

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 86/2

749 SCOM123: TITLE 29 POLICY REVISION ADVISORY COMM. 1980

the Native government gains no authority from the State, but merely enters into cooperative relations under its existing authority.

States typically implement recognition of Native governments in one of two ways. Either a state may extend general purpose recognition to Native governments, and provide for a systematic procedure for entering into compacts, or the state may adopt an incremental policy of limited recognition for specified purposes.

The Interlocal Cooperation legislation in Nevada,³⁷ Washington³⁸ and South Dakota³⁹ are good examples of legislation which reflect this first policy. Typically, these statutes allow state and local governments to enter into agreements providing for the joint exercise of powers, procedures for entering into such agreements, and financing of joint programs. In the above three states, the Interlocal Act simply defines entities eligible to enter into these agreements to include Indian tribes. Nevada has clarified this inclusion by enacting legislation which guarantees the rights of self-government of Indian tribes;⁴⁰ and provides that the administrative jurisdiction of state agencies is not extended over Indian country.⁴¹

In contrast, other states have adopted an incremental approach to recognition and compacts with Native government. A good example of this approach is Minnesota. A dispute between the State of Minnesota and the Chippewa Tribe arose over ricing and game regulation. The dispute led to a substantial amount of litigation which in turn led to an out-of-court settlement in the form of a ricing and game management compact between the state and the tribe.⁴² The compact is a limited effort by the state and tribe to cooperate in these limited subject areas, and does not attempt to establish an ongoing general relationship.

A more common area of limited state-tribal cooperation is in the area of law enforcement. In New Mexico, for example, state law provides general cross-deputization of state and tribal police.⁴⁴ Under this agreement, pueblo and Navaho tribal police also carry an appointment under

state law, and may, therefore, enforce state law within Native communities. State police also carry a tribal appointment.

C. FEDERAL LAWS

In considering inclusion of Native governments within the state local government system, the backdrop of federal law will have substantial effect. Of prime concern is the extent state law attempts to regulate the internal organization of Native government organization. Secondly, there is future legislation to be considered.

First, the Williams' doctrine prohibits states from regulating the internal self-government of Indian tribes.⁴⁵ Thus, the state could not mandate incorporation of Native governments under Title 29. Rather, the state could only authorize such incorporations upon consent of the tribe.

The Alaska constitution authorizes only three forms of local government - cities and boroughs which are capable of possessing all local government powers; and service areas/districts which are only capable of possessing enumerated powers.⁴⁶ Therefore, the legislature is limited to these modes of organization. The legislature may classify, define powers, and define manner of incorporation. Thus, in order to provide for the incorporation of a Native government under state law, the legislature must create a class of city, borough or service area, and define the powers of such government in a manner consistent with the Native government character.

If the legislature provided for state incorporation of Native governments as boroughs, however, the constitutional provisions vesting in the legislature the authority to regulate composition and apportionment of borough assemblies⁴⁷ would be inconsistent with the Williams' doctrine, which prevents state regulation of internal organization. This inconsistency is irreconcilable.

On the other hand, if the legislature provides for incorporation as a city, there exists no comparable constitutional claim to internal regulation. The state would merely create a class of city over which it disclaims authority to regulate composition.

The remaining option is the service area. The use of service areas in the unorganized areas of the state is relatively simple. Since such service areas operate by delegation of authority, the legislature may simply adopt the Florida or Maine plan and delegate to Native governments certain powers. In contrast, service areas within organized areas are subject to borough regulation. While the legislature may authorize boroughs to create a class of service area appropriate to the Native government, the character of borough regulation is equally important. Borough regulation which violates the Williams' test would invalidate the plan. To avoid this, the legislature may declare that the furtherance of Native self-determination is a matter of state interest, and under the local activity rule, the legislature could preempt borough regulation of Native service area composition.

Thus it is conceivable that the state could provide for incorporation of Native government as cities and service areas whether within or without organized boroughs.

The second consideration is the proposed Tribal-State Compact Act which is currently before the U.S. House of Representatives (see Appendix C). The implementation of the tribal-state paradigm would be substantially affected by the terms of the Act. In its current form, the bill specifically authorizes states and local governments to enter into agreements with Native governments. Such legislation is needed in non-P.L. 280 states because of recent court decisions invalidating such agreements.⁴⁸

In addition to merely authorizing tribal-state agreements, Sec. 102 of the proposed Act provides federal assistance to the entity assuming new obligations under the terms of a tribal-state compact. If passed, the Act will provide a mechanism to assist the state in its constitutional

plan of decentralization. By entering into eligible arrangements, the state may take advantage of available federal funding to facilitate implementation of state programs. Such agreements are more likely to operate in rural areas of the state where program costs are greatest. Use of such federal funding will decrease the burden on the state budget that such programs represent. While the state enjoys its present wealth, the need for federal assistance is less, yet, as projected state revenues decline in the future, the need for federal assistance will increase.

D. NON-NATIVES

The greatest concern over inclusion of Native village governments into the Alaska local government system is the preception that the Native governments are racially defined institutions. As such, it is feared that non-Natives will be relegated to a status of second class citizens in their own communities. This view is founded on two questionable assumptions: 1) non-Natives cannot participate in Native government, and 2) non-Natives have no rights under a Native government.

It is a general rule of law that a Native tribe has the exclusive authority to determine its membership.⁴⁹ This power specifically includes the power to provide for the adoption of non-Natives into the tribe.⁵⁰ This general rule is subject to one exception. The Secretary of the Interior is charged with the responsibility of determining tribal enrollment for the purposes of distributing tribal trust funds.⁵¹

In contrast, Native governments providing services under federal contracts may also render services to non-Native tribal members, since, for the purpose of contracting, "Indian" is defined in terms of tribal membership.⁵² Benefits provided through state revenue sharing are required by state procedures to be equally available to non-Native residents of the respective communities. Thus, it is quite possible for non-Natives to fully participate in Native government.

Participation by non-Natives in Native government is quite common, despite efforts of the B.I.A. to discourage the practice. In one case,

a Native village constitution goes so far as to guarantee non-member/non-Native heads of households representation on behalf of their Native children before the Native council.⁵³ In practice, Native councils are reluctant to open village roles to non-Natives who may be transient or are reluctant to establish permanent ties with the community. This is understandable in that membership in a village generally carries with it cultural duties and obligations. This reluctance is analogous to the policy of the federal government to extend citizenship to aliens.

The second major concern relates to the individual rights of non-Natives under Native government. The prime guarantee of individual rights under a Native government is the Indian Civil Rights Act of 1968.⁵⁴ The Act mandates that a Native government provide many of the same individual protections provided under the U.S. Constitution. These include:

- free exercise of religion
- freedom of speech, press and assembly
- freedom of unreasonable search and seizure
- protection from double jeopardy and self-incrimination
- protection from taking of property without compensation
- right of due process and counsel
- protection from cruel and unusual punishment and excessive bail
- right to equal protection of the laws
- prohibition of bills of attainder or expost facto laws, and
- right to trial by jury

These rights extend to members and non-members alike.⁵⁵

There is some concern that the Act only provides relief through the right of habeas corpus. This concern focuses around dicta contained in Santa Clara Pueblo v. Martinez.⁵⁶ In that case, the Court reviewed a tribal ordinance which conferred benefits upon tribal members based upon a distinction between patrilineal/matrilinial ancestors. In dicta, the Court stated that Congress only provided one clear remedy for plaintiffs under the Act - i.e., habeas corpus. A full reading of

Martinez, however, reveals that the holding of the case rests upon a test which balances two current policies of federal Indian law - i.e., self-determination and protection of individual rights. As one commentator remarked, "In litigation under the Indian Civil Rights Act, federal court jurisdiction outside the scope of habeas corpus proceedings has been firmly established."⁵⁷

CONCLUSIONS

It is clearly feasible to include Native village government into the state local government system. This may be done in one of two ways - either through compacts (see Appendix A) or direct incorporation (see Appendix B).

The first draft bill (see Appendix A) would be sufficient to authorize tribal state compacts. In addition to recognition, the bill defines the method whereby the State will engage in relations with the Native villages. The proposal provides that Native villages could participate in state programs to the same extent as second-class cities. It does not delegate to tribes general local government powers but does recognize the existing tribal powers retained by Native governments. The bill will clarify the status of Native village laws before state courts.

The bill also proposes cooperative agreements between the state and the Native governments to carry out state programs. This section anticipates the passage of the Tribal-State Compact Act which would allow federal funding of programs conducted under a State-Tribal agreement, and thus, reduce the burden on the state treasury for those areas affected by these agreements.

Finally, the bill conditions the relationship upon the Native government's complying with anti-discrimination provisions. This, of course, exempts federally funded Indian programs. The bill allows the Governor to enforce compliance through withdrawal of recognition.

The bill does not attempt to expand the jurisdiction of the State or the Native village. Section three (3) allows municipalities and village governments to enter into similar agreements.

The second draft bill (see Appendix B) would also provide for state-tribal compacts. In addition to this recognition, the bill allows direct incorporation of the Native government as a third class city. As a third class city, the government would have the attributes of a municipality and a Native village government. To avoid conflicts with the Williams doctrine, state law which regulates the internal operation of a city government are not made applicable to the third class city.

Other provisions of the bill are comparable to the first draft.

APPENDIX A

A BILL

For an Act entitled: "An Act Relating to Native Village Governments."

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

* Section 1. FINDINGS AND PURPOSE.

(a) The legislature has determined that,

(1) there exist within the state several communities which have Native village governments whose members are citizens of the state; and

(2) the law and customs of Native village governments include notions of democracy, liberty, and the exercise of personal rights consistent with the state and federal constitutions.

(b) It is the purpose of this Act to,

(1) extend recognition to Native village governments and encourage them in the administration of local government;

(2) provide for cooperative agreements between the state government and Native village governments to promote the equitable delivery of state services.

* Section 2. As 29 is amended by adding a new chapter to read:

CHAPTER ____ NATIVE VILLAGE GOVERNMENTS

Sec. 29 --. 010. NATIVE VILLAGE GOVERNMENTS. The State of Alaska hereby recognizes Native Villages as distinct, independent, political communities exercising original tribal sovereignty in

dependent association with the United States. Any Native village ordinance or custom heretofore or hereafter adopted by the duly constituted Native village government, in the exercise of any authority which it may possess shall, if not inconsistent with any applicable law or constitutional provision of the State of Alaska, be given full force and effect within the Alaska State Courts, provided that such Court shall have jurisdiction to hear such cause as a result of the withdrawal of federal jurisdiction pursuant to P.L. 83-280 (67 Stat. 588), as amended by P.L. 85-615 (72 Stat. 545).

Sec. 29.--. 020. ELIGIBILITY FOR STATE PROGRAMS. A Native village government, for a village which is not incorporated under this title, and is not located within an organized borough is,

- a) eligible to participate in all state programs to the same extent and in the same manner as a second-class city;
- b) entitled to notice concerning proposed actions by the state to the same extent as a government of a second-class city is entitled to notice; and
- c) entitled to consultation with the state on state actions and programs which affect the village to the same extent that the government of a second-class city is consulted on state actions and programs.

Sec. 29.--.030. AGREEMENTS.

(a) A Native village government or a group of Native village governments may negotiate agreements with the Commissioner regarding coordination of state and Native village facilities and services which may include judicial, law enforcement, and correction services.

(b) When the Commissioner negotiates an agreement under this section, he shall first consult with the head of each principal executive department which may be affected by the agreement. The

Commissioner shall next submit the proposed agreement to the Governor. The Governor may approve the agreement and upon approval of the agreement shall define the respective responsibilities of the state and of the Native village government during the period of time covered by the agreement.

Sec. 29.--.040. NONDISCRIMINATION.

(a) A Native village government which is a party to an agreement under AS 29.--.030 may not adopt a rule or operate a program which creates or extinguishes a benefit, liability, privilege, immunity or license dependent upon racial classification or membership in a Native tribe, clan or organization, except that a Native village government may participate in federally funded programs which provide services to persons or organizations because of their status as Native persons or Native organizations. Violation of this section renders an agreement entered into under AS 29.--020 void.

(b) The Governor may withdraw recognition of a Native village government authorized under AS 29.--.010 whenever he shall make a determination that the Native Village government has adopted a rule or operates a program which creates or extends a benefit, liability, privilege, immunity or license dependent upon racial classification or membership in a Native tribe, clan or organization, except that such determination may not be dependent on a Native village government's operation or participation in programs funded exclusively by federal or tribal funds which provide services to persons or organizations because of their status as Native persons or Native organizations.

(c) Actions and determinations made under this section shall be made in accordance with the Alaska Administrative Procedure Act (AS 44.62).

Sec. 29.--.050. LIMITATIONS. Nothing in this chapter authorizes the alienation, encumbrance, or taxation of real or personal property, including water rights, belonging to a Native person or

village that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States, or authorizes regulation of the use of property in a manner inconsistent with a federal treaty, agreement, statute, or regulation, or extends the jurisdiction of the state to adjudicate the ownership or right to possession of property. Nothing in this chapter deprives a Native person, Native village, or Native corporation of any right, privilege, or immunity afforded under federal or state treaty, agreement, or law, or alters the jurisdiction of the state, its political subdivisions, or a Native village government. Nothing in this chapter shall create in the state any trust obligation toward a Native person or Native organization because of their status as Native persons or Native organizations.

Sec. 29.--.060. DEFINITIONS. In this chapter,

(1) "Native person" means a person who meets the requirements for membership in a Native village or organization authorized, chartered or incorporated under the authority of a Native village government;

(2) "Native village government" means a local governing body organized by the authority of the Act of Congress of June 13, 1934, 25 USC, Sec. 476, or a traditional governing body of a Native village which meets the requirements of the Alaska Native Claims Settlement Act, 43 USC secs. 1601 et. seq.

(3) "Commissioner" means Commissioner of the Department of Community and Regional Affairs.

* Sec. 3. AS 29.48.010 (4) is amended to read:

(4) to enter into agreement, including those for cooperative or joint administration of any functions or powers with a local government, with the state, (OR) with the United States, or with a Native village government recognized under AS 29.--.010.

APPENDIX B

A BILL

For an Act entitled: "An Act Relating to Native Village Governments Establishing Third Class Cities."

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

* Section 1. FINDINGS AND PURPOSE.

(a) The legislature has determined that,

(1) there exist within the state several communities which have Native village governments whose members are citizens of the state; and

(2) the law and customs of Native village governments include notions of democracy, liberty, and the exercise of personal rights consistent with the state and federal constitutions.

(b) It is the purpose of this Act to,

(1) extend recognition to Native village governments and encourage them in the administration of local government;

(2) Provide for incorporation of Native village.

(3) provide for cooperative agreements between the state government and Native village governments to promote the equitable delivery of state services.

* Section 2. As 29 is amended by adding a new chapter to read:

CHAPTER ____ NATIVE VILLAGE GOVERNMENTS

Sec. 29 --. 010. NATIVE VILLAGE GOVERNMENTS. The State of Alaska hereby recognizes the Native villages as distinct, independent, political communities exercising original tribal sovereignty in dependent association with the United States. Any Native village ordinance or custom heretofore or hereafter adopted by the duly constituted governing body of Native village, in the exercise of any authority which it may possess shall, if not inconsistent with any applicable law or constitutional provision of the State of Alaska, be given full force and effect within the Alaska State Courts, provided that such Court shall have jurisdiction to hear such cause as a result of the withdrawal of federal jurisdiction pursuant to P.L. 83-280 (67 Stat. 588), as amended by P.L. 85-615 (72 Stat. 545).

Sec. 29.--. 020. INCORPORATION OF THIRD CLASS CITIES.

- a) A Native village government as defined in this chapter shall be eligible to incorporate as a third class city.
- b) Nothing in this chapter shall prevent such Native governments from exercising any power retained by that government by virtue of its tribal authority.

Sec. 29.--.030. ORGANIZATION OF COUNCIL.

- a) A third class city shall be organized pursuant to the organic documents for the Native village government seeking incorporation under this chapter.
- b) The following provisions of this title shall not apply to third class cities.
 - 1) A.S. 29.23.200-250 (organization of city council).

2) A.S. 29.48.130-260 (administrative procedures).

- c) A third class city shall possess all powers of a second class city outside boroughs as provided in A.S. 29.43.

Sec. 29.--.040. AGREEMENTS.

(a) A Native village government or a group of Native village governments may negotiate agreements with the Commissioner regarding coordination of state and Native village facilities and services which may include judicial, law enforcement, and correction services.

(b) When the Commissioner negotiates an agreement under this section, he shall first consult with the head of each principal executive department which may be affected by the agreement. The Commissioner shall next submit the proposed agreement to the Governor. The Governor may approve the agreement and upon approval of the agreement shall define the respective responsibilities of the state and of the Native village government during the period of time covered by the agreement.

Sec. 29.--.050. NONDISCRIMINATION.

(a) A Native village government which is a party to an agreement under AS 29.--.030 may not adopt a rule or operate a program which creates or extinguishes a benefit, liability, privilege, immunity or license dependent upon racial classification or membership in a Native tribe, clan or organization, except that a Native village government may participate in federally funded programs which provide services to persons or organizations because of their status as Native persons or Native organizations. Violation of this section renders an agreement entered into under AS 29.--020 void.

(b) The Governor may withdraw recognition of a Native village government authorized under AS 29.--.010 whenever he shall make a determination that the Native Village government has adopted a

rule or operates a program which creates or extends a benefit, liability, privilege, immunity or license dependent upon racial classification or membership in a Native tribe, clan or organization, except that such determination may not be dependent on a Native village government's operation or participation in programs funded exclusively by federal or tribal funds which provide services to persons or organizations because of their status as Native persons or Native organizations.

(c) Actions and determinations made under this section shall be made in accordance with the Alaska Administrative Procedure Act (AS 44.62).

Sec. 29.--.060. LIMITATIONS. Nothing in this chapter authorizes the alienation, encumbrance, or taxation of real or personal property, including water rights, belonging to a Native person or village that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States, or authorizes regulation of the use of property in a manner inconsistent with a federal treaty, agreement, statute, or regulation, or extends the jurisdiction of the state to adjudicate the ownership or right to possession of property. Nothing in this chapter deprives a Native person, Native village, or Native corporation of any right, privilege, or immunity afforded under federal or state treaty, agreement, or law, or alters the jurisdiction of the state, its political subdivisions, or a Native village government. Nothing in this chapter shall create in the state any trust obligation toward a Native person or Native organization because of their status as Native persons or Native organizations.

