

SCOMM

# 10:36

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

August 16, 1979

SUBJECT: Local Government Study drafting assignment

TO: Senator Arliss Sturgulewski, Chairman  
Senate Community and Regional Affairs Committee

Representative Bill Parker, Chairman  
House Community and Regional Affairs Committee

FROM: John B. Chenoweth  
Legislative Counsel

Some preliminary questions:

The outline dated August 14 describes some of the subject matter which should be covered. Initially, the division of the state's single unorganized borough is to be completed. Senate Bill 35 (1977) providing for the division of the unorganized borough into regional educational attendance areas is to serve as the model.

(1) Please advise whether it is sufficient, for your purposes, to provide that the boundaries of REAAs shall serve as the boundaries for unorganized boroughs.

If so:

What provision is to be made to accommodate the smaller "regional" educational attendance areas -- St. Paul, Adak, Metlakatla -- into the surrounding REAA/unorganized boroughs? Or should they be? The answer to this probably depends on the relationship you see emerging between educational functions (now handled through REAAs) and any and all other functions which may be handled through unorganized boroughs.

If not:

Who shall make the determination by which an existing REAA shall be divided or combined with an adjacent REAA (for purposes of this effort)? The commissioner of

community and regional affairs? The Local Boundary Commission? By what standards? Is it at all significant that, under this approach, a given community might find itself linked with its neighbors on one side for purposes of education and with a different group (or larger group, or smaller group) for purposes of planning and delivery of other services?

Should the line drawing (or re-drawing) be handled expeditiously (as in SB 35 -- maximum of 4 to 6 months) or be allowed to move at whatever pace is necessary, as is presently the case in coastal zone service areas?

What is meant by the entry "follow-up adjustment by the Local Boundary Commission?"

(2) Matter of unorganized borough councils: I assume that "unorganized boroughs" are to be voluntarily formed (following the coastal zone model) rather than mandated (as was done with REAAs). Am I right? Should I provide for an initial council of a fixed size (as was done with REAAs)? If not, in the absence of a set statutory number, who decides? How are unorganized boroughs initiated: public petition? resolution of the legislature to the commissioner/local boundary commission? Do I worry about "one village, one vote?" How elected: at large? by districts? some combination of both? Who decides? Is this decision made by area residents upon submission of a petition? Can existing REAA school boards also serve as unorganized borough councils? Should they be able to if people in an REAA want them to? Should it be barred -- in order to keep the educational function wholly separate? Can existing coastal service area boards serve the function of an unorganized borough council? Should they be able to if they want to? Should this be barred? If an unorganized borough council is established, should the election occur at the same time as elections for other "regional posts, i.e. when the regional school board and regional coastal management board are elected? If not, when? Who conducts these elections? Who pays for their costs? The outline says "Councils (Advisory)" -- are they to be advisory? In the same way that a community council is advisory to, say, the Anchorage assembly (i.e. the state agency would continue to have final say)? In the way a coastal management service area board's authority is circumscribed (i.e., a coastal management service area board may secure judicial review of

pa

Senator Arliss Sturgulewski  
Representative Bill Parker  
Page 3  
August 16, 1979

the actions of a state agency to conform to regional coastal management service area board decisions)? Should their authority be plenary within general guidelines set down by statute? Are these beasts to be "advisory" to the legislature in its capacity as the "assembly for the unorganized borough?" If so, should we establish a scheme whereby the relationship is "unorganized borough -- state legislature" rather than "unorganized borough -- state agency", thereby isolating program and budget factors from the requirements of general law? Is this desirable with half Alaska's population and legislature drawn from urban areas?

(3) Functions: We are agreed, I think, on some initial general functions: health; social services (public assistance); public safety (i.e. police and fire protection and, perhaps, emergency medical services/search and rescue). Let me also tentatively suggest to be added to the list (with full appreciation for the fact that it reopens the debate on management of fish and game) "natural resources conservation and management" (See Article III, section 2, State Constitution) and its derivative function, land use planning.

The first item under this heading is "planning." I think, but need you to affirm, that "planning" for the deliverance or provision of any one of the foregoing is the essential first step in that provision or deliverance, that "planning" should not be separated from "implementation" and that the two are merely parts of the same unit. Under that interpretation, an unorganized borough council might opt for health "planning" as part and parcel, and only as part and parcel, of assuming responsibilities for health functions. If I am in error on this, please advise, but the logical upshot is that you may wind up with a situation where the regional entity "plans" and the state agency budgets and executes almost entirely without ready reference to those "plans."

The next entry, "coordination and review", needs clarification. I would ask: with whom and for what purpose?

The matter of the relationship between these beasts and existing REAAs and coastal management initiatives I leave to you. Please tell me, at least for purposes of drafting, how you see these fitting together.

