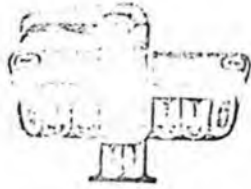


Leg. Finance - House & Senate Finance Comte Files (1973-74)

HB 66 cont., 66am 208



Alaska Pacific Assurance Company

218 FRONT STREET
JUNEAU, ALASKA 99801

State of Alaska
Workmen's Compensation - Alaska National Guard
0770-31808-113
7/1/70 - 7/1/71

PREMIUM ADJUSTMENT

Alaska National Guard Payroll	\$1,088,787.	@.508 =	\$9,595.
		Rate Increase 5.03% =	<u>483.</u>
			10,078.

TOTAL EARNED PREMIUM:	\$10,078.
TOTAL WRITTEN PREMIUM:	<u>-0-</u>
ADDITIONAL PREMIUM:	10,078.

10/19/72



Alaska Pacific Assurance Company

218 FRONT STREET
JUNEAU, ALASKA 99801

State of Alaska
Comprehensive General Liability - Alaska National Guard
0770-31808-213
7/1/70 - 7/1/71

PREMIUM ADJUSTMENT

Alaska National Guard	\$1,888,787.	x	.471	=	\$8,896.
Payroll	1,888,787.	x	.030	=	567.
	1,888,787.	x	.0085	=	161.
	1,888,787.	x	.0085	=	161.
	1,888,787.	x	.0085	=	161.
					<u>9,946.</u>

TOTAL EARNED PREMIUM:	\$9,946.
TOTAL WRITTEN PREMIUM:	-0-
ADDITIONAL PREMIUM:	<u>9,946.</u>

11/1/72

STATE
of ALASKA

MEMORANDUM

TO: Commissioner Joseph R. Henri
Department of Administration

DATE: November

FROM: Norman C. Gorsuch
Deputy Attorney General

SUBJECT: Insurance - Alaska
National Guard



In response to your memorandum of November 14 concerning insurance coverage for the Alaska National Guard and with regard to an earlier memorandum of October 3 from Richard Freer, Deputy Commissioner of Administration, to this department on the same subject, we have determined that both our present comprehensive general liability and workmen's compensation insurance do not cover the Alaska National Guardsmen.

The present insurance carrier for the State - Alaska Pacific Assurance Company - has had its counsel determine issues of (1) coverage under the Alaska Workmen's Compensation Act of members and employees of the National Guard and (2) liability of the State for acts and omissions of members and employees of the National Guard. Generally, we concur with the determinations made (see memorandum of August 10, 1971, from F.M. Doogan to Alaska Pacific Assurance Company), that Alaska Workmen's Compensation law covers guardsmen and the State is liable for the activities of guardsmen. Moreover, our own research and analysis (see Department of Law intra-office memorandum of November 5, 1971, on insurance coverage for National Guardsmen) independently reached similar conclusions.

We believe it is germane to note that this year alone the State settled out of court two civil suits dealing with general liability for National Guardsmen's acts or omissions. The settlements were for \$1,250.00 (Creswell v. Smith and State) and \$15,000.00 (Curkendall v. Smith and State). This compares to approximately \$10,000 in premiums for additional comprehensive general and automobile liability insurance quoted by the State's carrier for National Guard coverage for one year.

The decision to purchase additional insurance coverage such as that outlined in the November 9 letter to the

Commissioner Joseph R. Henri

November 27, 1972

- 2 -

Division of Supply from Shattuck and Grummett, Inc., is appropriately a Department of Administration one. It is our present view that the State is liable for workmen's compensation for Alaska National Guardsmen and that the State is also liable for the activities of the Alaska National Guardsmen. Risk analysis for on-going exposure to liability, which we believe is an administrative matter, can best be done by your department.

NCG/md

STATE OF ALASKA

HB 66
WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF ADMINISTRATION

DIVISION OF SUPPLY

POUCH C — JUNEAU 99801

January 24, 1973

The Honorable Earl D. Hillstrand
Chairman
Chairman- House Finance Committee
House of Representatives
State Capitol
Juneau, Alaska 99801

Dear Mr. Hillstrand:

This letter will hopefully answer the questions raised in this morning's (1/24/73) Committee hearing relative to supplemental appropriations for the Alaska National Guard.

My testimony dealt only with the Workmen's Compensation and Auto-General Liability premiums for F.Y. 71 thru 73. The following will respond to the pertinent questions:

Question: How far back can a liability claim be made?

Answer: Bodily Injury - 2 yrs.
Property - 6 yrs.
Workmen's Compensation - 2 yrs (from date of injury is known)

* Claims (7/1/70 to present)

Liability

open - 2 each
Reserves - \$22,750
Closed - none
Paid - none
Workmen's Compensation

Open - none
Reserves - none
Closed - 12 each
Paid - \$1,084,42

* Claims were difficult to ascertain because Guard and other employees are "lumped" together. Figures are as accurate as possible, pending a detailed audit. Such an audit could be performed, if you so wish.

Question: "Should we go back past present ALPAC policy to cover possible unknown claims which may still be viable?"

Answer: It is not legal to "back date" insurance policies. In the case of ALPAC's request, they are only asking for premiums for coverage they have provided during policy period. Past policies specifically excluded N.G. employees.

Cont'd

January 24, 1973

It might be interesting to note that the Workmen's Compensation Board has been extremely liberal in their awards for claims, i.e. in almost all claims they lean in favor toward the claimant.

It is also important to note that a very fine line exists, in some cases, between Federal-State responsibility. This tends to further confuse an already confusing problem. Another problem is that the Federal Government has set certain limits as to their responsibility while the State has not. The claimant, should he prevail, may have more to gain by filing against the State than the Federal Government.

As mentioned in the hearing, the Administration would like to set up a special fund to cover higher deductibles. We have found first dollar insurance costly. Self-assumption of portions of risk (funded) plus catastrophic coverage would be more economical . . . a practice now very popular with certain other States and many private organizations.

The Administration, is presently in the process of establishing an Office of Risk Management. The office will be responsible for identifying, assuming and transfer of risk as well as purchasing insurance; included in the program will be safety coordination and loss control. As you pointed out Mr. Hillstrand, the State should identify risk, self-assume whatever they can, then pass the rest on to commercial carriers. We have attempted to do this with some risks, but hesitate "stepping out" too far without a revolving fund to drop back on, should non-covered losses occur.

I hope the above has been helpful and adequately answers your questions.

If we can be of further assistance please let us know.

Sincerely,



Richard C. Bradley
Director

RCB/mi

CC: Myrt Charney
Joseph R. Henry

The Legislature of the State of Alaska
FISCAL NOTE
First Session - Eighth Legislature

I. REQUEST

Bill Identification: House Bill 66

Title: An act making supplemental appropriations to the Dept. of Military Affairs...

Requested by: Legislative Finance

Date: 1/12/73

Return Date Requested: ASAP

Agency: Budget and Management

Program: Search and Rescue

Military Preparedness

II. FISCAL DETAIL

Budget Request Unit(s) Affected: V, D, a, and V, F, 1

A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 73	FY 74	FY 75	FY 76	FY 77	FY 78
100 PERSONAL SERVICES	60.0	-0-	-0-	-0-	-0-	-0-
200 TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL	12.0	-0-	-0-	-0-	-0-	-0-
400 COMMODITIES	-0-	-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS, ETC.	62.0	-0-	-0-	-0-	-0-	-0-
TOTAL	134.0	-0-	-0-	-0-	-0-	-0-

B. FUNDING: (Thousands of dollars)

GENERAL FUND	134.0	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-

C. POSITIONS:

PERMANENT/TEMPORARY	0/0	0/0	0/0	0/0	0/0	0/0
MAN MONTHS (P./T.)	0/0	0/0	0/0	0/0	0/0	0/0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

100 Personal Services	\$ 60.0
(Workmen's Compensation and Comprehensive Liability for Alaska National Guardsmen)	
300 Contractual	
(Overhaul of 2 CAP Aircraft Engines)	
	12.0
700 Re-enlistment bonuses	62.0
	<u>\$134.0</u>

Based on more current information, the re-enlistment bonus supplemental should be increased to \$62,000 to cover an estimated 730 eligible guardsmen at a total cost of \$122,000.

IV. ATTACHMENTS

V. DATE: 1/17/73

PREPARED BY: M. R. Charney, Director

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

CAP

TO: [Major General William S. Elmore
The Adjutant General
Department of Military Affairs

DATE : January 12, 1973

FROM: James Carter, Director
Civil Air Patrol

SUBJECT: Request for Supplemental
Appropriation - \$12,000

*HR 66
Civil Air Patrol*

During the extended Begich search our organization suffered two major aircraft maintenance incidents, i.e., engine failure N2236T, a Cessna 185; and engine failure N4796C, a DHC-2. These incidents occurred in-flight and both aircraft were nursed back to the airport without further loss of property.

It is our normal practice to forecast and budget for all aircraft maintenance as applied to each budget FY. This practice has worked out most satisfactorily in the past. However, in these two incidents neither aircraft was scheduled for engine overhaul during this FY. The extra financial burden it has caused will not permit the accomplishment of all other essential and normal aircraft maintenance for the remainder of FY 73.

We request favorable consideration for an appropriation of \$12,000 to compensate for this additional financial expenditure. One engine has been overhauled and the billing processed through normal channels. The other engine will be completed and ready for pickup and installation the end of January.

In your analysis of this situation please consider that this is the first such request from Civil Air Patrol since receiving our fleet of aircraft in 1960--including the earthquake and Fairbanks flood flying activities.

Time is of the essence and we request all possible assistance in resolving this emergency situation.

STATE OF ALASKA

WILLIAM A. EGAN, Governor

DEPARTMENT OF MILITARY AFFAIRS

OFFICE OF THE ADJUTANT GENERAL

PHONE 277-7661
AUTOVON 862-7210
ROOM 610 MACKAY BUILDING
338 DENALI STREET - ANCHORAGE 99501

ARFF

30 January 1973

Mr. Glen K. Vernon
House Fiscal Analyst
Pouch WF-State Capitol
Juneau, Alaska 99801

Dear Mr. Vernon:

Re: Letter of 25 January 1973, requesting additional information supporting HB 66, (Supplemental Appropriation Request), the following is submitted.

(1) A log of the two aircraft requiring maintenance as a result of the recent air search.

Logs are not available at this time, however a summary of hours flown follows:

Aircraft 1972 #N2236T; 1st quarter, 52.90, 2nd quarter, 141.3, 3rd quarter, 97.1, 4th quarter, 86.4. The total hours 377.7, engine replaced December 15, 1972. Tachometer time 614.5.

Aircraft 1972 #N 4796 C; 1st quarter, 55.05, 2nd quarter, 120.7, 3rd quarter 46.6, 4th quarter, 159.2. Total hours 381.55, engine replaced September 7, 1972. Tachometer time is not available.

(2) An indication of what percentage of expected re-enlistment bonus payments result from the 6.9% federal pay increase for guardsmen.

20 percent.

(3) An indication, by area, as to where re-enlistments are occurring.

North 92 out of 127, 74%; Southwest 57 out of 99, 57%; South-Central 49 out of 121, 40%; South 5 out of 14, 36%.

Mr. Glen K. Vernon

30 January 1973

(4) An estimate of the normal time period in which a claim would be filed for workmen's compensation insurance claims. What is the potential number of claims that might be filed from the 1971-1972 period?

The normal time period in which a claim would be filed for workmen's compensation insurance claims is thirty days if injury or accident is reported by claimant. Two claims have been filed by Alaska Air Guardsmen (Spradlin and Gilley). For Fiscal Year 1971-72, there are no additional claims expected.

Additional facts are provided for your information:

The present strength and Authorized Strength of the Army National Guard, Air National Guard and Naval Militia is:

	Present	Authorized
Army National Guard	1907	2351
Air National Guard	586	746
Naval Militia	74	188 plus (unlimited)

The number of men recruited and re-enlisted last year and this year to present are:

For FY 1972 there were 433 men recruited which was an increase of 40% over FY 1971. For FY 1972 there was 278 men re-enlisted which was a 39% increase over FY 1971. For FY 1973 for the first half, there are 278 men recruited which is a 28% increase over first half of FY 1972. For FY 1973 for the first half, there are 228 men re-enlisted which is a 164% increase over the first half of FY 1972.

No changes are anticipated in our authorized strength, however, the strength levels are dictated by Federal Directive.

Nationwide in our Recruiting and Retention program, based on percent of increase in strength, we are in the top ten States Nationwide. We are consistently the highest, second highest or third highest State in Re-enlistments, month after month for the past year or more. The Reenlistment Bonus, the Job Information Service and Retirement program greatly assist our maintaining this posture.

Recruitment and Retention activities found an estimated fifty Guardsmen jobs directly through OTAG, R & R Job Counseling Service. The Operation Hitch-Hike program established in thirteen Villages in Scout Battalion areas, placed 32 people in jobs in the first three months of operation. A job information service bulletin board has been established in all units which has indicated that enlistments and re-enlistments are greater when we help the men find jobs.

