

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

752 SCOM123: TITLE 29 POLICY REVISION ADVISORY COMM. 1980

SUGGESTED CHANGES TO TITLE 29

From Elsie O'Brien (Houston City Clerk)

1. AS 29.28.190, recall provisions:
Should consider adding a requirement that the city council and city officials perform, with reference to recall petitions, within a time certain.
2. AS 29.63.090, service areas within boroughs:
The Mat-Su borough loaned money to a road service area, apparently on promise of repayment within fiscal year, but without approval of the apparent indebtedness by voters of the affected service area. Should consider legislation to require that such debts are subject to prior approval by voters within service area.
3. General observation: would like greater information within the text of the volume. (This may not be possible because of the strict format relating to what may be annotated. However, perhaps CRA should receive an amount so that each year for small cities a loose-leaf form of Title 29 may be prepared to update which carries changes in law, applicable commentary, case decisions, AG opinions, etc., supplied by the Dept. on a quarterly basis.)

From Senator Robert H. Ziegler, Sr.

1. I don't much like AS 29.53.080. What privately contracting parties sell or pay for property need not necessarily reflect f.m.v. Alaskan assessors are supposed to assess at 100% of true value. Ergo, if they can examine and inspect properties, why can't they appraise without involving the records of the buyer/seller? (I've lost this argument before!)

From Jack Chenoweth (Staff Counsel, Legislative Affairs)

1. Give some thought to inclusion of a provision somewhere by which a state officer -- governor, CRA commissioner or what have you -- enjoys authority to appoint municipal voters to fill elected city or borough offices when the number of incumbent members of city council or borough assembly drops below the number required by law or charter to produce a quorum. For example, if the 5 members of the Juneau assembly are recalled, it may be that the four remaining cannot function as an assembly even to the point of filling a vacancy or calling for an election to fill the vacancy. Other quirks in charter provisions could operate to preclude councils or assemblies from operating if there are "mass" resignations or wholesale removals.

- From Marjorie Erickson (House Committee on Community & Regional Development)
1. Section 9 AS 29.23.025 (a) outlines the procedures to be followed if a reapportionment ordinance has not been approved by the voters after the Assembly has determined that reapportionment is necessary. The law does not address what happens to the order--is it voted on by the people? Can the order be appealed? Is administrative or judicial review provided for?
 2. In Section 29.23.029 and Section 29.23.031 there should be additional statutory references providing for judicial review and relief in all applicable instances and referencing all applicable voter approved ordinances and reapportionment orders under Sec. 031.

From Clara M. Eccles (Anchorage)

1. I'm interested in SB 154 "Extending property tax exemption to include disabled veterans of any age." (Note: SB 154 did not pass last regular session.)

From Bruce Aronson (Ombudsman's Office)

1. AS 29.28.130 is unclear as to whether an official may be subject to recall within 6 months of being re-elected. It would seem that the original intent of this section was to protect rookies rather than incumbents. Recommendation: all officials may be recalled after 6 months have been served in office. The 6 month grace period would not apply if a person is re-elected to the same office.
2. The grounds for recall listed in AS 29.28.140 are too narrow in scope. Since the grounds stated in recall petitions need not be proven, people are forced to name one of the three listed grounds even when the real reason behind the petition bears little relation to it.
3. AS 29.28.150 should be changed so that it is clear that a recall petition can seek to recall only one named official. A separate petition should be filed for each official sought to be recalled. A petition should be required to contain the mailing address of each person who signs it.
4. AS 29.28.180 should be changed so that a new petition may not be filed sooner than 6 months after the original is rejected for insufficient content. However, the waiting period should not apply when a petition is rejected for lack of signatures.
5. There has been a fear that once a sufficient petition has been submitted and accepted, members of the council could resign and be re-appointed to the council. The statutes should preclude this possibility.
6. The statutes should be clear that the local recall effort is based on the last regular municipal election for purposes of determining the number of signatures required on a petition, not on the state election.

7. It is unclear whether a person recalled is removed from his office at once after the election has been certified, without any transition period. Some sort of transition period should be provided by statute to allow a government to continue to operate when a majority has been recalled from office.
8. Eliminate third class boroughs. There is no need for them now that REAAs have been established. If a borough is organized, it should assume minimal responsibilities, such as land use planning.
9. There should be a clear statutory statement as to when a city rather than the state must provide local enforcement services and what types of enforcement services a city must provide. This will never be done voluntarily on a local level because the state currently provides free police services. A statute should identify the types of local problems which the state troopers will not pursue, such as dog control.
10. There is a problem with local control of service areas. Community councils are getting direct support from the state and this creates mini-municipalities within the municipality which sets up the service area. The resulting overlapping jurisdiction causes confusion as to policy and citizens cannot determine who to deal with regarding particular problems. The councils should be advisory only by statute and money from the state ought to be appropriated for the city, not the council.
11. Statutes should be clarified and strengthened regarding the annexation process. Cities ought not to be able to annex territory without providing services to the annexed area and people living outside cities who are receiving services ought to help pay for them.

From Palmer McCarter (C & RA)

1. Clarify whether "health and hospital power" is one or two separate local powers.
2. Adopt uniform definitions of "municipality," "borough," and use the terms consistently throughout the title.
3. Clarify the use of the terms "general" and "regular" election. Use the term "general" election to refer to state, not local elections.

The following items as pertain to Title 29 were included in the preliminary draft of the Alaska Municipal League 1981 policy statement as agreed upon by the AML Legislative Committee at their meeting in Palmer, August 21 & 22, 1980.

Final action on the 1981 policy statement will be taken by the delegates of the Alaska Municipal League conference when it convenes its business meeting in Fairbanks on November 15, 1980.

PART I - TAXATION AND FINANCE

E. Funding the Newly Organized Municipalities.

1. The League requests the enactment of legislation to provide adequate block grants to assist in the formation of new municipalities.

F. Funding the Study and Formation of New Municipalities

1. The League requests the enactment of legislation to provide adequate block grants to assist in the implementation of newly organized municipalities.

PART II - EDUCATION

B. Assembly/Council-School Board Relationships

1. The League supports legislation to clarify assembly/council-school board relationships and opposes legislation which would diminish assembly/council authority in education matters.

PART IV - LAND USE

A. Local Options

1. The League feels strongly that laws pertaining to the powers of local planning and zoning must allow for the greatest flexibility at the local level.

E. Coastal Management

1. The League supports continued and maximum local control in the development and management of the coastal policies, coastal planning and implementation of coastal policies.

2. The League supports the concept of "extra-territorial" planning by municipalities in the unorganized borough with statutory provisions to permit the Alaska Coastal Policy Council to adopt said "extra-territorial" planning as part of the Alaska Coastal Management Program until such time as a resource district plan is adopted.

3. The League urges the state agencies to abide by a municipality's interpretation of coastal management standards from the time of conceptual approval by the municipality until fiscal approval by the Legislature.

F. Subdivisions

1. Subdivision of land is a major factor in community development, creating patterns which have long lasting effects. Although present legislation clearly recognizes the need for regulation of subdivision, means of enforcement are inadequate. The League supports legislation which would require proof of approval by local authorities prior to the filing of an instrument affecting the boundaries of land and prior to any judicial partition of real property.
2. The League supports legislation which would require legal access to all state land disposals; and that, except for state subdivisions in remote areas or for dispersed entry, local subdivision improvement requirements be honored by the state by either installing such improvements or by acquiescing in the formation of service areas and local improvement districts containing such property and honoring the obligation to pay LID assessments on such property while it is in state ownership.
3. The League supports the concept of an Enterprise Fund as a means for the state to provide required improvements in state land disposals.

PART V - TRANSPORTATION, DOCKS AND PORTS

11. Port Authorities: Insufficient mechanisms exist under Alaska law to create joint port authorities, free port of entries and trade zones. Therefore, the League supports legislation to expand the powers of home rule and general law municipalities to create, finance and operate port facilities and ancillary authorities to enhance commerce within the State of Alaska.

PART VII - MUNICIPAL ELECTIONS

A. Majority Elections

1. The League strongly supports legislation which would permit a municipality, with voter ratification, to opt out of the 40% plurality requirement for election to office and which would clarify the 40% rule for municipalities that continue to use it.

G. Qualifications for Elective Office

1. The League supports legislation that would include provisions in Title 29 for municipalities to set qualifications for all elected municipal officials and to delete that section in Title 14 relating to municipal school board member qualifications.

2. The League supports legislation that would amend Title 29 to include reference to the requirements of AS 15.13 and AS 39.50 pertaining to qualifications of candidates.

H. Title 29 Revisions

1. The League supports legislation which would clarify AS 29.28.070(b) to specify that signature requirements for petitions be based upon the last regular election held just preceeding the date of first circulation of the petition.

2. The League supports legislation amending AS 29.28.070 to provide that the number of signatures required to initiate a petition for referendum, initiative or recall be 30% of the number of voters voting in the last regular election regardless of population of the municipality.

3. The League supports revision of the reapportionment provisions of Title 29 for clarification, simplification, flexibility and autonomy at the local level.

PART VIII - LOCAL GOVERNMENT POWERS

A. Local Autonomy

5. The League supports the community council concept and also supports legislation which would require that the local governing body be the management unit for local community councils. The local governing body should be both the requester and receiver of state funds that will be used to fund community councils.

C. Third Class Borough

1. The League supports elimination of language from Alaska Statutes which would allow for the future creation of third class boroughs. Any existing third class borough would be allowed to continue in existence until such time as it reclassifies. The League believes that a third class borough, as currently defined in statute, does not meet standards for a general purpose local government.

KETCHIKAN GATEWAY BOROUGH

344 FRONT STREET
KETCHIKAN, ALASKA 99901

TO: Russell Walker, Municipal Attorney
THRU: Judith Slajer, Borough Manager*
FROM: Kathryn Carssow, Planning Director
DATE: August 14, 1980
RE: A.S. 29.63.090, Service Area

As we discussed, Judi pointed out a problem in the following excerpt from A.S. 29.63.090:

...the exercise of the powers must be approved by a majority of the qualified voters residing within the service area...

This doesn't correspond with A.S. 29.63.015, outlining procedures for special assessments, where the borough notifies the legal owner of record of real property of the proposed assessment, and where, if the bearers of 50% of the assessment protest, the process stops. These two sections are too interdependent for such a discrepancy.

The wording under service areas is unclear. Who has the right to vote: the renter residing on the property in the proposed service area or the absent property owner, who will bear the assessment? I'd guess the legislature envisioned the property owner residing on the lot; your point about the absentee land owner living in Florida is well taken. Moving owners onto their property in trailers long enough to hold an election is equally absurd. More research is needed to find clear and equitable wording, but as a start I suggest the following for discussion:

...the exercise of powers must be approved by a majority of the qualified voters who are legal owners of real property within the service area...

*(Judi: Please note your comments.)

Quess - I feel that making this just real property owners is very limiting - would approach the problem from a petition standpoint if there is a number of residents that has problems also

OFFICE OF THE MUNICIPAL ATTORNEY

KETCHIKAN GATEWAY BOROUGH

AND

CITY OF KETCHIKAN

234 FRONT STREET

P. O. BOX 7300

KETCHIKAN, ALASKA 99801

(907) 225-3111, EX. 327

July 31, 1980

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

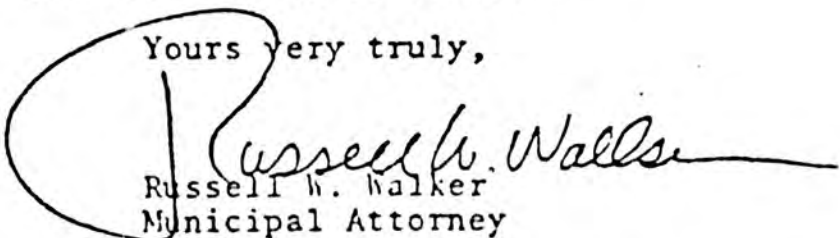
Re: Title 29 Review

Dear Ginny:

In furtherance of our telephone conference this date, please find enclosed herewith a preliminary list of matters the Ketchikan Gateway Borough and staff would appreciate being considered regarding the proposed Title 29 review. As I also mentioned, we would expect further submissions by staff as soon as possible as their concerns are developed.

If we can submit any further information regarding these points, please do not hesitate to so advise.

Yours very truly,


Russell W. Walker
Municipal Attorney

RWW:sf

Enclosure

cc: Borough Manager
City Manager

Amend to include "harbors" as type of facility municipality may own or operate outside its boundaries.

Comments: The City of Ketchikan currently leases from State and operates several boat harbors outside the boundaries of the City.

2. AS 29.53.135 - Board of Equalization:

Amend to clarify authority of assembly to appoint a board composed of not less than three (3) persons who may be (a) members of the assembly, (b) private individuals with certain experience, or (c) combination of (a) and (b). [See attorney Tesche memorandum, page 3]

3. Interest Rate:

The legal rate of interest now provided for in various tax enforcement provisions is eight (8%) percent.¹ Consideration should be given as to whether this rate should be increased. Also, interest rate on special assessments [AS 29.65.060(a)] is linked to the interest on real property taxes.

4. AS 40.15.030; AS 40.15.050 - Dedication of Streets, Alleys and Thoroughfares:

Add language to specifically provide that although second class borough may, as the platting authority, require, as a condition of approval of a subdivision of property, the dedication of rights-of-way and easements, and the installation of roads, sewers, and other utilities and improvements, and the dedication of such rights-of-way and improvements to the public, that the borough does not by such action become liable or responsible for any maintainance, operation, or inspection thereof, or for injuries to any person using the improvements (i.e., child drowns in drainage culvert not covered, cleaned, inspected, or maintained).

1

See: AS 29.53.180(a)(1), (a)(2), and (c)
AS 29.53.375
AS 29.53.390
AS 29.53.415(d) (sales tax)

Comments: Since a second class borough does not have road or other maintenance powers, but via the planning commission is the agency that requires and approves, incident to its platting authority, the design, construction and installation of subdivision improvements, which by AS 40.15.030 - AS 40.15.050 are "deemed to have been dedicated to public use," a question regarding ownership and duty to inspect and repair the facilities arises (See 9.65.070 - [immunity applies only "when the municipality is neither the owner nor lessee of the property involved"]). State law has addressed certain aspects of the matter in AS 38.08.090.

7. Implementation of Grants:

Amend AS 37.05.315 [HB 578] to require the State Department of Community and Regional Affairs to receive, administer, and implement any State grants which a municipality does not have the power to administer and implement (such as those appropriated by Ch. 50 SLA 80 as is now the procedure regarding grants to unincorporated communities where there is no incorporated entity qualified to receive the grant (AS 37.05.315(h)(3)). Also amend AS 37.05.315(c) to not impose covenant requirements on municipality with no power to operate and maintain the facility.

6. AS 29.33 - Planning, Platting and Zoning:

(a) AS 29.33.085 - Comprehensive Plan:
Amend section to require comprehensive plan review every five (5) years rather than every two (2) years.

Comments: See paragraph (1) of Planning Director's memorandum dated July 22, 1980.

