

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 86/2

748 SCOM123: TITLE 29 POLICY REVISION ADVISORY COMM. 1980

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.225. APPLICATION FOR RECALL PETITION. (a) An application for a recall petition shall be filed with the municipal clerk and shall contain

(1) the signature and residence addresses of at least 10 municipal voters who will sponsor the petition;

(2) the address to which all correspondence relating to the application may be sent;

(3) a statement in 200 words or less of the grounds of the recall stated with particularity.

(b) Additional sponsors may be added at any time prior to filing the petition by submitting their names to the clerk.

EXPLANATION: This is a new section which describes the requirements for an application for recall petition.

Sec. 29.30.230. PETITION. (a) If the municipal clerk determines that an application for a recall petition meets the requirements of AS 29.30.225, he shall prepare a recall petition. All copies of the petition shall contain

- (1) the name of the official sought to be recalled;
- (2) the statement of the grounds for recall as set forth in the application for petition;
- (3) the date the petition is issued by the clerk;
- (4) notice that signatures must be secured within 60 days after the date the petition is issued;
- (5) spaces for each signature, the printed name of each signer, the date of each signature, and the residence and mailing addresses of each signer;
- (6) a statement that the sponsor personally circulated the petition, that all signatures were affixed in his presence, that he believes the signatures to be those of the persons whose names they purport to be, space for indicating the number of signatures on the petition, and space for the sponsor's sworn signature.

(b) Copies of the petition shall be provided to each sponsor by the clerk.

EXPLANATION: This section sets out requirements similar to those relating to the content of initiative and referendum petitions. Requiring the clerk to prepare the petition and supply copies insures that each copy is complete and legible. A petition must be filed within 60 days after the petition is issued rather than 60 days after the date of the earliest signature on the petition.

Sec. 29.30.240. REQUIRED SIGNATURES. (a) The necessary signatures on a recall petition shall be secured within 60 days after the date the clerk issues the petition. The statement provided under AS 29.30.230(a)(6) shall be completed and signed by the sponsor. Signatures shall be in ink or indelible pencil.

(b) If a petition seeks to recall an official who represents the municipality at large, the petition shall be signed by 35 percent of the voters residing within the municipality based on the number of votes cast at the last regular election for that office held prior to issuance of the petition. If a petition seeks to recall an official who represents a district, the petition shall be signed by 35 percent of the voters residing within the district based on the number of votes cast at the last regular election for that office held prior to issuance of the petition. The clerk shall determine the number of signatures required on a petition and shall inform each sponsor.

(c) Illegible signatures shall be rejected by the clerk unless accompanied by a legible printed name. Signatures not accompanied by a legible residence address shall be rejected.

(d) A petition signer may withdraw his signature upon written application to the clerk prior to certification of the petition.

EXPLANATION: Which election to be used as a standard for determining the number of signatures required is clarified. The number of signatures required has been increased as compared to the number required for initiative and referendum because it is felt that recall is an especially disruptive process which should be more difficult to initiate. However, the signature requirement is based on the number who voted in a municipal rather than a state election. It is expected that this number will reflect a relatively low turnout, and therefore that it is not as difficult a requirement as may appear.

Sec. 29.30.250. SUFFICIENCY OF PETITION. (a) The copies of a petition shall be assembled and filed as a single instrument. Within ten days after the date the petition is filed, the municipal clerk shall certify on the petition whether it is sufficient.

(b) If a petition is insufficient, it may be supplemented with additional signatures obtained within ten days after the date on which the petition is rejected, except that a petition which does not contain an adequate number of signatures, both valid and invalid, may not be supplemented and shall be rejected and filed as a public record.

(c) Within ten days after the supplementary filing the clerk shall recertify the petition. If it is still insufficient, the petition is rejected and filed as a public record.

EXPLANATION: Unlike the situation in initiative and recall, this section does not allow additional time for obtaining signatures when a petition is filed which does not have enough signatures even before any are disqualified. This keeps a petitioner from filing an insufficient petition to gain additional time to gather signatures. Once again, it is felt that in the case of a recall effort, the process ought not to be prolonged.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.260. NEW RECALL PETITION. The rejection of a recall petition for any reason does not preclude the filing of a new petition. However, a new application for a petition to recall the same official may not be filed sooner than six months after a petition is rejected.

EXPLANATION: Filing a new petition prior to the six month waiting period is prohibited even though the petition is rejected for a reason other than failure to obtain sufficient signatures. Under existing law, failure to obtain sufficient signatures alone triggers the waiting period.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.280. ELECTION. (a) If a regular election occurs within 75 days but not sooner than 45 days after submission of the petition to the assembly or council, the assembly or council shall submit the recall at that election.

(b) If no regular election occurs within 75 days the assembly or council shall hold a special election on the recall question within 75 days but not sooner than 45 days after a petition is submitted to the assembly or council.

(c) If a vacancy occurs in the office after a sufficient recall petition is filed with the clerk, the recall question shall not be submitted to the voters. The assembly or council may not appoint to the same office an official who resigns after a sufficient recall petition is filed naming him.

EXPLANATION: The 45 day requirement was added to insure that a petition submitted after the legal notices of a regular election were published would not complicate the election. Added in section (c) is the prohibition against the appointment of an official who resigns after a sufficient recall petition is filed.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.290. FORM OF RECALL BALLOT. A recall ballot shall contain

(1) the grounds as stated in 200 words or less on the recall petition;

(2) a statement by the official named on the recall petition of 200 words or less if the statement is filed with the clerk for publication and public inspection within 20 days before the election;

(3) the following question: "Shall (name of person) be recalled from the office of (office)? YES () NO ()".

EXPLANATION: This section makes reference to the fact that each statement is limited to 200 words or less and provides that the statement of the official if published before the election will appear on the ballot.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.300. ELECTION PROCEDURE. Procedures for conducting a recall election are those of a regular municipal election if the question is submitted at a regular election. Procedures for conducting a recall election are those of a special election if the question is submitted at a special election, except that at least 20 days notice shall be given notwithstanding an ordinance or charter provisions to the contrary.

EXPLANATION: This section was changed to provide for cases in which a recall election is held as a special election.

DRAFTED CHANGES ALTERED BY THE POLICY GROUP - 10 & 11 November 1980

Sec. 29.30.330. SUCCESSORS. (a) If an official is recalled from the assembly or council, the assembly or council, by affirmative vote of a majority of the remaining members, may appoint a qualified person to fill a vacancy created by the recall.

(b) If all members of the assembly or council are recalled, the governor shall appoint at least three qualified persons to the assembly or council. The appointees shall, by an affirmative vote of the majority, appoint additional members to fill remaining vacancies.

(c) If all but two members of the assembly or council are recalled, each remaining member shall appoint a qualified person to fill a vacancy created by the recall. Additional persons may be appointed to fill vacancies by the affirmative vote of a majority of the remaining members and their appointees.

(d) If all officials are recalled from a school board the assembly or council may appoint a qualified person to fill a vacancy created by the recall.

(e) A person appointed under (a) - (d) of this section shall serve until a successor is elected and takes office.

(f) If an official is recalled the clerk, without further action by the assembly or council, shall conduct an election for a successor to fill the unexpired portion of the term. The election shall be held at least ten but not more than 60 days from the date the recall election is certified, except that if a regular or special election occurs within 75 days after certification and the certification occurs at least 20 days prior to the last date upon which a first notice of the election must be published, the successor shall be chosen at that election.

(g) Nominations for a successor may be filed until seven days prior to the last date upon which a first notice of the election must be published. Nominations may not be filed before the certification of the recall election.

EXPLANATION: This section has been expanded to prevent a local government from having to attempt to operate without a quorum of elected officials. Subsections (f) and (g) were changed to take into account time periods required for election notice and nominations.

TITLE 29 REVISION COMMISSION
NEWS RELEASE

Alaska Legislative Resolve number 39 directed the Alaska Legislative Council to revise Title 29 of the Alaska Statutes (Municipal Government) with the assistance of a Policy Advisory Group. A group was appointed consisting of both public and legislative members. Members are:

Senator Arliss Sturgulewski-Chairman, Anchorage
Senator Bob Mulcahy, Kodiak
Representative Margaret Branson, District 5
Representative Charles Parr, Fairbanks
Ted Berns, Attorney, Municipality of Anchorage
Terry Cook, City Council, Alakanuk
Marilyn Dimmick, Assembly, Kenai Peninsula Borough
James Kohler, Manager, City of Yakutat
Ronald Larson, Mayor, Matanuska-Susitna Borough
Gene Moore, Manager, City of Kotzebue
Donna Sherby, City Clerk, City of Cordova
Jonathan Solomon, Mayor, City of Fort Yukon
Russell Walker, Attorney, City of Ketchikan and Ketchikan
Gateway Borough

Ex-Officio Members are:

Ginny Chitwood, Alaska Municipal League,
Palmer McCarter, Department of Community & Regional Affairs
Phil Smith, RuralCAP

The first meeting of the Policy Group was in Anchorage on the 27th and 28th of August, 1980. At that meeting the Policy Group discussed the direction their policy decisions would take. It was agreed that Title 29 needed to be clarified so that elected officials could understand Title 29 without the help of attorneys, and that there needed to be greater self determination and latitude for local governments. A Technical Revision Committee was appointed to perform actual drafting. It is composed primarily of attorneys with expertise in municipal law.

The second meeting of the Policy Advisory Group was held in Anchorage on September 29th and 30th, 1980. Presentations were made by representatives of the Department of Environmental Conservation, the Department of Community and Regional Affairs, the Department of Health and Social Services, the Haines Borough Assembly, and Tanana Chiefs Conference, Inc. The Policy Group reviewed the work that had been done by the Technical Committee.

Chairman Sturgulewski attended the Alaska Federation of Natives convention and a meeting of the Alaska Village Council Presidents to answer questions and receive comments.

The latest Policy Advisory Group meeting was held in conjunction with the Alaska Municipal League's convention in Fairbanks, 10 and 11 November, 1980. Members of the public were heard including representatives from the City of Fairbanks, the City of McGrath, the City of Nome, the City of Saxman, the City of Homer, the Kodiak Island Borough, and the City of Unalaska. The Policy Group reviewed the work that the Technical Committee had accomplished.

To date changes in Title 29 granted preliminary approval by the Policy Advisory Group include a reorganization of the order of the sections, clarification and technical clean-up of the wording in many of the sections, and substantive changes in the area of initiative and referendum, recall, limitations on home rule powers, and procedures dealing with adoption of home rule or unification charters. However, all decisions made by the Policy Advisory Group are subject to further consideration and possible revision.

23:9

SCOMM

NAME	SENT TO:	DATE:
Letter fm Chefoenak	ALL	23 OCT 80
Drafting Chgs. #1	to Tech Comm.	24 OCT 80
Letter fm Bob. Jettner City Mgr. - McGeath	to ALL & Mike Waller	27 OCT 80
Drafting chgs #2	Tech Comm. (ALSO 18 Nov Mtg)	28 OCT 80
Ltr fm Cities of Kodiak & Palmer	ALL	29 OCT 80
Drafting chgs #1 Pg 32-34 & 133 St Mary's Ltr & reply KET Mun. Atty (4/4/80)	TO Policy Group Mtg ^{FBX} " " " " " " " " " HARBOR & "MARINAS"	10 NOV 80 " " "
KET Mun Atty. CHAP 53 CHAPTER 45 REVISION	TO TECH COMM. 12 NOV MTG " " " "	12 NOV "
Received: fm Mike Waller: " CITY OF FBX " " ALAKA ^{COOK} " " TONOK	POLICY GROUP Mtg. FBX " TRIBAL STATE RELATIONS etc Ltr re: 29.33.220 w/ old ATTACH Recommended CHGS (HOREALCAP) sub by Bonnie Hedley	12 NOV " " " "
Resolutions fm City of Kodiak		"
Resolutions fm NORTHWEST AK Mayors Conf.		"
Nana Ltr (dtd 11 NOV)	TO ALL (Policy, Tech, Ex-O)	18 NOV
City of Kenai (dtd 10 NOV)	" "	"
City of Kodiak (dtd 10 NOV)	" "	"
copy procepr dtd 7 OCT	" "	"
Hemo Bailey/McAneeny	" "	25 NOV 80
Notice of Mtg	TO ALL: ^{MEMBERS} PRINTED LABELS & OTHERS	25 NOV 80

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

MEMORANDUM

State of Alaska

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

TO: Palmer McCarter *pm*
Director

DATE: November 6, 1980

FILE NO:

TELEPHONE NO:

FROM: Terry Earley *TE*
State Assessor

SUBJECT: School Bond
Guarantee Fund

Attached is our annual memo that must go to the Governor's Office no later than December 1. As in the past this memo states that no sum is required to implement the school bond guarantee fund.

It is my understanding that this fund has never been used and, in fact, for the last four years our memo has been identical.

That lack of use coupled with the requirement in the statute that would allow a home rule city to exceed its authorized bonded indebtedness as defined in its home rule charter, seems to make this a less than desirable statute. I personally feel that deletion of this section is something the Title 29 review committee should consider.

Attachment

Lee - Please sign attached memo and forward to the Governor's office. Per Terry's suggestion, I am sending a copy of this memo to Tam Cate, legal counsel who can transmit our concern to the technical and policy groups of the T29 revision committee.

*T. Earley
pm*

MEMORANDUM

State of Alaska

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

TO: The Honorable Jay S. Hammond
Governor

DATE: November 17, 1980

FILE NO:

TELEPHONE NO:

FROM: Lee McAnerney, Commissioner
Department of Community &
Regional Affairs

SUBJECT: Chapter 137, SLA 1974
An Act Relating to Home
Rule City Bonded Indebtedness
Incurred for School Constructi

29.51.420

Chapter 137, SLA 1974, permanently codified as AS 29.58.345-350, establishes within the Department of Community & Regional Affairs a school bond guarantee fund, the purpose of which is "to further guarantee and provide an additional pledge of payment of . . . bonds issued" to pay costs of school construction. The bond guarantee is applicable only as to home rule cities levying and collecting property taxes for schools and is operative only as to those home rule cities incurring bonded indebtedness for school construction where the anticipated bond issue requires the city to exceed limits on authorized bonded indebtedness which have been defined in the municipality's home rule charter.