Sec. 29.--.070. DEFINITIONS. In this chapter,

(1) "Native person" means a person who meets the requirements for membership in a Native village or organization authorized, chartered or incorporated under the authority of a Native village government;

(2) "Native village government" means a local governing body organized by the authority of the Act of Congress of June 18, 1934, 25 USC, Sec. 476, or a traditional governing body of a Native village which meets the requirements of the Alaska Native Claims Settlement Act, 43 USC secs. 1601 et. seq.

(3) "Commissioner" means Commissioner of the Department of Community and Regional Affairs.

* Sec. 3. AS 29.48.010 (4) is amended to read:

(4) to enter into agreement, including those for cooperative or joint administration of any functions or powers with a local government, with the state, (OR) with the United States, or with a Native village government recognized under AS 29.--.010.

APPENDIX C

96TH CONGRESS
2D SESSION

S. 1181

IN THE HOUSE OF REPRESENTATIVES

JUNE 3, 1980

Referred to the Committee on Interior and Insular Affairs

AN ACT

To authorize the States and the Indian tribes to enter into mutual agreements and compacts respecting jurisdiction and governmental operations in Indian country.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Tribal-State Compact Act
4 of 1980".

5 DECLARATION OF POLICY

6 SEC. 2. The Congress hereby declares that it is the
7 policy of this Nation to continue to preserve and protect the
8 tribes of the American Indian people. The policy of this
9 Nation is premised on the status of tribal governments as a
10 continuing part of the American political fabric. Accordingly,

1 the United States has a responsibility to establish a legal
2 framework which will enable the tribes and the States to
3 achieve maximum harmony and facilitate their cooperative
4 efforts in the orderly administration of their governments.
5 Federal enabling authority for the establishment of viable
6 intergovernmental agreements between the tribes and the
7 States based on mutual consent must be established.

8 DEFINITIONS

9 SEC. 3. For purposes of this Act:

10 (a) "Indian tribe" means any Indian tribe, band, nation,
11 or other organized group or community which is exercising
12 powers of self-government and which is recognized by the
13 Secretary of the Interior as eligible for services provided by
14 the United States to Indians because of their status as
15 Indians.

16 (b) "State" means any of the States of the United
17 States, including cities, counties, municipalities, or other
18 political subdivisions thereof.

19 (c) "Secretary" means the Secretary of the Interior
20 unless otherwise designated in this Act.

21 (d) "Indian country" shall be defined in accordance with
22 the provisions in section 1151 of title 18, United States
23 Code.

1 **TITLE I—AUTHORIZATION OF COMPACTS AND**
2 **AGREEMENTS**

3 SEC. 101. (a) Notwithstanding the Act of August 15,
4 1953 (67 Stat. 588), as amended, or any other Act transfer-
5 ring civil or criminal jurisdiction over Indians within Indian
6 country from the United States to the various States, or
7 establishing a procedure for such transfers, and notwithstand-
8 ing the provisions of any enabling Act for the admission of a
9 State into the Union, the consent of the United States is
10 hereby given the States and the Indian tribes and the same
11 are hereby authorized to enter into compacts and agreements
12 between themselves on matters relating to (1) the enforce-
13 ment or application of civil, criminal, and regulatory laws of
14 both within their respective jurisdiction, and (2) allocation or
15 determination of governmental responsibility of States and
16 tribes over specified subject matters or specified geographical
17 areas, or both, including agreements or compacts which pro-
18 vide for concurrent jurisdiction between the States and the
19 tribes, and (3) agreements or compacts which provide for
20 transfer of jurisdiction of individual cases from tribal courts to
21 State courts or State courts to tribal courts in accordance
22 with procedures established by the laws of the tribes and
23 States.

24 (b) Such agreements and compacts shall be subject to
25 revocation by either party upon six months written notice to

1 the other unless a different period of time is agreed upon. No
2 agreement may provide for a period for revocation in excess
3 of five years unless first approved by a majority of the adult
4 enrolled Indians within the affected area voting at a special
5 election as prescribed in section 406 of the Act of April 11,
6 1968 (82 Stat. 80; 25 U.S.C. 1326), but such approval shall
7 not curtail the right of the parties to revoke the agreement by
8 mutual consent within a shorter period of time.

9 (c) Agreements or compacts entered into under the pro-
10 vision of this section must be filed with the Secretary within
11 thirty days of consummation. In the event an agreement is
12 not so filed, it shall be subject to immediate revocation by
13 either party. The Secretary shall cause the jurisdictional pro-
14 visions of any such agreement, compact, or revocation to be
15 published in the Federal Register.

16 (d) Such agreements, compacts, or revocation thereof
17 shall not affect any action or proceeding which arose prior to
18 the effective date of such an agreement, compact, or revoca-
19 tion, and no such action or proceeding shall abate by reason
20 of such agreement, compact, or revocation unless specifically
21 agreed upon by all parties to any such action or proceedings
22 and by the parties to the agreement or compact.

23 (e) Nothing in this Act shall be construed to: (1) enlarge
24 or diminish the jurisdiction over civil or criminal matters
25 which may be exercised by either State or tribal governments

1 except as expressly provided in this Act; (2) authorize or em-
2 power State or tribal governments, either separately or pur-
3 suant to agreement or compact, to expand or diminish the
4 jurisdiction presently exercised by the Government of the
5 United States to make criminal, civil, or regulatory laws for
6 or enforce those laws in the Indian country; (3) authorize or
7 empower the government of a State or any of its political
8 subdivisions or the government of an Indian tribe from enter-
9 ing into agreements or exercising jurisdiction except as au-
10 thorized by their own organizational documents or enabling
11 laws; (4) authorize agreements or compacts which provide for
12 the alienation, financial encumbrance, or taxation of any real
13 or personal property, including water rights, belonging to any
14 Indian or any Indian tribe, band, or community that is held in
15 trust by the United States or is subject to a restriction
16 against alienation imposed by the United States; or (5) to
17 enter into agreements or compacts for the transfer of unlimit-
18 ed, unspecified, or general civil and criminal jurisdiction of an
19 Indian tribe, except as provided under section 406 of the Act
20 of April 11, 1968 (82 Stat. 80; 25 U.S.C. 1326).

21 (f) Nothing in this Act shall be construed as impairing or
22 restricting the right of the United States, States and Indian
23 tribes to enter into negotiations with each other with respect
24 to settlement of property rights arising from aboriginal own-
25 ership, treaties or other Federal laws or judicial decisions.

1 FUNDING AND IMPLEMENTATION—FEDERAL ASSISTANCE

2 SEC. 102. (a) In any agreement or compact between an
3 Indian tribe and a State authorized under this Act, the
4 United States, upon agreement of the parties and the Secre-
5 tary, may provide financial assistance to such party for costs
6 of personnel or administrative expenses in an amount up to
7 100 per centum of costs actually incurred as a consequence
8 of such agreement or compact, including indirect costs of ad-
9 ministration which are clearly attributable to the services
10 performed under the agreement or compact. In determining
11 the amount of Federal assistance, if any, to be provided the
12 Secretary may consider among other things:

13 (1) Whether or not the party assuming an obliga-
14 tion under the agreement or compact is already
15 obligated or entitled to perform the function which is
16 the subject of the compact.

17 (2) Whether or not the Federal assistance will
18 cause or enable the contracting party to perform the
19 function at a standard above that which it is already
20 obligated to perform.

21 (3) The financial capacity of the contracting par-
22 ties to underwrite the expenses without Federal assist-
23 ance.

24 (4) The extent to which the success or failure of
25 the compact may depend upon Federal assistance.

1 (5) The extent to which the proposed compact or
2 agreement will contribute to fostering of community re-
3 lations between Indian and non-Indian communities.

4 (6) The extent to which the proposed compact or
5 agreement will enhance protection of resources of both
6 Indian and non-Indian communities.

7 (7) The comparative costs if the function which is
8 the subject of the compact or agreement were to be
9 performed by the United States.

10 (8) The extent to which Federal funding is al-
11 ready supplied through revenue sharing, grants in aid,
12 or other Federal program moneys.

13 (b) Whenever a party to such agreement or compact
14 seeks financial assistance from the United States, to offset
15 their costs, such party shall prepare a detailed statement of
16 the projected costs; a copy of such statement shall be sup-
17 plied to the other party; and the original of such statement
18 shall be supplied to the Secretary at the time said agreement
19 or compact is tendered to him for his approval.

20 (c) In any agreement or compact in which one of the
21 parties qualifies for Federal assistance, the other party shall
22 be supplied with copies of all vouchers for payment at the
23 time they are submitted and shall be fully informed of all
24 payments made by the United States to the recipient party.
25 In the event disputes arise between the parties, either party

1 may request an audit. The books and records of the party
2 receiving Federal assistance which are relevant to the agree-
3 ment or compact shall be open to inspection by authorized
4 representatives of the United States.

5 (d) In the funding of governmental operations authorized
6 under this Act, the Secretary may enter into agreements or
7 other cooperative arrangements with any and all other Fed-
8 eral departments, agencies, bureaus, or other executive
9 branches for transfer of funds or contributions of funds appro-
10 priated for programs within the category of the functions to
11 be performed by the parties under such agreements or com-
12 pacts, and such departments, agencies, or bureaus are hereby
13 authorized to use such funds in the implementation of this
14 Act.

15 (e) All Federal departments, agencies, and other execu-
16 tive branches are authorized to provide technical assistance
17 and material support and assign personnel to aid tribal and
18 State authorities in the implementation of the agreements or
19 compacts they may enter into under the terms of this Act.

20 (f) The Secretary is hereby authorized to promulgate
21 such rules and regulations as may be necessary to carry out
22 the purposes of this Act.

23 (g) There are authorized to be appropriated such sums
24 as may be necessary during fiscal year 1981 not to exceed
25 \$10,000,000 and each subsequent fiscal year in order to

1 carry out the agreements or compacts entered into pursuant
2 to this title. Such funds shall be expended by the Secretary
3 only after determination that there are no funds available
4 from alternative sources as provided in subsection (d) of this
5 section. The Secretary shall provide for such records as may
6 be necessary for the accounting and justification of the funds
7 expended under this authorization.

8 TITLE II—PLANNING AND MONITORING BOARDS

9 SEC. 201. (a) The Secretary is hereby authorized and
10 directed to encourage the tribes and the States to establish
11 councils, committees, boards, or task forces comprised of rep-
12 resentatives of the States and individual tribes, or on a
13 statewide or regional basis, to discuss and confer upon juris-
14 dictional questions which exist between the parties, and to
15 provide Federal representatives at such conferences.

16 (b) In furtherance of this objective, the Secretary is au-
17 thorized and directed to provide adequate representation of
18 tribal members at such conferences, and such further confer-
19 ences among the tribes as may be necessary for their sepa-
20 rate deliberations, and to participate in the payments of ex-
21 penses in employment of reporters, transcription of state-
22 ments, and preparation of reports as may be appropriate.

23 (c) Beginning October 1, 1980, funds appropriated pur-
24 suant to the Act of November 21, 1921 (42 Stat. 208), may
25 be utilized for the purposes of this title.

1 **TITLE III—JUDICIAL ENFORCEMENT**

2 SEC. 301. Any party to an agreement or compact en-
3 tered into in accordance with this Act may bring a civil
4 action to secure equitable relief, including injunctive and de-
5 claratory relief, for the enforcement of any such agreement or
6 compact, but no action to recover damages arising out of or
7 in connection with such agreement or compact shall lie
8 except as specifically provided for in such agreement or com-
9 pact. The United States district courts shall have original
10 jurisdiction of any civil action authorized by this section.
11 States and Indian tribes, by entering into compacts or agree-
12 ments in accordance with this Act, shall be deemed to have
13 consented to suit with respect to the subject matter of such
14 compacts or agreements unless the agreement or compact
15 specifically states otherwise.

 Passed the Senate May 30 (legislative day, January 3),
1980.

Attest:

J. S. KIMMITT,
Secretary.

FOOTNOTES

PART I

1. D. Case, *The Special Relationship of Alaskan Natives to The Federal Government*, pp. 119-127 (ANF, 1978).
2. *Preliminary Report on Borough Government*, p. 11 (Alaska Legislative Council, 1960) [hereinafter cited "Preliminary Report"].
3. *id.*
4. *id.* at 14
5. 37 Stat. 512 *See Preliminary Report*, at 12.
6. R. Cease & J. Saroff, *The Metropolitan Experiment in Alaska*, p. 2 (Praeger, 1968).
7. *id.*
8. Chapter 11, SLA 1915; amended Chapter 25, SLA 1917; repealed (h.23, SLA 1923).
9. *Preliminary Report*, *supra*, at 12-13
10. 25 U.S.C. 476
11. Sen. Rpt. 1080, 73rd Cong. 2d Session, 1 (1934)
12. *Preliminary Report*, *supra*, at 14
13. *id.*, at 15
14. *id.*
15. Chapter 150, SLA 1957; amended Chapter 79, SLA 1959.
16. Con. Cov. Proc., Pt. 4, p. 47
17. *id.* at 2161
18. Ak. Const., Art. X, Sec. 2.
19. Con. Cov. Proc., Pt. 6, p. 59.
20. Con. Cov. Proc., Pt. 4, pp. 2616-7.
21. *id.*, pp. 2613-4
22. *See* Comments by Delegate Lonberg, Con. Cov. Proc., Pt. 4, p. 2651.
23. A.S. 29.08.020
24. AK. Const., Art. X, Sec. 3 & 7.
25. AK. Const., Art. X, Sec. 4.
26. AK. Const., Art. X, Sec. 8.
27. AK. Const., Art. X, Sec. 5.
28. AK. Const., Art. X, Sec. 6.
29. *Walters v. Cease*, 380 P.2d 263 (Alaska, 1964)
30. A.S. 29.18.030
31. A.S. 29.18.011
32. Con. Cov. Proc., Pt. 4, pp. 2621-2.
33. *id.*
34. *Local Government Under The Alaska Constitution*, p. 46 (1959, Public Administration Service).
35. *City of Douglas v. City and Borough of Juneau*, 484 P.2d 1040 (Alaska, 1971). *See also Mobil Oil Corp. v. Local Boundary Comm'n*, 518 P.2d 92 (Alaska, 1974).
36. Con. Cov. Proc., Pt. 4, p. 2650.
37. Ak. Con., Art. X, Sec. 7.
38. *id.*, Sec. 3.
39. A.S. 29.18.011
40. Con. Conv. Proc., Pt. 4, p. 2654.

41. id.
42. 484 P.2d 1040 (Alaska, 1971).
43. Con. Conv. Proc., Pt. 4, p. 2653.
44. id., at 2623
45. id., at 2624.
46. 491 P.2d 720 (Alaska, 1971).
47. Chugach Electric Association v. City of Anchorage, 476 P.2d 115 (Alaska, 1970).
48. Ak. Const. Art. X, Sec. 2.
49. id., Sec. 15.
50. id., Sec. 5.
51. id.
52. Con. Conv. Proc., Pt. 4, pp. 2719-20.
53. Ak. Const., Art. X, Sec. 2 See Liberati v. Bristol Bay Borough, 384 P.2d 1130 (Alaska, 1978).
54. Wien v. City of Ketchikan, 383 P.2d 721 (Alaska, 1963).
55. Ak. Const., Art. X, Sec. 13.
56. id.
57. Compare Con. Conv. Proc. Pt. 4, pp. 2713 and 2652.
58. Ak. Const., Art. X, Sec. 6.
59. A.S. 29.03.020
60. 1961 Op. Attorney General No. 24
61. A.S. 16.10.380
62. A.S. 46.40.110 et. seq.
63. A.S. 14.08.031
64. Hootch v. Alaska State-Operated Schools, 536 P. 2d 793 (Alaska, 1975)
65. A.S. 29.89.040
66. D. Case, supra at 130.
67. See generally id., at 119-127.
68. Cohen, Handbook on Federal Indian Law, 122 (1948); 55 ID14 (1934) Powers of Indian Tribes; Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832); Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978).
69. U.S. v. Sandoval 231 U.S. 28 (1913)
70. P.L. 93-638, Sec. 4(a)
71. P.L. 92-512, Sec. 108(b) (14)
72. P.L. 93-383, Sec. 102(a) (1)
73. P.L. 93-203, Sec. 302
74. P.L. 95-608, Sec. 4(8)
75. 28 U.S.C. 1360 (c)
76. P.L. 90-351, Sec. 601(b)
77. See Fed. Reg. (May 25, 1973) p. 13758; Fed. Reg. (July 10, 1980) p. 46581-2.
78. 25 U.S.C. 476
79. 25 U.S.C. 473(a)
80. 25 U.S.C. 466
81. See generally D. Case, supra, at 38-40
82. 43 U.S.C. 1618
83. House Rept. No. 2244, 74th Cong., Second Session, .2 (1936).
84. Senate Rpt. No. 1080, 73d Cong., Second Session, 1 (1934).
85. 560 P.2d 31 (Alaska, 1977)
86. 465 F. Supp. 1286 (D.C. Alaska, 1978).

87. Act of June 19, 1935 (49 Stat. 388), as amended by Act of August 19, 1965 (79 Stat. 543).
88. P.L. 93-638, Sec. 4(a).
89. Field Solicitor's memorandum, Status of the Inupiat Community of the Arctic Slope for Self-Determination Act contracting and other purposes, May 1, 1979 (unpublished).
90. 25 U.S.C. 450(b).
91. Pueblo of Santa Rose v. Fall, 273 U.S. 315 (1927).
92. Williams v. Lee, 358 U.S. 217 (1959).
93. 541 P.2d 730 (Alaska, 1975).
94. See D. Case, supra, at 136-141.

