

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672
754 SCOM423: TITLE 29 POLICY REVISION ADVISORY COMM. 1980

fairbanks north star borough

p.o. box 1267 520 fifth ave. fairbanks, alaska 99707 907-452-4761



Terry L. Earley
Stat Assessor
Dept. of Community
& Regional Affairs
Pouch B
Juneau, Ak. 99811

Re: Senate C. R. 66

Dear Terry:

During my brief tenure, two provisions of title 29 pertaining to property taxes have caught my attention.

First, concerning the Farm Use Exemption; presuming its passage was directed toward encouraging agriculture in the State, and discounting the resistance some farmers in this area exhibit by their reluctance to sign up for it, I think the income requirement should either be reduced (say to 5%) or eliminated.

Take a farmer beginning a livestock operation. Nature dictates that it will be several years before productive breeder stock can be developed, let alone producing enough progeny to sell, sufficient to meet the income requirement.

Furthermore, any new farm venture demands high initial investment for equipment, clearing of land and the aforementioned stock development. They need an incentive to begin - not merely hope they will get relief if successful. I am prejudiced toward preferential treatment as an alternative. This is more consistent with current State agricultural use land sales, tending to establish land values in the eye of the taxpayer and creating a hard argument for and presumption of farm land value to overcome by local assessor.

Second, the Senior Citizen Exemption; and 29.53.020 (G) in particular. It is logical, and only fair, that reimbursement to the City or Borough be limited to that amount which exceeds a local exemption that was granted; but to extend it to a local exemption that if properly applied for "would have been granted" is too much. It is worse than ex post facto, it relates to something that never happened, and I fail to see any logic at all.

Possibly a third subject I would like to see addressed concerns Mobile Homes. I have experienced assessing them (twice now) and enjoyed the euphoria of not assessing them. By their very nature - mobile and subject to title ownership - they are hard to find outside of an established park and by collection time hard to catch up with, in many instances; even becoming personal property when repossessed. I realize this Borough is unique in Alaska regarding personal property, but that is not the basis for my objection to assessing them.

A much more efficient method of taxing them is to require a license (like motor vehicles) at which time a specific ownership tax is charged. That way

RECEIVED
AUG 11 1980
DEPT. OF COMMUNITY
AND REGIONAL AFFAIRS

August 5, 1980

the tax is paid and collected at the beginning of the tax year and distributed according to the pro-ratio formula of the property tax.

Although not changing existing law, I have several suggestions for additional statutes which I understand have been tried before and fly in the face of popular public opinion. Nevertheless, if the legislature is sincere in wanting to improve the administration of the property tax then serious consideration should be given them.

One, a Documentary Fee on Conveyance of Real Property. Enclosed is a copy of the Colorado law for what it is worth. I do know, however, that it worked beautifully and was an inestimable aid in the appraisal process.

Two, Confidentiality of Information as well as a corresponding penalty statute for divulging same. Enclosed are copies of pertinent statutes which I am familiar with. It is difficult to obtain written confirmation of verbal information relating, in particular, to income data, and in some instances cost data, if every Tom, Dick, and Harry has access to it. The penalty statute for divulging information is an added safeguard for the taxpayer as that puts the assessor under the gun in keeping confidential supportive data from which the final total assessment (clearly public information) may evolve.

Lastly, I am intrigued with assessing exempt property used by a non-exempt person. Terry, I refer to the Michigan statute, upheld by the Supreme Court, which allowed taxing such property. It was tried in Colorado (copy of law attached) but it was so emasculated by amendments (3), (4), & (5) of enclosed law) that it was in the process of being declared unconstitutional as being discriminatory-i.e., the only property not excepted was Federal owned - when I last heard about it.

Such a law would cover our railroad, airport, and University of Alaska leases as well as State and Federal lands. Just a thought.

I guess that about covers it for now.

Very truly yours,



Dave Braden
Borough Assessor

P. S. Am enclosing a copy of our new property tax limitation ordinance for your information.

DB/dg

RECEIVED
AUG 11 1980

DEPT. OF COMMUNITY
AND REGIONAL AFFAIRS

Documentary Fee on Conveyances of Real Property

39-13-101. LEGISLATIVE DECLARATION. (1) The general assembly declares that in enacting laws relating to the general property tax, it has provided that certain property in each county of the state shall be appraised and the actual value thereof determined by the assessor and that one of the several factors to be considered by him in determining the actual value of any property shall be "comparison with other properties of known or recognized value."

(2) It further declares that such comparison may be best effected if there is available to the assessor a continuing record of the consideration paid or to be paid by purchasers of real property evidenced, prior to recording, on the document conveying title to such property and recorded in the office of the county clerk and recorder in the several counties of the state in the manner provided by law and that this article is enacted to provide a means of developing such continuing record and making such record available for use primarily by assessors. (L 67)

39-13-102. DOCUMENTARY FEE IMPOSED - AMOUNT - TO WHOM PAYABLE. (1) There is imposed and shall be paid, by every person offering for recording in the office of the county clerk and recorder any deed or instrument in writing wherein or whereby title to real property situated in this state is granted or conveyed, a fee, referred to in this article as "documentary fee," measured by the consideration paid or to be paid for such grant or conveyance, which documentary fee shall be in addition to any other fee fixed by law for the recording of such deed or instrument in writing.

(2) The amount of documentary fee payable in each case shall be as follows:

(a) When there is no consideration or when the consideration, inclusive of the amount of any lien or encumbrance against the property granted or conveyed, is five hundred dollars or less, no documentary fee shall be payable.

(b) When the consideration, inclusive of the amount of any lien or encumbrance against the property granted or conveyed, exceeds five hundred dollars, the documentary fee payable shall be computed at the rate of one cent for each one hundred dollars, or major fraction thereof, of such consideration.

(3) All documentary fees shall be payable to and collected by the county clerk and recorder.

