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May 13, 1999

Alaska State Legislature
 Senator Robin Taylor
 State Capitol
 Juneau, AK 99801-1182

Dear Senator Taylor,

I am writing you in regard to CS House Bill 69 (FIN) that was recently passed by the Judiciary Committee. This bill impacts our brewery license in a way that will create an even more uneven licensing arena in this state. The fact that a Brewpub licensee would be able to manufacture its product, serve its product for consumption on premise, sell its product for removal off premise AND wholesale its product to a person licensed as a wholesaler under AS 04.11.160 is completely unfair to those of us holding a Brewery license. The Brewery license restricts service for consumption on premise which greatly reduces the potential profits seen by those who are able to sell in this manner. Therefore, those that are able to sell in this manner can reap the benefits of such a sale and establish control of the wholesale market by being able to undersell the competition, knowing it will make up the difference from its own retail sales. With this in mind, I am asking to have Section 5. AS 04.11.135(a)(5) "sell beer manufactured on the premises licensed under the beverage dispensary license to a person licensed as a wholesaler under AS 04.11.160." and Section 6 AS 04.11.135(d)(3)(B) "to a wholesaler licensed under AS 04.11.160; or" deleted from this bill. In addition to this deletion, I would like to see Sec. 15 AS 04.16.120(b) amended to read "With the permission of the licensee, a person may bring wine or beer into premises licensed as a beverage dispensary or a restaurant or eating place for consumption by the person while eating food served at a table on the licensed premises. The beverage dispensary or restaurant or eating place may charge a corkage fee for serving wine supplied by a customer." This is the addition of the words "or beer".

The original intent of this bill has gotten greatly skewed with the addition of special interests and the requests made by the Brewers Guild of Alaska have gone ignored. Please note we, the Homer Brewing Company, agrees with the original intent of this bill to extend the Alcoholic Beverage Control Board.

Thank you for your consideration and attention to this matter.

Sincerely,

Karen E. Berger Lasse Holmes Stephen F. McCasland

Karen E. Berger/ Lasse Holmes/Stephen F. McCasland - owners
 Homer Brewing Company
 1562 Homer Spit Rd. #A
 Homer, AK 99603
 (907) 235-3626

Cc: Gail Phillips
 Norm Rokeberg

7329 Arctic Boulevard ■ Anchorage, AK 99518
Office: (907) 344-1179 ■ Fax: (907) 344-6656
Email: beer@wildales.com ■ web site: www.wildales.com



Alaska State Legislature, State Capitol
Juneau, AK 99801-1182

Dear Senator:

Midnight Sun Brewing Company is now the oldest brewery in Anchorage. Our company is comprised of a small but energetic group, dedicated to producing traditional, high-quality beer that well represents Alaska. Please take the time to read this letter and help us rectify the injustice that House Bill 69 currently represents.

For the most part, House Bill 69 is positive. However, the following sections have been slipped in by Glacier Brewhouse to improve their position without regard to rest of the industry:

Section 5. AS 04.11.135(a)(5) "sell beer manufactured on the premises licensed under the beverage dispensary license to a person licensed as wholesaler under AS 04.11.160."

Section 6. AS 04.11.135(d)(3)(B) "to a wholesaler licensed under AS 04.11.160: or".

We are advocating that **HB 69 be rectified to pass without the above mentioned sections.**

Representative Rokeberg claims that these new sections "level the playing field" between licensees. In fact, these sections will allow Glacier Brewhouse and Moose's Tooth Pub, as hard liquor license holders, to brew beer, sell beer retail and sell beer wholesale. Currently, Glacier Brewhouse is selling beer wholesale against zoning laws. In order to truly level the playing field, we ask that you remove the above sections to not allow a hard liquor license holder to wholesale beer. Wholesaling beer should remain a function only of brewery license holders. The other brewers that I have talked to are also against the above mentioned sections of this bill, including Homer, Silver Gulch, Borealis, Snow Goose/Sleeping Lady and Alaskan.