(b) AS 29.33.090 - Zoning: Expand on enabling language to assure borough is not restricted in forms of zoning permitted.

Comments: See paragraph (2) of Planning Director's memorandum dated July 22, 1980.

(c) AS 29.33.150 - Platting Jurisdiction and Power: Amend subsection (b) to delete the following language in brackets and adds the underlined language to clarify the responsibility of State to comply with design and other requirements and only exempts State from actual construction requirements:

"(b) The regulations adopted under (a) of this section apply to subdivision plat of undeveloped state land for disposal under AS 38.05 or AS 38.08 filed with the platting board, except that the platting board [may not disapprove the subdivision plat or adopt regulations which require the state to construct access roads or capital improvements on state land included in the subdivision plat] must approve the subdivision plat if the plat meets all local platting regulations other than those requiring the construction of roads or capital improvements on state land included in the subdivision plat. Subdivision plats of undeveloped state land for disposal shall be accompanied by engineering plans for all improvements required by local regulations applicable to the subdivision of private land."

Comments: See paragraph (3) of Planning Director's memorandum dated July 22, 1980.

(d) AS 29.33.200 - Alteration of Replat: Amend or add a new section to allow for approval and recording of plats for minor boundary adjustments without going through formal planning commission hearings where no new lots are created, and no new dedications of roads or other rights-of-way are involved.

Comments: See paragraph (4) of Planning Director's memorandum dated July 22, 1980.

(e) AS 9.55.275: Add language to recognize that a change in boundary pursuant to AS 09.55.275 may result in a substandard size lot, and that compliance with normal subdivision requirements is not required with waiver by assembly permitted.

Comments: Cities or other public agencies frequently acquire in fee narrow strips or areas for road widening, sewer, park or other facilities which are very small in size (i.e., pump station for sewer system 25 x 25 etc.) and the public agency may in fact be prohibited from acquiring excess area not actually required for the public improvement. Such acquisitions frequently result in a change of boundary within the provisions of AS 09.55.275 and planning commission approval of a preliminary plat and also a final plat, is required.

(f) State Filing of Acquisitions. Filing of a plat with the local planning authority should be required if State acquires easements or rights-of-way across platted parcels.

Comments: See paragraph (4) of Planning Director's memorandum dated July 22, 1980, addressing need for filing with the local planning authority.

(g) AS 29.33.170 - Waiver of Subdivision Requirements: Amend section to make waiver permissive and clarify access which must be found to exist before platting authority may waive plat approval and recording requirements.

Comments: See paragraph (5) of Planning Director's memorandum dated July 22, 1980.

7. AS 29.53 - Corrections, Cancellations, Refunds and Transfers of Taxes. Add sections to provide procedures for correction of tax roll, refund or cancellation of taxes after confirmation and certification of final tax roll when required to correct clerical or mathematical errors, assessment of non-existent property, errors in legal description, or other administrative problems. AS 29.53.390 does not accommodate the foregoing.

Comments: The Borough assessor advises the State assessor, with assistance and input from local assessors, will be making suggestions and proposals regarding the above.



KETCHIKAN GATEWAY BOROUGH

344 FRONT STREET
KETCHIKAN, ALASKA 99901

TO: Judith Slajer, Borough Manager
FROM: Kathryn Carssow, Planning Director
DATE: July 22, 1980
RE: Title 29 Revisions

Last week, Bill, Jim, and I met to discuss improvements to Title 29; following are our recommendations --- add, (delete):

1. Section 29.33.085. Comprehensive plan. (b)...The planning commission shall undertake an overall review of the plan at least once every (two) five years.

To do justice to the time and money invested to develop the original policies, an overall review of the comprehensive plan every two years is impossible for a small department like ours with other major projects. We prefer revision every five years to allow us time to detect and incorporate changes in economic, population, and land use trends and to undertake other major planning efforts without increasing our existing staff.

2. Section 29.33.090. Zoning. We intend to do additional research on this section. Our concern is that performance zoning may not be allowed under this section.
AS 29.33.090 states in part "The assembly shall regulate... use of land...by districts or contract zoning." Contract zoning being a hybrid of a district (Euclidean) type zoning. Many performance systems do not employ districting as a control element. Therefore present state law may not include enabling language for other than land use controls based on traditional Euclidean zoning.
3. Section 29.33.150. Platting jurisdiction and power. (b)...the platting board (may not disapprove the subdivision plat or adopt regulations which require the state to construct access roads or capital improvements on state land included in the subdivision plat) must approve the subdivision plat if the plat meets all local platting regulations other than those requiring the construction of roads or capital improvements on state land included in the subdivision plat. Subdivision plats of undeveloped state land for disposal shall be accompanied by engineering plans for all improvements required by local regulations applicable to the subdivision of private land.

Of course we prefer to see this section deleted altogether, but clarification along these lines will be an improvement.

4. Section 29.33.200. Alteration of replat petition. See attached memo from Jim re: feasibility of shortened plat procedure.

This section needs language to distinguish plat alterations from subdivisions.

Also, AS 09.55.275 requires plat approval for parcels condemned for public purposes - e.g. city condemnation of the Wingren property for the sewer pump station - but AS 29.33 does not have corresponding language speaking to approval of substandard parcels for public purposes. See Attachment 2.

See Attachment 3 for Bill's explanation of problems resulting from condemnations for state right-of-ways.

5. Section 29.33.170. Waiver in certain cases. (a) The platting authority (shall) may...

- (1) each tract or parcel of land will be located on or have (adequate access to a) developed road access to a public highway or street;...
- (3) the conveyance is not made for the purpose of, or in connection with, a present (or projected) subdivision development;

For purposes of maintaining accurate platting records Section 29.33.170 should be deleted entirely; as a minimum, we recommend the above clarifications. The first is intended to define "adequate access." The second deletes the reference to projected development; for all practical purposes it's a meaningless criteria.

MT

KETCHIKAN GATEWAY BOROUGH

344 FRONT STREET
KETCHIKAN, ALASKA 99901

TO: Judith Slajer, Borough Manager
THRU: *JS* Kathryn Carssow, Planning Director
FROM: Jim Rapp, Zoning Administrator *JMR*
DATE: January 15, 1980
RE: Feasibility of Shortened Plat Procedure

At the January 14, 1980 workshop on the proposed new subdivision ordinance considerable discussion centered on the possibility of shortened plat procedures for "minor" subdivisions. A minor subdivision is basically one that does not involve the creation of additional lots or new streets. An example would be, two neighbors wishing to swap a 10' wide strip of land along their common side lot line in order to correct a house siting error. Proposed Section 55.10.045 (attached) provides a mechanism for such a shortened procedure.

This proposed section, as presented to the Borough Assembly, calls for a one step approval by the Platting Board, as opposed to the usual two step approval. As originally recommended by the Planning Commission in their review of the new ordinance, this provision was made an entirely administrative responsibility. Provided the limitations of Section 55.10.045 were honored, the designated planning official would approve the plat, obtain necessary signatures (Borough Manager, Planning Commission Chairperson, etc.) and see to its recording. However, the Municipal Attorney, in reviewing the Planning Commission's recommendations, found that Alaska Statutes Title 29 and Title 40 mandated approval by the full Platting Board in all cases.

Alaska Statute 29.33.200 sets out a replat alteration procedure that states that the petition shall be filed for approval by the Platting Board. This is reinforced by Alaska Statute 40.15, Dedications and Subdivisions, which calls for platting authority action in several instances. Alaska Statute 29.33.200 is the only vehicle suggesting the application of a minor subdivision procedure and unfortunately perhaps does not accomodate the greatest possible shortening of the process.

Administrative approval of short plats is a practice widely used in other areas and has several advantages, such as reduced processing times and costs. In order to protect neighboring properties, I would suggest that public notices be sent out for short plats with a five day response limitation. If any significant problems come to light as a result, an administrative decision would be made to present the plat to the full Board. Amendments to Alaska Statute 29 would be necessary for Ketchikan to adopt such a policy. Section 55.10.045 of the revised subdivision ordinance is the most expeditious route available at present. If a change in state law is desired, I suggest the Assembly refer the matter to legal and planning staff for preparation of language addressing the necessary changes and subsequent discussion of this issue with our state legislators.

WR

Attachment 2

City is submitting this plan as a matter of form. The statute requiring the plat is AS 09.55.275, quoted here in full:

"Replat approval. No agency of the state or municipality may acquire property located within a municipality exercising the powers conferred by AS 29.33.150 - 29.33.245 which results in a boundary change unless the agency or municipality first obtains from the municipal platting authority preliminary approval of a replat showing clearly the location of the proposed public streets, easements, rights-of-way, and other taking of private property. Final approval of replat shall be similarly obtained. However, if a state agency clearly demonstrates an overriding state interest, a waiver to the approval requirements of this section may be granted by the governor. The platting authority shall treat applications for replat made by state or local governmental agencies in the same manner as replat petitions originated by private landowners."

Attachment: Site Plan

TO: Kathy Carrsow, Planning Director

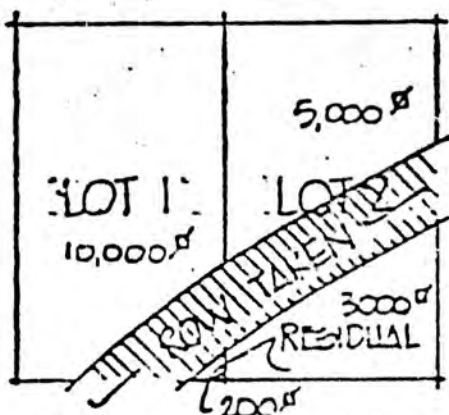
FROM: Bill Jones, Associate Planner

DATE: July 17, 1980

RE: Title 29

In reviewing Title 29 I was not able to identify any specific section which would apply to the State of Alaska "taking" land for rights-of-way without the benefit of a replat. My concern is that these defacto subdivisions often become obstacles to proper land development.

The following sketch illustrates the problem and I have included questions that "local planners" are often asked about results they were powerless to affect.



Can I use the square footage to subdivide or increase density ?

Can I put a culvert under the road and use it for a drainfield ?

Can I sell it to someone else ?

Just what can I do with it ?

SCOMM

#23:11

NAME	SENT TO:	DATE
Revised Index	Handed out Policy Mtg	29 Sept 80
Ltr - City of Unalakleet	" " " "	"
Ltr - City of Nome	" " " "	"
Draft Bill From State Assessor	" " " "	"
Revision Sugg. Shanley	" " " "	"
Minutes Policy Mtg	Policy, Tech, Ex-Off & others	30 Oct 80
Index	} Policy Technical Group	06 Oct 80
Presentations		
Ltr - City of Nome		
Ltr - City of Unalakleet		
Draft Bill (St. Assessor)		
Rev. Sugg Shanley		
Reservation cards	Policy group	07 OCT
& Notice of Mtg	Tech & Ex-Off	08 OCT
Summary of Sugg	Policy, Tech, & Ex-Off	08 OCT
Notice of Mtg	All others	08 Oct 80
AG's opinions	Mailed to Policy Grp, Tech Comm & Ex-Officio	17 17 OCT 80
Summary of Comments	Handed out w/ text to	20
C. Demming Cowles	Tech Grp at mtg 18 OCT	18 OCT
	Mailed to Policy Group	22
	w/ Text 18 OCT	18 OCT
Notice of AFN Mtg	Mailed to All	16 OCT
Packet w/ Stephanie	Mailed to ALL 22 OCT	22 OCT
Scott Comments & Assessor Recomm		

NAME

SENT TO:

DATE:

Packet #1:

Resolution #39

Article :

Summary AG's opns

Proposed agenda

Ltr. City St. Mary's

Ltr. Tesche Sugg

Ltr. Sharp Sugg

Total 29

'80 Bills Packet

Note: Glenn Svendsen

has since gotten copies

17 Sep

Policy Group

Minutes of Mtg
w/ ATTACHMENTS~~MIN.~~ Wkg Grp. Policy Grp
Ex Officio. Svendsen & others

11 Sep

Packet #3

Policy Group

Draft bill. ST. ASSESSOR

Wkg Group

w/ Ltr. FBX BORO, ASSESSOR

EX-O GROUP

KET. BORO

Glenn Svendsen

Memo CIRA (Dye)

Ltr. City of Valdez

Memo. Dept ENV. CON

Ket. Boro Ltr

Fin Revenue Coll.

Wkg Grp (mailed w/
index (rev.) & sugg. summ.
carried to policy mtg
29 & 30 Sep. Svendsen.
mailed 17 Sep

16 Sep 80

Agenda Sugg

Wkg grp & Ex-OFF

23 Sep 80

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

October 22, 1980

Stephanie K. Scott
Administrative Secretary
Haines Borough
P.O. Box H
Haines, Alaska 99827

Dear Ms. Scott:

Thank you for your letter. I have provided copies of the material you sent to all members of the Title 29 Advisory Policy Group.

For your information the Superior Court opinion City of Kodiak v. Kodiak Island Borough was never appealed. Unfortunately, I am not aware of any additional case law construing the statutory provision which limits the authority to form service areas. I will forward any additional information I receive on the subject to you. You have suggested that AS 29.63.090(d) be rewritten to provide more flexibility to municipal governments in creating service areas. Since that section is essentially a restatement of language contained in the state constitution, I doubt that rewriting the statute would accomplish your purpose.

Please send me any other suggestions which you may have regarding proposed changes to the Municipal Code and I will gladly forward them on to the Policy Group. Our next meeting is scheduled to be held in Fairbanks on November 10th and 11th. I hope to see you there.

Sincerely,

Tamara Brandt Cook
Legislative Counsel

TBC:ljb

cc: Title 29 Policy Advisory Group

HAINES BOROUGH

P.O. BOX H
HAINES, ALASKA 99827
(907) 768-2711

Tam Cook
Title 29 Revision Committee
Legislative Affairs
Legal Division
Pouch Y
Juneau, Alaska 99811

Dear Tam:

At this late date I am submitting the transcript of my comments at the September meeting. As attachments you will find the various letters and attorneys' opinions I refer to.

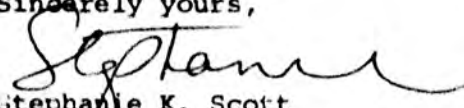
There is an item I would like to draw to the technical committee's attention regarding service areas. AS 29.63.090 (d) states that :

A new service area may not be established if, consistent with the purposes of article X of the state constitution, the new service can be provided by an existing service area, by annexation to a city, or by incorporation as a city.

In 1979 there was a superior court opinion in the City of Kodiak vs. Kodiak Island Borough which clarified this statute. Basically, the opinion was that annexation would provide for more services than the service area residents desire and that additional taxing jurisdictions are not created since the taxing authority for the service district remains the the Borough.

Even if the statute is not re-written to provide a little more latitude in the creation of service districts, perhaps the decision could be referenced in a foot note. However, I do not know if the decision was appealed. If you have any more recent information, or access to information, I would appreciate a lead.