By Section 350(f) of the Act, annually, not later than December 1, the Commissioner of the Department of Community & Regional Affairs must certify to the Governor that sum which is necessary to bring the fund created current to the requisite "debt service reserve".

Since, to our knowledge, no home rule cities have issued bonds necessitating additional requirement on the school bond guarantee fund, I wish to certify that no sum is required to implement the school bond guarantee fund.

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*Thomas
PM*

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· AS A UNIT IN THE ORIGINAL DOCUMENT. ·

MEMORANDUM

19 November 1980

TO: Title 29 Technical Committee

FROM: Tamara Brandt Cook
Legislative Counsel TBC

SUBJECT: Changes to Drafts Suggested by the Policy Group

Here are revisions to the drafts proposed by the Technical Committee incorporating changes suggested by the Policy Group during their meeting held on November 10th and 11th. In addition to these revisions, two sections are being held by the Policy Group for further review: AS 29.09.180 (Organization Grants), and AS 29.30.040 (Voter Qualifications).

I would appreciate any comments which you may have regarding these revisions. I am planning on sending copies of the revisions to the Policy Group early in December.

TBC:maf

Enclosures

NOTICE OF MEETING
November 24, 1980

A Policy Advisory Group has been appointed to oversee the revision of the Municipal Code, Title 29 of the Alaska Statutes. The Policy Advisory Group is composed of thirteen members. Of these, nine public members represent a broad range of local officials interested in Title 29. The public and legislative members of the Title 29 Policy Advisory Group are:

Ted Berns, Attorney, Municipality of Anchorage
Terry Cook, City Council, Alakanuk
Marilyn Dimmick, Assembly, Kenai Peninsula Borough
James Kohler, Manager, City of Yakutat
Ronald Larson, Mayor, Matanuska-Susitna Borough
Gene Moore, Manager, City of Kotzebue
Donna Sherby, City Clerk, City of Cordova
Jonathan Solomon, Mayor, City of Fort Yukon
Russell Walker, Attorney, City of Ketchikan and
Ketchikan Gateway Borough
Senator Arliss Sturgulewski, Anchorage
Senator Bob Mulcahy, Kodiak
Representative Margaret Branson, District 5
Representative Charles Parr, Fairbanks

The fourth meeting of the Policy Advisory Group is scheduled for 15, 16, and 17 December 1980. The meeting will begin at 9:00 a.m. in the Adventure Room of the Captain Cook Hotel, Anchorage, Alaska.

The proposed agenda for this meeting is :

December 15th:

1. Introduction of guests and members of the public attending.

2. Presentation by guests and members of the public of areas of concern or proposed items for consideration.

3. Old Business:

a. Report by Pat Poland on material prepared for newsletters.

b. Report by subcommittee chairman on AS 29.09.180 (Organization Grants).

c. Report by subcommittee chairman on AS 29.30.040 (Voter Qualifications).

d. Presentation of proposed drafts by the Technical Committee.

e. Other old business.

TO: Technical Group

FROM: Melissa Aber Fouse
Secretary, Title 29 Commission

MAF

SUBJECT: SB 582

We are sending you SB 582 on the request of Lee Sharp who plans to make this subject an item of discussion at the next Technical Committee meeting.

Original sponsor: Rules Committee
by request

Offered: 5/12/80
Referred: Finance

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 582

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the assessment, levy and collection
7 of property taxes on transient aircraft; and providing
8 for an effective date."

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

10 * Section 1. AS 44.25.020 is amended by adding a new paragraph to read:

11 (5) assess the value of transient aircraft in accordance with
12 AS 29.53.038.

13 * Sec. 2. AS 29.53 is amended by adding a new section to read:

14 Sec. 29.53.038. TRANSIENT AIRCRAFT. (a) The Department of Revenue
15 shall assess the value of transient aircraft that is not exempt from
16 property taxes under AS 29.53.162(c). The Department of Revenue shall
17 determine the value of aircraft assessed under this section at its full
18 and true value and shall determine the value of the aircraft as of
19 January 1 annually.

20 (b) The Department of Revenue may require by notice each person
21 having ownership or control of an interest in aircraft assessed under
22 this section to submit a return in the form prescribed by the Department
23 of Revenue, based on values existing on January 1 of each year. The
24 Department of Revenue by written notice may require a person to provide
25 additional information within 30 days of the notice.

26 (c) The Department of Revenue may investigate aircraft on which a
27 return has been filed or on which no return has been filed. In either
28 case, the department may make its own valuation of the aircraft, which
29 is prima facie evidence of full and true value. An employee or agent of

1 the Department of Revenue may enter an aircraft as necessary for the in-
2 vestigation during reasonable hours and may examine appropriate records.
3 When requested by an employee or agent of the Department of Revenue, the
4 owner of the aircraft shall furnish to the employee or agent reasonable
5 assistance required for the investigation. If refused entry, the Depart-
6 ment of Revenue may seek a court order to compel entry. For the purpose
7 of the investigation, the owner of the aircraft or his representative
8 may be required to present himself for examination under oath by the
9 Department of Revenue.

10 (d) The Department of Revenue shall prepare annually the assess-
11 ment roll for taxation of transient aircraft by municipalities. The
12 assessment roll shall contain

- 13 (1) a description of all aircraft assessed under this section;
14 (2) the assessed value of the aircraft;
15 (3) the names and addresses of persons owning aircraft
16 assessed under this section.

17 (e) On or before March 1 of each year, the Department of Revenue
18 shall send to each owner of aircraft named in the assessment roll a
19 notice of assessment, showing the assessed value of the aircraft.
20 Notice of assessment is effective on the date of mailing.

21 (f) The Department of Revenue shall send to each municipality
22 levying a property tax a copy of the notice of assessment on aircraft
23 which is assessed under this section.

24 (g) A municipality or an owner of aircraft receiving an assessment
25 notice may object to the assessment by advising the Department of Revenue
26 in writing of the objections to the assessment within 20 days of the
27 effective date of the notice.

28 (h) The Department of Revenue shall provide by regulation for
29 notices of appeals to interested persons and municipalities.

1 (i) Following an objection, the Department of Revenue may adjust
2 the assessment and the assessment roll. An adjustment based on an
3 objection from a municipality or an owner of aircraft shall be made
4 within 30 days of the effective date of the notice of assessment.

5 (j) After a ruling by the Department of Revenue on an appeal made
6 under (g) of this section, the municipality or the owner of aircraft may
7 appeal to the State Assessment Review Board. The appeal must be filed
8 in writing within 50 days of the effective date of the notice of assess-
9 ment. The State Assessment Review Board shall provide by regulation for
10 notices of appeals to interested persons and municipalities.

11 (k) The State Assessment Review Board shall hear appeals filed
12 under (i) of this section. A majority of the State Assessment Review
13 Board constitutes a quorum required to transact business under this
14 section. The State Assessment Review Board shall provide by regulation
15 for notices of hearings to interested persons and municipalities. If an
16 appellant fails to appear at the hearing, the State Assessment Review
17 Board may proceed with the hearing in his absence. The appellant bears
18 the burden of proof at a hearing under this subsection.

19 (l) The only grounds for adjustment of assessed value is proof of
20 unequal, excessive or improper valuation or valuation not determined in
21 accordance with the standards set out in this section, based on facts
22 stated in a written appeal timely filed or proved at the hearing.

23 (m) The State Assessment Review Board shall certify its determina-
24 tion of an appeal to the Department of Revenue within seven days of the
25 hearing.

26 (n) A municipality or an owner of aircraft may appeal to the
27 superior court for, and is entitled to, trial de novo of the action of
28 the State Assessment Review Board.

29 (o) No later than June 1 of each year, the Department of Revenue

1 shall certify the final assessment roll.

2 (p) The Department of Revenue shall include aircraft omitted from
3 the assessment roll on a supplementary assessment roll, using the proce-
4 dures set out in this section for the original assessment roll.

5 (q) In this section, "transient aircraft" means

6 (1) aircraft with a gross operating weight of more than
7 12,500 pounds used in commerce by an air carrier to furnish transport-
8 ation to the public for compensation, hire or lease;

9 (2) equipment included in aircraft described in (1) of this
10 subsection; and

11 (3) ground cargo handling and containerization equipment
12 which can be transported in aircraft described in (1) of this subsection
13 and which is so transported.

14 * Sec. 3. AS 29.53 is amended by adding a new section to read:

15 Sec. 29.53.162. LEVY AND COLLECTION OF PROPERTY TAX ON TRANSIENT
16 AIRCRAFT. (a) A municipality may levy and collect property tax on
17 transient aircraft only under this section.

18 (b) A municipality may levy a property tax on transient aircraft
19 by applying the rate of levy, determined under AS 29.53.170(b), to a
20 value for all transient aircraft under the same ownership determined by

21 (1) adding the value of all transient aircraft owned by the
22 same taxpayer; and

23 (2) multiplying the value determined under (1) of this sub-
24 section by the ratio of the number of landings of transient aircraft
25 owned by the taxpayer in the municipality levying the tax during the
26 year preceding the assessment year to the total number of landings of
27 all transient aircraft owned by the taxpayer.

28 (c) A municipality may, by ordinance, classify transient aircraft
29 and exempt certain classes of transient aircraft from levy and collection

1 of a property tax under this section.

2 (d) In this section, "transient aircraft" means

3 (1) aircraft with a gross operating weight of more than
4 12,500 pounds used in commerce by an air carrier to furnish transporta-
5 tion to the public for compensation, hire or lease;

6 (2) equipment included in aircraft described in (1) of this
7 subsection; and

8 (3) ground cargo handling and containerization equipment
9 which can be transported in aircraft described in (1) of this subsection
10 and which is so transported.

11 * Sec. 4. Notwithstanding any other provisions of AS 29.53, an assessment
12 return on transient aircraft filed with a municipality under AS 29.53.070 for
13 the 1980 assessment year is valid for determining the tax due for that assess-
14 ment year. If two or more municipalities levy a property tax on transient
15 aircraft under AS 29.53 for the 1980 assessment year, the owner of the air-
16 craft may ask the commissioner of revenue to determine the tax due to each
17 municipality. Upon receipt of the request of the taxpayer, the commissioner
18 of revenue shall apportion the tax due by applying to the assessment of
19 transient aircraft reported to a municipality under AS 29.53.070 the amount
20 determined under AS 29.53.162, added by sec. 3 of this Act.

21 * Sec. 5. Notwithstanding any other provision of AS 29.53, an assessment
22 return on transient aircraft filed with a municipality under AS 29.53.070 for
23 an assessment year before 1980, is valid for determining the property tax due
24 to that municipality for that prior assessment year.

25 * Sec. 6. Sections 1 - 3 of this Act take effect January 1, 1981.

26 * Sec. 7. Sections 4 - 7 of this Act take effect immediately in accord-
27 ance with AS 01.10.070(c).
28
29

Tratk Saxman

City of Saxman
P.O. Box 8676
Ketchikan, Alaska 99901
(907) 225-4166

RESOLUTION NO:

A RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE'S
TITLE 29 REVISION COMMITTEE DECLARING A POLICY
AND POSITION ON NATIVE VILLAGE AND TRADITIONAL
TRIBAL GOVERNMENTS ENTERING INTO MUTUAL AND CO-
OPERATIVE AGREEMENTS OVER GOVERNMENTAL AND JURIS-
DICTIONAL MATTERS WITH THE STATE OF ALASKA

WHEREAS,

THE LEGISLATURE HAS DETERMINED that there exists
in the State several communities which have Na-
village and/or traditional tribal governments;
and,

WHEREAS,

THE LAW AND CUSTOMS OF THESE GOVERNMENTS include
defined notions of democracy, liberty and the
exercise of personal rights consistent with the
State and Federal constitutions; and,

WHEREAS,

THE PRESENT ECONOMIC BASE OF THE STATE is based
on a non-renewable resource which holds the pro-
mise of short life, absent renewable economic diver-
sification; and,

WHEREAS,

STOCKS PRESENTLY OWNED BY SHAREHOLDERS OF ANCSA
REGIONAL AND VILLAGE CORPORATIONS will be recall-
ed and sold to the general public in the year
1991; and,

WHEREAS,

BASED ON THE PAST HISTORY OF ALASKA'S ECONOMIC
GROWTH PATTERN, it would not be unreasonable
to project similiar economic impact occuring
through the unwarranted exportation of job/em-
ployment opportunities and local dollars result-
ing from an outside invasion of private non-
State interests in 1991; and,

WHEREAS,

THE ANCSA REGIONAL AND VILLAGE CORPORATIONS by
1991 will be a substantial and sizable component
of the State's economic base which will be ser-
iously threatened by private non-State interests
and entrepreneurs without the ability or ac-
cessibility for recognition and mutual and co-
operative interaction by the State with Native vil-
lage and traditional tribal government over jur-
isdictional and governmental matters.

NOW, THEREFORE, BE IT RESOLVED by:

THE POLICY AND POSITION ON NATIVE VILLAGE AND
TRADITIONAL TRIBAL GOVERNMENTS ENTERING INTO

Tatk Saxman

— City of Saxman
— P.O. Box 8676
— Ketchikan, Alaska 99901
— (907) 225-4166

MUTUAL AND COOPERATIVE AGREEMENTS OVER JURIS-
DICTIONAL AND GOVERNMENTAL MATTERS WITH THE STATE
OF ALASKA WILL PROMOTE THE EFFICIENT AND APPRO-
PRIATE DEVELOPMENT OF THE STATE RESOURCES AFTER
A SHORT DURATION OF NON-RENEWABLE RESOURCE ECO-
NOMIC ACTIVITY.