These sections were designed solely for one licensee: Glacier Brewhouse. Glacier Brewhouse wants to "have their cake and eat it too". Moose's Tooth Brewery is also now in favor of these sections as it will allow them to open an additional restaurant in Spenard. Allowing HB 69 to pass "as is" only creates more craziness as Moose's Tooth will be forced to sell spirits at their new location in Spenard--a part of town that already has plenty of alcohol-related problems--when all Moose's Tooth wants to do is sell beer and wine.

Allowing the above mentioned sections to stay will help a very small group while immensely hurting our industry as whole. These sections of the bill essentially allow large companies who can spend \$150,000 on a hard liquor license to sell sprits, have live entertainment until the wee morning hours, manufacture beer for on-site sales, manufacture beer for off-premise sales and sell jugs or kegs (up to five gallons) or bottles of beer "to go" like a liquor store. This new type of license would give these companies a huge advantage over bread-and-butter wholesale beer manufacturers like Midnight Sun Brewing Company.

7329 Arctic Boulevard ▪ Anchorage, AK 99518
Office: (907) 344-1179 ▪ Fax: (907) 344-6656
Email: beer@wildales.com ▪ web site: www.wildales.com

For the future, Representative Valero has proposed an amendment to HB 69 that would truly make things fair. His amendment proposed the statutes be returned to their pre-1996 state where restaurants and eating places were allowed to also hold brewery licenses. This would allow Moose's Tooth and Glacier as well as other entrepreneurs to open additional restaurants/breweries without involving hard liquor licenses. The rights and privileges of restaurant/brewery licenses should be equivalent to beer and wine licenses, including fee structure, but with the additional rights of a brewery. Restaurant/brewery licenses should not have the advantages of hard liquor licenses (live entertainment after dinner hours, etc.). This would keep the holders of hard liquor licenses happy and neither impact the holders of beer and wine licenses nor the holders of brewery licenses. Many issues and much legislation has stemmed from the revoking of the restaurant/eating establishment/brewery license. The key is to repair the true issue and stop trying to patch the resulting problems—for the good of the entire industry.

Thank you.



Mark Staples
CEO/Owner



Finance Office
3401 Derali St., 202-A
Anchorage, Alaska
99503

Gary J. Klopfer,
Member Manager/Owner
Phone: (907) 561-2274
Fax: (907) 563-9354

May 12, 1999

Alaska State Legislature
Senator Robin Taylor
State Capitol
Juneau, AK 99801-1182

Dear Senator Taylor:

I own the Snow Goose Restaurant and the Sleeping Lady Brewing Company in downtown Anchorage. **CS House Bill 69(FIN)** that was just passed by the Judiciary Committee impacts my brewery license in a negative way. It also impacts all the other brewery license holders in Alaska in a negative way. This bill contains sections that will now allow hard liquor license holders to act like breweries (without a brewery license) and yet breweries have no such advantage to sell hard liquor or even food to try and compete against this new type of license! In fact, this bill creates a new type of "Super License" that will allow such a license holder to act like: a hard liquor bar, a restaurant, a package store and a brewery! Is this, in fact, what the Senates intent is, to create these Super Licenses for special interests and ignore and harm all the individual type of license holders? I do not believe it is fair nor do I believe it is right to create this new type of Super Licenses.

Please do the right thing and stop the creation of this new type of license. Please delete the following sections from this bill:

Section 5. AS 04.11.135(a)(5) "sell beer manufactured on the premises licensed under the beverage dispensary license to a person licensed as a wholesaler under AS 04.11.160."

Section 6. AS 04.11.135(d)(3)(B) "to a wholesaler licensed under AS 04.11.160; or"

I firmly believe in fairness and a level playing field for all industry in this Great State of Alaska.

Thank you for your time and I would be glad to talk to you about this subject at any time.

