

SCOMM

#11:15

Roosevelt Hotel

539 H Street
Anchorage, Alaska 99501

277-5541

To: Senator John Huber
Chm of Senate Special Comm on Taxes + Revenue

~~Dear Mr. Martin:~~

City Center — Free Parking

120 Rooms — Direct Dial Phones

Bruce Kendall, Owner-Manager

May 29, 1975

I don't believe it is legal for the oil companies to loan money to the state treasury and use the future royalties as collateral. My reasoning is based on facts as well as theory:

1. Nevada, New Mexico, Wyoming and California hold that future oil royalties in the ground are "realty", just like land. The owners can sell the oil "once", just as land owners can sell but "once". Furthermore, these states have some court tests on this subject.
2. Cook Inlet production royalties are legal since that oil has already been produced, severed and taxed. The present new oil revenue law is a mortgage because that resource is in place, not severed (will not be for some years to come), nor have the taxes been paid as per lease agreement. Our Constitution has been interpreted that, by law, the lease holder or producer, whichever, doesn't have to pay severance, income tax, or business license tax until it is being produced for use. To carry this theory further, it is surely no different than placing a first mortgage on state lands or buildings. How it is possible to construe that the oil in place is different than realty, capital improvements, or a fixed asset of the state's residents?
3. The administration, through the elected governor and empowered state agency, can legally lease oil lands for the single purpose of finding and producing the oil from said leased lands and collect annual rents. Therefore, upon discovery and production the tax laws apply. That chain of events makes the bonus and lease money rental income for the general treasury for the elected legislature to appropriate for the general public's good and benefit. To rent property or a fixed asset is one thing; . . . to pawn it is another. That places this legislature in the position of obligating a future legislature to return the debt in reduced earned income to the treasury of the state. It certainly must follow that the future legislature must allow credit to the debt since the future legislature would be powerless to renege if the present bill becomes law, and is not successfully challenged in court prior to any collection of monies. The state constitution clearly states that each year the operating budget must at least balance with that year's earned revenues. At present, that isn't exactly fact. The state constitution also states very clearly that any debt of more than one year's duration must be approved by the qualified voters of our state. It is very definitely separated in our constitution that annual operational appropriations and long-term debts are different subjects.

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4. The state constitution also states that no long-term debt can be used for operationsl budget deficit financing. It can only be used for specific capital improvements that are approved by the qualified electorate. Therefore, we must address ourselves to the question of what is the "operating budget" that is appropriated by each annual legislature and disbursed by each legal agency and what is a "long-term" or "fixed debt"?
 - (a) An operational annual budget is composed of day-to-day expenses to operate the agencies, expend aids and benefits to the general public as prescribed by law and to pay the debt service charges on long-term debts, i.e., capital return and interest to the long-term lender is also an operational budget item.
 - (b) Long-term debts are approved by the voters of the state, then the proceeds are appropriated for a specific voter-approved improvement and is specifically not a general fund item to be allocated at the legislature's whim of the moment. And even worse, "How can a private corporation transfer funds in this manner without showing earned interest on balances?" I am sure that the IRS will have something to say on this.
5. In conclusion, how can this legislature or our elected administrator borrow money on a fixed asset of the state without the consent of the qualified voters when it is an obvious fact that long-term reimbursement of those funds to the lender are spelled out so specifically in the law? In addition, the oil companies intend to use this advance payment on royalties as collateral in their own private financing. How could the above points be more clearly identified as a promissory note of the State of Alaska backed by oil royalties as realty?

Respectfully yours,

Bruce Kendall
Speaker of Alaska State House
1963-64

BK:mmm

AGO 530360 +

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Chm of Special Senate Committee
on Taxes and Revenues

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~~The Honorable Guy Martin —
Commissioner of Natural Resources
Beaufort Sea Hearings
Anchorage, AK —~~

My Dear Mr. Martin:

The Legislature has been struggling for 125-30 days now with a budget problem of serious shortages. This administration and the Legislature have raised consumer taxes. Not enough money was raised to even dent the deficit proposed. Also, both have been toying with "gimmickery" such as the "Ad Valorem Tax" on reserves plus an advance pay scheme on "royalties" which as I previously presented. It appears to me when our State government has such a serious short fall in cash flow. . . and it appears to almost everyone that I know, that the only thing to do is dispose of something of value that has a market for cash. That, gentlemen, is the "Beaufort Sea lease sale". It's really the only value that can be converted to cash quickly.