PART II

1. AK. Const. Art. X, Sec. 12
2. A.S. 29.18.090
3. A.S. 29.68
4. A.S. 29.18.050 et. seq. and A.S. 29.68
5. See generally. Fairview Public Utility District No.1 v. City of Anchorage, 368 P.2d 540 (Alaska, 1962)
6. A.S. 29.48.037
7. A.S. 29.43.100
8. A.S. 29.78.010 (18)
9. A.S. 29.33.010 et. seq. A third class borough may only exercise taxing and education powers. A.S. 29.41.010
10. A.S. 29.78.010 (19)
11. A.S. 29.38.010
12. A.S. 29.48.020; A.S. 29.38.020; A.S. 29.38.030
13. F. COHEN, supra at 5
14. 2 U.S.C. 1360(c) (PL 83-280) states
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 causes of action pursuant this section (i.e., which arise in Indian country).
15. See PRICE, LAW AND THE AMERICAN INDIAN, 79-84, (1973)
16. Id
17. Indian Intercourse Act of 1834 (4 Stat. 729)
18. F. COHEN, supra, at 5-6
19. Id. at 6n60
20. 5 U.S. 240 (1887)
21. 228 U.S. 243 (1913)
22. 231 U.S. 28 (1913)
23. 290 U.S. 357 (1933)
24. 151 F. Supp 132 (Alaska, 1957)
25. 161 F. Supp 269 (Alaska, 1958)
26. P.L. 85-615
27. 1978 Op. Atty. Gen. File No. J-66-001-67, J-66-503-77. Memo re: State Taxation of Alaska Natives and Business Enterprises Operated by Native Organizations. p.21
28. 466 F. Supp 860 (Alaska, 1979)
29. 369 U.S. 60 (1962)
30. 426 U.S. 373 (1976)

31. Citing U.S. v. Mazurie, 419 U.S. 544 (1975); See also Santa Rose Band of Indians v. Kings County, 532 F.2d 655, (9th Cir., 1975)
32. U.S. v. McGowan, 302 U.S. 535 (1938)
33. U.S. v. Sandoval, supra
34. 43 U.S.C. 1603(e)
35. 43 U.S.C. 1611, 1613
36. U.S. Solicitor's Opinion, (Oct. 1, 1980), p. 2.
37. id.
38. 302 U.S. 535 (1938).
39. See generally 25 U.S.C. 465, 473(a)
40. 368 U.S. 351 (1962)
41. See Matz v. Arnet, 412 U.S. 481 (1973)
42. 420 U.S. 452 (1975)
43. 436 U.S. 191 (1978)
44. 436 U.S. 313 (1978)
45. 419 U.S. 544 (1975)
46. 28 U.S.C. 1360(c)
47. Jim v. C.I.T. Financial Services Corp., 87 N.M. 362, 533 P.2d 751 (N.M., 1975). 28 U.S.C. 1738, requires that: Acts, records, and judicial proceedings (of any State, Territory or Possession) shall have the same full faith in credit in every Court within the United States and its Territories and Possessions as they have by usage in the Courts of such State, Territory or Possession from which they are taken. See also In re Buehl, 87 Wash 2d 649, 555 P.2d 1334 (1976); Ragsdale, Problems in Application of Full Faith and Credit for Indian Tribes, 7 N. Mex. L. Rev. 133 (1977)
48. Fox v. Fox, 542 P.2d 918 (Or. App., 1975); Begay v. Miller, 70 Ariz. 380, 222 P.2d 624 (1950)
49. Compare Santa Clara Pueblo v. Martinez, 98 S.Ct. 1670 (1978) and U.S. v. Wheeler, supra.
50. 358 U.S. 217 (1959)
51. 369 U.S. 69 (1962)
52. id., at 75-76
53. McClanahan v. Arizona Tax Commission, 411 U.S. 164 (1973).
54. P.L. 83-280 (67 Stat. 588), amended to add Alaska, P.L. 85-615 (72 Stat. 545). Now codified as 18 U.S.C. 1162, 28 U.S.C. 1360 and other scattered sections.
55. See Goldberg, Public Law 280: The Limits of State's Jurisdiction Over Reservation Lands, 22 UCLA Law Review 535 (1975).
56. 426 U.S., 388-89 citing U.S. v. Mazurie, supra.
57. id.
58. id., at 384
59. id.
60. Santa Rosa Band of Indians v. Kings County, 532 F.2d 655 (9th Cir., 1975)
61. Morongo Band of Mission Indians v. Area Director, IBILA 79-18-A (1979).
62. See generally Goldberg, supra; Santa Rosa Band of Indians v. Kings County, supra.
63. F. COHEN, supra, at 122
64. D. CASE, supra, at 152-3
65. A.S. 29.08.010

66. A.S. 29.08.020
67. A.S. 29.48.010
68. A.S. 29.48.035
69. A.S. 29.48.030
70. A.S. 29.33
71. A.S. 29.43
72. A.S. 29.48.030 (7); Town of Ketchikan v. Greenbaum, 5 Alaska 396 (1915)
73. 55 I.D. 14 (Powers of Indian Tribe)
74. 18 U.S.C. 1153
75. 18 U.S.C. 1152
76. Compare A.S. 29.48.200 and 25 U.S.C. 1302 (7)
77. Ak. Const. Art. IV, Sec. 1
78. See McKenzie, YOU HAVE THE RIGHT, 25-27 (AFN, 1976); Keiner v. City of Anchorage 378 P.2d 406 (Alaska, 1963); State v. Lundgren Pacity Const. Co. Slip Op. 1980 (Alaska, 1979).
79. Guthrie, Analysis of Amendment to HB 533 proposed by Tanana Chiefs, Legislative Affairs Agency (March 21, 1980), citing Baker v. City of Fairbanks, 471 P.2d 386; Alexander v. City of Anchorage, 490 P.2d 910 (1979)
80. Iron Crow v. Oglala Sioux Tribe, 231 F.2d 89 (1959)
81. Talton v. Mayes, 163 U.S. 376 (1896)
82. 25 U.S.C. Sections 1301-1303
83. A.S. 29.33.070. et. seq.
84. A.S. 29.33.070(b)(2)
85. A.S. 29.29.43.040
86. A.S. 38.05.037
87. 541 P.2d 730. See P.24 infra, for discussion
88. id., at 737-8
89. A.S. 29.33.070 et. seq.
90. Sec. 45, Chap 85 SLA 1979
91. A.S. 29.48.035
92. 419 U.S. 544 (1975)
93. Johnson v. Chilkoot Indian Village, 957 F. Supp. 384 (D. Alaska, 1978)
94. 532 F.2d 655 (9th Cir., 1977)
95. id., at 663
96. Buster v. Wright, 135 F.947 (8th Cir. 1905). Iron Crow v. Oglala Sioux Tribe, supra; Barta v. Oglala Sioux Tribe, 259 F.2d 553. (8th Cir., 1958), cert. den. 385 U.S. 932 (1959); 55 I.D. 14, 28 (1934) (Powers of Indian Tribes)
97. Buster v. Wright, supra.
98. Maxey v. Wright, 105 F. 1003 (8th Cir., 1900)
99. Morris v. Hitchcock, 194 U.S. 384 (1904)
100. A.S. 29.53.415 et. seq. (boroughs); A.S. 29.53.440 (cities within boroughs); A.S. 29.43.020 (cities outside boroughs)
101. A.S. 29.53.010 (boroughs); A.S. 29.53.400, 410 (cities within boroughs); A.S. 29.43.020 (cities outside boroughs)
102. A.S. 29.53.020, et. seq.
103. 55 I.D. 14 (1934) (Powers of Indian Tribes). See also Indian Child Welfare Act, P.L. 95-608

PART III

1. Con. Conv. Proc., Pt. 6, p.478
2. AK. Const., Art. I, Sec. 1, provides that this constitution is dedicated to the principles...that all persons are equal and entitled to equal rights, opportunities, and protection under the law;...
3. 262 N.W. 2d 341 (Minn., 1977)
4. id., at 348
5. Id., at 348n24 citing Morton v. Mancavi, 417 U.S. 535 (1974) and McClanahan v. Arizona State Tax Comm., 411 U.S. 164 (1973)
6. 430 U.S. 641 (1977)
7. U.S. Const., Art. 1, Sec. 8
8. 262 N.W. 2d, at 347n.23
9. State v. Erickson, 574 P. 2d 1 (Alaska, 1978); Isakson v. Rickey, 550 P. 2d 358 (Alaska, 1976); Lynden Transport, Inc. v. State, 522 P. 2d 1125 (Alaska, 1974)
10. 426 U.S., at 388-9
11. A.S. 29.08.050(b)
12. N.M. Stat. Ann. Sec. 53-9-1.
13. Toledo v. Pueblo de Jemez, 119 F. Supp. 429 (D.N.M., 1954)
14. 30 M.R.S.A. Sec. 6201 et. seq.
15. 30 M.R.S.A. Sec. 6206
16. 30 M.R.S.A. Sec. 6206
17. 30 M.R.S.A. Sec. 6206
18. 30 M.R.S.A. Sec. 6204
19. 30 M.R.S.A. Sec. 6210
20. 30 M.R.S.A. Sec. 6206
21. 426 U.S. 373 (1976)
22. Fl. Stat. Sec. 285.06
23. id., Sec. 285.17
24. See id., Sec. 285.061 (2). See Solicitor's Opinions, No. M-36907 (Nov. 14, 1978) Criminal Jurisdiction on Seminole Reservations in Florida.
25. Fl. Stat. Sec. 285.18
26. Conn. Gen. Stat., Sec. 47-63, et. al.
27. Conn. Gen. Stat., Sec 47-65(d)
28. Texas Stat., Chapter XLIV, Acts of the 5th Legislature, 1854
29. Texas Stat., Art. 5421z, Sec. 11A
30. Texas Stat., Art. 5421z, Sec. 12
31. Texas Stat., Art. 5421z, Sec. 18
32. These states include California, Delaware, Idaho, Montana, Maryland, Massachusetts, Michigan, Minnesota, North Dakota, Oregon, South Dakota, Wisconsin, and Wyoming.
33. Minn. Stat., Sec. 922 et. seq.
34. Cal. Code Educ. 4084
35. KELSEN, PRINCIPLES OF INTERNATIONAL LAW, 387 (2nd ed., 1966)
36. id., at 399
37. Nev. Rev. Stat. Sec. 277.080 et seq
38. R.C.W. 39.34
39. S.D. Compiled Laws Ann. Sec. 1-23-24 et seq
40. Nev. Rev. Stat. Sec. 233A.120
41. Nev. Rev. Stat. Sec. 233A.130

42. See State v. Forge, 262 N.W. 2d 341 (Minn. 1977); Minn. Stat. 97.431
43. Or. Rev. Stat. Sec. 390.845
44. N.M. Rev. Stat. 29-1-11. See also Tribal-State Compact Act of 1978. Hearings on S.2502 before the U.S. Senate Select Committee on Indian Affairs, 95th Cong., 2d Sess. 35-36, 183-189, and 252-259 (1978) Statements on cross-deputization in other states.
45. See generally Part II(B)(1) supra.
46. See generally Part II(B) supra.
47. AK. Const., Art. X, Sec. 4
48. See White v. Califano, 437 F. Supp. 543 (1977); Black v. District Court, 158 Mont. 523 (1973); Kennerly v. District Court, 400 U.S. 423 (1971)
49. 55 ID 14 (1934), Smith v. Bonifer, 154 F.883 (1909); Ollestead v. Native Village of Tyonek, 560 P.2d 31 (1977).
50. Smith v. Bonifer, supra.
51. 25 USC 163
52. 25 CFR 271.2 (i)
53. Proposed IRA Constitution for Dish-Ina-Nek, Art. 5, Sec. 4
54. 25 U.S.C. 1301
55. Dodge v. Nakai, 298 F. Supp. 26 (D. Ariz., 1969); Dry Creek Lodge, Inc. v. United States, 515 F.2d 926 (10th Cir., 1975)
56. 436 U.S. 49 (1978)
57. MANUAL OF INDIAN LAW, B-9 (The American Indian Lawyer Training Program, Inc., 1976)

NANA DEVELOPMENT CORPORATION, INC.

4706 HARDING DRIVE, ANCHORAGE, ALASKA 99503
TELEPHONE (907) 248-3030



November 11, 1980

Mr. Palmer McCarter, Director
Division of Local Government Assistance
Department of Community & Regional Affairs
Pouch B
Juneau, Alaska 99811

Dear Palmer:

Recently I had a discussion with Bert Griest concerning the requirement of AS 29.48.260 that a municipal corporation must dispose of real estate by public auction or sealed bids.

As you know, a number of villages, including several in the NANA region, are in the process of developing new housing. In several of these communities, the only lots suitable for construction of new homes are located outside the patented townsites on land that is selected and will eventually be conveyed to ANCSA corporations. Since new housing units are needed now, the Regional Housing Authorities understandably want to proceed with construction of homes in advance of transfer of ownership of the lots. By itself, this does not present any difficulty provided the permission of the ANCSA corporation and the interim land manager, (in most cases the BLM), is obtained. The problem arises later when BLM grants title and a reconveyance of the lots is requested by the owners of the new homes.

The Settlement Act amendments in the D-2 bill contain a provision whereby a Native corporation may transfer land to a shareholder for the purposes of constructing a family dwelling and not have that distribution of land be treated as a taxable distribution of assets. However, that method of granting title is not preferred by all ANCSA corporations. The ideal method, in our judgement, is to include these lands within the 1280 acres reconveyed to the municipal corporation. But a difficulty arises when the municipality seeks to reconvey title to the home owner. State law requires a public auction or sealed bid procedure since these lots were not occupied in 1971 and there is no requirement that they be reconveyed directly by the village corporation pursuant to Section 14 (c) of ANCSA.



Member Villages: Ambler, Buckland, Candle, Deering, Kiana, Kivalina, Kobuk, Kotzebue, Noatak, Noodin, Selawik, Shungnak



Mr. Palmer McCarter

Page 2

November 11, 1980

It may be appropriate to bring this to the attention of the committee working on amendments to Title 29, provided my understanding of what the statute requires is correct. I expect you will know whether the committee is already aware of the problem. If an amendment is needed, it seems to me, a waiver provision similar to AS 29.48.260 (d) would work. In this instance, waiver from the auction and bid requirements need only be available to a municipality reconveying land received from a ANCSA corporation if the reconveyance is to grant a village resident title to his homesite, and perhaps for other public purposes.

Best regards.

Sincerely,

Don Argetsinger
Vice President

DA/mt

cc The Honorable Arlis Sturgulewski - Alaska State Senate
Jack Chenoweth - Legislative Counsel ✓
Bert Griest



Draft of Revised Title 29 with Index

CITY OF KENAI
"Oil Capital of Alaska"

P. O. BOX 580 KENAI, ALASKA 99611
TELEPHONE 283 - 7535

November 10, 1980

Mrs. Marilyn Dimmick
P. O. Box 151
Ninilchik, Ak 99639

Re: Title 29 Provision

Dear Marilyn:

You mentioned the other day that I had sent you a list of some changes which I believe should be made in the revision of Title 29, but I do not remember getting the letter off nor the changes suggested.

Therefore, I am suggesting that an amendment be made to AS 29.33.050 (copy attached) as follows:

"The area within the boundaries of an organized [EACH] borough constitutes a borough school district which shall [AND] establish[ES], maintain[S], and operate[S] a system of public schools on an area-wide basis with such authority and responsibility in the organized borough as provided in AS 14.14.060."

I believe the original intent of this statute was merely to set up boundaries of a school district which should be autonomous under the direction of an elected school board except for the fiscal and other responsibilities given to the borough under the provisions of AS 14.14.060 (copy attached) and subject to such directions as provided by the state in Title 14.

Unfortunately the wording that now exists implies that the borough itself has responsibility for the school district even though AS 14.14.060 gives only limited powers to the borough and places full operational authority in the elected school board. The result has been that every time a suit has been brought against the school district the borough has been joined in this suit at considerable expense of time even though the suit may be on teachers' salaries or something else for which the borough has

no responsibility. For instance AS 14.09.010 (copy attached) provides for the department to provide for transportation of pupils and grants authority to school districts to enter into contracts for operation of transportation systems, to report to the department, and to receive reimbursement from the state for operation of the transportation system. Yet in Kenai Peninsula Borough v. State, 532 P.2d 1019, 1024, 1026 (1975) (copy attached), the Supreme Court denied any liability of the state for an accident occurring due to the transportation system and stated that "the actual control of the transportation services was undertaken by the borough which, on its own behalf, entered into the contract with Carver." In fact, the borough had no control whatsoever over this contract which was a contract of the school district as recognized by the Court when it stated, "The bus was not owned by the state, and Carver entered into the contract with the borough school district, not the state." [emphasis supplied] The suit, however, was brought against the borough and there was no effort to show non-responsibility - evidently because the insurance company who represented the borough also represented the school district and would have been responsible in any case.

The borough has also been put to the loss of time and expense in suits over teachers' salaries and other negotiations for which the borough has no authority and no responsibility. IN KPEA v. Kenai Peninsula Borough School District and Kenai Peninsula Borough, 572 P.2d 416 (1977), the trial court first ruled that the defendants should negotiate on certain items and later reversed itself to restrict the order to the school district, but refused to grant summary judgment to the borough and was upheld by the Supreme Court, which then refused appeal by the borough (since no judgment had been taken against it), denied borough's petition for certiorari, and then violated its own rules (Civil Rule 54(b)) by entertaining appeal by the school district on judgment against less than all the parties without an express determination that there was no just reason for delay and express direction for entry of judgment. In view of the two cases cited, it is obvious that any relief from responsibility without authority will have to come from the legislature.

Although the borough may be responsible for failures to act properly in areas in which it has authority over the school

system which may or may not be shared by the school district, certainly in the area of operations the school district is autonomous from the borough and there should be no responsibility in those areas on behalf of the borough.

Sincerely,

Ben

Ben T. Delahay
City Attorney

BTD/md

Enclosures

cc: Med Berns
Anchorage Municipality Attorney

Russ Walker
Attorney for City of Ketchikan
and Ketchikan Gateway Borough

chapter on an areawide basis, both inside and outside cities within their boundaries.

(b) No city, whether home rule or not, may exercise an area-wide power conferred in, or assumed by means of §§ 250—290 of, this chapter once that power is being exercised by a borough. (§ 2 ch 118 SLA 1972)

Borough may not regulate sale and use of fireworks.—A borough's acquisition of the areawide health function

does not give it authority to regulate the sale and use of fireworks. 1965 Op. Att'y Gen., No. 12.

Article 2. Assessment and Collection of Taxes.

Section

30. Assessment and collection

Sec. 29.33.030. Assessment and collection. Boroughs shall assess and collect property, sales, and use taxes levied within their boundaries, subject to ch. 53 of this title. Taxes levied by a city and collected by a borough are returned in full to the levying city. (§ 2 ch 118 SLA 1972)

Article 3. Education.

Section

50. Education

Sec. 29.33.050. Education. Each borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an areawide basis as provided in AS 14.14.060. (§ 2 ch 118 SLA 1972)

Constitution requires pervasive state authority in field of education.

— The constitutional mandate of Alaska Const., art. VII, § 1, for pervasive state authority in the field of education could not be more clear. First, the language is mandatory, not permissive. Second, Alaska Const., art. VII, § 1, not only requires that the legislature "establish" a school system, but also gives to that body the continuing obligation to "maintain" the system. Finally, the provision is unqualified; no other unit of government shares responsibility or authority. *Macauley v. Hildebrand*, Sup. Ct. Op. No. 741 (File No. 1550), 491 P.2d 120 (1971).