(4) In those cases in which real property located in two or more counties is granted or conveyed in a single transaction, each county clerk and recorder shall collect a portion of the total documentary fee referred to in subsection (2) of this section in the same ratio that the consideration fairly attributable to the part of such property located in his county bears to the total consideration. The allocation of the total consideration between counties is to be made by the person offering such deed or instrument in writing for recording. (L 68)

39-13-103. EVIDENCE OF PAYMENT OF FEE. Each county clerk and

recorder shall evidence payment of the documentary fee imposed in this article by imprinting, typing, stamping, or writing in ink on the margin or other blank portion of every document to which such fee applies the words "State Documentary Fee," the amount of documentary fee paid, and the date upon which paid, which impression or notation shall be made on such document before it is recorded. (L 68)

39-13-104. EXEMPTIONS. (1) The documentary fee imposed in this article shall not apply to:

(a) Any deed wherein the United States or any agency or instrumentality thereof or the state of Colorado or any political subdivision thereof is either the grantor or the grantee;

(b) Any deed granting or conveying title to real property in consequence of a gift of such property;

(c) Any public trustee's deed executed pursuant to the provisions of section 38-39-110, C.R.S. 1973;

(d) Any treasurer's deed executed in accordance with the provisions of article 11 of this title;

(e) Any sheriff's deed;

(f) Any instrument which confirms or corrects a deed previously recorded;

(g) Any deed granting or conveying title to cemetery lots;

(h) Any executory contract for the sale of real property of less than three years' duration under which the vendee is entitled to or does take possession thereof without acquiring title thereto, nor to any assignment or cancellation of any such contract;

(i) Any lease of real property or assignment or transfer of an interest in any such lease;

(j) Any document given to secure payment of an indebtedness;

(k) Any document granting or conveying a future interest in real property;

(l) Any decree or order of a court of record determining or vesting title;

(m) Any document necessary to transfer title to property as a result of the death of an owner thereof;

(n) Any mineral deed or royalty deed;

(o) Any rights-of-way and easements.

(2) Exemption from payment of the documentary fee imposed in this article must be claimed at the time a deed or instrument is offered for recording. (L 68)

39-13-105. NO DEED RECORDED UNLESS DOCUMENTARY FEE PAID. No deed or instrument in writing to which a documentary fee applies shall be recorded until and unless the documentary fee payable thereon has been paid and evidence of its payment has been imprinted, typed, stamped, or written in ink

thereon as provided in section 39-13-103. Any county clerk and recorder who willfully and knowingly records any document to which a documentary fee applies without having first collected such fee and evidence payment thereof as provided in this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of fifty dollars. (L 68)

39-13-106. UNLAWFUL ACTS - PENALTY. (1) It is unlawful for any person to commit the following acts:

(a) To fail or refuse to pay the documentary fee imposed in this article when such payment is required;

(b) To willfully and knowingly recite to the county clerk and recorder a consideration greater or less than the actual consideration referred to in section 39-13-102 (2) (a) and (2) (b) in connection with the granting or conveying of title to real property by any deed or instrument in writing to which the documentary fee applies.

(2) Any person who commits either of the acts set forth in subsection (1) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than ten days nor more than three months, or by both such fine and imprisonment. (L 67)

39-13-107. ASSESSOR TO COMPILE CONTINUING RECORD. It is the duty of each assessor to examine at least once each year all documents recorded in his county upon which a documentary fee has been paid and to determine in each case the consideration upon which such fee was computed and paid. He shall compile and maintain in his office a continuing record of all such consideration to assist him in appraising property and determining the actual value thereof as required by the provisions of section 39-1-103 (5). (L 67)

39-13-108. DISPOSITION OF FEES. All documentary fees collected by the county clerk and recorder shall be deposited with the county treasurer at least once each month and credited by him in the manner prescribed by law. (L 67)

31-25-107 (9) (a), C.R.S. 1973, for payment of taxes according to the provisions of said section, as long as said division remains in effect. (L 75)

39-1-112. TAXES AVAILABLE - WHEN. All taxes levied pursuant to the provisions of articles 1 to 13 of this title shall be available for expenditure by the political subdivision for which levied during its fiscal year, as collected. (L 64)

39-1-113. ABATEMENT AND REFUND OF TAXES. No abatement or refund of taxes erroneously or illegally levied shall be made by the board of county commissioners unless a hearing is had thereon, at which hearing the assessor shall have the opportunity to be present. Whenever any abatement or refund is recommended by the board of county commissioners, an application therefor, reciting the amount of such abatement or refund and the grounds upon which it should be allowed, shall be submitted to the administrator for his review pursuant to section 39-2-116. If an application is approved, the board of county commissioners shall order the abatement of taxes pro rata for all levies applicable to such property, or, in the case of a refund, the board of county commissioners shall order the refund of taxes pro rata by all taxing jurisdictions receiving payment thereof. (L 77)

39-1-114. WHO MAY ADMINISTER OATH. Whenever any fact, matter, or thing is required by the provisions of articles 1 to 13 of this title to be verified by oath or affirmation, any assessor, treasurer, or county clerk and recorder, or a deputy of any of said officers, may administer such oath or affirmation. The deputy need not certify the oath in the name of the principal. (L 64)

39-1-115. RECORDS PRIMA FACIE EVIDENCE. The assessment rolls, the tax warrants, the entries made in the books of the treasurer, and the lists of lands sold for taxes recorded by the treasurer or the county clerk and recorder, or a certified copy thereof, shall be prima facie evidence of all things appearing therein in all courts and places. (L 64)

★ 39-1-116. PENALTY FOR DIVULGING CONFIDENTIAL INFORMATION. Except when pursuant to an order of any court of competent jurisdiction, or as otherwise provided by law, any person who divulges or makes known in any way the contents of any private document, as specified in section 39-4-103 or in section 39-5-120, to any person not authorized to have access to such documents is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment. (L 64)

39-1-117. PRIOR ACTIONS NOT AFFECTED. Nothing in articles 1 to 13 of this title shall apply to or in any manner affect any valuation, assessment,

48
or demolished subsequent to the assessment date in any year, it is the duty of the owner thereof or his agent to promptly notify the assessor of such destruction or demolition and the date upon which the same occurred. In all such cases, such personal property or improvements shall be valued by the assessor at the proportion of its valuation for the full calendar year that the period of time in such year prior to its destruction or demolition bears to the full calendar year. Failure of the owner thereof or of his agent to so notify the assessor prior to the date taxes are levied shall be considered a waiver, and no proportionate valuation by the assessor shall then be required.
(L 64)