Mr. Glen K. Vernon

30 January 1973

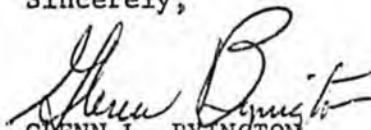
The percentage of increase in strength for FY 1972 was two percent. The percentage of increase in strength for FY 1973 for the first half is five percent.

Data for Reenlistment Bonus projections were taken from Computerized print-outs of the Alaska ARNG ADP Personnel Reporting program, plus a personnel file screening. Initial data was forwarded to Facilities and Fiscal in September 1972, subsequent to that time the following facts came to light.

- A. A Federal pay increase of 6.9 percent was authorized.
- B. Units reported that some personnel were not paid the Reenlistment Bonus for the previous fiscal year, resulting in the requirement to pay the bonuses.
- C. Data used to prepare the September input data was in error because of computer print-out error.

The above necessitated a complete re-evaluation which was completed and furnished Facilities and Fiscal Division in January 1973.

Sincerely,


GLENN L. BYINGTON
Col, GS-Alas (ARNG)
Dir, Fac & Fis Div.

AG

21 December 1972

SUBJECT: Guardsman Coverage and Liability

Chief
National Guard Bureau
The Pentagon
Washington, DC 20310

1. The State of Alaska has been a party to litigation involving settlement of liability claims and workmen's compensation coverage for several years. It appears, based upon the attached, that the State is being pressed into obtaining insurance coverage for this financial protection when it is not required. Mr. Doogan's contention is predicated upon the master/servant relationship whereby the guard is under state control until it is mobilized into federal service.
2. I submit that regardless of state/federal status (excluding state active duty) the federal government is liable for personal or property damages resulting from an act performed by a guardsman. In addition, I believe payment of workmen's compensation benefits by the state is questionable. If the master/servant relationship is a determining factor, Section 502, Title 32, USC is a federal promulgated requirement which thereby establishes them as the master rather than the state.
3. I would appreciate your review and comment on the attached material. I recognize that your review may be somewhat limited due to lack of sufficient information.

WILLIAM S. ELMORE
Maj Gen, (AK) ANG
The Adjutant General

cc: Lois Richardson

STATE
of ALASKA

MEMORANDUM

TO:

Lois Richardson
Dept. of Military Affairs
Juneau

DATE : December 14, 1972

FROM:

TA
Terry Adlhock
AGO - Juneau

SUBJECT: Alaska National Guard
Insurance

Attached are the memoranda referred to in our November 27 memorandum to Commissioner Henri concerning insurance, as you requested today by phone.

If these are to be reviewed by U.S. Army-Alaska JAG, please let us know JAG's conclusions.

As the November 27 memorandum points out, insurance coverage is deemed needed because of liability exposure.

Attachments
TA/md

LAW OFFICES OF
FAULKNER, BANFIELD, BOOCHEVER & DOOGAN
ROOM 201, 311 FRANKLIN STREET
JUNEAU, ALASKA 99801

TEL. 586-2210
AREA CODE 907

HERBERT L. FAULKNER
NORMAN E. BANFIELD
ROBERT BOOCHEVER
FRANK M. DOOGAN
DONALD L. CHADDICK
AVRIL M. GROSS
MICHAEL B. HOLMES
BARFORD SASALKIN

August 10, 1971

MEMORANDUM

FROM: F. M. Doogan

TO : Alaska Pacific Assurance Company

Re : I. Coverage under the Alaska Workmen's Compensation Act of members and employees of the National Guard.
II. Liability of the State for acts and omissions of members and employees of the National Guard

I. Workmen's Compensation

A. TYPES OF EMPLOYEES AND TYPE STATUS IN GENERAL

In order to properly discuss the applicability of Alaska Workmen's Compensation to employees and members of the National Guard it is necessary to first define the various types of Guard employees and second to define the different types of status in which these employees may be found at different times.

There are basically three types of Guard employee/members: Full-Time Technician, Full-Time Technician/Guardsman and Guardsman.

Full-Time Technician. These individuals are principally female employees, clerk-typists, and security guards and are not required to be members of the Guard in a military status. They do, however, work full time, in a civilian status for the Guard.

Full-Time Technician/Guardsman. These individuals work for the Guard in a full-time technician status as civilians and are required to be members of the Guard in a military status. Examples of their technician jobs include Adjutant General, aircraft mechanic, supply

specialist, flight activity commander, etc.

Guardsman. He is a member of the military portion of the Guard and attends the military functions of the Guard, however, his civilian job is not related to the National Guard.

The status of employment of these three types of employees varies. Of course, the full-time technicians will only be found in that status; in other words, they will work only as civilians. However, the full-time technician/Guardsman may be found to be working as a technician in his civilian status or on military status as a Guardsman. The Guardsman is only found working for the Guard in a military status.

There are various types of military status in which either the Guardsman or technician/Guardsman may be found. The first of these is normal training status which normally includes 48 training drills per year plus a 15 day summer camp each year. This may be increased by federal orders, and in the case of aviators includes additional flight training periods. If a Guardsman or technician/Guardsman is unable to make scheduled drill periods, he may be allowed to attend equivalent training periods to make up his training. In this status, although the Guard is under the command of the Governor and state authorities, its pay and supply source is the federal government.

The second status in which these individuals may be found is state active duty. This includes any situation in which the Governor has called the Guard or any portion of the Guard (units or individuals) to active duty in the event of a state emergency, (i.e. flood, riot, etc.). In this status the Guard is under the command of the Governor and is paid by the state.

A third status is federal active service. This includes service any time the President calls the Guard and to Federal service (i.e. sent to combat, riot control, postal service, etc.). In this status the Guard is under the command of the President and the normal active duty military chain of command and is completely divorced from state control.

B. FULL-TIME TECHNICIAN - The National Guard Technician Act of 1968 32 U.S.C.A. 709 provides:

"(d) A technician employed under subsection (a) is an employee of the Department of the Army or the Department of the Air Force, as the case may be, and an employee of the United States."

House Report No. 1823, U.S. Code, Congressional and Administrative News, 90th Congress, 2nd Session, 1968, page 3318, gives the following summary:

"Purpose of Legislation:

"(a) to provide a retirement and fringe benefit program which will be both uniform and adequate . . . "

.

"Federal fringe benefits --

As Federal employees the technicians would be covered under the laws providing for the various fringe benefits for Federal employees including groups, health, and life insurance, leave, Federal employees death and injury compensation, severance pay, tenure and status. ID. at 3324.

From this it would appear that the Federal Government has pre-empted any state control as to disability or death benefits and that these full-time technicians would not be covered by Alaska Workmen's Compensation.

C. FULL-TIME TECHNICIAN/GUARDSMAN

1. While working as technician not covered by Alaska Workmen's Compensation (see B supra)
2. While on military duty as a Guardsman

In Section 8012 of Title 5 USCA the compensation for disability or death of a Federal employee is outlined, in (a) of that section it is provided that:

"The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty, "

An argument may be that the technician/Guardsman, while on duty as a military member of the Guard, is not "in the performance of his duty" as a technician but is performing military duties. However, because a full-time technician/Guardsman is required to be a member of the Guard as a part of his civilian employment (see House Report No. 1823 U.S. Code, Congressional and Administrative News, 90th Congress, 2nd Session 1968, page 3318) an argument may be made that the technician is within the performance of his duty as a technician and therefore, falls within the protection of the quoted section.

This would seem to be the case in a normal training status or state active duty status because the technician is required by his employer, the Federal Government, to work in such a status when required.

The conclusion then is that the technician is covered by Federal Compensation law regardless of his status. However, the fact that the technician/Guardsman appears to be covered by the Federal Compensation law does not preclude the possibility that he will be awarded compensation under the Alaska Workmen's Compensation Act. In Employers Liability Assurance Corporation v. Spradlin, a decision of the Superior Court of Alaska at Anchorage, Civil Action No. 68-508A dated December 26, 1969, it was held that the family of a technician/Guardsman, who was killed while under Federal Orders to active duty for training (see normal training status supra), was entitled to compensation under the Alaskan Act.

The holding was that Spradlin was killed within the course and scope of his employment in the State of Alaska. As partially discussed above, although the technician/Guardsman while on a normal training status received pay credit for Federal military service, and credit towards Federal military retirement while in a normal training status he is still commanded by the State authorities and is directly engaged in the employment of the State. The Governor may order him in that status to engage directly in state employment (i.e. fly the Governor or his staff to different points in the state). It is upon this control that the court in Spradlin based its decisions that the injured or deceased technician/Guardsman is entitled

to elect Alaska Workmen's Compensation benefits or Federal benefits. See for master-servant relationship creating right to compensation Globe Indemn. Co. v. Forrest, 182 S.E. 215 (Va. 1935), Baker v. State, 156 S.E. 917 (N.C. 1931), Cantois v. State, 186 A. 2d 741 (R.I. 1962),

Although the above discussion covered only the situation in which the technician/Guardsman is in a normal training status the argument, of course, applies also when he is found on state active duty. In that status even his source of compensation is the state which further reinforces the concept and reality of State control.

D. GUARDSMAN

1. Normal Training Status

Title 32, USCA Section 318, as amended provides:

"A member of the National Guard is entitled to the hospital benefits, pension, and other compensation provided by law or regulation for a member of the Regular Army or the Regular Air Force, as the case may be, of corresponding grade and length of service, whenever he is called or ordered to perform training under Sections 502 [drills and annual field exercises], 503 [field exercise in conjunction with the Army or Air Force], 504 [school attendances and arms competitions], 505 [regular Army or Air Force school attendance] of this title

(1) for a period of more than 30 days and is disabled in line of duty from disease while so employed; or

(2) for any period of time, and is disabled in the line of duty from injury while so employed."

In short if a Guardsman is disabled in any of the above situations he is entitled to the same Federal benefits as a regular army soldier. Because of the fact that these benefits normally exceed in value those offered under the State

Workmen's Compensation plans one should never see a situation in which a disabled guardsman injured while in a normal training status attempts to get workmen's compensation under the Alaska Workmen's Compensation Act as contrast to federal compensation.

Although, as stated above an injured Guardsman is covered by Federal Compensation when in a normal training status nothing appears to preclude an election on his part to take the Workmen's Compensation benefits in lieu of the Federal benefits.

However, no mention is made above as to compensation in the event of the death of the Guardsman while in a normal training status. Section 321 of Title 32 allows for a death gratuity in the amount of six months pay but not less than \$800 or more than \$3000. In addition Alaska Statute §26.05.260 (c) states:

"If an officer or enlisted man of the National Guard suffers permanent total disability or death while performing his duty as an officer or enlisted man under orders from the commander in chief, the officer or enlisted man, or his heirs or dependents, have a claim against the state for financial help or assistance, on such terms and in such amount, not exceeding \$7,500, as is determined to be right and just by a board of three medical officers or three civilian physicians. The commander in chief shall, by order, convene the board for this purpose."

The question then is whether or not a Guardsman killed in a normal training status is covered by Alaska Workmen's Compensation.

He is covered for the following reasons. The primary question is simply who is he working for.

Alaska Statute §26.05.060 Control of Alaska National Guard states in part that "[t]he governor as ex officio commander of the militia of the state has command of the Alaska National Guard while it is not in active federal service." (emphasis added)

Section 3495 of Title 10 --

Army National Guard of the United States. Status:
Members of the Army National Guard of the United States are not in active Federal service except when ordered thereto under law. (Section 8495 of Title 10 states the same for the Air National Guard)

Section 325 of Title 32 USCA provides:

Each member of the Army National Guard of the United States or the Air National Guard of the United States who is ordered to active duty is relieved from duty in the National Guard of his state or territory, or of Puerto Rico, the Canal Zone, or the District of Columbia, as the case may be, from the effective date of his order to active duty until he is relieved from that duty.

Section 3500 of Title 10 USCA "Army National Guard in Federal Service" states:

Whenever --

(1) the United States, or any of the territories, commonwealths, or possessions, is invaded or is in danger of invasion by a foreign nation;

(2) there is a rebellion or danger of a rebellion against the authority of the Government of the United States; or

(3) the President is unable with the regular forces to execute the laws of the United States; The President may call into Federal service members and units of the Army National Guard of any State or territory, Puerto Rico, the Canal Zone, or the District of Columbia in such members as he considers necessary . . ."

It is concluded then that the Guardsman when not called into Active Federal Service as above is working for and controlled by the State.

A second question is whether or not the \$7,500 provision of the Alaska Statutes mentioned above (AS §26.050.260) is an exclusive remedy. This contention was defeated in an exclusive remedy. This contention was defeated in Spradlin supra, and because of the liberal interpretation of Workmen's Compensation Acts would be defeated in the future.

2. State Active Duty

When the governor calls the Guardsman to State Active Duty he is clearly working for the state and covered by Workmen's Compensation.

3. Federal Active Service

When the Guardsman is called into Federal active service (see §3500 Title 10 in 1 above) he is clearly working for the Federal Government and is not covered by Workmen's Compensation.

E. SUMMARY

The following individuals are covered by Workmen's Compensation.