ET ATK Saxman

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RESOLUTION NO:

A RESOLUTION OF THE ALASKA MUNICIPAL LEAGUE'S TITLE 29 REVISION COMMITTEE DECLARING A POLICY AND POSITION ON THE 1979 LOCAL GOVERNMENT STUDY AND THE FINDING OF THE LOCAL GOVERNMENT SYMPOSIUM, HELD AUGUST 4-5, 1979, AS A CONSISTENT POLICY STATEMENT WHICH IDENTIFIES AND ESTABLISHES MAXIMUM LOCAL SELF-GOVERNMENT THROUGH FEDERAL AND STATE PROGRAM DECENTRALIZATION OF FUNDING AND UNIFICATION OF LOCAL EFFORTS FOR EFFECTIVE AND EFFICIENT UTILIZATION OF OPTIMIZED AND FUNCTIONALIZED COMMUNITY RESOURCE DEVELOPMENT AND THE ELIMINATION OF DISINCENTIVES AND BARRIERS WHICH DEPRIVE LOCAL NATIVE VILLAGES OF OPTIMAL AND FUNCTIONAL ASSURANCE OF THE BASIC COMMUNITY AND TRIBAL RIGHTS FOR LIMITED SOVEREIGNTY, SELF-GOVERNMENT, SELF-DETERMINATION AND SELF-SUFFICIENCY AND THE COOPERATIVE EFFORTS OF AND THE COORDINATION WITH OTHER ENTITIES OUTSIDE OF THE TRADITIONAL NATIVE VILLAGE AND COMMUNITY

WHEREAS,

TITLE 29 OF THE ALASKA STATE STATUTES is urban designed and needs to adapt governmental structures and processes to rural needs and conditions; and,

WHEREAS,

THE ALASKA STATE CONSTITUTION provides for maximum local self-government and local participation, however, legislative provisions and actions appear to abridge the privileges and immunities of these constitutional provisions; and,

WHEREAS,

DECENTRALIZATION OF SERVICE DELIVERY through intergovernmental cooperation is mandated through appropriate federal legislative and administrative provisions and actions with the intent of providing a more economical and efficient method of providing services, promoting participation on the community, not area, level, and establishing unification of local efforts for the optimal and functional assurance of maximum local self-government; and,

WHEREAS,

THE URBAN ORIENTED MUNICIPAL GOVERNMENT STRUCTURES of Title 29 lack appropriate optimal and functional assurances of demographic characteristics integral within the systematic isolationism it promotes of Native Villages and Communities with respect to not only identifying geo-

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graphic characteristics, but, also, political, economic, cultural and social isolationism; and,

WHEREAS,

DECENTRALIZATION AND COORDINATION OF FEDERAL AND STATE PROGRAMS will not be optimized nor functionalized unless the State recognizes the need to provide receptacles for service delivery on the community, again not area, level through legislative provisions and actions for planning and zoning on the community, not area, wide basis through the maximized maintenance of local self-government, self-determination and self-sufficiency on the local community level; and,

NOW, THEREFORE, BE IT RESOLVED by:

THE POLICY AND POSITION OF THE 1979 LOCAL GOVERNMENT STUDY AND THE FINDINGS OF THE LOCAL GOVERNMENT SYMPOSIUM, HELD AUGUST 4-5, 1979, DECLARES AND RECOGNIZES A CONSISTENT POLICY AND NEEDS STATEMENT WHICH IDENTIFIES AND ESTABLISHES MAXIMUM LOCAL SELF-GOVERNMENT THROUGH FEDERAL AND STATE PROGRAM DECENTRALIZATION OF FUNDING AND UNIFICATION OF LOCAL EFFORTS FOR THE EFFECTIVE AND EFFICIENT UTILIZATION OF OPTIMIZED AND FUNCTIONALIZED COMMUNITY RESOURCE DEVELOPMENT AND THE ELIMINATION OF DISINCENTIVES AND BARRIERS WHICH DEPRIVE THE LOCAL NATIVE VILLAGES OF OPTIMAL AND FUNCTIONAL ASSURANCE OF THE BASIC COMMUNITY AND TRIBAL RIGHTS FOR LIMITED SOVEREIGNTY, SELF-GOVERNMENT, SELF-DETERMINATION AND SELF-SUFFICIENCY AND THE COOPERATIVE EFFORTS OF AND THE COORDINATION WITH OTHER ENTITIES OUTSIDE OF THE NATIVE VILLAGE AND COMMUNITY.

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RESOLUTION NO:

A RESOLUTION OF THE TITLE 29 COMMITTEE FOR THE ALASKA MUNICIPAL LEAGUE 30th ANNUAL LOCAL GOVERNMENT CONFERENCE DECLARING A POLICY AND POSITION ON THE PROPOSED ALASKA STATE STATUTES, TITLE 29, MUNICIPAL GOVERNMENT, REVISIONS MUST REFLECT THE ABILITY, AND NOT INABILITY, OF LOCAL COMMUNITIES TO REACH AND MAINTAIN THE BASIC SOCIAL AND FOUNDATIONAL GOAL OF THE STATE OF ALASKA: SOUND, ECONOMICALLY MOBILIZED AND MAXIMUM LOCAL SELF-GOVERNMENT, THROUGH DELIBERATE AND EQUITABLE STRENGTHENING OF THE ADMINISTRATIVE AND LEGISLATIVE POLICIES AND PROCEDURES AS CONTAINED AND EFFECTED BY THE ALASKA STATE STATUTES AND AS IMPLEMENTED BY AND PROVIDED THROUGH THE STATE OF ALASKA IN FEDERAL AND STATE PROGRAMS AND SERVICES PROVIDING TO RECIPIENT COMMUNITY AND AREA APPLICANTS IN A CURRENT AND DECENTRALIZED MANNER THEREBY ENHANCING AND ENCOURAGING THE REALIZATION OF SOUND, ECONOMICALLY MOBILIZED AND MAXIMUM LOCAL SELF-GOVERNMENT

WHEREAS:

SUBSTANTIAL ECONOMIC AND SOCIAL HARDSHIP is predominant within the rural and suburban communities of the State; and,

WHEREAS:

EFFECTIVE AND EFFICIENT PROVISIONS designed with deliberate and equitable strength will enhance and encourage the ability of rural and suburban communities to exercise and enjoy all the rights, privileges, powers and immunities, including, but without limitation, the power to enact ordinances and collect taxes, and shall be subject to all the duties, obligations, liabilities and limitations of municipal government subject to the Alaska State Constitution, yet not found in the present provisions of Alaska State Statutes, Title 29, Municipal Government, for the self-actualization of maximum local self-government; and,

WHEREAS:

SOUND, ECONOMICALLY MOBILIZED AND MAXIMUM LOCAL SELF-GOVERNMENT as an optimal and functional goal of the State of Alaska can only be reached and maintained through a current and decentralized administration of Federal and State programs and services concentrated at the local community level in order to provide the impetus through community participation and public/private financial lever-

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aging to appropriately and efficiently combat substantial economic and social hardship and alienation; and,

WHEREAS:

DOMINANT URBAN CENTERS WITHIN THE STATE by demonstrating their ability for reaching and maintaining maximum local self-government must support and continue to exemplify this goal by further enhancing and encouraging the proposed Alaska State Statutes, Title 29, Municipal Government, revisions to reflect this needed intent for the continued and consistent viability and longevity of the State of Alaska; and,

WHEREAS:

THE EFFECTIVE MANAGEMENT IN AN INTERGOVERNMENTAL CONTEXT is one which exercises and enjoys the legal and political competence and institutional capacities of maximum local self-government and meshes these capacities with those being cooperatively managed or shared from the Federal side; and,

WHEREAS:

MAXIMUM LOCAL SELF-GOVERNMENT STRATEGIES require an unprecedented level of intergovernmental interaction, which the various elements of government having specific responsibilities to discharge relative to local government and its constituencies cannot adroitly address the mutual problems inherent in the United States and the State of Alaska self-government approaches without optimal and functional assurance of broad based community participation.

NOW, THEREFORE, BE IT RESOLVED by the Title 29 Committee for the Alaska Municipal League 30th Annual Local Government Conference:

THE POLICY AND POSITION ON THE PROPOSED ALASKA STATE STATUTES, TITLE 29, MUNICIPAL GOVERNMENT, REVISIONS MUST REFLECT THE ABILITY, AND NOT INABILITY, OF LOCAL COMMUNITIES TO REACH AND MAINTAIN THE BASIC SOCIAL AND FOUNDATIONAL GOAL OF THE STATE OF ALASKA: SOUND, ECONOMICALLY MOBILIZED AND MAXIMUM LOCAL SELF-GOVERNMENT, THROUGH DELIBERATE AND EQUITABLE STRENGTHENING OF THE ADMINISTRATIVE AND LEGISLATIVE POLICIES AND PROCEDURES AS CONTAINED AND EFFECTED BY THE ALASKA STATE STATUTES AND AS IMPLEMENTED BY AND PROVIDED THROUGH THE STATE OF ALASKA IN FEDERAL AND STATE PROGRAMS AND

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SERVICES PROVIDING TO RECIPIENT COMMUNITY AND
AREA APPLICANTS IN A CURRENT AND DECENTRALIZED
MANNER THEREBY ENHANCING AND ENCOURAGING THE
REALIZATION OF SOUND, ECONOMICALLY MOBILIZED
AND MAXIMUM LOCAL SELF- GOVERNMENT.

TRIBAL-STATE RELATIONS



A New Paradigm for Local
Government in Alaska



TRIBAL-STATE RELATIONS:
A NEW PARADIGM FOR LOCAL
GOVERNMENT IN ALASKA

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INTRODUCTION

Local government in rural Alaska is plagued by the existence of parallel government systems. On one hand, there exists a system of Native governments. On the other hand, the state has encouraged the formation of municipal governments. Often the dual system exists side-by-side in communities of less than 200 persons. In these situations, confusion, and the duplication of administrative costs and services has had a crippling effect on local government. Communities which attempt to avoid the duplication find themselves either ineligible for the respective benefits of the missing government, or forced to create exotic or ad hoc organizations which are marginally eligible for the desired benefits.

This study is an effort to sort out and compare these two systems of government. Additionally, the study makes suggestions on how to correct this situation within existing constitutional restraints.

PART I

EARLY AND CURRENT ALASKAN LOCAL GOVERNMENTS

A. EARLY ALASKAN LOCAL GOVERNMENTS

The earliest "local governments" in Alaska were Native. As Dave Case points out, primal governments varied between the Native cultures.¹ Generally, however, these early governments were loose associations of individuals based upon family relationships and customs. Group decisions were made by consensus.

Similarly, early non-Native local government in Alaska was very informal. After the purchase of Alaska by the U.S. in 1867, the primary mechanism of local government was the extra-legal mining districts.² Like the Native governments, these early miner's governments were loose associations based on custom. Generally, decisions were made by majority vote. In 1884, Congress recognized the authority of these mining districts, but the status of Native governments remained in limbo.

In 1900, Congress enacted a civil code for Alaska which included authorization to form towns of over 300 residents.³ This first form of municipal government was patterned after the mayor-council type of city government common to the "lower 48." Towns were severely limited as to their ability to tax and contract debt and were highly dependent on intergovernmental transfers for financial support. Their primary function seems to have been providing school services. In 1904, some of these limitations were relaxed, but the next major change had to wait until the formation of a territorial government.

In 1905, Congress authorized the formation of independent (city) school districts, and school districts for unincorporated areas.⁴ In both cases, the districts exercised fiscal autonomy over current operating expenditures. They directly received a portion of intergovernmental

revenue transfers due the city. They remained dependent on the city or territorial government for tax revenues for capital expenditures.

In 1912, Congress passed the Organic Act creating the Territorial legislature.⁵ In the following years, the legislature created a second class of territorial towns, subject to the limitations of the earlier Act of Congress. It was fully intentioned that local government be kept weak so as to prevent a taxing or regulatory threat to commercial and mining interests in the territory.⁶ In fact, the Organic Act prohibited organization of "counties" or other regional local governments.⁷ In 1915, the legislature upgraded territorial towns so that they would be subject to the same limitations as the towns authorized under the federal legislation. At the same time, the legislature for the first time attempted to assimilate Native village government through the Indian Village Act of 1915. This Act authorized Indian villages to organize as units of local government.⁸

In 1917, the legislature authorized incorporation of school districts in unincorporated areas. Under this new legislation, the incorporated school districts achieved greater fiscal autonomy through authorization to tax, as well as an increase in shared intergovernmental transfer revenues.

The legislature undertook a revision of the territorial municipal code in 1923. The new code replaced federally authorized towns with first class cities which directly elected a mayor, expanded council powers, provided for mayoral vetoes, and established minimum procedures for city government.⁹ Later, in 1929, the legislature repealed the Indian Village Act of 1915, and revised the laws relating to second class cities making them substantially equal to first class cities.

By 1934, the federal policy toward Indians had again shifted away from assimilation. This was reflected by the passage of the Indian Reorganization Act, and the subsequent extension of the Act to Alaska in 1936.¹⁰ The Act was intended to vest "tribal organizations with

real, though limited, authority, and by prescribing conditions which must be met by such tribal organizations."¹¹

At this same time, the legislature instituted reforms designed to authorize special purpose regional governments. In 1935, the legislature authorized incorporation of "independent school districts" which included both the area inside city limits and the surrounding adjacent areas. The new school districts were independent of city governments and were fiscally autonomous.¹² Also in 1935, the legislature authorized public utility districts which were fiscally autonomous special purpose governments capable of providing garbage, parks, street, fire, telephones, electrical, and other services.¹³

In 1951, the legislature authorized third class cities, which were essentially the same as second class cities, differing only in geographical and population size.¹⁴

In 1957, the territorial legislature again attempted to incorporate villages under territorial law.¹⁵ An Incorporated Village had limited powers which included power to provide water, electricity, sewers, and fire protection; regulate dogs, curfews, and land use; and provide public works. The State amended the Act in 1959 to invest the incorporated village with general police powers and provided for village magistrates to levy limited fines. At the same time, the legislature defined the incorporated villages as a city of the fourth class.

At the time of statehood, there existed in the state:

- 24 first class cities
- 8 second class cities
- 2 third class cities
- 10 fourth class cities
- 69 I.R.A.'s
- 5 P.U.D.'s
- 8 independent school districts

- 1 incorporated school district
- unknown number of traditional Native councils

Statehood did not drastically alter the local government pattern since Article XV, Section 1 of the Alaska Constitution provided that, the laws of the territory remained in effect until they were repealed, amended or expired.

