of funds by a municipality (Work Order No. 20-LS0681)

TO: Representative Gary Lee Davis
Attn: Andy Peterson

FROM: Tamara Brandt Cook TBC
Director

You have asked whether a municipality may dedicate funds. There is no statute that prohibits a municipality from dedicating funds, although an initiative may not be used to propose an ordinance that would create a dedication. Article XI, sec. 7 of the state constitution does not allow an initiative to be used to dedicate revenues, and that prohibition has been applied to municipalities under AS 29.10.030(c) and AS 29.26.100.

It is unclear whether the constitutional prohibition against dedicated state funds contained in Art. IX, sec. 7 applies also to municipalities. Attorney general opinions have not been consistent on this point. I have found two opinions that conclude that Art. IX, sec. 7 applies only to state and not to municipal funds. (1960 Inf. Op. Att'y Gen., December 5, Havelock; Att'y Gen. Op. No. 660-88-0525, July 29, 1988, Odland) On the other hand, another opinion warns that receipts of a municipal liquor tax could not be dedicated to "costs created by abuse of alcohol" without violating Art. IX, sec. 7. (Memorandum to the Honorable Jay S. Hammond, Oct. 8. 1976, Peter) At this point the Alaska Supreme Court has noted that the issue exists and has declined to express an opinion on it. (Fairbanks v. Convention and Visitors Bureau, 818 P.2d 1153 (Alaska 1991) footnote 7)

TBC:glc
97-121.glc

Legal Clarification

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

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

M E M O R A N D U M

February 21, 1997

SUBJECT: Municipal taxation of alcohol - (SSHB 132)

TO: Representative Gary Davis
Attn: Andy

FROM: Michael F. Ford
Legislative Counsel

You have asked if the above referenced bill will have any effect on the existing ability of a damp or dry municipality to impose a sales and use tax on alcoholic beverages. As explained in this memo, I do not believe that SSHB 132 will change existing law as to this issue.

A damp or dry municipality has the ability to impose a sales and use tax on alcoholic beverages under AS 04.21.010(c)(4). This provision of law is unchanged under SSHB 132. As a practical matter, the ability to impose a sales and use tax would only seem of value in a damp municipality or one that prohibits sale under AS 04.11.491(a)(1), but not importation or possession of alcohol. In dry municipalities, or a place that prohibits sale and importation, or sale, importation and possession, there would be no legal activities to tax. Therefore the ability to impose a use tax would seem of questionable value in a dry community. Regardless of the value of the taxing authority granted under AS 04.21.010(c)(4), SSHB 132 does not change this provision of law.

If you have further questions please contact me.

MFF:jdr
97-113.jdr

Section
60. Warehousing of alcoholic beverages
65. Posting of warning signs

Section
70. Enforcement
80. Definitions

Sec. 04.21.010. Municipal regulation. (a) A municipality may adopt ordinances governing the importation, barter, sale, and consumption of alcoholic beverages within the municipality and may ban possession of alcoholic beverages under AS 04.11.491(a)(5). An ordinance adopted under this section may not be inconsistent with this title or regulations adopted under this title. In a municipality that has adopted a local option under AS 04.11.491(a)(1), (2), or (3), an ordinance is not inconsistent with this title if it limits

(1) the monthly amounts of alcoholic beverages a person may import into the municipality;

(2) the percent of alcohol by volume that an alcoholic beverage may contain; a limit imposed under this paragraph may not be less than 40 nor more than 76 percent alcohol by volume; or

(3) the type of alcoholic beverage container that may be possessed in the municipality.

(b) After the adoption of a local option under AS 04.11.491(a), a municipality may adopt an ordinance making the sale, importation, or possession of alcoholic beverages a misdemeanor to the extent prohibited under the local option. The ordinance may not be inconsistent with this title or the regulations adopted under this title.

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

(1) property tax on alcoholic beverage inventories;

(2) sales tax on alcoholic beverage sales if sales taxes are imposed on other sales within the municipality;

(3) sales tax on alcoholic beverage sales that was in effect before July 1, 1985; and

(4) sales and use tax on alcoholic beverages if the sale of alcoholic beverages within the municipality has been prohibited under AS 04.11.491(a)(1), (4), or (5).

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

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

(2) has jurisdiction over the area affected by the proposed action. (§ 4 ch 131 SLA 1980; am § 20 ch 74 SLA 1985; am § 19 ch 93 SLA 1985; am § 9 ch 80 SLA 1986; am §§ 11, 12 ch 156 SLA 1988; am §§ 50 — 52 ch 101 SLA 1995)

Effect of amendments. — The 1995 amendment, effective July 1, 1995, made section reference substitutions in subsections (a) and (c); in subsection (a), added the last sentence in the introductory language and added paragraphs (1)-(3); and rewrote subsection (b).

Legislative history reports. — For sectional analysis of CS SSSB 239, the predecessor of FCCSSB 239 (ch. 131, SLA 1980), see 1980 Senate Journal Supplement No. 23, April 1, 1980.

For Senate letter of intent relating to the amendments to (a) and (c) of this section by secs. 11 and 12, ch. 156, SLA 1988 (HCS CSSB 371 (Jud) am H), see 1988 Senate Journal 2939.

Opinions of attorney general. — Anchorage Municipal Code 10.50.030 and 10.50.035, which established guidelines for when the Assembly will exercise its protest authority under AS 04.11.480, are not inconsistent with this title, are not in excess of the municipality's authority, and are not unreasonable. February 25, 1986, Op. Att'y Gen.

Ordinance regulating where licensees may be located did not exceed the borough's authority. October 23, 1991, Op. Att'y Gen.

NOTES TO DECISIONS

Sales tax. — Paragraphs (c)(2) and (c)(3) of this section, when read together, bar a municipality from taxing only the sale of alcoholic beverages and further require that if sales taxes are imposed on other commodities, then the rate of taxation on the sale of alcoholic beverages may not exceed the rate of taxation imposed upon such other commodities sales. Lagos v. City & Borough of Sitka, 823 P.2d 641 (Alaska 1991).