Sincerely,

Gary J. Klopfer

SLEEPING LADY BREWING COMPANY
717 West 3rd Ave., Anchorage, Alaska 99501
(907) 277-7127

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. CSSB69(JUD)

Revision Date/Time (Note if correction) _____	Dept. Affected _____	Office of the Governor _____
Title <u>Advisory vote relating to the</u>	BRU _____	Elective Operations _____
<u>election of the attorney general</u>	Component _____	General and Primary _____
Sponsor <u>Senator Ward</u>	_____	
Requester <u>Senate Judiciary Committee</u>	Component Serial No. _____	<u>22</u>

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual	1.5					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	1.5	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
1002 Federal Receipts						
1003 GF Match						
1004 GF	1.5					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	1.5	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58. However, only six measures can be printed on an 8-1/2 by 14 inch ballot. If this measure requires printing an 8-1/2 by 18 inch ballot, the cost will increase by \$22.0.

Prepared by <u>Gail Fenumia</u> <i>Gail Fenumia</i>	Phone <u>465-3935</u>
Division <u>Division of Elections</u>	Date/Time <u>3/4/99 11:09 AM</u>
Approved by <u>Lt. Governor Fran Ulmer</u> <i>Fran Ulmer</i>	Date <u>3/4/99</u>
Agency <u>Office of the Lieutenant Governor</u>	

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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

MEMORANDUM

March 1, 1999

SUBJECT: Advisory Vote on Elected Attorney General (Work Order No. 21-LS0452)

TO: Senator Robin Taylor, Chair
Senate Judiciary Committee

FROM: Kathryn L. Kurtz *KK*
Legislative Counsel

Enclosed is a final of Senate Bill No. 69(JUD). I hope it correctly captures the concept of the conceptual amendment.

Please note that this version, as drafted, would prevent placement of the question advisory on the ballot prior to the end of the second regular session. If this is not what the committee intended, let me know.

KLK:pl:glc
99-032.plm

Enclosure

committee.

.

With no further business to come before the committee, CHAIRMAN TAYLOR adjourned at 1:41.

EXACT WORDING

SENATOR DONLEY: "Would this be an appropriate time to do that contingent effective date idea that we discussed?"

CHAIRMAN TAYLOR: "Sure"

SENATOR DONLEY: "In case a constitutional amendment makes it through the process, the act would take effect - we can just do it conceptually and move it out; that is simple, an effective date change. The sponsor didn't seem to have an objection to that."

MARK HODGINS: "No, SENATOR DONLEY."

SENATOR DONLEY: "I would move that conceptually, that the act would take effect if the legislature did not place a constitutional

Feb-26-99 03:39P Senate Records

907 465-2931

P-108

Amend #1

amendment for the election of the attorney general before the people in the next general election that this would go on the ballot instead."

X SB 69

*Sue
(S) JUD.
3717*

*(4) version in what form
Resolution?*

Put on the ballot, not ask if we should.

SENATE BILL NO. 69

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY SENATORS WARD, Taylor

Introduced: 2/10/99

Referred: State Affairs, Judiciary

A BILL

FOR AN ACT ENTITLED

**1 "An Act authorizing an advisory vote by the qualified voters of the state on the
2 question of the election of the attorney general; and providing for an effective
3 date."**

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. The lieutenant governor shall place before the qualified voters of the state at
**6 the next general or special election a question advisory to the legislature of whether the
7 legislature should propose a constitutional amendment that, if approved by the qualified voters
8 of the state, would require the election of the attorney general. The question shall appear on
9 the ballot in substantially the following form:**

10 Q U E S T I O N

**11 Shall the Legislature of the State of Alaska propose a constitutional amendment
12 that would require the election of the attorney general?**

13 Yes []

No []

14 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

amend > *take effect if Leg. does not put a CA before
on ballot.*

LEGAL SERVICES

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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

MEMORANDUM

February 15, 1999

SUBJECT: Attorney General

TO: Senator Jerry Ward
Attn: Mark Hodgins

FROM: Tamara Brandt Cook
Director

TBC

You have asked a number of questions regarding the office of the attorney general.

(1) What is the attorney general legally required to represent and provide advice to?