I am concerned, too, for the notion of "extended home rule." I have not the foggiest notion of what the participants may see in this as the answer to their concerns or problems. What is it, in Title 29 or elsewhere, that is so odious, so difficult, so threatening as to warrant "instant home rule?" I say this in all seriousness, for I do not want to throw out or suggest some home rule binder requirements that step on the hopes and expectations of participants? "One village - one vote?" Home rule probably cannot skirt this issue: there are federal constitutional precepts involved. What else is there? What is it, for openers, that people in the Upper Yukon may see in home rule? What is it the North Slope Borough officials saw in "traditional" (i.e. municipal) home rule? Did they use home rule to accomplish their expectations?

What about procedures bearing upon instant gratification through immediate adoption of home rule? Do we start with a "general law unorganized borough" and require its council to initiate the home rule charter adoption process? Do we mandate a process? Minimal requirements for inclusion in a charter? Do we allow residents to develop a home rule unorganized borough where no regional general government unit now exists? HOW???

Who prepares the charter? Should the legislature, acting as assembly for the unorganized borough, receive the petition of residents and, by local legislation, direct the preparation of a charter for this area, another (at a later date) for that region, and so forth? Do these charters need to be reviewed and approved (or not disapproved) by anyone? Legislative review? Commissioner of community and regional affairs? How long should the framers of the charter have to complete the effort? Who approves at the local level? Who pays for that election?

And, when you have totalled up whatever it is you decide on home rule for the unorganized borough, please pause to consider the implications that this result has on existing home rule municipalities, bound, as they are, by some interesting ad hoc provisions in AS 29.13. Conceivably, home rule in unorganized areas could prove to be far broader than home rule concepts and precepts applicable within municipalities. Is this desirable?

(4) Financing and services: Is there to be a local effort requirement for any service? for all services? Is it a necessary requirement? Do we authorize levy and collection of taxes? Which ones? What limits? How about any fees? Do I worry about protection against taxation of undeveloped lands, boats, the property of senior citizens, and other classes which have been identified as exempt or partially exempt from municipal taxation? Do you allow "in kind?" At what value? Who decides? Does it matter???\*

(5) The title heading is "recognition of villages," but the single response listed says "third class cities." Is this to be the response? Do I follow the department's draft on this? Should existing cities be permitted to "declassify" from first or second class city status to take advantage of this additional class of city? Does this establishment of yet another class of city answer the real issue on "recognition of village governments" (i.e. recognition of tribes or IRA councils) or are we just adding another option in Title 29 which, we are told, does not work in many rural areas anyway?

These are, as the first paragraph indicates, my preliminary questions bearing on a first draft.

JBC:jdn

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\*I do not mean to be critical, but this matter of 'in kind' contributions serving in place of cash really could be significant. I understand from Marge Gorsuch that the governor is insisting that unorganized borough units begin to make some contribution. I also recall how the legislature recently treated with "in kind" contributions in legislation authorizing construction of cultural facilities. In that legislation, you will recall, there is a formula by which the amount of required local contribution to the project is to be determined. The legislature allows a municipality to count toward satisfaction of that requirement donations of land on which the facility is to be built, indicating how that value is to be ascertained, but without inquiring as to how the municipality came to hold title. Thus, with an "in kind" contribution to the project of land which the municipality gained at little or no cost, the municipality can effectively shift the entire cash burden for construction to the state.

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I see "in kind" as opening the door to maintaining 100 percent state support for the planning and delivery of services in unorganized boroughs, retaining the same system of financing these services as we have now. This may be desirable on the part of legislators, indeed, may be necessary from the point of view of urging organization of these areas. But I am concerned that, in dwelling on the topics of "boundary delineation", "powers of councils", and "functions and authorities", the most significant subject of equitable financial contributions is being set aside for further study at a "later" time. The state is chugging merrily down the road to financial turmoil in those years that oil and gas contributions to the general fund begin to fall off. The difficult question of financing provision of services will have to be faced then. I respectfully suggest that, ten years hence, the answers to that question, to the extent that they require all Alaskans to contribute more in the way of state income and local property and sales taxes, may come a little easier if the legislature now commits itself to requiring some cash contribution as a required local effort in any foundation approach by which responsibility for essential public services is moved to the regional level.



Official Business

# Alaska State Legislature

JOINT SENATE AND HOUSE  
COMMUNITY AND REGIONAL AFFAIRS COMMITTEE  
LOCAL GOVERNMENT STUDY

Co-Chairmen  
Senator Arliss Sturgulewski  
Representative Bill Parker

Address all  
correspondence to:  
LOCAL GOVERNMENT STUDY  
Pouch V  
State Capitol  
Juneau, Alaska 99811

TO: Jack Chenoweth  
FROM: Marjorie Gorsuch *MJG*  
Gene Walsh  
DATE: 8/14/79  
RE: Draft Legislation/Local Government Study

Jack...Needless to say, we are pleased that you will continue to be involved in the Local Government Study. We have found your work of invaluable assistance in this effort.

Reiterating the agreements made at our August 8 meeting, we understand that you will be researching specific portions of the Action Program (see attached). The material should be developed in a form suitable for introduction as legislation during the Second Session of the Eleventh Legislature.