Full-Time Technicians - Never

Full-Time Technician/Guardsman

1. While on Duty as a technician - Never
2. While on military duty
 - a. State active duty - if he so elects
 - b. Normal training status - if he so elects
 - c. Federal active service - never

Guardsman

1. State active duty - Always
2. Normal training status
 - a. Death - Always
 - b. Injury - If he so elects
3. Federal active service - Never

II. Liability of State for Parts of National Guard

A. Generally a state is liable for the acts of its agents or employees committed within the scope of employment, the question here is again who is the Guard working for.

Title 32 USCA 564.52 states the statutory authority for claims for damages involving the National Guard and Air National Guard:

(a) Limited authority for the payment of claims arising out of National Guard and Air National Guard activities has been granted annually for several years by provisions of the annual Appropriations Act for the Department of Defense. A recent provision is as follows:

The following sums are appropriated, * * *
For payment of * * *; claims (not to exceed \$1,000 in any one case) for damages to or loss of private property incident to the operation of Army and Air National Guard camps of instruction, either during the stay of units of said organizations at such camps or while en route thereto or therefrom; * * * (Act of August 1, 1953, Public Law 179, 83d Cong.).

(b) In accordance with general principles of law, the National Guard and the Air National Guard when not in Federal service are not agencies of the United States, and the United States is not liable for injury or damage arising from their activities. Thus, claims for such injury or damage are not cognizable under the Federal Tort Claims Act, as revised and codified (62 Stat. 982, 28 U.S.C.A. 3671-80). By the statutory provisions referred to in paragraph (a) of this section, the United States assumes an obligation to settle administratively limited classes of claims relating to activities of the National Guard and the Air National Guard. (Emphasis added)

B. GUARDSMAN

It is apparent then that the Federal government is responsible for any acts or omissions of the Guardsman while in Federal Active Service (see §3500 Title supra).

It is equally clear that in a normal training status that the State would be liable for the acts of the Guardsman except to the extent that the Federal expressly assumes responsibility as stated above.

On state active duty the state would be liable for the Guardsman's acts.

C. TECHNICIAN

The question of who is liable for the acts of a technician is not as clearly stated as that same question as to a Guardsman stated above.

First it is apparent that the Federal government has clearly stated that the technicians are Federal employees, however, House Report No. 1823, U.S. Code, Congressional and Administrative News, 90th Congress, 2nd Session 1968 page 3318 states in part:

"This bill implements the purpose by converting the technicians to Federal employee status with certain controls on administration and supervision which would as a matter of law remain at the State level. In effect, the technicians will become Federal employees, receiving the salaries, fringe and retirement benefits, but with certain administrative control regarding employment supervision remaining with the adjutants general prescribed by the Secretary concerned." Page 3320.
(Emphasis added)

It appears then that the state would be liable if the proximate cause of the injury caused by the technician (in his status as a technician) was a failure to properly supervise on the part of the state as this supervision is a state function.

However, if the technician caused injury and the state was in no way liable as regard supervision, a good argument could be made that the Federal government should be held liable.

In the last mentioned situation an important consideration would be the determination of who the technician was working for. If a court decided that the technician was working primarily to maintain the Guard for the state's benefit, the state would be liable regardless of a lack of failure in supervision. If the court decided that the technician was working primarily for the Federal government's benefit in maintaining the Guard the Federal government would be held liable.

MEMORANDUM
Alaska Pacific Assurance Co.

August 10, 1971
Page 11

D. SUMMARY

The State is liable for the activities of the Guard in the following situations:

State Active Duty -- Always

Normal Training Duty -- Always, except as expressly assumed by the Federal Government

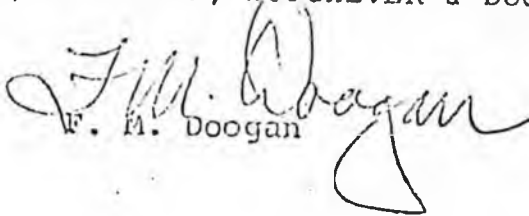
Technicians on duty in that status --

(1) when the state supervision or lack of supervision is the proximate cause of the injury, and

(2) when a court determines that the technician is engaged in work primarily for the state.

Very truly yours,

FAULKNER, BANFIELD, BOOCHEVER & DOOGAN


F. M. Doogan

FMD/jp

MEMORANDUM

State of Alaska

*Desryard
7th
14 Dec
72*

TO: [

**THIS IS NOT AN OPINION
PRELIM RESEARCH]**

Donna Spragg
Assistant Attorney General

DATE : November 5, 1971

FROM:

Robert M. Schlanger
Legal Assistant

SUBJECT: Insurance Coverage for National
Guardmen

I. Is the state liable for the torts of its National Guardsmen?

Yes.

II. Should the state provide workmen's compensation for Guardsmen injured when not on active federal duty?

Yes.

The constitutions of the several states universally provides for the organization and maintenance of a well regulated state militia and grants to the legislature the necessary power to carry those provisions into effect. The power of state government to legislate the militia existed and was exercised before the adoption of the constitution of the United States and, as its exercise is not prohibited by that instrument, it remains with the state today. (36 Am.Jur. Military, § 44 "Power of States".)

According to the constitution of Alaska (Article III, §19), the Governor is Commander-in-Chief of the Armed Forces of the state. He may call out these forces to execute the laws, prevent or suppress insurrection, lawless violence or repel invasion. The Governor, as provided by law, shall appoint all general and flag officers of the Armed Forces of the state subject to confirmation by a majority of the legislature in joint session.

The only time that the National Guard is not in the service of the state is when it has been activated for federal service. The Army National Guard, while in the service of the United States, is a component of the Army (10 U.S.C.A. § 3078.) When not on active duty, members of the Army National Guard of the United States shall be administered, equipped and trained in their status as members of the Army National Guard. (10 U.S.C.A. § 3072.) Members of the Army National Guard of the United States are not in active Federal service except when ordered thereto under law. (10 U.S.C.A. § 3495.) Thus, it appears that the Army National Guard remains as the National Guard of the respective state until ordered into active federal service pursuant to law. These statutes were interpreted by the Court of Claims of the State of New York in *Sedowski v. State of New York*. (51 Misc.2d 832, 274 N.Y.S.2d 368 [1956].) The court held that a member of the New York Army National Guard who was not in the active service of the United States Army by order of the President, was in the employ of the state. Any injuries which he sustained while attending the regularly scheduled

drill at the state armory could be sought for only as provided by the laws of the state. The State of Alaska also recognizes, by statute, the fact that Guardsmen not on active federal service are servants of the state. AS 26.05.060 states that the Governor as ex officio commander of the militia of the state has command of the Alaska National Guard while it is not in active federal service. He may adopt necessary regulations for it not inconsistent with § 473-479 Title 48 U.S.C.

The Supreme Court of the United States in Maryland v. United States (381 U.S. 41, 14 L.Ed.2d 295 (1965)) considered the issue of whether Guardsmen were federal employees for purposes of the Federal Tort Claims Act. In some oft quoted dicta, the court stated.

It is not argued here that military members of the Guard are federal employees even though they are paid with federal funds and must conform to strict federal requirements into satisfy training and promotion standards. Their appointment by state authorities and the immediate control exercised over them by the state make it apparent that military members of the Guard are employees of the state and so the Courts of Appeals have uniformly held. (p. 210, L.Ed.2d.)

I. Assuming that Guardsmen not called to active federal duty are in the service of the state, should the state be liable for the torts of these Guardsmen under the doctrine of respondent superior?

The doctrine of respondent superior depends on the master-servant relation. This relation can change depending on who has control over the servant and whether that control is sufficient. For instance, if the National Guard is called into active federal service pursuant to law, it becomes a component of the Army. It loses its status as a state institution and its "master" becomes the federal government. If the guard is called into active state service by the Governor (AS 26.05.079), the state remains as its master. During those periods when it is neither called into active state or active federal service--(periods of weekend meetings and two week encampments) the Guard retains its status as a state institution and the Guardsmen are considered as employees of the state. (Maryland v. United States supra., 1965; Sadowski v. State of New-York supra., 1965.)

The status of the master-servant relation can also be altered by law. National Guard technicians are employees entirely compensated by federal funds and authorized under Title 32 U.S.C.A. § 709 to administer and train the National Guard and to maintain and repair the supplies issued to the Guard. In two previous Attorney General opinions (Op. of Atty. Gen., No. 4, 1961; Op. of Atty. Gen., June 8, 1966), the state construed the conflicting law on the matter in favor of awarding state workmen's compensation to National Guards

technicians. However, in 1968, Title 32 U.S.C.A. § 709 was amended and provided that National Guard technicians should be considered as employees of the federal government and not the state. This amendment changed the master-servant relationship of technicians by law, and was acknowledged in a subsequent opinion of the Alaska Attorney General on February 28, 1969.

National Guardsmen are in the service of the state when not on active federal duty, and their status and relationship to the state has been interpreted as that of employer-employee. (Maryland v. United States supra., [1965].) The question narrows down to whether the state has waived its sovereign immunity under AS 09.50.250 as to torts committed by National Guardsmen as employees? There does not seem to be any authority for separating National Guardsmen as state employees from other state employees. It follows that the waiver of immunity extended under AS 09.50.250 to torts committed by state employees in general should also be applicable to torts committed by State Guardsmen. (See Superior Court Judge Sechinintzi's "Memorandum of Decision" on the State's Motion to Dismiss in Hazel Jacobs v. State of Alaska, 3rd Judicial District, File No. CA 552 (1971)). The Hazel Jacobs case supra. involved an accident caused by the negligent operation of a truck driven by a state Guardsman. It was settled for \$225,000.

In conclusion, it appears that the state will be liable for the torts of its state Guardsmen acting within the scope of their employment. It further appears that the state's coverage under the general liability and automobile liability policies with the Alaska Pacific Assurance Co. leaves the issue of state Guard protection in doubt.

This was made unmistakably clear in Sadovskii v. State of New York, supra. (1966). In that case, a National Guardsman was injured while attending the regularly scheduled drill of his unit. The court held that he was entitled to workmen's compensation under the law of the state and did not consider the military code as providing the exclusive remedy.

Hays v. Illinois Term Transportation Co., 363 Ill. 397, 2 N.E.2d 309 (1935) was another case in which the court denied recovery under the state's workmen's compensation law. Here, like in Soldstein supra, the recovery was denied because the injury occurred while the Guard was on active service and so compensation was limited to the State's military code.

Alaska's Code of Military Affairs and Veterans, Title 26, provides for compensation and death benefits for members of the National Guard. (AS 26.05.260.) The language of this statute is almost identical to the Illinois code and would seem to lend itself to a similar judicial interpretation. (Hays v. Illinois Term Transportation Co., supra. [1935].) The statute in section (d) refers to Guardsmen who are "wounded or disabled" while "on active duty for the state. (Emphasis mine.) Section (e) refers to Guardsmen who suffer permanent disability or death while performing his duties as an officer or enlisted man under orders of the Commander-in-Chief [the Governor]. It would seem that "active duty" would refer to "active service for the state" as defined in AS 26.05.070. This would make AS 26.05.260 applicable to Guardsmen only when they are actively in the service of the state--suppressing riots, flood control, etc. It would not apply to Guardsmen who are in their inactive status--attending weekly drill meetings, encampments, etc. The Alaska Superior Court in State v. Worden, 7 Alas.C.J. #9 (1969) considered the effect of AS 26.05.260.

"There is no substantial evidence here that the deceased was at the time of his death on active duty such that the provisions of AS 26.05.260(d) and (e) would be applicable as the exclusive remedy for the deceased survivors." At p. 641.

In my opinion, the above cited dicta is wrong from a policy point of view. If members of the Guard are entitled to workmen's compensation while attending their monthly drill meetings, I see no reason why they should be restricted in their coverage while in the active service of the state. There is no doubt that active service is more hazardous (suppressing riots, aiding in disaster areas, etc.) than attending meetings. The \$7,500 limitation imposed by the military statute as opposed to the \$20,000 workmen's compensation limitation seems to be unfair to those men who are called upon to serve the state under hazardous conditions. If anything, the recovery permitted under AS 26.05.260 should be an additional benefit to workmen's compensation. The rationale for this conclusion is that AS 26.05.260 should be considered as insurance for extra hazardous activities which the Guardsmen, as state employees, are sometimes called upon to perform.

In conclusion, I would advise that the state contract AFAC and provide workmen's compensation coverage for National Guardsmen. I would also advise that a policy decision be made as to AS 26.05.260(d) (c). Should it be the exclusive remedy for Guardsmen called to active duty in lieu of workmen's compensation, or should it be additional protection for extra hazardous duty?

RMS:pb

STATE
of ALASKA

MEMORANDUM

Reenlistment Benefits

TO: [Myrton R. Charney, Director
Division of Budget and Management
Department of Administration

DATE : 15 January 1973

FROM: Col. Glenn L. Byington, Director
Facilities & Fiscal Division
Department of Military Affairs

HB

SUBJECT: Reenlistment Bonus Supplemental
Appropriation Request FY 1973.

*HB 66
Reenlistment Benefits*

Request an appropriation increase for the Alaska National Guard portion of the Department of Military Affairs FY 1973 budget.