Finally in 1972, the state undertook a wholesale revision of the municipal code to create the current system. The main impact of the 1972 revision on the smaller rural communities was to strip those communities which organized under the Village Incorporation Act of their "village" status.

B. CURRENT STATE CHARTERED LOCAL GOVERNMENT

The system of local government authorized under the Alaska Constitution is relatively simple. It is possible to categorize Alaskan local governments into two basic types, i.e., general and special purpose governments. For the sake of analysis, a general purpose government is a government which exercises independent discretion over a broad range of topical concerns. In contrast, a special purpose government is a government which exercises discretion over a specified topical concerns.

General Purpose Governments.

The general purpose government is the constitutionally preferred unit of local government in Alaska. This policy is specifically stated in Article X, Section 1 of the Alaska Constitution which states that, "The purpose of this article is to provide for maximum local self-government with a minimum of local government units, ..." This policy is implemented in Article X, Section 2 which provides that "All local government powers shall be vested in boroughs and cities," and is further stated in Article X, Section 15 which states "Special service districts existing at the time a borough is organized shall be integrated with the government of the borough as provided by law."

This concern for consolidating local powers into single general purpose governments is expressed throughout the Constitutional Convention record. The adoption of "one basic local government system" was intended to prevent "creation of numerous types of local units which can become not only complicated but unworkable."¹⁶ Of immediate concern to the Delegates was the governance of the school boards, public utility districts (P.U.D.s) and health districts. As stated by delegate Victor Fischer:

"That is one of the points that we have tried to meet here, not to establish too many local governments but those that would be established would be effective to carry out not only the local but also state functions as may be necessary."

To this end the constitution provides for the creation of boroughs and cities.¹⁸

The most unique aspect of the Alaskan municipality is the framer's intent to create strong local government units. Systems of government then operating in the majority of the states were felt to be too weak.¹⁹ In his initial address to the convention introducing the Local Government Committee's proposed article, Delegate Vic Fischer expressed the "New Federalist" philosophy favoring general decentralized government. Citing the Congressional Commission on Intergovernmental Relations, delegate Fischer stated:

"The Commission concerned itself with the need for strengthening of state government and a decentralization of federal power. In this study they found that local government is an important factor in this process and I would like to briefly quote a few paragraphs. In discussing the strengthening of local government, the Committee says, 'The objective of decentralization cannot be obtained by a readjustment of national-state relations alone. It will be fully achieved only when carried through to the lowest levels of government where every citizen has the opportunity to participate actively and directly. The strengthening of local government requires the activities that can be handled by these units be allocated to them together with the financial resources necessary for their support.' Then the report goes on and draws a picture of the tremendous number of overlapping tax jurisdictions and separate local entities we now have in the state and goes on to say, 'More or less hidden in this picture is a paradox that

consistently plagues the state and bars any easy solution of the problem of achieving the decentralization of government -- too many local governments and not enough local government.' That is one of the points that we have tried to meet here, not to establish too many local governments but those that would be established would be effective to carry out not only the local but also state functions as may be necessary."²⁰

To implement this plan, the committee adopted the so-called "Texas Plan." This approach was explained to the convention by delegate Victor Rivers as follows:

The old approach to county government was that they existed and had their authorities only in those specifically delegated to them and specifically spelled out to them by the legislature or by the constitution. The other approach which has been adopted and which has operated in a few states, approximately seven as I recall, particularly in Texas, has been called the Texas Plan, and there, under that plan, they allocate such powers to the intermediate tier of government and the cities are not specifically reserved or eventually withdrawn by the state itself. They have a broad exercise of local authority much as our cities have today. That has been the matter of the choice -- whether we wanted to follow the old pattern in which the constitution and the legislature would delegate certain specific powers to the intermediate form of government, which often is called the county and which we have designated as the borough, or whether we would follow the plan of reserving powers to the state and letting the local government exercise broad general authority within the limits of those reservations.²¹

It is quite clear that the "pure" Texas plan called for application of home rule principals to all local governments. The various classes of cities and boroughs would be defined in law by the quantity and quality of powers reserved by the state.

The record indicates that some delegates to the constitutional convention supported the "pure" Texas Plan.²² In fact, the concept of a "general law" municipality was not introduced in the floor debate, but seems to have been an assumed constant which carried over from the territorial local government concepts. This is reflected in Article X, Section 9 and 11 which respectively provide that first-class municipalities could assume home-rule status, and that the legislature could extend home rule to other classes of government. The concept of

"general law" municipalities was enacted by statute.²³ It is interesting to note that although the "general law" concept was not discussed in convention floor debates, it has become a fundamental concept upon which the majority of local governments in Alaska are based.

It is also important to note that the framers specifically desired to provide independent authorization for city and borough powers, rather than provide that such powers be delegated to the cities and boroughs by the legislature. The legislature's authority over cities and borough is specifically enumerated. It may only regulate cities and boroughs through its authority to classify and define the respective powers and manner of incorporation.²⁴ Oddly enough the Constitution provides for legislative definition of borough assemblies' appointment and composition.²⁵ In contrast, it does not have a similar provision governing city councils. Rather, the Constitution merely provides that the council, however composed, shall be the governing body of the city.²⁶

On the other hand, the powers of service areas are delegated. In the case of an incorporated area, the service area's powers are derived from the organized borough.²⁷ The exercise of this borough power is subject to legislative regulation by the legislature. In contrast, service areas in unorganized areas of the state possess authority delegated and regulated by the legislature.²⁸

i) Boroughs: A borough is the intermediate level of government in the State of Alaska. Although the term "borough" is somewhat unique, the notion of an intermediate level of government is common to the American local government scene. The borough "corresponds generally to the county in other states."²⁹ By statute, the borough is a government for an "area."³⁰ This is in contrast to a city, which is a government for a "community."³¹ The framers of the constitution anticipated that an average size borough would be between 1,000-2,500 square miles.³² Presumably, an area could include a number of communities and their outlying areas.³³ Clearly, the framers intended to create a system of two-tiered, local coexistent governments.

But the framers also intended local government to be flexible enough to adjust to future developments. It has, therefore, been observed that:

Boroughs in different parts of Alaska may serve two quite different purposes. In areas which include cities, they may constitute a second tier of government. In other areas, they may themselves be the sole or primary local units.³⁴

The Alaska Supreme Court has recognized this by stating that the Constitution does not require the coexistence of boroughs and cities.³⁵

There is a strong indication that the original concept of the borough was strongly linked to home rule. This is most notably demonstrated in committee answers to delegate questions regarding the unorganized borough.

V. Rivers: ... In the extent that the benefits that the legislature sets up will offset the added cost to the people, and the extent of their desire for home rule will govern how far they go in organizing those boroughs, but it was our thought there would be enough inducement for them to organize and exercise home rule so that as time went on they would gradually all become incorporated boroughs...³⁶

This sentiment is noticeable in comparing the respective constitutional sections dealing with cities and boroughs. Whereas the constitution specifically states that "Cities shall have the powers and functions conferred by law or charter."³⁷ (emphasis added) The comparable clause dealing with boroughs is less specific providing that, "The legislature shall classify boroughs and prescribe their powers and functions."³⁸ (emphasis added) It remains unclear whether such prescription should be by specific enumeration or reservation. Nevertheless, inclusion of reference to boroughs in Article X, Sections 9 and 10 leaves no doubt that general law boroughs were constitutionally contemplated.

ii) Cities. In contrast to boroughs, cities are statutory defined as the local government unit for "communities."³⁹ The local government

PART II

COMPARISONS OF GOVERNMENTAL AUTHORITY

The question of governmental authority is actually a question of the respective jurisdiction of the governments in question. Basically there are two types of jurisdiction: Territorial jurisdiction, i.e., the geographical area over which a government's authority extends; subject matter jurisdiction, i.e., the topical areas over which a government has the authority.

A. TERRITORIAL JURISDICTION

i) Municipalities. The Alaska Constitution provides that boundaries are determined by the Local Boundary Commission.¹ The Local Boundary Commission is charged by statute with establishing boundaries upon municipal incorporation² and subsequent boundary alterations.³

The territorial jurisdiction of Alaskan cities is ill-defined by Alaskan statutes. The statutes provide for the creation of boundaries,⁴ which presumably infers that boundaries constitute the jurisdictional demarcation of a city.⁵ This inference is further reinforced by statutes which provide for extra-territorial jurisdiction. A municipality may provide parks, roads, trails, playgrounds, emergency medical services, cemeteries, and airports outside its municipal boundaries.⁶ Additionally, cities outside boroughs may exercise extra-territorial curfew regulation.⁷

In contrast, a borough's territorial jurisdiction is clearly defined in regards to each respective power. Certain powers are "area-wide," i.e., a power of an organized borough exercised throughout the borough.⁸ These include education, planning, platting, zoning, and tax assessment and collection and such additional powers acquired by the borough through transfer or referendum.⁹ The borough may exercise other municipal powers as "non-area-wide powers," i.e., powers exercised only in the area outside of cities.¹⁰ First class boroughs may exercise any municipal power as a non-area-wide power by ordinance.¹¹ Second

The basic model for the regional Native nonprofit organization was established under the terms of the Indian Self-Determination Act. That Act authorizes contracts between the BIA and Native governments or, in their place, Native organizations. Generally BIA programs in Alaska cannot be effectively administered at the village level. The sheer cost of administering such programs at the village level makes such contracting not feasible. In response to this problem, Natives have organized along regional lines to form Native organizations which can effectively contract with BIA for the operation of BIA programs within their region.⁹⁴ With the exception of the Inupiat Community and the Tlingit/Haida Central Council, none of these regional Native nonprofit organizations possess de jure governmental authority. Rather, they only provide those services normally provided by BIA or other federal or state agencies under a contract with those agencies. In this way, they are capable of performing governmental functions without the prerequisite governmental stature.

The most notable example is illustrated in the court case State v. Aleut Corporation.⁹³ In that case, several Native organizations sued the Alaska Division of Lands to prevent a proposed sale of lands adjacent to their communities. In addition to various villages, the plaintiff's list included the Bristol Bay Native Corporation and the Aleut Corporation, both regional corporations formed under the terms of the Alaska Native Claims Settlement Act. The plaintiffs in that case sued under AS 38.05.305, which provided that the Division should give notice and consult with incorporated municipalities and other organized communities adjacent to lands proposed for sale by the state. The court recognized that ANCSA regional corporations perform a number of quasi-governmental functions in rural Alaska, however, the Court specifically held that for the purposes of the Alaska Lands Act, regional Native corporations formed under ANCSA did not possess the requisite governmental attributes to qualify them for notice and consultation under the terms of the then existing statute. Subsequent to the Alaska Supreme Court decision, the Alaska Legislature amended the Alaska Lands Act to specifically require the Division of Lands to give notice to the regional Native profit corporations prior to a proposed sale of lands by the state. In 1979, the legislature again amended Section 305 to require the Division of Lands to give notice and consult with village corporations formed under ANCSA. These notices are similar to those given to organized municipalities. In light of this legislative history, it would seem that the Alaska Legislature intended to vest in ANCSA corporations certain specific governmental powers in spite of their general corporate character.

A second type of quasi-governmental Native organization is characterized by the regional Native nonprofit corporation. The activities of these regional nonprofits substantially vary. Their activities include Self-Determination Act contracting for the administration of BIA programs; contracting from HUD for the administration of housing projects; contracting under Title VI, the Comprehensive Employment and Training Act, for the operation of Native CETA programs; etc.

The organization of the Inupiat Community under the Indian Reorganization Act presents a similar case. Prior to the passage of ANCSA, the Inupiat Community organized several Northern Slope villages to form a regional IRA. The Department of the Interior takes a position for the purpose of the Indian Self-Determination Act, that the Inupiat Community cannot enter into contracts or accept grants without the prior approval of the affected villages.⁸⁹ In both cases, the Solicitor has depended upon the terms of the Indian Self-Determination Act itself which defined "Indian Tribe" as:

any Indian tribe, band, nation, or other organized group or community including any Alaskan Native or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act which is recognized as eligible for the special programs of services provided by the United States to Indians because of their status as Indians.⁹⁰

In these special cases, it is unclear which is the special purpose government and which is the general purpose government. As a general rule, Indian nations have the power to determine their own form of self-government in accordance with the political and cultural history.⁹¹ This is in accordance with the principle that "the internal affairs of the Indians remained exclusively within the jurisdiction of whatever tribal governments existed."⁹² Under these circumstances, it is necessary to review an organization's status on a case-by-case basis. In light of the Cogo decision, however, it is also necessary to review any relevant specific statutory law to determine if the respective organization has a special function under federal law.

Native Quasi-Governments

In addition to the general purpose governments and the special purpose governments outlined above, there exists entities which, for the lack of a better term, may be called Native quasi-governments. These types of organizations are not governments in the formal sense, however, they exercise a variety of functions which are generally exercised by governments. In rare cases, these types of organizations have been formally recognized as exercising governmental authority.

at least analogous to the tribal organization found in the "lower 48." This principle is recognized under Alaskan state law and was enunciated by the Alaska Supreme Court in Ollestead v. Native Village of Tyonek.⁸⁵ In that case, the court recognized the tribal status of the Native village of Tyonek council.

It is, therefore, clear that to the extent that they exist, Alaska Native Village Councils organized under Indian Reorganization Act are recognized as local tribal government organizations.

Special Purpose Governments

While it is clear that the general purpose governments of Alaskan Natives are organized at the village level, additional special purpose Native governments exist which complicate the governmental pattern of Alaskan Natives. Most notable in this category is the Tlingit/Haida Central Council.