During the last week of September and early October, the Committee members will take the concepts embodied in the legislation you are preparing to rural regional centers and villages in the unorganized borough for public hearings. Therefore, it would be most helpful to receive the legislative proposals by September 7 so that they can be reviewed and so that some advance educational material on the subject matter can be made available to those in rural Alaska who will be invited to the public hearings.

Restating the tasks you felt you could complete, we understand that you plan to work on the following:

1. ESTABLISHMENT OF UNORGANIZED BOROUGHS - *implications*
  - A. BOUNDARIES
    1. DELINEATION
    2. FORMALIZATION (ESTABLISHMENT)
    3. FOLLOW-UP ADJUSTMENT BY LOCAL BOUNDARY COMMISSION
  - B. COUNCILS (ADVISORY)
    1. APPORTIONMENT
    2. ELECTION
  - C. FUNCTIONS AND AUTHORITY
    1. PLANNING - *(Council plan - rather planning)*
    2. COORDINATION AND REVIEW
    3. RELATIONSHIP TO REAA's & COASTAL RESOURCE SERVICE AREAS
  - D. STEPS TOWARD ORGANIZED STATUS

*How. Ruler unorganized borough*

*Bill Parker*

*League of Cities could possibly continue to each other their recognized authority precedents - boroughs*

(In reference to 1.(B), it would appear from the discussion at the Symposium, that a representation plan which would most closely provide for individual village representation, while still complying with the Supreme Court mandate of "one man one vote" would be acceptable to those living in rural Alaska.)

*cu*

2. HOME RULE/ORGANIZED BOROUGH

A. EXTENDED HOME RULE (provision to move directly from unorganized status)

(Relative to the above, please find the attached memo from the Department of Community and Regional Affairs on the "instantaneous unification" proposal as well as the draft proposal on this subject circulated during the First Session of the Eleventh Legislature. )

*What is the problem with general law? What problems?*

3. LOCAL GOVERNMENT FINANCING AND SERVICE

B. FOUNDATION PLAN FOR HEALTH, PUBLIC ASSISTANCE, PUBLIC SAFETY, EDUCATION

(The attached letter received from John Havelock on this general subject might be of interest to you)

C. INTERGOVERNMENTAL CONTRACTING

4. B. RECOGNITION OF VILLAGES

1. THIRD CLASS CITIES

(You mentioned that memos relative to the Third Class City written by Pat Poland might be of assistance in this area)

Please advise us if the above is not accurate.

We would appreciate receiving any portion of the work upon completion-- the mail to Anchorage (to Arliss and Bill) seems to be getting slower by the day and we would want them to review the legislative proposals.

Many thanks.

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED  
AS A UNIT IN THE ORIGINAL DOCUMENT.

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL  
JUNEAU, ALASKA 99811

January 16, 1980

Honorable Arliss Sturgulewski, Chairman  
Senate Community & Regional Affairs Committee  
and  
Honorable Bill Parker, Chairman  
House Community & Regional Affairs Committee  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Madam and Mr. Chairman:

Your staffs have asked us to comment on the use of the term "unorganized borough" in legislation proposed to divide the state into a number of unorganized boroughs, the boundaries of which would be coterminus with the regional educational attendance areas.

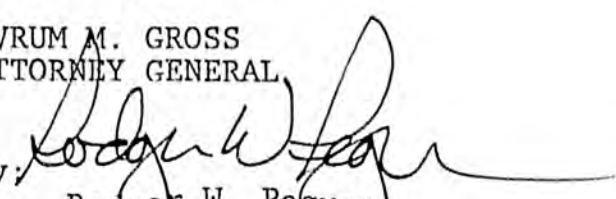
We perceive no legal problems in the use of the term nor in having one unorganized borough or a dozen. We perceive the existence of conceptual problems, that is, there should be no need to use the word "districts" in the proposed new article 2 of AS 44.17 if the term "unorganized borough" is to be used and the unorganized boroughs are to consist of the State's several, diverse regions. Instead, the term "borough" should be used (rather than "district") and it should be defined as an organized borough, a unified municipality, or an unorganized borough.

We also perceive a potential for mischief in the use of the term if the legislature continues to create ad hoc special districts in unorganized boroughs without some mechanism for unification of services, functions, and control. A principal purpose of the constitution's local government article was to avoid a multiplicity of special districts, each with its own governing body, providing uncoordinated, disarticulated local government services. Unorganized boroughs which provide no integrative mechanisms on the local level -- even though they do so on the state level -- are not wholly consistent with that purpose.