This commission surely can't recommend leasing the lower Cook Inlet which is before the Federal Supreme Court. On this score you might have to repay all or part of the last Cook Inlet sale because that's before the State Supreme Court. The Gulf of Alaska is under considerable doubts as to any lease sales in that area for sometime to come. Our Governor will, in my opinion, never lease any lands in the major river deltas even if they were ready to lease.

The Governor's task force turned in a report on the Beaufort Sea which in essence said it is within the tolerable ecology and technology limits to go ahead and produce oil if found. The task forces only negative comment was, "It would bring more people to Alaska."

Therefore, I think that your hearing is timely and is really the only transferable value that is available in the time frame that exists for budget balancing. I sincerely hope your findings are positive and I am absolutely sure that the Legislature will be very receptive to a positive recommendation. Thank you for your time.

Very truly yours,

Bruce Kendall

Bruce Kendall
Speaker of the State House
1963-64

BK:mm

AGO 530361

HABER
May 27, 1975

The Honorable Helen Fischer
Representative
Alaska State Legislature
Pouch V
Juneau, Alaska 99801

Dear Representative Fischer:

I don't believe it's legal for the oil companies to loan money to the State treasury and use the future royalties as collateral. My reasoning is based on facts as well as theory.

No. 1 - Nevada, New Mexico, Wyoming and California hold that future oil royalties in the ground are realty "just like land." The owners can sell the oil "once", just as land owners can sell but "once." Furthermore, these states have some court tests on this subject.

No. 2 - Cook Inlet production royalties are legal since that oil has already been produced, severed and taxed. The present new oil revenue law is a mortgage because that resource is in place, not severed (will not be for some years to come) nor have the taxes been paid, as per lease agreement. Our constitution has been interpreted that by law the lease holder or producer, whichever, doesn't have to pay severance, income tax or business license tax until it's being produced for use. To carry this theory further, it is surely no different than placing a first mortgage on state land or buildings. How is it possible to construe that the oil in place is different than realty, capital improvements or a fixed asset of the states' residents?

No. 3 - The administration, through the elected governor and empowered state agencies, can legally lease oil lands for the single purpose of finding and producing the oil from said leased lands, and collect annual rent. Therefore, upon discovery and production the tax laws apply. That chain of events makes the bonus and lease money rental income for the general treasury for the elected legislature to appropriate for the general public's good and benefit. To rent property or a fixed asset is one thing -- to pawn it is another. That places this legislature in the position of obligating a future legislature to return that debt in

reduced earned income to the treasury of the State. It certainly must follow that the future legislature must allow credit to the debt since the future legislature would be powerless to renege if the present bill becomes law, and is not successfully challenged in court prior to any collection of monies. The State Constitution clearly says that each year the operating budget must at least balance with that year's earned revenues. At present, that isn't exactly fact. The State Constitution also states very clearly that any debt or more than one years duration must be approved by the qualified voters of our State. It is very definitely separated in our constitution that annual operation appropriations and long term debts are different subjects.

No. 4 - The state constitution also states that no long term debt can be used for operational budget deficit financing. It can only be used for specific capital improvements that are approved by the qualified electorate. Therefore, we must address ourselves to the question of what is the "operating budget" that is appropriated by each annual legislature and disbursed by each legal agency, and what is "long term" or "fixed" debt.

- A. An operational annual budget is composed of day to day expenses to operate the agency, expend aids and benefits to the general public as prescribed by law, and to pay the debt service charges on long term debts, i.e., capital rent and interest to the long term lender is also an operational budget item.
- B. Long term debts are approved by the voters of the state, then the proceeds are appropriated for a specific voter-approved improvement, and is specifically not a general fund item to be allocated at the legislature's whim of the moment.

No. 5 - In conclusion, how can this legislature, or our elected administrator, borrow money on a fixed asset of the state without the consent of the qualified voters when it is an obvious fact that the long term reimbursement of those funds to the lender are spelled out so specifically in the law? In addition, the oil companies

intend to use this advance payment on royalties as collateral in their own private financing. How could the above points be more clearly identified as a promisory note of the State of Alaska backed by oil royalties as realty? And worse, how could a private corporation show such a transfer of funds without an interest yield? I am sure that the IRS will have something to say about that.

Respectfully yours,

Bruce Kendall
Speaker of the Alaska State
House 1963-64