39-5-118. FAILURE TO RECEIVE SCHEDULE - VALIDITY OF VALUATION. No determination of the actual value of any taxable personal property made by the assessor shall be rendered invalid by reason of his failure to secure or receive the personal property schedule required to be completed and returned to him prior to his determination of such value.
(L 64)

39-5-119. REFUSAL TO ANSWER - COURT ORDER. Whenever any person refuses to be interviewed by the assessor or his deputy or refuses to answer any pertinent questions relative to taxable property owned by him, or in his possession, or under his control, then, in the discretion of the district court having jurisdiction in the county and upon affidavit of the assessor or his deputy showing such refusal to be interviewed or to answer such questions, such person shall be cited before such court and shall be required by the court then and there to submit to such interview and to answer such questions. All costs of such proceedings shall be assessed by the court against such person, and judgment and execution shall be entered therefor as in other civil cases.
(L 67)

★ 39-5-120. TAX SCHEDULES ENDORSED AND FILED - AVAILABILITY FOR INSPECTION. All personal property schedules and exhibits or statements attached thereto returned to or secured by the assessor shall be endorsed with the name of the person whose taxable personal property is listed therein and shall be filed in either alphabetical or numerical order and retained for a period of six years, after which time they may be destroyed. Such schedules and accompanying exhibits or statements shall be considered private documents and shall be available on a confidential basis only to the assessor and the employees of his office, the treasurer and the employees of his office, the executive director of the department of revenue and the employees of his office, and the administrator and the employees of his office. Such exhibits or statements shall be available on a confidential basis to the board and the county board of equalization when information contained in such documents is pertinent to an appeal or protest.
(L 76)

39-5-121. NOTICE OF INCREASED VALUATION. No later than May 24 in each year, the assessor shall mail to each person whose taxable personal

39-3-110. PAYMENT OF TAXES ESTINGUISHES LIEN. Payment to the treasurer of prorated taxes for the current year, as provided in sections 39-3-108 and 39-3-109, together with payment of any other unpaid taxes and penalty interest or charges, shall extinguish the lien for taxes on such property, or a portion thereof; but if only a portion of any parcel, tract or lot of property becomes legally exempt from general taxation and no taxes are collected at that time, the lien of taxes levied or to be levied shall attach to the remaining portion of said property. (L 64)

39-3-111. CONDEMNATION BY TAX EXEMPT AGENCY - TREASURER'S DUTIES. In all cases where an entire property, or a portion of any parcel, tract, or lot of property is likely to become legally exempt from general taxation through exercise of the power of eminent domain, the treasurer shall be joined as a party respondent in any such action, and upon joinder and notice of the proceedings, he shall assert a claim for the amount of any prorated taxes for the current year on such property, and all other unpaid taxes, penalty interest, or charges thereon with the clerk of the court in which the proceedings are filed. Upon institution of any such proceedings, the lien of general taxes levied and to be levied shall be transferred from the property acquired or sought to be acquired to any money awarded or to be awarded for the taking of such property. Nothing in this section shall require any treasurer to file a claim in any such proceedings involving acquisition of only a portion of any property, if he is satisfied that there is sufficient taxable property remaining after the taking of such portion to satisfy any lien for the amount of taxes payable on such portion taken. (L 64)

★ **39-3-112. TAXATION OF EXEMPT PROPERTY - TAXES NOT TO BECOME LIEN.** (1) When any property which for any reason is exempt from taxation is leased, loaned, or otherwise made available to and used by a private individual, association, or corporation in connection with a business conducted for profit, the lessee or user thereof shall be subject to taxation in the same amount and to the same extent as though the lessee or user were the owner of such property, except as provided in this subsection (1) and as provided in subsections (3), (4), and (5) of this section. (L 75)

(2) Taxes shall be assessed to such lessee or user of property and collected in the same manner as taxes assessed to owners of such property; except that such taxes shall not become a lien against the property. When due, such taxes shall be a debt due from the lessee or user to the board of county commissioners for the county where said property is located, and in the city and county of Denver to such other body as is authorized by law to levy taxes, and shall be recoverable by such body by direct action in debt on behalf of each governmental entity for which a tax levy has been made. (L 75)

(3) This section shall not vary in any manner the taxation of mines or oil and gas or oil shale or geothermal leaseholds and lands under articles 1 to 13 of this title. The valuation for assessment of mines or oil and gas or oil shale or geothermal leaseholds and lands shall be determined pursuant to articles 6 and 7 of this title. (L 75)

(4) (a) This section shall not apply to any property owned by a home rule or statutory county, city and county, city, or town, or by a territorial charter city, if such property is subject to payments in lieu of taxes under section 29-3-120, C.R.S. 1973 (L 76)

(b) This section shall not apply to any property owned by a home rule or statutory county, city and county, city, or town or by a territorial charter city, if such property was, before July 1, 1976, leased, loaned, or otherwise made available to and used by a private individual, association, or corporation in connection with a business conducted for profit; but such exemption shall not extend beyond the term of such lease or loan or option included in the agreement in effect before said date. (L 76)

(c) This section shall not apply to rights-of-way or easements acquired by public utilities or for access roads. (L 76)

(d) This section shall not apply to any property owned by a political subdivision of the state which is used in the provision of normal facilities, services, or operations authorized by constitution or statute to be provided by such political subdivisions. (L 76)

(5) This section is not applicable to lands used solely for agricultural purposes and improvements thereon. (L 75)

(6) The valuation for assessment of lands owned by the United States and used for recreational purposes shall be thirty percent of the fees paid by the user of said lands to the United States for the use thereof in the previous calendar year. (L 75)

(7) Nothing in this section shall be construed to apply to properties exempted by territorial charter. (L 75)

By: Bruce Wannack
John Kohler
Introduced: 5/22/80
Advanced: 5/22/80
Substituted: 6/12/80
Adopted: 6/12/80

ORDINANCE NO. 80-35

AN ORDINANCE LIMITING PROPERTY TAXES
TO FIVE MILLS

BE IT ORDAINED BY the Fairbanks North Star Borough Assembly

that:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the Code of the Fairbanks North Star Borough.