Sincerely yours,

AVRUM M. GROSS  
ATTORNEY GENERAL

By,

  
Roger W. Pegues  
Assistant Attorney General

03-C5LH

RWP/pjg

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 14, 1980

JAN 15 1980

SUBJECT: Identification of administrative regional units as "unorganized boroughs." (Work Order Nos. 7569, 7570 and 7571)

TO: → Senator Arliss Sturgulewski, Chairman  
Senate Community and Regional Affairs Committee

Representative Bill Parker, Chairman  
House Community and Regional Affairs Committee

FROM: John B. Chenoweth  
Legislative Counsel

The designation of administrative regions as "unorganized boroughs" in the context of these bills is wrong as a matter of legislative drafting and contrary to provisions of the state's constitution. 1+2

As a drafting matter, this Agency has consistently tried to describe single purpose subdivisions of the state's unorganized borough fairly and accurately. Responsibility for schools and for resource planning in the state's coastal zone was transmitted to single-purpose unorganized borough "service areas" consistent with the directive of the constitution and state statute that "service areas" be used to accommodate provision of "special services". While uneasy with adaption of an organized borough mechanism for use in the unorganized borough, at least the choice of nomenclature fairly served to describe what was in the works. The terminology did serve to inform the citizens of the state fairly and fully of the status of the new subdivision. The choice of "unorganized borough" in this bill does not, as a matter of bill drafting, fairly describe the nature of the subdivision or unit that is being established in the accompanying bills. The "unorganized borough" authorized in these bills is clearly a single-purpose entity not characterized (as were earlier "service areas") by regional public participation and direction. These "unorganized boroughs" are confined to assist state planning efforts. "Unorganized borough" is a defective nomenclature that does not accurately identify the result embodied in the legislation. Branche  
not good  
for an  
E

Representative Bill Parker

Page 2

January 14, 1980

The Constitution, at Article X, sec. 6, suggests that the term "unorganized borough" be used in conjunction with a scheme by which services are to be performed in areas not within incorporated areas, indicating that the legislature "[allow] for maximum local participation and responsibility." Since "service areas" have been used to describe the devices adopted for "special services" in the unorganized borough, and since the principal bill of the three accompanying this memo does not address "local participation and responsibility" for a function or service, use of the term "unorganized borough" -- which at least implies a delivery of multiple services with local participation and responsibility -- to describe an entity the sole purpose of which is to redirect the nature of state agency efforts is inconsistent with applicable constitutional directive.

The choice of terms in this regard is not insignificant. Fulfillment of the constitutional directive with respect to formation of unorganized boroughs -- "maximum local participation and responsibility" -- suggests to me that the three bills as presented are incomplete: the unorganized borough bill should also make provision for accommodation of existing services which involve local participation and responsibility, and, accordingly, should include transitional provisions by which the current service area responsibilities for single purpose subjects (i.e. education and coastal management planning) are folded into these new "unorganized boroughs." Your selection of the term "unorganized borough" almost certainly requires that, if adopted, the continued use of "service areas" of the unorganized borough as the structure to transfer responsibility for a service from a state agency to an entire region is no longer appropriate; hereinafter, bills drafted making such a transfer must make use of these new "unorganized boroughs."

JBC:ljb

Enclosures

STATE OF ALASKA  
THE LEGISLATURE

POUCHY - STATE CAPITOL  
JUNEAU ALASKA 99811  
907-465-3600

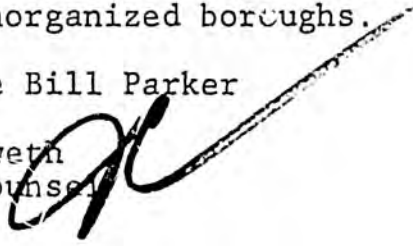
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 18, 1980

SUBJECT: Alteration of Work Orders Nos. 7656 and 7657  
relating to unorganized boroughs.

TO: Representative Bill Parker

FROM: John B. Chenoweth  
Legislative Counsel 

In response to Margo Waring's memo --

Item 1:

Work Order No. 7657: Page 1, following line 20: Insert  
\*Sec. 2 to read:

\*Sec. 2. INTENT. In providing for the division of the state's unorganized borough into unorganized boroughs, it is the intent of the legislature that all future transfers of functions or services from state agencies to regions within unincorporated areas be made only within the appropriate boundaries for unorganized boroughs established under AS 29.03.011 - 29.03.021, added by section 3 of this Act.

Item 4 is covered by AS 29.03.021.

Item 6: The previous language, precluding subdivision of areas within REAA's into smaller unorganized boroughs, read:

"Sec. . . . COMBINING OF SERVICE AREAS TO ESTABLISH UNORGANIZED BOROUGHs. The commissioner may, after public hearings in the areas affected, constitute the geographic area within two or more regional educational attendance areas as a single unorganized borough. . . ."

The provision was modified to the language you have in the bill (Work Order No. 7657) in response to Marge's December 8th memo and verbal clarification of some of the points in that memo.

\* \* \*

Representative Bill Parker  
Page 2  
January 18, 1980

Item 5:

Work Order No. 7656: Page 2, following line 14, insert new paragraph "(2)" to read:

(2) require that if the report does not favor incorporation of a borough, the report include an analysis and recommendations concerning a representative advisory body for the unorganized borough and an analysis and recommendations defining the relationship between that body and

(A) the school board for the regional educational attendance area;

(B) the coastal resource service area board, if one has been established under AS 46.40.110 - 46.-40.160;

(C) any other regional entity responsible for services; and

(D) the governments of cities located within that unorganized borough.

\* \* \*

Item 2 of Margo's memo is, I think, answered by the suggested language prepared in response to item 5 in that these regional strategy contracts may not run longer than 3 - 4 years.