A Sitka ordinance which taxed the sales of alcoholic beverages at a four percent higher rate than sales made on other commodities within the city and bor-

- Alaska Statutes -

ough of Sitka violated this section Lagos v. City & Borough of Sitka, 823 P.2d 641 (Alaska 1991).

Collateral references. — 45 Am. Jur. 2d, Intoxicating Liquors, § 27.

48 C.J.S., Intoxicating Liquors, § 213.

Provision as to sale of liquor to women as affecting validity of regulatory statute 9 ALR2d 541.

Validity and construction of measure prohibiting retail alcoholic beverage seller from furnishing free food or drink 66 ALR2d 758.

Validity and construction of statute or ordinance requiring or prohibiting posting or other publication of price by liquor dealer. 89 ALR2d 901.

Validity and construction of statute or ordinance respecting employment of women in places where intoxicating liquors are sold 46 ALR3d 369.

Validity of municipal regulation more restrictive than state regulation as to time for selling or serving intoxicating liquor 51 ALR3d 1061.

Validity, construction, and effect of statutes, ordinances, or regulations prohibiting or regulating advertising of intoxicating liquors. 20 ALR4th 600.

Validity and construction of statute or ordinance making it offense to have possession of open or unsealed alcoholic beverage in public place. 39 ALR4th 668.

Sec. 04.21.015. Private manufacture of alcoholic beverages. (a) Except as provided in (b) of this section, the provisions of this title do not apply to the private manufacture of alcoholic beverages.

(b) This section does not apply to AS 04.16.050, 04.16.051, 04.16.080; AS 04.21.010, 04.21.020; alcoholic beverages manufactured in a quantity that exceeds the limit imposed on private manufacture under federal law; or an area that has adopted a local option law under AS 04.11.491. (§ 1 ch 88 SLA 1989; am § 53 ch 101 SLA 1995)

Effect of amendments. — The 1995 amendment, effective July 1, 1995, made a section reference substitution in subsection (b).

Sec. 04.21.020. Civil liability of persons providing alcoholic beverages. A person who provides alcoholic beverages to another person may not be held civilly liable for injuries resulting from the intoxication of that person unless the person who provides the alcoholic beverages holds a license authorized under AS 04.11.080 — 04.11.220, or is an agent or employee of such a licensee and

(1) the alcoholic beverages are provided to a person under the age of 21 years in violation of AS 04.16.051, unless the licensee, agent, or employee secures in good faith from the person a signed statement, liquor identification card, or driver's license meeting the requirements of AS 04.21.050(a) and (b), that indicates that the person is 21 years of age or older; or

(2) the alcoholic beverages are provided to a drunken person in violation of AS 04.16.030. (§ 5 ch 131 SLA 1980; am § 14 ch 109 SLA 1983)

Revisor's notes. — In 1980, this section was rearranged for clarity.

Cross references. — For responsibility of licensee for violations, see AS 04.16.150, for responsibility of licensees, agents and employees, see AS 04.21.030.

NOTES TO DECISIONS

Editor's notes. — Many of the cases cited in the notes below were decided under former AS 04.10.180 and 04.15.020.

Constitutionality. — This section is not so completely lacking in rationality or legitimacy of purpose as to be unconstitutional. Immunizing social hosts from liability caused by their guests' conduct can rationally be based on a view that it is an undesirable interference with normal hospitality to require a social host to monitor guests' alcohol consumption. Further, the primary actor responsible for harm caused by a drunken person is the drunken person. Chokwak v. Worley, 912 P.2d 1248 (Alaska 1996).

Legislative intent. — The intent of the legislature in enacting this section was to limit vendor liability in cases where the vendor has provided alcohol in a statutorily permissible manner. Williford v. L.J. Carr Invs., Inc., 783 P.2d 235 (Alaska 1989).

"Provide" alcohol. — A vendor may "provide" alcohol even unwittingly to third parties. Williford v. L.J. Carr Invs., Inc., 783 P.2d 235 (Alaska 1989).

This section does not immunize vendors who violate AS 04.16.030, which prohibits certain conduct relating to drunken persons. Williford v. L.J. Carr Invs., Inc., 783 P.2d 235 (Alaska 1989).

Proximate cause. — AS 04.16.030 and this section require for purposes of liability only that the defendant's intoxication, and not the particular sale of

Effect of amendments. — The 1995 amendment, effective July 1, 1995, rewrote subsection (a).

NOTES TO DECISIONS

Protest upheld. — City's protest that a proposed liquor store location was too close to a senior citizens housing complex and was in an area which already contained a high concentration of bars was not arbitrary, capricious, and unreasonable. Stoltz v. City of Fairbanks, 703 P.2d 1155 (Alaska 1985).

Former law construed. — See In re Alaska Labor Trades Ass'n, 10 Alaska 472 (1945); In re Wakefield, 10 Alaska 599 (1945); In re Kaye, 11 Alaska 556 (1948); In re Martin's Retail Liquor License No. 1517, 15 Alaska 225 (1954).

Sec. 04.11.490. Prohibition of the sale of alcoholic beverages. [Repealed, § 69 ch 101 SLA 1995.]

Sec. 04.11.491. Local options. (a) If a majority of the persons voting on the question vote to approve the option, a municipality shall adopt a local option to prohibit

(1) the sale of alcoholic beverages;

(2) the sale of alcoholic beverages except by one or more of the following listed on the ballot:

(A) a restaurant or eating place licensee;

(B) a beverage dispensary licensee;

(C) a package store licensee; or

(D) a caterer holding a permit under AS 04.11.230 to sell alcoholic beverages at a site within the municipality who is also licensed under a beverage dispensary license for premises outside of the municipality;

(3) the sale of alcoholic beverages except on premises operated by the municipality and under a type of licensed premises listed on the ballot, that may include one or more of the following:

(A) a restaurant or eating place license;

(B) a beverage dispensary license; or

(C) a package store license;

(4) the sale and importation of alcoholic beverages; or

(5) the sale, importation, and possession of alcoholic beverages.