Section 2. Section 3.08.140 is amended by adding a new subsection to read:

Section 3.08.140 (B) Property taxes assessed or levied by the Fairbanks North Star Borough, inclusive of existing current bonded indebtedness, and principal and interest payments thereon, but exclusive of any future bonded indebtedness and principal and interest payments thereon, incurred, and passed by a majority of voters in any general or special election, after July 1, 1980, shall be limited to a maximum of five (5) mills.

Section 3. Effective date. This ordinance shall become effective on July 1, 1980, and shall remain in effect unless repealed by a majority of the assembly of the Fairbanks North Star Borough.

PASSED AND APPROVED THIS 12th DAY OF JUNE, 1980.


Presiding Officer

ATTEST:


Clerk of the Assembly

KETCHIKAN GATEWAY BOROUGH

344 FRONT STREET
KETCHIKAN, ALASKA 99901

August 15, 1980

Terry L. Earley, State Assessor
Department of Community & Regional Affairs
Pouch B
Juneau, AK 99811

Re: TITLE 29 REVISIONS

Dear Terry:

Attached are copies of excerpts from title 29, chapter 53. I have included my recommended revisions and/or additions in the right column. Recommended deletions are shaded in the body of the text.

My work schedule has been such that I was unable to address this matter as quickly as I would have liked. I apologize.

Sincerely,



Michael W. Worley
Director of Assessments
Ketchikan Gateway Borough

MWW/jfs

RECEIVED
AUG 21 1980

DEPT. OF COMMUNITY
AND REGIONAL AFFAIRS

KETCHIKAN GATEWAY BOROUGH

344 FRONT STREET
KETCHIKAN, ALASKA 99901

M E M O R A N D U M

TO: Russell W. Walker, Municipal Attorney
THRU: Judi Slajer, Borough Manager
FROM: *Michael W. Worley* Michael W. Worley, Director of Assessments
RE: Revisions to Title 29
DATE: August 14, 1980

I support the revision of AS 29.53.135 (see attached copy)
as stated in your memorandum dated July 31, 1980.

Attached are my suggestions for further revisions of Chapter
53. Revisions are stated in the right margin, and deletions are
highlighted in the body of the text.

Sec. 29.53.029. 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 the 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 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.

(e) After January 1, 1973 the real property owned and occupied as a permanent place of abode by a resident 65 years of age or over whose gross annual income totals less than \$10,000 is exempt from taxation of the assessed 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; however, in the case of more than one party eligible for an exemption with

(Housekeeping)

If used by educational groups, the property must be used exclusively for classroom space.

(Housekeeping)

respect to the same property, the total combined gross annual income of the parties may not exceed \$10,000. 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.

(f) 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 and 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. 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, and in that respect may as one form of proof require authorization from the taxpayer to verify gross income level by reference to gross income shown in the latest state income tax return available for all or part of the assessment year for which an exemption is sought.

(g) The state shall reimburse a borough or city, as appropriate, for the real property tax revenues lost to it by the operation of (e) of this section.

(h) Nothing in (e)—(i) 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. However, under (e)—(i) of this section only the amount of revenue lost to the municipality by reason of the exemption authorized in those provisions may be reimbursed to the municipality by the state.

(i) In (e)—(i) 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 F.2d 412 (9th Cir. 1958).

This section was enacted pursuant to Alaska Const., art. IX, § 4. *Harmon v. North Pac. Union Conference Ass'n of Seventh Day Adventists*, Sup. Ct. Op. No. 591 (File No. 1060), 462 P.2d 432 (1969).

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 non-taxable 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. 740 (File No. 1382), 490 P.2d 1226 (1971).

under (e) of this section

tioned in this section, is not subject to valuation by first class cities for the purposes of AS 14.17.010 et seq., to the extent that it is exempt from taxation. 1962 Op. Att'y Gen., No. 12.

Exclusive employment of occupants of properties sought to be taxed was such as to bring these properties within the exemptions provided in subsections (b)(1) and (b)(2) for residences of ministers owned by religious organizations, or property used for "solely charitable purposes" or "religious education." North Pac. Union Conference Ass'n of Seventh Day Adventists v. Harmon, 5 Alaska L.J. No. 11, p. 228 (Nov., 1967).

The providing of recreational facilities, such as accommodations for campers, is a charitable use of the property. Matanuska-Susitna Borough v. King's Lake Camp, Sup. Ct. Op. No. 472 (File No. 857), 439 P.2d 441 (1968).

Ordinance exempting from local taxation any class of real or personal property.—A home rule city has the power to enact an ordinance exempting from local taxation any class of real or personal property, if such an exemption is not prohibited by the city's home rule charter. 1969 Op. Att'y Gen., No. 1.

Electric cooperative operating under arrangement with federal agency is not exempt.—A nonprofit cooperative is not an agency of the United States government simply by virtue of an "arrangement" with the Rural Electrification Administration pursuant to 7 USC §§ 901—915, and therefore immune from local taxation. City of Anchorage v. Chugach Elec. Ass'n, 17 Alaska 481, 252 F.2d 412 (9th Cir. 1958).

There is no statutory authority exempting the property of Chugach Electric Association from taxation by the city of Anchorage and the Anchorage independent school district. City of Anchorage v. Chugach Elec. Ass'n, 17 Alaska 481, 252 F.2d 412 (9th Cir. 1958).

Exemption of property on federal land inapplicable to Railroad Reserve. — The doctrine that property located upon federally owned land is immune from local taxation is inapposite where it is not shown that the Railroad Reserve is "federal property" or under the exclusive jurisdiction of the federal government. City of Anchorage v. Chugach Elec. Ass'n, 17 Alaska 481, 252 F.2d 412 (9th Cir. 1958).

74 *amended*
Sec. 29.53.025. 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.

(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 \$5 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 \$500 in value and the effects of the head of a family or a householder; 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

See § 29.53.020.(a)(2)

(Housekeeping)

(C) historic sites, buildings and monuments.