In addition to the \$80,000 appropriated, a \$62,000 increase is required to properly administer the reenlistment bonus in the Recruiting and Retention area.

During FY 1972 \$63,515.77 was expended for reenlistment bonuses to 459 individuals. During FY 1973 the estimate of eligible guardsmen is 730, plus a 6.9% military pay increase on 1 January 1973 totaling the amount at \$122,000.

Through a recent review of the records it was discovered, because of administrative errors in the field, that 4 eligible guardsmen were not paid in FY 1971 and 51 in FY 1972. The remaining 216 reflects a normal yearly increase of eligible guardsmen.

} what does this mean

Fuel - take-out

*Total # in ground - % reenlist in post - in enlistment period just post
@ 150 per re-enlistment -*

*ALPAC JNU

9077 .98 Rate

ALPAC ANCH AHG
1-24-73 12:25
ATTN CARL
RE AK NATL GUARD CLAIMS
LIABILITY OPEN

KLER RESERVES 19-\$20,000.00 ALLOC-\$1,500.00
MEISER RESERVES 20-\$1,000.00 ALLOC-\$250.00

LIABILITY CLOSED NONE

W C OPEN NONE

W C CLOSED

EMM, JOHN H.	12-15-71	PAID	\$290.28
BODEK, DENNIS	7-27-71	26RO	26.401
BODEK, DENNIS	5-24-71		205.00
BOOSHU, WILBUR	9-11-70		13.00
FREY, --MARGARET	6-28-71	6-11-71	49.00
HAMPLIN, DONALD	8-25-70		275.00
NUNCOORUK, HOWARD	12-15-70		27.25
SEIDLER, FRANK	7-7-71		39.99
SEIDLER, FRANK	4-17-72		15.00
SEIDLER, FRANK	9-29-70		25.00
SPONHOLZ, RANDY	8-18-72		51.00
LAGOD, RICHARD	8-24-70		67.50

THATS ALL WE COULD FIND JAN

ALPAC ANCH AHG

Statute of Limitations

BI 2 yrs

PD 6 yrs

*Comp - 3 yrs from date
claimant becomes aware
of disability or defect*

STATE
of ALASKA

MEMORANDUM

Insurance Coverage

TO: [Myrton R. Charney, Director
Division of Budget & Management
Department of Administration

DATE : 15 January 1973

FROM: Col. Glenn L. Byington, Director *GB*
Facilities & Fiscal Division
Department of Military Affairs

SUBJECT: Supplemental Appropriation

HR 66
Insurance

Request additional appropriation this fiscal year for the Department of Military Affairs to cover insurance premiums; Workmen's Compensation and Comprehensive Liability for Alaska National Guardsmen.

Attached Attorney General's Opinion determines coverage is necessary.

Amounts necessary are \$20,897.00 for 7-1-71 through 7-1-72; \$20,024.00 for 7-1-70 through 7-1-71 and an estimate of \$21,000.00 for 7-1-72 through 7-1-73 for a Total of \$61,921.00

Incl
as

AG

21 December 1972

SUBJECT: Guardsman Coverage and Liability

Chief
National Guard Bureau
The Pentagon
Washington, DC 20310

1. The State of Alaska has been a party to litigation involving settlement of liability claims and workmen's compensation coverage for several years. It appears, based upon the attached, that the State is being pressed into obtaining insurance coverage for this financial protection when it is not required. Mr. Doogan's contention is predicated upon the master/servant relationship whereby the guard is under state control until it is mobilized into federal service.
2. I submit that regardless of state/federal status (excluding state active duty) the federal government is liable for personal or property damages resulting from an act performed by a guardsman. In addition, I believe payment of workmen's compensation benefits by the state is questionable. If the master/servant relationship is a determining factor, Section 502, Title 52, USC is a federal promulgated requirement which thereby establishes them as the master rather than the state.
3. I would appreciate your review and comment on the attached material. I recognize that your review may be somewhat limited due to lack of sufficient information.

WILLIAM S. ELSORE
Maj Gen, (AG) ANG
The Adjutant General

cc: Lois Richardson

STATE
of ALASKA

MEMORANDUM

TO: Lt. Col. Byington
Department of Military Affairs

DATE: December 11, 1972

FROM: Dorothy Evans
Purchasing Agent
Division of Supply
Department of Administration
PurSUBJECT: Invoices, Workmen's Compensation
and Comprehensive Liability

Attached for your appropriate action are two invoices covering Alaska National Guard payroll audit for the periods 7/1/70-7/1/71 and 7/1/71 - 7/1/72. Also attached is a copy of a determination from the Office of the Attorney General that Alaska Workmen's Compensation law covers guardsmen, and the State is liable for the activities of guardsmen.

Payment of the back premiums would serve to protect the State in case of claims filed for accidents which may have occurred during the period 7/1/70-72.

The premium for 7/1/72-7/1/73 will be a composit rate of 1.0735855 per \$100 of payroll. You should anticipate a 15% increase over this for FY 1974, due to an increase in benefits under the Workmen's Compensation law.

DE/mi
enclosures

5221

Comprehensive

can you get it?

6-5391



Alaska Pacific Assurance Company

218 FRONT STREET
JUNEAU, ALASKA 99801

State of Alaska
Workmen's Compensation - Alaska National Guard
0771-31808-113
7/1/71 - 7/1/72

PREMIUM ADJUSTMENT

Alaska National Guard Payroll \$1,946,515. 0.5579065 = \$10,860.

TOTAL EARNED PREMIUM: \$10,860.
TOTAL WRITTEN PREMIUM: -0-
ADDITIONAL PREMIUM: 10,860.

10/19/72



Alaska Pacific Assurance Company

218 FRONT STREET
JUNEAU, ALASKA 99801

State of Alaska
Comprehensive General Liability - Alaska National Guard
0771-31808-213
7/1/71 - 7/1/72

PREMIUM ADJUSTMENT

Alaska National	\$1,946,515.	x	.4561015	Comp Gen & Auto Liab	=	\$0,878.
Guard Payroll	1,946,515.	x	.0346935	Malpractice	=	679.
	1,946,515.	x	.0082280	Personal Injury	=	160.
	1,946,515.	x	.0082280	Personal Injury	=	160.
	1,946,515.	x	.0082280	Personal Injury	=	160.
						<u>10,037.</u>

TOTAL EARNED PREMIUM:	\$10,037.
TOTAL WRITTEN PREMIUM:	-0-
ADDITIONAL PREMIUM:	<u>10,037.</u>

11/1/72

shattuck & grummett, inc.

insurance - bonds

301 Seward Phone 586-2414
Juneau, Alaska 99801

- State of Alaska
- c/o Division of Supply
- Juneau, Alaska
-

11-8-72

Date	Premiums	Balance
7-1-70	Additional auto premium, National Guard	
to		
7-1-71	Lorison's Compensation policy #0770-21308-113	\$ 10,078.00
	Comp. Genl. & Auto Lia. " #0770-21308-213	<u>9,946.00</u>
		\$ 20,024.00

STATEMENT

H. P. *



Alaska Pacific Assurance Company

218 FRONT STREET
JUNEAU, ALASKA 99801

State of Alaska
Workmen's Compensation - Alaska National Guard
0770-31808-113
7/1/70 - 7/1/71

PREMIUM ADJUSTMENT

Alaska National Guard Payroll	\$1,888,787.	@.508 =	\$9,595.
		Rate Increase 5.03% =	<u>483.</u>
			10,078.

TOTAL EARNED PREMIUM:	\$10,078.
TOTAL WRITTEN PREMIUM:	-0-
ADDITIONAL PREMIUM:	<u>10,078.</u>

10/19/72



Alaska Pacific Assurance Company

218 FRONT STREET
JUNEAU, ALASKA 99801

State of Alaska
Comprehensive General Liability - Alaska National Guard
0770-31809-213
7/1/70 - 7/1/71

PREMIUM ADJUSTMENT

Alaska National Guard	\$1,888,787.	x	.471	=	\$8,896.
Payroll	1,888,787.	x	.030	=	567.
	1,888,787.	x	.0035	=	161.
	1,888,787.	x	.0085	=	161.
	1,888,787.	x	.0085	=	161.
					<u>9,946.</u>

TOTAL EARNED PREMIUM:	\$9,946.
TOTAL WRITTEN PREMIUM:	<u>-0-</u>
ADDITIONAL PREMIUM:	9,946.

11/1/72

STATE
OF ALASKA

MEMORANDUM

TO: Commissioner Joseph R. Henri
Department of Administration

FROM: Norman C. Gorsuch
Deputy Attorney General

DATE:

November

SUBJECT:

Insurance - Alaska
National Guard



In response to your memorandum of November 14 concerning insurance coverage for the Alaska National Guard and with regard to an earlier memorandum of October 3 from Richard Freer, Deputy Commissioner of Administration, to this department on the same subject, we have determined that both our present comprehensive general liability and workmen's compensation insurance do not cover the Alaska National Guardsmen.

The present insurance carrier for the State - Alaska Pacific Assurance Company - has had its counsel determine issues of (1) coverage under the Alaska Workmen's Compensation Act of members and employees of the National Guard and (2) liability of the State for acts and omissions of members and employees of the National Guard. Generally, we concur with the determinations made (see memorandum of August 10, 1971, from F.M. Deegan to Alaska Pacific Assurance Company), that Alaska Workmen's Compensation law covers guardsmen and the State is liable for the activities of guardsmen. Moreover, our own research and analysis (see Department of Law intra-office memorandum of November 5, 1971, on insurance coverage for National Guardsmen) independently reached similar conclusions.

We believe it is germane to note that this year alone the State settled out of court two civil suits dealing with general liability for National Guardsmen's acts or omissions. The settlements were for \$1,250.00 (Creswell v. Smith and State) and \$15,000.00 (Cuckendall v. Smith and State). This compares to approximately \$10,000 in premiums for additional comprehensive general and automobile liability insurance quoted by the State's carrier for National Guard coverage for one year.

The decision to purchase additional insurance coverage such as that outlined in the November 9 letter to the

Commissioner Joseph R. Henri

November 27, 1972

- 2 -

Division of Supply from Shattuck and Grummett, Inc., is appropriately a Department of Administration one. It is our present view that the State is liable for workmen's compensation for Alaska National Guardsmen and that the State is also liable for the activities of the Alaska National Guardsmen. Risk analysis for on-going exposure to liability, which we believe is an administrative matter, can best be done by your department.

NCG/md

shattuck & grammitt, inc.

insurance - bonds

301 Seward Phone 596-2414
Juneau, Alaska 99801

- State of Alaska
- c/o Division of Supply
- Juneau, Alaska
-

Date	Premiums	Balance
7-1-71	Additional audit premium, National Guard	
to		
7-1-72	Mortren's Compensation Policy Comp. Genl. & Auto Lic. "	\$ 10,860.00 <u>10,037.00</u>
		\$ 20,897.00

STATEMENT

M. P.

REVISED PROGRAM
 COST ANALYSIS SUMMARY
 by BUDGET COMPONENT

AGENCY	CATEGORY	
	PROGRAM	
DIVISION	SUB-PROGRAM	
	ELEMENT	
	SUB-ELEMENT	

CODE	EXPENDITURE BY OBJECT	PRESENT AUTHORIZATION	REVISION INCREASE, (DECREASE)	AMENDED AUTHORIZATION
100	PERSONAL SERVICES			
200	TRAVEL			
300	CONTRACTUAL SERVICES			
400	COMMODITIES			
500	EQUIPMENT			
600	LANDS, BUILDINGS, NON STRUCTURAL IMPROVEMENTS			
700	GRANTS, CLAIMS, SHARED REVENUE			
800	MISCELLANEOUS			
	INTER-AGENCY TRANSFERS (INCLUDED ABOVE)			
	TOTAL			
NEW CODE	FEDERAL RECEIPTS			
	REQUIRED GENERAL FUND MATCHING			
	OTHER GENERAL FUND			
	INTER-AGENCY TRANSFERS			
	OTHER			
	TOTAL			
	PERMANENT FULL TIME POSITIONS			
	PERMANENT PART-TIME POSITIONS			
	TEMPORARY (FULL-TIME EQUIVALENTS)			
	NUMBER OF MAN MONTHS			

	FY 73	FY 74	FY 75	FY 76	FY 77	FY 78
EXPENDITURES - TOTAL						
SOURCE OF FUNDS						
FEDERAL						
REQ. G. F. MATCH						
OTHER G. F.						
OTHER (SPECIFY)						

MEMORANDUM

TO:

Lois Richardson
Dept. of Military Affairs
Juneau

DATE : December 14, 1972

FROM:

TA
Terry Adlhock
AGO - Juneau

SUBJECT: Alaska National Guard
Insurance

Attached are the memoranda referred to in our November 27 memorandum to Commissioner Henri concerning insurance, as you requested today by phone.

If these are to be reviewed by U.S. Army-Alaska JAG, please let us know JAG's conclusions.

As the November 27 memorandum points out, insurance coverage is deemed needed because of liability exposure.