(b) If a majority of the persons voting on the question vote to approve the option, an established village shall exercise a local option to prohibit

(1) the sale of alcoholic beverages;

(2) the sale of alcoholic beverages except by one or more of the following listed on the ballot:

(A) a restaurant or eating place licensee;

(B) a beverage dispensary licensee;

(C) a package store licensee; or

(D) a caterer holding a permit under AS 04.11.230 to sell alcoholic beverages at a site within the established village who is also licensed under a beverage dispensary license for premises outside of the established village;

(3) the sale and importation of alcoholic beverages; or

(4) the sale, importation, and possession of alcoholic beverages.

(c) A ballot question to adopt a local option under this section must at least contain language substantially similar to: "Shall (name of municipality or village) adopt a local option to prohibit (local option under (a) or (b) of this section)? (yes or no)."

(d) The ballot for an election on the option set out in (a)(2)(A), (a)(3)(A), or (b)(2)(A) of this section must include a summary explanation of the authority to sell alcoholic beverages given to a restaurant or eating place under AS 04.11.100(a). The ballot for an election on the option set out in (a)(2)(B) or (D), (a)(3)(B), or (b)(2)(B) or (D) of this section must include a statement that a beverage dispensary license is commonly known as a

"bar" and a summary explanation of the authority to sell alcoholic beverages given to a beverage dispensary licensee under AS 04.11.090(a). The ballot for an election on the option set out in (a)(2)(C), (a)(3)(C), or (b)(2)(C) of this section must include a statement that a package store license is commonly known as a "liquor store" and a summary explanation of the authority to sell alcoholic beverages given to a package store licensee under AS 04.11.150(a).

(e) If a municipality dissolves under AS 29.06.450(a) or (b), a local option adopted by the municipality under (a) of this section shall continue in effect as the corresponding local option under (b) of this section for an established village having the same perimeter as the previous boundaries of the municipality. A license for premises operated by the municipality under AS 04.11.505 expires when the municipality dissolves.

(f) A municipality or established village that has adopted a local option under (a)(1), (2), or (3) or (b)(1) or (2) of this section may designate a site for the delivery of alcoholic beverages to individuals in the area or a site for a person to bring alcoholic beverages if the alcoholic beverages are imported into the area. This subsection does not apply to the delivery or importation of

(1) one liter or less of distilled spirits, two liters or less of wine, or one gallon or less of malt beverages; or

(2) alcoholic beverages to a premises licensed under (a)(2) — (3) or (b)(2) of this section. (§ 21 ch 101 SLA 1995)

Cross references. — For provisions relating to the continuation of local options adopted under former AS 04.11.490, 04.11.492, 04.11.496, 04.11.498, and 04.11.500, see § 70, ch.101, SLA 1995 in the Temporary and Special Acts; for provisions relating to local option petitions on file on July 1, 1995, see § 71, ch 101, SLA 1995 in the Temporary and Special Acts

Effective dates. — Section 79, ch. 101, SLA 1995 makes this section effective July 1, 1995.

Sec. 04.11.492. Community liquor license; complete prohibition on sales. [Repealed. § 69 ch 101 SLA 1995.]

Sec. 04.11.493. Change of local option. (a) If a majority of persons voting on the question vote to approve a different local option, a municipality or established village shall change a local option previously adopted under AS 04.11.491 to the different approved option.

(b) A ballot question to change a local option under this section must at least contain language substantially similar to: "Shall (name of municipality or village) change the local option currently in effect, that prohibits (current local option under AS 04.11.491), and adopt in its place a local option to prohibit (proposed local option under AS 04.11.491)? (yes or no)." (§ 22 ch 101 SLA 1995)

Effective dates. — Section 79, ch. 101, SLA 1995 makes this section effective July 1, 1995.

Sec. 04.11.495. Removal of local option. (a) If a majority of the persons voting on the question vote to remove the option, a municipality or established village shall remove a local option previously adopted under AS 04.11.491. The option is repealed effective the first day of the month following certification of the results of the election.

(b) A ballot question to remove a local option under this section must at least contain language substantially similar to: "Shall (name of municipality or village) remove the local option currently in effect, that prohibits (current local option under AS 04.11.491), so that there is no longer any local option in effect? (yes or no)."

(c) When issuing a license in the area that has removed a local option, the board shall give priority to an applicant who was formerly licensed and whose license was not renewed because of the results of the previous local option election. However, an

Article 4. Borough Sales and Use Tax.

Section
650. Sales and use tax
660. Notice of sales and use tax
670. Referendum, adoption, and modification
680. Combining sales and use tax with incorporation of a borough

Sec. 29.45.650. Sales and use tax. (a) Except as provided in AS 04.21.010(c) and in (f) and (h) of this section, a borough may levy and collect a sales tax on sales, rents, and on services provided in the borough. The sales tax may apply to any or all of these sources. Exemptions may be granted by ordinance.

(b) A borough levying a sales tax may also by ordinance levy a use tax on the storage, use, or consumption of tangible personal property in the borough. The use tax rate must equal the sales tax rate and the use tax shall be levied only on buyers.

(c) A person who furnishes proof, in the form required by the borough tax collector, that the person has paid a sales tax on the source on which a use tax is levied by the borough is required to pay the use tax only to the extent of the difference between the amount of the sales tax paid and the amount of the use tax levied by the borough. This subsection applies to a sales tax levied in any taxing jurisdiction whether inside or outside the state.

(d) If the assembly charges interest on sales taxes not paid when due, the rate of interest may not exceed 15 percent a year on the delinquent taxes and shall be charged from the due date until paid in full. This subsection applies to home rule and general law municipalities.

(e) A borough may provide for the creation, recording, and notice of a lien on real or personal property to secure the payment of a sales and use tax, and the interest, penalties, and administration costs in the event of delinquency. When recorded, the sales tax lien has priority over all other liens except (1) liens for property taxes and special assessments; (2) liens that were perfected before the recording of the sales tax lien for amounts actually advanced before the recording of the sales tax lien; (3) mechanics' and materialmen's liens for which claims of lien under AS 34.35.070 or notices of right to lien under AS 34.35.064 have been recorded before the recording of the sales tax lien. This subsection applies to home rule and general law municipalities.

