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02-001B (Rev. 10/76)

STATE of ALASKA

MEMORANDUM

Singer
#18:22A

TO: Frances A. Ulmer, Director
Div. of Policy Development & Planning

DATE: April 11, 1979

FILE NO: J-66-614-79

TELEPHONE NO:

FROM: AVRUM M. GROSS
ATTORNEY GENERAL

SUBJECT: Use of Permanent Fund income as debt guarantee, HB 414

By:
Rodger W. Pegues
Assistant Attorney General

You have asked us to review HB 414, and to advise whether the legislature may provide for the use of the income from the Permanent Fund to guarantee bonds, notes, and other indebtedness issued to finance public power projects.

While HB 414 will require substantive amendment, the income from the permanent fund probably can be used for this purpose.

The constitutional amendment establishing the permanent fund provides in pertinent part that "[a]ll income from the permanent fund shall be deposited in the general fund unless otherwise provided by law." Alaska Const., art. IX, § 15. */ The concluding clause: "unless otherwise provided by law" was intended to give the legislature maximum flexibility in using the fund. 1976 H. Jour. 684-685. It may be that the record of proceedings before the several committees which considered the amendment and of proceedings on the floor of the legislature would show its purpose in more detail. Its purpose is not discussed in the ballot summary or voter's pamphlet. Both simply advised the electorate that the income would go into the general fund and be available for appropriation unless otherwise provided by law. The title of the joint resolution by which the legislature proposed the amendment makes no reference to the disposition of the Permanent Fund's income. Disposing of it so as to establish still another dedicated fund probably encompasses a whole new and different subject from establishing the

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*/ The clause, "unless otherwise provided by law" was added to the proposed constitutional amendment by a House Judiciary Committee Substitute. Compare SSHJR 39, 1/15/76, with CSSS HJR 39, 3/24/76. It was dropped by SCS CSSS HJR 39, 4/7/76 (which would have authorized additional dedications), and restored by SCS CSSS HJR 39 (Res), 5/21/76. It remained in SCS CSSS HJR 39 (Res) am S, 5/21/76, the final version.

Alaska Permanent Fund. As a general rule, separate subjects must be treated separately in adopting constitutional amendments, and each must be summarized for the voters. Our conclusion is, therefore, that the clause does not exempt the fund's income from the prohibition against dedicated funds.

We turn to the question of whether the clause permits the legislature to provide for the Permanent Fund's income to be pledged as a guarantee for financing public power projects. While we doubt that the clause exempts the fund's income from the prohibition against dedications for a special purpose, we believe that neither repaying debts nor guaranteeing their repayment comes within the constitution's prohibition against dedicated funds and that, therefore, the income can be used as a security to repay or guarantee the repayment of a debt for a given capital improvement. */

The next question is whether an appropriation is required to make payments on the debt as may become necessary.

The relevant provisions of the constitution provide as follows:

> No money shall be withdrawn from the treasury except in accordance with appropriations made by law.

Alaska Const., art. IX, § 13. **/

It appears that an appropriation would be necessary either to make the guaranty at the outset or subsequently to make payments. A guaranty is a promise that payment will be made in accordance with its terms. Aside from those

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*/ This conclusion is based on a reading of the Minutes of the Constitutional Convention and the files of the Convention's Committee on Finance and Taxation. The wording, "proceeds of any tax or license," in article IX, section 7, of the constitution was intended to allow exemptions for pension fund payments, bond proceeds, sinking fund receipts, and the like. 1975 Op. Atty. Gen. No. 9, 6-9.

**/ A related provision, article II, § 13, requires appropriations to be made in bills that are confined to appropriations.

the promise is unconditional. However, any promise to pay made by the state is necessarily conditioned on the appropriation of the monies to be paid. Id. In order to meet this constitutionally imposed condition, an appropriation is necessary. It can be made at the outset as a conditional appropriation, e.g., "$x million is appropriated annually to pay the guaranty on the condition that it becomes due." It can be made, as is done for general obligation bonds, as the payments become due, i.e., in the case of a guaranty, an annual, conditional appropriation.

While there is authority that no money can be paid from the treasury even on a judgment, United States v. Commonwealth, 288 S.W.2d 664 (Ky. 1956), the better view is that the provisions of a state constitution requiring an appropriation to be made by law must give way under the combined effect of the federal constitution's contracts and supremacy clauses. */ Cf., Virginia v. West Virginia, 246 U.S. 565 (1918). A guaranty is a contract and cannot be impaired. The legislature's refusal to honor it would constitute its impairment. A court would render judgment for the debtor and levy on the fund's income to enforce the judgment. Therefore, no appropriation would be required in order to enforce payment. Nevertheless, to avoid the necessity for obtaining a judgment, an appropriation should be made.

It appears that the concluding clause of the 1976 amendment authorizes the legislature to make an appropriation from the income on a continuing basis for the purpose of paying or guaranteeing payment of a debt for a public power project, i.e., provide in a single Act for a given sum of monies to be expended annually from the income of the fund. Thus, a conditional appropriation could be made at the time the guaranty is made, and no further appropriations would be required. With respect to a guaranty, our best guess is that a continuing appropriation would probably be upheld. The guaranty would probably include a promise not to repeal the appropriation so long as the guaranteed debt remains outstanding. Any repeal would then be invalidated by a court.

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*/ U.S. Const., art. VI, cl. 2; Amend. V, XIV, § 1.

The next question is whether the guaranty must be made by law and approved by the voters. Because the guaranty would be a contract for a conditional debt which could result in the state's being, in effect, in debt to the creditor, it appears that the approval of the electorate would be required to make the guaranty. Article IX, section 7, of the Alaska Constitution prohibits contracting debt unless it is for a capital improvement and is ratified by the electorate. The court places a great premium on this ratification. Thomas v. Rosen, 522 P.2d 1120 (Alaska 1974). The constitutional exceptions from the requirement of ratification do not expressly apply to a guaranty. Alaska Const., art. IX, § 11. Our best guess is that the requirement, therefore, applies to guaranties and that any proposed guaranty would have to be presented to the voters as a ballot proposition. It would almost certainly, therefore, require as well that, as with a bond issue, the guaranty be authorized by law in the first instance and then submitted to the voters. Enactment of a law is what the language of the 1976 amendment requires on its face.