Item 3 in that memo was not to be acted on.

JBC:ljb

CONFIDENTIAL

TO ARLISS  
FR MARGO  
RE UNORGANIZED BORO BILLS

I discussed Jack's memo with him today (1/17/80). Basically, he objects because the bill does not address the 2 following problems 1) absence of a tax base  
2) future relationship between the "boro" and the special service districts .

Jack made several suggestions to improve the bill:

1. A new section 101 which would state the intent that there will be a regional response to service delivery and planning and that there will be no new regional subdivision or separate single purpose service area to be used hereafter. ✓
2. A provision in the bill that X years from ~~date~~ effective date, the legislature will be advised regarding the relationship between the unorganized boros , the REAAs ,and the CRSBs. *CRA* ✓
3. Place the regional strategy bill within this bill. ✓
4. Make sure that the establishment criteria for the unorganized boros reflect the constitutional standards (either Art.X language or the REAA language), REAAs, Regional Corporate boundaries, and the boundaries of crsds. ✓
5. In the regional strategy section, regarding the scope of the study, say that if it appears that unorganized boro status is all that is feasible, the study will address and discuss the relationship of the unorganized boro to the REAAs and the CRSDs. ✓
6. Change the language back to "an unorganized boro consists of one or more REAAs". ✓

*Leave separate*

My discussion indicated that these changes would strengthen the bill and meet some of the problems seen in it.

*Arliss -  
read before  
telecom meeting  
today*

Sen. Arliss Sturgulewski

Rep. Bill Parker

January 15, 1980

to Arliss S. and Bill P, CRA committees

from Vic Fischer

re Jack Chenoweth's 1/14/80 comments on "unorganized borough" nomenclature

Jack takes the position that use of 'unorganized borough' in proposed bills is wrong from standpoint of legislative drafting and contrary to provisions of state constitution.

I defer to Jack with respect to legislative drafting.

However, I cannot accept Jack's position regarding what the constitutional provisions would require.

Jack's argument revolves around section 6, Article X provision of services in the unorganized borough with maximum local participation and responsibility. To deal with this matter, however, one has to look at section 3 as well as 6, plus keep in mind what the constitutional intent was as set forth quite clearly in the convention record.

The key to the issue is sec. 3: it provides that the entire state be subdivided into boroughs. Whether organized or unorganized, they are to meet criteria of population, geography, economy, transportation, etc. Each borough - unorganized as well as organized -- shall embrace an area and population with common interests.

The problem today is that the existing unorganized borough is patently illegal under the constitution. It does not meet the criteria or standards set forth in ~~unorganized~~ section 3 for both organized and unorganized boroughs.

*note*

The constitution and the constitutional record are very clear that the intent was to divide the entire state into regions, using standards currently being applied to organized boroughs only. The intent always was to have regional units that would be able to move from totally unorganized status to whatever degree of organization might be appropriate.

*agree*

Unlike Jack, I don't believe that sec. 6 "suggests" that the term unorganized borough be used in conjunction with service schemes entailing maximum local involvement. Note that sec 6 states: "The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs," then adding "allowing for maximum local participation and responsibility." ~~Make~~ the proviso is not the other way around: It does not say that only where local participation is provided can the state provide services. Thus, the state is to provide services it decides upon, with whatever local participation is appropriate. The principal purpose of the ~~and proviso is to make sure that local~~ participation be provided to maximum extent possible. And I think that the regional strategy planning provisions lay the basis for truly major local participation in all services being provided by the state in the particular region.

*good*

Note also that the first sentence of sec. 6 refers to "unorganized boroughs", using the plural -- another indication that the regional concept is basic to article X and that the present single unorganized borough is counter to both constitutional language and intent.

Thus I agree with Jack fully that the choice of terms is not insignificant. It's just that we end up on opposite sides!

The designation of regional unorganized borough would, in my opinion, carry out the mandate of the constitution. Maybe a bit late, but not too late. I do believe it should be handled now, without perpetuating an illegality and incongruity that was perpetrated twenty years ago. (By the way, this whole matter is discussed in greater detail in our draft/unpublished study on regional government in Alaska.)

I do not think that establishing unorganized boroughs would create any problem whatsoever with service areas, REEAs or CMSAs. Some appropriate language can assure that their status is preserved. In doing so, the legislature would simply be exercising its authority and jurisdiction under sec. 6. The process of folding existing service areas need be no more complex than legislative action long ago providing that independent school districts be part of organized boroughs. Since unorganized boroughs would not, under proposed legislation, have their own governing body or facsimile thereof, the relationship between the service areas and state government need not change in any way whatsoever.

OK?



Pls give copy to Jack C. before our conference call

*See Jack's letter to  
Do  
need to see  
how REEA's  
CMSA's relate  
to law to  
unorg borough*

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED  
AS A UNIT IN THE ORIGINAL DOCUMENT.

