

1/22/01

CARLSON

V.

STATE

HFIN

FILE

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

1-22-01

TONY KNOWLES, GOVERNOR

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January 18, 2001

Honorable Eldon Mulder
Co-chair, House Finance Committee
State Capitol, Room 507
Juneau, AK 99801-1182

Honorable Bill Williams
Co-chair, House Finance Committee
State Capitol, Room 511
Juneau, AK 99801-1182

Honorable Beverly Masek
Co-chair, House Resource Committee
State Capitol, Room 128
Juneau, AK 99801-1182

Honorable Drew Scalzi
Co-chair, House Resource Committee
State, Capitol, Room 13
Juneau, AK 99801-1182

Re: Status of *Carlson v. State, CFEC*,
Case No. 3AN-84-05790 CI
Our file no.: 223-97-0054

Dear Representatives Mulder, Williams, Masek, and Scalzi:

In *Carlson v. CFEC*, nonresident commercial fishermen are challenging the state's practice of charging them three times more than residents for annual entry permit fees and crewmember licenses. I would like to brief your committee and others on this case. *Carlson* could soon impose an extraordinary cost on the state.

This suit has been ongoing since 1982, and it has been before the Alaska Supreme Court twice. In the latest appeal, decided in 1996, the Court announced a formula that establishes, for each year, the maximum additional amount that a nonresident may be charged.

One of the main factors in the formula is the state's annual expenditures that support commercial fisheries. The more services, paid for by non-fish receipts, that can be found to support the industry, the higher the fees that may be charged to nonresidents.

Hon. Eldon Mulder
Hon. Bill Williams
Hon. Beverly Masek
Hon. Drew Scalzi

January 18, 2001
Page 2

After a June, 2000, trial in Anchorage, the superior court decided which types of expenditures, related to commercial fisheries, may be counted in the formula. When that decision is applied for every year since the inception of this suit, the potential refunds to nonresident fishermen are enormous. We estimate that overpaid fees and interest total approximately thirty million dollars. There would also be an indirect cost. The state would lose future revenues that are predicated on fees that exceed the permissible amount.

This spring, we expect the superior court to enter a judgment against the state for an exact amount. In an effort to reduce or eliminate the refunds, we will be appealing several of the superior court's decisions to the Alaska Supreme Court. We expect a final decision from the Court by the end of 2002.

Over the years, the Department of Law has met a number of times with chairs and members of key committees to keep the legislature apprised of the status of *Carlson*. Most recently, in July, 1999, we wrote to the co-chairs of the Finance Committees and met with several of them, and in June of last year, briefed the Legislative Budget and Audit Committee.

I believe it is important to again inform the legislature about the *Carlson* case and the potential financial liability it presents. I am available, at your request, to brief the members of your committees on what has transpired in this case, what issues remain to be resolved and appealed, and the potential range of refunds that may be owed to nonresidents.

If you would like for me to meet with your committee to discuss the *Carlson* case, please contact my secretary at 465-2133. Thank you.

Sincerely,



Bruce M. Botelho
Attorney General

BMB: kh

MAIN STATUTE AND REGULATION AT ISSUE: *CARLSON V. STATE*

AS 16.43.160 (b)

Annual fees established under this section (for entry or interim use permits) shall be no less than \$10 and no more than \$750 and shall reasonably reflect the different rates of economic return for different fisheries. The amount of an annual fee for a nonresident shall be three times the amount of the annual fee for a resident.

20 AAC 05.240 (4)

...the resident and non-resident annual fees are:

FEE CLASS	ANNUAL FEE	
	<u>Resident</u>	<u>Non-resident</u>
I	\$250	\$750
II	\$200	\$600
III	\$150	\$450
IV	\$100	\$300
V	\$50	\$150

1-22-01

ALASKA SUPREME COURT'S FORMULA FOR CALCULATING
THE MAXIMUM PERMISSIBLE FEE FOR A NONRESIDENT
COMMERCIAL FISHING LICENSE OR PERMIT:

MAXIMUM
PERMISSIBLE
FEE FOR A
NONRESIDENT
PERMIT/LICENSE

=

FEE FOR A
RESIDENT PERMIT/
LICENSE

+

(ANNUAL FISHERIES
BUDGET/ALASKA
POPULATION) X
(% STATE BUDGET
FROM OIL REVENUES)