We do not believe that a one-time-only ratification by the voters of an Act generally authorizing the Permanent Fund's managers to guarantee debts for public power projects would satisfy the constitutional requirement for contracting debt. However, it might aid the court in deciding that those requirements do not apply to a guaranty which is based solely on the Permanent Fund's income. There is a line of cases which hold that debt restrictions similar to those contained in article IX, section 8, of the Alaska Constitution apply solely to debts which the state's full faith and credit is pledged to pay. The likelihood that the rationale of these cases would be applied by the Alaska Supreme Court to a guaranty based solely on the income from the Permanent Fund could possibly be increased by the voter's having ratified the concept. Nothing prevents the legislature from making the statutory authorization for guaranties contingent on voter approval. Accordingly, while we do not believe it will be valid, a general authorization for the Permanent Fund managers to make guaranties could be enacted and then tested in court.

Finally, the constitution provides that the "public credit [cannot] be used except for a public purpose." Alaska Const., art. IX, § 6. We believe that only the most

irrational of power projects would be barred under this provision. E.g., Wright v. City of Palmer, 468 P.2d 326 (Alaska 1970). We assume that the projects would be public works. Whether the income from the Permanent Fund could be used to guarantee financing for private works is an entirely different question which involves entirely different issues.

RWP/pjg

cc: Jerry Reinwand
Office of the Governor

Ron Lind
Div of Budget & Management

Keith Specking
Office of the Governor

bcc: Tom Singer
Div of Policy Development
& Planning

M E M O R A N D U M

March 10, 1980

SUBJECT: Eligibility for state benefits determined by durational residency

TO: Representative Hugh Malone

FROM: James L. Baldwin
Legislative Counsel

You have asked if the state and federal constitutions permit the enactment of a law which conditions the payment of state benefits on the length of time a person has been a resident of the state.

This type of durational residency requirement creates separate classes of state residents who participate unequally in the benefits provided by the state. The federal constitution provides that a state may not deny a person within its jurisdiction the equal protection of the law. Section I of Amendment XIV, Constitution of the United States. The state constitution provides

". . .that all persons are equal and entitled to equal rights, opportunities, and protection under the law,. . . ."

Article I, section 1, Constitution of the State of Alaska.

Federal Equal Protection Determinations

A federal court determines the validity of a durational residency requirement by isolating the right impaired by the challenged state statute. If the federal court finds that the right impaired is fundamental to state or federal citizenship, the durational residency requirement is valid only if the state has a compelling interest which requires the discrimination based on length of residency. See, Oregon v. Mitchell, 400 U.S. 112 (1970). Alternatively, if the federal court finds that the right impaired is not fundamental to state or federal citizenship, the durational residency requirement is valid only if the legislature had a rational

basis for discriminating between classes of state recidents. This rational basis standard was announced by the United States Supreme Court in F.S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920). In that case the Court explained that for a statute to survive judicial scrutiny

> [It must] be reasonable not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.

Alaska Equal Protection Determinations

The Alaska Supreme Court has adopted a standard of review for alleged equal protection violations which differs from the federal standards. The Court announced the state standard in State v. Erickson, 574 P.2d 1 (Alaska 1978). The Court explained its standard of review as follows:

> Such a test will be flexible and dependent upon the importance of the rights involved. Based on the nature of the right, a greater or lesser burden will be placed on the state to show that the classification has a fair and substantial relation to a legitimate governmental objective. Where fundamental rights or suspect categories are involved, the results of this test will be essentially the same as requiring a "compelling state interest"; but, by avoiding outright categorization of fundamental and non-fundamental rights, a more flexible, less result-oriented analysis may be made.

State courts apply the equal protection test adopted in Erickson by

> (1) determining the purposes for which the challenged legislation is intended and whether those purposes are within the power of the state to promote;
>
> (2) examining the means used to achieve the purpose of the legislation and whether the means directly achieve the purpose; and
>
> (3) balancing the importance of the state's interest in the means used to accomplish the legislative purpose against the nature of the personal right which is impaired.

Alaska Durational Residency Cases

The Alaska Supreme Court has had more than one occasion to test the validity of durational residency requirements. A brief summary of these cases follows:

(1) State v. Van Dort, 502 P.2d 453 (Alaska 1972), -- a 75-day durational residency requirement for voting in state elections was found to be unconstitutional as a violation of the fundamental right of interstate travel and a 30-day residency requirement for voting was expressly approved;

(2) State v. Wylie, 516 P.2d 142 (Alaska 1973) -- a one-year state residency preference for state employment was found to be unconstitutional as a violation of the fundamental right of interstate travel;

(3) State v. Adams, 522 P.2d 1125 (Alaska 1974) -- a one-year durational residency requirement for the initiation of divorce proceedings was found to be a violation of the state constitution;

(4) Gilbert v. State, 526 P.2d 1131 (Alaska 1974) -- a three-year durational residency requirement for legislative office was upheld as supported by the compelling state interest of assuring that legislators are well acquainted with state conditions and the needs of the voters; the court also found that less restrictive alternatives to achieve these interests were unavailable;

(5) Hicklin v. Orbeck, 565 P.2d 159 (Alaska 1977), rev'd on other grounds, 437 U.S. 518, 57 L.Ed.2d 397 (1978) -- a one-year durational residency requirement for pipeline jobs was found to be unconstitutional as an unjustified impairment of the right to interstate travel; and

(6) Castner v. City of Homer, 598 P.2d 953 (Alaska 1979) -- a one-year durational residency requirement for seeking municipal office was found to be constitutional. The Court relied heavily on Gilbert v. State, supra.

It is difficult to predict the outcome of a case involving a challenge to a classification of state residents determined by length of residency in the state similar to those contained in CSSB 122 (Rules) and CSHB 696 (State Affairs). Essentially, these two bills establish five separate classes of state residents who receive varying amounts as a refund of taxes (CSSB 122) or a residency payment (CSHB 696) determined by years of residency of the person receiving the refund or payment.