RECEIVED

APR 25 1979

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

7,8,9,10,11,12,1,2,3,4,5,6 PM

THIRD JUDICIAL DISTRICT



CITY OF KODIAK, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 KODIAK ISLAND BOROUGH and )  
 BETTY WALLIN, Mayor of )  
 KODIAK ISLAND BOROUGH, )  
 )  
 Defendants. )  
 )  
 )  
 )

RECEIVED

APR 27 1979

Alaska Office  
Keane, Harper, Pearlman  
and Copeland

Case No. 3KO-78-120 Civ

MEMORANDUM OF DECISION

The "Complaint for Declaratory Judgment and Injunction" filed by plaintiff City of Kodiak prays for equitable relief, including an injunction prohibiting the Kodiak Island Borough from operating Service District No. 1. Plaintiff further seeks a declaration that the Borough's establishment of Service District No. 1 was illegal. This action is based upon plaintiff's contention that the Borough's establishment of the Service District is contrary to Article X, Section 5 of the Alaska Constitution and AS 29.63.090(d) since the City of Kodiak, which lies contiguous to the Service District, has the legal capability to tax and provide municipal services of sewer, sewage treatment, water and roads. Further, plaintiffs assert that the Service District is unlawful under Article X, Section 1 of the Alaska Constitution as it creates another taxing entity.

On February 7, 1979 this court heard oral argument on plaintiff, City of Kodiak's Motion for Summary Judgment and defendant, Kodiak Island Borough's Cross-Motion for Partial Judgment on the Pleadings. After reviewing the pleadings, the memoranda submitted, and the arguments of counsel; and being fully advised, the court enters this, its Memorandum of Decision.

A BOROUGH IS NOT PROHIBITED AS A MATTER OF LAW FROM ESTABLISHING A SERVICE DISTRICT SIMPLY BECAUSE IT CAN BE ANNEXED BY A CITY THAT CAN PROVIDE THE SERVICE.

Plaintiff's Complaint and Motion for Summary Judgment are premised upon the following contentions:

The establishment of the Service District is unlawful under AS 29.63.090(d) and unconstitutional under Section 5, Article X, Alaska Constitution in that the roads, sewer and water service function and power can be provided by the City of Kodiak through annexation to the City, without any necessity for the creation of the Service District. Complaint, paragraph 15, p. 3.<sup>1</sup>/<sub>1</sub>

Thus, as a basis for its Complaint and Motion for Summary Judgment, the plaintiff is maintaining that, as a matter of law, the existence of the City of Kodiak with the legal capacity to provide sewer, water and road services prohibits the Borough from forming a service district to provide such services.

Plaintiff's construction of Section 5, Article X and AS 29.63.090(d) as literal and absolute directives to this court would have the consequence of prohibiting any new service area from ever being established anywhere in Alaska, as every borough in Alaska contains at least one city which, in a literal

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<sup>1</sup>Section 5, Article X, Alaska Constitution provides in pertinent part:

"Service areas to provide special services within an organized borough may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. A new service area shall not be established if, consistent with the purposes of this article, a new service can be provided by an existing service area, by incorporation as a city, or annexation to a city."

AS 29.63.090(d) provides in pertinent part:

(d) A new service area may not be established if, consistent with the purposes of Article X of the State Constitution, the new service can be provided by an existing service area, by annexation to a city, or by incorporation as a city.

sense, could provide a service in the borough if the rest of the borough were annexed to it. Plaintiff's construction would enable cities to force annexation upon areas which do not want to be annexed and which only need and desire a limited number of services that could be provided more effectively and economically by a service district.

Even if a purely rural borough with no existing cities were established, it is difficult to imagine an area where the need for services would arise in which the population was not large enough to provide the legal basis for a second class city. This, under plaintiff's construction, would activate the statutory prohibition against establishment of a service district where the service "can be provided . . . by incorporation as a city". Such a legalistic interpretation of Alaska's constitutional and statutory provisions could not have been intended, and no court should find the law to be so literal in its requirements. Certainly the language of both the constitutional and statutory provisions to be considered in this case is ambiguous and is, of necessity, subject to construction as to the intention of the framers. <sup>2/</sup>

A. Constitutional Framers' Intent

(1) Drafting of Section 5 of Article X of the Constitution.

The first public draft of Section 5, Article X of the Alaska Constitution, referred to as Proposal No. 6, was never considered and voted upon by the constitutional convention. Instead, the Local Government Committee which drafted the proposal simply introduced it to the convention and then recalled it prior to debate or vote.

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<sup>2</sup>In addition to other ambiguous language contained in the pertinent constitutional and statutory provisions, the words "can be provided by . . ." necessitates construction and ascertainment of the framers' intent. For example, it is unclear as to what is meant by those words, how it is to be determined whether the requirement is satisfied, and who is to make that determination. The words "consistent with the purposes of Article X" also are in need of judicial construction.

Proposal No. 6/a<sup>3</sup> was the first draft actually considered and voted upon by the Constitutional Convention. Proposal No. 6/a was the subject of extensive debate at the Convention (see e.g. pages 2610-2730 of Constitutional Minutes). It was this proposal that was voted upon by the Convention, adopted and enrolled.