Sincerely yours,


Stephanie K. Scott
Administrative Secretary

October 17, 1980

HAINES BOROUGH

P.O. BOX H
HAINES, ALASKA 99827
(907) 786-2711

October 17, 1980

David Dye, Planner III
Department of Community
and Regional Affairs
Pouch B
Juneau, Alaska 99811

Dear David:

I am enclosing a copy of the superior court opinion in City of Kodiak vs. Kodiak Island Borough which clarifies 29.63.090(d). Perhaps your department has more recent data on this decision. Was it appealed? If the decision stands perhaps it would be wise to recommend to the Title 29 Technical Committee that it re-write 29.63.090(d) to give a bit more latitude to the creation of service districts, or that it at least provide in a foot note for reference to the decision.

Let me know if there is any opinion in your department regarding the above suggested revision to 29.63.090(d).

Sincerely yours,

Stephanie K. Scott
Administrative Secretary

xc: Tam Cook, Title 29 Revision Committee

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

APR 25 1979

7,8,9,10,11,12,13,14,15,16

1

CITY OF KODIAK,

Plaintiff,

vs.

KODIAK ISLAND BOROUGH and
BETTY WALLIN, Mayor of
KODIAK ISLAND BOROUGH,

Defendants.

RECEIVED

APR 25 1979

Alaska Office
Keane, Harper, Pearlman
and Copeland

Case No. 3KO-78-120 Civ

MEMORANDUM OF DECISION

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

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

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

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

The establishment of the Service District is unlawful under AS 29.63.090(d) and unconstitutional under Section 5, Article X, Alaska Constitution in that the roads, sewer and water service function and power can be provided by the City of Kodiak through annexation to the City, without any necessity for the creation of the Service District. Complaint, paragraph 15, p. 3.¹

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

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

¹Section 5, Article X, Alaska Constitution provides in pertinent part:

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

AS 29.63.090(d) provides in pertinent part:

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

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

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

A. Constitutional Framers' Intent

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

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

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

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

(2) Framers' Intent as Revealed in
Constitutional Minutes

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

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

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

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

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

Proposal No. 6/n³ was the first draft actually considered and voted upon by the Constitutional Convention. Proposal No. 6/a was the subject of extensive debate at the Convention (see e.g. pages 2610-2730 of Constitutional Minutes). It was this proposal that was voted upon by the Convention, adopted and enrolled.

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

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

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

⁴Rule 16(c) provides in pertinent part:

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

11

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

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

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

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

⁵Article X, Section 5 provides in part:

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

AS 29.63.090(b) provides:

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

⁶See, e.g., comments of Delegate Taylor, Constitutional Minutes pp. 2699-2700.

Also see Constitutional Minutes, p. 2630.

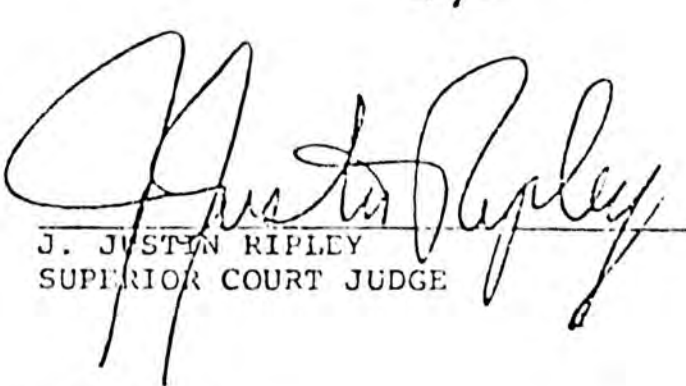
the problem by granting local tax-levying authority to only two bodies, cities and boroughs (See Alaska Constitution Article X, Section 2), and by permitting the establishment of service districts only under the control and auspices of boroughs. See Article X, Section 5 and AS 29.63.090. The fact that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

CONCLUSION

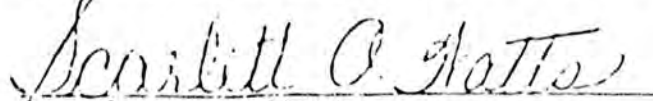
Since plaintiff's interpretation of the relevant constitutional and statutory provisions is incorrect, not only must its Motion for Summary Judgment fail, but also its Complaint must be dismissed because of the failure of plaintiff to state a viable cause of action against defendants.

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

DATED at Anchorage, Alaska this 19th day of April 1979.


J. JUSTIN RIPLEY
SUPERIOR COURT JUDGE

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


Scarlett O. Watts

HAINES BOROUGH

P.O. BOX H
HAINES, ALASKA 99827
(907) 766-2711

TRANSCRIPT OF COMMENTS MADE BY
STEPHANIE K. SCOTT, HAINES BOROUGH,
SEPTEMBER 29, TITLE 29 REVISION
COMMITTEE, ANCHORAGE, ALASKA

STEPHANIE SCOTT, Haines Borough: I am taking you from the government with the most responsibilities to the least responsibilities. The Haines Borough is a third class borough. I am here today to say that we want to participate in your discussions and decisions on the revisions of Title 29, specifically as it applies to the third class borough. We felt somewhat overlooked when the Senate-House C.R.A. interim committee, formed last year, developed House Bill 354 which eliminated the third class borough, never did enter into a discussion with the residents of the Haines Borough. We have a good record in terms of our consideration of different forms of government. We rejected a first class borough proposal in 1964; we rejected a second class borough proposal in 1967 and again in May of 1968; the third class borough was accepted August 20 of 1968. Recently in 1980 we rejected an advisory issue to consider a unified City-borough government. We have a first class city of about 2.6 square miles within the Haines Borough, which encompasses about 2200 square miles.

A letter recently came to our attention written by a deputy commissioner of Community and Regional Affairs which suggested circumscribing the portion of Title 29 that applies to the general powers of all municipalities. Her concern is that the general powers ought to perhaps only adhere to service districts in the Haines Borough. I believe you have probably received such a recommendation from Community and Regional Affairs.

SENATOR ARLISS STURGULEWSKI, Chairwoman, Title 29 Revision Committee: I don't recall a copy of that letter coming to the committee.

SCOTT: The letter we received was written to the City of Haines on September 4, 1980 and it says: "More specifically we have recommended that section 29.41.010 be re-written to include or exclude all or part of the provisions of Chapter 48 (powers applicable to all municipalities) with particular attention to 29.48.010 and 29.48.260." Our concern is that we believe that portion of the statutes that details powers general to all municipalities provides for the limited scope of various municipalities by saying that these powers are "subject to other provisions of law." In the third class borough we have the two area-wide powers of education and taxation assessment and collection. We have various attorneys' opinions, attorneys hired by the Haines Borough, and one 1977, Jan. 6 opinion from Assistant Attorney General

Roger Pegues, that those general powers apply to a third class borough insofar as they are exercised in relation to our two area-wide powers of tax assessment and collection and education. That really should take care of the controversy. I will make those attorney's opinions available to you.

STURGULEWSKI: Correct me if I am wrong: One issue then will be the clarification of the powers of the third class borough.

SCOTT: Yes. I would like to read a little more from the letter we received: "As an example of the uncertainty of these sections as they apply to the third class borough we cite the last sentence of paragraph (a) of Section 29.41.010 which states that: "Area wide exercise of powers other than education and tax assessments and collection is not authorized"." The question she is posing is: "Are third class boroughs prohibited except on a service area basis from acquiring, using and disposing of real property; the power to sue and be sued; or the power to expend funds for the good of the municipality?" She states: "The literal application of section 29.41.010 would seem to limit the exercise of these and other general municipal powers, to service areas created especially for the purpose, but we are not sure." In other words, she is saying that we need service areas in order to sue or be sued. I would contend that that's not the case. It's really quite clear that the statutes say we can enter into suits and buy and sell land insofar as it applies to the two functions of taxation and education. I would like to point out that in a second class borough the only additional area-wide power granted by the statutes is planning, platting and zoning. Every other power has to be voted by the citizens, although it can be adopted area-wide and we cannot adopt any other powers on an area-wide basis. So the same limited interpretation would have to apply to second class boroughs. I think such an interpretation would be unworkable. There are also footnotes in the statutes behind the section on the general powers which state that the intention is that the powers be liberally construed. The liberal understanding of those powers has been the fact.

There are a couple of places that the statutes "have their legs crossed" in terms of the third class borough. They are technical and I think that you should take them to your technical committee. I will get these to you in writing. One is 29.41.020 which says that the school board may provide for

weighted voting, but in the chapter on the assembly (29.23.021-c) it states that the assembly may not provide for weighted voting. Since in a third class borough the assembly is the school board it is inconsistent for one body to have weighted voting and one body to be denied weighted voting. Probably when weighted voting for the assembly was eliminated, the elimination of weighted voting for the school board was overlooked. So please note the conflict between 29.41.020 and 29.23.021(c).

The other technical revision is also in 29.41.020 which says that the borough executive is the presiding officer of the school board. That is confusing because elsewhere in the statutes it defines the presiding officer as someone elected from the body of the assembly and you can't have a borough executive who is elected from the assembly. This could be rectified by saying that the borough executive is president of the school board. Eliminate the reference of a presiding officer with respect to the third class borough. The object of the third class borough is to create the simplest form of government and we don't need a separate borough executive, a presiding officer and a president of the school board. They are all the same person.

I have been asked by the Borough Chairman to convey two recommendations: One is that we do support the recommendation from the Division of Community Planning in the Department of CRA to rewrite 29.48.260(e) to relieve the procedural requirements for the lease or sale of land to a beneficial new industry, which result from the court decision in Libbly vs. the City of Dillingham. This is important to us right now because like everybody else we are involved in Municipal Entitlements and disposals and we are looking at our own disposal ordinances. Getting the economy together in Haines is of primary importance and it may help us to be able to negotiate a lease to beneficial industry.

Chapter 53 concerns us. It has to do with taxation. We would like to be able, in some way, to provide for the optional exemption of inventory from personal property tax. We don't have any specific ideas on how to do this; but the Haines Borough would like to be able to put that exemption before its citizens if it were permitted by the Statutes. Presently there is no way to provide for the consideration of that option.

STURGULEWSKI: What is the status of exemption of inventory under personal property tax for other boroughs?

SCOTT: If you are a home rule municipality you can exempt it, but if you are a general law municipality you must tax inventory unless you exempted it prior to 1972. The definition of personal property includes inventory. Perhaps you could provide for the exemption through definition.

Other than that I wanted to let you know that by October 26 a teleconference system will be operative in Haines and that there are lots of people in Haines interested in our form of government. We would really like to be heard on the decisions, particularly if you are going to take a strong look at the recommendation from the Deputy Commissioner from the Department of Community and Regional Affairs and particularly if you are going to change the general powers of municipalities. We would like to be involved and we don't want to be surprised with a bill that provided for the elimination of our form of government without having a good chance to talk about it before it comes before the legislation. Other than that I will be here for two days listening and learning and available for questions.

STURGULEWSKI: We appreciate the fact that you're here. We are glad to know that you do have teleconference capability. I know that we talked to a number of people from your area when the third class was up. There was a pretty early decision made that that particular legislation (HB 584) was not going to pass or there would certainly have been a public hearing in your community. I think there is some concern on the part of certain divisions in the State that the third class borough has not always been a happy thing for people to live with and we are looking at some other areas that are looking at it. I think that if we are going to keep it we need to look at it very carefully.

SCOTT: I think that it deserves to be pointed out that the third class borough can plan, plat and zone on a service area basis. In order to do that there first has to be an area-wide vote to grant the third class borough the power to adopt service areas for planning, platting and zoning. And

then of course the service areas have to vote on that power. We had a vote on that and it was voted down. Another thing to bear in mind is that the Haines Borough, as a third class borough, is a very large borough, but its population is confined to a very small area so it would not be impossible to develop a service area that would affect just the populated area and handle planning on that basis. I know that that is the problem with the third class borough as far as the state is concerned. I think that you have to talk to the people who live in a third class borough to find out what kind of a problem they feel they have, if they feel they have a problem. Then if there is still an overriding concern that it is a problem from the state level, it's the state's responsibility to come in and tell the people, or teach them, what the problem is. In other words, there may be people in the Haines Borough who feel that they don't have a problem.

RUSSELL W. WALKER, Attorney, City of Ketchikan and Ketchikan Gateway Borough:
I would appreciate it if you could give this information to Tam Cook. I am interested in seeing what you are driving at.

STURGULEWSKI: We really appreciate you're being here. We know that it is a major effort to send someone. We will see that we use your teleconference equipment when it comes on line.

SCOTT: Thank you.

(907) 465-4750

September 4, 1980

The Honorable Mayor Jon Halliwell
City of Haines
P.O. Box 576
Haines, Alaska 99827

Dear Mayor Halliwell:

I apologize for the delay in responding to your query concerning the powers of the third class borough to acquire and dispose of land conveyed to it by the State. I had my staff contact your city administrator, Vern McCorkel, the Attorney General's Office and review appropriate sections of Title 29 to better ascertain the nature of your concerns.

It is my understanding that, although you only expressed interest in the land disposal issue, your underlying concerns are of a broader nature. They stem from the fact that the City of Haines is a first class city with full planning, platting and zoning powers located within a third class borough with only the limited powers of education and taxation. The fundamental issue, then, is not just whether a third class borough can acquire State land and dispose of it but whether the implied powers of Chapter 48 "Powers applicable to all municipalities" are applicable to a third class borough or not. These general powers address such functions as disposal of municipal property, the ability to establish departments, pay salaries, enter into agreements and to sue or be sued, among others.

We informally approached the Attorney General's Office about the possibility of receiving a timely response to your questions regarding the third class borough's authority to acquire and dispose of municipally owned property. The response we received was that they prefer to handle factual situations and not hypothetical ones. There was also some question whether this particular issue was of statewide concern as is necessary to warrant an Attorney General's opinion.

The feeling of my staff was that even if the land disposal questions were independently addressed by Attorney General's opinion, the other concerns and questions relating to the authorized general powers of the third class borough would still not be satisfied.

To effectively deal with the basic concerns as you and your city administrator have described them, the Department has suggested, in accor-

The Honorable Jon Halliwell
September 4, 1980
Page 2

dance with Senate Concurrent Resolution 66, that Title 29, the Municipal Government Code, be revised to clarify the general powers of the third class borough. More specifically, we have recommended that Section 29.41.010 be rewritten to include or exclude all or part of the provisions of Chapter 48 (powers applicable to all municipalities) with particular attention to Sections 29.48.010 and 29.48.260. As an example of the uncertainty of these sections as they apply to the third class borough we cite the last sentence of paragraph (a) of Section 29.41.010 which states that: "Area wide exercise of powers other than education and tax assessments and collection is not authorized". Paragraph (b) states that a third class borough may, under certain circumstances, exercise any power exercised by a second class borough but only on a service area basis. Are third class boroughs prohibited, except on a service area basis, from: acquiring, using, and disposing of real property; the power to sue and be sued; or the power to expend funds for the good of the municipality? The literal application of Section 29.41.010 would seem to limit the exercise of these and other general municipal powers to service areas created especially for the purpose but we are not sure.