The Alaska Supreme Court was presented with a challenge to an extended durational residency requirement in Thomas v. Bailey, 595, P.2d 1 (Alaska 1979). That case involved the Beirne Homestead Initiative which created four classes of residents consisting of (1) those persons who have resided in the state for less than three years and who were ineligible for state land; (2) those persons who have resided in the state for more than three years but less than five years who were entitled to one grant of forty acres of land; (3) persons who have resided in the state for more than five years but less than ten years, who were entitled to two forty-acre grants of state land totalling eighty acres; and (4) residents of ten years or longer who were entitled to receive four grants of forty acres each, or a total of 160 acres of state land.

The validity of the durational residency classification was argued before the Court. However, the Court chose to rest its decision on a determination that a conveyance of land by initiative is an appropriation and barred by Article XI, Section 7 of the state Constitution. The majority of the Court did not reach the durational residency issue because the finding of a violation of the initiative process was sufficient to dispose of the case.

However, Justice Rabinowitz authored a separate concurring opinion in which he concluded that the residency classifications in the Beirne Initiative were in violation of the equal protection requirements of Article I, Section 1 of the state Constitution. He expressed his conclusion as follows:

> In light of the consistent pronouncements by this court concerning the fundamental nature of the right to travel under our state constitution in prior cases, I believe there is a strong case presented in favor of continuing

> to apply the most stringent standard of review to durational residency classifications under the new, flexible equal protection test adopted in State v. Erickson, 574 P.2d 1 (Alaska 1978). However, even starting from the premise that the least intensive scrutiny available under Erickson applies, I do not think that the classification of Alaska residents into four groups of dissimilarly treated individuals based on duration of residency for purposes of disbursing grants of state land is "reasonable, not arbitrary" and "rest[s] upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced [are] treated alike."

(Citing Isakson v. Rickey, 550 P.2d 359, 366 (Alaska 1976)). (footnotes omitted)

The view of Justice Rabinowitz may foreshadow the possible conclusion of the Alaska Supreme Court on the question of durational residency classifications.

Application to Pending Legislation

Two arguments have been proposed to support a classification of state residents by length of residence. They are:

> (1) a state benefit based on the number of past years of state residency equalizes the cost of government between short-term and long-term residents; and
>
> (2) the state has broad authority to pay benefits derived from the permanent fund because the permanent fund represents revenue from natural resources exclusively owned by the state.

The first argument set out above will fail unless some direct relationship exists between the governmental cost and the contributions of state residents. An example of a durational residency requirement which achieves a proper cost equalization is a durational residency requirement for resident tuition at state universities and colleges. Starns v. Malkerson, 326 F.Supp. 234 (D. Minn. 1970) aff'd, 401 U.S. 985, 28 L.Ed 2d 527 (1971). Starns upheld a one-year residency requirement for resident tuition at the University of Michigan. In that

case the Court reasoned that the residency requirement was justified as a partial cost equalization since the challenged statute required nonresidents to be taxpayers for a reasonable period before they become eligible for resident tuition while attending public educational institutions. However, it should be noted that (1) there is a direct connection between the payment of taxes and the cost of public education which is partially supported by taxes; (2) nonresident students are not prevented from attending state educational institutions if they pay nonresident tuition; and (3) after the required period has elapsed, nonresidents may become eligible for resident tuition. I have difficulty finding a direct connection between state benefits paid from the permanent fund and any public costs associated with the accumulation or distribution of the permanent fund. I conclude from Starns that something more than glittering generalities about the past suffering of long-term residents is needed to support a cost equalization argument. The legislature must develop a cost analysis of the actual dollars that are recovered for state residents through a durational residency requirement.

The second argument set out above is grounded on the ancient case of McCready v. Virginia, 94 U.S. 391, 24 L.Ed. 248 (1877) which involved a law limiting commercial fishing in intra-state waters to state residents. The challenged law was upheld in McCready on the ground that the fishery was not an interstate activity; i.e. solely in intra-state waters -- and that a state may limit the use of its resources to its own residents. The proponents of this argument claim that the state may deny benefits to nonresidents and may distribute income from the permanent fund to residents unequally because this income is derived from petroleum resources owned by the state. The Alaska Supreme Court relied on McCready in the Hicklin case and stated at page 169 of that opinion

> Accepting the premise that the United States has and should have one common economy, we do not accept the offered conclusion that the government of Alaska can never make benefits available to citizens of Alaska in preference to citizens of other states.

Hicklin was appealed to the U.S. Supreme Court. There the appellant job seekers argued that the state's discrimination against nonresidents in hiring for petroleum related jobs violated the Privileges and Immunities Clause contained in

Article IV, section 2 of the U.S. Constitution and that the state ownership of petroleum resources did not justify this discrimination. The Supreme Court reversed the holding of the Alaska Supreme Court and expressed the current law regarding the McCready doctrine as follows:

> "We do not agree that the fact that a state owns a resource, of itself, completely removes a law concerning that resource from the prohibitions of the [privileges and immunities] clause. Although some courts, including the [Alaska Supreme] court below, have read McCready as creating an 'exception' to the Privileges and Immunities Clause, we have just recently confirmed that '[i]n more recent years . . . the Court has recognized that the States interest in regulating and controlling those things they claim to "own" . . . is by no means absolute."

(Citing Baldwin v. Montana Fish and Game Comm'n, 436 U.S. at 385, 56 L Ed. 2d 354) Hicklin v. Orbeck, 437 U.W. 518, 523 57 L Ed. 2d 397, 406 (1979)

The Alaska Supreme Court's interpretation of McCready only supports certain preferences for residents as against non-residents. It does not support classifications which create inequalities among classes of state residents determined by length of residence. It is unlikely that a state court will cite McCready as justification for unequal treatment of state residents especially in light of the equal protection guarantee for the disposal of natural resources contained in Article VIII, section 17 of the state Constitution which provides:

> Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.

It is my opinion that classifications of state residents by length of residency are of questionable constitutional validity and that the Alaska Supreme Court will uphold a durational residency classification which discriminates against nonresidents if

> (1) there is a compelling state interest which justifies the discrimination;

(2) the length of residency is reasonable; and

(3) the personal right of nonresidents which is impaired by the residency requirement is not a privilege of national citizenship under the U. S. Constitution.