(f) A borough may not levy and collect a sales tax on a purchase made with (1) food coupons, food stamps, or other type of certificate issued under 7 U.S.C. 2011 — 2025 (Food Stamp Act); or (2) food instruments, food vouchers, or other type of certificate issued under 42 U.S.C. 1786 (Special Supplemental Food Program for Women, Infants, and Children). This subsection applies to home rule and general law municipalities.

(g) *[Repealed, § 2 ch 159 SLA 1990.]*

(h) A borough may not levy or collect a sales tax on sales, rents, and services, or a use tax on the storage, use, or consumption of personal property on the following activities:

(1) the sale, lease, rental, storage, consumption, or distribution in this state of or the provision of services relating to an orbital space facility, space propulsion system, or space vehicle, satellite, or station of any kind possessing space flight capacity, including the components of them;

(2) the sale, lease, rental, storage, consumption, or use of tangible personal property placed on or used aboard an orbital space facility, space propulsion system, or space vehicle, satellite, or station of any kind, regardless of whether the tangible personal property is returned to this state for subsequent use, storage, or consumption; an exemption under this paragraph is not affected by the failure of a launch to occur, or the destruction of a launch vehicle or a component of a launch vehicle. (§ 12 ch 74 SLA 1985; am §§ 3, 4 ch 38 SLA 1986; am § 1 ch 20 SLA 1987; am § 2 ch 30 SLA 1988; am §§ 1, 2 ch 96 SLA 1989; am §§ 1, 2 ch 159 SLA 1990; am §§ 4, 5 ch 88 SLA 1991)

NOTES TO DECISIONS

Annotator's notes. — The cases cited in the note below were decided under former, similar provisions.

Evolutionary development of present language of subsection (a). — See Liberati v. Bristol Bay Borough, 584 P.2d 1115 (Alaska 1978).

Subsection (a) of this section permits a selective sales tax. Liberati v. Bristol Bay Borough, 584 P.2d 1115 (Alaska 1978).

This section states no limits on what may be exempted. Liberati v. Bristol Bay Borough, 584 P.2d 1115 (Alaska 1978).

And there is nothing in the statute which expressly requires a general tax. Liberati v. Bristol Bay Borough, 584 P.2d 1115 (Alaska 1978).

The term "sales tax" carries no connotation of generality. Liberati v. Bristol Bay Borough, 584 P.2d 1115 (Alaska 1978).

The city of Homer bed tax, based upon the actual rental of a room, and imposed, computed and collected according to traditional sales tax methods, is a sales tax within the meaning of this section. City of Homer v. Gangl, 650 P.2d 396 (Alaska 1982).

A real property lien is beyond the scope of what may be "necessarily or fairly implied in or incident to" the authority to collect a sales tax. Fairbanks N. Star Borough v. Howard, 608 P.2d 32 (Alaska 1980).

Successor liability. — Subsection (e) of this section does not provide for successor liability, unless done through a lien on the real and personal property of a "seller," i.e. the business; municipalities' attempt by ordinance to hold successor owners personally liable for delinquent sales taxes would effectively eliminate paragraph (e)(2) of this section lien priority and was, therefore, invalid. Kenai Peninsula Borough v. Associated Grocers, 889 P.2d 604 (Alaska 1995).

Collateral references. — 68 Am. Jur. 2d, Sales and Use Taxes, § 1 et seq.

Sec. 29.45.660. Notice of sales and use tax. (a) If the borough levies and collects only a sales tax and use tax, the assembly shall provide a notice substantially in the form set out in AS 29.45.020. In providing notice under this subsection, the assembly shall substitute for the millage equivalency its estimate of the equivalent sales tax rate for each of the categories of financial assistance set out in AS 29.45.020. Notice shall be provided

(1) by publishing in a newspaper of general circulation in the borough a copy of the notice once each week for a period of three successive weeks, with publication to occur not later than 45 days after the final adoption of the borough's budget; or

(2) if there is no newspaper of general circulation in the borough, by posting a copy of the notice for at least 20 days in at least two public places in the borough, with posting to occur not later than 45 days after the final adoption of the borough's budget.

(b) Compliance with the provisions of this section is a prerequisite to receipt of municipal tax resource equalization assistance under AS 29.60.010 — 29.60.080 and state aid for miscellaneous municipal services under AS 29.60.100 — 29.60.180. The department shall withhold annual allocations under those sections until municipal officials demonstrate that the requirements of this section have been met. (§ 12 ch 74 SLA 1985)

Sec. 29.45.670. Referendum, adoption, and modification. A new sales and use tax or an increase in the rate of levy of a sales tax approved by ordinance does not take effect until ratified by a majority of the voters at an election. (§ 12 ch 74 SLA 1985)

Sec. 29.45.680. Combining sales and use tax with incorporation of a borough. A petition for incorporation of a borough may request that a sales and use tax proposition be placed on the same ballot. The petition must state the proposed tax rate. The petition may request that incorporation be dependent on the passage of the tax proposition; if so, the incorporation proposition fails if the tax proposition fails. (§ 1 ch 3 SLA 1989)

Editor's notes. — Section 2, ch. 3, SLA 1989 provides that this section is retroactive to January 1, 1987.

Legislative history reports. — For governor's transmittal letter, see 1989 Senate Journal 46.

Alaska State Legislature

Interim:
145 Main Street Loop #223
Kenai, Alaska 99611
(907) 283-7095
(907) 283-3075 (fax)
(907) 262-7574 (h)

Session:
State Capitol
Juneau, Alaska 99801
(907) 465-2693
(fax) (907) 465-3835

Representative Gary L. Davis

SPONSOR STATEMENT

HB 132
"An Act relating to municipal taxation of alcoholic beverages."

HB 132 removes the restrictions on municipalities related to the sales tax imposed on alcoholic beverages. Current statutes are interpreted to allow municipalities to impose only the general sales tax amount on alcohol. This bill allows municipalities to impose a sales tax which may be equal to, lower, or higher than the general sales tax.