I feel that a legislative approach (through revision of Title 29) could provide a comprehensive solution to your concerns. The Municipal League is also actively involved in the Title 29 revisions (along with the Rural Alaska Community Action Program, Inc.) and may be an appropriate avenue for the City to express its concerns regarding this matter.

Attached for your information is an interpretation by Departmental staff of appropriate sections of Title 29 as they would apply to the ability of the third class borough to acquire and dispose of land. However, I would caution you to consult your municipal attorney prior to acting on the basis of any of these interpretations.

I appreciate your request for assistance and hope that I have adequately addressed your concerns.

Sincerely,

Marie Matsuno
M

Marie Matsuno
Deputy Commissioner

Attachment

GF: City of Haines

bcc: Palmer McCarter
Richard Spitler

MM:RS:td

File: Land Management
Powers of a Third class Bor

10
Honorable Lee McAnerney
Commissioner
Department of Community
& Regional Affairs

DATE : January 6, 1977

FROM: AVRUM M. GROSS
ATTORNEY GENERAL

SUBJECT: Powers of Third
Class Borough
Our File No. J-66-227-77

By: Rodger W. Pegues *[Signature]*
Assistant Attorney General

This responds to your request for an opinion on this subject of December 29, 1976. Pursuant to your request, we have reviewed our informal opinion of August 8, 1968, on this subject and AS 29.41.

We agree with your views on the matter. The third class borough's sole function is to provide education. It is empowered to levy and collect taxes, to borrow money and to establish service areas to that end. It has no other function. It would be inconsistent with AS 29.41 for a third class borough to exercise a power of a first or second class borough which is not in furtherance of its assigned function and prescribed powers. Thus, in order to collect taxes, a third class borough obviously must possess the power to file tax liens and foreclose on them. To operate a school system, it must possess the power to acquire and manage property and enter into contracts. This is what the last sentence of AS 29.41.010(a) means.

The third class borough is but an up-dated version of the pre-statehood independent or incorporated school districts. Indeed, AS 29.41.020, which constitutes the assembly the school board as well, is conclusive on this point. It is irrefutable evidence of the legislature's intent that the third class borough has no other function.

The opinion on this subject of August 8, 1968, is in error on these points and is overruled.

RWP:cdm

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April 9, 1979

The Honorable Martin Tengs
Chairman
Haines Borough Assembly
Box H
Haines, Alaska 99827

Re: Opinion Respecting Authority of
Lobbying Expenditures by Third Class
Borough

Dear Mr. Tengs:

Your letter of April 2, 1979 inquires into the authority of the Haines Borough, as a borough of the third class, to expend funds for purposes which may be generally described as "lobbying" for specifically enumerated purposes. The answer, in short, is a qualified "no".

This opinion is limited to the factual particulars recited in your letter. Further, it is not intended to address the issue of the Borough's liability for unlawful appropriation of funds, nor a taxpayer's remedy for same, nor intended to prescribe the relationship between the City-Borough.

The powers of third class boroughs are enunciated in Alaska Statute Section 29.41.010. A copy of the statute is attached for your quick reference. Subsections (a) and (b) are particularly relevant. Subsection (a) is basically a carry-over from the 1972 Revised Municipal Code. The 1972 statute prescribed in AS 29.41.010(a) that:

"A third class borough shall exercise the area-wide powers of education and tax assessment and collection in the manner provided for second class boroughs. Provisions of law relative to first and second class organized boroughs apply with respect to third class boroughs only to the extent they are consistent with this chapter."

The intent of the 1972 legislation which basically reorganized and reclassified the system of boroughs and municipality classification was addressed in legislative notes accompanying the 1972 amendment. The June 17, 1972 Senate Journal Supplement No. 3 contained in relevant part the following language of interpretative assistance:

"Third class borough powers are unchanged. Acquisition of powers in the borough area outside cities is intended, as under present law, to be governed by provisions of law applying to second class boroughs."

Stopping at that juncture in 1972 to analyze those powers, a third class borough was limited to powers to (1) education and (2) tax assessment and collection (presumably limited to the exclusive purpose of education). Subsections (b) and (c) of the 1972 legislation on AS 29.41.010 are irrelevant to our inquiry, however, the statutes are sufficiently clear in permitting third class boroughs to assume additional powers if appropriate procedures are followed. Those procedures were prescribed in AS 29.33.250 which recites that "first and second class boroughs acquire additional area-wide municipal powers by transfer from a city or by holding an area-wide election on the question, except as provided otherwise in AS 29.48.030 and AS 29.48.035(b)." (emphasis added). Accordingly, even under the 1972 legislation there existed a grant of statutory authority for third class boroughs to assume powers in addition to education and taxation conditions upon area-wide election as to the specific functions for which the borough sought authority.

That proposition was further clarified with subsequent legislation amending the 1972 version of AS 29.41.010. Amendments to that section occurred in 1974, 1975, and 1977. They are embodied in the attached photocopy of the relevant statute and you will observe that it is broken into four subsections. Succinctly stated, subsection (a) prohibits a third class borough from exercising powers other than education and taxation. Subsection (b) does not qualify (a) so much

Mr. Martin Tengs
Page Three
April 9, 1979

as create an exception to it, specifically reciting the methods by which a third class borough may assume additional powers.

Taking a step back to examine the various legislative provisions in perspective, it may be succinctly stated that the third class Haines Borough may exercise only the area-wide powers of education and tax assessment; additional powers of more limited scope under AS 29.41.010(b) may be assumed by following election procedures. Additionally, it is important to examine the specific purpose of the so-called "lobbying" effort. Lobbying per se would not qualify as a general administrative function. Instead, the specific purpose or purposes toward which the effort is directed must be analyzed. Your letter recites that the purposes for which expenditures are intended include legislation toward a federally-funded eagle study in the Chilkat Valley, expenses associated with information and registering opposition to the Udall Bill, and part of the cost associated with keeping the Assembly informed as to Washington, D.C. developments on D-2 legislation. In my opinion, those functions fall quite easily into the land use planning category, which is a component or subpart of the planning, platting and zoning power. Accordingly, unless the Haines Borough has opted to exercise planning and zoning powers pursuant to AS 29.41.010(b) and followed the procedures prescribed therein, an appropriation of funds for the purposes recited in your letter will be subject to successful challenge.

The contents of your letter does not disclose and I am unfamiliar with the present circumstances in Haines as to whether or not the Borough voters in a general or special election have opted to provide for planning, platting and zoning. The answer to your question pivots on that factual determination. Going further, there is one additional aspect to the planning function which requires elaboration. Assuming that there has been an election in compliance with AS 29.41.010(b), there exists the question of the appropriateness of the expenditure from a common or general fund source. Under AS 29.41.010 as it existed in 1972 a third class

Mr. Martin Tengs
April 9, 1979
Page Four

borough could assume additional area-wide municipal powers under AS 29.33.250, assuming the Senate Journal notes which serve as the official legislative history are to be accorded veracity. But the powers referred to in AS 29.33.250 are area-wide. The new legislation seems to impose a limitation. AS 29.41.010 prescribes in the last sentence of subsection (a) that "Area-wide exercise of powers other than education and tax assessment and collection is not authorized." That language constitutes a specific limitation which gains even further support in the second sentence of subsection (b) which prescribes that "Powers assumed by a third class borough under this section may be exercised only within service areas." At that point, one would logically inquire as to whether or not the Haines Borough may presently make such an appropriation under its planning, platting and zoning function which applies to all of the borough area outside the City of Haines. I think not; the statutes apparently contemplate separate or individualized services areas rather than permitting a "unified" service area comprised of all of the borough territory outside a city. AS 29.63.090 seems to be dispositive. It provides in relevant part that

"(a) Service areas to provide special services within a borough may be established, operated, altered or abolished by the assembly by ordinance. Special services include services not provided on an area-wide basis within the borough or the borough area outside cities or a higher or different level of service than that provided on an area-wide basis or in the borough area outside cities... "

Subsection (b) of AS 29.63.090 which pertains to service areas prescribes that the assembly is authorized to levy taxes in the service areas to finance the special services.

In conclusion, the Assembly's appropriation of moneys for the purposes prescribed in your letter of April

Mr. Martin Tengs
April 9, 1979
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2, 1979 will appear to be within prescribed statutory authority only if the Haines Borough has conducted an election to permit planning, platting and zoning, and further, that said function be implemented and taxed on a service area basis as contrasted with an area-wide basis.

Very truly yours,

ROBERTSON, ~~MONAGLE~~, EASTAUGH & BRADLEY

By:


L.B. Jacobson

LBJ:ss

Enclosure

HAINES BOROUGH

P.O. BOX H
HAINES, ALASKA 99827

17

February 15, 1979

MEMORANDUM

TO: Haines Borough Chairman and Assemblypersons
FROM: Borough Attorney
SUBJECT: Lobbying expenditures by the Borough

The question has been asked recently and now again about the Haines Borough's authority to expend monies for lobbying purposes.

The Haines Borough is a member, I believe, of both the Alaska Schoolboard Association and Alaska Municipal League, two well known lobbying organizations, that have represented Alaska cities and boroughs for many years before the executive and legislative branches concerning many tax, educational and other issues of vital nature to the Haines Borough. Expenditure of Borough monies for these memberships is legal, in my opinion, since lobbying by the two entities involves substantially the issues of taxes and education, the two powers that the Borough can presently expend Borough funds for.

The City of Haines is requesting the Borough to appropriate lobbying funds in conjunction with City funds for retaining a law firm to represent the governments in Washington on the issue of HR-39. Whether this is a legal expenditure of funds for the Borough is a question that should be addressed prior to the Borough meeting next Tuesday. As a member of Lynn Canal Conservation, Inc. I do not feel I should give an opinion, but suggest that the Borough ask another attorney for his opinion on the question.

RCF

HAINES BOROUGH

P.O. BOX H
HAINES, ALASKA 99827

Memorandum to: Haines Borough Assembly Members
From: Administrative Secretary *[Signature]*
Subject: Conversation with Bill Pritchard, Department of Community
and Regional Affairs re lobbying and the Third Class Borough

January 24, 1979

Telephone conversation with Bill Pritchard, Community and Regional Affairs
465-4707

Mr. Pritchard stated that the Borough could undertake to lobby
if:

(1) funds were used which were not specifically designated
for education. Federal Revenue Sharing funds, and Payment-in-lieu of
taxes might be used.

(2) a special account was set up for this particular expenditure.

Mr. Pritchard reasoned that lobbying was not a Borough wide power
and that therefore, to lobby was not misusing the two area wide
powers of taxation and education, although lobbying against the
eagle study as designated in H.B. 39, Special Studies subsection,
would have area-wide effect.

Mr. Pritchard compared the ability of the Borough to lobby to the
ability of the Borough to sue and to defend itself in court. Mr.
Pritchard did not seem to think that the nature of the lobbying
effort had to have a necessary relationship to taxation or education.
Mr. Pritchard added that he was of the opinion that running a
public library was beyond the province of a third class borough.

In closing, Mr. Pritchard stated that he would talk to some other
individuals in the office and that he would get back to the Borough
if he was able to turn up any more relevant advice and/or information.
Mr. Pritchard allowed that there is no definite legal opinion on the
precise powers of a third class borough and that one way to obtain
legal opinion is to go ahead and lobby, and then go to court if
the Borough is taken to task for misuse of its powers.

cc: Dan Lockhorst, City Administrator
Merrill Palmer

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF FOREST, LAND AND WATER MANAGEMENT

MT. S. HARRIS, BOROUGH

323 E. 4TH AVENUE
ANCHORAGE, ALASKA 99501

March 10, 1980

Stephanie K. Scott
Administrative Secretary
Haines Borough
P.O. Box H
Haines, Alaska 99827

Dear Stephanie:

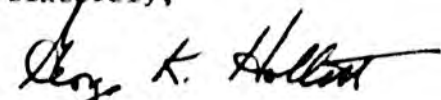
Your February 4, 1980, letter raised two questions regarding the ability of a third class borough to dispose of land:

1. It appears that a third class borough does have the authority to dispose of land, and to subdivide it pursuant to the disposal. AS 29.48.010(9), in the Chapter titled "Powers Applicable to All Municipalities", establishes the general power "to acquire, manage, control, use and dispose of real and personal property for the purpose authorized under this title...". If Municipal land were sold to provide revenue for educational purposes, it would appear to be within the authority of any municipality. This is further supported by the footnotes in Title 29 that cites court cases which establish a broad, liberal construction of powers to municipalities. The platting, planning, and zoning powers, are powers to regulate land subdivision; though your borough could not regulate the subdivision of land by use of the police power, it certainly would not prohibit your borough from subdividing land.
2. The answer to your second question is answered by the above response: There appears to be no problem expending funds from the sale of land for a valid purpose, such as education. The 1979 amendment to AS 29.48.010(9) is permissive only, and creates no prohibition or limitation on a municipality. A municipality would not be prevented from expending moneys otherwise that is allowed under the amendment.

These answers to your questions relating to land disposal are staff opinions only, I would strongly suggest that you ask your borough attorney to give you further advice.

If the land disposals within your borough raise other problems or questions, do not hesitate to contact me.

Sincerely,



for Theodore G. Smith
Director

XC: City of Haines 8/26/80

MEMORANDUM

Date: October 16, 1980
To: Russell W. Walker, Title 29 rewrite committee
From: Michael W. Worley, President, Alaska Ass'n of Assessing Officers
Subject: Title 29 rewrite; Chapter 53

On October 14, certain members of AAAO met in Juneau to discuss recommended revisions to chapter 53 of title 29. Those present were:

Bob Howe	from:	Juneau
Zeno Walther	from:	Juneau
Don Thomas	from:	Kenai
Dave Braden	from:	Fairbanks
Karl McManus	from:	Fairbanks
John Arney	from:	Haines
Steve VanSant	from:	State Assessor's Office
Chuck Foster	from:	Mat Su
Mike Worley	from:	Ketchikan

Enclosed are the recommendations which evolved from that meeting.

On behalf of AAAO, I request your committee consider these suggestions and I encourage you to incorporate them in your final draft of the title 29 rewrite to be presented to the Alaska Municipal League.

enc:

cc: Glenn Mckee
Dave Braden
Robert Howe
Steve VanSant

John W. Arney
Don Thomas
Edward Haney
Charles Hopson

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

Chapter 53. Municipal Assessment and Taxation.

Article 1. Municipal Property Tax.

Sec. 29.53.010. General property tax. Home rule and general law boroughs may levy (1) an areawide property tax for areawide functions, and (2) a property tax limited to the area outside cities for functions limited to the area outside cities. A property tax if levied must be assessed, levied and collected on real and personal property as provided in this chapter. (§ 2 ch 118 SLA 1972)

Taxation of personal property of Town of Fairbanks v. Independent Student located outside city. — See Most Mt., 4 Alaska 147 (1910).

The North Slope Borough is a viable legal entity with powers to tax as provided to boroughs by this section. Arnes Pipe Line

Co. v. North Slope Borough, Superior Court, 5th Jud. Dist., C.A. No. 73-284 and C.A. No. 73-284 to 73-304 (1973).