JLB:jdn

July 5, 1977

Hon. Terry Gardiner
Alaska State Legislature
P. O. Box 6092
Ketchikan, Alaska 99901

Re: Permanent Fund

Dear Terry:

We have finally come out from under long enough to give you a short answer to your questions on this. In order of your inquiries, the answers are as follows:

(1) The creation of the permanent fund did not legally obligate the legislature to keep the income of the fund abreast of inflation. There almost certainly is an implied obligation to manage as a prudent person, which means that reasonable efforts to make profitable investments with an eye on inflation are probably a legal requirement. We confess that we cannot be sure. We will have to compare the language establishing our permanent fund with that of others and see what the cases say.

(2) Appropriations made to the permanent fund by law may not be withdrawn even though they are in excess of the amount required by the constitution. Only the income of the fund is available from the fund. Of course, a standing appropriation could be repealed, and if so, no further money would go into the fund from it.

Please advise if you require more on this. We realize that there will be hundreds of questions. We cannot conduct unlimited research on all of them. For the most part, we believe it will be best to limit our research to the issues which are of practical application. Even then, we will be stretched.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By:
Rodger W. Pegues
Assistant Attorney General

RWP:chp

cc: Clark Gruening
Fran Ulmer

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 15, 1979

SUBJECT: Permissible General Fund Investments (W.O. #6681)

TO: The Honorable Russ Meekins
Chairman, House Finance Committee

FROM: Larry Eppenbach
Senior Policy Analyst

What are permissible general fund investments? The short answer; almost anything.

Section 37.10.070 of the Alaska Code currently lists 13 categories in which the Commissioner of Revenue may invest surplus funds (surplus = general funds). Some of these categories specifically identify single investments such as "(3) notes issued by the Farmer's Home Administration." Some specifically identify a class of investments such as "(1) obligations of, or obligations insured or guaranteed by, the United States or agencies or instrumentalities of the United States."

One category, however, opens the door to almost any potential investment. It reads "(6) other securities, including corporate securities." Securities are defined in this section as "... bonds, notes, debentures and all other forms of indebtedness; common stock, preferred stock and all other forms of equity capital; investments in stocks and equity capital may not exceed 33-1/3% of the unappropriated surplus as of the end of the previous fiscal year."

Personal IOU's and similar examples of unsecured indebtedness may qualify as a legal investment under this category since the definition of security includes the expression "all other forms of indebtedness". The actual meaning of this expression is ambiguous and invites a case-by-case legal opinion with respect to new investments. That may have been the objective of the 1971 legislature which added this category to the list of qualifying investments. Another and more likely interpretation is that in an attempt to make common stock a qualifying investment for the general fund, this language was written into the Code not realizing the range of possible investments that it would qualify.

The attached list briefly describes the amount held in each of the investment categories listed in AS 37.10.070. If you would like additional comments about this list, or our suggestions for revision to it, we would be pleased to provide them.

LE:lmk
Attachments

Sec. 37.10.070. INVESTMENT OF SURPLUS FUNDS. (a) When the commissioner of revenue determines that there is in the state treasury a surplus above an amount sufficient to meet current cash expenditure needs, the surplus shall be invested in any of the following:

(1) obligations of, or obligations insured or guaranteed by, the United States or agenices or instrumentalities of the United States;

U. S. Treasury bills, U.S. notes and bonds, and the notes and bonds of federal agencies are all included in this category. In addition, state treasury places repurchase agreements in this category. Repurchase agreements or "repos" are short-term investments purchased under an agreement to resell the security -- usually the next day. The repo is collateralized or secured by the delivery of a U.S. or corporate note or bond. As of January 1, 1979, a total of 125.5 million dollars was invested in investment instruments described by this category. An additional $28.5 million was invested in repurchase agreements secured by collateral which fit in this category.

(2) obligations secured by reserves paid in by the United States or agencies or instrumentalities of the United States or obligations of corporations in which the United States is a shareholder or member;

The notes and bonds of organizations such as the International Bank for Reconstruction, the InterAmerican Bank and the Asian Development Bank, each of which the United States is a member, are covered in this category. Currently there are no investments of surplus funds in this category.

(3) notes issued by Farmer's Home Administration;

The Farmer's Home Administration is a federal agency which has in the past offered notes which were unique because they had an annual interest payment and a variable amortization pay back. None of these investments have been held for many years and further this entire category appears to be redundant with Category (1).

(4) bank certificates of deposit which are secured as to the payment of principal and interest in accordance with Alaska law;

This category includes both deposits in Alaska banks and those in banks outside the state. The Alaska bank deposits are secured by collateral (notes, bonds, municipal bonds, and

Alaska mortgages) as determined by the Commissioner of Revenue. Deposits in banks outside the state are typically not collateralized. By policy, the treasury has limited such deposits outside the state to major banks in the U.S. issuing time certificates of deposit that are freely traded in a secondary market. As of January 31 a total of $56.9 million of surplus funds were invested in short-term TCD's of major outside banks. Another $26.9 million of surplus funds were deposited in Alaska banks under this category. (These amounts are in addition to $27.8 million of bond construction funds and $17.8 from the International Airport Revenue Fund, also on deposit with Alaska banks.)

(5) corporate obligations of prime or equivalent quality, as rated by a nationally recognized rating organization;

This category includes both corporate notes and bonds and also short-term general obligations of corporations called "commercial paper". Prime is an obsolete term once used to describe first quality commercial paper. Notes and bonds are rated by Standard and Poors, Moodys, and possibly Fitch (although there is some question to Fitch's national recognition) on an ABC rating scale. Although the rating requirements are ambiguous, the treasury interprets them to limit investment to "investment grade" securities. At the present time there are no surplus general funds invested in these corporate obligations.

(6) other securities, including corporate securities;

This is the catch-all category that invites a case-by-case legal ruling on each investment. It is always a matter of opinion as to which investment may qualify and only a judgment can be made about the amount of present state funds so invested. First, a number of loan programs, such as, commercial fishing, fisheries enhancement, small business, tourism, and child care facilities, are likely in this category and these now total $96.3 million as of January 31, 1979. In addition, all investments in the Bank Loan Incentive Program not covered in other categories would fall here (this is an old program by treasury to increase Alaska bank mortgage lending now totals $7.5 million dollars.) Finally, the obligations of state corporations held in the general fund may also be in this category and such obligations now total an additional $36.0 million for a grand total of $139.8 million.