Although there are many other specific provisions that apply to the attorney general and the Department of Law, AS 44.23.020 sets out the general duties and powers of the attorney general. Subsection (a) makes the attorney general "the legal advisor of the governor and other state officers." Note that the attorney general is specifically authorized to give legal advice and furnish written legal opinions to members of the legislature, as well as to other state officers. (AS 44.23.020(b)(4))

With respect to representation, the attorney general is charged with bringing and defending actions for the collection of revenue (AS 44.23.020(b)(1)); representing "the state in all civil actions in which the state is a party" (AS 44.23.020(b)(2)); and prosecuting "all cases involving violation of state law" (AS 44.23.020(b)(3)). Additionally, the attorney general has the powers ascribed at common law, including the power to bring any action he or she thinks necessary to protect the public interest. The attorney general has discretionary control of the legal business of the state, both civil and criminal, and the exercise of that discretion is not subject to control or review of the courts on separation of powers grounds. (Public Defender Agency v. Superior Court, 534 P.2d 947 (Alaska 1975))

(2) Does the attorney general have the power to enforce constitutional mandates (or overlook constitutional violations) even when directed otherwise by the governor?

Under the reasoning of the Public Defender Agency case the attorney general does have discretion to initiate, prosecute, or dispose of cases (or to fail to initiate cases). However, as the head of a principal department, the attorney general serves at the pleasure of the governor. (Art. III, sec. 25, Constitution of the State of Alaska) The governor has the power to control the discretion of the attorney general by removal from office.

Senator Jerry Ward
February 15, 1999
Page 2

(3) If the attorney general has a clear mandate, such as a statute put in place by the people or the legislature, may he or she ignore it if directed to do so by the governor?

Art. III, sec. 16 of the state constitution makes the governor "responsible for the faithful execution of the laws." There are many cases involving the executive's misapplying a statute, but few cases deal with situations where the executive simply fails to implement a statutory scheme that has been funded. However, in National Treasury Employees Union v. Nixon, 492 F.2d 587 (D.C.Cir. 1974), the court stated that it could issue an order requiring the president to perform a ministerial duty that was clearly required by law (in that case the granting of a pay raise), although the court, in fact, simply declared that the president should do so.

As previously pointed out, the attorney general has the discretion in a particular situation to take action or not to enforce a law, regardless of the role the governor may have played in the decision. Nonetheless, there are certainly situations when an action may be brought to challenge a decision of the executive branch that a law is unconstitutional and unenforceable on that ground. (O'Callaghan v State of Alaska, 914 P.2d 1250 (Alaska 1996) cert. denied 177 S.Ct 1690, 137 L.Ed.2d 818 (1997)), holding the state's blanket primary statute constitutional) Also, following the reasoning in the National Treasury Employees Union case, the court does have authority in some situations to order an agency to comply with a statute or perform a statutory duty. (Ellis v. city of Valdez, 686 P.2d 700 (Alaska 1984; AS 22.10.020(c); AS 22.10.050) However, whether the court would actually order the performance of a duty in any particular case is unknown. The court in the Ellis case specifically reserved its decision regarding the legal effect of a failure of an agency to carry out a mandate. *Supra*, footnote 8, page 706) Mandamus is not available to require the performance of a discretionary act.

(4) What is the difference between an elected attorney general and an appointed one?

Presumably, an elected attorney general would not necessarily be chosen by the governor and could not be removed from office at the will of the governor. This would, I think, change the relationship between the attorney general and the governor.

(5) May the legislature remove the attorney general from office?

The attorney general, along with all other civil officers, is subject to impeachment under Art. II, sec. 20 of the state constitution.

(6) How would I describe the duties of the attorney general to an audience who wonders what the duties are and what role the attorney general plays in protecting the rights of citizens?

I would point out the provisions of AS 44.23.010 and discuss the fact that the governor has the power to remove an attorney general from office.

TBC:lmb:
99-010.lmb

Subject: state attorneys general

Date: Fri, 12 Feb 1999 14:40:48 -0700

From: "Jennie Drage" <jennie.drage@ncsl.org>

To: <Mark_Hodgins@legis.state.ak.us>

Your request for information about state attorneys general was forwarded to me. The short answer is: most states elect their attorney general. The exceptions are Alaska, Hawaii, New Hampshire, New Jersey and Wyoming, where the AG is appointed by the governor; Maine, where the legislature elects the AG; and Tennessee, where the judges of the state supreme court appoint the AG.