Sec. 29.53.020. Required exemptions. (a) The following property is exempt from general taxation:

(1) municipal, state or federally owned property, except that private leaseholds, contracts or other interest in the property shall be taxable to the extent of those interests;

(2) household furniture of the head of a family or a householder not exceeding \$500 in value;

(3) property used exclusively for nonprofit religious, charitable, cemetery, hospital or educational purposes;

(4) property of a nonbusiness organization composed entirely of persons with 90 days or more of active service in the armed forces of the United States whose conditions of service and separation were other than dishonorable, or the property of the auxiliary of such organization;

(5) money on deposit;

(6) the real property of certain residents of the state to the extent and subject to the conditions provided in (e) of this section.

(b) "Property used exclusively for religious purposes" includes the following property owned by a religious organization:

(1) the residence of a bishop, pastor, priest, rabbi, minister or religious order of a recognized religious organization;

(2) a structure, its furniture and its fixtures used solely for public worship, charitable purposes, religious administrative offices, religious education or a nonprofit hospital;

(3) lots supporting and adjacent to a structure or residence mentioned in (1) or (2) of this subsection which are necessary to convenient use;

(4) lots required by local ordinance for parking near a structure defined in (2) of this subsection.

(c) Property described in (a) or (b) of this section from which income is derived is exempt only if that income is solely from use of the property by nonprofit religious, charitable, hospital, or educational groups for classroom space.

(d) Laws exempting certain property from execution under the Code of Civil Procedure (AS 09) do not exempt the property from taxes levied and collected by municipalities.

29.53.020.(a)(2)

Delete: "...not exceeding \$500 in value;"

(see also 29.53.025(b)(2)(A))

Groups, n. 14

29.53.020.(c)

Delete: "...for classroom space.
Insert: "If used by nonprofit educational groups, the property is exempt only if used exclusively for classroom space."

for classroom space

...the value of the real property. Only one exemption may be granted with respect to the same property and, if two or more persons are eligible for an exemption with respect to the same property, the parties shall decide between or among themselves which shall receive the benefit of the exemption. No real property may be exempted under this subsection which the assessor determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption. The determination of the assessor is appealable under AS 44.62.560 -- 44.62.570.

(d) No exemption may be granted except upon written application for the exemption on a form prescribed by the state assessor for use by local assessors. The claimant must file the application no later than January 15 of the assessment year for which the exemption is sought, but during the same year the governing body of the municipality for good cause shown may waive the claimant's failure to make timely application for the exemption for that year and authorize the assessor to accept the application as if timely filed. The claimant must file a separate application for each assessment year in which the exemption is sought. If an application is filed within the required time and is approved by the assessor, he shall allow an exemption in accordance with the provisions of this section. If a claimant whose failure to file by January 15 of the assessment year has been waived as provided in this subsection and the application for exemption is approved, the amount of tax which the claimant may have already paid for the assessment year with respect to the property exempted shall be refunded to him. The assessor may at any time require proof in the form he considers necessary of the right and amount of an exemption claimed under this section.

(e) The state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of (c) of this section. However, reimbursement will be made to a borough or city for revenue lost to it only to the extent that the loss exceeds an exemption which was granted by the borough or city, or which upon proper application by an individual would have been granted by the borough or city, under § 25(a) of this chapter.

(f) Except as provided in (g) of this section, nothing in (e)-(f) of this section affects similar exemptions from property taxes granted by municipalities on September 10, 1972 or prevents municipalities from

granting similar exemptions by ordinance as provided in § 25 of this chapter.

(Am 66 1, 2 ch 60 SLA 1973; am 6 1 ch 65 SLA 1975; am 6 1 ch 191 SLA 1976; am 6 1 ch 217 SLA 1976; am 66 1, 2 ch 229 SLA 1976; am 6 1 ch 97 SLA 1977)

(i) In (e)-(f) of this section the term "real property" includes but is not limited to mobile homes, whether classified as real or personal property for municipal tax purposes. (§ 2 ch 118 SLA 1972)

History of section. — See City of Anchorage v. Chugach Elec. Ass'n, 17 Alaska 481, 252 P.2d 412 (9th Cir. 1956).

This section was enacted pursuant to Alaska Const., art. IX, § 6. *Harmon v. North Pac. Union Conference Ass'n of Seventh Day Adventists*, Sup. Ct. Op. No. 591 (File No. 1080), 482 P.2d 422 (1963).

Intent of constitutional convention. — The constitutional convention intended that only so much of the property used for religious purposes as

was being used to produce income should be taxable, that such other parts should be exempt, and that a proration between taxable and nontaxable parts should be made. 1962 Op. Att'y Gen., No. 15.

Purpose. — The purpose of this section is to encourage the establishment of privately supported nonprofit educational institutions; the motivation for their establishment is largely irrelevant. *McKee v. Evans*, Sup. Ct. Op. No. 743 (File No. 1582), 490 P.2d 1224 (1971).

29.53.020.(f)

Following the words "No exemption may be granted..."

Insert: "under (e) of this section."

1975 amendment, effective May 15, 1975, in subsection (f) deleted the former second sentence and the present second and third sentences by substituting "The amount for 'and' at the beginning of the present third sentence added the language beginning 'but during the same year' to the end of the second sentence, and added the present fifth sentence.

The first 1976 amendment, effective January 1, 1977, in subsection (b), substituted "a sub-a. master" for "the master" in paragraph (1) and inserted "religious administrative offices" in paragraph (2).

The second 1976 amendment, in subsection (a), deleted "After January 1, 1975" from the beginning of the first sentence, added the language beginning "up to and including an assessed value limit" to the end of that sentence, and added the former second sentence.

The third 1976 amendment, effective June 18, 1976, added the second sentence of subsection (a) which read "Except as provided in (g) of this section," to the beginning of subsection (b) and deleted the former second sentence of subsection (b), which read "However, under (c) - (i) of this section only the amount of revenue lost to the municipality by reason of the exemption authorized in these provisions may be reimbursed to the municipality by the state."

The 1977 amendment, effective June 18, 1977, and retroactive to January 1, 1977, in subsection (c), deleted "up to and including an assessed value limit determined no later than January 15 of each year by the commissioner of the Department of Community and Regional Affairs" from the end of the first sentence and deleted the former second sentence, which read "The

amount of revenue lost to the municipality by reason of the exemption authorized in these provisions may be reimbursed to the municipality by the state."

As the end of the section was not affected by the amendments, it is not set out.

Editor's note: - Section 1, ch. 22, R.S.A. 1971, provides: "Notwithstanding the provisions of AS 29.53.021, for the 1975 assessment year the filing date for application for the exemption granted under AS 29.53.021(a) is extended to March 15, 1975."

Religious construction.

The courts must narrowly construe statutes granting tax exemptions. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1290 (File No. 2445), 553 P.2d 467 (1976).

Burden of showing eligibility for exemption. - A taxpayer claiming a tax exemption has the burden of showing that the property is eligible for the exemption. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1290 (File No. 2445), 553 P.2d 467 (1976).

Exclusive use for nonprofit religious, etc., purposes must be shown. In order to qualify for an exemption, the taxpayer must show not benefits, but exclusive use for nonprofit religious, charitable, cemetery, hospital or educational purposes. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1290 (File No. 2445), 553 P.2d 467 (1976).

When the property in question is used even in part by nontax-exempt parties for their private business purposes, there can be no exemption. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1290 (File No. 2445), 553 P.2d 467 (1976).

Actual use rather than owner's use should be analyzed in determining eligibility for an exemption. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1290 (File No. 2445), 553 P.2d 467 (1976).

Office space rented to doctors engaged in private practice. - Office space in a building partially used exclusively for nonprofit hospital purposes, rented to doctors engaged in the private practice of medicine by a nonprofit charitable and religious corporation, was not exempt from taxation. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1290 (File No. 2445), 553 P.2d 467 (1976).

While the use of office space by doctor-tenants in conducting their private practice does provide incidental benefits to the adjacent hospital, the office space is not used exclusively for hospital purposes. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1290 (File No. 2445), 553 P.2d 467 (1976).

Sec. 29.53.021. Optional exemptions and exclusions. (a) Municipalities may exclude or exempt or partially exempt residential property from taxation by ordinance ratified by the voters at a regular or special election. An exclusion or exemption authorized by this section may not exceed \$10,000 for any one residence.

(b) Municipalities may, by ordinance

(1) classify boats and vessels for purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage; a tax based upon a tonnage valuation shall not exceed \$3 a year for a boat or vessel of less than five net tons and shall not exceed \$15 a year for a boat or vessel of more than five net tons;

(2) classify and exempt from taxation

(A) the household furniture over \$100 in value and the effects of the head of a family or a household, and

(B) the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes, provided that income derived from rental of such property does not exceed the actual cost to the owner of the use by the renter; and

29.53.025(b)(2)(A)
Delete all.

Passin!
Call Brumley
+ Alice Stampert
already all
hundred families
- so want to just
take out optional.

~~Sec. 29.53.030. Mining claims. The assessed value of an un-
proved patented mining claim which is not producing, and a non-
producing patented mining claim upon which the improvements
originally required for patent have become useless and valueless
through depreciation, removal or otherwise, is ~~assessed~~
each 50 acres or fraction thereof. If the surface ground of a
claim has a separate and independent value for nonmining uses,
the full and personal property is assessed at its full and true value.
(§ 2 ch 118 SLA 1972)~~

29.53.030.
Delete all.

Sec. 29.53.031. Farm or agricultural lands. (a) Farm use lands
included in a farm unit and not dedicated or being used for nonfarm
purpose shall be assessed on the basis of full and true value for farm
use, and shall not be assessed as if subdivided or used for some other
nonfarm purpose. The assessor shall maintain records valuing the farm
use land for both full and true value and farm use value. Should the farm
use land be sold, leased, or otherwise disposed of for uses incompatible
with farm use or be converted to a use incompatible with farm use by
the owner, the owner is liable to pay an amount equal to the additional
tax at the current mill levy together with eight per cent interest for the
preceding seven years, as though the land had not been assessed for
farm use purposes. Payment by the owner shall be made to the state
to the extent of its reimbursement for revenue loss under (c) of this
section for the preceding seven years. The balance of the payment shall
be made to the city or borough.

(b) An owner of farm use land must, to secure the assessment, make
application to the assessor before May 15 of each year in which the
assessment is desired. The application shall be made upon forms
prescribed by the state assessor for the use of the local assessor and
shall include information which may reasonably be required to
determine the entitlement of the applicant. If the farm use land is leased
for farm use purposes, the applicant shall furnish to the assessor a copy
of the lease bearing the signatures of both lessee and lessor along with
the completed application. The applicant shall furnish the assessor a
copy of the lease covering the period for which the exemption is
requested.

(c) In this section "farm use" means the use of land for raising and
harvesting crops or for the feeding, breeding and management of
livestock or for dairying or another agricultural use for profit or any
combination thereof. To be farm use land, the owner or the lessee must
be actively engaged in farming the land, and derive at least 10 per cent
of his yearly gross income from the farm use land. The provisions of
this section do not apply to land respecting which the owner has granted,
and has outstanding, a lease or option to buy the surface rights. A
property owner wishing to file for farm use classification having no
history of farm-related income may submit a declaration of intent at the
time of filing the application with the assessor setting out the intended
use of the land and the anticipated percentage of income. An applicant
using this procedure shall file with the assessor before February 1 of
the following year a notarized statement of the percentage of gross

income attributable to the farm use land. Failure to make the filing
required in this subsection forfeits the exemption.

(d) In the event of a crop failure by an act of God the previous year,
the owner or lessee may submit an affidavit affirming that 10 per cent
of his gross income for the past three years was from farming.

(e) Subject to legislative appropriations for the purpose, the state
shall reimburse a borough or city, as appropriate, for the real property
tax revenues lost to it by the operation of this section. (§ 2 ch 118 SLA
1972; am § 1 ch 90 SLA 1974; am § 3 ch 226 SLA 1976; am § 1 ch 66
SLA 1978)

Effect of amendments. — The 1974
amendment made such changes in
subsections (d), (b), and (c) as to make a
detailed comparison impracticable and
added subsections (d) and (e).

The 1976 amendment, effective June 21,
1976, and retroactive to January 1, 1975, in
subsection (d), substituted "was
incompatible with farm use" for "three
than farm use purposes." It was

incompatible with farm use" for "nonfarm
use" and "eight per cent" for "five per
cent" in the third sentence, inserted "at the
current mill levy" in that sentence, and
added "for the preceding seven years" at
the end of the fourth sentence.

The 1978 amendment substituted "May
1" for "February 1" in the first sentence
of subsection (b).

ADD:
"Exempt?"
"Prodn all Prod?"

Sec. 29.53.050. Tax limitation. (a) No municipality may levy and use for any purpose in excess of three per cent of the assessed valuation of property within the municipality in any one year.

(b) No municipality, or combination of municipalities occupying the same geographical area, in whole or in part, may levy taxes (1) which will result in tax revenues from all sources exceeding \$1,000 a year for each person residing within their boundaries or (2) upon values which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality. If two or more municipalities occupying the same geographical area in whole or in part attempt to levy a tax (1) the combined levy of which would result in tax revenues from all sources exceeding \$1,000 a year for each person residing within their boundaries or (2) upon value which, when combined with the value of property otherwise taxable by the municipality, exceed the product of 225 per cent of the average per capita assessed full and true value of property in the state multiplied by the number of residents of the taxing municipality, the commissioner of community and regional affairs shall apportion the lawful levy and equitably divide these revenues on the basis of need, services performed and other considerations in the public interest. For the purpose of this subsection, population shall be determined by the commissioner of community and regional affairs based on the latest statistics of the United States Bureau of the Census or on other reliable population data. For purposes of this subsection the average per capita assessed full and true value of property in the state shall be calculated without regard to the assessed value of taxable property under AS 43.58. (6 2 ch 118 SLA 1972; am 4 ch 1 FSSLA 1973; am 5 ch 159 SLA 1975)

29.53.050.(b)
Delete the two references to
"\$1000".
insert "\$1500" in place of
each

- Per Jerry Early,
- Is required by some
other statute.

STUS. KANSON
465-4730

29,53.045
<New>

Effect of amendments. - The 1973 amendment, effective January 1, 1974, added subsection (b).

The 1975 amendment, effective June 25, 1975, in subsection (b) inserted "(1)" "upon values which," and "exceed" in both

the first and second sentences, deleted "either (1)" preceding "\$1,000" in these sentences, and added the fourth sentence. Editor's note. - Section 4, ch. 138, SLA 1975, contains a covering clause.

"Limitation on taxing power relates to use of revenues for ordinary municipal purposes. - The provisions of this section limiting the taxing power of the town to three per cent of the as-

essed valuation upon all property relate to the use of revenues for ordinary municipal purposes. Lund v. Town of Petersburg, 203 P. 898 (9th Cir. 1922).