Attachments
TA/md

LAW OFFICES OF
FAULKNER, BANFIELD, BOOCHEVER & DOOGAN

HERBERT L. FAULKNER
RODMAN C. BANFIELD
ROBERT BOOCHEVER
FRANK H. DOOGAN
DONALD L. CHADDICK
AVRIL M. GROSS
MICHAEL M. HOLMES
SANFORD BAGALKIN

ROOM 201, 311 FRANKLIN STREET
JUNEAU, ALASKA 99801

TEL. 586-2210
AREA CODE 907

August 10, 1971

MEMORANDUM

FROM: F. M. Doogan

TO : Alaska Pacific Assurance Company

Re : Coverage under the Alaska Workmen's Compensation Act of members and employees of the National Guard.

II. Liability of the State for acts and omissions of members and employees of the National Guard

I. Workmen's Compensation

A. TYPES OF EMPLOYEES AND TYPE STATUS IN GENERAL

In order to properly discuss the applicability of Alaska Workmen's Compensation to employees and members of the National Guard it is necessary to first define the various types of Guard employees and second to define the different types of status in which these employees may be found at different times.

There are basically three types of Guard employee/members: Full-Time Technician, Full-Time Technician/Guardsman and Guardsman.

Full-Time Technician. These individuals are principally female employees, clerk-typists, and security guards and are not required to be members of the Guard in a military status. They do, however, work full time, in a civilian status for the Guard.

Full-Time Technician/Guardsman. These individuals work for the Guard in a full-time technician status as civilians and are required to be members of the Guard in a military status. Examples of their technician jobs include Adjutant General, aircraft mechanic, supply

specialist, flight activity commander, etc.

Guardsmen. He is a member of the military portion of the Guard and attends the military functions of the Guard, however, his civilian job is not related to the National Guard.

The status of employment of these three types of employees varies. Of course, the full-time technicians will only be found in that status; in other words, they will work only as civilians. However, the full-time technician/Guardsman may be found to be working as a technician in his civilian status or on military status as a Guardsman. The Guardsman is only found working for the Guard in a military status.

There are various types of military status in which either the Guardsman or technician/Guardsman may be found. The first of these is normal training status which normally includes 48 training drills per year plus a 15 day summer camp each year. This may be increased by federal orders, and in the case of aviators includes additional flight training periods. If a Guardsman or technician/Guardsman is unable to make scheduled drill periods, he may be allowed to attend equivalent training periods to make up his training. In this status, although the Guard is under the command of the Governor and state authorities, its pay and supply source is the federal government.

The second status in which these individuals may be found is state active duty. This includes any situation in which the Governor has called the Guard or any portion of the Guard (units or individuals) to active duty in the event of a state emergency, (i.e. flood, riot, etc.). In this status the Guard is under the command of the Governor and is paid by the state.

A third status is federal active service. This includes service any time the President calls the Guard and to Federal service (i.e. sent to combat, riot control, postal service, etc.). In this status the Guard is under the command of the President and the normal active duty military chain of command and is completely divorced from state control.

B. FULL-TIME TECHNICIAN - The National Guard Technician Act of 1968 32 U.S.C.A. 709 provides:

"(d) A technician employed under subsection (a) is an employee of the Department of the Army or the Department of the Air Force, as the case may be, and an employee of the United States."

House Report No. 1823, U.S. Code, Congressional and Administrative News, 90th Congress, 2nd Session, 1968, page 3318, gives the following summary:

"Purpose of Legislation:

"(a) to provide a retirement and fringe benefit program which will be both uniform and adequate"

.

"Federal fringe benefits --

As Federal employees the technicians would be covered under the laws providing for the various fringe benefits for Federal employees including groups, health, and life insurance, leave, Federal employees death and injury compensation, severance pay, tenure and status. ID. at 3324.

From this it would appear that the Federal Government has pre-empted any state control as to disability or death benefits and that these full-time technicians would not be covered by Alaska Workmen's Compensation.

C. FULL-TIME TECHNICIAN/GUARDSMAN

1. While working as technician not covered by Alaska Workmen's Compensation (see B supra)
2. While on military duty as a Guardsman

In Section 8012 of Title 5 USCA the compensation for disability or death of a Federal employee is outlined, in (a) of that section it is provided that:

"The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty,"

An argument may be that the technician/Guardsman, while on duty as a military member of the Guard, is not "in the performance of his duty" as a technician but is performing military duties. However, because a full-time technician/Guardsman is required to be a member of the Guard as a part of his civilian employment (see House Report No. 1823 U.S. Code, Congressional and Administrative News, 90th Congress, 2nd Session 1968, page 3318) an argument may be made that the technician is within the performance of his duty as a technician and therefore, falls within the protection of the quoted section.

This would seem to be the case in a normal training status or state active duty status because the technician is required by his employer, the Federal Government, to work in such a status when required.

The conclusion then is that the technician is covered by Federal Compensation law regardless of his status. However, the fact that the technician/Guardsman appears to be covered by the Federal Compensation law does not preclude the possibility that he will be awarded compensation under the Alaska Workmen's Compensation Act. In Employers Liability Assurance Corporation v. Spradlin, a decision of the Superior Court of Alaska at Anchorage, Civil Action No. 68-508A dated December 26, 1969, it was held that the family of a technician/Guardsman, who was killed while under Federal Orders to active duty for training (see normal training status supra), was entitled to compensation under the Alaskan Act.

The holding was that Spradlin was killed within the course and scope of his employment in the State of Alaska. As partially discussed above, although the technician/Guardsman while on a normal training status received pay credit for Federal military service, and credit towards Federal military retirement while in a normal training status he is still commanded by the State authorities and is directly engaged in the employment of the State. The Governor may order him in that status to engage directly in state employment (i.e. fly the Governor or his staff to different points in the state). It is upon this control that the court in Spradlin based its decision that the injured or deceased technician/Guardsman is entitled

to elect Alaska Workmen's Compensation benefits or Federal benefits. See for master-servant relationship creating right to compensation Globe Indemn. Co. v. Forrest, 182 S.E. 215 (Va. 1935), Baker v. State, 156 S.E. 917 (N.C. 1931), Cantois v. State, 186 A. 2d 741 (R.I. 1962),

Although the above discussion covered only the situation in which the technician/Guardsman is in a normal training status the argument, of course, applies also when he is found on state active duty. In that status even his source of compensation is the state which further reinforces the concept and reality of State control.

D. GUARDSMAN

1. Normal Training Status

Title 32, USCA Section 318, as amended provides:

"A member of the National Guard is entitled to the hospital benefits, pension, and other compensation provided by law or regulation for a member of the Regular Army or the Regular Air Force, as the case may be, of corresponding grade and length of service, whenever he is called or ordered to perform training under Sections 502 [drills and annual field exercises], 503 [field exercise in conjunction with the Army or Air Force], 504 [school attendances and arms competitions], 505 [regular Army or Air Force school attendance] of this title

(1) for a period of more than 30 days and is disabled in line of duty from disease while so employed; or

(2) for any period of time, and is disabled in the line of duty from injury while so employed."

In short if a Guardsman is disabled in any of the above situations he is entitled to the same Federal benefits as a regular army soldier. Because of the fact that these benefits normally exceed in value those offered under the State

Workmen's Compensation plans one should never see a situation in which a disabled guardsman injured while in a normal training status attempts to get workmen's compensation under the Alaska Workmen's Compensation Act as contrast to federal compensation.

Although, as stated above an injured Guardsman is covered by Federal Compensation when in a normal training status nothing appears to preclude an election on his part to take the Workmen's Compensation benefits in lieu of the Federal benefits.

However, no mention is made above as to compensation in the event of the death of the Guardsman while in a normal training status. Section 321 of Title 32 allows for a death gratuity in the amount of six months pay but not less than \$800 or more than \$3000. In addition Alaska Statute §26.05.260 (c) states:

"If an officer or enlisted man of the National Guard suffers permanent total disability or death while performing his duty as an officer or enlisted man under orders from the commander in chief, the officer or enlisted man, or his heirs or dependents, have a claim against the state for financial help or assistance, on such terms and in such amount, not exceeding \$7,500, as is determined to be right and just by a board of three medical officers or three civilian physicians. The commander in chief shall, by order, convene the board for this purpose."

The question then is whether or not a Guardsman killed in a normal training status is covered by Alaska Workmen's Compensation.

He is covered for the following reasons. The primary question is simply who is he working for.

Alaska Statute §26.05.060 Control of Alaska National Guard states in part that "[t]he governor as ex officio commander of the militia of the state has command of the Alaska National Guard while it is not in active federal service." (emphasis added)

Section 3495 of Title 10 --

Army National Guard of the United States. Status:
Members of the Army National Guard of the United States are not in active Federal service except when ordered thereto under law. (Section 3495 of Title 10 states the same for the Air National Guard)

Section 325 of Title 32 USCA provides:

Each member of the Army National Guard of the United States or the Air National Guard of the United States who is ordered to active duty is relieved from duty in the National Guard of his state or territory, or of Puerto Rico, the Canal Zone, or the District of Columbia, as the case may be, from the effective date of his order to active duty until he is relieved from that duty.

Section 3500 of Title 10 USCA "Army National Guard in Federal Service" states:

Whenever --

(1) the United States, or any of the territories, commonwealths, or possessions, is invaded or is in danger of invasion by a foreign nation;

(2) there is a rebellion or danger of a rebellion against the authority of the Government of the United States; or

(3) the President is unable with the regular forces to execute the laws of the United States; The President may call into Federal service members and units of the Army National Guard of any State or territory, Puerto Rico, the Canal Zone, or the District of Columbia in such numbers as he considers necessary . . . "

It is concluded then that the Guardsman when not called into Active Federal Service as above is working for and controlled by the State.

A second question is whether or not the \$7,500 provision of the Alaska Statutes mentioned above (AS §26.059.260) is an exclusive remedy. This contention was defeated in an exclusive remedy. This contention was defeated in Spradlin supra, and because of the liberal interpretation of Workmen's Compensation Acts would be defeated in the future.

2. State Active Duty

When the governor calls the Guardsman to State Active Duty he is clearly working for the state and covered by Workmen's Compensation.

3. Federal Active Service

When the Guardsman is called into Federal active service (see §3500 Title 10 in 1 above) he is clearly working for the Federal Government and is not covered by Workmen's Compensation.

E. SUMMARY

The following individuals are covered by Workmen's Compensation.

Full-Time Technicians - Never

Full-Time Technician/Guardsman

1. While on Duty as a technician - Never
2. While on military duty
 - a. State active duty - if he so elects
 - b. Normal training status - if he so elects
 - c. Federal active service - never

Guardsman

1. State active duty - Always
2. Normal training status
 - a. Death - Always
 - b. Injury - If he so elects
3. Federal active service - Never

II. Liability of State for Torts of National Guard

A. Generally a state is liable for the acts of its agents or employees committed within the scope of employment, the question here is again who is the Guard working for.

Title 32 USCA 564.52 states the statutory authority for claims for damages involving the National Guard and Air National Guard:

(a) Limited authority for the payment of claims arising out of National Guard and Air National Guard activities has been granted annually for several years by provisions of the annual Appropriations Act for the Department of Defense. A recent provision is as follows:

The following sums are appropriated, * * * For payment of * * *; claims (not to exceed \$1,000 in any one case) for damages to or loss of private property incident to the operation of Army and Air National Guard camps of instruction, either during the stay of units of said organizations at such camps or while en route thereto or therefrom; * * * (Act of August 1, 1953, Public Law 179, 83d Cong.).

(b) In accordance with general principles of law, the National Guard and the Air National Guard when not in Federal service are not agencies of the United States, and the United States is not liable for injury or damage arising from their activities. Thus, claims for such injury or damage are not cognizable under the Federal Tort Claims Act, as revised and codified (62 Stat. 982, 28 U.S.C.A. 3671-80). By the statutory provisions referred to in paragraph (a) of this section, the United States assumes an obligation to settle administratively limited classes of claims relating to activities of the National Guard and the Air National Guard. (Emphasis added)

B. GUARDSMAN

It is apparent then that the Federal government is responsible for any acts or omissions of the Guardsman while in Federal Active Service (see §3500 Title supra).

It is equally clear that in a normal training status that the State would be liable for the acts of the Guardsman except to the extent that the Federal expressly assumes responsibility as stated above.

On state active duty the state would be liable for the Guardsman's acts.

C. TECHNICIAN

The question of who is liable for the acts of a technician is not as clearly stated as that same question as to a Guardsman stated above.

First it is apparent that the Federal government has clearly stated that the technicians are Federal employees, however, House Report No. 1823, U.S. Code, Congressional and Administrative News, 90th Congress, 2nd Session 1968 page 3318 states in part:

"This bill implements the purpose by converting the technicians to Federal employee status with certain controls on administration and supervision which would as a matter of law remain at the State level. In effect, the technicians will become Federal employees, receiving the salaries, fringe and retirement benefits, but with certain administrative control regarding employment supervision remaining with the adjutants general prescribed by the Secretary concerned." Page 3320.
(Emphasis added)

It appears then that the state would be liable if the proximate cause of the injury caused by the technician (in his status as a technician) was a failure to properly supervise on the part of the state as this supervision is a state function.