(c) The provisions of (a) of this section notwithstanding.

(1) a home rule or first or second class borough may, by ordinance adopted without weighted voting, adjust its property tax structure in whole or in part to the property tax structure of a city within it, including but not limited to, excluding personal property from taxation, establishing exemptions, and extending the redemption period;

(2) a home rule or first class city shall have the same power to grant exemptions or exclude property from borough taxes that it has as to city taxes, provided that the exemptions or exclusions have been adopted as to city taxes and further provided that the city appropriate to the borough sufficient money to equal revenues lost by the borough because of the exemptions or exclusions, the amount to be determined annually by the assembly without weighted voting.

(d) Exemptions or exclusions from property tax which have been granted by home rule municipalities in addition to exemptions authorized or required by law, and which are in effect on September 10, 1972 and not later withdrawn, are not affected by this Act. (§ 2 ch 118 SLA 1972)

City may not exempt property without express authority.—The authority of a municipal corporation to allow exemptions of particular property from taxation, unless expressly conferred by law, has very generally been denied. *Valentine v. City of Juneau*, 36 F.2d 904 (9th Cir. 1929).

Ordinance exempting from local taxation any class of real or personal property.—A home rule city has the power to enact an ordinance exempting from local taxation any class of real or personal property, if such an exemption is not prohibited by the city's home rule charter. 1969 Cp. Att'y Gen., No. 1.

Valuation of full and true value not precluded. — The fact that first

class cities may choose the tonnage valuation of ships for the purposes of taxation does not preclude them from making a valuation of full and true value for the purposes of taxation. It necessarily follows that boats and vessels should be valued at full and true value for the purpose of AS 14.17.010 et seq. 1962 Op. Att'y Gen., No. 18.

Rules applicable to second class cities.—The rules applicable to boats and vessels in first class cities apply equally to those under the jurisdiction of second class cities. 1962 Op. Att'y Gen., No. 18.

Sec. 29.53.030. Mining claims. The assessed value of an unimproved unpatented 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 fixed at \$200 for each 20 acres or fraction of 20 acres. If the surface ground of a claim has a separate and independent value for nonmining uses, the real and personal property is assessed at its full and true value. (§ 2 ch 118 SLA 1972)

Replace with local Severance tax on all resources (timber, fill, minerals, etc.)

Sec. 29.53.110. 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 dates 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 118 SLA 1972)

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 118 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 118 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 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*, 8 Alas. L.J. No. 11, p. 272 (Sept., 1970).

within 30 days of the effective date of the notice.

(b) If the property owner disagrees with the assessed value, the assessor shall review the assessment and inform the property owner of his findings allowing 10 days for appeal to the board. If the assessed value changes, the assessor shall send a revised notice to the property owner.

be allowed 10 . . . the notification described in § 29.53.120(b) above, to

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 118 SLA 1972)

Borough assembly as administrative body. — When the borough assembly functions as a board of equalization or adjustment, it acts as an administrative, not a legislative, body. 1965 Op. Att'y Gen., No. 7.

When the borough assembly sits as an administrative body, whether as a board of equalization or adjustment, the weighted vote may not be used. 1965 Op. Att'y Gen., No. 7.

not fewer than three members.

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), 359 P.2d 783 (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), 359 P.2d 783 (1961).

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 inval-

date all taxes, thus practically putting an end to the operations of government. *Valentine v. City of Juneau*, 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. 1855-1855g, or other federal law. (§ 2 ch 118 SLA 1972)

Sec. 29.53.170. Tax levy and rate. (a) The power granted to the assembly to assess, levy and collect a general property tax shall be exercised by means of general ordinances, but the rate of levy, the date of equalization and the date when taxes become delinquent shall be fixed by resolution.

(b) The assembly shall annually determine the rate of levy before June 15. By July 1 the tax collector shall mail tax statements setting out the levy, dates when taxes are payable and delinquent, and penalties and interest. (§ 2 ch 118 SLA 1972)

Sec. 29.53.180. Rates of penalty and interest. (a) If the taxpayer is required to pay the entire tax on the due date set by the assembly, a penalty not to exceed 10 per cent may be added to all

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

date of repurchase, together with delinquent taxes assessed and levied as though it had continued in private ownership.

(b) After termination of the right of redemption there is no right to repurchase property held for, or devoted to, a public purpose. (§ 2 ch 118 SLA 1972)

Payment of taxes constitutes an application to repurchase property from foreclosure. *Jameson v. Wurtz*, Sup. Ct. Op. No. 259 (File No. 431), 396 P.2d 68 (1964).

Sec. 29.53.380. Proceeds of tax sale. 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. (§ 2 ch 118 SLA 1972)

Sec. 29.53.385. 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.

Section

400. Power of levy

405. Differential tax zones

Section

410. Limited property taxing power for second class cities

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

, 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 paid to the taxpayer

Sec. 29.53.050. Tax limitation. (a) No municipality may levy and tax 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. (§ 2 ch 118 SLA 1972; am § 4 ch 1 FSSLA 1973; am § 5 ch 159 SLA 1975)

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

The 1975 amendment, effective June 26, 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 those sentences, and added the fourth sentence.

Editor's note. — Section 8, ch. 159, SLA 1975, contains a severability clause.

Alaska Statutes 29.53.055 and 29.58.180(a) authorize taxes to pay for municipal bonds, independent of the limitations of this section or AS 29.53.045, and regardless of whether the bonds are in default or default is pending. *North Slope Borough v. Sohio Petroleum Corp.*, Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 3659), 585 P.2d 534 (1978).

Alaska Statute 29.53.055, literally read, does not render this section and AS

29.53.045 meaningless. AS 29.53.055 applies only to debt financing. The limitations of this section and AS 29.53.045 apply to operating revenues. Merely because they do not also curb taxes to pay for bonds does not render them nullities. *North Slope Borough v. Sohio Petroleum Corp.*, Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 3659), 585 P.2d 534 (1978).