State laws are continually passed that have a direct financial impact on municipalities. Municipalities are required by state law to care for and protect public inebriates. Currently, the State does not provide sufficient funding for such activities. <u>This is not a new tax</u>. HB 132 merely allows municipalities to tax alcohol according to their local alcohol related costs.

This legislation will enable municipalities to address budgeting problems created through the consumption of alcoholic beverages. HB 132 will enable municipalities to address their local expenses. Such costly services include public safety, care for inebriates, and alcohol related social and health problems.

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Representative Gary L. Davis

SECTIONAL ANALYSIS OF HB 132
A BILL FOR AN ACT ENTITLED

"An Act relating to a municipal taxation of alcoholic beverages."

Section 1 AS 04.21.010(c) (2). Is an addition the current exceptions regulating the municipalities ability to tax alcohol. It states that municipalities will have the ability to impose a sales tax on alcohol that is equal to, higher, or lower than an existing sales tax. This section removes the existing requirement that a general sales tax be in place before a sales tax can be placed on alcohol.

Section 1 AS 04.21.010 (c) (3) Was a "grandfather" clause that allowed municipalities that had an existing sales tax in effect prior to July 1, 1985 to tax alcohol. This section will be deleted, as this legislation will allow all municipalities to place a sales tax on alcohol.

Section 2 AS 29.45.650 (a) This section states that a borough may levy and collect taxes within the borough's jurisdiction with three exceptions, AS 04.21.010 (c) and AS 29.45.650 (f) and (h). Since AS 04.21.010 (c) This bill no longer restricts municipalities ability to place a sales tax on alcohol, the presence of AS 04.21.010 (c) will be deleted.

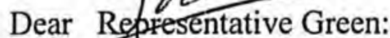
- Sectional Analysis -

CITY/BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

OFFICE OF THE MAYOR

March 20, 1997

The Honorable Joe Green, Chair
House Judiciary Committee
Alaska State Legislature
Room 118, Capitol Building
Juneau, Alaska 99811

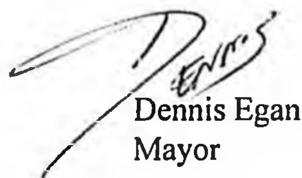


Dear Representative Green:

On behalf of the City and Borough of Juneau Assembly, I am writing in support HB132, which lifts restrictions on municipal taxation of alcoholic beverages. At the March 12 CBJ Assembly/Legislative Delegation meeting, consensus was reached in support of this bill. Even though the CBJ has a differential rate which predates the prohibition, CBJ supports the ability for all municipalities to determine at the local level the tax rates most appropriate to provide necessary services. In the case of alcohol taxes, many municipalities would find added revenue from a tax on alcoholic products beneficial in dealing with the costs of dealing with the result of alcohol consumption.

The CBJ Assembly will pass a resolution in support of HB132 at a special meeting on Monday, March 24, 1997. Please let me know if you need additional information. Thank you for your consideration of our letter of support.

Sincerely,



Dennis Egan
Mayor

cc: CBJ Assembly
Clark Gruening

155 South Seward Street, Juneau, Alaska 99801

HB 132 - Removes Special Restrictions and Allows Local Voters to Decide on Alcohol Sales Tax

1. Under state statutes adopted years ago, a special exemption on alcohol sales was granted which **prohibited local voters** from establishing a higher level of sales tax on alcohol in their community. **It is time to remove the exemption and let local voters decide for their own community.**

2. This is **not a new state tax**. It is an **optional tool for municipalities** to balance local tax burdens and provide critical public services.

3. Instead of creating a new municipal taxing power, **HB 132 removes an inappropriate restriction** on an existing municipal tax.

4. **Alcohol abuse is the number one health and public safety problem in Alaska.** Alcohol sales should not receive a special exemption. Municipalities must be able to defray some of the costs they incur coping with alcohol-related problems.

5. With growing pressure on property taxpayers, **local voters should be allowed to vote** on whether or not to tax alcohol to pay a larger share of the costs directly related to alcohol use in their community. Alcohol related costs to local taxpayers include:

- ➔ Unfunded state mandated police costs to **transport public inebriates**
- ➔ Unfunded state mandated **emergency medical services**
- ➔ Unfunded state mandated **hospital** emergency care costs
- ➔ **Police** costs for alcohol related felonies and misdemeanors
- ➔ Unfunded **prosecutions**
- ➔ Unfunded direct **treatment and rehabilitation** of alcohol abusers
- ➔ Increase in costs of **youth and family services** related to alcohol use, provided by schools and local governments
- ➔ Unfunded local **medical services and hospitalization**
- ➔ Unfunded repair of **property damage** to public facilities
- ➔ **Health insurance costs** paid by local governments and school districts to treat alcohol and alcohol-related health problems.

ALASKA STATE

HOSPITAL & NURSING HOME

ASSOCIATION

February 14, 1997

Representative Gary Davis
Room 513, Capitol Building
Juneau, Ak 99801-1182

Dear Representative Davis:

Members of the Alaska State Hospital & Nursing Home Association strongly support House Bill 132 "An Act relating to municipal taxation of alcoholic beverages."

The challenge of caring for the public inebriate, along with the cost of providing that care is of serious concern to community hospital administrators throughout Alaska. Attached is a "discussion paper" on this issue written by Ed Myers, former Administror of Kodiak Island Hospital. Ed is also a former chairman of the board of directors of ASHNHA. His paper is about Kodiak but the problems apply to nearly every community in Alaska, if not all of them.

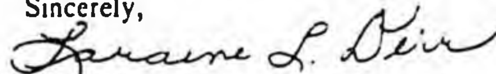
State statutes require that police protect public inebriates from harm by bringing them to the hospital for a medical screening required by state law. The costs of those services to public inebriates go unpaid and, as with other costs that are shifted to communities in Alaska, property tax payers foot the bill. If this problem needs to be taken care of locally (and we believe it does) then the state should stop prohibiting the communities from raising money to pay for it.