The specific status of Tlingit/Haida Central Council was litigated in Cogo v. the United States.⁸⁶ In that case, an individual brought a lawsuit against the Council to require inclusion in the preparation of the tribal roll under the Tlingit/Haida Settlement.⁸⁷ In that case, the council successfully claimed sovereign immunity as a tribal organization. The plaintiffs argued that the Council was not a tribal organization, and, therefore, could not assert tribal sovereign immunity. Specifically, the plaintiff pointed to the language in the Indian Self-Determination Act which seems to indicate that in Alaska, the village council was the tribal organization.⁸⁸ The court rejected the plaintiff's claim stating that the language in the Indian Self-determination Act was irrelevant for the purposes of this suit and went on to state that, although the Tlingit/Haida Central Council was certainly not a tribal organization for the purposes of the Indian Self-Determination Act, it was a tribal organization for the purposes of Tlingit/Haida Settlement. This case has clearly established a principle that special purpose tribal governments exist in Alaska, however, the exact extent of such special purpose tribal governments has not been fully delineated.

1936 to specifically extend its provisions to the Territory of Alaska.⁷⁹ The operation of the Indian Reorganization Act under the 1936 Alaska amendment was substantially different than the general application of the Act in the "lower 48." The adoption of the Alaska amendment marked the extension of the reservation policy to Alaska. Under the Act, Indian communities could petition the federal government for the creation of reservations.⁸⁰ Between 1934 and 1949, several IRA reserves were established. The IRA reserve policy, however, was greatly opposed by non-Native residents of Alaska and through the operation of territorial politics, lawsuits and other pressures on the Bureau of Indian Affairs, the Bureau abandoned the policy of creating IRA reserves in Alaska.⁸¹ Even though the reservation policy was abandoned by the Bureau, the organizational efforts of the Bureau left in its wake a number of organized Native villages without reservations. Those few reservations actually formed pursuant to the Act were later revoked by the Alaskan Native Claims Settlement Act.⁸² The net result of this course of events has left a number of Native governments continuing to operate under their IRA constitutions.

The legislative history accompanying passage of the Alaska amendment clearly indicates that Congress intended to recognize the Alaska Native village as analogous to a tribal organization. A House report stated:

The proposed amendment, number 1 above, set out is necessary because of the peculiar nontribal organization under which the Alaska Indians operate. They have no tribal organizations as the term is understood generally. Many groups that would otherwise be termed tribes live in villages which are the basis of their organization.⁸³

In this sense, the Alaska amendment was consistent with the general statutory purpose of the Indian Reorganization Act, which was

To stabilize the tribal organization of Indian tribes by vesting such tribal organizations with real limited authority and by prescribing conditions which must be met by such tribal organizations.⁸⁴

In light of these Congressional enactments and legislative history, it is clear that the Alaskan Native IRA Village Council is equivalent or

tribes. For example, Native villages receive identical treatment as Indian tribes under the Indian Self-Determination Act,⁷⁰ the State and Local Fiscal Assistance Act,⁷¹ the Housing and Community Development Act,⁷² the Comprehensive Employment Training Act,⁷³ and the Indian Child Welfare Act.⁷⁴ Additionally, Congress has recognized self-governing qualities of Alaska Native communities when it provided for the extension of state civil jurisdiction over Alaska Natives. In applying PL 83-290 to Alaska, Congress expressly reserved that:

Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community, in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the state, be given full force and effect in the determination of civil cause of action pursuant to this section.⁷⁵

The executive branch has likewise dealt with Alaska Native villages as Native governments where it exercises discretion. The best example of this is the Omnibus Crimes Control and Safe Streets Act which places responsibility of the Secretary of the Interior to determine those Indian tribes which perform law and order functions.⁷⁶ Under this authority, the Secretary of the Interior has recognized several Alaska Native villages as exercising the law and order functions including the employment of tribal police, establishment of tribal courts, corrections functions, and the adoption a law and order code.⁷⁷

i) I.R.A.s. A second type of general Native government in Alaska is the "IRA Village Council." IRA stands for Indian Reorganization Act, or the Howard-Wheeler Act, which was passed in the 1930s in an effort to modernize Indian or Native American governments.⁷⁸ The Act originally applied only to the "lower 48." Its application in Alaska was somewhat unique. A 1934 version of the Indian Reorganization Act provided that only an "Indian tribe or tribes residing on the same reservation" could organize to adopt constitutions under the Act. Since few reservations existed in Alaska at the time, the Act had, in its original form, doubtful utility in Alaska. To address the special problems of Indian organization in Alaska, Congress amended the Indian Reorganization Act in May of

General Purpose Governments.

It is commonly stated that there are two types of general Native governments in Alaska: Traditional Councils and IRA Councils.⁶⁶ In practice, there is little difference between the operation of these two types of government. The distinction between the two governments is largely theoretical. This distinction is important, however, when the authority or status of the government comes into question.

i) Traditional Councils. In a strict sense, traditional councils are not traditional to the Alaska Native people. As pointed by David Case, the traditional precontact Native governments were primarily based on family ties.⁶⁷ Traditional councils have been formed in reaction to contact with the non-Native culture for local representation of the Native community before outside interest. Many of these councils have adopted formal traditional constitutions while others seem to operate according to an unwritten constitution like the United Kingdom. In all cases, the basic level of organization is the village.

The basis of these government's authority rests in their retained sovereignty, i.e., the principle that absent express Congressional action to the contrary, Indian nations retain the inherent power of internal self-government.⁶⁸

This observation has led to several inquiries regarding the tribal status of Alaskan Native villages. Although the question of tribal status in Alaska is intriguing from an ethnic and political perspective, its resolution has doubtful legal significance. More important that tribal status however, is the general recognition of a group's authority to govern itself. This recognition is directly linked to its dependent status vis-a-vis the federal government.⁶⁹ In turn, a Native community's dependent status is determined by legislative and executive course of action respecting the Native community in question.

Congress has specifically extended this recognition to Alaska Native villages and has treated them in the same manner as other Indian

areas may organize a special service area for the conducting district coastal management programs.⁶² These programs operate to guide state agencies in the operation of their programs throughout the coastal areas of the state. While the state continues to be the basic provider of basic services, the service area boards operate as a centralized planning agency for the area. The board of the service area is popularly elected.

Third, the regional education attendance areas (REAA) are service areas providing educational services within the unorganized borough.⁶³ Like the coastal zone management areas, the REAA's are controlled by a popularly elected board, but were mandatorily organized by the legislature after a settlement of the "Molly Hootch" case.⁶⁴

Finally, the legislature has "impliedly" authorized organization of volunteer fire departments for unorganized areas of the state through the state revenue sharing program.⁶⁵ Under this program, local fire departments may organize under regulations adopted by the state fire marshall. Upon approval and registration of the departments, the organizations are eligible for state funding. Generally, these departments enjoy substantial fiscal autonomy, provided that they confine their activities to fire protection.

As noted above, there is great variety in the organization and operation of these special service areas. At the present time, the authority of these special service areas has not been challenged in court, so that it is impossible to define the limits of the legislature's discretion as to the manner and form that these service areas may take. If the past record is an indication of legislative authority, it can only be stated that the legislature possesses broad discretion in creating and organizing service areas, provided they are defined taxing authority.

C. ALASKA NATIVE GOVERNMENT ORGANIZATION

As with state chartered local governments, Alaskan Native governments can be categorized as general or special purpose governments. Additionally, there exists "quasi-governmental" entities.

range of services for a community without city incorporation. This concept is not beyond the framer's contemplation, in that both pro-integration, and anti-integration factions within the Constitutional Convention characterized cities as "a collection of service areas".⁵⁷ It must be remembered, however, that a collection of service areas lack independent taxing authority possessed by cities. Thus, a collection of service areas would be totally dependent on intergovernmental transfers, whether from the borough or the state. Furthermore, a collection of service areas would be subordinate to borough regulation in areas of "local control". The collection of service areas, however, could exercise substantial autonomy in areas of state interest, as defined by the legislature.

Service areas have their greatest utility in the unorganized boroughs. The constitution directs the legislature to provide necessary services in the unorganized boroughs, "allowing for maximum local participation and responsibility."⁵⁸ To implement this section, the legislature provided that it may authorize "service areas" in the unorganized borough.⁵⁹ It is agreed that such service areas do not possess powers of fiscal autonomy,⁶⁰ however, they may exercise other powers delegated by the legislature.

The legislature has seen fit to authorize four types of service areas in the unorganized borough - i.e.: 1) aquaculture service areas; 2) coastal resource service areas; 3) regional educational service areas, and 4) volunteer fire departments.

The legislature authorized the Commissioner of Commerce and Economic Development to declare aquaculture service areas.⁶¹ The purpose of these service areas are to provide fishery enhancement services. The service area board is comprised of representatives of member user groups.

The coastal zone management service areas are general planning units for coastal areas of the state. Whereas, coastal boroughs are automatically designated coastal zone management districts, unorganized

revenues from intergovernmental transfers. For example, under the terms of A.S. 29.89.030 (2), a health district operating a hospital may qualify for state revenue sharing. Although, the sponsoring municipality would initially receive the revenue sharing payments, the municipality is required to transfer such payments to the service area to be used for health services at the discretion of the hospital "directors".

The second major limitation on a service area's autonomy is related to the operation of the "local activity rule." As the Court stated in Macauley, the legislature may delegate to service areas power beyond the regulation of the parent municipality in areas which are the subject of state concern. It follows, therefore, that service area autonomy is inversely related to "local" concerns. For example, a municipality could certainly regulate the use of municipal property regardless of whether it was assigned to the service area, since municipal property is purely a local concern.⁵⁴ Of course, it is not easy to define what is a "local" concern as opposed to a "state" concern. This is even less clear under the borough form of government in that the framers of the constitution intended boroughs to assume greater responsibility in the area of traditional state concerns as state government "decentralized." The framers seemed to have accepted this ambiguity, and left the matter to the legislature. The courts, in turn, have recognized this role for the legislature by holding that municipal regulation is invalid in the face of contrary statutory law.

In spite of these limitations, service areas would seem to be remarkably flexible mechanisms of local government. For example, the Constitution authorized intergovernment cooperative agreements between "any local governments" for joint administration of any functions or powers.⁵⁵ Presumably, these provisions would apply to service areas since they are local governments. This view is supported by the fact, that only cities and boroughs are authorized to transfer powers, while "all local governments" are authorized to enter into intergovernmental agreements.⁵⁶ Thus, it would seem possible for co-extensive service areas to enter into cooperative administrative agreements for such things as centralized accounting and budgeting, personnel management and property management systems. Such mechanisms could be used rather extensively to provide a wide

exclude the exercise of governmental authority by governments other than cities and boroughs.

This balance is further demonstrated in those constitutional provisions which provide that when a borough is organized, existing service districts shall be "integrated" into the borough government.⁴⁹ Once a borough is organized, the assembly may create service areas within its borders.⁵⁰ This latter power is subject to the single prohibition that services areas cannot be established where such services can be rendered by annexation to an existing service area or city.⁵¹ This prohibition is consistent with the general preference for integration rather than separate incorporation.

It is quite clear that service areas are only "semi-autonomous." As indicated above, the service area would be subject to the exclusive "fiscal jurisdiction" of the assembly. Beyond this, however, the framer's contemplated that service area boards could be set up and exercise substantial powers. This was clarified by delegate Fischer who stated:

... , it is the intent of the committee that when you establish a service area you could, say, establish a separate⁵² school board, ...to supervise the school functions...

Thus, it is possible for a service area to exercise substantial power independent of the general borough assembly.

It must be remembered, however, that the service area may never exercise total autonomy. There seems to be two chief limitations on the service areas. First, the service area may not unilaterally tax. The Constitution specifically provides that only cities and boroughs may tax.⁵³ As indicated above, this limitation on service areas was perceived by the framers as the sufficient link needed to achieve local government coordination. There remains, however, substantial autonomy even in fiscal matters as indicated by the Macauley v. Hildebrand case. A school district may maintain separate financial records. Similarly, while service areas have limited control over tax revenues, they may possess substantial autonomy with respect to

however, provided for service areas and districts which seem to be semi-autonomous special purpose governments. In understanding the role of special purpose governments, it is necessary to recognize that service areas represent a compromise between the constitutional delegates who argued in favor of wholly integrated local governments, and those delegates who favored continuing the independent school districts, health districts and P.U.D.s formed under the territorial government. In expressing this compromise, delegate Vic Fischer stated:

Mr. Johnson, it was not the intention of the committee to do away with any existing school districts just by the enactment of this article. (Sec 15). The intent was to leave them within a new framework of government... what we visualize is putting them under the general fiscal jurisdiction of the larger entity, which includes all the people within the particular school district.⁴⁴

This was again explained by delegate Rivers who stated:

Mr. President, the idea was that the general powers of government would be with the general elected representatives of the people. Now, as Mr. Fischer has pointed out, the special functions in regards to the use of one group for one special purpose such as health, education or anything else, the power to take the board and take its powers away, the powers of the boards would probably continue except for the taxing power being centralized in the one taxing agency which would thus have its own appraising, its own assisting agency, its own condemnations.⁴⁵

This point was recognized by the Alaska Supreme Court in Macauley v. Hildebrand⁴⁶ where the Court held that a home rule borough may not require its school system by ordinance to participate in centralized accounting where the Legislature has delegated express authority to the school board to resist such requirements. The Court based its decision upon the theory that education was an area of "pervasive state authority." The obvious conclusion, therefore, is that service areas may exercise substantial autonomy in areas of "pervasive state authority." In a similar manner, the legislature could provide substantial autonomy to public utility districts since regulation of public utilities is also an area of state concern.⁴⁷ Thus, while the constitution provides that "all local powers shall be vested in boroughs and cities",⁴⁸ it does not

committee of the Constitutional Convention considered the option of abolishing the city form of government. It was felt, however, that such a move was "too drastic a step," and it was felt that the existing territorial units of governments should be perpetuated.⁴⁰ On the other hand, it was also stated that,

"... we visualize the possibility that as the borough becomes a more definite unit of government over the years, which we hope it will, the scope better defined, that all the functions that can best be carried out on the unified basis be transferred over to the borough."⁴¹

In City of Douglas v. City and Borough of Juneau,⁴² the Court recognized that "Unification is consistent with the purpose expressed in Article X, Section 1 of minimizing the number of local government units." But in preserving the city, the convention did not intend to subordinate the city to the borough as indicated by the following exchange:

HURLEY: The borough then has nothing to say about the services that the city offers its own residents within its boundaries. Is that true?