(7) Federal Housing Administration mortgages;

These are mortgages guaranteed by the Federal Housing Administration and, by policy decision of the treasury, are limited to Alaska mortgages. However, nothing in the code imposes that limitation. Some of these mortgages exist in the Bank Loan Incentive Program and some are obligations that are now pledged to the Alaska Housing Finance Corporation (AHFC) to secure

their bonds. A total of $12.5 million of these mortgages in the general fund are currently pledged to the AHFC.

(8) Federal Veterans Administration mortgages;

See Category (7) above.

(9) loans made under the provisions of AS 03.10 and AS 26.15;

AS 03.10 is the Agricultural Loan Act and refers to loans made in amounts up to $200,000. As of January 31, 1979 a total of $683,700 of the state's surplus funds were invested in these loans. AS 26.15 refers to the major veterans' loan program administered by the Division of Veteran's Affairs. As of January 1, 1979 a total of $278.6 million dollars were invested here.

(10) conventional residential mortgages if the offering financial institution retains at least 25 per cent of the mortgage;

Alaska banks selling conventional mortgages to the general fund are required under this provision to retain a quarter of the mortgage in their own portfolio. At the present time no conventional residential mortgages are held in the general fund.

(11) other secured loans if the offering financial institution retains at least 33-1/3 per cent of the mortgage;

Similar to Category (10) this category refers to business loans rather than residential loans. Currently there are no such loans in the general surplus funds.

(12) mortgages of the Alaska Rural Rehabilitation Corporation which secure agricultural loans, agricultural business loans and agricultural processing loans;

The Alaska Rural Rehabilitation Corporation is unknown to personnel in the state treasury and may no longer be in operation. In any case, to their knowledge, no such mortgages have ever been purchased.

(13) bankers acceptances drawn on and accepted by banks with a combined capital and surplus aggregating at least $200 million.

Bankers acceptances are notes issued by banks to finance international shipments. These notes are secured by the value of the shipments as well as the assets of the bank. Limiting the bank to those with $200 million dollars of capital and surplus effectively limits the investment to the top 25 banks in the country.

"June 4, 1975

CSHB 324 am S

The Honorable Mike Bradner
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

The Alaska Legislature has adopted and sent to me for action Committee Substitute for House Bill No. 324 amended Senate, an Act establishing a permanent Mineral Lease Bonus Fund. The bill requires that 50 per cent of the receipts paid the State from all mineral lease bonuses be deposited in the Fund. The deposits are to be invested as surplus state funds or in state loan programs which are eligible for permanent fund investments. Only the income from the investment fund would be subject to general appropriation.

The purpose of the bill is, in my view, laudatory. I personally believe that we have an obligation to insure that we do not waste the State's non-renewable resources, which belong to all Alaskans present and future, to meet the obligations of present-day government. My feeling is magnified by the experience the State has undergone with the 900 million dollar bonus fund from the North Slope. This enormous sum has been expended for a vastly increased state government and now, but six years after that mineral wealth was leased, the bonus fund is nearly gone.

I would like to sign HB 324 into law. But were I to do that, I would have to flatly ignore the Alaska Constitution and the advice of my Attorney General, who deems it clearly unconstitutional. Article IX, Section 7, of the Constitution provides:

> "The proceeds of any state tax or license shall not be dedicated to any special purpose, except when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this constitution by the people of Alaska."

I have been advised by the Attorney General that this provision applies to proceeds from lease bonus sales and that accordingly, HB 324 is contrary to the Constitution. In light of that opinion, I have reluctantly concluded from the minutes of the Constitutional Convention that the framers of the Constitution did intend that mineral lease bonuses be covered by the Constitutional proscription.

This decision of the framers of our Constitution was not made in a vacuum. The question of dedicated funds was discussed extensively at the Constitutional Convention. Advocates for dedicating state proceeds used many of the same arguments as are being used today--that the state government would be profligate and that resources belonging to all state residents, present and future, should not be used to fund present government expenses. These arguments were rejected. The Convention overwhelmingly concluded that neither the governor nor the legislature should be deprived of real control over the finances of the State. It expressly sought to avoid the situation in which many states now find themselves--the situation where an ever-increasing percentage of revenues is tied up and an ever-decreasing amount of revenue is available for appropriation to ongoing state programs.

The situation the Convention sought to avoid is precisely the situation which seems to be developing in Alaska. HB 324, the proposed fund for parks and recreation (SB 147), and the proposed funds for hydroelectric projects (HB 171 and 185) demonstrate a trend toward dedication of an ever-increasing percentage of the State's revenues. The trend toward dedication of funds is particularly glaring at this time when the State is going through difficult financial times and maximum flexibility should be permitted in the planning and expenditure of our finances.

It may be that the policies considered persuasive by the Constitutional Convention when it determined to prohibit dedicated funds are less persuasive now that the citizens of the State have seen the actual operation of the state government. Certainly, the expenditure of the 900 million dollars has caused more than a few people to question the prohibition against dedicated funds. But it is a question which, once having been resolved by the people in their Constitution, can only be changed by the people through a Constitutional amendment. My personal preference, while recognizing the original arguments against dedication, is to favor a Constitutional change which would permit the legislature to establish such permanent funds from mineral lease bonus monies. In any event, the question is one which should be and must legally be submitted to the people. I have, accordingly, today introduced a Constitutional amendment which, if enacted by the legislature, will be placed before the people at the next general election in 1976. That amendment would authorize the legislature to do what they have unsuccessfully attempted to do in HB 324. I can assure you that if the amendment is adopted by the people and similar legislation is again adopted by the legislature, I will sign it willingly. In the absence of such a Constitutional amendment and legal authorization for a fund such as that established by HB 324, I must reluctantly veto the measure.

Sincerely,

Jay S. Hammond
Governor"

HJR 39 HOUSE JOINT RESOLUTION NO. 39 by the Rules Committee by request of the Governor

Proposing an amendment to the Constitution of the State of Alaska to authorize an additional exception for a dedication of revenues

was introduced, read the first time and referred to the Committee on Finance.

The Governor's transmittal letter on HOUSE JOINT RESOLUTION NO. 39 appears as follows:

"June 5, 1975

The Honorable Mike Bradner
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Pursuant to the Uniform Rules of the Legislature, I am transmitting a joint resolution for an amendment to the State Constitution.

The proposed amendment would change Article IX, Section 7, of the Constitution to provide an additional exception from the prohibition against dedicated funds to allow the dedication of proceeds from mineral lease bonuses or so-called royalty bonuses.