Under state statutes adopted many years ago, alcohol is granted a special exemption intended to prohibit local voters from voting on a special sales tax on alcohol sales in their community. House Bill 132 would provide a tool for municipalities to use to pay for the costs of local police departments, hospitals and other impacts related to alcohol abuse.

This is not a new state tax. It is a needed optional tool for municipalities to balance local tax burdens.

Thank you for introducing House Bill 132. ASHNHA will be working hard this session to seek passage of this important legislation.

Sincerely,



Laraine L. Derr
President / CEO

Support Letters

319 SEWARD STREET #11 • JUNEAU, AK 99801 • (907) 586-1790 • FAX (907) 463-3573

March 19, 1995

DISCUSSION PAPER
HOSPITAL EXAMINATION OF PUBLIC INEBRIATES

By:
Edmon Myers, Administrator
Kodiak Island Hospital / Care Center

Examination of public inebriates in the Emergency Room at Kodiak Island Hospital and Care Center has been an ongoing problem for several years, and to date, there has been no resolution to this problem. The basic problem in Kodiak lies in the fact that the Police Department believes that under the current law, they are required to pick up and transport any public inebriate to the Hospital for examination prior to incarceration or other disposition. An often cited case is several years ago in Anchorage, where an individual died without being examined for other injuries.

The following facts and issues characterize the situation at Kodiak Island Hospital and Care Center.

1. Police either bring public inebriates or call an ambulance to transport public inebriates to the Hospital for examination. The use of the public ambulance service has arisen because of the legal issues for payment surrounding protective custody. KIH/CC has sought legal determination regarding responsibility for payment when police bring inebriates to the Hospital. The legal determination received was that the Police Department is acting in the same capacity as a guardian of a minor in those cases, and therefore, would be responsible for payment. To circumvent this, the Police Department has resorted to calling an ambulance to bring public inebriates to the Hospital on the theory that the Hospital must then take care of examining the inebriates, the same as any other patient arriving by ambulance, and the protective custody issue is thereby avoided.

2. In other cases when the Police pick up inebriates and bring them to the Hospital, the Police usually release them "on their own recognizance" at the Emergency Room door and after examination, rearrest them as they leave the Hospital. Again, the City has indicated this then removes the protective custody issue, and does not have to pay for the examination of the patient.

3. In those cases where prisoners are brought in from the jail, the Police again usually release prisoners on their own recognizance and rearrest them after they are released from the Hospital, requiring the Hospital to call them prior to release so they may await them at the door when they leave. This has occurred, even in the case of "dangerous" patients, in which the Hospital is required to provide its own security to protect the staff.

4. KIH/CC has written off several hundred thousand dollars over the past few years in providing care and treatment of patients brought to the Hospital as a result of inebriation. In most of these cases, treatment is not required, but merely an evaluation of whether there is any medical condition which would prohibit incarceration or other disposition by the Police Department.

This is a serious financial problem to the Hospital, and I suspect it is in other communities, based upon my discussion with other Hospitals. I have offered on several occasions to enter into a contract with the City for examinations providing "deep discounts". This is an area which I would like to see improved, as I believe it is unreasonable to expect Hospitals to provide examinations which are not requested by the patient without reimbursement.

# # # #

MAR 1997

Central Peninsula General Hospital

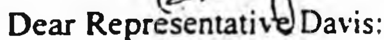
A member of Lutheran Health Systems

250 Hospital Place–Soldotna, Alaska 99669

(907) 262-4404

February 27, 1997

Representative Gary Davis
Room 513, Capitol Building
Juneau, AK 99801-1182



Dear Representative Davis:

Our Hospital Board and Administration strongly support House Bill 132 "An Act relating to municipal taxation of alcoholic beverages."

The challenge of caring for the public inebriate, along with the cost of providing that care is of serious concern to community hospital administrators throughout Alaska. Alaska seems to have a higher than normal problem with alcohol/substance abuse related incidents and hospital Emergency Departments end up becoming involved with most of them. During the last seven months of 1996 we had 200 people seen in our Emergency Department with an alcohol substance abuse problem. These folks always take more time in the Emergency Department than other patients due to the numerous complications associated with their problems.

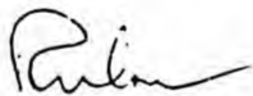
State statutes require that police protect public inebriates from harm by bringing them to the hospital for a medical screening required by state law. The costs of those services to public inebriates go unpaid and, as with other costs that are shifted to communities in Alaska, property tax payers foot the bill. If this problem needs to be taken care of locally (and we believe it does) then the state should stop prohibiting the communities from raising money to pay for it.

Under state statutes adopted many years ago, alcohol is granted a special exemption intended to prohibit local voters from voting on a special sales tax on alcohol sales in their community. House Bill 132 would provide a tool for municipalities to use to pay for the costs of local police departments, hospitals and other impacts related to alcohol abuse.

This is not a new state tax. It is a needed optional tool for municipalities to balance local tax burdens.

Thank you for introducing House Bill 132. Let us know how we can help in moving this important legislation forward.

Sincerely,



Rulon J. Barlow
Administrator

Alaska Native Health Board

4201 Tudor Centre Dr., Suite 105
Anchorage, Alaska 99508

Phone: (907) 562-6006
FAX: (907) 563-2001

February 21, 1997

Representative Gary Davis
Alaska Legislature
State Capitol
Juneau, AK 99801

Dear Representative Davis:

I am writing to let you know how much we appreciated the chance to meet with you in Juneau this week and hear of your commitment to provide communities with another tool to reduce alcohol abuse.

I want to let you know that the Alaska Native Health Board voted to support HB 132. At the same time, I also want to take this opportunity to ask again for your support of HB 1, the tobacco tax increase, which will be heard in House Finance Committee next week.

You mentioned that you think local governments should have the opportunity to levy alcohol and tobacco taxes. We agree, but we don't think this should preclude the state from doing so as well. If the Alaska Legislature acts this year to pass a major tobacco tax increase, every community in the state will benefit and thousands of lives will ultimately be saved.