However, if the technician caused injury and the state was in no way liable as regard supervision, a good argument could be made that the Federal government should be held liable.

In the last mentioned situation an important consideration would be the determination of who the technician was working for. If a court decided that the technician was working primarily to maintain the Guard for the state's benefit, the state would be liable regardless of a lack of failure in supervision. If the court decided that the technician was working primarily for the Federal government's benefit in maintaining the Guard the Federal government would be held liable.

D. SUMMARY

The State is liable for the activities of the Guard in the following situations:

State Active Duty -- Always

Normal Training Duty -- Always, except as expressly assumed by the Federal Government

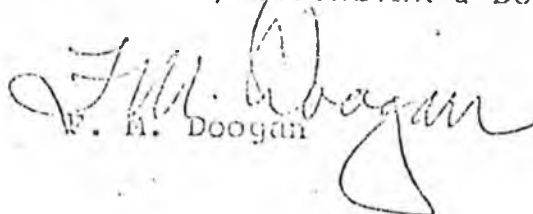
Technicians on duty in that status --

(1) when the state supervision or lack of supervision is the proximate cause of the injury, and

(2) when a court determines that the technician is engaged in work primarily for the state.

Very truly yours,

FAULKNER, BENFIELD, BOOCHEVER & DOOGAN


F. A. Doogan

FMD/jp

MEMORANDUM

State of Alaska

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12

**[THIS IS NOT AN OPINION
PRELIM RESEARCH]**

TO:

Donna Spragg
Assistant Attorney General

DATE : November 5, 1971

FROM:

Robert M. Schlanger
Legal Assistant

SUBJECT: Insurance Coverage for National
Guardmen

- I. Is the state liable for the torts of its National Guardsmen?
Yes.
- II. Should the state provide workmen's compensation for Guardsmen injured when not on active federal duty?
Yes.

The constitutions of the several states universally provides for the organization and maintenance of a well regulated state militia and grants to the legislature the necessary power to carry those provisions into effect. The power of state government to legislate the militia existed and was exercised before the adoption of the constitution of the United States and, as its exercise is not prohibited by that instrument, it remains with the state today. (36 Am.Jur. Military, § 44 "Power of States".)

According to the constitution of Alaska (Article III, §19), the Governor is Commander-in-Chief of the Armed Forces of the state. He may call out these forces to execute the laws, prevent or suppress insurrection, lawless violence or repel invasion. The Governor, as provided by law, shall appoint all general and flag officers of the Armed Forces of the state subject to confirmation by a majority of the legislature in joint session.

The only time that the National Guard is not in the service of the state is when it has been activated for federal service. The Army National Guard, while in the service of the United States, is a component of the Army (10 U.S.C.A. § 3073.) When not on active duty, members of the Army National Guard of the United States shall be administered, equipped and trained in their status as members of the Army National Guard. (10 U.S.C.A. § 3072.) Members of the Army National Guard of the United States are not in active Federal service except when ordered thereto under law. (10 U.S.C.A. § 5495.) Thus, it appears that the Army National Guard remains as the National Guard of the respective state until ordered into active federal service pursuant to law. These statutes were interpreted by the Court of Claims of the State of New York in Soderaki v. State of New York (51 Misc.2d 832, 274 N.Y.S.2d 368 [1966].) The court held that a member of the New York Army National Guard who was not in the active service of the United States Army by order of the President, was in the employ of the state. Any injuries which he sustained while attending the regularly scheduled

drill at the state armory could be sought for only as provided by the laws of the state. The State of Alaska, by its statute, recognizes by statute, the fact that Guardsmen not on active federal service are servants of the state. AS 26.05.050 states that the Governor as ex officio commander of the militia of the state has command of the Alaska National Guard while it is not in active federal service. Henry adopt necessary regulations for it not inconsistent with § 473-479 Title 45 U.S.C.

The Supreme Court of the United States in Maryland v. United States (381 U.S. 41, 14 L.Ed.2d 295 (1965)) considered the issue of whether Guardsmen were federal employees for purposes of the Federal Tort Claims Act. In some of its dicta, the court stated:

It is not argued here that military members of the Guard are federal employees even though they are paid with federal funds and must conform to strict federal requirements in order to satisfy training and promotion standards. Their appointment by state authorities and the immediate control exercised over them by the state make it apparent that military members of the Guard are employees of the state and so the Courts of Appeals have uniformly held. (p. 210, L.Ed.2d.)

I. Assuming that Guardsmen not called to active federal duty are in the service of the state, should the state be liable for the torts of these Guardsmen under the doctrine of respondent superior?

The doctrine of respondent superior depends on the master-servant relation. This relation can be defined as one in which the master has control over the servant and whether that control is sufficient to establish the relation. For instance, if the National Guard is called into active federal service pursuant to law, it becomes a component of the Army. It loses its status as a state institution and becomes a part of the federal government. If the guard is called into active state service by the Governor (AS 26.05.079), the state becomes its master. During those periods when it is not in state or active federal service--(periods of two week encampments) the Guard retains its status as a state institution and the Guardsmen are considered employees of the state. (Maryland v. United States supra., 1965; New York v. United States supra., 1966.)

The status of the master-servant relation can also be altered by law. National Guard technicians are compensated by federal funds and authorized under Title 38 U.S.C.A. and to maintain the two previous Attorney General opinions (Op. of Atty. Gen., No. 4, 1956; Op. of Atty. Gen., No. 1, 1956), the state construed the conflict in favor of awarding state workers' compensation to National Guard

technicians. However, in 1963, Title 32 U.S.C. and provided that National Guard technicians are employees of the federal government and not merely changed the master-servant relationship, and was acknowledged in a subsequent opinion of the Alaska Attorney General on February 28, 1969.

National Guardsmen are in the service of the state when not on active federal duty, and their status with respect to the state has been interpreted as that of employer-employee. (*United States v. United States* supra., [1965].) The question is whether the state has waived its sovereign immunity as to torts committed by National Guardsmen acting as state employees from other state employees. It does not seem to be any authority for separating National Guardsmen from other state employees. The waiver of immunity extended under AS 09.50.250 by state employees in general should also be extended to torts committed by State Guardsmen. (See Superior Court Memorandum of Decision on the State's Motion for Judgment in *Jacobs v. State of Alaska*, 3rd Judicial Dist. (1971)). The *Jacobs* case supra. involved an accident caused by the negligent operation of a truck driver. It was settled for \$225,000.

In conclusion, it appears that the state will be liable for the torts of its state Guardsmen acting within the scope of their employment. It further appears that the state's coverage under the general liability and automobile policies of the Alaska Pacific Assurance Co. leaves the protection in doubt.

§ 709 was amended to be considered as a tort. This means that technicians by law, as Alaska Attorney General

the state when acting in their relationship to the state. (Maryland *Pratt* down to AS 09.50.250 employees? There does not seem to be any authority for separating National Guardsmen from other state employees. It does not seem to be any authority for separating National Guardsmen from other state employees. The waiver of immunity extended under AS 09.50.250 by state employees in general should also be extended to torts committed by State Guardsmen. (See Superior Court Memorandum of Decision on the State's Motion for Judgment in *Jacobs v. State of Alaska*, 3rd Judicial Dist. (1971)). The *Jacobs* case supra. involved an accident caused by the negligent operation of a truck driver. It was settled for \$225,000.

will be liable for the torts of its state Guardsmen acting within the scope of their employment. It further appears that the state's coverage under the general liability and automobile policies of the Alaska Pacific Assurance Co. leaves the protection in doubt.

III. Should Guardsmen not on active duty be entitled to workmen's compensation within the scope of their employment?

The Guard, when not on active duty, is a state institution. The Supreme Court in *Howley* (1965) stated that members of the Guard as employees, they should be entitled to workmen's compensation just like other state employees. To deny workmen's compensation might be a denial of equal protection under the law.

It has been argued that the federal government supplies compensation to Guardsmen injured while participating in other exercises, and therefore, the state should not award workmen's compensation. (32 U.S.C.A. § 318.) This argument was considered in *Glasgow v. United States*, U.S.D. District, 95 F.Supp. 93 (1951) and was rejected as being unrealistic. In an era of federal subsidies and grants in aid, it would be illogical to deny a person state coverage just because he receives some benefits from the federal government. There is no language in Title 32 to indicate that the benefit afforded Guardsmen is to be an exclusive remedy. In some states, they have provided by statute for deductions from the state's workmen's compensation award amount received from the federal government (*Halverson v. Solvang*, 201 Minn. 464, 165 N.W.2d 534 [1969]). Alaska does not have such a statute. The fact that the federal government gives a remedy does not preclude the state from doing so itself.

In *Goldstein v. State*, 261 N.Y. 317, 24 N.E.2d 97 (1939) the court found that National Guardsmen were not employees of the state so as to subject the state to workmen's compensation liability. However, that case can be distinguished. The court reasoned that workmen's compensation was never intended to cover militia men while engaged in active service. (24 N.E.2d at p. 99.) The court went on to say that the military law made provision for compensating those injured in active service. To justify a decision that another concurrent remedy has been created whereby the state may be made liable in unlimited amounts requires a statutory construction of that effect, the meaning and intent of which is unmistakable. (24 N.E.2d at p. 100.)

Thus *Goldstein*, supra, must be limited to Guardsmen who are in active service pursuant to an order of the Governor. When in such service, recovery should be limited to the amounts allowed under the military code of the State of New York.

This was made unmistakably clear in Adams v. State of New York, supra. (1966). In that case, a member of the National Guard was injured while attending the regularly scheduled drill of his unit. The court held that he was entitled to workers' compensation under the law of the state and did not consider the military code as providing the exclusive remedy.

Hays v. Illinois Term Transportation Co., 363 Ill. 397, 2 N.E.2d 309 (1935) was another case in which the court denied recovery under the state's workmen's compensation law. Here, like in Goldstein supra, the recovery was denied because the injury occurred while the Guard was on active service and compensation was limited to the State's military code.

Alaska's Code of Military Affairs, Veterans, Title 26, provides for compensation and death benefits for members of the National Guard. (AS 26.05.260.) The language of this statute is almost identical to the Illinois code and it would seem to lend itself to a similar judicial interpretation. (Hays v. Illinois Term Transportation Co., supra. [1935].) The statute, section (d) refers to Guardsmen who are 'wounded or disabled' while on active duty for the state. (Emphasis mine.) Section (e) refers to Guardsmen who suffer permanent disability or death while performing his duties as an officer or enlisted man under orders of the Commander-in-Chief [the Governor]. It would seem that 'active service for the state' as defined in AS 26.05.260 would make AS 26.05.260 applicable to Guardsmen only when they are actively in the service of the state--suppressing riots, flood control, etc. It would not apply to Guardsmen who are attending weekly drill meetings, encampments, etc. The Alaska Superior Court in State v. Worden, 7 Alas.C.J. #9 (1967) considered the effect of AS 26.05.260.

"There is no substantial evidence here that the deceased was at the time of his death on active duty such that the provisions of AS 26.05.260(d) and (e) would be applicable as the exclusive remedy for the deceased survivors." At p. 641.

In my opinion, the above cited decision is wrong from a policy point of view. If members of the Guard are entitled to workmen's compensation while attending their monthly drill meetings, I see no reason why they should be restricted in their recovery while in the active service of the state. There is no doubt that active service is more hazardous (suppressing riots, aiding in disaster areas, etc.) than attending meetings. The \$7,500 limit imposed by the military statute as opposed to the \$20,000 workmen's compensation limitation seems to be unfair to those men who are called upon to serve the state under hazardous conditions. If any benefit is to be permitted under AS 26.05.260 should be an additional benefit to workmen's compensation. The rationale for this conclusion is that AS 26.05.260 should be considered as insurance for extra hazardous activities which the Guardsmen, as state employees, are sometimes called upon to perform.

In conclusion, I would advise that the state contract AFAC and provide workmen's compensation coverage for National Guardsmen. I would also advise that a policy decision be made as to AF 26.05.260(a) (c). Should it be the exclusive remedy for Guardsmen called to active duty in lieu of workmen's compensation, or should it be additional protection for extra hazardous duty?

RMS:pb

Lois

NCB-JA

29 December 1972

Major General William S. Elmore
The Adjutant General, Alaska
610 Mac Kay Building
338 Denali Street
Anchorage, Alaska 99501

Dear General Elmore:

This is in reply to your letter of 21 December.

We have reviewed the August 10, 1971 opinion of the law firm of Faulkner, Benfield, Boochaver and Doogan, and the State of Alaska memorandum of November 5, 1971 enclosed in your letter, both of which are concurred in with the most minor exceptions. You are in error in concluding that a master-servant relationship exists between the United States and members of the Alaska National Guard training under title 32, United States Code. The Supreme Court of the United States decided otherwise in Maryland for Use of Levin v. United States, 381 U.S. 41 (1965).

It is transparently clear that the Alaska National Guard may be engaged in training or duty which will not entitle its members, or third persons who may suffer personal injury or property damage to any protection by the Federal government, or where the Federal protection is something less than complete. In these instances there is a distinct requirement for local legislation.