Sec. 29.53.055. No limitation on taxes to pay bonds. The limitations provided for in 45 or 50 of this chapter do not apply to taxes levied or pledged to pay or secure the payment of the principal and interest on bonds. Taxes to pay or secure the payment of principal and interest on bonds may be levied without limitation as to rate or amount, regardless of whether the bonds are in default or in danger of default. (6 2 ch 118 SLA 1972; am 5 ch 1 FSSLA 1973; am 6 ch 94 SLA 1977)

Effect of amendments. - The 1973 amendment, effective January 1, 1974, substituted "limitations provided for in 45 or 50 of this chapter do" for "limitations provided for in 45 of this chapter do" in the first sentence.

The 1977 amendment, effective June 2, 1977, and retroactive to January 1, 1976, added "regardless of whether the bonds are in default or in danger of default" to the end of the section.

This section, literally read, does not render AS 29.53.015 and 29.53.016 meaningless. This section applies only to debt financing. The limitations of AS 29.53.015 and 29.53.016 apply to operating revenues. Merely because they do not also curb taxes to pay for bonds does not render them null and void. North Slope Borough v. Yukon Petroleum Corp., Sup. Ct. Op. No. 1750 (file Nov. 2nd, 2011, 2020, 100 P 84 534 (1975).

Continuing legislative history of this section. — For *North Slope Borough v. Yukon Petroleum Corp.*, Sup. Ct. Op. No. 1750 (File Nos. 3468, 3412, 3439, 345 P.2d 344 (1974)).

Chapter 61, SLA 1977, relating to both state and local taxation does not violate Alaska Const., art. II, § 11, which requires every bill to be related to one subject. *North Slope Borough v. Yukon Petroleum Corp.*, Sup. Ct. Op. No. 1750 (File Nos. 3468, 3412, 3439, 345 P.2d 344 (1974)).

Authority to pay for municipal bonds. — This section and AS 29.53.060 authorize towns to pay for municipal bonds, independent of the limitations of AS 29.53.063 or 29.53.064, and regardless of whether the bonds are in default or default is pending. *North Slope Borough v. Yukon Petroleum Corp.*, Sup. Ct. Op. No. 1750 (File Nos. 3468, 3412, 3439, 345 P.2d 344 (1974)).

Alaska Statute 29.53.060 assesses taxation of all AS 29.53 property. — The last sentence of the section sets forth the language which authorizes taxation of AS 29.53 property. *North Slope Borough v. Yukon Petroleum Corp.*, Sup. Ct. Op. No. 1750 (File Nos. 3468, 3412, 3439, 345 P.2d 344 (1974)).

The second sentence of this section does contain independent authorizing language. "Towns ... may be levied," but may not be construed as a grant to tax AS 29.53 property independent of the authority of AS 29.53.063 for distinct from an independent town. AS 29.53.063 and 29.53.064 provide that municipalities may tax AS 29.53 property only under AS 29.53.063. *North Slope Borough v. Yukon Petroleum Corp.*, Sup. Ct. Op. No. 1750 (File Nos. 3468, 3412, 3439, 345 P.2d 344 (1974)).

Sec. 29.53.060. Full and true value. (a) The assessor shall assess property at its full and true value as of January 1 of the assessment year, except as provided in this section and §§ 30, 35 and 160 of this chapter. The full and true value is the estimated price which the property would bring in an open market and under the then prevailing market conditions in a sale between a willing seller and a willing buyer both conversant with the property and with prevailing general price levels.

(b) Assessment of business inventories may be based on the average monthly method of assessment rather than the value existing on January 1. The method used to assess business inventories shall be prescribed by the borough assembly. (§ 2 ch 118 SLA 1972)

(c) In the case of cessation of business during the tax year, the assembly may provide for reassessment of business inventories using the average monthly method of assessment for the tax year rather than the value existing on January 1 of the tax year, and for reduction and refund of taxes. In enacting an ordinance authorized by this section, the assembly may prescribe procedures, restrictions, and conditions of assessing or reassessing business inventories and of remitting or refunding taxes.

(Am § 45 ch 53 SLA 1973; am § 1 ch 46 SLA 1974)

Effect of amendments. — The 1973 amendment deleted "of a municipality" following "assessor" in the first sentence of subsection (a).

The 1974 amendment added subsection (b).

As the rest of the section was not affected by the amendments, it is not set out.

Editor's note. — The amendment in the main pamphlet, reading "This section applies only to the tax year during which a disaster takes place," was necessary located under this section. It appears in AS 29.53.160.

Legislative committee report. — For report on ch. 53, SLA 1973 (CSHB 662), see 1973 House Journal, pp. 784, 884.

Sup. Ct. Op. No. 636 (File No. 1214), 673 P.2d 610 (1976).

The borough assessor had the power to grant earthquake decrements. *Hobbit v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 610 (1976).

Property was not entitled to an earthquake decrement for tax assessment purposes since there was an absence of evidence indicating that its market value was reduced. *Hobbit v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 636 (File No. 1214), 473 P.2d 610 (1976).

Valuation of boats and vessels on the basis of registered or certified

tonnage rather than full and true value does not limit the application of the full and true value as to boats and vessels. 1962 Op. Atty Gen., No. 18.

Determining portion of property devoted to purposes of organization. — Determination of what portion of property owned by a charitable, religious, or educational organization is devoted to purposes of the organization, is a factual function devolving upon the assessor and the board of equalization by law. *Sisters of Charity v. Greater Anchorage Area Borough*, 6 Alaska L.J. No. 11, p. 372 (Sept., 1970).

29.53.060.(a)
Following the words "The assessor shall...",
Delete the word "...assess..."
Insert the word "...value..."

(Floor)
We don't
know for sure
when it will
be -

Sec. 29.53.109. Assessment notice. (a) The assessor shall give every person named in the assessment roll a notice of assessment, showing the assessed value of his property. On each notice is printed a brief summary of the dates when taxes are payable, delinquent and subject to penalty and interest, and the date when the board of equalization will sit.

(b) Sufficient assessment notice is given if mailed by first class mail 30 days before the equalization hearings. If the address is not known to the assessor, the notice may be addressed to the person at the post office nearest the property. Notice is effective on the date of mailing. (§ 2 ch 113 SLA 1972)

Mandatory provision of action not complied with. — Mandatory provisions of AS 29.53.109 and tax action relating to assessment procedure were not complied with by the North Slope Borough. Such non-compliance is a violation of the rights

of plaintiff to due process in the levy of taxes against them. Area Pipe Line Co. v. North Slope Borough, Superior Court, 4th Jud. Dist., C.A. No. 73-234 and C.A. Nos. 73-235 to 73-236 (1972).

29.53.110.(a)
Delete: "...and the dates when the board of equalization will sit..."

Sec. 29.53.120. Corrections. (a) A person receiving an assessment notice shall advise the assessor of errors or omissions in the assessment of his property. The assessor may correct errors or omissions in the roll before the board of equalization hearing.

(b) If errors found in the preparation of the assessment roll are adjusted, the assessor shall mail a corrected notice allowing 30 days for appeal to the board. (§ 2 ch 113 SLA 1972)

Sec. 29.53.130. Appeal. (a) A person whose name appears on the assessment roll or his agent or assigns may appeal to the board of equalization for relief from an alleged error in valuation not adjusted by the assessor to the taxpayer's satisfaction.

(b) The appellant shall, within 30 days from the date of mailing of notice of assessment, submit to the assessor a written appeal specifying grounds in the form which the board may require. Otherwise, the right of appeal ceases unless the board finds that the taxpayer was unable to comply.

(c) The assessor shall notify appellants by mail of the time and place of their hearing.

(d) The assessor shall prepare for use by the board a summary of assessment data relating to each assessment which is appealed.

(e) A city may appeal an assessment to the board of equalization in the same manner as a taxpayer. Within five days after receipt of the appeal, the assessor shall notify the person whose property assessment is being appealed by the city. (§ 2 ch 113 SLA 1972)

Taxpayer may contest valuation. — Under this section a taxpayer may contest valuation before a board of trustees meeting as a board of equalization. Yakutat & S. Ry. v. City of Yakutat, 16 Alaska 18, 227 F.2d 9 (9th Cir. 1955).

Determining portion of property devoted to purpose of organization. — Determination of what portion of

property owned by a charitable, religious, or educational organization is devoted to purposes of the organization, is a factual function devolving upon the assessor and the board of equalization by law. Sisters of Charity v. Greater Anchorage Area Borough, 8 Alaska L.J. No. 11, p. 272 (Sept. 1970).

Applied in Area Pipe Line Co. v. North Slope Borough, Superior Court, 4th Jud. Dist., C.A. No. 73-234 and C.A. Nos. 73-235 to 73-236 (1972).

Quoted in Whigardner v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1125 (File No. 2461, 134 P.2d 641 (1974).

Sec. 29.53.135. Board of equalization. The assembly sits as a board of equalization for the purpose of hearing any appeal from determinations of the borough assessor, or it may delegate this authority to a board appointed by it for that purpose. The board of equalization shall consist of at least that number of members of the assembly over and above the number required for a quorum to transact business. The board is governed in its proceedings by such procedures consistent with general rules of administrative law and the laws governing equalization proceedings as may be adopted by ordinance, including but not limited to quorum and voting requirements. The assembly shall by ordinance adopt rules for the membership and conduct of the board. (§ 2 ch 113 SLA 1972)

Board of equalization is administrative body. — When the borough assembly functions as a board of equalization or adjustment, it acts as an administrative, not a legislative, body. 1945 Op. Atty Gen., No. 2.

When the borough assembly acts as an administrative body, whether as a board of equalization or adjustment, the weighted vote may not be used. 1945 Op. Atty Gen., No. 2.

Board of equalization is administrative body within meaning of Appellate Rule 41. — See *Wingardner v. Greater*

Anchorage Area Borough, Sup. Ct. Op. No. 1133 (File No. 2044), 534 P.2d 541 (1975).

Sec. 29.53.140. Hearing. (a) If an appellant fails to appear, the board of equalization may proceed with the hearing in his absence.

(b) The appellant bears the burden of proof.

(c) The only grounds for adjustment is proof of unequal, excessive or improper valuation based on facts which are stated in a valid written appeal timely filed or proved at the hearing.

(d) The board shall certify its actions to the assessor within seven days.

(e) The assessor shall enter the changes and certify the final assessment roll by June 1.

(f) An appellant may appeal to the superior court for, and is entitled to, trial de novo of the board's action. Either party to the appeal may demand a jury trial. (§ 2 ch 118 SLA 1972)

Scope of review. — The superior court will not substitute its judgment for the judgment of those upon whom the law confers the authority and duty to assess and levy taxes. The superior court is concerned with nothing less than fraud or the clear adoption of a fundamentally wrong principle of evaluation. *Sisters of Charity v. Greater Anchorage Area Borough*, 8 Alas. L.J. No. 11, p. 272 (Sept., 1970); *Twentieth Century Inv. Co. v. City of Juneau*, Sup. Ct. Op. No. 28 (File No. 42), 339 P.2d 743 (1961).

When valuation or assessment violates due process. — The valuation and assessment of property for taxes does

not contravene the due process clause of the 14th amendment unless it is plainly demonstrated that there is involved, not the exercise of the taxing power, but the exertion of a different and forbidden power, such as the confiscation of property. Such a demonstration is not made simply by showing overvaluation; there must be something which, in legal effect, is equivalent to an intention or fraudulent purpose to place an excessive valuation on property, and thus violate fundamental principles that safeguard the taxpayer's property rights. *Twentieth Century Inv. Co. v. City of Juneau*, Sup. Ct. Op. No. 28 (File No. 42), 339 P.2d 743 (1961).

Broad reading of subsection (e) held unconstitutional. — A broad reading of subsection (e) to implicitly permit the jury to set the valuation of property by finding that the valuation set by the assessor is "unreasonable" or "improper" is violative of the doctrine of separation of powers, while a more limited reading of subsection (e) is constitutionally permissible. *Wingardner v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 1133 (File No. 2044), 534 P.2d 541 (1975).

Subsection (f) delegates to a jury the power previously held exclusively by the borough assembly. *Wingardner v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 1133 (File No. 2044), 534 P.2d 541 (1975).

There is no constitutional right to a trial by jury to determine proper tax assessments. *Wingardner v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 1133 (File No. 2044), 534 P.2d 541 (1975). Proceedings to levy and collect taxes are

29.53.140.(c)
Following the words: "...
valid written appeal timely
filed...",
Delete the word "...or..."
Insert the word "...and..."

except as to
Supplementary
assessments.

Change to
"AND"

* * * Delete or provide
NO JURY TRIAL - ~~Prohibit~~
"Satisfied" 9 vid. Rule "enf."
Provides

of the court in the case of *Wingardner v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 1123 (File No. 2044), 534 P.2d 541 (1975).

Right to fresh assessment of taxes on appeal. — Subsection (f) grants a taxpayer's right to have the judgment of a jury substituted for that of the borough assembly sitting as its own board of equalization. The right, however, is not to a fresh assessment of taxes of the property. *Wingardner v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 1123 (File No. 2044), 534 P.2d 541 (1975).

Subsection (f) does not purport to authorize judicial formulation of general tax policies. It asks the courts to conform with the act of a jury, only the functioning judicial task in the event of disagreement as to particular instances whether policy to be followed in the assessment of taxes has been accurately applied. *Wingardner v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 1123 (File No. 2044), 534 P.2d 541 (1975).

Contention that board cannot be administrative agency because its decisions are subject to judicial review under subsection (f) held without merit. — See *Wingardner v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 1123 (File No. 2044), 534 P.2d 541 (1975).

Cited in *Arco Pipe Line Co. v. North Slope Borough*, Superior Court, 4th Jud. Dist., C.A. No. 73-456 and C.A. Nos. 73-494 to 73-504 (1973).

Though review resembles original proceeding, — (i) now jury trial does signal judicial review beyond the limited scope associated with a classic appeal; and (ii) the jury may disregard some of the findings of a board

of equalization. The court, however, in original proceeding. *Wingardner v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 1123 (File No. 2044), 534 P.2d 541 (1975).

Right to fresh assessment of taxes on appeal. — Subsection (f) grants a taxpayer's right to have the judgment of a jury substituted for that of the borough assembly sitting as its own board of equalization. The right, however, is not to a fresh assessment of taxes of the property. *Wingardner v. Greater Anchorage Area Borough*, Sup. Ct. Op. No. 1123 (File No. 2044), 534 P.2d 541 (1975).

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Cited in *Arco Pipe Line Co. v. North Slope Borough*, Superior Court, 4th Jud. Dist., C.A. No. 73-456 and C.A. Nos. 73-494 to 73-504 (1973).

Sec. 29.53.150. Supplementary assessment rolls. The assessor shall include property omitted from the assessment roll on a supplementary roll, using the procedures set out in this chapter for the original roll. ((2 ch 118 SLA 1972))

Erroneous omissions from assessment roll do not invalidate all taxes. — The omission of property from an assessment roll, through error of judgment or of law, will not invalidate all taxes, thus practically putting an end to the operations of government. *Valentine v. City of Jurupa*, 36 F.2d 904 (9th Cir. 1929).