And such authority is not diminished by delegating certain educational functions to local boards.—That the state may, even to the extent of delegating certain educational functions to local boards, is not in doubt. But that Alaska cannot be divided by vesting the educational functions of different local

ities does not diminish constitutionally mandated state control over education under Alaska Const., art. VII, § 1. *Macauley v. Hildebrand*, Sup. Ct. Op. No. 741 (File No. 1550), 491 P.2d 120 (1971).

A newly incorporated borough assumes administrative responsibility for a state-operated school within its boundaries immediately after incorporation. 1963 Op. Att'y Gen., No. 23.

The law provides that the organized borough shall provide, establish, maintain, and operate the schools within its boundaries. Ownership of state-operated schools must be conveyed by the state to the local school district as soon as possible after incorporation. The transfer of direct administration of these schools should be made shortly after incorporation prior to the beginning of the next school year, and as quickly as is consistent with continuity of

not to exceed \$50,000. The bond shall be conditioned on the officer's honest and faithful disbursement and accounting of all money that may come into his official custody. The bond shall be filed with the clerk of the school board. This section does not apply to an officer who has been bonded under AS 29.23.520. (§ 1 ch 98 SLA 1966; am § 21 ch 53 SLA 1973)

Effect of amendment. — The 1973 amendment substituted "29.23.520" for "07.25.060" at the end of the fourth sentence.

Legislative committee report. — For report on ch. 53, SLA 1973 (CSHB 382), see 1973 House Journal, pp. 793, 885.

Sec. 14.14.050. Annual audit. (a) The school board in each school district shall, before October 1, of each year, provide for an audit of all school accounts for the school year ending the preceding June 30. To make the audit the school board shall contract with a public accountant who has no personal interest, direct or indirect, in the fiscal affairs of the district. One certified copy of the audit shall be filed with the commissioner and one certified copy shall be posted in a public place at the principal administrative office of the district.

(b) The audit shall conform in form to requirements established by the commissioner. The commissioner shall withhold all payments of state funds after November 15 to a school district which fails to file a certified copy of the audit with the department.

(c) The commissioner may provide for a reaudit or an audit check in a school district if in his judgment it is necessary to substantiate the reported expenditures.

(d) The school board shall not make the audit if an audit which satisfies the requirements of this section and which is filed and posted as required by this section, is made according to AS 29.48.220. (§ 1 ch 98 SLA 1966; am § 22 ch 53 SLA 1973)

Effect of amendment. — The 1973 amendment substituted "29.48.220" for "07.29.150" at the end of subsection (d).

Legislative committee report. — For report on ch. 53, SLA 1973 (CSHB 382), see 1973 House Journal, pp. 793, 885.

Sec. 14.14.060. Relationship between borough school district and borough. (a) The borough assembly may by ordinance require that all school money be deposited in a centralized treasury with all other borough money. The borough administrator shall have the custody of, invest and manage all money in the centralized treasury. However, the borough assembly, with the consent of the borough school board, may by ordinance delegate to the borough school board the responsibility of a centralized treasury.

(b) When the borough school board by resolution consents, the borough assembly may by ordinance provide a centralized accounting system for school and all other borough operations. The system shall be operated in accordance with accepted principles of governmental

accounting. However, the assembly, with the consent of the borough school board, may by ordinance delegate to the borough school board the responsibilities of the accounting system.

(c) The borough school board shall submit the school budget for the following school year to the borough assembly by April 1 for approval of the total amount. Within 30 days after receipt of the budget the assembly shall determine the total amount of money to be made available from local sources for school purposes and shall furnish the school board with a statement of the sum to be made available. If the assembly does not, within 30 days, furnish the school board with a statement of the sum to be made available, the amount requested in the budget is automatically approved. By May 31, the assembly shall appropriate the amount to be made available from local sources from money available for the purpose.

(d) The borough assembly shall determine the location of school buildings with due consideration to the recommendations of the borough school board.

(e) The borough school board is responsible for the design criteria of school buildings. To the maximum extent consistent with education needs, a design of a school building shall provide for multiple use of the building for community purposes. Subject to the approval of the assembly, the school board shall select the appropriate professional personnel to develop the designs. The school board shall submit preliminary and subsequent designs for a school building to the assembly for approval or disapproval; if the design is disapproved, a revised design shall be prepared and presented to the assembly.

(f) The borough school board shall provide custodial services and routine maintenance for school buildings and shall appoint, compensate, and otherwise control personnel for these purposes. The borough assembly through the borough administrator, shall provide for all major rehabilitation, all construction and major repair of school buildings. The recommendations of the school board shall be considered in carrying out the provisions of this section.

(g) State law relating to teacher salaries and tenure, to financial support, to supervision by the Department of Education and other general laws relating to schools, governs the exercise of the functions by the borough. The school board shall appoint, compensate, and otherwise control all school employees and administration officers in accordance with this title.

(h) School boards within the borough may determine their own policy separate from the borough for the purchase of supplies and equipment. (S. ch. 118 S.L.A. 1972)

Amended by Act No. 118, Law No. 1, 1972.
Borough School Board, Superior Court,
Dist. C.A. No. 73-20 and C.A. No. 73-209
to § 14.14.060 (1972).

History of public education in America
see, for example, *The Public Schools of
Spokane Valley, Superior Court, No. 71-1015, No.
71-1016, No. 71-1017, No. 71-1018, No. 71-1019, No. 71-1020, No. 71-1021, No. 71-1022, No. 71-1023, No. 71-1024, No. 71-1025, No. 71-1026, No. 71-1027, No. 71-1028, No. 71-1029, No. 71-1030, No. 71-1031, No. 71-1032, No. 71-1033, No. 71-1034, No. 71-1035, No. 71-1036, No. 71-1037, No. 71-1038, No. 71-1039, No. 71-1040, No. 71-1041, No. 71-1042, No. 71-1043, No. 71-1044, No. 71-1045, No. 71-1046, No. 71-1047, No. 71-1048, No. 71-1049, No. 71-1050, No. 71-1051, No. 71-1052, No. 71-1053, No. 71-1054, No. 71-1055, No. 71-1056, No. 71-1057, No. 71-1058, No. 71-1059, No. 71-1060, No. 71-1061, No. 71-1062, No. 71-1063, No. 71-1064, No. 71-1065, No. 71-1066, No. 71-1067, No. 71-1068, No. 71-1069, No. 71-1070, No. 71-1071, No. 71-1072, No. 71-1073, No. 71-1074, No. 71-1075, No. 71-1076, No. 71-1077, No. 71-1078, No. 71-1079, No. 71-1080, No. 71-1081, No. 71-1082, No. 71-1083, No. 71-1084, No. 71-1085, No. 71-1086, No. 71-1087, No. 71-1088, No. 71-1089, No. 71-1090, No. 71-1091, No. 71-1092, No. 71-1093, No. 71-1094, No. 71-1095, No. 71-1096, No. 71-1097, No. 71-1098, No. 71-1099, No. 71-1100, No. 71-1101, No. 71-1102, No. 71-1103, No. 71-1104, No. 71-1105, No. 71-1106, No. 71-1107, No. 71-1108, No. 71-1109, No. 71-1110, No. 71-1111, No. 71-1112, No. 71-1113, No. 71-1114, No. 71-1115, No. 71-1116, No. 71-1117, No. 71-1118, No. 71-1119, No. 71-1120, No. 71-1121, No. 71-1122, No. 71-1123, No. 71-1124, No. 71-1125, No. 71-1126, No. 71-1127, No. 71-1128, No. 71-1129, No. 71-1130, No. 71-1131, No. 71-1132, No. 71-1133, No. 71-1134, No. 71-1135, No. 71-1136, No. 71-1137, No. 71-1138, No. 71-1139, No. 71-1140, No. 71-1141, No. 71-1142, No. 71-1143, No. 71-1144, No. 71-1145, No. 71-1146, No. 71-1147, No. 71-1148, No. 71-1149, No. 71-1150, No. 71-1151, No. 71-1152, No. 71-1153, No. 71-1154, No. 71-1155, No. 71-1156, No. 71-1157, No. 71-1158, No. 71-1159, No. 71-1160, No. 71-1161, No. 71-1162, No. 71-1163, No. 71-1164, No. 71-1165, No. 71-1166, No. 71-1167, No. 71-1168, No. 71-1169, No. 71-1170, No. 71-1171, No. 71-1172, No. 71-1173, No. 71-1174, No. 71-1175, No. 71-1176, No. 71-1177, No. 71-1178, No. 71-1179, No. 71-1180, No. 71-1181, No. 71-1182, No. 71-1183, No. 71-1184, No. 71-1185, No. 71-1186, No. 71-1187, No. 71-1188, No. 71-1189, No. 71-1190, No. 71-1191, No. 71-1192, No. 71-1193, No. 71-1194, No. 71-1195, No. 71-1196, No. 71-1197, No. 71-1198, No. 71-1199, No. 71-1200, No. 71-1201, No. 71-1202, No. 71-1203, No. 71-1204, No. 71-1205, No. 71-1206, No. 71-1207, No. 71-1208, No. 71-1209, No. 71-1210, No. 71-1211, No. 71-1212, No. 71-1213, No. 71-1214, No. 71-1215, No. 71-1216, No. 71-1217, No. 71-1218, No. 71-1219, No. 71-1220, No. 71-1221, No. 71-1222, No. 71-1223, No. 71-1224, No. 71-1225, No. 71-1226, No. 71-1227, No. 71-1228, No. 71-1229, No. 71-1230, No. 71-1231, No. 71-1232, No. 71-1233, No. 71-1234, No. 71-1235, No. 71-1236, No. 71-1237, No. 71-1238, No. 71-1239, No. 71-1240, No. 71-1241, No. 71-1242, No. 71-1243, No. 71-1244, No. 71-1245, No. 71-1246, No. 71-1247, No. 71-1248, No. 71-1249, No. 71-1250, No. 71-1251, No. 71-1252, No. 71-1253, No. 71-1254, No. 71-1255, No. 71-1256, No. 71-1257, No. 71-1258, No. 71-1259, No. 71-1260, No. 71-1261, No. 71-1262, No. 71-1263, No. 71-1264, No. 71-1265, No. 71-1266, No. 71-1267, No. 71-1268, No. 71-1269, No. 71-1270, No. 71-1271, No. 71-1272, No. 71-1273, No. 71-1274, No. 71-1275, No. 71-1276, No. 71-1277, No. 71-1278, No. 71-1279, No. 71-1280, No. 71-1281, No. 71-1282, No. 71-1283, No. 71-1284, No. 71-1285, No. 71-1286, No. 71-1287, No. 71-1288, No. 71-1289, No. 71-1290, No. 71-1291, No. 71-1292, No. 71-1293, No. 71-1294, No. 71-1295, No. 71-1296, No. 71-1297, No. 71-1298, No. 71-1299, No. 71-1300, No. 71-1301, No. 71-1302, No. 71-1303, No. 71-1304, No. 71-1305, No. 71-1306, No. 71-1307, No. 71-1308, No. 71-1309, No. 71-1310, No. 71-1311, No. 71-1312, No. 71-1313, No. 71-1314, No. 71-1315, No. 71-1316, No. 71-1317, No. 71-1318, No. 71-1319, No. 71-1320, No. 71-1321, No. 71-1322, No. 71-1323, No. 71-1324, No. 71-1325, No. 71-1326, No. 71-1327, No. 71-1328, No. 71-1329, No. 71-1330, No. 71-1331, No. 71-1332, No. 71-1333, No. 71-1334, No. 71-1335, No. 71-1336, No. 71-1337, No. 71-1338, No. 71-1339, No. 71-1340, No. 71-1341, No. 71-1342, No. 71-1343, No. 71-1344, No. 71-1345, No. 71-1346, No. 71-1347, No. 71-1348, No. 71-1349, No. 71-1350, No. 71-1351, No. 71-1352, No. 71-1353, No. 71-1354, No. 71-1355, No. 71-1356, No. 71-1357, No. 71-1358, No. 71-1359, No. 71-1360, No. 71-1361, No. 71-1362, No. 71-1363, No. 71-1364, No. 71-1365, No. 71-1366, No. 71-1367, No. 71-1368, No. 71-1369, No. 71-1370, No. 71-1371, No. 71-1372, No. 71-1373, No. 71-1374, No. 71-1375, No. 71-1376, No. 71-1377, No. 71-1378, No. 71-1379, No. 71-1380, No. 71-1381, No. 71-1382, No. 71-1383, No. 71-1384, No. 71-1385, No. 71-1386, No. 71-1387, No. 71-1388, No. 71-1389, No. 71-1390, No. 71-1391, No. 71-1392, No. 71-1393, No. 71-1394, No. 71-1395, No. 71-1396, No. 71-1397, No. 71-1398, No. 71-1399, No. 71-1400, No. 71-1401, No. 71-1402, No. 71-1403, No. 71-1404, No. 71-1405, No. 71-1406, No. 71-1407, No. 71-1408, No. 71-1409, No. 71-1410, No. 71-1411, No. 71-1412, No. 71-1413, No. 71-1414, No. 71-1415, No. 71-1416, No. 71-1417, No. 71-1418, No. 71-1419, No. 71-1420, No. 71-1421, No. 71-1422, No. 71-1423, No. 71-1424, No. 71-1425, No. 71-1426, No. 71-1427, No. 71-1428, No. 71-1429, No. 71-1430, No. 71-1431, No. 71-1432, No. 71-1433, No. 71-1434, No. 71-1435, No. 71-1436, No. 71-1437, No. 71-1438, No. 71-1439, No. 71-1440, No. 71-1441, No. 71-1442, No. 71-1443, No. 71-1444, No. 71-1445, No. 71-1446, No. 71-1447, No. 71-1448, No. 71-1449, No. 71-1450, No. 71-1451, No. 71-1452, No. 71-1453, No. 71-1454, No. 71-1455, No. 71-1456, No. 71-1457, No. 71-1458, No. 71-1459, No. 71-1460, No. 71-1461, No. 71-1462, No. 71-1463, No. 71-1464, No. 71-1465, No. 71-1466, No. 71-1467, No. 71-1468, No. 71-1469, No. 71-1470, No. 71-1471, No. 71-1472, No. 71-1473, No. 71-1474, No. 71-1475, No. 71-1476, No. 71-1477, No. 71-1478, No. 71-1479, No. 71-1480, No. 71-1481, No. 71-1482, No. 71-1483, No. 71-1484, No. 71-1485, No. 71-1486, No. 71-1487, No. 71-1488, No. 71-1489, No. 71-1490, No. 71-1491, No. 71-1492, No. 71-1493, No. 71-1494, No. 71-1495, No. 71-1496, No. 71-1497, No. 71-1498, No. 71-1499, No. 71-1500, No. 71-1501, No. 71-1502, No. 71-1503, No. 71-1504, No. 71-1505, No. 71-1506, No. 71-1507, No. 71-1508, No. 71-1509, No. 71-1510, No. 71-1511, No. 71-1512, No. 71-1513, No. 71-1514, No. 71-1515, No. 71-1516, No. 71-1517, No. 71-1518, No. 71-1519, No. 71-1520, No. 71-1521, No. 71-1522, No. 71-1523, No. 71-1524, No. 71-1525, No. 71-1526, No. 71-1527, No. 71-1528, No. 71-1529, No. 71-1530, No. 71-1531, No. 71-1532, No. 71-1533, No. 71-1534, No. 71-1535, No. 71-1536, No. 71-1537, No. 71-1538, No. 71-1539, No. 71-1540, No. 71-1541, No. 71-1542, No. 71-1543, No. 71-1544, No. 71-1545, No. 71-1546, No. 71-1547, No. 71-1548, No. 71-1549, No. 71-1550, No. 71-1551, No. 71-1552, No. 71-1553, No. 71-1554, No. 71-1555, No. 71-1556, No. 71-1557, No. 71-1558, No. 71-1559, No. 71-1560, No. 71-1561, No. 71-1562, No. 71-1563, No. 71-1564, No. 71-1565, No. 71-1566, No. 71-1567, No. 71-1568, No. 71-1569, No. 71-1570, No. 71-1571, No. 71-1572, No. 71-1573, No. 71-1574, No. 71-1575, No. 71-1576, No. 71-1577, No. 71-1578, No. 71-1579, No. 71-1580, No. 71-1581, No. 71-1582, No. 71-1583, No. 71-1584, No. 71-1585, No. 71-1586, No. 71-1587, No. 71-1588, No. 71-1589, No. 71-1590, No. 71-1591, No. 71-1592, No. 71-1593, No. 71-1594, No. 71-1595, No. 71-1596, No. 71-1597, No. 71-1598, No. 71-1599, No. 71-1600, No. 71-1601, No. 71-1602, No. 71-1603, No. 71-1604, No. 71-1605, No. 71-1606, No. 71-1607, No. 71-1608, No. 71-1609, No. 71-1610, No. 71-1611, No. 71-1612, No. 71-1613, No. 71-1614, No. 71-1615, No. 71-1616, No. 71-1617, No. 71-1618, No. 71-1619, No. 71-1620, No. 71-1621, No. 71-1622, No. 71-1623, No. 71-1624, No. 71-1625, No. 71-1626, No. 71-1627, No. 71-1628, No. 71-1629, No. 71-1630, No. 71-1631, No. 71-1632, No. 71-1633, No. 71-1634, No. 71-1635, No. 71-1636, No. 71-1637, No. 71-1638, No. 71-1639, No. 71-1640, No. 71-1641, No. 71-1642, No. 71-1643, No. 71-1644, No. 71-1645, No. 71-1646, No. 71-1647, No. 71-1648, No. 71-1649, No. 71-1650, No. 71-1651, No. 71-1652, No. 71-1653, No. 71-1654, No. 71-1655, No. 71-1656, No. 71-1657, No. 71-1658, No. 71-1659, No. 71-1660, No. 71-1661, No. 71-1662, No. 71-1663, No. 71-1664, No. 71-1665, No. 71-1666, No. 71-1667, No. 71-1668, No. 71-1669, No. 71-1670, No. 71-1671, No. 71-1672, No. 71-1673, No. 71-1674, No. 71-1675, No. 71-1676, No. 71-1677, No. 71-1678, No. 71-1679, No. 71-1680, No. 71-1681, No. 71-1682, No. 71-1683, No. 71-1684, No. 71-1685, No. 71-1686, No. 71-1687, No. 71-1688, No. 71-1689, No. 71-1690, No. 71-1691, No. 71-1692, No. 71-1693, No. 71-1694, No. 71-1695, No. 71-1696, No. 71-1697, No. 71-1698, No. 71-1699, No. 71-1700, No. 71-1701, No. 71-1702, No. 71-1703, No. 71-1704, No. 71-1705, No. 71-1706, No. 71-1707, No. 71-1708, No. 71-1709, No. 71-1710, No. 71-1711, No. 71-1712, No. 71-1713, No. 71-1714, No. 71-1715, No. 71-1716, No. 71-1717, No. 71-1718, No. 71-1719, No. 71-1720, No. 71-1721, No. 71-1722, No. 71-1723, No. 71-1724, No. 71-1725, No. 71-1726, No. 71-1727, No. 71-1728, No. 71-1729, No. 71-1730, No. 71-1731, No. 71-1732, No. 71-1733, No. 71-1734, No. 71-1735, No. 71-1736, No. 71-1737, No. 71-1738, No. 71-1739, No. 71-1740, No. 71-1741, No. 71-1742, No. 71-1743, No. 71-1744, No. 71-1745, No. 71-1746, No. 71-1747, No. 71-1748, No. 71-1749, No. 71-1750, No. 71-1751, No. 71-1752, No. 71-1753, No. 71-1754, No. 71-1755, No. 71-1756, No. 71-1757, No. 71-1758, No. 71-1759, No. 71-1760, No. 71-1761, No. 71-1762, No. 71-1763, No. 71-1764, No. 71-1765, No. 71-1766, No. 71-1767, No. 71-1768, No. 71-1769, No. 71-1770, No. 71-1771, No. 71-1772, No. 71-1773, No. 71-1774, No. 71-1775, No. 71-1776, No. 71-1777, No. 71-1778, No. 71-1779, No. 71-1780, No. 71-1781, No. 71-1782, No. 71-1783, No. 71-1784, No. 71-1785, No. 71-1786, No. 71-1787, No. 71-1788, No. 71-1789, No. 71-1790, No. 71-1791, No. 71-1792, No. 71-1793, No. 71-1794, No. 71-1795, No. 71-1796, No. 71-1797, No. 71-1798, No. 71-1799, No. 71-1800, No. 71-1801, No. 71-1802, No. 71-1803, No. 71-1804, No. 71-1805, No. 71-1806, No. 71-1807, No. 71-1808, No. 71-1809, No. 71-1810, No. 71-1811, No. 71-1812, No. 71-1813, No. 71-1814, No. 71-1815, No. 71-1816, No. 71-1817, No. 71-1818, No. 71-1819, No. 71-1820, No. 71-1821, No. 71-1822, No. 71-1823, No. 71-1824, No. 71-1825, No. 71-1826, No. 71-1827, No. 71-1828, No. 71-1829, No. 71-1830, No. 71-1831, No. 71-1832, No. 71-1833, No. 71-1834, No. 71-1835, No. 71-1836, No. 71-1837, No. 71-1838, No. 71-1839, No. 71-1840, No. 71-1841, No. 71-1842, No. 71-1843, No. 71-1844, No. 71-1845, No. 71-1846, No. 71-1847, No. 71-1848, No. 71-1849, No. 71-1850, No. 71-1851, No. 71-1852, No. 71-1853, No. 71-1854, No. 71-1855, No. 71-1856, No. 71-1857, No. 71-1858, No. 71-1859, No. 71-1860, No. 71-1861, No. 71-1862, No. 71-1863, No. 71-1864, No. 71-1865, No. 71-1866, No. 71-1867, No. 71-1868, No. 71-1869, No. 71-1870, No. 71-1871, No. 71-1872, No. 71-1873, No. 71-1874, No. 71-1875, No. 71-1876, No. 71-1877, No. 71-1878, No. 71-1879, No. 71-1880, No. 71-1881, No. 71-1882, No. 71-1883, No. 71-1884, No. 71-1885, No. 71-1886, No. 71-1887, No. 71-1888, No. 71-1889, No. 71-1890, No. 71-1891, No. 71-1892, No. 71-1893, No. 71-1894, No. 71-1895, No. 71-1896, No. 71-1897, No. 71-1898, No. 71-1899, No. 71-1900, No. 71-1901, No. 71-1902, No. 71-1903, No. 71-1904, No. 71-1905, No. 71-1906, No. 71-1907, No. 71-1908, No. 71-1909, No. 71-1910, No. 71-1911, No. 71-1912, No. 71-1913, No. 71-1914, No. 71-1915, No. 71-1916, No. 71-1917, No. 71-1918, No. 71-1919, No. 71-1920, No. 71-1921, No. 71-1922, No. 71-1923, No. 71-1924, No. 71-1925, No. 71-1926, No. 71-1927, No. 71-1928, No. 71-1929, No. 71-1930, No. 71-1931, No. 71-1932, No. 71-1933, No. 71-1934, No. 71-1935, No. 71-1936, No. 71-1937, No. 71-1938, No. 71-1939, No. 71-1940, No. 71-1941, No. 71-1942, No. 71-1943, No. 71-1944, No. 71-1945, No. 71-1946, No. 71-1947, No. 71-1948, No. 71-1949, No. 71-1950, No. 71-1951, No. 71-1952, No. 71-1953, No. 71-1954, No. 71-1955, No. 71-1956, No. 71-1957, No. 71-1958, No. 71-1959, No. 71-1960, No. 71-1961, No. 71-1962, No. 71-1963, No. 71-1964, No. 71-1965, No. 71-1966, No. 71-1967, No. 71-1968, No. 71-1969, No. 71-1970, No. 71-1971, No. 71-1972, No. 71-1973, No. 71-1974, No. 71-1975, No. 71-1976, No. 71-1977, No. 71-1978, No. 71-1979, No. 71-1980, No. 71-1981, No. 71-1982, No. 71-1983, No. 71-1984, No. 71-1985, No. 71-1986, No. 71-1987, No. 71-1988, No. 71-1989, No. 71-1990, No. 71-1991, No. 71-1992, No. 71-1993, No. 71-1994, No. 71-1995, No. 71-1996, No. 71-1997, No. 71-1998, No. 71-1999, No. 71-2000, No. 71-2001, No. 71-2002, No. 71-2003, No. 71-2004, No. 71-2005, No. 71-2006, No. 71-2007, No. 71-2008, No. 71-2009, No. 71-2010, No. 71-2011, No. 71-2012, No. 71-2013, No. 71-2014, No. 71-2015, No. 71-2016, No. 71-2017, No. 71-2018, No. 71-2019, No. 71-2020, No. 71-2021, No. 71-2022, No. 71-2023, No. 71-2024, No. 71-2025, No. 71-2026, No. 71-2027, No. 71-2028, No. 71-2029, No. 71-2030, No. 71-2031, No. 71-2032, No. 71-2033, No. 71-2034, No. 71-2035, No. 71-2036, No. 71-2037, No. 71-2038, No. 71-2039, No. 71-2040, No. 71-2041, No. 71-2042, No. 71-2043, No. 71-2044, No. 71-2045, No. 71-2046, No*