The analysis by Mr. Doogan is arranged quite logically, and can be usefully followed. Schematically, there are two principal subdivisions. First is the system of benefits for members of the National Guard, National Guard technicians employed under 32 U.S.C. 709, and other civilian employees of the State military department. Second is the liability of the State and the individuals described in the preceding sentence in the event of injury, death or property damage caused by their activities.

A. Benefits for members.

1. Members of the Alaska National Guard in the active military service of the United States.

Members of the Alaska National Guard may be "called" in active Federal service by the President under chapter 15 of title 10, United States Code, or

sections 3500 and 8500 of that title. This includes duty to enforce the laws of the United States (e.g. school integration cases in Arkansas, Alabama, Mississippi, disorders in the District of Columbia) Federal aid to State governments (e.g. Detroit), and invasion or threat thereof (1916 Mexican Border). In their Army National Guard of the United States and Air National Guard of the United States status they may be ordered to active duty in time of war or national emergency (WWII, Pueblo incident, New York postal strike). Statutory tour officers (10 U.S.C. 265, 3033, 3264, 8033, 8264) are ordered to active duty as individuals. So are U.S. property and fiscal officers under 32 U.S.C. 708. "REP '63" trainees, who enlist under 10 U.S.C. 511(d) are ordered to active duty for training in their Reserve of the Army and Reserve of the Air Force status.

In the event of injury, disease or death of these individuals, the Federal Government provides the same benefits as it provides for all other members on active duty.

However, the States are at liberty to add to these benefits. Many credit Federal military service for State civil service purposes, provide pensions, or otherwise recognize the contribution.

2. Members of the Alaska National Guard performing training or duty (full time training duty, inactive duty training) under title 32, United States Code.

Although entitled to pay, allowances and other benefits enumerated in Federal statutes, members of the National Guard performing training or duty under title 32, United States Code are not in the service of the United States at such times. Maryland for Use of Levin v. U.S., supra.

A member injured in line of duty, or who contracts a disease in line of duty while on duty under orders which do not specify a period of 30 days or less is entitled to pay and allowances from the United States so long as he is disabled from the performance of his normal military duty. If he is permanently disabled, he will either be separated with severance pay, or retired for physical disability.

There are two weaknesses in the current system. One is that a man may be unable to return to his civilian employment even though he is found to be able to perform his normal military duties, and therefore ineligible for pay and allowances from the military. Second, his military pay may be substantially less than his usual civilian earnings, and the military pay and allowances he receives will not prevent economic hardship. State legislation is required if these deficiencies are to be remedied.

3. Members of the Alaska National Guard in the active military service of the State, under authority of State law.

Pay, allowances and benefits in case of injury, disease or death while in service required by State authorities, e.g. local disaster, military aid to the civil authority is governed entirely by State law. Except for indirect Federal aid, such as declaring an area to be a disaster area, and authorizing military leave for Federal employees who are performing State military service, the United States provides no coverage for Guardsmen.

There is an absolute necessity for provision by the State of some sort of protection, e.g. by making its State Workmen's Compensation applicable, or by adopting some of the principles of Federal law, such as those relating to death gratuities, dependency indemnity compensation, life insurance, medical care for line of duty disabilities, physical disability retirement, burial.

4. Technicians employed under section 709 of title 32, United States Code.

These are Federal employees. Benefits in the case of injury or death resulting from activities in the scope of their employment are provided by subchapter I of chapter 81 of title 5, United States Code (formerly known as the Federal Employees Compensation Act, which corresponds to State Workmen's Compensation Acts).

An injury or death from an accident not within the scope of employment is not covered by that law. For example a technician who is injured while working on his home, "moonlighting", or while engaged in military training or duty, such as that required by title 32, United States Code or by State law, is not acting within the scope of his technician employment at such times.

Although certain technician positions require National Guard membership as a condition of employment, a technician injured while performing National Guard duty is not acting within the scope of his employment for the purpose of subchapter I of chapter 81 of title 5. He is entitled to the benefits provided by titles 10, 32, 37 and 38, United States Code, and has no right of election between the benefits provided for military and civilian service.

A technician injured while performing military service receives certain title 5 benefits, such as sick leave, and separation with severance pay or physical disability retirement if appropriate. His Government life insurance, if any, will also be payable in case of a service connected death.

5. State military department employees.

This includes all State employees whose hire is authorized by State law, irrespective of whether they are paid entirely by State funds, or, as in the case

of "service contract employees" whether the United States reimburses the State, in whole or in part for these expenses.

Among the expenses for which the United States will reimburse the State are those incident to providing workmen's compensation for persons employed under the service contract.

As in the case of Guardsmen on State active duty, the only benefits for State military department employees (exclusive of Social Security) are those that may be provided by State law.

B. Protection of the Public. Third Party liability in case of personal injury, property damage, or death resulting from National Guard activities.

1. Injury, death or property damage to third persons caused by members of the National Guard in the active military service of the United States.

Claims are payable in accordance with chapters 3 and 4 of AR 27-20 and chapters 7 and 12 of AFM 112-1 which implement the so-called Military Claims Act (10 U.S.C. 2733) and the Federal Tort Claims Act (28 U.S.C. 1346(b), 2401(b), 2402, 2671, 2672, 2674-2680)).

The injured party has a cause of action against the United States for a tortious act of a military member acting in line of duty except for certain offenses, such as false imprisonment.

There is no requirement for State legislation.

2. Injury, death or property damage to third persons caused by members of the National Guard performing training or duty under sections 502-505 of title 32, United States Code.

Members of the National Guard in this status are not considered to be in Federal service for the purpose of the Federal Tort Claims Act, and injured parties have no right of action against the United States.

Before 13 September 1960, annual appropriation acts for the Department of Defense authorized the payment of claims, not in excess of \$1000, for damage to property incident to the operation of National Guard camps of instruction.

On 13 September 1960 section 715 of title 32, United States Code, the so-called National Guard Claims Act, was enacted. Claims not in excess of \$15,000 can be paid by the Secretarys of the Army and Air Force; amounts in excess of \$15,000 require approval by the Congress. It covers injury, death or property damage by Guardsmen engaged in training under title 32, and in the scope of their duties. For detailed description of the administration of 32 U.S.C. 715, see chapter 6 of AR 27-20 and chapter 14, AFM 112-1 dated 1 December 1972.

These claims are paid in the discretion of the service Secretaries. Their decisions are final and conclusive. The claimant has no recourse, administrative or judicial from such decisions.

The injured party is not required to present his claim to the U.S. Government. He may pursue whatever course of action and elect whatever remedies he may have.

He may present his claim in accordance with AF 27-20 or AFM 112-1 as appropriate. However, the service Secretary will deny the claim if he concludes that the negligence of the claimant contributed to the cause of the accident. The Secretary may conclude that the claim is excessive, and offer the claimant an amount that he will not accept. Since the claimant has no right of action against the United States (Maryland for Use of Levin v. U.S. (supra)) his only recourse is against the State (if it has consented to be sued), or against the individual Guardsman.

Some States provide that a Guardsman may not be sued civilly or prosecuted criminally for acts committed by them while acting in accordance with orders. In the absence of such a statute, the injured third party may decide to sue the Guardsman as an individual. In the absence of State law authorizing the State to provide counsel for the Guardsman in case of litigation, and to pay whatever money judgment that may be assessed, the Guardsman is unprotected and he may be required to pay the plaintiff from his own funds. A number of States provide a degree of protection by private insurance covering the operation of motor vehicles, including those issued to the National Guard. New York has in the past also insured Air National Guard aircraft.

3. Injury, property damage or death resulting from activities of the National Guard while on State active duty.

Federal law provides no compensation whatever for third persons who are injured or killed, or whose property is damaged by members of the National Guard ordered to active military duty by State authorities.

Payment of claims, administrative and judicial remedies afforded to the injured parties, insurance, and protection of Guardsmen responsible for the injury or damage, are matters which are governed exclusively by State law.

4. Injury, death or property damage caused by National Guard technicians employed under section 709 of title 32, United States Code.

These employees are employees of the United States, and their acts within the scope of their employment subject the United States to liability under the Federal Tort Claims Act. On the other hand, acts committed by them which are not within the scope of their employment, such as acts while performing military training or duty, are not covered by FTCA.

In some instances, for example if National Guard technicians are ordered to perform such duties as coping with a forest fire or furnishing a military escort, it is likely that an action under the Federal Tort Claims Act would probably be defended by denying that the technician was acting within the scope of his employment.

Any protection that the individual technician would have in these circumstances would depend upon State law. Absent such law, he could of course be sued and held personally financially responsible.

5. Injury, death or property damage caused by other State military department employees.

The service contract provides for reimbursement by the United States from the States' cost of liability insurance it may procure.

However no action may be brought against the United States, nor will it defend an action, or pay a judgment that may be entered against such an employee by reason of an injury or damage to third persons.

The remedies of the injured person and protection afforded these employees are controlled exclusively by State law.

As indicated above, I do not agree with Mr. Doogan's conclusion that a technician is entitled to compensation under subchapter I of chapter 81 of title 5, United States Code in case of injury while performing military training duty (p.4, Doogan Memorandum). The Alaska courts' conclusion that the State Workmens Compensation Act covers members on Federal active duty for training in the Spradlin case cited by Mr. Doogan does not require a similar conclusion by Federal courts.

I do not follow his reasoning in assuming that a Guardsman entitled to Federal benefits because of an injury in line of duty while performing training duty will not seek Alaska Workmens Compensation Act benefits. As pointed out above, Federal pay and allowances terminate upon a determination that the member is able to perform his normal military duty, whereas workmens compensation is based upon the inability to perform the duties of his civilian employment. Moreover, unless the Alaska statute provides for a reduction of workmens compensation benefits in case Federal benefits are paid, a member in receipt of Federal benefits would not be barred from payment by the State of Alaska as well, and no "election" between Federal and State benefits which Mr. Doogan suggests is not required by either Federal or Alaska law. It appears from the Attorney General memorandum (third paragraph p.4) that Alaska has no provision of law similar to that of Minnesota. Hawaii has a similar set-off statute.

Again, in his summary, page 8, Mr. Doogan sees a requirement for election between Alaska Workmens Compensation Act and other benefits. I agree with the Schlanger memorandum of November 5 that in the absence of a provision in State law making

workmen's compensation exclusive of any other, there is no requirement for election.

Title 32 U.S.C.A. 564.52 cited by Mr. Doogan at page 9 is obsolete, and was based upon the law and regulations in effect before September 13, 1960, when Pub. L. 86-740 adding 32 U.S.C. 715, was enacted.

The conclusion at page 10 of Mr. Doogan's study that supervision of technicians is a State function may perhaps be advanced by the United States in defense of some future litigation, but is certainly arguable. Supervision is, by Federal law vested not in the State but in the Adjutant General. The Adjutant General derives his authority with respect to the technician program not from State law, but by reason of his designation by the Secretaries of the Army and Air Force under 5 U.S.C. 2105(a)(1)(F).

Again, at the same page, there is perhaps an over-simplification. A Federal court could decide that a technician was not acting in the scope of his Federal employment, and that the U.S. was not liable for his negligent act. A State court could conclude that he was not acting within the scope of his State employment for the purposes of a State statute. Both courts could make a finding of "in scope" in which case both Governments would be liable, and any combination of decisions could result. In view of the dual status of the National Guard and the interest of both the State and the United States (e.g. title to property issued to the National Guard remains in the United States, but the State has an interest in protecting it, since it is required to pay the United States if it is lost, damaged, or destroyed through negligence), it could readily be concluded that both Governments benefit from the technician's work, and both could be liable.

I hope the foregoing proves helpful.

Sincerely,

WILLIAM M. BLATT
Legal Adviser
National Guard Bureau

January 25, 1973

Lt. Col. Glenn Byington
Director
Facilities and Fiscal Division
Dept. of Military Affairs
Fouch L
Juneau, Alaska

RE: HB 66 (Supplemental Appropriation Request)

Dear Col. Byington:

In order to supplement testimony which you presented before the House Finance Committee on January 24th, the committee would appreciate receiving the following information:

- (1) A log of the two aircraft requiring maintenance as a result of the recent air search.
- (2) An indication of what percentage of expected re-enlistment bonus payments result from the 6.9% federal pay increase for guardsmen.
- (3) An indication, by area, as to where re-enlistments are occurring.
- (4) An estimate of the normal time period in which a claim would be filed for workmen's compensation insurance claims. What is the potential number of claims that might be filed from the 1971-1972 period?

Thank you for your assistance in this matter.