Regulation denying credit against tax levied under AS 43.56 was invalid. An emergency regulation which denied a credit against the tax levied by the state under AS 43.56.010(a) for property taxes collected by municipalities in excess of the limitations set forth in AS 29.53.045 and subsection (b) of this section was invalid since AS 43.56.010(d) mandates that all taxes paid under AS 29.53.045 are to be credited against the levy of AS 43.56.010(a). *North Slope Borough v. Sohio Petroleum Corp.*, Sup. Ct. Op. No. 1750 (File Nos. 3460, 3513, 3659), 585 P.2d 534 (1978).

Needs to be changed to \$1,500 to be consistent with § 29.53.045..

TO: Lee McAnerney
Commissioner

DATE: August 20, 1980

THRU: Lawrence H. Kimball, Jr. *L.H.K.*
Director/Community Planning

FILE NO:

TELEPHONE NO: 465-4750

FROM: David Dye *D.D.*
Planner III
Division of Community Planning

SUBJECT: Title 29 Revisions

As requested, this memo is a list of suggestions and comments for revision of Title 29 of the Alaska Statutes. Some of these comments are products of the consensus viewpoint of the staff. Some are the products of a particular staff member's concern and experience with a given provision. Several otherwise meritorious suggestions do not appear in this memo because the provisions to which they are addressed are located in other titles and could not easily be integrated into Title 29 or they are primarily a matter of DCRA's jurisdiction vis a vis other State agencies. It is my feeling that these issues must be dealt with separately in order to avoid the appearance that our Department is attempting to restructure its statutory authority under the guise of revising Title 29 or construing the mandate of JCR 66 in an excessively broad fashion.

Many of the suggestions concern policy questions which are sure to be debated extensively as the revision process continues. I do not feel it is appropriate, at this point, to offer statutory drafts implementing these policy considerations. In some cases, a mere substitution, addition, or clarification is all that is suggested and these are presented with more specificity than questions with broader policy implications. In one or two instances, a model draft of a new provision is offered as a guide where it is appropriate to do so.

Other suggestions were modified or eliminated because, after some reflection, I felt that Title 29 already adequately addressed the question or that the suggested change would have unanticipated and unwanted consequences. Given that I was not guided by the divine revelation in exercising my editorial license, I invite other staff members to continue to advocate revisions I have not favored or overlooked.

General Consideration

Title 29 provides a framework for municipal authority and function in Alaska. The relationships among the entities it creates are complex and intertwined. Therefore, the language of the statute is necessarily complex and requires a certain sophistication and studied familiarity to master. This is perhaps unavoidable given the striking diversity of conditions in Alaska. However, the burden of using this complex blueprint falls unevenly on smaller communities. Larger urban communities usually possess the technical and professional resources to deal with Title 29's requirements and options. Many smaller communities do not.

Because of this lack of expertise and resources some basic concepts are not well understood and some functions are performed badly or not at all by these small municipalities. It is ironic that many larger municipalities have home rule status which relieves them of the burden of conforming to most of the finer details of Title 29 while most smaller communities must do so.

If Title 29 is to serve as both a mandate and as a guide, it will be most effective where it is clearest and most straightforward. A primary goal of revision should be to clarify, define and simplify to the greatest extent possible. To do so comprehensively would require a great deal of work but would undoubtedly be worth the effort if the result were better local government.

On the other hand, there are areas which would benefit from a bit more complexity. Wherever a public body, commission, or board performs a discretionary or quasi-judicial duty there should be standards, guidelines, criteria, and legislative intent spelled out with some specificity. Too often these entities do not understand the necessity of procedural regularity and therefore do not function at an acceptable level of competence and evenhandedness.

Chapter 18, Article 4-Development Cities

The development cities statute should be eliminated or, in the alternative, thoroughly restructured in light of the experience gained in the few abortive attempts at implementing its provisions. The case for elimination of the development cities law has been convincingly laid out in prior DCRA analyses. The following is a lengthy quote from an April 20, 1976 intra-Division memo:

The Development City law has been a failure. As of this date, this statute has been applied to only one area, notorious Lost River, and that project fizzled and then went "dud". A stunning indication of the value of the Development City law is found in the fact that it was substantially instigated, according to an Anchorage Times editorial (January 31, 1975), by the very group sponsoring its most egregious failure, Lost River.

Once a petition is offered for development city, a great deal of State authority is set in motion, but no development city petitions other than Lost River have or will be forthcoming because development cities are usually undesirable or impractical public and private investments. Let me elaborate on this point.

Building a community from scratch--and that is what a development city is essentially--is a very costly proposition to the public purse. The more costly it becomes, the more controversial and the less willing the State and public are to commit public funds to

to finance the proposed city's service and facilities requirements. Remember how nearby Nome jealously questioned the potentially great expenditure of State and Federal energy and financial resources for Lost River.

Lost River was bound to a State policy--which should also apply to future development city proposals--that State fiscal support of a development city will be forthcoming only if the development city first demonstrates economic feasibility without State subsidies. Considering the nature of the kind of development most likely to foster a development city proposal this is impossible. Most will be based on single industry natural resource development, be it mining like Lost River, or possibly lumbering and associated wood processing or activities supporting onshore or offshore oil and gas development. Absent the creation of a diversified regional economy, a development city isolated in the bush has virtually no potential for attracting further permanent industrial growth and only limited possibilities for commercial growth. Thus, the city collapses when the natural resource upon which it is founded becomes depleted.

Spending public funds on a community bound for extinction is not a sound investment unless the economic returns to the public substantially exceed public investment costs. Substantial public investment can cause a development city to generate a regional economy attracting more lasting industrial and commerce development, especially through State and federal investment for a regional transportation network--i.e., for airport, port and/or highway transportation facilities. However, even with such public investment, there is no guarantee that the regional economy created will be self-sustaining without continued substantial public investment. Bethel, a regional center created by substantial federal and State investment in public services and facilities, cannot sustain its regional economy without ever constant and substantial federal and State subsidy.

The development city will not only be fiscally infeasible from the State's point of view, but also as a functioning municipality. Lost River, which should fairly well exemplify any new city built from the ground up in the hinterlands, was hardly an attractive prospect in the municipal bond market. Its assessed valuation was extremely low while required bonded indebtedness was astronomically high.