involving his pecuniary interest unless the member has disclosed that interest to the board and the remaining members have approved the member's participation in the voting. (§ 2 ch 124 SLA 1975)

Sec. 14.08.141. Regional resource centers. A regional educational attendance area or any other school district in the state may participate in regional or statewide resource centers which may be established by the department. Services provided by a resource center include, but are not limited to accounting, payroll and other fiscal services, media services, instructional support services, bilingual-bicultural educational services, in-service and staff development services, student services, diagnostic services, school management and training services and school board member training. Funds for the operation and administration of a regional resource center shall be provided by the department. (§ 2 ch 124 SLA 1975)

Sec. 14.08.151. Land and buildings. — The ownership of land and buildings used in relation to regional educational attendance area schools shall remain vested in the state, and use permits shall be given to the regional school boards. (§ 2 ch 124 SLA 1975)

Chapter 09. Transportation of Pupils.

Section

- 10. Transportation of pupils
- 20. Transportation for nonpublic school students

Sec. 14.09.010. Transportation of pupils. (a) The department may provide for the transportation of pupils who reside a distance from established schools, and in order to accomplish that purpose may

(1) require school districts to enter into contracts with the department for the administration, supervision, operation or subcontracting of the operation of transportation systems for students to and from the schools within their service area;

(2) require all school districts, transportation contractors and other recipients of state transportation funds to submit to the department an annual report, which includes a financial statement and other operational data required by the department;

(3) permit school districts to (A) establish supplementary systems of student transportation for students ineligible to utilize transportation facilities paid for by the state, (B) charge fares or fees for the supplementary transportation systems, and (C) use local tax funds to pay, in whole or in part, the cost of the supplementary system.

(b) Each school district mentioned in (a)(1) of this section is entitled to receive reimbursement from the state for the operation of the transportation system on a unit cost basis determined by the department.

(c) The school board of a district, or the department for areas not within school districts, shall designate as hazardous those routes which cannot be safely traveled by children not served by school bus. The designation may recognize hazards that exist only part of the time and in these instances the designation shall be applicable only during the time the hazards are found to exist. The board or the department shall provide for the transportation of pupils on routes designated as hazardous. The additional cost of the transportation in a district shall be shared equally by the district and the department. Eligibility to receive school bus service on routes designated as hazardous shall not be subject to restrictions based on the minimum distance between established schools and the residences of pupils. (§ 1 ch 39 SLA 1966; § 1 ch 98 SLA 1966)

Revisor's note (1966). -- Chapter 39, SLA 1966, amended AS 14.10.070 by adding a new Chapter 98, SLA 1966, revised Title 14 and the wording of AS 14.10.070 became AS 14.09.010. Therefore (c) as added by ch. 39, SLA 1966, is included above as AS 14.09.010(c).

Editor's note. -- Provisions similar to those contained in this section were formerly codified as AS 14.10.070 and derived from § 37-2-8(7), ACLA 1949; ch. 51, § 1, SLA 1957.

Prior law. -- For cases construing former similar provisions, see *Tapscott v. Page*, 17 Alaska 507 (1958); *Matthews v. Qanton*, Sup. Ct. Op. No. 31 (File No. 48), 362 P.2d 932 (1961).

Borough was not acting as an agent of the state in furnishing transportation of pupils. *Kenai Peninsula Borough v. State*,

Sup. Ct. Op. No. 1124 (File No. 2092), 532 P.2d 1019 (1975).

While the state did supervise the school transportation service insofar as it related to the funding provided by it and also had certain regulations in effect pertaining to the overall safety of the transportation system, the actual control of the transportation services was undertaken by the borough which, on its own behalf, entered into the contract with a school bus owner to furnish transportation service for specified routes. *Kenai Peninsula Borough v. State*, Sup. Ct. Op. No. 1124 (File No. 2092), 532 P.2d 1019 (1975).

Applied in *Girves v. Kenai Peninsula Borough*, Sup. Ct. Op. No. 1168 (File No. 2016), 536 P.2d 1221 (1975).

C.J.S. reference. -- 78 C.J.S. Schools and School Districts § 146.

Sec. 14.09.020. Transportation for nonpublic school students. In those places in the state where the department or a school district provides transportation for children attending public schools, the department also shall provide transportation for children who, in compliance with the provisions of ch. 30 of this title, attend nonpublic schools which are administered in compliance with state law where the children, in order to reach the nonpublic schools, must travel distances comparable to, and over routes the same as, the distances and routes over which the children attending public schools are transported. The commissioner shall administer this nonpublic school student transportation program integrating it into existing systems as much as feasible, and the cost of the program shall be paid from funds appropriated for that purpose by the legislature. (§ 1 ch 157 SLA 1972)

struction in question ought not to be given in United States district courts within their respective jurisdictions is not, without more, authority for declaring that the giving of the instruction makes a resulting conviction invalid under the Fourteenth Amendment. Before a federal court may overturn a conviction resulting from a state trial in which this instruction was used, it must be established not merely that the instruction is undesirable, erroneous, or even "universally condemned," but that it violated some right which was guaranteed to the defendant by the Fourteenth Amendment.²

Thus, the United States Supreme Court implied that if it were exercising the same supervisory power which, as a state supreme court we are required to exercise over a trial court, it might have held the jury instruction to be reversible error.

The majority opinion on rehearing in Galauska's case condemns the questioned instruction, stating:

Such an instruction is subject to numerous infirmities. It interferes with the province of the jury to determine credibility of witnesses. It seems to conflict with the presumption of innocence. The instruction serves to raise doubt in the juror's mind as to his role and adds a confusing factor to jury deliberations. (footnotes omitted)

Despite these shortcomings, the majority holds the instruction to be harmless error under the circumstances of Galauska's trial. In *Anthony v. State*,³ we reiterated the test for harmless error as previously enunciated in *Love v. State*⁴ stating:

Only if we can fairly say that the error "did not appreciably affect the jury's verdict" can we conclude that infringement of the right to the instruction was harmless.

Galauska's conviction depended on whether or not the jury believed Roger Peter's version of the incident. As I have indicated in my dissent to the original opinion in this case, I believe that Peter was an accomplice and that Galauska was entitled to his requested instruction that "the testimony of an accomplice ought to be viewed with distrust".⁵ In the absence of giving that instruction, I fail to see how it can be said to be harmless error to instruct the jury over defendant's objection that Peter was presumed to speak the truth. Moreover, if we deem the instruction to be erroneous as indicated by the majority, there is no prohibition to its continued use when it is held to be harmless error in a case such as this, for it is hard to envision circumstances where the instruction would be more damaging. I accordingly would hold that the giving of the instruction under the circumstances here involved constituted reversible error.



KENAI PENINSULA BOROUGH and the
Home Insurance Company, Appellants,
v.

STATE of Alaska, Appellee.
No. 2092.

Supreme Court of Alaska.
March 12, 1975.

Borough and its insurer which had made payment in settlement of suit for injuries sustained by motorist in collision with school bus brought suit for judgment declaring that state was required to indemnify borough. The Superior Court, Third Judicial District, Elton H. Lewis, J. ren-

2. 414 U.S. at 140, 91 S.Ct. at 400, 38 L.Ed.2d at 273.

3. 521 P.2d 480, 491 (Alaska 1974).

4. 157 P.2d 622, 632 (Alaska 1947).

5. The instruction is required by Alaska R. Crim.P. 30(c)(2).

dered judgment for state and borough appealed. The Supreme Court, Boochever, J., held that although state supervised the transportation of pupils insofar as it related to the funding provided by state and also had regulations in effect pertaining to safety of the transportation system, borough in transporting people did not act as agent for the state in either a compelled or voluntary capacity.

Affirmed.

1. Municipal Corporations $\S$ 54

Where political subdivisions are alleged to have acted as agents of the state, court will apply a much stricter test of agency than when other forms of entities are utilized as to the type of control required to create liability on the part of the state.

2. Municipal Corporations $\S$ 54

Although state supervised transportation of students insofar as it related to the funding provided by state and state also had certain regulations in effect pertaining to the overall safety of the transportation system, borough in transporting students was not acting as agent for the state in either a compelled or voluntary capacity and state was not required to indemnify borough for settlement made with persons injured in collision with school bus. AS 14-010, 29,33,050; Const. art. 7, $\S$ 1.

3. Principal and Agent $\S$ 8

One may become a compelled agent or servant of another.

4. Indemnity $\S$ 15(7)

Principal and Agent $\S$ 23(3)

Fact that department or bureau regulations in effect at time of collision were not followed by driver of school bus was not sufficient to establish that state was negligent or that it was liable for settlement made with persons injured in collision with school bus. AS 14-010, 29,33,050; Const. art. 7, $\S$ 1.

liable to indemnify borough. AS 14-090-010, 29,33,050; Const. art. 7, $\S$ 1.

Kenneth P. Jacobus, Anchorage, for appellants.

Sanford Gibbs, Anchorage, for appellee.

Before RABINOWITZ, C. J., and CONNOR, ERWIN, BOOCHEVER and FITZGERALD, JJ.

OPINION

BOOCHEVER, Justice.

The seldom litigated question of when a political subdivision acts as an agent of the state so as to render the state liable for the acts of the subdivision is presented by this appeal.

On January 15, 1969, James Harman was injured and his wife was killed as the result of a collision with a school bus owned by Burton Carver and driven by Darrell Houston. Mr. Harman, individually and as administrator of the estate of his deceased wife, brought suit against the Kenai Peninsula Borough alleging that the bus driver was acting as agent of the borough at the time of the accident. The borough, in turn, tendered defense of the suit to the State of Alaska contending that in furnishing transportation for school pupils, the borough was acting as an agent of the state. The tender was refused. The borough then filed a complaint against the state seeking a declaratory judgment that the state must indemnify the borough for reasonable settlements, judgments, costs and attorney's fees resulting from the Harman suit.

The Harman case was settled for the sum of \$17,500 and the Home Insurance Company, as insurer of the bus, contributed \$5,000 to that settlement. The Home Insurance Company was then added as a party to the declaratory judgment suit.

The state's motion for summary judgment was denied. The state's motion for summary judgment was denied. The state's motion for summary judgment was denied.

by the court, with the other issues being severed for subsequent disposition. The superior court rendered a judgment in favor of the state, and the borough has appealed.

Therefore, we are confronted with the single issue as to whether the trial court was correct in ruling that the borough was not an agent of the state in furnishing school transportation.¹

The Alaska Constitution provides that "[t]he legislature shall by general law establish and maintain a system of public schools open to all children of the State."² The legislature has specified that "[e]ach borough constitutes a borough school district and establishes, maintains, and operates a system of public schools on an area-wide basis"³ The borough admits that in the general operation of the school system, it is exercising a delegated authority from the legislature, so that in the absence of facts not here involved, the state would not incur liability for personal injuries. With reference to the transportation function, however, it is the borough's contention that it was acting as a compelled agent of the state so as to entitle the borough to indemnity for any liability incurred.⁴

The borough bases this argument on AS 14.09.010, which provides in relevant part:

(a) The [D]epartment [of Education] may provide for the transportation of pupils who reside a distance from established schools, and in order to accomplish that purpose may

(1) require school districts to enter into contracts with the department for the administration, supervision, operation or subcontracting of the operation of transportation systems for students to

and from the schools within their service area;

(3) permit school districts to (A) establish supplementary systems of student transportation for students ineligible to utilize transportation facilities paid for by the state, (B) charge fares or fees for the supplementary transportation systems, and (C) use local tax funds to pay, in whole or in part, the cost of the supplementary system.