The effect of the proposed amendment would be to allow the legislature to provide for the dedication of a single source of revenue. It will give the legislature a free hand to establish special funds and provide for their administration. Subsequent legislatures will, of course, be able to alter the funds' administration or purposes as new needs arise or old needs disappear. The per cent of the proceeds to be dedicated is left to the legislature's discretion.

Sincerely,

Jay S. Hammond
Governor"

CONSIDERATION OF THE DAILY CALENDAR

SECOND READING OF HOUSE RESOLUTIONS

HCR 61 HOUSE CONCURRENT RESOLUTION NO. 61 (paving of a certain portion of the Denali Highway) was read the second time with the State Affairs Committee report (page 1178 of the journal) and the Finance Committee report (page 1638 of the journal).

The question being: "Shall HOUSE CONCURRENT RESOLUTION NO. 61 pass the House?" On voice vote, it passed the House and was referred to the Chief Clerk for engrossment.

HJR 34 HOUSE JOINT RESOLUTION NO. 34 (state and federal fishery management arrangements) was read the second time with the Resources Committee report (page 1318 of the journal).

Mr. Miller moved and asked unanimous consent that HOUSE JOINT RESOLUTION NO. 34 be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered and the resolution was read the third time.

The question being: "Shall HOUSE JOINT RESOLUTION NO. 34 pass the House?" The roll was taken with the following result:

Yeas:	33	Anderson, H. Beirne, M. Beirne, Bowman, Bradner, Brown, Buchholdt, Cotten, Cowper, Davis, Duncan, Eliason, Gardiner, Gruening, Guy, Hackney, Hershberger, Itta, McKinnon, Malone, Miller, Naughton, Osterback, Ostrosky, Parker, Parr, Rhode, Smith, Specking, Sullivan, Swanson, Urion, Wallis.
Nays:	0	
Excused:	7	Bradley, Fischer, Freeman, Haugen, Huntington, Kelley, Ose.

And so, it passed the House and was referred to the Chief Clerk for engrossment.

HJR 35 HOUSE JOINT RESOLUTION NO. 35 (child support programs under P.L. 93-647) was read the second time with the Finance Committee report (page 1283 of the journal) and the Judiciary Committee report (page 1626 of the journal).

Mr. Miller moved and asked unanimous consent that HOUSE JOINT RESOLUTION NO. 35 be considered engrossed, advanced to third reading and placed on final passage. There being no objection, it was so ordered and the resolution was read the third time.

Hugh: OK both with Berrier and AG's office

JAN 16 1980

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM

January 16, 1980

SUBJECT: Appropriations to the Permanent Fund

TO: Representative Oral Freeman

FROM: Billy G. Berrier
Director
Division of Legal Services

You have asked whether money appropriated to the permanent fund in excess of the amount required to be deposited in the fund under sec. 15, Art. IX of the Alaska Constitution could later be withdrawn from the fund.

In my opinion money appropriated to the fund becomes fund principal in the same manner as money deposited in the fund under sec. 15. Neither can be withdrawn or used other than as provided in that section without an authorizing amendment to the constitution.

Section 15 reads:

> SECTION 15. At least twenty-five per cent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in a permanent fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investments. All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law.

Effectively, this does two things. It requires that a specified minimum percentage of certain state receipts be deposited in a permanent fund. It then limits the use of the principal of the fund and provides for use of the income.

It is very clear from the amendment language that there is no intent to preclude money in excess of the minimum required amount from becoming a part of the permanent fund and there is no language in the section which suggests either that the principal of the fund be limited to amounts required to be deposited or that the limitations on the prinicpal be so limited.

The term "permanent" as used three times in the body of the amendment and in the title of the fund would be read in the normal sense of that word since the reading is consistent with the context, with the legislative and public discussion of the amendment proposing the fund and with the understanding that the voters would be presumed to have had in approving the amendment. There can be no legitimate question that the objective of the permanent fund is preservation of the principal of the fund for the long term use of the state and its people.

The section distinguishes between principal of the fund and income from the fund; in my opinion no further distinction between one type of principal and another depending on how the money came to the fund can be implied from the language. Further, such a distinction would be incompatible with the objective of the fund.

In my opinion once money from whatever source is placed in the permanent fund by deposit or by appropriation, the money becomes part of the principal subject to the constraints of the section. Therefore, the money could not be withdrawn.

The Department of Law examined this question and in an opinion dated August 31, 1977, reached the same conclusion. A copy of that opinion is enclosed.

BGB:jdn

Enclosure

August 31, 1977

Hon. Clark Gruening
Chairman
House Special Committee on
the Permanent Fund
528 West Fifth, Suite 270
Anchorage, Alaska 99501

Re: Permanent fund, irretrievability of money appropriated to; our file J-66-106-78

Dear Representative Gruening:

You have asked whether money appropriated to the permanent fund in excess of the amount required by the constitution is irretrievable.

Section 15 of article IX of the Alaska Constitution, as added by the 1976 amendment to the constitution, reads as follows (emphasis added):

> At least twenty-five per cent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State shall be placed in a permanent fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investments. All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law.

Your question really is whether the limiting language of section 15 applies not only to the mandatory 25 percent of mineral revenues placed in the permanent fund but also to any additional money placed in the fund.

We believe that the answer is yes.

The language of the amendment providing for the permanent fund is clear enough. There is to be a permanent fund. At least 25 percent of the enumerated mineral revenues are to be placed in it. The use of the words "[a]t least" clearly contemplates that additional monies may well be placed in the fund. Once there, they form the fund's principal. That principal "shall be used only" for income-producing investments. Hence, on its face, what becomes a part of the principal may no longer be withdrawn for another purpose. Only the income from investments of the principal is available.

It is a universal principle that the legislature's law-making power is plenary except as limited by the state or federal constitutions. In order to hold that the legislature may not appropriate additional monies to the permanent fund and also provide for their subsequent withdrawal, the courts must find an express or implied prohibition against its doing so. Facially, the constitution's restriction on the use of the fund's principal seems to constitute such an implied restriction, i.e., the principal may be invested but nothing else, including a withdrawal, may be done with it.