Representative Davis, we feel that your support of the tobacco tax legislation is as critical as our mutual goal to reduce alcohol abuse. The tobacco industry is making an all-out effort to stop the tax, and we are counting on you not to let this happen. From our conversation, I believe you do care about the health and well-being of all Alaskans. We look forward to working with you to address the two biggest health problems in our state—tobacco and alcohol abuse.

I would welcome the chance to discuss this with you further.

Sincerely,

Anne M. Walker
Executive Director

ALEUTIAN PRIBILOF ISLANDS ASSOCIATION
BRISTOL BAY AREA HEALTH CORPORATION
CHUGACHMIUT
COPPER RIVER NATIVE ASSOCIATION
EASTERN ALEUTIAN TRIBES
KODIAK AREA NATIVE ASSOCIATION
MANIILAQ ASSOCIATION

METLAKATLA INDIAN COMMUNITY
MT. SANFORD TRIBAL CONSORTIUM
NATIVE VILLAGE OF EKLUTNA
NATIVE VILLAGE OF TYONEK
NINILCHIK TRADITIONAL COUNCIL
NORTH SLOPE BOROUGH

NORTON SOUND HEALTH CORPORATION
SELDOVIA VILLAGE TRIBE
SOUTHCENTRAL FOUNDATION
SOUTHEAST ALASKA REGIONAL HEALTH CONSORTIUM
TANANA CHIEFS CONFERENCE
YUKON-KUSKOKWIM HEALTH CORPORATION
VALDEZ NATIVE TRIBE

III. TITLE 47 REIMBURSEMENT FOR HEALTH CARE FACILITIES

Alaska Native health organizations that operate hospitals and health centers throughout rural Alaska have been inappropriately bearing a heavy financial burden for services provided to intoxicated persons.

Title 47 of Alaska State Statutes provides financial support to local governments for public safety services provided to intoxicated and incapacitated individuals. Under certain circumstances such individuals are referred to local health care facilities for medical screening prior to being released, returned to police custody, or transferred to treatment facilities.

Even though local protocols may be developed to limit the number of such referrals, as many as one-third of the individuals entering the public safety system in some areas are screened by medical professionals at a significant cost in terms of time and resources.

The problem faced by the Alaska Native Health Board's member organizations throughout rural Alaska is that their hospitals and health centers are not reimbursed for these services. Very few of these individuals have Medicaid coverage or other private insurance. Local city governments have disclaimed responsibility for payment for these services, and have made provisions in some locations to release those in custody at the hospital door and then re-arrest upon discharge to avoid liability.

Kanakanak Hospital in Dillingham estimates that the uncompensated care provided for such individuals is valued at least $100,000 per year. Other hospitals are reporting similar losses.

It is our understanding that this problem is significant for other hospitals outside of the Alaska Native health care system as well. The Alaska State Hospitals and Nursing Homes Association has raised this as a legislative concern as well, recommending that state law concerning municipal taxation of alcoholic beverages be revised to generate a revenue stream.

The Alaska Native Health Board urges the Alaska State Legislature to recognize the financial hardship being faced by small rural hospitals due to the demands of medical screening for intoxicated persons, to work with the Department of Health and Social Services and local governments to develop a strategy to address these concerns, and to ensure that sufficient financial support is provided to meet governmental obligations to provide these services.

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

March 4, 1997

Representative Gary Davis
Alaska State Capitol
Juneau, AK 99801-1182

Dear Representative Davis,

Thank you for introducing House Bill 132. This is a **top legislative priority of the Alaska Municipal League and the Alaska Conference of Mayors.**

As pressure increases on local sales and property taxes, municipalities must have more tools to make sure that local taxes are fair and do not hinder the growth of the local economy. It is important to note that **this bill does not create a new state tax. HB 132 creates an optional revenue tool for municipalities by removing a state restriction on an existing local tax.**

The costs to taxpayers related to the use of alcohol are stunning. A significant portion of alcohol costs are for the **unfunded state mandate to treat public inebriates.** Other local costs related to alcohol use include police services, hospital services, emergency medical services, repair of property damage, fire services, health insurance premiums, youth and family services, school services, etc. **The voters of a community should be free to decide if they wish to re-allocate the tax burden, or improve local services, through an increase in sales or use taxes on alcohol.**

Alaska can no longer afford to prohibit local voters from deciding on an appropriate level of alcohol sales and use taxes for their community. If there is any additional information we can provide, we will be happy to do so.

Sincerely,

Kevin Ritchie
Executive Director

cc: AML Board of Directors and Legislative Committee
Alaska Conference of Mayors

C:legcomm:297HB132alcohol

Support HB 132

Remove Special Restrictions and Allow Local Voters to Decide on Alcohol Sales Tax

Here's why. . .

1. Under state statutes adopted years ago, a special exemption on alcohol sales was granted which prohibited local voters from establishing a higher level of sales tax on alcohol in their community. It is time to remove the exemption and let local voters decide for their own community.

2. This is **not a new state tax.** It is an optional tool for municipalities to balance local tax burdens and provide critical public services.

3. Instead of creating a new municipal taxing power, HB 132 removes an inappropriate restriction on an existing municipal tax.

4. Alcohol abuse is the number one health and public safety problem in Alaska. Alcohol sales should not receive a special exemption. Municipalities must be able to defray some of the costs they incur coping with alcohol-related problems.

5. With growing pressure on property taxpayers, local voters should be allowed to vote on whether or not to tax alcohol to pay a larger share of the costs directly related to alcohol use in their community. Alcohol related costs to local taxpayers include:

- Unfunded state mandated police costs to transport public inebriates
- Unfunded state mandated emergency medical services
- Unfunded state mandated hospital emergency care costs
- Police costs for alcohol related felonies and misdemeanors
- Unfunded prosecutions
- Unfunded direct treatment and rehabilitation of alcohol abusers
- Increase in costs of youth and family services related to alcohol use, provided by schools and local governments
- Unfunded local medical services and hospitalization
- Unfunded repair of property damage to public facilities
- Health insurance costs paid by local governments and school districts to treat alcohol and alcohol-related health problems.