Relying on this statute, the borough rests its appeal on an attempt to draw a distinction between the delegation of the legislative function of furnishing school transportation and the creation of a relationship whereby the borough acts on behalf of the state as its agent in furnishing the service. The use of the words "may provide" is said to indicate that the transportation power is in the state, and the words "may require" are claimed to show that the state can compel the local school districts to act as state agents in exercising the pupil transportation function. However, admitting that the transportation power is in the state and that the state has compelled the school district to handle that function is not tantamount to agreeing that the district is acting as the state's agent in providing school transportation so as to impose liability on the state.

It is thus on the slippery distinction between a power delegated to a political subdivision and an agency relationship that the case turns. The borough points to the case of *Pantess v. Saratoga Springs Authority*⁵ which discusses aspects of the distinction as follows:

Where the State assumes to act directly in the carrying out of its government-

1. In light of our ruling here, the other issues pertaining to the right to indemnity no longer require trial.

2. Alaska Const. art. VII, § 1.

3. AS 29.33.050.

4. If so argued, the borough relies on the statement (Second) of Agency § 224 (1957) which provides:

One compelled by law or duty to render services to another has power to subject that other to liability as if there were a master and servant relation.

5. 225 A.2d 490, 420, 8 N.Y.S.2d 403, 405 (1958).

tal function, even though it create and use a corporation for that purpose, it assumes responsibility for the conduct of its agent. Thus the State may choose to create and maintain a state system of parks, and thereby subject itself to liability for the negligence of its officers and employees (Court of Claims Act, § 12-a; *Maltby v. County of Westchester*, 267 N.Y. 375, 379, 196 N.E. 295); or, with like liability, it may provide for the imprisonment of young delinquents, and commit their custody to an authorized institution for the purpose. *Paige v. State of New York*, 269 N.Y. 352, 199 N.E. 617. But when the State delegates the governmental power for the performance of a state function, the agency exercises its independent authority as delegated, as does a city, and its responsibility for its acts must be determined by the general law which has to do with that class of agent and corporate activity, apart from liability on the part of the State. That is the case when the State delegates its state function of education to a school board, its public health function to a local board of health, when it delegates broader governmental functions to a county, city or village. In such instances, there is no authority for making claim against the State, but the agency exercising the delegated authority must respond for its own actionable conduct.

In *Pantess*, the Saratoga Springs Authority was established as a public corporation to develop the "Saratoga Cure" from

the spring's water. Such development was expressly declared to be a part of the over-all public health policy of the state. However, the court held that, even though the Authority was an agency exercising governmental powers, "the performance of its functions [was] not so closely allied or held in such intimate relation to the health activities carried on by the State itself . . ." as to make it an agent of the state and thereby impose liability on the state to one scalded in taking the cure.⁶

The *Pantess* case, however, deals only with the results flowing from a determination of an agency relationship or a delegated function, not the distinction between them. We find great difficulty with elucidation of the distinction between a function delegated to a political subdivision so as to insulate the state from liability and the exercising of a function by a political subdivision as a part of the state. The basis of action by any agent is the authority delegated by his principal,⁷ so that a delegation is involved in both relationships. The distinction would appear to be one of degree of control. If a political subdivision acts with a substantial degree of independence under authority delegated by the state, liability may not be imposed on the state as a result of such activity. If, on the other hand, an executive department specifically makes a political subdivision its agent to act on its behalf and subject to its control, it may be subjected to liability based on acts of the political subdivision.

Our examination of the sparse authority on this subject indicates that authorized

6. 8 N.Y.S.2d at 106. Significantly, the court relied on an analogy to the state school system, stating:

"These arguments are true in the relation of another, or in one respect of another, to the public school system of the State. The State determines the qualifications of teachers, and provides for their remuneration, but with almost complete independence contributes to their support and to the maintenance of the system. . . . The State is not liable for the negligence of a teacher employed by a local school board. . . ."

of liability on the part of the State for the conduct of boards of education.

7. Restatement (Second) of Agency § 14 (1957) defines "agency" as:

"(1) Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act."

This manifestation of consent by one person to another to act on his behalf is a legal concept, and is termed "delegation" or "deposition of authority." See, e.g., *New York State Thruway Authority v. New York State Thruway Authority*, 117 N.Y.2d 100, 101 (1962), 20 A.L.R.2d 100, 101.

activities of such subdivisions as municipalities and school districts are almost universally considered to be independent actions not subjecting the state to liability,⁸ whereas when a state functions through use of some other type of agency or a private corporation, liability is more likely to ensue.⁹ Thus, in imposing liability on the state for injuries to a juvenile placed in a private correctional institution, the New York Court of Appeals pointed out:

The quasi penal institution in which the claimant was confined was a governmental agency to which the state had committed in part its function to care for wayward minors. But the institution did not thereby acquire a status equivalent to that of the civil divisions of the state.¹⁰

[1] We have had no case cited to us where liability was imposed upon the state for actions of a political subdivision such as a municipality or a school district.¹¹ Political subdivisions of a state are creatures of the legislature which prescribes and curtails their authority. They may be subjected to detailed requirements in the exercise of their statutory functions. Yet such legislative regulation has not been held to make the subdivision an agent of the state so as to impose liability. Never-

theless, we can envision situations which might arise where it is clear that the subdivision is acting on behalf of the state as its agent and under its control to such an extent as to impose liability. Where political subdivisions are involved, however, we shall apply a much stricter test than when other forms of entities are utilized as to the type of control required to create liability on the part of the state.¹² To apply such a test, we shall now review the factual context which confronts us in this appeal.

Under the authority of AS 14.09.010,¹³ the Alaska Department of Education entered into a contract with the Kenai Peninsula Borough School District (referred to hereinafter as the borough) whereby the borough was to furnish or contract for the transportation of pupils living 1½ miles or more from the school, and the state was to pay a specified amount for each day transportation was furnished. In addition, the state agreed to pay two (2) percent of that amount to the borough as an administrative charge. The borough was authorized to furnish transportation to students living closer to the school provided that it paid the costs for such transportation without the right to state reimbursement. Any contracts entered into by the borough for school transportation were required to be

the Westchester County Park Commission was acting as an agent of the state or the county in entering into road contracts. It was not a case of the county itself acting on behalf of the state.

12. We do not consider applicable here the "enterprise" theory espoused in *Fruit v. Schriener*, 502 P.2d 133, 141 (Alaska 1972) whereby losses to third persons incidental to carrying on an enterprise were held to be a cost of operation and to be borne by the enterprise, with the burden distributed among those benefited by the enterprise. Such a theory could apply with equal force to the borough and the state. Nor do we find pertinent the "intra-industry" test utilized in determining whether an injured workmate was an employee or contractor of an employer in the private industry context of *Ostrom v. Alaska Workmen's Compensation Board*, 511 P.2d 1063 (Alaska 1973).

13. Quoted in *Trivette*, part at page 4, *supra*.

8. *Gonzales v. State*, 29 Cal.App.3d 585, 105 Cal.Rptr. 801 (1972); *Pantess v. Saratoga Springs Authority*, 225 App.Div. 426, 8 N.Y.S.2d 103, 105-406 (1938); see *D. R. Smalley & Sons, Inc. v. United States*, 372 F.2d 505, 178 Cl.Cl. 593 (1967); and *Elen Memorial Park Ass'n v. United States*, 300 F.2d 432 (9th Cir. 1962), which held that a state is not an agent of the United States in performing functions under the Federal Aid Highways Act, 23 U.S.C. § 101 et seq. (1958).

9. See *Paige v. State*, 290 N.Y. 352, 199 N.E. 617 (1936) (state use of a private institution as a reformatory); see generally *State v. Abbott*, 198 P.2d 712 (Alaska 1972); *Johnson v. State*, 473 P.2d 752, 417 P.2d 352 (1968).

10. *Paige v. State*, 290 N.Y. 352, 199 N.E. 617, 618 (1936) (citations omitted).

11. The borough cites *Jaffby v. Westchester County*, 197 N.Y. 375, 199 N.E. 253 (1936), but in that case, the question was whether

erably more expensive than originally anticipated. In seeking recovery from the United States, the plaintiff asserted that with regard to these projects, the State of Ohio was the agent of the United States.

To support this claim, plaintiff points out that: the contracts were drafted pursuant to the regulations and requirements of defendant; the contracts were approved by defendant; the work was inspected and approved by defendant as it progressed; changes in plans were approved by defendant; the final completion of the work was inspected and approved by the defendant; and defendant agreed by the provisions of the law to pay the state (for the benefit of plaintiff) ninety per cent of the cost of the contract.¹⁶

In language which applies with equal effect to the relationship between a state and its various political subdivisions, the court stated:

The National Government makes many hundreds of grants each year to the various states, to municipalities, to schools and colleges and to other public organizations and agencies for many kinds of public works, including roads and highways. It requires the projects to be completed in accordance with certain standards before the proceeds of the grant will be paid. Otherwise the will of Congress would be thwarted and taxpayers' money would be wasted. These grants are in reality gifts or gratuities. It would be farfetched indeed to impose liability on the Government for the acts and omissions of the parties who contract to build the projects, simply because it requires the work to meet certain standards and upon approval thereof reimburses the public agency for a part of the costs.¹⁷

The court rejected the agency argument citing *Eden Memorial Park Assoc. v. United States*,¹⁸ wherein the court stated:

Moreover, analysis of the Federal-Aid Highways Act indicates that while close cooperation between the United States and the individual states was contemplated, the states or their agencies or officials were in no sense to become agents of the United States in projects authorized by that act.

The borough attempts to distinguish *Smalley* on the basis that the states may elect whether to construct highways under the Federal-Aid Highway Act whereas the borough was compelled to provide school transportation once the state Board of Education decided to require it. It contends that the involuntary nature of its undertaking of the function makes it a compelled agent of the state.

[3] We agree that one may become a compelled agent or servant of another. As noted previously, Section 224 of the Restatement (Second) of Agency (1957) states that "[o]ne compelled by law or duress to render services to another has power to subject the other to liability as if there were a master and servant relation". Similarly, one who volunteers services may be a servant of the one accepting services.¹⁹ Whether one is a compelled or voluntary agent begs the question here involved, i. e., was the borough acting as an agent of the state in furnishing school transportation. It is not contended that the borough is an agent of the state in exercising the function of public education, yet it is compelled by law to maintain and operate a system of public schools on an areawide basis.²⁰

We conclude that the borough was not acting as an agent of the state in furnishing transportation of pupils. Our conclusion is supported by the only case to rule

16. 372 F.2d 1019.

17. *Id.* (citations omitted).

18. 300 F.2d 432, 433 (9th Cir. 1962).

19. 332 P.2d 1019.

19. *Id.* (citations omitted).

20. *Id.* (citations omitted).

squarely on the relationship between a school district furnishing such transportation and a state. In *Gonzales v. State*,²¹ the plaintiff brought suit against a school bus driver, the school district, the county and the State of California and other defendants for injuries suffered when the plaintiff was struck by a school bus. In seeking recovery against the state, the plaintiff contended that the school district was the agent of the state in employing the driver so as to make the driver an employee of the state. A California statute imposed liability only on the public entity whose employee caused the injury.

Thus, as in the *Kennai* case, for the state to be liable, the school district had to be found to be the state's agent. The court held:

Grace Erickson, at the time mentioned in the complaint and for the previous 19 years, was employed by the District as a bus driver; she was not employed by the State and did not drive or operate a bus owned or controlled by the State, at any time.

State agencies, even though exercising a portion of the state's powers of government, are not the state or a part of the state; and may not act on behalf of the state unless authorized to do so by statute. . . . There is no statute conferring authority upon school boards, expressly or by implication, to employ an individual on behalf of the state.

The fact the authority of a school district to operate buses, and the incidental authority to employ bus drivers, is derived from the State through its Legisla-

ture, does not support the conclusion a bus driver employed by the District is an employee of the State.²²

Similarly, there is no Alaska statute or contract authorizing the borough to employ or contract with a driver *on behalf of the state*. The bus was not owned by the state, and Carver entered into the contract with the borough school district, not the state.²³

[4] The borough makes an additional argument to the effect that a change in the Department of Education regulations made subsequent to the Harman accident indicates that under the former regulations, the borough acted as agent. The regulations in effect in 1969 provided in part that the "Commissioner of Education shall direct the school boards to enter into contracts for transportation of pupils who reside a distance of 1½ miles or more from the school,"²⁴ whereas the current regulation specifies that the Commissioner "may in his discretion" establish contracts with districts to provide for transportation of students.²⁵ The borough contends that this indicates that the state has elected to no longer "require" the borough to provide for the transportation. But the fact that it is discretionary with the Commissioner whether to enter into the contract, does not make it less a requirement on the part of the borough when such discretion is exercised. Moreover, as we have discussed previously, the real issue is not whether the borough was "required" to furnish the transportation but whether it acted as agent for the state in either a compelled or voluntary capacity.

21. 29 Cal.App.3d 755, 105 Cal.Rptr. 804 (1972).

22. *Id.* at 805, 807 (quoting *Harman v. State*, 1969 Cal.App.3d 805, 105 Cal.Rptr. 807).

23. The *Gonzales* case was remanded to the trial court for a determination of whether the school district was the agent of the state in employing the driver. The court found that the school district was not the agent of the state.

agents, and the state did not own, operate or control any of the buses at any time. 29 Cal.App.3d 755, 105 Cal.Rptr. at 806. We have agreed upon the more difficult question of whether the state is the agent of the state.

24. 1969 Cal.App.3d 805, 105 Cal.Rptr. 807.

25. 1971 Cal.App.3d 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

ADKINS v. LESTER

Citizens, Alaska, 532 P.2d 1027

Alaska 1027

We conclude that the superior court was correct in granting summary judgment for the state holding that the borough was not acting as an agent of the state in furnishing school transportation.

Affirmed.



James O. ADKINS, Appellant,

v.

Michael LESTER et al., Appellees.

Brenda S. ADKINS and James O. Adkins,
Appellants,

v.

CITY OF FAIRBANKS and Michael
Lester et al., Appellees.

Nos. 2078, 2113.

Supreme Court of Alaska.

Feb. 3, 1975.

Consolidated actions were brought arising out of a collision between an automobile and an unmarked city police vehicle which was at the time responding to a radio report of a burglary in progress but which was not using its siren or flashing red light. The Superior Court, Fourth Judicial District, Fairbanks, Warren William Taylor, J., entered judgment in favor of police officer and city, and motorist and his wife appealed. The Supreme Court, Erwin, J., 530 P.2d 11, reversed and remanded. On petition for rehearing, the Supreme Court, Connor, J., held that although the jury did in fact give a negative response to an interrogatory concerning whether the police officer's actions were a proximate cause of the collision, the way in which the interrogatory was phrased may have led the jury to believe that, having found the officer not negligent, it had to find no causation, and the improperly excluded opinion testimony of investigating officer that the speed of the police vehicle

was excessive and was a contributing cause of the accident may have affected the jury's answers on both the negligence and causation issues.

Petition denied.

Rabinowitz, C. J., did not participate.

Appeal and Error — 1056.1(5)

Although, in actions arising out of collision between automobile and unmarked city police vehicle, jury did in fact respond negatively to interrogatory concerning whether police officer's actions were a proximate cause of collision, the way in which interrogatory was phrased may have led jury to believe that, having found officer not negligent, it had to find no causation; and the improperly excluded opinion testimony of investigating officer that the police vehicle's speed was excessive and a contributing cause of the accident may have affected the jury's answers on both the negligence and causation issues.

O. Nelson Parrish and James Parrish, Fairbanks, for appellant Brenda Adkins.

Barton C. Biss, Anchorage, for appellant James O. Adkins.

Thomas E. Fenton, of Call, Hayercraft & Fenton, Fairbanks, for appellee Michael Lester.

D. Rebecca Snow, Law Office of Charles E. Cole, Fairbanks, for appellee City of Fairbanks.

Before CONNOR, ERWIN, BOOCH-
EVER and FITZGERALD, JJ.

OPINION ON REHEARING

CONNOR, Justice.

Appellee City of Fairbanks in its petition for rehearing points out that at page 17 of our opinion we misstate the actualities of the case where we say—

"The jury responded that it found no negligence on the part of appellant officer and it responded to the question

533

534

535

HARTIG, RHODES, NORMAN & MAHONEY

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
SUITE 201
717 K STREET
ANCHORAGE, ALASKA 99501
TELEPHONE: (907) 274-3570
TELECOPIER: (907) 277-4392
TELEX: (0901) 25-404

KODIAK OFFICE:
202 CENTER AVE. BOX 503
KODIAK, ALASKA 99541
(907) 486-3143
C. WALTER EBELL
MELVIN M. STEPHENS, II

ROBERT L. HARTIG (1926-1980)

JAMES D. RHODES
JOHN E. NORMAN
ROBERT J. MAHONEY
BERNARD J. DOUGHERTY
MICHAEL W. SHAFER
ROGER H. BEATY
EDGAR R. LOCKE

MICHAEL ROBBINS
NEV W. SHEA
C. WALTER EBELL
SPENCER C. SNEED
MELVIN M. STEPHENS, II
ROBERT E. SPIKE

OF COUNSEL:
G. RENT FOWARD

November 10, 1980

REPLY TO:
Anchorage

Gordon Ryan, City Manager
City of Kodiak
P.O. Box 1397
Kodiak, AK 99615

Re: Proposed Legislative Changes
Our File 844-10

Dear Mr. Ryan:

Pursuant to your request, I have reviewed Title 29 of the Alaska Statutes and the supplements for the purpose of making recommendations regarding proposed changes to statutory sections that might be presented to the Alaska Municipal League during its meeting in Fairbanks during the week of November 17, 1980. In particular, I have attempted to locate the statutory sections that have been the source of litigation or disputes in the past. I have also discussed this matter with Mel Stephens and sought his recommendations.

A. I would recommend that the first full paragraph of AS 29.28.070(b) be amended to read as follows:

(b) Every petition for either the initiative or referendum in the government of a municipality shall be signed by a number of qualified voters residing within the territorial limits of the municipality, or, if the act sought to be initiated or referred pertains exclusively to the area outside cities or to a service area, by a number of qualified voters residing within the area outside cities or within the service area, as the case may be, equal to the following per cent of the total number of votes cast at the last regular [GENERAL] election in the city or borough or borough area concerned, or a special election called for the purpose of electing city or borough officers:

Gordon Ryan, City Manager
November 10, 1980
Page Two

The word that has been underlined in the above section is the word to be added by the change in legislation. The capitalized word in brackets will be deleted.