It could be possible, one might argue, for the legislature to make appropriations to the fund by law and specify that they are made on the condition that they are intended to be retrievable and are null and void ab initio if ruled not to be. The problem is that the courts would likely rule that the condition itself is so inconsistent with the provisions of section 15 that it is absolutely void, i.e., that the legislature is prohibited from withdrawing from the principal both directly and indirectly.

Or the legislature could appropriate to the fund and specify that the monies appropriated are not to be considered a part of the fund's "principal" in the sense of the constitution, i.e., as monies available solely for investment, but rather are to be considered as a temporary addition to the fund which is to be used for investment but which shall be accounted for separately and may be withdrawn. Again, the problem is that the courts would likely rule that such legislation is so inconsistent with the provisions of section 15 that it is void. Either there is a permanent fund or there is not.

We are dealing here with a peculiar--perhaps unique--quasi-trust. Unlike most trusts, the principal may not be reached whatever, either now or in the future. No one has a future right to the principal. Instead, the principal is to be invested in perpetuity to produce income.

Only the income from investments may be reached. Absent still another constitutional amendment, we see no way around this result. A permanent fund was intended, and a permanent fund appears to have been achieved.

Accordingly, we doubt very much that any money appropriated to the permanent fund may subsequently--without a constitutional amendment--be withdrawn.

Sincerely yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By:
Rodger W. Pegues
Assistant Attorney General

RWP:chp

Opinion 1977-27

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM

SUBJECT: Permanent fund

TO:

FROM: Billy G. Berrier, Director
Division of Legal Services

You have requested my comments on the legal implications of the words "permanent" and "income producing" as used in the constitutional amendment authorizing the permanent fund on the legal standards and guides the legislature may wish to establish in legislation.

The relevant provision is Section 15, of Article IX which reads:

> "Section 15 ALASKA PERMANENT FUND. At least twenty-five percent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the State of Alaska shall be placed in a permanent fund, the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investments. All income from the permanent fund shall be deposited in the general fund unless otherwise provided by law".

It is clear from the wording of the amendment itself and from the surrounding context that the concept is that a fund be created in which a portion of the mineral revenues of the state would be set aside in order to insure preservation for the future of that portion of the revenue. There can be no legitimate question that the objective is preservation of that portion as capital for the long term use of the state and its people and prevention of uses which are expedient in the short term but which would dissipate the capital of the fund. The paramount consideration must be the probable safety of the capital of the fund to be invested.

The term "permanent" as used three times in the body of the amendment and in the title of the fund would be read in the normal sense of that word since that reading is consistent with the context of the amendment, with the legislative and public discussion of the amendment, and with the understanding that the voters would be presumed to have in approving the amendment.

While the permanent fund is not a trust in the technical legal meaning of the term, the protection of capital required has substantial similarities to the requirements binding upon a trustee. This requirement is commonly referred to as the prudent-man rule. There have been numerous cases on this rule and many commentators have set out reasonable similar statements of the rule. A good statement is found in Scott on Trusts 3rd Ed in Sec. 227 (pages 1805 - 1806) which reads:

> "The only general rule which can be laid down as to investments is that the trustee is under a duty to make such investments as a prudent man would make of his own property having primarily in view the preservation of the estate and the amount and regularity of the income to be derived. In various forms this rule has been stated in innumerable cases. It involves three elements, namely care and skill and caution. The trustee must exercise a reasonable degree of care in selecting investments. He must exercise a reasonable degree of skill in making the selection. He must, in addition, exercise the caution which a prudent man would exercise where a primary consideration is the preservation of the funds invested."

This rule would seem to adequately set out the general parameters constitutionally required for permanent fund investments of principal. It would apply at two stages of the process. The legislature would be bound to apply it in exercising the duty to circumscribe and delineate investments required under the limitation in the constitution reading:

> "...the principal of which shall be used only for those income-producing investments specifically designated by law as eligible for permanent fund investment. (emphasis added)

The managers of the fund are given no constitutional discretion under this clause. The discretion is lodged exclusively in the legislature; and, if the objectives of the permanent fund are to be attained, investments specifically designated by law as eligible for permanent fund investment must also meet the criteria of having as a primary consideration the preservation of the funds invested.

The legislation, however, would not be expected to detail the permissable investments. It would presumably designate specific investment catagories and create a management structure for the fund which would make the specific decisions as to which investments are to be made. Here again, the prudent-man rule would be applicable. In addition to designating specific catagories of investment, any legislation should also establish guidelines for the fund management which are consistent with the objective of the fund. The need for this arises because within a class which as a class meets the objectives of preservation of the funds invested, some specific investments would still not be made by a prudent man. Possibly this could be largely avoided by using an ultra restrictive approach to allowable catagories of investment but this approach would create or exacerbate other problems.

The primary difficulty with an ultra restrictive approach to allowable investments is that, as a matter of law, the problem of inflation would not be a factor in investment decisions. It can be reasonable assumed that inflation to some degree may be anticipated.

The argument has been made that inflation can realistically be anticipated to occur, that if principal is not increased in an amount to compensate for inflation the real value of the principal will decline even though the nominal value is maintained and that the duty of a prudent investor is to maintain the real value of the principal. Therefore, failure to account for inflation in investment policy violates the prudent-man rule of investment. I have found no authority to support this argument as a legal requirement. Factually, the argument would fail here. The constitutional amendment makes a clear distinction between principal which is permanent and income which is subject to expenditure by the normal appropriation process unless the legislature directs otherwise. At the time the amendment was adopted, inflation had occurred at an extremely high rate in the immediate past so it must be assumed that both the legislature and the public were conscious of inflationary effect. It would therefore, to support this argument, require assuming that investments which would have a capital appreciation, entirely apart from income earned, which is at least equal to inflation are the only permissable investments. This does not seem reasonable.

The argument that inflation must be taken into account does not seem valid here but that does not mean that inflation may not, or even that it should not, be taken into account. There is no reason that legislation establishing the management of the permanent fund and the disposition of fund income should not address this problem directly. I have suggested earlier that the legislation needs to establish standards for investments to avoid having to specify only ultra restrictive investments. The legislation could also require that the possible effects of inflation be a consideration in investment decisions made by the fund managers.