ROSSWOG: Yes, the city should remain as much the same as today, or practically the same unless there are some gradual changes in the future. They can delegate powers back and forth but the borough would not tell the city that they had to supply certain services or couldn't supply certain services. That is why the two are set up as having the authority.

HURLEY: In essence, then, you have two local government units?

ROSSWOG: Yes, that is right.⁴³

Thus, while the momentum set in force by the Constitutional Convention contemplates eventual dissolution of cities in favor of boroughs, the interim is governed by the principals of sovereign coexistence.

Special Purpose Governments

As noted above the integrated/unified local government is the preferred vehicle of local government in Alaska. The constitution,

class boroughs may only exercise certain enumerated powers as non-area-wide powers by ordinance. These include regulatory power over fireworks, animals, motor vehicles, snow vehicles, garbage, water pollution. A second class borough may only acquire other municipal if such powers are specified in its charter or subsequently acquired by referendum.¹²

ii) Native Government. Native Village constitutions, whether adopted under the traditional form of government or under the Indian Reorganization Act, generally fail to define the exterior boundaries of their territorial jurisdiction. It is, therefore, necessary to look to common law in order to determine the respective jurisdictions of the tribal organizations.

Generally, it is said that tribal law and custom are applicable within "Indian country."¹³ This rule was not altered when Congress extended the State of Alaska's jurisdiction to Alaskan Indian country. Congress expressly reserved that Indian law and custom shall be given full force and effect in the determination of civil causes of action arising within Indian country in Alaska.¹⁴

This observation, however, begs the question to whether Indian country exists in Alaska, and, if so, what are the limits of Indian country in Alaska? Unfortunately, in Alaska the question whether Indian country exists is largely disputed, and supported by a vacillating history of cases.

As Felix Cohen illustrates in his early attempt to define the term Indian country, the term is a dynamic concept. Originally, the concept seems to have been born out of respect for the territorial integrity of Indian nations.¹⁵ Later, the idea was supported in the Jacksonian policy of Indian removal to reserves, a policy designed to physically separate Indians and the immigrant culture.¹⁶ From thence, the concept found its way into the early Indian Intercourse Acts to indicate Indian lands west of the Mississippi.¹⁷ From this point, the courts and Congress have separately, albeit tangentially, developed the concept of "Indian country."

Congress repealed the definition section of the Act in 1834 and failed to reenact a substitute general definition of Indian country.¹⁸

Later, however, Congress defined the term Indian country in relation to specific crimes.¹⁹ The only current federal statutory definition of Indian country exists in 18 USC 1151 which defines Indian country as:

- (a) All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights of way running through the reservation,
- (b) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof and whether within or without the limits of a state, or
- (c) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

It should be noted that this definition of Indian country only applies to a set of federal criminal statutes contained in Title 18 of the U.S. Code. The term Indian country, however, is also found in 28 USC 1360 dealing with state civil jurisdiction over Indians. The result is that there is no general statutory definition for Indian country, nor is there a statutory definition for Indian country in the civil sense.

The resulting ambiguity from the lack of a statutory definition of Indian country led to a series of Supreme Court decisions laying down the principal common law definition of Indian country. Felix Cohen states that the first ruling by the Supreme Court on the issue came in Bates v. Clark,²⁰ which stated in essence that:

"It follows from this that all the country described by the Act of 1834 is Indian country, remains Indian country so long as the Indians retain their original title to the soil, and ceases to be Indian country when ever they lose that title, in the absence of any different provision by treaty or act of Congress."

This basic principle was expanded in Donnelly v. U.S.,²¹ where the Court stated that executive order reservations constituted Indian

country even though the respective band did not possess original title to the land in question.

Of more importance to the Alaskan situation however, was the case U.S. v. Sandoval,²² which held that Pueblo lands not held in trust by the United States, but owned in fee simple by a Native community under a Spanish land grant, was in fact Indian country. In his treatise on the federal-Indian relationship, David Case pointed out that the Sandoval doctrine presents a clear analogy to the Alaskan situation. Like the New Mexico pueblos, Alaska Native communities own land in fee simple through their Native corporations. In the Sandoval case, the court looked to the statutory definition embodied in 18 USC 1151 and held that the Pueblos of New Mexico were clearly "dependent communities" within this definition of Indian country. In a similar case, U.S. v. Chavez,²³ the Court defined Indian country as "any unceded lands owned or occupied by an Indian nation or tribe of Indians." If these Court cases are to be literally applied to the Alaska situation, it is clear that Indian country does exist in Alaska. However, the matter has never truly been settled.

The modern federal courts have only addressed the question whether Indian country exists in Alaska on three occasions. In the first case, In re McCord,²⁴ the Court heard a petition in a proceeding for a writ of habeas corpus arising from a conviction for statutory rape occurring upon the Tyonek Indian Reserve. In that case, the Court followed the Donnelly decision and held that the executive order reservation was in fact Indian country which denied state jurisdiction to prosecute the defendant in the case. The second major case following McCord by one year, was U.S. v. Booth.²⁵ In that case, the court held that the Metlakatla Indian Reservation did not constitute Indian country because the reservation was not a "reservation in the traditional sense." The Court further distinguished the case from McCord by noting the different conditions and history behind the Metlakatla Reservation. The decision in the McCord case, however, led to a general public outcry of concern over the lack of law and order within Indian country in Alaska. Alerted to this apparent gap in jurisdiction, Congress passed an amendment to

PL 83-280 (P.L. 280) including Alaska among those states where mandatory state jurisdiction extended over Indian country within the borders of the state.²⁶ The legislative history behind this action clearly indicates that the Congress reacted to the holding in the McCord case, and indicates that Congress clearly desired to overrule and reverse the precedents set by that case.²⁷ If the application of PL 280 to Alaska was a congressional reaction to McCord, rather than Booth, it is safe to assume that the holding in McCord was a correct statement of the legal crisis prior to the application of PL 280 to Alaska. That Act specifically states that the State of Alaska shall have jurisdiction over Indian country within its borders. It therefore seems incredible to assert that Indian country does not exist in Alaska.

But the doctrinal confusion regarding the existence of Indian country in Alaska has continued. This is primarily due to the nature of the cases in which the claim of Indian country arises. For example, in the People of South Naknek v. Bristol Bay Borough,²⁸ the plaintiffs claimed a tax exemption for Native townsites within the borough by claiming that the townsites were Indian country and therefore exempt from state taxation. The court firmly refused to attempt an answer as to whether or not the land in question was in fact Indian country. The Court, however, noted the historical confusion over the question of Indian country in Alaska. The Court blamed much of this confusion on "one of the principal Indian jurisdictional cases that has emerged from Alaska," specifically, the Organized Village of Kake v. Egan.²⁹ Like Naknek, the Kake case arose out of a claim denying state jurisdiction. It is important to note, however, that Kake did not deal with the question of Indian country per se, but addressed a narrower question of whether state law applied to off-reservation Indians. Kake, like Naknek, did not address the question whether Indian country exists in Alaska.

It should be noted that the mere existence of Indian country and consequent tribal jurisdiction is not an exclusive claim to jurisdiction and does not exclude state criminal and civil jurisdiction. As noted earlier, Alaska is subject to the mandatory provisions of PL 280 which authorized the extension of state jurisdiction over Indian country. As

a general rule, however, the application of PL 280 does not create exclusive state jurisdiction nor does it substantially affect tribal jurisdiction. In Bryan v. Itasca County,³⁰ the Court stated that:

. . . nothing in its [PL 280] legislative history remotely suggests that Congress meant the Act's extension of civil jurisdiction to states would result in the undermining or destruction of such tribal governments as did exist and a conversion of the affected tribes into little more than private voluntary organizations.³¹

In reaching this conclusion, the court noted that 28 USC Section 1360(c) provided for full force and effect of any tribal ordinances or customs heretofore or hereafter adopted by an Indian tribe if not inconsistent with any applicable civil laws of the state. In light of these cases, it would seem that territorial jurisdiction over those areas which can be determined to be Indian country, would seem to be concurrent between the state and the tribe.

There remains, however, substantial concern that the Alaska Native Claims Settlement Act placed in question the existence of Indian country in Alaska. Specifically, concern centers around Section 19 of the Act, which revoked existing reservations in Alaska. The supporters of this theory contend that, when the reservations were revoked, the territorial jurisdictions of the respective villages were destroyed. The argument, however, rests upon the proposition that Indian country is dependent upon the existence of reservations. The Supreme Court has clearly announced that there is nothing magic in the term "reservation."³² Other forms of Indian country exist in addition to reservations. It is also clear that tribal jurisdiction is not dependent upon federal ownership ? of the territory in question.

The Pueblo cases arising out of the New Mexico situation clearly demonstrate these principles. In the Chavez case, Indian country was defined as "any unceded land owned or occupied by an Indian nation or tribe of Indians." It is not necessary to establish clear unequivocal boundaries. Rather, it is only necessary that the lands in question are occupied by "distinctly Indian communities" recognized and treated by the government as dependent communities entitled to its protection.³³ Applying this

rule to Post-ANCSA Alaska it is quite easy to identify those villages in rural Alaska which continue to be "distinctly Native communities." Such communities retain substantial cultural, social, and economic characteristics identifiable as Native and therefore these villages clearly fall within the definition of a dependent Indian community enunciated in the Chevez decision. Additionally, it must be recognized that ANCSA clarified continued Native title to certain lands within the state. Under the terms of the Act, Alaskan Native aboriginal claims to the land were extinguished.³⁴ In compensation for the extinguishment of such claims, Alaska Native villages were allowed to select and receive substantial amounts of land surrounding the villages.³⁵ The main effect of this act was to continue Native occupancy and ownership of a substantial amount of land surrounding Native communities. Thus those lands selected and ultimately conveyed to the village corporations clearly constituted "unceded lands owned and occupied" by the Native villages concerned. Again, the definition of Indian country as specified in the Chavez case is clearly met. As noted earlier, the fact that such lands were conveyed in fee simple was ruled irrelevant in the Sandoval case.

This view is consistent with a recent solicitor's opinion which stated that,

The continued existence of Indian country in Alaska, in our view, does not conflict with the Settlement Act, and consequently, that Act should not be construed to have abolished Indian country or the possibility that Native villages might qualify as "dependent Indian communities."³⁶

The opinion then considered a number of factors including whether the Native village was modern and urban in character, a high percentage of Native residents, the village's eligibility to receive federal services, and the land tenure pattern, and concluded that,

In our view, these factors are sufficient to support presumption that the area (Allakaket) is a dependent Indian community and³⁷ therefore, Indian country for the purposes of the liquor laws.

Of course, this does not address the substantial concern which may arise upon subsequent land transfers by the respective Native

communities. The problem presents itself in two distinct situations. First, what is the status of lands originally selected by a village corporation and then conveyed by the corporation to non-Natives? Secondly, what is the status of lands subsequently acquired by the Native village?

The basic rule governing subsequently acquired Indian lands and their respective status as Indian country was laid down in United States v. McGowan.³⁸ In that case, the lands in question were lands owned by the United States and purchased out of funds appropriated by Congress for this purpose. The ruling that such lands were in fact Indian country relied on the role of the government in the establishment of the colony. The role of the federal government in the creation of the Reno Colony is substantially analagous to the role of the federal government in the identification and conveyance of lands received under the terms of ANCSA. Subsequent purchases of private land by Alaskan Native villages in fee simple would by definition not involve the federal government. Under the rationale of McGowan, the diminished federal role in the identification of Indian lands would substantially impact the status of those lands under the McGowan test. Subsequently, acquired land which would not involve federal government participation in their acquisition would not necessarily extend village jurisdiction.

The above type of subsequent acquisition, however, should be sharply contrasted from acquisitions authorized under the Indian Reorganization Act.³⁹ Lands acquired in this manner would fall under the black letter rule of McGowan, so that lands subsequently acquired pursuant to the terms of the Indian Reorganization Act would clearly extend village jurisdiction to those lands.

The possibility that a village might sell or otherwise dispose of village lands to nonmembers of the community presents a substantially different problem. In the case Seymour v. Superintendent,⁴⁰ the United States Supreme Court held that lands conveyed to non-Indians within the exterior boundaries of a former reservation did not lose the character of Indian country. This rests upon the theory that once Congress has set aside certain lands for the use and occupancy of

Indians, such use and occupancy shall not be disturbed. Broadly applying this principle to Alaskan Native villages, it would seem that lands within the Alaskan Native village selections authorized under the terms of ANCSA, would continue to be Indian country in spite of subsequent conveyance of such lands to non-Indians by the village.⁴¹ In contrast to these decisions, however, is the decision in DeCoteau v. District County Court.⁴² In that case, the Court held that the Lake Traverse Indian Reservation in South Dakota was terminated and returned to the public domain and, hence, Indian country on the Lake Traverse reservation ceased to exist on this reservation. The Court in DeCoteau noted that the Act in question was a ratification of a prior negotiated agreement which was fully intended to terminate the reservation. By the terms of the agreement itself, the Indians would "cede, sell, and relinquish, and convey" all the remaining land in the reservation. The court distinguished Matz and Seymour as being cases involving unilateral Congressional action rather than possession or sale of land by the Indians. From these two lines of cases it is unclear whether that a sale of Indian lands by a village would result in the relinquishment of tribal jurisdiction over those lands.

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iii) Summary Comparison. In summary, it seems clear that the territorial jurisdiction of state municipal governments are basically defined in terms of their boundaries. Borough's territorial jurisdiction may be limited in regards to a number of powers by the existence of cities within its boundaries. Finally, all municipalities may exercise extra-territorial jurisdiction in respect to certain enumerated powers. The procedure for enlarging or diminishing boundaries is statutorily prescribed.

In contrast, a Native village government's territorial jurisdiction is defined in reference to the village's "Indian country." It is most likely that a village's Indian country is coextensive with lands received under ANCSA, and any other lands subsequently acquired with federal participation. It is unclear whether village's Indian country is diminished through unilateral sale or cession of village lands.