The basis for this recommendation is the ruling by Judge Carlson in the recall case holding that the signature requirement was based on the number of votes cast in the municipality during the last general election. In effect, the signature requirements for initiative, referendum and recall may be substantially increased by this ruling.

B. I would recommend that the provisions relating to the review of a recall petition be amended to provide for a review of the petition by the clerk prior to the time the petition is circulated for signature. Moreover, I would recommend that some procedure be provided for an expeditious review of the clerk's decision by the Department of Community and Regional Affairs if the clerk determines that the contents of the petition are insufficient.

Possible legislative changes to implement the suggestion would be as follows:

Add a new section 29.28.145 to read:

(a) A petition seeking recall of one or more municipal officials shall contain the grounds for recall stated with particularity as to specific instances reflecting the alleged misconduct in office, incompetence, or failure to perform proscribed duties. The statement of grounds for recall shall be submitted to the municipal clerk for review as to content, prior to circulation for signature and the municipal clerk shall, within ten (10) days, certify whether the statement is acceptable or unacceptable. The clerk shall not determine whether the statement of grounds for recall is true or false, nor shall the clerk determine whether the specific instances set forth constitute misconduct in office, incompetence or failure to perform proscribed duties. If the petition is determined by the clerk to be unacceptable, the clerk shall specify in writing the reasons for determining the statement to be unacceptable.

(b) A statement of grounds for recall that is determined to be unacceptable by the clerk may be amended and resubmitted, or the clerk's decision may be submitted by the recall proponent to the Department of Community and Regional Affairs for review. Within ten (10) days after receipt, the Department of Community and Regional Affairs shall review the statement of grounds for recall and the clerk's written specification of the reasons why the statement is unacceptable and shall determine whether the grounds for recall are stated with particularity as to specific instances in a form acceptable for the petition.

Section 29.28.150 should be modified to provide as follows:

Petition. (a) The petition containing an accepted statement of grounds for recall shall be filed with the municipal clerk when it has been completed to contain

(1) the signatures and resident addresses of a number of voters as prescribed in Section 70(b) of this chapter for initiative and referendum; and

(2) the date each voter signed the petition.

(b) A petition for recall must be filed with the clerk within 60 days after the date of the earliest signature on the petition.

Modify Section 29.28.150 to provide:

Examination of Signatures. The municipal clerk shall review the signatures, addresses and dates contained in the petition and shall certify on the petition within ten (10) days of the filing date whether it is accepted or rejected. Until the petition is accepted, a petition signer may withdraw his signature upon written application to the clerk.

The proposed changes recommended above, would provide a procedure for reviewing the statement of grounds in a recall petition prior to the expenditure of the effort that normally

Gordon Ryan, City Manager
November 10, 1980
Page Four

goes into obtaining adequate signatures. Moreover, by establishing in the guidelines for the clerk's decision and providing for review by the Department of Community and Regional Affairs, the modifications would tend to minimize litigation that otherwise occurs.

C. I would recommend that AS 29.33.070(a) be amended to negate any implied power that boroughs now have to review and disapprove capital improvement programs of cities located within the boroughs. This modification might be accomplished by adding a second sentence to subparagraph (a) to read:

The powers delegated to boroughs under this section shall not be construed to grant to a borough any authority or control over a capital improvement program or project of a city within the borough or a city's right to seek funding of such capital improvements without prior approval by the borough.

This recommendation is based upon the unacceptability of the A95 Review Procedures for Grant Applications. As I understand that review procedure, if a borough does not approve a capital improvement project proposed by a city within the borough, the grant application is rejected. Obviously, there may be other and perhaps better ways of eliminating borough control over city capital improvement projects.

D. I would recommend that Section 29.33.130 relating to judicial review of decisions by the Board of Adjustment be amended. At the present time, if a city has been delegated the authority to act as a Board of Adjustment, the city is invariably named as a party in the appeal from the Board of Adjustment decision. In some instances, the city is designated as the sole party and it is forced to incur the costs and attorney's fees necessary to respond to the appeal. So long as the city is a party to the appeal they are also subject to a judgment for costs and attorney's fees incurred by the party appealing from the Board of Adjustment action.

This problem might be resolved by an additional paragraph within Section 29.33.130 to read as follows:

If a city acted as a Board of Adjustment pursuant to a power delegated by the borough, the city shall not be named as a party in the action seeking review unless the action of the Board of Adjustment reversed or overturned action by the borough planning

commission. The city may, however, intervene as an interested party in an appeal from a Board of Adjustment decision which related to property within the limits of the city.

E. I would recommend that Section 29.33.120 be amended to specifically provide that appeals to the Board of Adjustment may be heard on the record. It would appear to be wise policy to require an applicant seeking relief from the Planning & Zoning Commission to present a full and complete record of the grounds upon which the relief is based. A record should therefore be adequate for review and decision when supplemented by briefs of the parties. A requirement that de novo hearings be held, which might possibly be implied from the provisions of AS 29.33.110(a), which authorizes the presiding officer to administer oath and compel attendance of witnesses, may encourage the presentation of a minimal case before the planning commission with the thought that the record can always be improved before the board of adjustment.

F. I would recommend that AS 29.33.150 be amended to require city participation in the platting process if the subdivision is located within the city. In particular, that section might be amended to provide that rules and regulations relating to installation of street paving, curbs, gutters, sidewalks, sewers, water lines, drainage and other public utility facilities and improvements, which are to be located within, operated by or connected to facilities in a first class city, shall be constructed in compliance with requirements that are not less stringent than those established by the city. Moreover, the statute should require approval of the plat by a city within which the platted property is located and to prohibit the filing of the plat until all improvements have been constructed or security, in a form acceptable to the city, has been provided to insure that the improvements will be completed as designed and approved.

The city has in the past, particularly with regard to the Russells Estates Subdivision, been placed in the position where the borough specifications for roads and utilities were far below those required by the city. The city had no authority to prohibit or disapprove the construction but may be required to maintain dedicated roads after they are completed and may assume the responsibility for the proper operation of the utilities. In Russells Estates, the streets were of insufficient width, were improperly constructed and the sewer facilities, which was designed to operate with individual grinders and pumps in the homes failed to operate

Gordon Ryan, City Manager
November 10, 1980
Page Six

properly. As a result, the city incurred substantial expenditures to completely reconstruct the project. The borough naturally assumed no responsibility for the deficiencies that existed. After the developer sold the lots he moved out of state and the city is finding it extremely difficult to obtain any reimbursement for its expenditures.

F. I would recommend that AS 29.53.025(c)(2) be repealed or, if not repealed, modified to eliminate the problem that currently exists with regard to the personal property tax exemption in Kodiak. The framework created by the statute is totally unworkable because the borough is given authority to determine the revenues lost as a result of the exemption. In the case of the personal property tax exemption the borough includes substantial properties on its assessment list for which taxes would not or could not be collected if the borough was levying and collecting the taxes.

It is extremely difficult to recommend modifications for this section because it appears that the appropriate solution would be a repeal of the exemption by the City of Kodiak. That has been attempted once, but a petition for a referendum of the repealing ordinance was filed and ultimately found to be valid by the Superior Court in Kodiak. At the election, a majority of the voters cast their ballots in favor of the referendum.

One possible modification would be to require borough consent for exemption and subject the exemption to an agreement between the municipalities regarding the determination of the revenues lost and the method of repayment. That type of approach would have to provide some method for revoking the consent on the reasonable notice.

Another possible modification would be to amend that section to read as follows:

(2) A home rule or first class city shall have the same power to grant exemptions or exclude property from borough taxes that it has as to city taxes, provided that the exemptions or exclusions have been adopted as to city taxes and further provided that the city appropriate to the borough an amount calculated to equal the reasonably anticipated revenues, less costs of collection, lost by the borough because

Gordon Ryan, City Manager
November 10, 1980
Page Seven

of the exemptions or exclusions. The amount of lost revenues shall be determined annually by the assembly, subject to approval by the city council. If the council disapproves the amount determined by the assembly, the city shall appropriate the amount determined by the assembly to have been lost during that year, and the exemption shall thereafter be void with regard to borough taxes levied in future tax years.

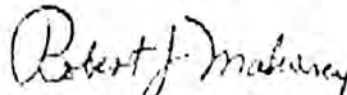
The recommendations proposed above are based in substantial part upon the experience I have had in the City of Kodiak over the past six years. Recommendations as to specific language for changes in the statutes are merely rough proposals and would have to be carefully reviewed and refined if it was determined that those proposals could be supported by the Alaska Municipal League. Nevertheless, I believe the problem areas are adequately highlighted and possible solutions proposed.

If you have any questions after you have had an opportunity to review these recommendations, please advise me at your convenience.

Kindest regards,

Very truly yours,

HARTIG, RHODES,
NORMAN & MAHONEY


Robert J. Mahoney

RJM:bad

Motion made by Fred Stickman and seconded by Jonah Tokienna

NORTHWEST ALASKA MAYORS' CONFERENCE

NOVEMBER 6 - 7, 1980

RESOLUTION NO. 23

A RESOLUTION: PETITIONING THE STATE OF ALASKA TO FUND AT 100% ADEQUATE FIRE FIGHTING EQUIPMENT FOR RURAL CITIES.

WEHREAS, Fire is a great destroyer of life and property in rural Alaska, and

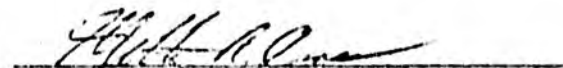
WHEREAS, rural communities have little economic base from which to purchase and to provide necessary fire equipment,

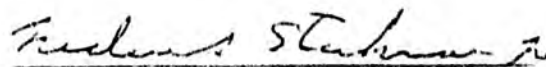
THEREFORE BE IT RESOLVED: That the State of Alaska fund at 100% adequate fire fighting equipment for rural cities.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE THIS 7th day of November, 1980.

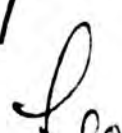
ATTEST:


N.P.


PRESIDENT


SECRETARY

21 OF 30 INVITED MAYOR'S TOOK PART IN
THE NOV 6TH & 7TH CONFERENCE
ALL RESOLUTIONS PASSED UNANIMOUSLY
EXCEPT 5 & 17



Motion made by Leo Rasmussen and seconded by John Jenewouk.

NORTHWEST ALASKA MAYORS' CONFERENCE

NOVEMBER 6 - 7, 1980

RESOLUTION NO. 22

A RESOLUTION: PETITIONING THE ALASKA STATE LEGISLATURE TO AWARD SURPLUS STATE EQUIPMENT AND MACHINERY WITHOUT A BID TO THE NEAREST LOWER LEVEL OF GOVERNMENT.

WHEREAS, Presently excess State equipment is often required to be bid upon, and

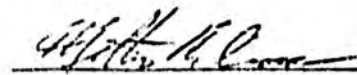
WHEREAS, many of the State's smaller communities have no economic base and therefore, no money with which to make a bid.

NOW THEREFORE BE IT RESOLVED: That the Alaska State Legislature pass legislation to award without a bid surplus State equipment and machinery to the nearest lower level of government.

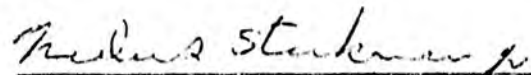
PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

ATTEST:


R.R.T.



PRESIDENT



SECRETARY

Motion made by Jonah Jenewouk and seconded by Melvin Otten.

NORTHWEST ALASKA MAYORS' CONFERENCE

NOVEMBER 6-7, 1980

RESOLUTION NO. 21

A RESOLUTION: TO INCREASE STATE REVENUE SHARING ALLOCATION FOR EVERY SECOND-CLASS CITY IN RURAL ALASKA.

WHEREAS, the State Legislature has seen fit to fund each city at \$25,000.00,
and

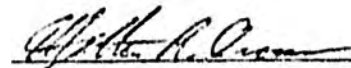
WHEREAS, the Alaska Municipal League has supported the State Revenue Sharing Program.

NOW THEREFORE BE IT RESOLVED: That the State Legislature be petitioned to increase the basic State Revenue Sharing allocations to \$50,000.00 for each city.

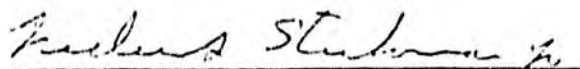
PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

ATTEST:


RRF



PRESIDENT



SECRETARY

Motion made by Karl Ashenfelter and seconded by Jonah Tokienna.

NORTHWEST ALASKA MAYORS' CONFERENCE

NOVEMBER 6 - 7, 1980

RESOLUTION NO. 20

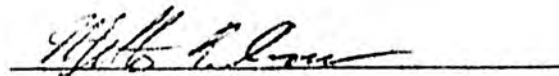
A RESOLUTION: PETITIONING THE ALASKA STATE LEGISLATURE TO FIND PERSONNEL TO FILL DRUG ABUSE ENFORCEMENT AND EDUCATION POSITIONS.

WHEREAS, drug abuse is an increasing problem among the citizens of rural Alaska, and

WHEREAS, the citizenry of the State of Alaska is its most precious resource.

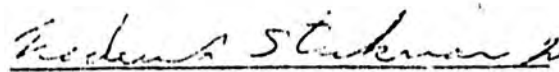
THEREFORE BE IT RESOLVED: That the Northwest Alaska Mayors' Conference petitions the Alaska State Legislature to fund additional law enforcement and education positions to specifically combat drug abuse.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.


PRESIDENT

ATTEST:


RRT


SECRETARY

Motion made by Leo Rasmussen & Mayor Madros and seconded by Mayor Otten.

NORTHWEST ALASKA MAYORS' CONFERENCE

NOVEMBER 6-7, 1980

RESOLUTION NO. 19

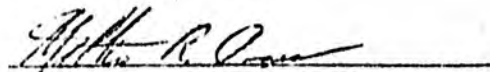
A RESOLUTION: REQUESTING THE APPOINTMENT OF PERSONS WITH THE ABILITY TO INTERPRET AND ENFORCE THE LETTER OF THE LAW; THUS PROVIDING COMPLIANCE TO THE LAW, RESULTING IN AN EQUITABLE SYSTEM IN PROVIDING LAW AND ORDER.

WHEREAS, Leniency to offenders in the area of public order is considered as a major contributor to the breakdown of law and order, and

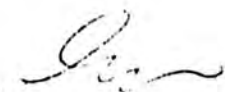
WHEREAS, this breakdown in law and order is increasingly harmful to the citizenry of rural Alaska.

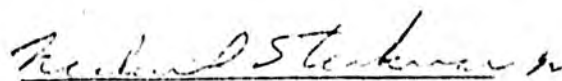
THEREFORE BE IT RESOLVED: That the Northwest Alaska Mayors' Conference request of the Judicial Council in reviewing appointments for District, Superior and Supreme Court judgeships; to only consider for recommendation, those persons who will more strictly construe law and order for our communities.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.


PRESIDENT

ATTEST:


R.R.J.


SECRETARY

Motion made by Karl Ashenfelter and seconded by Leo Rasmussen.

NORTHWEST ALASKA MAYORS' CONFERENCE

NOVEMBER 6-7, 1980

RESOLUTION NO. 18

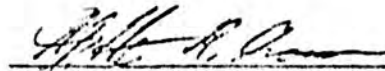
A RESOLUTION: PETITIONING THE ALASKA STATE LEGISLATURE TO PROVIDE A JUDICIAL SYSTEM FOR RURAL ALASKA.

WHEREAS, there is presently no judicial officer close nearby for most cities of rural Alaska, and

WHEREAS, local ordinances can not be enforced in the absence of a judicial system.

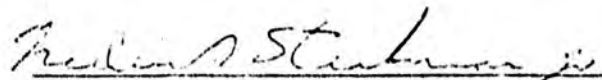
THEREFORE BE IT RESOLVED: That the conference of Northwest Alaska Mayors' petitions the Alaska State Legislature to fund a judicial system that will make a judicial officer available in each city in rural Alaska.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.



PRESIDENT

ATTEST:


RR-F

SECRETARY

Motion made by John Jenewouk and seconded by Melvin Otten.

NORTHWEST ALASKA MAYORS' CONFERENCE

NOVEMBER 6 - 7, 1980

RESOLUTION NO: 17

A RESOLUTION: OPPOSING NOME'S CITY ANNEXATION PLAN.

VOTE:	YES	2
	NO	14
	1	ABSTAINED

Me
Lee
RR7

Motion made by Karl Ashenfelter and seconded by Jonah Tokienna.

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO. 16

A RESOLUTION REQUESTING THE ALASKA STATE LEGISLATURE TO REQUIRE MINIMUM STANDARDS AND INSPECTION TO WHICH ALL NEW HOUSING BUILT IN RURAL ALASKA MUST CONFORM AND TO FUND REBUILDING AND RENOVATION OF EXISTING SUBLEVEL HOUSING.

WHEREAS, much housing built in rural Alaska has been of substandard design and construction, and

WHEREAS, there is presently little standard to which new housing built in rural Alaska must conform.

THEREFORE BE IT RESOLVED: by the Conference of Northwest Alaska Mayors' that the Alaska State Legislature be petitioned to require minimum standards and inspection to which all new housing built in rural Alaska must conform and to fund rebuilding and renovating ^{OF} existing sublevel housing.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

ATTEST:

RRF

[Signature]
PRESIDENT

[Signature]
SECRETARY

Motion made by Fred Stickman and seconded by Mayor Otten.

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO: 15

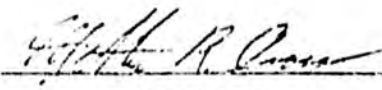
A RESOLUTION: TO SUPPORT THE LEGISLATIVE ACTION THAT WAS TAKEN DURING THE
THE LAST LEGISLATIVE SESSION TO SUBSIDIZE ELECTRIC POWER AND EXPLORE~~R~~ ALTER-
NATIVE ENERGY SOURCES.

WHEREAS, energy costs are rapidly increasing for Northwestern Alaska, and

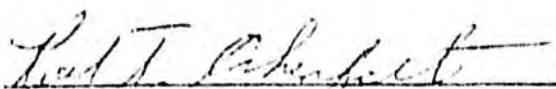
WHEREAS, this increasing cost is a growing burden on the citizens of the
region.

BE IT RESOLVED: That the conference of Northwest Alaska Mayors' supports
legislative action that has been taken to subsidize electric power and
explore alternate energy sources for rural Alaska.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th
day of November, 1980.



PRESIDENT



SECRETARY

ATTEST:


RR-T

Motion made by Karl Ashenfelter and seconded by Willie Thomas.