Proposal No. 6/a as adopted was sent to the Style and Drafting Committee. Under the applicable Constitution Convention Rules, the Style and Drafting Committee had no authority to make substantive changes to Proposal No. 6/a. See Rule 16c of the Permanent Rules, Constitutional Convention of Alaska.<sup>4</sup> The Style and Drafting Committee authored the final version of Section 5, Article X and delivered it to the convention for consideration. At no time during the Convention's consideration of the Style and Drafting Committee's draft was it either stated or suggested that a substantive change had been made to the provisions of Proposal No. 6/a as adopted by the Convention. Thus, under the rules applicable to the Convention, Section 5, Article X was to have a substantively equivalent meaning to original Proposal No. 6/a. Proposal No. 6/a expressly provided that "the judgment of the

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<sup>3</sup>Proposal No. 6/a reads in pertinent part as follows:

"Section 6. Service areas to provide special services within portions of an organized borough may be established, altered or abolished by the assembly, subject to the provisions of law. The assembly may authorize levying such taxes, charges or assessments within any service area as may be necessary to finance the activities. No new service area shall be created when, in the judgment of the assembly, the objectives of Section 1 of this article would be better served by giving a new function to an existing service area, incorporation of the area as a city, or annexation of the area to a city. (emphasis added)

<sup>4</sup>Rule 16(c) provides in pertinent part:

"The committee on Style and Drafting . . . shall have the authority to rephrase or to regroup proposed language or sections of the proposed constitution but shall have no authority to change the sense or purpose of any proposal referred to it."

assembly" is to determine whether new or additional services can be provided better by a new service area, by annexation to a city, by an existing service area, or by incorporation as a new city. Section 5, Article X must be construed to have the same meaning.

(2) Framers' Intent as Revealed in  
Constitutional Minutes

The Constitutional Minutes are most helpful in understanding the framers' intent as to the meaning of Section 5, Article X.

In particular, the testimony of Delegate Taylor is enlightening. The following is an extremely relevant portion of Mr. Taylor's testimony:

"Now there is no forced annexation in this matter as I can see it, so there is a wide choice. They can be either a service district or those functions can be performed by an already existing service area. They can incorporate as a city or they can be annexed to a city. It is up to the body in which they are represented. It is the American way of doing things that the body decides, that it be for the best interests of this area. The body can decide that it would be possibly to the financial betterment of the people in that area if they did incorporate another service district or if they incorporated as a city. So, I think it should be left in here so that the body, the assembly, could meet and consider all factors and recommend as to whether they could organize as a service district or whether they could secure the same service from an adjacent service district or whether they could incorporate as a city or whether they could be annexed to a city that is already incorporated. It is a wide latitude that they are given and I think that in an assembly in which they are represented and are a part of that body, I think they would receive proper consideration. [emphasis added]." pp. 2716-17, Constitutional Minutes.

The consensus behind the views expressed by Delegate Taylor is confirmed by testimony of other delegates which can be found at pages 2712 - 17 of the Constitutional Minutes.

Clearly, the Constitutional Minutes reflect that the framers intended that cities were not to be permitted to prevent the borough's establishment of a service district by forcing or threatening annexation.

THE SERVICE DISTRICT DOES NOT CREATE A DUPLICATION OF TAX-LEVYING JURISDICTIONS IN VIOLATION OF ARTICLE X, SECTION 1 OF THE ALASKA CONSTITUTION.

Paragraph 17 of plaintiff's Complaint asserts that the Service District is unlawful under Article X, Section 1 of the Alaska Constitution as it creates another taxing entity. This contention is without merit because the establishment of new service areas by the Borough does not create new tax-levying jurisdictions.

Under both the relevant constitutional and statutory provisions,<sup>5</sup> the tax-levying authority for new service districts is retained and exercised solely by the Borough. No new local government unit has been established with authority to exercise local government power at the policy level. Even where administrative functions are delegated by the Borough to a service district, the Borough nevertheless has full control over those functions.

The Constitutional Minutes reflect that the concern of the Delegates was to avoid a multiplicity of independent tax-levying jurisdictions, such as would have been the case had such entities as school districts been given tax-levying authority independent of cities and boroughs.<sup>6</sup> The delegates foreclosed

<sup>5</sup>Article X, Section 5 provides in part:

"The assembly may authorize the levying of taxes, charges, or assessments within a service area to finance special services. [emphasis added]."

AS 29.63.090(b) provides:

The assembly may levy or authorize the levying of taxes, charges, or assessments in service areas to finance the special services. [emphasis added]

<sup>6</sup>See, e.g., comments of Delegate Taylor, Constitutional Minutes pp. 2699-2700. Also see Constitutional Minutes, p. 2630.