B. PERSONAL JURISDICTION

In contrast to a municipal government, tribal government has very limited personal jurisdiction. It is generally assumed that personal jurisdiction of a municipality extends to all or most individuals within its territorial jurisdiction. This may depend upon the subject matter involved (see below). A tribe's jurisdiction is generally linked to its membership. The U.S. Supreme Court enunciated the basic principles of tribal personal jurisdiction in the companion cases, Oliphant v. Suquamish⁴³ and U.S. v. Wheeler.⁴⁴ In Oliphant, the Suquamish tribe attempted to enforce a local traffic ordinance against a nontribal member. In its decision, however, the Court denied the tribe's claim to jurisdiction over nonmembers. In Wheeler, however, the Court upheld the Navajo Reservation's claim to enforcement jurisdiction over tribal members.

There are basically two ways to interpret the meaning of these cases. In the broad sense, the Oliphant decision can be interpreted as denying tribal jurisdiction over non-members. It is important to note, however, that the Court in Oliphant did not overrule the holding in U.S. v. Mazurie.⁴⁵ In that case, the Court upheld the extension of tribal liquor ordinances over non-members of the tribe. Although the cases seem irreconcilable at first glance, there was a substantial difference between these two cases. In Mazurie, the Court upheld the authority of the tribe to prescribe the ordinance and stated that such legislative acts extend and apply to nontribal individuals. The actual enforcement mechanism in the Mazurie case were federal authorities, i.e., the federal courts. In contrast, the tribe in Oliphant was attempting to enforce tribal ordinances through tribal courts. The only way these two cases can be reconciled is to recognize that tribal ordinances extend to non-members but that tribes lack the authority to enforce such ordinances against non-members. The result is that tribes must seek alternative enforcement mechanisms against nontribal members, i.e., the state or federal courts. As noted in Bryan v. Itasca, federal courts are not available in a PL 280 state such as Alaska since federal jurisdiction has

generally been withdrawn. Thus, in Alaska the state courts are the only forum for the enforcement of most tribal ordinances against non-members.

As noted above, "PL 280" requires the state to give "full force and effect" to valid tribal ordinances in civil cases.⁴⁶ This supports the notion that a village would have prescriptive jurisdiction over non-tribal members. It also clarifies that state enforcement of tribal ordinances is clearly required by federal law in civil matters.

There remains, of course, the question of criminal cases. PL 280 has no comparable requirement for "full force and effect" of tribal ordinances in criminal cases. There exists, however, two lines of authority on this issue. Some states have extended "full faith and credit" to tribal ordinances by holding that a tribe is a "territory" under 28 USC 1738.⁴⁷ On the other hand, many states have refused full faith and credit, but have extended "comity" to tribal ordinances.⁴⁸ The issue remains unresolved.⁴⁹

C. SUBJECT MATTER JURISDICTION

Subject matter jurisdiction refers to the types of issues with which a government may concern itself. Often subject matter jurisdiction is referred to as the "powers" of a government. Title 29 of the Alaska Statutes enunciates, in a comprehensive manner, the powers of state chartered local governments. In contrast, there exists no similar comprehensive and authoritative exposition of tribal powers. Understanding tribal powers requires a thorough review of a substantial body of federal and international common law. Finally, there exists a less formidable body of federal common law governing the interaction of these respective jurisdictions.

1) Concurrent Jurisdiction

There are two basic principals governing the interaction between municipal and tribal governments.

The first principle was enunciated by the United States Supreme Court in Williams v. Lee.⁵⁰ In that case, the United States Supreme Court held that states have jurisdiction over Indians except where such state jurisdiction infringes upon tribal self-government. This test was specifically applied to Alaska in Organized Village of Kake v. Egan.⁵¹ In that case, the Court analyzed the development of this principle and stated:

"these decisions indicate that even on reservations, state laws may be applied to Indians unless such application would interfere with reservations, self-government, or impair a right granted or reserved by federal law."

In explaining these lines of decisions, the Supreme Court further stated that, "it must be remembered that the Courts in applying the Williams test, have dealt principally with situations involving non-Indians."⁵² In these situations, both the tribe and state fairly claim an interest in asserting jurisdiction. The Williams test was designed to resolve this conflict by providing that the state could protect its interest in its non-Native citizens up to the point where tribal self-government would be affected.⁵³ In fulfillment of this policy, cases arising between tribal members fell within the exclusive interest of the tribal government.

The second major principle is a modification of the above rule required by the fact that Alaska is governed by the operation of Public P.L. 280.⁵⁴ Generally, this law confers upon the state criminal and civil jurisdiction to adjudicate matters between Natives within Indian country. It is important, however, to understand the parameters of PL 280 as recently defined by the courts. The courts have generally attempted to limit the effect of PL 280 because of the devastating impact the law has had on tribal governments."⁵² In Brian v. Itasca County, the U.S. Supreme Court in commenting on PL 280 stated:

"nothing in this legislative history remotely suggest that Congress meant the acts extension of civil jurisdiction to the states should result in the undermining or destruction of such tribal governments as did exist in a conversion of the affected tribes in the little more than "private volunteer organizations," a possible result if

tribal governments and reservation Indians were subordinated to full panoply of civil regulatory powers, including taxation of state and local governments. The act itself refutes such an inference: There is notably absent any conferral of state jurisdiction of the tribes themselves and Section 4 C, 28 U.S.C. Section 1360(C) (28 U.S.C. Section 1360 (C)), providing for the "full force in effect" of any tribal ordinances or customs "heretofore or hereafter adopted by An Indian Tribe...if not inconsistent with any applicable civil laws of the state, contemplates the continuing vitality of tribal government."⁵⁶

The court went on in a footnote to further explain this policy of promoting Native governments. In a comment of particular importance to Alaska, the court stated:

"the suggestion is that since tribal governments are disabled under many state laws from incorporating as local units of government, general regulatory control might relegate tribal government to a level below that of counties and municipalities, thus essentially destroying them, particularly if they might raise revenue only after the tax base had been filtered through many governmental layers of taxation. Present federal policy appears to be returning to a focus upon strengthening tribal government...and the Court of Appeals of the Ninth Circuit has impressed the view that courts are not obliged in ambiguous instances to strain to implement an assimilationist policy Congress has now rejected, particularly, where to do so will interfere with the present Congressional approach to what is after all an ongoing relationship."⁵⁷

This general policy, favoring the strengthening of tribal governments has two effects.

First, PL 280 does not confer upon a state general civil regulatory control over Indian country.⁵⁸ Although the Supreme Court has failed to fully define what the scope of "regulatory" means, it is clear that taxation of personal property on trust land,⁵⁹ zoning authority,⁶⁰ and outdoor advertising⁶¹ in Indian country are beyond the state's authority.

The second effect of Brian v. Itasca was that PL 280 only made applicable to Indian country those state laws which "had a general applicability throughout the state." In short, this general principle denies the authority of local governments to exercise authority over Indian country since their authority does not extend throughout the state.⁶² This basic principle, if applied in Alaska, could have a crippling

does apply to mun. gov. state is not affected

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ing effect on rural Alaskan municipal governments. The result would be the creation of local governments chartered under state law whose authority only extended over non-Indians. The end result would be the creation of parallel local government units incapable of exercising jurisdiction over the respective persons subject to the other local government's personal jurisdiction.

2) Local Government Powers.

The basic rule regarding the powers of a tribal government is that such powers are not in general delegated powers granted by Congress, but rather are inherent powers of a limited sovereignty which has never been extinguished.⁶³ This has recently been compared with the concept of home rule under Alaska state law.⁶⁴

In contrast, Alaskan municipalities are of two types. A home rule municipality, like an Indian tribe possesses all local government powers not reserved from it by state law.⁶⁵ A general law municipality possesses powers delegated to it by state law.⁶⁶ Basically, general municipalities exercise four types of powers.

A general law municipality possesses "general powers" related to the municipal corporate identity. These powers include the following powers: be sued; employ municipal officers and officials; levy taxes and special assessments; enforce ordinances; prescribe penalties for violations; acquire manage, control, use, and dispose of personal and real property; promote legislation for the municipality; expend funds for community purposes; and borrow money and issue evidence of indebtedness.⁶⁷ By statute, all municipalities possess the unilateral authority to exercise these powers.

Second, general law municipalities "regulatory powers," which relate to: public rights-of-way facilities to services, traffic and general transportation including buses, taxis, etc., animal control, sales of goods, foods, and alcoholic beverages, dangerous insect and rodent control, recreational devices, building codes, public nuisance abatement,

garbage & solid waste collection, water and air pollution, licensing of day-care facilities, police powers, or other general health safety and well-being welfare functions.⁶⁸

As a general rule, cities possess the unilateral authority to exercise the regulatory powers. Boroughs, however, are subject to a narrower grant of authority depending on whether the power is area-wide or non-area-wide (see Part II (i) above).

Third, Alaska Statutes outline a number of municipal facilities and services which general law municipalities may provide. These include services and facilities relating to streets and sidewalks, sewage treatment facilities, harbors, flood control, health and hospital services, cemeteries, police and jail services, cold storage, telephone, lights, power, heat, water, transportation, community centers, libraries, recreation facilities, airport facilities, garbage facilities, fire protection, parking, urban renewable, consumer protection, and historical sites, buildings and monuments.⁶⁹ Any city may exercise the powers necessary to provide these facilities, however, boroughs must assume the powers to provide these facilities and services in a like manner required for the exercise of regulatory powers. Third class boroughs are not specifically authorized to provide such facilities and services.

Fourth, general law municipalities are authorized to exercise what are commonly called area-wide powers, i.e., education, and planning, platting, and zoning authority. Generally, first and second class boroughs have the statutory authority to unilaterally provide exercise such powers on an area-wide basis.⁷⁰ All third class boroughs may provide educational services on an area-wide basis and may, upon voter approval, exercise planning and zoning authority. As a rule, cities do not exercise such powers except when they are located outside borough boundaries.⁷¹

An exhaustive comparison of these powers is certainly beyond the scope of this project, however, it is possible to select areas for special consideration.

i) Police Powers. While municipalities possess police powers,⁷² tribes possess the power to regulate the conduct of members.⁷³ The federal government has withdrawn tribal jurisdiction over most felony crimes by enactment of the Major Crimes Act,⁷⁴ and Assimilative Crimes Act.⁷⁵ Both the tribe and the municipality are limited from prescribing a punishment for violation of an ordinance in excess of \$500 and/or thirty (30) days in jail.⁷⁶

Municipalities are prevented from operating "courts" since the Alaska Constitution provides for an integrated court system under state government.⁷⁷ This constitutional reservation of power to the state, however, does not prevent municipalities from operating "administrative tribunals" capable of enforcing ordinances.⁷⁸ Such tribunals, however, are subject to the same constitutional guarantees protecting the rights of the accused, where the ordinance provides for the regulation of acting which traditionally connotes criminality.⁷⁹

In contrast to municipalities, Native governments possess the inherent power to create courts to enforce their ordinances.⁸⁰ While tribal courts are not generally subject to the individual guarantees of the Bill of Rights,⁸¹ they are subject to the guarantees of the Indian Civil Rights Act of 1968,⁸² which applies the constitutional protections of the Bill of Rights to Indian governments.

ii) Planning. Both tribes and municipalities possess planning authority. Alaska statutes specifically provide for municipal planning authority. Within organized boroughs, planning is an area-wide function of the borough.⁸³ Of course, the borough may also delegate such powers to a city within its borders.⁸⁴ Outside organized boroughs, first class cities are required, and second class cities may exercise planning powers.⁸⁵ In unorganized areas of the state, planning authority rests with the Department of Natural Resources.⁸⁶

Tribal planning authority is a power retained by tribes in the absence of contrary federal law. This authority is already expressly recognized by the state. While the Court in State v. Aleut Corp.,⁸⁷

held that ANCSA regional corporations lacked governmental planning authority so as to require the State Division of Lands to give notice of pending land actions, the Court also held that traditionally organized Native villages constituted local authorized planning agencies.⁸⁸

While both entities enjoy substantially similar planning authority, the entities implement this authority in substantially different ways. Municipalities have authority to directly implement their plans through zoning, platting,⁸⁹ and operation and licensing. The municipality, however, is not able to direct state agencies to comply with local plans. For example, the prior A.S. 29.33.090(d) required certain state land management programs to comply with municipal plans. This was repealed.⁹⁰

Municipalities also may implement their plans through its licensing power over vehicles, animals, day care facilities, etc.⁹¹

A tribe's most potent implementation tool is its recognized authority to license. For example, in U.S. v. Mazurie,⁹² the Supreme Court upheld a tribe's right to license bars owned by non-Natives on fee simple land within Indian country. Secondly, a village may regulate the nature of member's ownership rights in property.⁹³ By defining members property rights, a tribe can restrict uses of property which are deleterious. Finally, there is some authority to believe that a Native village government may exercise zoning authority over Native land. In Santa Rosa Band of Indians v. Kings County,⁹⁴ the Court struck down local zoning ordinances holding that "the extension of local jurisdiction is inconsistent with tribal self-determination and autonomy."⁹⁵ This infers, of course, that the local government invaded a power to zone reserved to the tribe.

iii) Taxation. The right of a Native government to tax is a retained sovereign power.⁹⁶ The extent of this power is almost wholly uncertain, since few Native governments exercise this power. The courts, however, have upheld tribal taxes on business,⁹⁷ occupations,⁹⁸ or to accompany tribal permits,⁹⁹ regardless of whether the tax was levied against members or non-members.

The taxing powers of municipalities are more clearly defined. They may levy sales and use taxes,¹⁰⁰ and property taxes.¹⁰¹ These taxing powers are subject to a substantial number of exemptions and limitations.¹⁰²

Conclusion. While the municipalities and tribes do not have co-extensive powers, they have many similar areas of concern where their powers overlap. It should be remembered that the tribal organization is a governmental unit with broader areas of concern and responsibility than the municipality. For example, tribal powers include regulation of property rights, marital relations, and child custody.¹⁰³ Tribes provide employment, welfare, economic development, child protection, and various other services generally felt to be beyond the scope of local government. As local government in Alaska develops along the path of decentralization envisioned by the framers, it is likely that municipal governments will also address these subject areas. In any case, it is clear that village and municipal government are not the same thing. It is also evident that they are closer than commonly perceived.