Sec. 29.53.160. Tax adjustments on property affected by a natural disaster. (a) The assembly may provide for reassessment and reduction of taxes for property destroyed, damaged, or otherwise reduced in value as a result of a natural disaster.

(b) A reassessment may be made by the assessor only upon the receipt of a sworn statement of the taxpayer that his losses exceed \$1,000. A reduction of taxes may be made only on losses in excess of \$1,000 for the remainder of the year following the disaster. Upon reassessment, the borough shall recompute this tax and refund taxes which have already been paid.

(c) The borough shall make notice of assessment or reassessment and shall hold an equalization hearing as provided in this chapter, except that a notice of appeal is filed with the board of equalization within 10 days after notice of assessment is given to the person appealing. Otherwise, the right of appeal ceases unless the board finds that the taxpayer is unable to comply.

(d) In enacting an ordinance or resolution authorized by this section, the assembly may, consistent with this section, prescribe procedures, restrictions and conditions of assessing or reassessing property and of remitting, refunding or forgiving taxes.

(e) In this section "disaster" means a major disaster declared by the President of the United States under the provisions of the Federal Disaster Act of 1950, Title 42, United States Code, sec. 1861-1865g, or other federal law. ((2 ch 118 SLA 1972))

Editor's note. — This section is based on former AS 29.10.297.

This section applies only to the tax year during which a disaster takes place. *Robb v. Greater Anchorage Area*

Borough, Sup. Ct. Op. No. 686 (File No. 1216), 473 P.2d 689 (1970).

29.53.150. Add the following sentence to this section:

"Any supplementary roll must be finalized and certified on or before September 1 of the assessment year."

29.53.155. Insert new section:

Sec. 29.53.155. Manifest errors. Manifest errors discovered in the assessment roll may be corrected by the assessor and an adjustment made to the roll subsequent to its certification.

* *Wade definition*
no do tax admin

*Per. State assessor,
He needs final
figure of Rev. Sharing
an etc. matters
BY Oct. 1 - See
must get Supplementary
Rolls in*

Sec. 29.53.350. (a) The clerk shall publish a redemption notice. The notice shall contain the date of judgment, the date of expiration of the period of redemption and a warning to the effect that all properties ordered sold under the judgment, unless redeemed, shall be deeded to the borough or city immediately on expiration of the period of redemption and that every right or interest of any person in the property will be forfeited forever to the borough or city. The notice is published once a week for four consecutive weeks in a newspaper of general circulation distributed within the borough. If there is no newspaper of general circulation distributed within the borough, the notice is posted in three public places for at least four consecutive weeks. The clerk shall send a copy of the published notice by certified mail to each record owner of property against which a judgment of foreclosure has been taken and, if the assessed value of the property is more than \$10,000, to all holders of mortgages or other liens of record on the property. The notice shall be mailed within five days of the first publication. The mailing shall be sufficient if mailed to the property owner and to the holder of a mortgage or recorded lien at the last address of record. The right of redemption shall expire 30 days after the date of the first publication notice.

(b) Costs incurred in the determination of holders of mortgages and other liens of record and costs of publication of notice incurred by a municipality under (a) of this section are a lien on the property and may be recovered by the municipality. (§ 2 ch 118 SLA 1972; am 66 2, 3 ch 48 SLA 1977)

Effect of amendment. — The 1977 amendment designated the provisions of this section as subsection (a) and in that subsection, substituted "At least" for "Not earlier than" at the beginning of the first sentence, substituted the language beginning "which a judgment of

foreclosure has been taken" for "when a judgment of foreclosure has been taken" at the end of the fifth sentence, and inserted "and to the holder of a mortgage or recorded lien" in the seventh sentence. The amendment also added subsection (b).

Sec. 29.53.260. Deed to borough or city. (a) Unredeemed properties in the area of the borough outside cities are deeded to the borough by the clerk of the court. Unredeemed properties within a city are deeded to the city subject to the payment by the city of unpaid borough taxes and costs of foreclosure levied against the property before foreclosure. The deeds shall be recorded in the recording district in which the property is located.

(b) Conveyance gives the borough or the city clear title except for prior recorded liens of the United States and the state.

(c) If unredeemed property lies within a city and if the city has no immediate public use for the property but the borough does have an immediate public use, the city shall deed the property to the borough. If unredeemed property lies within the borough outside a city and if the borough does not have an immediate public use for the property but the city does have an immediate public use, the borough shall deed the property to the city.

(d) No deed is invalid for irregularities, omissions or defects, unless the former owner has been misled to his injury. After two years from the date of the deed, its validity is conclusively presumed and any claim of the former owner is forever barred. (§ 2 ch 118 SLA 1972)

Upon foreclosure, municipality receives new title to property, free from encumbrances. — The general rule in Alaska and the great majority of jurisdictions is that once a municipality forecloses on property for failure to pay taxes, it receives a new title to the property free from all encumbrances. *Jefferson v. Metropolitan Mfg. & Inv. Co., Sup. Ct. Op.*

No. 843 (File No. 1438), 508 P.2d 1296 (1972).

And a buyer of the property at a subsequent tax sale receives a new, independent title and not that of the former owner. *Jefferson v. Metropolitan Mfg. & Inv. Co., Sup. Ct. Op. No. 843 (File No. 1438), 508 P.2d 1296 (1972).*

As a general rule the purchaser of

property at a tax sale receives a new title free from all encumbrances. *Jefferson v. Metropolitan Mfg. & Inv. Co., Sup. Ct. Op. No. 843 (File No. 1438), 508 P.2d 1296 (1972).*

Unless the buyer is the owner. — An owner of property may not purchase his own title to property by failing to pay his taxes and either directly or indirectly repurchasing the property at a tax sale. *Jefferson v. Metropolitan Mfg. & Inv. Co., Sup. Ct. Op. No. 843 (File No. 1438), 508 P.2d 1296 (1972).*

It is the general rule that when the owner

of record redeems or repurchases his property, his purchase merely operates as a payment of the taxes and he receives the same title he held before the municipality's foreclosure. He can not evade the purpose of the statute by allowing the property to be sold to a third person and then buying it back, or by any other arrangement which would directly or indirectly defeat the operation of the rule. *Jefferson v. Metropolitan Mfg. & Inv. Co., Sup. Ct. Op. No. 843 (File No. 1438), 508 P.2d 1296 (1972).*

29.53.350. (a)
Following the words:
"...has been taken
and, if the assessed
value of the property
is more than..."
Delete: "...\$10,000."
Insert: "...\$100,000."

Sec. 29.53.328. Proceeds of tax sale. (a) Upon sale of foreclosed real or personal property the borough or city shall divide the proceeds less cost of collection, between the borough and the city having unpaid taxes

against the property. The division is in proportion to the respective municipal taxes against the property at the time of foreclosure.

(b) The former record owner of tax-foreclosed real property which has been held by a municipality for less than 10 years after the close of the redemption period and never designated for a public purpose which is sold at a tax-foreclosure sale is entitled to the portion of the proceeds of the sale which exceeds the amount sufficient to satisfy unpaid taxes, delinquent taxes assessed and levied as if the property had continued in private ownership, penalty, interest and costs of property sold, including costs incurred under § 25(b) of this chapter. If the proceeds of the sale of tax-foreclosed property exceed the total of unpaid and delinquent taxes, penalty, interest, and costs, the borough or city shall provide the former owner of the property written notice advising of the amount of the excess and the manner in which a claim for the balance of the proceeds may be submitted. Notice is sufficient under this subsection if mailed to the former owner at his last address of record. Upon presentation of a proper claim, the municipality shall remit the excess to the former record owner. A claim for the excess filed after six months of the date of sale is forever barred. (§ 2 ch 118 SLA 1972; am § 7 ch 48 SLA 1977)

Sec. 29.53.333. Payment of taxes upon public utilization. If a city or borough holds or takes title to tax-foreclosed property for a public purpose, the city or borough shall satisfy unpaid taxes and assessments against the property held by other municipalities, with accrued interest but without penalty. If the amount required to satisfy the unpaid taxes and assessments exceeds the assessed valuation of the property, the city or borough shall pay the other municipalities the assessed valuation, which shall be divided between the other municipalities in proportion to their respective taxes and assessments against the property at the time of foreclosure. (§ 2 ch 118 SLA 1972)

Sec. 29.53.390. Refund of taxes. (a) If a taxpayer pays taxes under protest, he may bring suit in the superior court against the borough for recovery of the taxes. If judgment for recovery is given against the borough, the borough shall refund the amount of the taxes to the taxpayer with interest at eight per cent from the date of payment plus costs.

(b) If, in payment of taxes legally imposed, a remittance by a taxpayer through error or otherwise exceeds the amount due, and the borough, on audit of the account in question, is satisfied that this is the case, the borough shall refund the excess to the taxpayer with interest at eight percent from the date of payment. A claim for refund filed after one year of the due date of the tax is forever barred. (§ 2 ch 118 SLA 1972)

Article 3. City Property Tax.

Sec. 29.53.400. Power of levy. Home rule and first class cities within boroughs may levy a general property tax. A property tax,

if levied, shall be levied in the manner provided for borough levies in § 170(a) of this chapter and is subject to §§ 10—25, 60—65 and 810—860 of this chapter. The council shall by June 15 of each year present to the borough assembly a statement of the city's rate of levy, unless a different date is agreed upon by the borough and city. (§ 2 ch 118 SLA 1972; am § 5 ch 147 SLA 1972)

Effect of amendment. — The 1972 amendment, effective September 10, 1972, in the second sentence, inserted "shall be levied in the manner provided for borough levies in § 170(a) of this chapter and," inserted "10—25," and inserted "810—860."

29.53.390.(a)
Following the words: "If judgment for recovery is given...".
Delete: "...against the borough, the borough shall refund the amount of the taxes to the taxpayer...".
Insert: "...or if in the absence of suit, the borough assembly determines that judgment for the recovery of the taxes would be obtained if legal proceedings were brought, the amount of the taxes shall be refunded to the taxpayer...".

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LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

**: PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
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SUMMARY OF COMMENTS BY
C. DEMING COWLES, DEPUTY COMMISSIONER
ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION
September 26, 1980

The Department of Environmental Conservation performs some functions which might be handled by local communities. Local governments, being closer to the people and environment affected, might serve its citizens far better than the State can in some instances, a fact recognized by the Legislature in the 1980 session.

ACTIVITIES

The following activities are suitable for local assumption:

1. On-lot Inspections

(The material for this review was taken from Alex Viteri's "Draft Investigation of the State of Alaska Department of Environmental Conservation's On-site Certification Program and Suggested Recommendations," July 1980.)

"The need for the on-site certification program is two-fold. First, it is used as a means of ensuring that the proposed house loan matches the fair market value. Major lending institutions place this responsibility on local banks and mortgage companies which process the loan application. Without an on-site certification program, local banks and mortgage companies would not be able to process loans for houses with on-site water or sewer systems in a manner which would be satisfactory to the lending institutions.

Secondly, the on-site certification program is used as a means of ensuring that the home buyer is protected from health hazards encountered with faulty on-site water and/or sewer systems and the cost associated with their repair. Nationwide, the responsibility for on-site certification is traditionally accepted by either State or local government health authorities. It is presumed that this is because of the health authorities' familiarity with the subject matter and its interrelationship with their goals.

The State of Alaska has recently authorized the Alaska Housing Finance Corporation to bond up to five hundred million dollars for the financing of house loan mortgages. By performing the on-site program, the Department is ensuring that the health, safety, and welfare of the people of the State and their overall economic well-being is protected, in keeping with AS 46.03.010. It is also protecting the financial credibility of the State of Alaska."

2. Subdivision Review

This activity entails the review of subdivision plans for adequate sanitary waste disposal and accompanying field inspections. Adequate subdivision plan review must be done by a competent engineer; however, most communities with an existing public works department might be able to utilize existing staff as long as State standards and guidelines are explicitly stated and followed.

3. Environmental Sanitation

This program includes all activities listed in Appendix I. Most states retain only 2-3 sanitarians on the public or environmental health staff. Their main function is to provide technical assistance and guidance to local or county health jurisdictions. Anchorage is the only municipality in Alaska which has assumed all environmental sanitation activities. Others, notably Ketchikan and Fairbanks, have assumed responsibility only for hospitals.

4. Small Oil Spills

This would involve the containment and cleanup of small spills which frequently occur around canneries, tank farm fueling sites and boat harbors. According to Andy Spear, who recently drafted a paper entitled "Local Involvement in Oil Spill Response:" "With the right training and equipment, the chronic small spill can be contained and cleaned up by local personnel, reducing the damage to the local environment and reducing the overall costs to federal and state governments. Coupled with local ordinances, local involvement in spill response could substantially reduce the total number of spill incidents."

5. Surface Oiling and Oily Waste Burn Permits

The oily gravels, earth and cleanup materials from an oil spill have to be disposed of somehow. While the potential for air pollution is the main deterrent to open burning of oily wastes, in some cases open burning might be preferable to other alternatives. If a municipality assumes part of the Small Oil Spill Program, it is reasonable to consider allowing similar control over the wastes generated by cleanup. However, since a high level of expertise is necessary to make judgements regarding oily wastes, probably only the larger communities would be capable of this function. Likewise, technical expertise is also required to make the correct decision whether to allow waste oil to be used on local roads as a dust suppressant. Note: If waste oil is declared a hazardous waste, the subject will be moot.

6. Litter Control

The intent here is for local jurisdictions to assume control over litter receptacles, youth litter programs, and litter in general. Communities, of course, often sponsor spring cleanup campaigns and several include litter prohibition in a general ordinance. But few, if any, have a comprehensive, functional program similar to that envisioned in the Litter Control and Resource Recovery Act, which is designed to specifically to combat litter. Since the Department is considering instituting its program only in areas outside organized municipalities, the latter may be faced with no program at all or with devising some systematic control effort to match that in the rural areas.

7. Vehicular Emissions

This responsibility pertains only to Anchorage and Fairbanks. Deterioration of air quality due to carbon monoxide emissions has not occurred in other parts of the State and is not of concern. The primary method of reducing CO emissions is through an Inspection and Maintenance (I/M) Program, and through

transportation planning and strategies. Both municipalities are lead agencies in these control efforts, but at least 2 full-time DEC positions are currently devoted to transportation planning and auto emissions control in the two cities.

ASSISTANCE

The Department recognizes that, although the State now may be wealthier due to oil revenues, the financial situation in most municipalities remains as dismal as in earlier years. Local governments everywhere are feeling a powerful fiscal crunch and Alaskan communities, even with higher revenue sharing are no different.

Ginny Chitwood of the Alaska Municipal League has stated that, when the question of subdivision review came up over a year ago, the concern was raised that most local communities didn't have the sophistication to do the job, couldn't afford to do it right, and, if they did it right, could go bankrupt. She also stated that, if DEC did adopt minimum standards for the functions it wanted to see municipalities assume, the larger municipalities might be willing to assume responsibility.

We want to assure local communities that, if they assume the above functions and State staff is no longer needed to perform them, State positions will be indeed be cut, with financial transfers as a method of assistance promoted on all levels.