The term "income-producing" as used in the amendment presents serious conceptual difficulties. In context, this could simply be a restatement of the normal duty to make productive investments. In relation to trusts this has been stated:

> "It is the duty of a trustee to preserve the trust property and make it productive. It is ordinarily his duty to invest trust funds in such a way as to receive an income without improperly risking the loss of principal." (Scott on Trusts 227 p. 1805)

However, as stated earlier, the permanent fund is not a trust in the technical legal sense. Simply carrying over the trustee's duty could be misleading.

The term "income-producing" is not a term of art and has no fixed legal meaning differing from the conventional meaning of the term. It is possible that a court would hold that the term implies that maximum income consistent with safety of principal must be the exclusive criteria for investment. This would be consistent with trust law but it appears that the amendment contemplates broader considerations as well. It would appear more likely that other considerations, such as the effect particular investments would have on furthering public purposes other than maximization of income, could also be given weight. Some examples of other public purposes are providing jobs, improvement of the Alaskan economy and economic diversification.

It is clear that production of income is a necessary goal of each investment; it is probably that maximization of income consistent with safety of principal must be a major goal, ; but it appears unlikely that a court would hold that this must be the exclusive goal of permanent fund investment policy.

While the investment of the permanent fund differs from investment of state treasury surplus funds in several respects including the specific requirement of income producing investment of permanent fund principal, both have as major goals protection of principal and production of income. It is interesting to note that state treasury surplus fund investment specifies policy goals additional to the primary goals. On this point AS 37.10.075(f) provides:

> (f) Investment policy shall be formulated by the commissioner of revenue who shall be advised by a committee appointed by the governor which shall contain representation from the legislature. In formulating investment policy they shall consider maximum income and safety as governed by the prudent-man rule and the benefit to the private and public sectors of the economy in terms of increased housing and commercial credit, stimulated business activity, increased employment, support of the market for state and local bonds, increased public revenue together with the possible inflationary effect of the investment, and (h) and (i) of this section.

The question of what the term means as a matter of law will almost certainly be decided by the courts on a case by case basis. The questions involved are complex and change over time. In reasonably similar instances, the courts have refused to provide a general definition. For example the Alaska court in dealing with the term "capital improvements" as used in the Alaska Consitution said:

> "We believe it would be unwise for this court to attempt to provide an abstract definition of "capital improvements." We have concluded that it is beyond human ability to permanently circumscribe with mere words at a given point in time a concept which though limiting in aspect, is otherwise intended to provide a broad, permanent and continuing authority for municipalities to finance present as well as unforeseeable future needs." (Juneau v. Hixon 373 P2d 743 (Alaska 1962))

While it is my opinion the courts will be liberal in sustaining the reasonable expectations of the legislature and the fund managers, they are unlikely to allow investments which cannot reasonably be anticipated to produce maximum current income consistent with safety of principal modified by application of other permissable public policy considerations. It appears certain that investments which cannot reasonably be anticipated to produce direct income would not be allowed.

BGB:jpd

LAWS OF ALASKA

1977

Source	Chapter No.
HB 210	6

AN ACT

Providing for interim management of the Alaska Permanent Fund; and providing for an effective date.

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

* Section 1. AS 37.10 is amended by adding a new section in art. 3 to read:

Sec. 37.10.065. INVESTMENT OF THE ALASKA PERMANENT FUND. (a) The Alaska Permanent Fund consists of 25 per cent of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses received by the state. The commissioner of revenue shall deposit in the Alaska Permanent Fund 25 per cent of the receipts from these sources at least once each month. The commissioner of revenue shall invest the money in the Alaska Permanent Fund in income-producing investments of the following types:

(1) obligations of, or obligations insured or guaranteed by, the United States or agencies or instrumentalities of the United States;

(2) obligations secured by reserves paid in by the United States or agencies or instrumentalities of the United States or obligations of corporations in which the United States is a shareholder or member;

(3) certificates of deposits issued by United States domestic banks which are members of the Federal Deposit Insurance Corporation and secured as to the payment of principal and interest in accordance with Alaska law;

(4) corporate investment-grade securities;

(5) bankers' acceptances drawn on and accepted by United States banks which each have a combined capital and surplus aggregating at least $100,000,000;

(6) repurchase agreements, the securities underlying the agreements being any of the items in (1) - (5) of this subsection;

(7) deposits of federally insured savings and loan associations not to exceed 10 per cent of each savings and loan association's deposits exclusive of federal, state, and municipal deposits;

(8) fixed-term certificates of debentures of federally insured credit unions not to exceed 10 per cent of each credit union's shares.

(b) The commissioner of revenue may enter into contracts providing for custody of securities and execution of transactions.

(c) The commissioner of revenue shall transfer to whatever agency is established for the express purpose of managing and investing the Alaska Permanent Fund all or part of the securities and money in the Alaska Permanent Fund in accordance with Alaska law no later than two weeks after receipt of written notice from that agency.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.070(c).

Approved by the Governor: March 22, 1977
Actual Effective Date: March 23, 1977

#18:22A

LEGISLATIVE HEARING - STATE OF ALASKA PERMANENT FUNDS

What are the Primary Considerations i olving the role of the Permanent Fund in Alaska's future?

1. Preserve as much of the incoming oil wealth as possible in a permanent investment program for the benefit of future Alaskans.

What this does

A) Changes a depletable asset (development of oil) into a permanent benefit for all citizens of the State.

B) Provides stability when looking at the future. The availability of income from investments allowing better long term planning.

C) The availability of the permanent fund should help minimize future economic problems.

What it can't do

A) Be spent currently for tourism and business development, building homes and other buildings.

2. Need for a Permanent Fund to be separate from day-to-day activities of running the State's affairs.

Want to Avoid

A) Permanent Fund being used to cover day-to-day operating costs

B) Confusing Permanent Fund with Development or Enterprise Fund.

C) Having the proceeds from the "oil receipts" readily available to cover fiscal shortfalls.

D) Confusing the Permanent Fund with other activities of the State Government.

Want to Achieve

A) Lower future costs of State Government through improved and stable credit standing.

B) Long term program that will improve the living and working style of the State.

C) A legacy for future Alaskans and treated as a permanent fund in trust for the future.

3. The objectives of the Permanent Fund and its relationship with other programs need to be understood by all citizens of Alaska.

Robert E. Greeley
Vice President
Merrill Lynch White Weld
One Liberty Plaza
New York, New York 10080