PART III

SUGGESTIONS TO INCLUDE NATIVE VILLAGE GOVERNMENTS WITHIN THE ALASKAN LOCAL GOVERNMENT SYSTEM

The decision to allow inclusion of Native village government within the state local government is, of course, a policy issue. Several factors must be considered in making this decision. First is the question whether such action is consistent with the Alaska Constitution. Second, the actions of other states must be considered. Thirdly, the backdrop of federal law needs to be considered. Finally, the state interest in non-Native citizens needs to be addressed.

A. THE CONSTITUTION

Substantial concern exists as to whether the proposed action is consistent with the Alaska Constitution. The proposal raises two issues. First, the proposal must be analyzed to determine whether it is consistent with the constitutional scheme for local government. The local government committee of the Constitutional Convention articulated five basic principles with which the proposal may be compared, i.e., self-government, unified system, prevention of overlapping tax authorities, flexibility, and state interest. Additionally, the proposal raises a question whether it is consistent with the equal protection clause of the Alaska Constitution.

1. Self-government. Maximum local control over local government was a primary goal of the framers. This policy is specifically enunciated in Section 1 of Article 10 of the Constitution which provides that, "the purpose of this Article is to provide for maximum local self-government..." This concern is reflected in other provisions of Article 10. For example, Section 6 provides that the legislature shall provide for the performance of services that it deems necessary and advisable in the unorganized boroughs "allowing for maximum local participation and responsibility." (emphasis added) Section 9 provides that home rule charters of first-class

municipalities shall be approved by popular election. This policy favoring local self-government in municipal matter is consistent with federal policy favoring self-determination of Indian tribes. Fundamental to self-government/self-determination, is the right of people to determine what form their government shall take and to establish rules and regulations regarding the management and operation of that government. For a variety of reasons, several Alaskan Native villages have failed to organize as second-class city under the Alaska state law. They prefer rather to organize themselves exclusively as Alaska Native villages. In many cases, such organization reflects a community decision to organize a local government which best reflects the cultural and social character of the respective community. Under this rationale, the state should encourage communities to organize themselves under any authorized governmental form which best represents the respective communities' social, cultural and economic pattern. The inclusion of Native governments within the system of Alaska state local government promotes this policy. This action would broaden the number of local options available to communities desiring to organize, thereby leaving greater control at the local level.

2. Integrated local government system. The framers of the Alaskan Constitution desired to create a single system of local government within Alaska. As noted by this study, however, two parallel systems of local government exist in Alaska, i.e., state chartered municipalities and tribal government. The quality and quantity of interaction between these two types of government varies from community to community. The quality and quantity of possible interaction ranges from substantial cooperative efforts to substantial opposition. Often times coordination between governments is merely a function of interlocking office holders. Where the Native council and the city council are substantially the same, the respective governmental efforts are highly coordinated. In contrast, where the councils are not interlocked there is little coordination and counterproductive efforts often result. State and federal programs often depend on the existence of local cooperation. Nonrecognition of Native governments is a impediment to this local cooperation.

Non-recognition problems also result where a community is exclusively organized as a Native village government. Such communities are not immuned from the same problems which plaque communities organized as municipalities. Where the municipality may draw on the resources of the state to help address such problems, the Native village encounters greater reluctance by the state to render equal assistance. The obvious solution to this problem is for the community to organize as a municipality. The community would in fact only trade problems--i.e., the community would trade a reluctance on part of the state to render assistance in exchange for the duplicity and confusion which results from parallel governments.

The inclusion of the Native government within the local government system, therefore, would further state policy favoring a unified local government system. It would promote cooperation where parallel governments exist and it would alleviate the necessity of creating parallel local governments where none exist now.

3. Prevention of overlapping taxing and authorities. As noted above, the framers of the Alaska Constitution specifically intended to eliminate overlapping tax authorities and promote physical integration within local government. For this reason, Article 10, Section 2, specifies that cities and boroughs are the only local governments authorized to tax under the Alaska Constitution. As noted above, however, this plan is somewhat frustrated by the existence of Native government which possess authority to levy taxes and dues on members and non-members. Additionally, the eligibility of Native villages to receive intergovernmental revenue transfers frustrates the state's objective to facilitate fiscal integration of local government. This lack of fiscal integration within the community leads to a number of problems including duplicate accounting systems, redundant and excessive administrative costs and, in some cases, program duplication. The framers had hoped to avoid such problems in adopting a policy favoring fiscal integration. The inclusion of Native governments within the local government system will help avoid these inefficient fiscal management systems.

4. Flexibility. Throughout the Constitutional floor debates, the drafters of Article 10 emphasized their desire to provide a "framework" for local government which would be flexible enough to meet community demands throughout a highly pluralistic state such as Alaska. Native governments represent a flexible accommodation to the need for pluralistic representation in local government. It, therefore, follows that the inclusion of such governments fulfill a constitutional policy favoring flexibility in Alaskan local government.

5. State interest. As noted above, the framers of the Alaska Constitution felt that strong local government was a mechanism to facilitate the decentralization of state government. It was fully intended that strong local government could perform traditional state functions much better than a centralized government structure. This plan, however, is dependent on the existence of local government. Since the state does not recognize Native governments, these local mechanisms are unavailable to the state. The inclusion of Native governments within the state system of local government makes available to the State existing government entities through which the State may operate. In this sense, the Native government can serve as a conduit for the provision of state services. In a limited sense, the state has already adopted this policy. For example, in the Coastal Zone Management Act, the Rural Development Act, the Municipal Trust Land (14c) Program, the Community Legal Assistance Program, the Community Miscellaneous Assistance Program and various state contracting programs utilize Native government to administer and otherwise implement these programs which require substantial community participation. The general inclusion of Native governments within the local government system of the State of Alaska will make available to the state a valuable local instrument.

6. Equal Protection. It is unfortunate that the Alaska Constitutional Convention failed to address the issue of Native local governments. In the heady atmosphere of the convention, the delegates seemed to assume that the state mechanism would be comprehensive. The record fails to indicate that the convention ever considered that viable Native governments would continue. In this vacuum it is difficult to analyze the

constitutionality of state legislation which seeks inclusion of Native government in the local government system. Generally, however, there exists concerns whether such legislation would violate the equal protection clause of the Alaska Constitution.² Since this is a novel question in Alaska, we must look to sister states for guidance.

The Supreme Court of Minnesota was forced to deal with the issue in State v. Forge.³ In that case, non-Indians sought to challenge the constitutionality of a compact between the state and the Chippewa Tribe over ricing and fishing. The state legislation vested certain rights in members of the Chippewa tribe that did not extend to state citizens in general. The court upheld the statutes in the face of a challenge based on the equal protection guarantees of the Minnesota Constitution.

2. In deciding that the state action did not violate the state constitutional guarantee of equal protection, the Court noted that the compact related to the reconciliation of claims between the state and the Indian tribes. As such, the classifications made by the state law rationally related to the competing claims of the state and the tribes.⁴ It is important to note that the court's finding was based upon Indian treaty rights, which could not be used as a basis for Alaskan legislation. Nevertheless, the Court noted that:

Even in the absence of treaty rights, the United States Supreme Court has frequently upheld legislation that singles out Indians for particular and special treatment.⁵

Subsequent to State v. Forge, the United States Supreme Court dealt with the issue directly in United States v. Antelope.⁶ In that case, Antelope was tried for murder under the Major Crimes Act. The defendant argued correctly that if he were not an Indian, he would have been charged under the Assimilative Crimes Act for manslaughter. The court held that the statute did not create an impermissible racial classification since the constitution specifically authorizes particular and special treatment of Indians.⁷

There is one distinction, however, which may distinguish Alaska's and Minnesota's Constitution. The standards of the equal protection clause under the Minnesota Constitution are synonymous with the U.S. Constitution's equal protection clause.⁸ In contrast, however, the standards of protection under Alaska's equal protection clause is not synonymous with that of the U.S. Constitution.⁹ Absent an express ruling to the contrary, however, the Minnesota interpretation is probably an accurate indicator of the Alaskan position.

B. OTHER STATES

Other states have attempted to establish direct tribal-state relations in one of two basic ways - 1) incorporation, or 2) recognition and compact.

1) Incorporation. Incorporation is the formation of a unit of local government. As noted above, such incorporation may result in the formation of either a general or special purpose government. Theoretically, it is possible to incorporate Native governments under state law. In Bryan v. Itasca, the court stated that one reason it was reluctant to extend local government jurisdiction over Native communities was the fact that many states did not allow incorporation of Native government under state law.¹⁰ This implies, of course, that it is possible for a state to allow such incorporation if it removes its self-imposed prohibitions.

As noted above, this has been attempted twice in Alaska's past. Several current second class cities were originally incorporated under the 1957 Village Incorporation Act. The villages lost their village status through the 1972 municipal code revision.¹¹ In general, the attributes of tribal self-government are no longer present, so that neither the people, the state, nor the federal government recognize these governments as tribal entities.

Direct state incorporation of general purpose Native governments is not common. There are, however, a few instances of such state action.

One example is New Mexico, which provides for the incorporation of Pueblo Indian communities.¹² The courts, however, have ruled that the pueblo's did not gain any powers, rights or duties under this statute, but rather their powers stem from their authority as Indian tribes.¹³

In contrast, Maine has recently enacted the Maine Indian Claims Settlement Act¹⁴ which does not incorporate the tribal entities, but rather delegates to them "all the rights, privileges, powers and immunities" of a state municipality.¹⁵ This includes the authority to enact ordinances, collect taxes and provide general services like any municipality. Conversely, the tribe is subject to all duties, obligations, liabilities and limitations of a municipality in the operation of municipal authority. A major exception is the internal organization of the tribes.

The tribes' jurisdiction extend over "Indian territory" as defined by the Act, which includes newly created reservations (akin to townsites) and surrounding lands conveyed in fee simple to the new Native corporations.¹⁶ As entities possessing municipal authority, the tribal councils have jurisdiction to prescribe criminal and civil ordinances over non-Natives, but may only judicially enforce certain ordinances against members and handle small claims matters between members.¹⁷ The state courts have jurisdiction to hear all other cases.¹⁸ Law enforcement is handled through a cross-deputization of tribal and state police.¹⁹

The state has also sought to protect nonmember's rights by making municipal authority dependent upon nondiscriminatory delivery of services and guaranteeing enfranchisement in county, state and federal elections.²⁰

In considering the Maine Settlement, two major points must be made. First, the Main Settlement was prompted by litigation over both the land claims and governmental claims of the Maine Indians. By comparison, the Alaska Settlement only addressed land claims, and left unresolved the governmental claims of the Alaskan Native people. This oversight is generally attributable to the common perception of P.L.-280 in the pre-ANCSA period. It must be remembered that ANCSA preceded

Bryan v. Itasca,²¹ which was decided in 1976. Prior to 1976, the general feeling was that P.L. 280 replaced tribal authority. The court in Bryan v. Itasca, however, clearly rejected this analysis, and reasserted that P.L.-280 merely resulted in concurrent state/tribal jurisdiction.

Secondly, except of the delegation of municipal powers, the Maine Settlement Act does not substantially change the respective authority of the state and tribes. Generally, the Act serves as a restatement of the law as currently understood. Thus, the Maine statutory scheme may serve as a useful model for incorporation of general purpose Native government under a state's authority.

In contrast to general purpose incorporation, some states have sought to declare Indian tribes as special purpose governments. For example, Florida, like Connecticut, has established a state reservations which in effect is an extension of a federal Seminole reservation.²² In addition, however, the state has declared the whole Seminole Reservation (both federal and state portions) and the Miccosukee Reservation as "special improvement districts."²³ While the state recognizes that the tribes may regulate their members and lands as other tribes,²⁴ the state law provides that the tribal councils (organized as I.R.A.s) shall be the governing body of the districts, and are granted law enforcement, housing, and health powers, along with providing a variety of state services.²⁵

It is interesting to note, that Florida is not the only state which has set up state Indian reservations. Connecticut has also established state reservations.²⁶ Management of the reservations is through an Indian Affairs Council and tribal councils, both of which have state regulatory powers over the reservation.²⁷ The State Administrative Procedure Act specifically applies to regulatory decisions of the councils. Texas also has authorized state Indian reservations.²⁸ Furthermore, Texas has extended state recognition of a federally nonrecognized tribe, and committed the state to seek federal recognition.²⁹ Even more unique than this, Texas has delegated bonding

authority to tribal councils.³⁰ Under state law, lands held in trust by the state and the rents, royalties, revenue and income from such lands, may be pledged to back the bonds.³¹

While the above states have attempted various types of incorporation, many states have taken the intermediate step of creating State Commissions on Indian Affairs.³² A fairly representative example is Minnesota which created an Indian Affairs Board.³³ While the tribes are not brought within state government directly, the board is a state commission comprised of various state commissioners, state legislators, and tribal officials. The commission does not attempt to exercise governmental authority over tribes. Rather it acts as a liaison between state and tribal service programs.

Similarly, in California, state law authorizes the formation of school districts within Indian reservations.³⁴ Unlike Florida, either the tribal governing body or an independently selected body is the governing body of such a district.

2) Recognition and Compact. Recognition is a concept borrowed from international law. It is the process whereby one government acknowledges the authority of another government. It is more than taking note of a mere fact. It is the process whereby two governments seek to establish intergovernmental relations. There are two types of recognition - recognition of the community and recognition of the government. Recognition of the community is acknowledgement that the community is a legal entity capable of being organized under an independent and effective government.³⁵ Recognition of the government is acknowledgement that an individual or body of individuals act as the government for the community.³⁶

The use of the concept of recognition is quite useful in the context of Native governments since the state is not attempting to create a racially defined institution under its own authority. Rather the State is acknowledging the existence of the Native communities and governments. Thus,