Please feel free to contact me if I can be of further assistance.

Jennie Drage
Research Analyst, Legislative Management
National Conference of State Legislatures

Alaska State Legislature

Senate

JERRY WARD

State Capitol
Juneau, AK 99801-1182
Phone (907) 463-4940
Fax (907) 463-3766

716 W. 4th Ave., Ste. 450
Anchorage, AK 99501-2133
Phone (907) 258-8183
Fax (907) 258-0820

143 Main Street Loop
Ketchikan, AK 99901
Phone (907) 283-7996
Fax (907) 283-3073



SB 69

Advisory vote of the people to elect the Attorney General.

SB 69 allows an advisory vote of the people to begin the process of electing the State's Attorney General. Most states elect their Attorney General, there are currently five states where the governor appoints the AG; Alaska, Hawaii, New Hampshire, New Jersey, and Wyoming. One state, Maine, where the legislature elects the AG; and Tennessee, where the judges of the state supreme court appoint the AG.

Many times in the history of the state of Alaska, the "appointed" attorney general has followed political whims of the Governor instead of working for the Alaskan people. Under the present governor appointee system, the governor has his own personal lawyer, who very clearly enforces laws as the governor directs, instead of the way it should be, with the Attorney General owing his allegiance and loyalty to the Constitution and the people of the State of Alaska.

The advantages are many for Alaskans with an elected attorney general:

- A Department of Law that serves only the people of Alaska.
- That stands up for Alaskans.
- Answers only to the Alaskan people.
- Interprets the Constitution, instead of the Governor.
- Works directly for Alaskans.

Past experience shows us that appointed attorney generals do not have Alaskan's Rights at heart. We have had attorney generals drop very important actions at the insistence of the Governor:

- Statehood Compact
- Subsistence Lawsuit
- State's Rights issues
- 90/10 Royalty NPRA

FISCAL NOTE No. 1

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Bill Version: SB 69

(S) Publish Date: 2-17-99

Revision Date/Time (Note if correction) _____

Dept. Affected Office of the Governor

Title Advisory vote relating to the
election of the attorney general

BRU Elective Operations

Component General and Primary

Sponsor Senator Ward

Requester Senate State Affairs

Component Serial No. 22

Expenditures/Revenues

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual	1.5					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	1.5	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

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1003 GF Match						
1004 GF	1.5					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	1.5	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

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

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58. However, only six measures can be printed on an 8-1/2 by 14 inch ballot. If this measure requires printing an 8-1/2 by 18 inch ballot, the cost will increase by \$22.0.

Prepared by Gail Fenumai
Division Division of Elections

Phone 465-3935

Date/Time 2/16/99 2:24 PM

Approved by Gov. Fran Ulmer
Agency Office of the Lieutenant Governor

Date 2/16/99

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Alaska State Legislature

Senate

JERRY WARD

State Capitol
Juneau, AK 99801-1182
Phone (907) 465-4940
Fax (907) 465-3766

716 W. 4th Ave., Ste. 450
Anchorage, AK 99501-2133
Phone (907) 258-8183
Fax (907) 258-0820

145 Main Street Loop
Kenai, AK 99611
Phone (907) 283-7996
Fax (907) 283-3075

February 17, 1999

Senator Robin Taylor, Chair
Senate Judiciary Committee

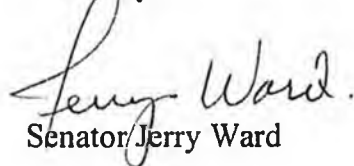
Senator Robin Taylor,

Please schedule SB 69 for a hearing in the Senate Judiciary Committee at your earliest convenience.

SB 69 will allow an advisory vote at the next state-wide election to determine whether the Attorney General should be elected by the people rather than appointed by the Governor.

Thank you for your consideration.

Sincerely,


Senator Jerry Ward