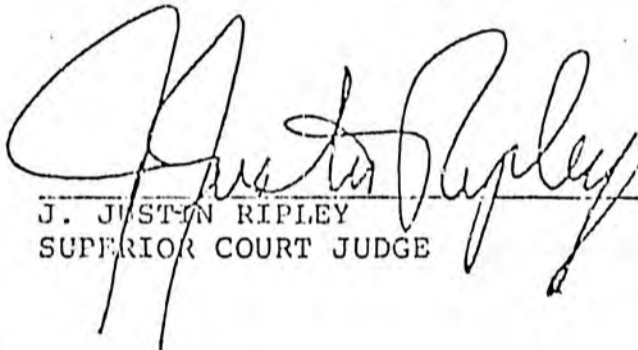
the problem by granting local tax-levying authority to only two bodies, cities and boroughs (See Alaska Constitution Article X, Section 2), and by permitting the establishment of service districts only under the control and auspices of boroughs. See Article X, Section 5 and AS 29.63.090. The fact that the framers of the Alaska Constitution authorized the establishment of service districts rebuts the suggestion that they viewed the creation of such districts as the creation of new tax-levying jurisdictions.

CONCLUSION

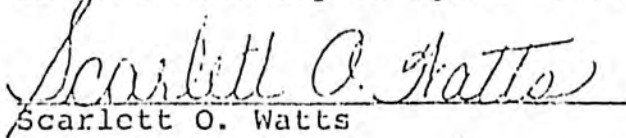
Since plaintiff's interpretation of the relevant constitutional and statutory provisions is incorrect, not only must its Motion for Summary Judgment fail, but also its Complaint must be dismissed because of the failure of plaintiff to state a viable cause of action against defendants.

IT IS ORDERED that defendant's Motion for Partial Judgment on the Pleadings is granted and plaintiff's Complaint is dismissed with prejudice.

DATED at Anchorage, Alaska this 19<sup>th</sup> day of April 1979.

  
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J. JUSTIN RIPLEY  
SUPERIOR COURT JUDGE

I certify that I mailed copies of the foregoing document to Mr. Donald M. Johnson and Mr. James Crane at their address of record on this 20th day of April 1979.

  
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Scarlett O. Watts

LSA  
testimony

Senator Sturgulewski

Liza, why don't you go ahead with your testimony and we'll do a little quick checking on it. That issue was raised and frankly just yesterday, and I haven't had time to research it, so if you'll continue on, I'll check and get back on that.

Liza, I'll raise some questions, but I don't expect  
Liza Rudd- I'll raise some questions, but I don't expect answers because I know you've got lots of people and I just raise them so that you will aware and if you think they are worth looking into, then you go ahead, but I don't expect any answers to these questions. On Line 19 & 20 - SB 348 - the encouraging of the development of regional responsibilities of planning and implementation of these services, that seems to me to be ... for what you are really saying which is providing for these corporations of home rule boroughs by unorganized boroughs. And, I think if that's what you are really talking about, and it certainly is according to the title of your bill, then that's what you should say and in fact you should probably put it first rather than last under the pertinent section. On page 3, SB 348, Line 17, Sec. B, boundaries may be modified by the Legislature, the last sentence there the agency requesting modification of the boundaries shall submit to the Legislative Council - I wonder how this relates to the responsibilities of DPDP on the outline of SB 350, and whether or not this provision, in this bill might not be looked at as pat? by the Governor's Office. I wonder if the Governor's Office might not want agencies independently going to the Legislative Council and asking for suggested boundaries.

Sen. Sturgulewski. The answer is right. That issue has been raised and it will be addressed.

Lize Rudd - O.K. maybe I should just shut up. I think everybody's .., or has ~~already thought of. On page 5, (C), I'm wondering why you only~~

42 - already thought of. On page 5, (C), I'm wondering why you only provide for one shot at a charter, instead of two, as other boroughs have. You know, when we unified here, in Anchorage, each charter commission got a chance to write the charter once and then if defeated, write it again; and that's not provided under this method of incorporation, and maybe you've thought why, but I was just wondering why. On page 6, line 16, (B?) the word substantially, I don't know if that's usual, but it seems to me that the Lt. Governor should provide the elections in the manner provided in the election code, rather than substantially in ..... ON line 26 there, the repealers, these 2 repealers refer to the powers of home rule boroughs and general .. municipalities, and I understand the reason for repealing it, but I think you still need it on, do you not the statement that a home rule municipality can perform any functions not forbidden by State law, and you also need a state law that says general long? municipality purposes provides purposes, provided under state law, and if you repeal those 2 sections without reinstating those statements, I think something is missing in the law. SB 349 - it seems to me again there is a mutual fear ? that maybe this Act should be named something like the assistant to the study of the feasibility of borough incorporation, rather than talking about planning assistance, because the minute I got down to the section dealing with regional management programs, I asked myself the question, who will manage what? It doesn't say. It just says for the purpose of preparing the management program for an unorganized borough, and it doesn't say who is going to manage it, or what they are going to manage, and so on. If you are talking about <sup>Managing</sup> adding the delivery of state services in the unorganized borough, that should be .. but it seems that is not what you are talking about, because when you get over later, you are talking about this contract, the only thing required of the contract, is the analysis and recommendation concerning the incorporation of a borough government. So that seems to be the real purpose of this bill, is to provide for assistance to groups in order to plan for the incorporation of a borough, and I think that should be