For more information, call the Alaska Municipal League at 586-1325.

Alaska Municipal League &
Alaska Conference of Mayors

1997 Legislative Platform

1. Approval of the "**Safe Communities**" bill and **maintain current funding for municipal revenue sharing** to avoid further state generated local property tax increases. The "four legs" of the Safe Communities bill are:
   - Directs the funds to be used primarily for **public safety and health services**
   - Establishes a **minimum sharing of $40,000** for small municipalities
   - Removes the "hold harmless" to allow **equal treatment** to all municipalities
   - Distributes municipal funds on **July 31** each year

2. **Provide for the long term construction, operation, and maintenance of state and municipal airports, roads, and harbors,** including revenue sharing programs for maintenance. Bring state harbors up to an adequate maintenance level through a statewide bond issue, or other funds, to prepare them for possible negotiated transfer to municipalities.

3. Approval of a **Long Range Financial Plan** that prohibits unfunded mandates and unfunded service responsibilities, adequately funds schools and maintenance of public infrastructure, reasonably reduces state expenses, protects the Permanent Fund, and phases in new tax revenue sources.

4. Actively encourage the construction of a natural **gas pipeline** with an emphasis on jobs for Alaskans.

5. Restore funding for **Municipal Capital Matching Grant Program** to $20 million because local communities can most efficiently determine and meet local capital needs.

6. Create a **permanent State/Local Government Partnership Council** to negotiate methods to most efficiently provide public services at the lowest possible cost to taxpayers.

7. Provide long term funding of public safety and health services through the **equitable sharing of increased statewide alcohol and tobacco taxes**, and removing the current prohibition against municipalities voting for **local special taxes on the sale or use of alcohol.**

8. **Reduce the state unfunded mandate** for the Senior Citizen Property Tax exemption.

9. Adequately fund a program to **construct efficient sanitation systems** throughout Alaska.

10. Give communities more tools to reduce youth crime by **limiting confidentiality** of youth crime information to protect the community, allow municipalities the option of assuming **greater jurisdiction over juvenile justice,** and **limit liability for providing recreational opportunities for youth,** such as skateboard parks.

CITY & BOROUGH of YAKUTAT
P.O. Box 160
Yakutat, Alaska 99689
Phone (907) 784-3323
Fax (907) 784-3281

4/3/97

Rep. Joe Green
Alaska Legislature
Room 118 Capitol
Juneau, AK 99801

Dear Rep. Green:

I'm sorry I won't be able to speak in person before the Judiciary Comt. tomorrow but I must return to Yakutat for an Assembly meeting.

As you know, the AML supports the concept of HB 132. I would like to add my personal support of that bill. Being one of the more senior municipal managers in the state, I can securely say this is a tool that has long been needed by towns and villages across the state.

The ability to have its use, at local discretion, is a welcome step forward.

Sincerely, Tom Armour, Mgr. City and Borough of Yakutat

THE SEAL OF THE STATE OF ALASKA

Official Business

COMMITTEE: HOUSE JUDICIARY

DATE: April 11, 1997 - Friday

Subject of meeting: HB 132 - Municipal Tax of Alcohol

SIGN-IN

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
Don Dapcevich	Box 0608 Juneau 99811	465 4607	Advisory Board on Alcohol / DA	yes
Harry Peska (?)	319 Seward St. Juneau 99801	586-1770	ASHNHA	yes
Loren Jones	Box 110607 Juneau 99811	465-2071	Division of Alcoholism + Drug Abuse	yes
Kevin Ritchie	217 2nd St	5861325	AK Municipal League	yes

THE SEAL OF THE STATE OF ALASKA

Official Business

COMMITTEE: HOUSE JUDICIARY

DATE: April 4, 1997 - Wednesday

SIGN-IN

Subject of meeting: HB 132 - Municipal Tax of Alcohol

PLEASE PRINT!

NAME	ADDRESS (MAILING) & (ZIP)	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY?
ANNE SCHULTZ Research analyst	240 Main St #101 Juneau	465-5114	Advisory Board on Alcoholism and Drug Abuse	Friday yes
LOREN Jones	Box 110607 JUNEAU, 99811-0607	465-2071	Division of Alcoholism + DRug Abuse	yes
Tom Armour	Box 160 Yakutat 99689	784-3323	City/Borough of Yakutat	Yes
EDNA DeVRIES	Box 1027 Palmer 99645	745-3362	City of Palmer	No

04/11/97 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150

13:12:48 PARTICIPANT LIST (ALL PARTICIPANTS) BY:ANC

TCN:70591 SCHEDULED FOR:04/11/97 13:00 TO 16:00 FOR:ANC

PUBLIC HEARING HOUSE JUDICIARY

LOCATION:ANCHORAGE				
JAMES POSEY, A	JAMES	POSEY	opposed	TESTIFY
HB 132	DON	GRASSE	Ex-ANC Distributor Booze	TESTIFY

04/11/97 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1150

13:33:41 PARTICIPANT LIST (ALL PARTICIPANTS) BY:JNU

TCN:70591 SCHEDULED FOR:04/11/97 13:00 TO 16:00 FOR:KTN

PUBLIC HEARING HOUSE JUDICIARY

LOCATION:KETCHIKAN					
HB 132	MR.	JIM	ELKINS	opposed; representing Ketchikan CHAR	TESTIFY

04/11/97 13:36:40 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM LTN1120
MESSAGE FROM: LIOCJEN IN ANCHORAGE JNU

RE TCN: 70591 SCHEDULED FOR:04/11/97 13:00 TO 16:00
SPONSOR: HOUSE JUDICIARY PURPOSE: PUBLIC HEARING

MESSAGE TEXT: PAT POLAND IS ON FOR HB 132 favor; Dir. regional [illegible]. Com & Reg [illegible]

Classic Statement
"alcohol sales have not been healthy."
Don Grasse (and Liquor distributor)
to HJC Jud. Comm 4-11-97