Not

a good bond investment. Projected municipal expenditure for community development in Lost River was reported as extremely high due to the high construction and maintenance cost characteristic of bush Alaska. On the other hand, expected revenue was extremely

low, attributable to the usual absence of other revenue-producing industrial and commercial operations in a single-industry city, and a low public ability-to-pay taxes, since an unusually large share of individual and family consumer expenses in remote high cost-of-living Alaskan settlements are required for the purchase of necessities. Under these foregoing circumstances, municipal fiscal health would be the exception and not the rule for a development city.

A development city will have just as hard a time becoming a socially viable community. The Bethel magneticism syndrome is a premier problem. A new community situated in the middle of the bush and chockfull of services and facilities of a high-quality never before experienced in a region could, and probably would, create an in-migration of bush citizens. The phenomenon of in-migration from rural to urban areas has been discussed and analyzed about the world for years and as of yet no one has formulated a workable, humane solution to the tremendous physical, social and governmental problems and pressures it creates in the receiving urban settlement. Bethel says it all.

Natural resource cities cannot seem to hold their workforce, having a high labor turnover and, resultanty, a high turnover of families whose continued presence is the prime ingredient for community stability. Faro, a development city (mining) in the Yukon is geographically the closest example of this instability. It was well designed and provided every essential amenity. Today, visitors and many of its former residents remark that Faro is a tedious place lacking the community spirit and cohesiveness that inexplicably only organic community development can provide. Only close to genius planning can create a brand new development city with the vitality and stability natural to communities created and evolving organically. Tapiolas, however, are exceptional and almost more a result of fortuity of circumstances than of deliberate planning.

The private sector has not exactly been flooding the Local Boundary Commission with petitions for development city incorporation. Private reluctance to jump on the bandwagon of the Development City concept is based on a good capitalist economic sense and the company-town mentality.

First, most conventional industrial development will not locate in the bush away from the established markets and amenities and thus reassuring to developers in existing cities. Second, past experience reveals that those kinds of natural resource ventures, large or small, most likely to be candidates for development city treatment

want to avoid association with any kind of municipal organization whether a development city or a regular municipality. Go it alone is the ethic, with the principal developer providing the facilities and services to the employees of the operation. Look to Prudhoe Bay, Thorne Bay and Red Bay as examples of this company-town mentality. The principal developer knows he can provide needed services for his development if he so wishes to assume the obligation. He does not have the same degree of assurance where these services are promised by a newly created municipal entity with no experience or demonstrated financial or functional capability in providing essential services supportive of industrial activity and concomitant residential and commercial build-up. The company town reaction will probably extend to any new industrial settlements arising as a consequence of offshore oil and gas development occurring well away from existing municipalities of any consequence. (Memo from Sid Wolf, Senior Planner to Kevin Waring, Directory Division of Community Planning, April 20, 1976).

The case against development cities is reinforced by the experience gained from the proposed development city of Afognak. The developer of Afognak was an ANCSA village corporation with large holdings of timber lands located within the boundaries of the proposed city. Also located within the boundaries were timber lands owned by other village corporations, permanent logging camps, and up to eighty private landowners. These various groups protested the formation of the development city and the local boundary commission finally disapproved the incorporation petition. It was argued that the development of timber land other than those held by the city's developer might be subject to land use controls designed to inhibit competition. Private land holders complained that the composition of the City Council during the development stage denied them representation and that the council meetings would not be public. They also argued the City might use its power to issue revenue bonds excessively and that there was no voter approval as a check on this power. Due to the particular status of ANCSA lands, it was feared that the ultimate liability for bonding for other municipal indebtedness would fall on the private non-Native landholders. Objections were also raised to what was perceived as a massive and unjustified State subsidy to private industry.

In retrospect, it has been argued that the Afognak case was a misapplication of the development cities statute. Perhaps the better viewpoint is that the statute was not designed to anticipate the variety of conditions to which its general application would make it susceptible. It is clear that the statute was intended primarily for the Lost River type of situation i.e., a reasonably compact development located in an isolated and virtually unpopulated area with no diversity in land ownership and no competing development. Given the complex land ownership pattern created by ANCSA, the large amount of land required for some types of resource development and the somewhat random pattern of rural population

it can be anticipated that future development cities, if any, have a good chance of facing the same problems as Afognak. Some of these problems could be ameliorated by restructuring the statute but others are likely to remain as latent political questions.

Perhaps the best framework for judging the development cities law is the utilitarian propective. To date no development city exists and no serious proposal is on the horizon. The statute books are thick enough without special interest legislation which even the special interests have not found useful.

Chapter 33, Article 4-Planning, Platting and Zoning

Section 29.33.070 (b)(2). The present language of this provision was adopted by amendment in 1979. DCRA is on record as favoring the language of this provision as it existed prior to its 1979 amendment. The department was concerned that allowing a borough to delegate planning authority to a city within the borough may lead to gaps and inconsistency in planning. This is still a valid objection. The previous language allowed a borough to delegate only administrative and enforcement responsibilities to a city within the borough. This was a reasonable and efficient arrangement which struck a balance between the need for areawide continuity and the need for local responsibility. The Department should therefore recommend a return to the pre-1979 statutory language.

Section 29.33.080 (b)(4). The term "official" map needs to be defined as it has a technical meaning which is not apparent by reference to common usage. An official map is a document adopted by the legislative body of the community. It pinpoints the location of future streets and other public facilities. The official map serves as notice on developers that the municipality intends to acquire certain specified property(it is not however, a comprehensive or general plan). (A good discussion of official maps is contained in Principals and Practice of Urban Planning, International City Managers Association, Wash., D.C., 1968).

Section 29.33.080 (f). Among other things, paragraph (f) requires that "the commission shall establish, subject to approval by the assembly, rules and regulations for the conduct of its meeting." The assembly is not required to adopt these rules and regulations by ordinance. The wording of paragraph (f) should be changed to require the adoption of these rules and regulations by ordinance. In the alternative, a new section could be added to Title 29 which requires that the rules and regulations of all municipal boards, commissions, and departments be codified and published. Either of these changes would increase public access to these rules and regulations and thereby help to insure procedural regularity in the performance of administrative and quasijudicial functions.