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO: 14

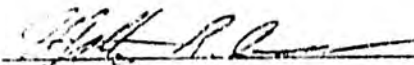
A RESOLUTION: TO REQUEST THE DOT/PF TO PROVIDE ADEQUATE AIRPORT LIGHTING AND TO CONSTRUCT AIRPORTS TO THE MINIMUM LENGTH OF 4,000 FEET AND TO INCLUDE RUNWAYS TO ACCOMODATE PREVAILING CROSSWINDS.

WHEREAS, many airports in Northwest Alaska are not adequate to meet the needs of the citizens of Northwest Alaska, and

WHEREAS, it is the responsibility of the State of Alaska to provide airports in rural Alaska.

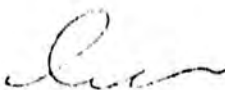
THEREFORE BE IT RESOLVED: That the Department of Transportation/Public Facilities and the Alaska State Legislature be requested to provide in northwestern Alaska adequately lighted, well constructed airports of a minimum length of 4,000 feet to include alternate landing strips to accomodate prevailing crosswinds.

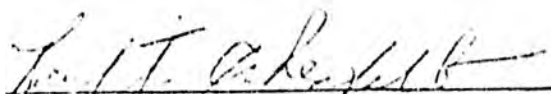
PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.



PRESIDENT

ATTEST:


RRH



SECRETARY

Motion made by Ted Katcheak and seconded by Karl Ashenfelter.

NORTHWEST ALASKA MAYORS' CONFERENCE

NOVEMBER 6-7, 1980

RESOLUTION NO. 13

A RESOLUTION: THAT THE DIVISION OF COMMUNITY PLANNING BE DIRECTED TO PROVIDE ADDITIONAL PERSONNEL TO MEET THE TERMS OF 14 (C) ANCSA IN RURAL ALASKA.

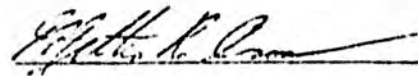
WHEREAS, The Alaska Native Claims Settlement Act sets aside 1,280 acres under 14(c) Reconveyances to municipalities, and

WHEREAS, there is a need for technical assistance in the processing of this section under the ANCSA, and

WHEREAS, the Division of Community Planning is to provide that assistance.

NOW THEREFORE BE IT RESOLVED that the Division of Community Planning be directed to act expeditiously in meeting the terms of 14(c) ANCSA.

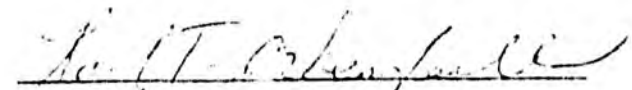
PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.



PRESIDENT

ATTEST:


R.R.T.



SECRETARY

Motion made by John Jenewuk and seconded by Percy Nayokpuk.

NORTHWEST ALASKA MAYORS' CONFERENCE

NOVEMBER 6-7, 1980

RESOLUTION NO. 12

A RESOLUTION: TO HAVE THE COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION TO ASSESS THE NEEDS OF THE REGION AND TO SUPPLY THE FUNDS NECESSARY TO PROVIDE SAFE AND SANITARY WATER AND SEWER SYSTEMS TO ALL COMMUNITIES THAT REQUIRE THEM AT THE EARLIEST POSSIBLE DATE.

WHEREAS, there is an immediate need for safe and sanitary water and sewer systems in the communities in the Bering Straits and NANA regions, and the Doyon region; and

WHEREAS, the State of Alaska, Department of Environmental Conservation is charged with providing the funds to construct water and sewer systems in rural Alaska.

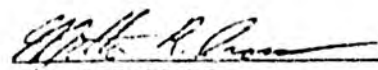
NOW THEREFORE BE IT RESOLVED: That the Commissioner of the Department of Environmental Conservation be directed to assess the needs in the Bering Straits and NANA regions respectively, and

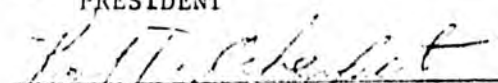
LET IT FURTHER BE RESOLVED that funds be earmarked to provide safe and sanitary water and sewer systems in all communities that need them and that construction begin at the earliest possible date.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

ATTEST:





PRESIDENT


SECRETARY

^{CITIZEN}
Motion made by M. Brown of Koyuk and Seconded by Paul Brown, Sr. of Noorvik.

NORTHWEST ALASKA MAYORS' CONFERENCE

NOVEMBER 6 - 7, 1980

RESOLUTION NO: 11

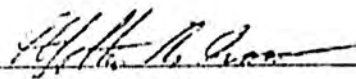
A RESOLUTION TO IMPROVE TELE-COMMUNICATIONS SYSTEMS IN NORTHWEST ALASKA AND TO PROVIDE TWO TRAINED TECHNICIANS TO REPAIR TELE-COMMUNICATIONS EQUIPMENT IN NORTHWEST ALASKA.

WHEREAS, modern maintained tele-communications systems are absent in most of Northwest Alaska, and

WHEREAS, modern, maintained tele-communications are increasingly important in today's world.

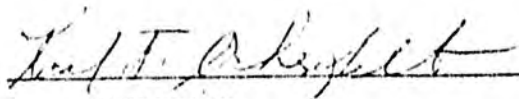
THEREFORE BE IT RESOLVED: that the Alaska State Legislature be petitioned to improve tele-communications in Northwestern Alaska and to provide two trained technicians to maintain this equipment.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

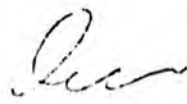
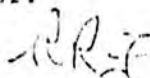


PRESIDENT

ATTEST:



SECRETARY

Motion made by John Jemewuk and seconded by Jonah Tokienna.

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO. 10

A RESOLUTION: TO INCREASE THE SERVICES PROVIDED BY THE V.P.S.O. PROGRAM TO ALL COMMUNITIES NOT CURRENTLY SERVED BY THE PROGRAM.

WHEREAS, the Village Public Safety Officer Program is deemed to be an excellent effort on the part of the Department of Public Safety, and

WHEREAS, the need for law enforcement still remains largely unmet in all of the communities in the Bering Straits and NANA regions, and the Doyon regions:

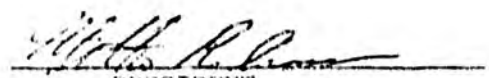
WHEREAS, the State of Alaska is the only source of funds for rural law enforcement.

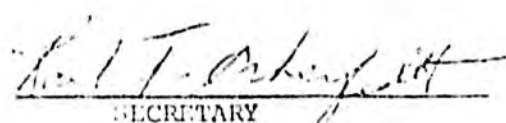
NOW THEREFORE BE IT RESOLVED THAT THE STATE OF ALASKA EXPAND THE V.P.S.O PROGRAM to include those communities in the Bering Straits and NANA regions that are not presently served by the V.P.S.O. Program.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

ATTEST:

R.R.T.


PRESIDENT


SECRETARY

Motion made by Karl Ashenfelter and Seconded by Jonah Tokienna.

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO: 9

A RESOLUTION TO REQUIRE THE PUBLIC HEALTH SERVICE TO PROVIDE AIR FARES FOR HOSPITAL PATIENTS REQUIRING MEDICAL EVACUATIONS.

WHEREAS, most villagers have little economic resources to pay for air transportation, and

WHEREAS, the Public Health Service has funds to provide air transportation.

NOW THEREFORE BE IT RESOLVED: That the Public Health Service pay patient travel to and from the Norton Sound Hospital and the Kotzebue Hospital.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE THIS 7th day of November, 1980.

ATTEST:

B.R.T.

[Signature]
PRESIDENT

[Signature]
SECRETARY

Motion made by John Jenewuk and seconded by Melvin Otten.

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO. 8

A RESOLUTION: That the Department of Community and Regional Affairs provide additional personnel in the area of servicing the region by providing technical assistance.

WHEREAS, The Department of Community and Regional Affairs (LGAD) has the responsibility to provide a wide range of technical assistance to second-class cities ranging from Point Hope to Stebbins and all those in between including Kaltag, Nulato, and Koyukuk on the Yukon, and

WHEREAS, there are only two Local Government Specialists assigned to serve over 30 second-class cities in this region, and

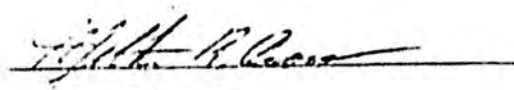
WHEREAS, the needs of second-class cities are becoming increasingly complex and numerous,

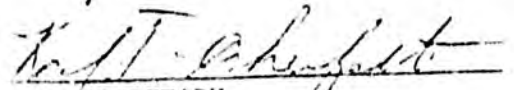
NOW THEREFORE BE IT RESOLVED that the Department of Community and Regional Affairs fund one additional Local Government Specialist for the Nome field office.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

ATTEST:

NPT


PRESIDENT


SECRETARY

Motion made by Ted Katcheak of Stehns & Seconded by Fred Stickman, Jr., Mulato.

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO. 7

A RESOLUTION: TO ENDORSE THE SUBSTITUTION OF THE WORD DENALI FOR MCKINLEY.

WHEREAS, we recognize that the place name Denali is an authentic Athabascan origin name for the tallest mountain in North America, and

WHEREAS, Denali is derived from an ancient Athabascan name Denali meaning "Tall one", and

WHEREAS, Athabascan people have strong feelings toward this great mountain because it is virtually in the center of traditional Alaskan Athabascan territory, and because it is thought of respectfully as the one the ancestors viewed, and

WHEREAS, the name "McKinley" has no comparable antiquity or tradition, and

WHEREAS, the Alaska State Legislation has passed a joint resolution recognizing the name Denali, and

WHEREAS, Denali is the name officially recognized by the State of Alaska for said mountain.

NOW THEREFORE BE IT RESOLVED, that the NORTHWEST ALASKA MAYORS' CONFERENCE hereby calls on the United States Board of Geographical Names to recognize the original name of the mountain, Denali.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November 1980.

ATTEST

[Signature]
110

[Signature]
PRESIDENT
[Signature]
SECRETARY

Motion made by Mayor Stickman and Seconded by Mayor Madros.

NORTHWEST ALASKA MAYORS' CONFERENCE.

November 6 - 7, 1980

RESOLUTION NO. 6

A RESOLUTION: To establish regulations to require certified audits of all R.E.A.A. School Districts and said audits to be made public.

WHEREAS, generally acceptable accounting practices may not be used by all R.E.A.A.'s Districts; and

WHEREAS, any financial information used and generated by some R.E.A.A.'s Districts comes from their Accounting Departments.

THEREFORE BE IT RESOLVED: To request the State to establish regulations requiring all R.E.A.A. School Districts to publicly make available an annual certified audit of their operations.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

ATTEST:

RRF

Walter R. Green
PRESIDENT

Robert A. Lytle
SECRETARY

Motion made by John Jenewouk of Elin and Seconded by Percy Nayokpuk of Shishmaref.

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO. 5

A RESOLUTION: OBJECTING TO BIA CLOSING OF MT. EDGE CUMBE.

FAILED BY A VOTE OF 12-5

W
W
RBF

Motion made by Karl Ashenfelter and Seconded by John Jenewuk.

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO. 4

A RESOLUTION: TO HIRE AN EDUCATION SPECIALIST TO HELP EVALUATE EDUCATION IN NORTHWEST ALASKA.

WHEREAS, there is an apparent deterioration of basic education in Northwest Alaska;

WHEREAS, basic education is apparently being supplanted with alternate courses.

NOW THEREFORE BE IT RESOLVED: That the Northwest Alaska Mayors' Conference requests the State of Alaska to hire an Education Specialist to evaluate education, its delivery in Northwest Alaska, and to provide a listing of proposed changes that would better provide the delivery of basic education to our children.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.

ATTEST:

[Signature]
RRF

[Signature]
PRESIDENT

[Signature]
SECRETARY

Motion made by Earl Ashenfelter and seconded by James Commack.

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO. 3

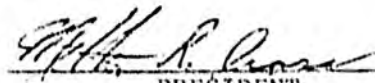
A RESOLUTION: REQUESTING THE DEPARTMENT OF EDUCATION TO EVALUATE THE ACADEMIC PROGRAMS IN THE VILLAGES IN NORTHWEST ALASKA.

WHEREAS, there are questions regarding the quality of basic academic programs in Northwestern Alaska, and

WHEREAS, there are no apparent systems established to provide this data.

NOW THEREFORE BE IT RESOLVED: That the Department of Education provide a Curriculum Development Specialist to investigate academic programs in Northwest Alaska with special emphasis on Basic Education.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.


PRESIDENT

ATTEST


R R F


SECRETARY

Motion made by John Jenewouk and seconded by Karl Ashenfelter.

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO. 2

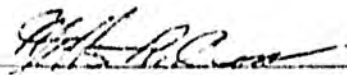
A RESOLUTION: ASKING THAT THE STATE PROVIDE MONIES TO FUND A PERMANENT CITY CLERK OR CITY ADMINISTRATOR POSITION WITH A MINIMUM SALARY OF \$1,500.00 PER MONTH FOR ALL CITIES.

WHEREAS, It is almost impossible to hire a capable part-time or full-time City Clerk or Administrator with the monies now provided;

WHEREAS, present State Revenues hardly cover minimal costs of administering small cities.

THEREFORE BE IT RESOLVED: That the State fund a City Clerk or City Administrator position for all cities at a salary not less than \$1,500.00 per month.

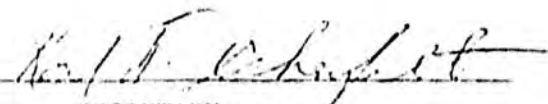
PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.



PRESIDENT

ATTEST:


-RRF



SECRETARY

Motion made by John Jenewuk and seconded by Charles Riley

NORTHWEST ALASKA MAYORS' CONFERENCE

November 6 - 7, 1980

RESOLUTION NO: 1

A RESOLUTION: REQUEST THE HOLDING OF PUBLIC HEARINGS ON THE MOVE OF THE DISTRICT OFFICES OF THE BERING STRAITS R.E.A.A. SCHOOL DISTRICT TO UNALAKLEET.

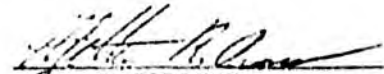
WHEREAS, the public has not been adequately noticed of the move of the Bering Straits R.E.A.A. School District and its offices to Unalakleet, and

WHEREAS, the public has not been adequately allowed to publicly voice its views on the move, and

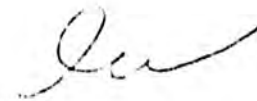
WHEREAS, the move of the offices and the Bering Straits R.E.A.A. School District could impair education of the students it is charged with in terms of quality of education.

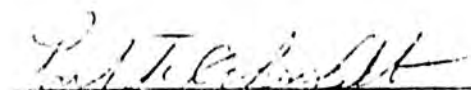
NOW THEREFORE BE IT RESOLVED: That the NORTHWEST ALASKA MAYORS' CONFERENCE asks that Public Hearings, duly noticed, be held on the potential or occurring move of the offices and headquarters of the Bering Straits R.E.A.A. School District to Unalakleet.

PASSED and APPROVED by the NORTHWEST ALASKA MAYORS' CONFERENCE this 7th day of November, 1980.


PRESIDENT

ATTEST:


RRF


SECRETARY

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

CITY OF FAIRBANKS

CHARLES M. GIBSON
CITY ATTORNEY

BRETT M. WOOD
DEPUTY CITY ATTORNEY

ALASKA
99701



HERBERT P. KUSS
DEPUTY CITY ATTORNEY

MICHAEL P. McCONAHY
ASSISTANT CITY ATTORNEY

Legal Department
410 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
907-452-1881
August 5, 1980

Ms. Ginny Chitwood
Executive Director
Alaska Municipal League
204 N. Franklin Street
Juneau, Alaska 99801

Dear Ginny:

I am taking this opportunity to write to you concerning several matters which I would thank you to transmit to the committee studying the revision of Title 29.

First, at a recent city council meeting, there was a matter on the agenda concerning the vacation of a certain street in the city which had come to the council with a recommendation from the Borough Planning and Zoning Commission that the vacation of the street be permitted. Because of the time constraints in Section 29.33.220 requiring action by the council within 30 days from the decision of the Commission in which to veto that decision, the council was required to act upon the matter with what they considered to be insufficient information to properly consider the proposal. As a result of this incident, the council reviewed the provisions of Section 29.33.220 and directed me to bring this to your attention for action by the Title 29 revision committee. The last two sentences of this Section (29.33.220) state:

The assembly or council shall have 30 days from the decision in which to veto the board's decision. If no veto is received by the board within the 30-day period, the consent of the city or borough shall be considered to have been given to the vacation.

It was the feeling of the council that in matters as important as a vacation of a city street, it should require affirmative action, rather than silence, to constitute consent. With that in mind, I respectfully submit the following language, or some variation of it, in place of the last two sentences of the section as it is now written as follows:

The assembly or council shall have 30 days from the date that the board decision is received by the assembly or council within which to consider the proposed vacation. If the decision of the assembly or council is not received by the board within the 30-day period, then the council or assembly shall be deemed to have vetoed the proposed vacation.

In this way, it would be much easier for the petitioners seeking the vacation to submit a new petition than it would be to have the council or assembly reverse the effect of its failure to act as is now the situation.

Mayor Wood has requested me to seek the committee's consideration of revising the applicable provisions of Title 29 so as to allow a home rule city to enact and implement certain tax incentive measures for the promotion of residential and industrial development within the municipality. As we read the present provisions of Chapter 53 of Title 29, Sections 10 through 350, and 400, there are certain required exemptions as set forth in 29.53.020(a) through (i), none of which would cover the type of tax incentives which the mayor has in mind. Also, the optional exemptions and exclusions in Section 29.53.025, as amended through 1979, are not broad enough to allow the type of residential and industrial tax incentives which he feels are necessary to stimulate economic activity within the community. Subsections (f) and (g) afford some relief in the residential area of concern, but again are not sufficiently broad in scope to permit the provisions that we wish to consider for such legislation. In addition, it is our opinion that the required and optional exemptions and exclusions set forth in Chapter 53 of Title 29 are exclusive, and as such, would not permit a home rule municipality to enact tax incentives for industry which we feel would be desirable. Rather than set forth a statutory scheme to cover a myriad of available or innovative incentives, it occurs to me that it might be more desirable to specifically exempt home rule cities from the provisions of Section 29.53.025, and rather than have the exemption by silence, to insert language in any revision thereof indicating home rule cities to be exempt from these provisions and subject only to constitutional provisions in the taxation of real property situated within the corporate limits.