Sincerely,

Glen K. Vernon
House Fiscal Analyst

STATE OF ALASKA
Inter-Department Route Slip

TO:

DEPT.: _____

ATTN.: _____

Mr. Hagan

- | | |
|--|--|
| <input type="checkbox"/> Approval | <input type="checkbox"/> Note & Return |
| <input type="checkbox"/> Signature | <input type="checkbox"/> Initial & Return |
| <input type="checkbox"/> Comment | <input type="checkbox"/> Return As Requested |
| <input type="checkbox"/> Contact Me | <input type="checkbox"/> Return For Approval |
| <input type="checkbox"/> Prepare Reply | <input type="checkbox"/> Necessary Action |
| <input type="checkbox"/> For Your File | <input type="checkbox"/> Your Information |

Remarks:

From:

Dept.: _____

9 Law

Date

1-12-75

By: _____

Norman Garuch

STATE OF ALASKA

WILLIAM A. EGAN, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K -- STATE CAPITOL
JUNEAU 99801

May 17, 1972

Maj. General William S. Elmore
Adjutant General
Department of Military Affairs
338 Denali Street
610 MacKay Building
Anchorage, Alaska 99501

Re: AS 26.05.265 - Alaska
National Guard Re-enlistment
Bonus.

Dear General Elmore:

This opinion will concern itself with the question of who is and is not eligible to receive re-enlistment bonuses as per the hypothetical cases submitted by you to our office. The pertinent part of AS 26.05.265, Re-enlistment Bonus, reads:

"After the initial voluntary enlistment for the period of service in the Alaska National Guard which fulfills the mandatory requirement for military service under the Military Selective Service Act of 1967, a bonus shall be paid to a person who re-enlists in the Alaska National Guard."

Case No. 1.

A man enlists in the Alaska National Guard on 5 January 1966 for a six-year obligatory period in the National Guard as required in the Military Selective Service Act. He satisfactorily completes his obligation contract on 4 January 1972 and immediately re-enlists for a one-year period.

Commentary

This man would be eligible to receive the re-enlistment bonus as described in the statute. First of all, his initial enlistment in the Alaska National Guard was voluntary and secondly it fulfilled the mandatory requirement for military service under the Military Selective Service Act of 1967. His subsequent re-enlistment then entitles him to the bonus.

Case No. 2

A man enlists in the Oregon Army National Guard on 5 January 1966 for a six-year obligatory period. He moves to Alaska on 2 July 1969 and is discharged from the Oregon National Guard on 2 July and enlists in the Alaska Army National Guard to complete the remainder of his six-year obligatory period on 3 July 1969. He satisfactorily completes his obligation contract on 4 January 1972 and immediately re-enlists for a one-year period.

Commentary

This man would be eligible for the re-enlistment bonus. He voluntarily enlisted in the Oregon National Guard, moved to Alaska and then voluntarily enlisted in the Alaska National Guard to complete his six-year obligation as required by the Military Selective Service Act of 1967. His subsequent re-enlistment entitles him to a bonus because he has satisfied his military obligation by a previous voluntary enlistment in the Alaska Army National Guard.

Case No. 3

A man enlists in the Washington Army National Guard on 5 January 1966 for a six-year obligatory period in the National Guard as cited in the Military Selective Service Act. He satisfactorily completes his obligation contract on 4 January 1972 and is honorably discharged from the Washington National Guard. He moves to Alaska on 6 February 1972 and enlists in the Alaska National Guard on 10 March 1972.

Commentary

This man would not be eligible for the re-enlistment bonus. Although he satisfied his military selective service obligation by enlisting in the Army National Guard, it is important to note that the National Guard was the Washington National Guard and not the Alaska National Guard; therefore, when he enlisted in the Alaska National Guard 10 March 1972 it cannot be considered a re-enlistment in the Alaska National Guard. The statute is quite specific. The initial voluntary enlistment must be in the Alaska National Guard in order for the subsequent re-enlistment to entitle the individual to the bonus.

Case No. 4

A man voluntarily enlists in the regular Army on 5 January 1966 for a period of three years and is released from active duty on 4 January 1969. He is carried in a control group,

U.S. Army Reserve status for the period 4 January 1969 to 4 January 1970, thereby completing his one-year active reserve obligation and then is carried in a U.S. Army standby reserve status from 5 January 1970 to 4 January 1972; thereby completing his six-year total obligation. He then enlists in the Alaska Army National Guard on 10 March 1972.

Commentary

This man would not be entitled to the re-enlistment bonus because he satisfied his military obligation by serving in the regular Army and Army Reserves and not the Alaska National Guard. He therefore is not entitled to a bonus.

Case No. 5

Same as above, except that he enlisted in the Alaska Army National Guard immediately upon discharge from active duty on 5 January 1969. After completing his six-year obligation with the Alaska National Guard, he re-enlists in the Alaska National Guard.

Commentary

This man would be eligible for the re-enlistment bonus as defined in the statute. All men owe their country six years of military service as required by the Military Selective Service Act of 1967. This individual satisfied three years of that six-year obligation by enlisting in the regular Army. He completed that obligation by enlisting in the Alaska National Guard for the subsequent three years. Thus, his initial voluntary enlistment in the Alaska National Guard fulfilled the mandatory requirement for military service under the Military Selective Service Act of 1967 and his subsequent re-enlistment in the Alaska National Guard entitles him to a re-enlistment bonus.

Case No. 6

A man voluntarily enlists in the regular Navy on 5 January 1966 for a period of four years and is released from active duty on 4 January 1970. He joins the Alaska Naval Militia on 5 January 1970.

Commentary

This man is not eligible for a re-enlistment bonus as defined under the statute. There are two reasons for this conclusion. First of all, the Alaska Naval Militia is not considered part

of the Alaska National Guard. AS 26.05.030, Composition of Organized Militia, states that the Alaska National Guard consists of. . . "(1) members of the militia who have voluntarily enlisted and who upon original enlistment are organized, armed, equipped and federal recognized according to the laws of the United States;" and, "(2) commissioned officers and warrant officers who are citizens of the United States having the qualifications prescribed by federal law and regulations and who are appointed and commissioned or warranted by the governor." The Alaska Naval Militia is considered part of the organized militia of the state, but it is defined separately from the Alaska National Guard under subsection (c) of the above-captioned section.

Until such time as the statute is changed so that the definition of Alaska National Guard includes Alaska Naval Militia, a person cannot be eligible for a re-enlistment bonus by re-enlisting in the Alaska Naval Militia. Even if the Alaska Naval Militia was considered part of the Alaska National Guard, this individual would not be eligible for a re-enlistment bonus. His voluntary enlistment on 5 January 1970 is only to enable him to complete his military obligation as required under the Selective Service Act of 1967. It is not a re-enlistment subsequent to fulfilling that obligation so as to entitle him to a re-enlistment bonus.

Case No. 7

A man enlists in the U.S. Naval Reserve on 5 January 1966 and undergoes two years active duty in the U.S. Navy. He then returns to Alaska and as required by his service obligation joins the Naval Reserve unit in Anchorage and voluntarily affiliates with the Alaska Naval Militia at the same time on 5 January 1968. He then serves four years of required active reserve obligation between 5 January 1968 to 4 January 1972. He then re-enlists in the Naval Reserve in Alaska Naval Militia on 5 January 1972.

Commentary

This individual would not be eligible for a re-enlistment bonus because the Alaska Naval Militia is not considered part of the Alaska National Guard and so re-enlistment in that body would not entitle the individual to a re-enlistment bonus.

Case No. 8

As far as WAC's or WAF's goes, their enlistment and subsequent voluntary enlistment in the National Guard would not entitle

them to a re-enlistment bonus. The statute requires that the initial voluntary enlistment in the Alaska National Guard must fulfill the mandatory requirement for military service under the Military Selective Service Act of 1967. Women do not have such a mandatory requirement for military service and so their enlistment and subsequent re-enlistment does not entitle them to a bonus.

I hope that I have satisfactorily answered all the hypothetical cases which you have presented to me. If there are any problems, please feel free to call on me.

Very truly yours,

JOHN E. HAVELOCK
ATTORNEY GENERAL

By: *Robert M. Schlanger*
Robert M. Schlanger
Assistant Attorney General

RMS:gb

February 19, 1973

The Honorable Tom A. Fink
Speaker of the House

Subject: HOUSE BILL NO. 65 "An Act making supplemental appropriations to the Alaska State-Operated School System; and providing for an effective date."

In view of the controversy generated from consideration of paragraph #5 of our committee report on the above-identified measure, the committee respectfully requests its deletion from said report.

Earl D. Hillstrand
Chairman
House Finance Committee

Ernie Haugen

Al Ose

Edward G. Barber

Bud Saylor

Frank R. Ferguson

Keith Specking

Oral E. Freeman

Andy Warwick



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

4/26/89
Date

Committee Report

S E N A T E

3/9/73

4/5/73

Date

Mr. President:

The Committee on FINANCE has had HR 56 and
Dept. Military Affairs sup. appropriation
under consideration. A majority of the members of the Committee

- recommends it do pass
- recommends it do not pass
- recommends it do pass with attached amendment(s)
- recommends it be replaced with CS for _____ and that
CS for _____ do pass
- (and) recommends it be referred to the _____
committee
- reports it back without recommendation
- (other) reports it back with individual recommendations

MEMBERS SIGNING THE MAJORITY REPORT:

<u>[Signature]</u>	<u>[Signature]</u>	_____
<u>[Signature]</u>	<u>[Signature]</u>	_____
<u>[Signature]</u>	<u>[Signature]</u>	_____
<u>John Sicker</u>	<u>[Signature]</u>	_____

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

<u>[Signature]</u>	recommends: <u>[Signature]</u>
<u>[Signature]</u>	recommends: _____
<u>[Signature]</u>	recommends: <u>NO PASS</u>
_____	recommends: _____
_____	recommends: _____

[Signature]
CHAIRMAN

Introduced: 1/12/73
Referred: Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 66

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act making supplemental appropriations to the
7 Department of Military Affairs; and providing for
8 an effective date."

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

10 * Section 1. The sum of \$95,000 is appropriated from the general fund
11 to the Department of Military Affairs for the fiscal year ending June 30,
12 1973 to be apportioned as follows:

13	Civil Air Patrol	\$ 12,000
14	Re-enlistment bonuses, National Guard	62,000
15	Workmens' compensation and liability	
16	insurance, National Guard	21,000

17 * Sec. 2. This Act takes effect on the day after its passage and approval
18 or on the day it becomes law without approval.

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Introduced: 1/12/73
Referred: Finance

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 66

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act making supplemental appropriations to the
7 Department of Military Affairs; and providing for
8 an effective date."

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

10 * Section 1. The sum of \$112,000 is appropriated from the general fund
11 to the Department of Military Affairs for the fiscal year ending June 30,
12 1973 to be apportioned as follows:

13	Civil Air Patrol	\$ 12,000
14	Re-enlistment bonuses, National Guard	40,000
15	Workmens' compensation and liability	
16	insurance, National Guard	60,000

17 * Sec. 2. This Act takes effect on the day after its passage and approval
18 or on the day it becomes law without approval.

11/11/73
January 11, 1973

The Honorable Tom Fink
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99801

Dear Mr. Speaker:

Pursuant to the Uniform Rules of the Legislature,
I am transmitting a bill making a supplemental
appropriation to the Department of Military
Affairs.

The proposed bill appropriates \$112,000 to the
Department of Military Affairs for three purposes.
The reenlistment benefits program requires
\$40,000 to cover unbudgeted costs of reenlistment
bonuses for the current fiscal year. The amount
of \$50,000 is needed to cover costs of the newly
implemented insurance coverage for National
Guardsmen retroactive to fiscal year 1971. The
amount of \$12,000 is requested for repair to two
Civil Air Patrol aircraft which experienced
unusual wear in recent extended search efforts.

Sincerely,

William A. Egan
Governor

shattuck & grummett, inc.

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301 SEWARD STREET

JUNEAU, ALASKA 99801

CURTIS G. SHATTUCK
ALLEN D. SHATTUCK
ROGER R. SHATTUCK, CLU, ChFC

MICHAEL A. GRUMMETT
ROGER GRUMMETT

March 20, 1973

Senator C. R. Lewis
Capital Building
Juneau, Alaska

Re: Alaska National Guard

Dear Senator Lewis:

Further to our telephone conversation March 20, this is to provide you in writing with comments regarding requests for supplemental appropriations for approximately \$60,000.

Of the total request for the supplemental appropriation, approximately \$20,000 is for the current fiscal year while the other \$40,000 is for the prior two fiscal years.

The purpose of the supplemental appropriation is to pay the premium for liability and workmen's compensation coverages for the period of time as mentioned above. Justification for the billing of the premium is based on the fact that coverage has been provided by Alaska Pacific Assurance Company since July 1, 1970 for National Guard exposures and as a result, Alaska Pacific is entitled to the premiums. These were not billed perviously due to the fact that payroll figures given by the State for total State payroll did not previously include National Guard payrolls.

Justification for the billings can be further clarified by the fact that Alaska Pacific Assurance Company has been paying claims right along in connection with the National Guard. They have paid to date a total of approximately a dozen workmen's compensation claims totaling approximately \$1,100 and have also established reserves on two liability claims totaling nearly \$23,000. In addition, there is always the very real possibility that additional claims could come to light at a later date that may have occured during this period.

I trust that the above fills you in on the situation, but if I can be of any further assistance, please let me know.

Sincerely,


ALLEN D. SHATTUCK

ADS:pmk

PHONE 580-3411

INSURE AND BE SURE

TELEX 994-6313