In the meantime, the following are already available:

1. Grants

Two types of grants, both legislative, might be available. One is a direct grant to a community, usually for a specific community for a specific project. The second is a general legislative or Congressional grant authorization included in a law. The Litter Control and Resource Recovery Act is an example of such a grant. The State agency in this case basically passes through the money to the municipality. The only grants that DEC can make immediately available are those for litter control, which probably will not be over \$90,000 for this fiscal year.

2. Revenue Sharing

The revenue sharing formula and the qualified uses was drastically changed by the 1980 Legislature. Previously qualified uses were listed and quantified and, based on them, communities submitted their requests. Now a community receives an automatic \$25,000, but, beyond that, receives funding based on its own incentive to tax itself. Except for health and transportation-related activities, no activities are listed by type. Therefore, given this flexibility, a community can request funding for programs which were previously not covered by revenue sharing.

3. Technical Assistance

The primary assistance which we can give to communities assuming these activities and programs is a consistent set of standards and guidelines for implementation coupled with regularly scheduled workshops and courses for instruction for local staff.

MEMORANDUM

October 16, 1980

SUBJECT: A.F.N. Meeting

**TO: Policy Advisory Group
Technical Committee
Title 29 Revision**

**FROM: Tamara Brandt Cook
Legislative Counsel**

The Alaska Federation of Natives, Incorporated is holding its Fourteenth Annual Convention at the Sheraton Hotel in Anchorage on October 23, 24, and 25, 1980. In connection with this convention, an affiliated meeting dealing with the work being done by the Title 29 Revision Committee will be held on Friday, October 24th at 1:00 P.M.

You are invited to attend and to participate in the affiliated meeting which will focus on the concerns of smaller rural communities. Senator Arliss Sturgulewski will be there and I hope some of you are able to attend.

TBC:ljb

cc: Frank Ferguson, President, A.F.N.

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

Note:

Included are copies of recently distributed formal opinions of the Attorney General. These opinions are not included in the "Summary of Attorney General Memos and Opinions Concerning Title 29" which was previously sent to you.

Tamara Brandt Cook

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

MY E. HANSEN, ATTORNEY

420 'L' Street, Suite 100
Anchorage, Alaska 99501

May 6, 1980

Mr. Michael J. Walleri
Village Government Specialist
Tanana Chiefs Conference, Inc.
Doyon Building
First & Hall Streets
Fairbanks, Alaska 99701

Re: S.1181; Native Village
of Tanacross Proposal
Our File: A66-417-80

Dear Mr. Walleri:

I am sorry it has not been possible to respond substantively to your letter of April 4, 1980 to our Juneau office until today but my East Coast travel on state business lasted several days longer than I had originally intended, and I did not return to the office until April 28. I have received from you a copy of S.1181 which I understand is pending, together with other proposed amendments regarding Title 18 of the United States Code. It is my further understanding, based upon conversations with senatorial offices in Washington, that no action is expected on S.1181 during 1980, but that it may advance sometime after the first of the year. Your letters indicate that you do not feel the passage of S.1181 is necessary in order for the State to consider the proposed agreement with Tanacross for law enforcement, which was the subject of your April 4 letter.

Your letter of April 4 specifically requests participation by the State in discussions on the following subjects:

1. A mutual understanding of the definition of Indian country which reflects the federal law on the subject;
2. A cross-deputization agreement respecting tribal and state officials, including magistrates, constabulary and prosecutors;
3. An agreement respecting the regulatory authority of the State in Native villages, including planning, platting, zoning, taxing and other home-rule regulatory authority; and
4. Duration of such agreements.

I have discussed these matters with Wilson Condon, Deputy Alaska Attorney General and assure you that representatives of the Attorney General's Office, including Debra Vogt and Tom Koester of our Juneau office, as well as myself, would

welcome the opportunity to discuss with you the topics you have mentioned, as well as others. However, in fairness I feel that you should be apprised of the State's legal position regarding these matters at the outset, so that you may have the opportunity to analyze whether the approach you have suggested, or some alternative approach, might be legally possible while at the same time meeting the needs of the people of Tanacross. The purpose of the remainder of this letter is to outline for you, in summary fashion, the position of the State regarding the points you have raised.

1. "Indian country". It is the State's position that, with the possible exception of the Metlakatla Indian Reservation on Annette Island, Alaska is not, nor has it ever been, "Indian country" as that term is used in 18 U.S.C. 1162 and 28 U.S.C. § 1360(b). Your assertion that the State is free, even in the absence of the enactment of S.1181, to enter into agreements such as you have proposed with Tanacross or other villages "since Alaska is a mandatory P.L. 83-280 state" has no direct bearing on your concerns because only the "Indian country", if any, within Alaska falls within the ambit of P.L. 83-280 (18 U.S.C. § 1162, 28 U.S.C. § 1360). Further, because in our view only the Metlakatla Reservation may possibly be defined as "Indian country", the obligation (or indeed the authority) of the State to enter into the type of agreement you have suggested

regarding lands not within the Metlakatla Reservation does not exist. It has long been recognized as a matter of federal law that Alaska, as a territory or as a state, was not "Indian country" as that term has been defined in statute and court decisions. U.S. v. Seveloff, Fed. Case No. 16,252 (D. Ct. Ore. 1872) stated in part as follows,

Under these circumstances, I conclude that the Territory of Alaska is not a part of "the Indian country," so declared by law, whatever it may be in fact, . . . I am inclined to the opinion that if Congress had intended this or any other provision of the Intercourse Act to be enforced in Alaska, it would, in accordance with its common practice, have so declared in the Act of July 27, 1868.
***p. 1024.

With the exception of subsequent specific statutory prohibitions against the introduction of spiritous liquor within the Territory of Alaska, Alaska did not later become "Indian country" by act of Congress or otherwise. In Re Carr, 5 Fed. Case No. 2,432 (D. Ct. Ore. 1875); 14 Op. A.G. 327 (1873); 16 Op. A.G. 141 (1878); Waters v. Campbell, 29 Fed. Case No. 17,264 (Ct. App. Ore. 1876); U.S. v. Williams, 2 Fed. 61 (Cir. Ct. Ore. 1880); U.S. v. Stephens, 12 Fed. 52 (Cir. Ct. Ore. 1882); U.S. v. Kie, Fed. Case No. 15,528A, 15,528B (D. Ct. Ak. 1885); Aff'd., Kie v. U.S., 27 Fed. 351 (Cir. Ct. Ore. 1886); In Re Sah Quah, 31 Fed. 327 (D. Ct.)

Ak. 1886). This consistent view of the non-existence of "Indian country" in Alaska is summarized by the eminent Indian law commentator Felix Cohen, in his Handbook of Federal Indian Law (1948), as follows:

A license to trade is not required in Alaska. The Act of June 30, 1834, was not extended ex proprio vigore to the Territory upon its cession to the United States.

The court, in United States v. Seveloff, in 1872, decided that this new possession was not Indian country, as defined and limited by the Trade and Intercourse Act. After this decision, on March 3, 1873, Congress extended to Alaska the provisions of Sections 21 and 22 of this statute relating principally to the interdiction of liquor traffic. The presumption seems clear that by singling out, mentioning, and extending two sections only, the intention of Congress was to withhold or exclude from the Territory all other sections of the Act. Apparently Alaska was intended to be considered "Indian country," in connection with Indian trade only to the extent of that specifically prohibited traffic. p. 350.

More recently, the Superior Court for the State of Alaska, Third Judicial District, specifically found in the case of Paug-Vik, Inc., Ltd. vs. LeResche, et al., (No. 77-17158) that,

25 U.S.C. § 177 of the Indian Non-intercourse Act has never applied in Alaska, and Alaska has never become "Indian country"; Kie v. United States, 27 F. 351; 31 F. 327 (D. Ore. 1886); Supp. Brief of State re: 28 U.S.C. § 1360(b), May 25, 1978). Specifically, with the exception of certain reservations not relevant to this proceeding, the federal government has never closed Alaska to travel and settlement by any ethnic group. Decision, p. 16 (Sept. 12, 1979).

On the basis of this consistent and long-standing legal interpretation of the term "Indian country" as it might otherwise be applied to Alaska, it is the state's view that with the exception of Metlakatla, Alaska is not "Indian country" and thus is not a "mandatory P.L. 83-280 state", with that single exception. Thus the state is not required to recognize law enforcement, regulatory, or other police-power authority claimed by other native villages unless those villages are in fact incorporated as municipalities under state law, pursuant to Title 29 of the Alaska Statutes. Similarly, the concept of "tribal" officials is foreign to the law in Alaska, since there were no designated or recognized "tribes" or discrete jurisdictional territories within the state (again, with the exception of Metlakatla), and passage of the Alaska Native Claims Settlement Act (as will be set forth more fully below) specifically "closed the door" on the concept of any subsequent grant of "tribal"

status to native regions or to villages receiving benefits under that act. Thus, to the extent that S. 1181 defines an "Indian tribe" as an "organized group or community exercising powers of self-government . . . including any Alaska Native villages included in the Alaska Native Claims Settlement Act . . . ", such a reference is both factually and legally erroneous, and cannot elevate the status of Alaska villages or village corporations to "tribal" status. The apparently well-meaning but incorrect reference to ANCSA Native villages as "tribes" will be the subject of continuing state communication to appropriate congressional committees so long as such language remains in the bill (though certainly the limitation of the scope of the entire bill to "Indian country" only should remove Alaska, with the exception of Metlakatla, from coverage by the bill).

2. The Alaska Native Claims Settlement Act. It is our view, and one which we believe is widely shared, that the Alaska Native Claims Settlement Act of 1971 represents the most "assimilationist" effort yet achieved by the United States in the settlement of aboriginal claims of indigenous native peoples, and the integration of those peoples and the property granted them by way of settlement into the mainstream of economic and governmental relations within a state.

Whether this approach was, in retrospect, beneficial or detrimental is not the question; what is important is the relationship of the state to the United States and to Alaska's Natives, their corporations, and the lands conveyed to those corporations under the act. ANCSA is explicit in its avoidance of the creation of a "reservation system" in Alaska, through its adoption of a plan conveying 44 million acres of federal lands in fee to Native village and regional corporations, without the trusteeship of the Secretary of the Interior as was the case when reservations were created in the lower 48 states. The land conveyed to Alaska Native corporations was to be held and managed as any private corporation might own and manage its lands, and the relationship of that corporation to the State of Alaska was to be the same as that of any other private corporation.

For example, Section 2 of ANCSA states in part as follows:

Congress finds and declares that --

* * *

(b) The settlement should be accomplished rapidly, with certainty, in conformity with real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and

Michael J. Walleri
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property, without establishing any
permanent racially defined institution,
rights, privileges, or obligations,
without creating a reservation system
or lengthy wardship or trusteeship,
and without adding to the categories
of property and institutions enjoying
special tax privileges or to the legis-
lation establishing special relation-
ships between the United States govern-
ment and the State of Alaska;

* * *

[Emphasis supplied]

In our view, the recognition by the State of Alaska of the "Native village of Tanacross" as a local government with police-power jurisdiction over lands conveyed to the village corporation of Tanacross (and to other lands?) would in fact perpetuate "racially-defined institutions, rights, privileges, and obligations." Your statement that the incorporation of Tanacross as a municipality under State law would "fail to fully represent the predominantly Native character of the community" appears to confirm the intent to seek state recognition of a "racially-defined institution." By seeking an agreement with the State which defines the "regulatory authority of the Native village", including law enforcement, planning, zoning, and taxing, the possibility of "adding to the categories of property and institutions enjoying special tax privileges" is clearly raised. The inability of the state to enter into an agreement with a village "tribe",

where no such "tribe" has been recognized in law, whose claimed existence is antithetical to the purposes and implementation of ANCSA, poses a substantial barrier to state involvement in the manner you have suggested.

The Alaska Native Claims Settlement Act is replete with clear indications that Congress intended (or required) that Native villages incorporate as profit or non-profit corporations under the laws of the State of Alaska (Sections 3(j), 8(a)-(c)), that Native groups do the same (Section 14(h)(2), and that de facto Native villages be, or become, municipalities pursuant to the laws of the State of Alaska (Section 14(c)). Land conveyed to Native corporations was to enjoy a 20-year immunity from state and local real property taxation only; it was not to be forever immune as "Indian country" might otherwise be. Section 21(d). Nothing in ANCSA attributes powers of self-government over lands conveyed by ANCSA to unincorporated villages, or to IRA village councils. While the future utility, if any, of IRA village councils was not finally decided by ANCSA, it is the state's position that such councils, if they attempt to assert local police-power jurisdiction as a "tribe" or a local government entity, are acting contrary to law and to the express purposes of ANCSA.

In the state's view the role of IRA Councils cannot, after ANCSA, include the function of local self-government within a defined geographic area or over non-Natives, or as a recognized, lawful alternative to incorporation as a municipality under the laws of the State of Alaska. Therefore, the state is simply without authority to enter into "tribal" or "village council" agreements respecting law enforcement, land-use planning, taxation, and other "home-rule regulatory authority" as you have suggested in your letter, unless the state is negotiating with a unit of local government organized under the laws of the state.

I sincerely hope that this expression of the state's position on these matters does not in any way indicate that the state is not interested in or willing to work with Tanacross or any other village to solve recognized land-use planning, law enforcement, or similar matters. The state most certainly is interested in finding the best way, within its lawful powers, to meet such challenges, for both its rural and urban citizens, without regard to ethnic background. However, the state cannot meet these challenges by ceding its police power jurisdiction or authority to entities which

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are not now recognized under state or federal law, whose expressed desires are contrary to the purposes and implementation of the Alaska Native Claims Settlement Act, and whose functions in Alaska since 1971 are dubious and speculative at best.

Members of the Attorney General's Office would certainly be willing to meet with you and those whom you represent at your convenience regarding this or any other matter which you might wish to discuss, including alternative means which are within the state's authority, to reach many of the same goals which you have expressed in your letter. Thank you for this opportunity to discuss these matters with you.

Sincerely yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By:

Thomas E. Meacham
Assistant Attorney General

cc: Wilson Condon
Deputy Attorney General
AGO - Juneau

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

(907) 465-3634

May 12, 1980

Fran Ulmer
Don Gilman
Co-chairpersons, Coastal
Policy Council
Pouch AP
Juneau, Alaska 99811

Re: Local Zoning Authority Over
State Oil and Gas Development
Our File No.: J-66-536-80

Dear Ms. Ulmer and Mr. Gilman:

You have asked in your letter of March 4, 1980 1/
for an opinion on the following questions:

1. Can home rule and other municipalities adopt
coastal management plans which impose restrictions upon
state or federal lessees engaged in exploration, development
and production of hydrocarbons and minerals?

2. If so, can local government administer its
plans through a permitting system?

The answer to both questions is a qualified yes.

This opinion will first address the permissible
limits of municipal regulation of state and federal lessees
and then discuss the validity of a permitting system.

1/ The issuance of this opinion was delayed for 30 days
in order to accommodate the request of both the North Slope
Borough and Sohio B.P. for time in which to submit their
views in writing.