Section 29.33.090. This section should be rewritten to eliminate the use of the term "zoning" and a broader term such as "land use regulation"

or "land use management" should be substituted. Euclidian zoning, whereby land is divided into use restricted districts, has not always proved to be the best or most appropriate method for regulating community development in Alaska, particularly in rural communities. "Permit" and "performance standards" systems are examples of devices used in other parts of the country to accommodate the needs for flexibility in planning. The use of the broader concept of land use regulation would include traditional zoning but would not limit communities to this device. It would also help to avoid the rather narrow and inflexible interpretation given to zoning powers by some courts.

Enabling legislation should be added to section 29.33.090 for the transfer of development rights. This land use device has evolved in recent years as a way to accomodate extensive use of community police powers to zone for open space or to preserve historic buidlings with the right of property owners to the reasonable use of their property. Other devices such as comprehensible regulation, eminent domain and acquisition of conservation easements accomplish the same public goal but require large expenditures of public funds.

The transfer of development rights system creates zones where development is greatly restricted for some public purpose. The owners of the restricted property are given the power to sever the right to develop from the rest of the fee in the land to transfer (sell) that right to an adjacent or remote parcel of land. The receiving property is no longer limited by the bulk and density requirements of its zone and may be over-developed in an amount equal to the transferred right.

The use of this device could be an important tool in shaping attractive and functional communities while at the same time allowing appropriate development to the greatest extent possible. A good discussion of this concept along with model enabling legislation can be found in: Rose, "A Proposal for the Separation and Marketability of Development Rights as a Technique to Preserve Open Space," 2 Real Estate Law Review 635 (Winter, 1974.).

Section 29.33.150.245. Paragraph (a) of section 29.33.150 should be re-written to explicitly state that all subdivisions are required to be platted and that these plats must be recorded except where the requirement is waived in specified circumstances. Chapter 15 of Title 40 of the Alaska Statutes concerning subdivisions and dedications should be integrated into Title 29.

Section 29.33.170. The waiver provisions of section 29.33.170 should be modified and a new section added authorizing short subdivisions and short plats. Under present waiver provisions, a large tract of land could be successively subdivided into four or less parcels without ever

triggering the platting requirements. Short plat authority would avoid this result by requiring simplified plats and summary approval for small subdivisions. A model short plat and short subdivision statute is set out below:

Section 29.33. . The assembly or council may adopt regulations and procedures for the summary approval of short plats and short subdivisions or revisions thereof. Such regulations shall be adopted by ordinance and may contain wholly different requirements than those governing the approval of preliminary and final plats of subdivisions and may require surveys and monumentations and shall require filing of the short plat for record in the office of the recorder: provided, that regulations shall contain a requirement that land in short subdivisions may not be further divided in any manner [within a period of five years] without filing of a final plat.

Section 29.33. . Definitions 1) "Short subdivision" is the division of land into four or less lots, tracts, parcels, sites, or subdivisions for the purpose of sale or lease. 2) "Short plat" is the map or representation of a short subdivision.

If the provisions of AS 40.15 relating to subdivisions and dedication, were integrated into Title 29 a new section should be added as follows:

Section 29.33. . Purpose: The purpose of this chapter is to regulate the subdivision of land to promote the public health, safety, and general welfare in accordance with standards established by the State to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light and air; to facilitate adequate provision for water, sewage, parks and recreation area, sites for schools and school grounds and other public requirements; to provide for proper ingress and egress; and to require uniform momumenting of land subdivision and conveyancing by accurate legal description.

Chapter 41-Powers of Third Class Boroughs

Section 29.41.010. This section should be rewritten to specifically include or exclude all or part of the provisions of Chapter 48 (powers applicable to all municipalities) with particular attention paid to Section 29.48.010 and Section 29.48.260.

The last sentence of paragraph (a) of Section 29.41.010 states that: "Area wide exerise 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, exerise any power exerised by a third 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.

Chapter 48 Article I-General Powers

Section 29.48.010. Sub-section (9) of this section allows the disposal of real and personal property for purposes authorized under this or other law. Unlike section 29.48.260, this provision requires no procedural safeguards nor does it require that such action be done by ordinance.

Sub-section (9) should also be rewritten to allow for land exchanges between municipalities and private persons in certain circumstance which will occur as a result of the implementation of section 14 (c)(3) of ANSCA. Under section 14 (c)(3) municipalities will receive 1280 acres of land to be used for future municipal expansion. Several municipalities will not be able to select appropriate land in or near the municipality because most or all of the available land has been conveyed to private persons pursuant to section 14 (c)(1). It would be advantageous for a municipality to be able to exchange some of this inconveniently located land for parcels more suited to municipal purposes. Procedural safeguards should be built in to guard against improper exchanges.

Section 29.48.020. This section should be placed in another chapter. Chapter 48, in which this section is located, is entitled "Powers Applicable to all Municipalities". This section deals with powers of second class boroughs in areas outside cities and not with municipalities in general. It should be placed in another chapter.

Chapter 48 Article 4-Miscellaneous Provisions

The provisions of Section 29.48.260 relating to disposal of municipal properties could be improved by several additions and changes as outlined below:

The term "municipal purpose" in subsection (a) should be defined, or in the alternative, standards or criteria for determining when municipal land is no longer required for municipal purposes should be added to this section.

Certain procedural requirements are specified in subsection (c). The authorized methods for sale of municipal land are auction or by opening of sealed bids. Adding authority for disposal by lottery at fair market value, or some lesser figure set by the municipal legislative body, would give municipalities a fair and reasonable way to distribute land

to persons of low or moderate income. The State has used this method for some time and there is no apparent reason why it would not be appropriate for municipalities. Another provision of sub-section (c) requires voter ratification of any ordinance for the sale, lease or disposition of real property or interest of real property valued at \$25,000 or more. The ravages of inflation has made this provision unnecessarily burdensome to municipalities. In today's market, this provision could require voter ratification for the sale of one lot in some urban municipalities. An appropriate figure would be two to four times the present figure.

Sub-section (d) exempts municipal lands acquired from the State from the procedural requirements of subsection (c). The policy behind this provision is not apparent from reading the statute. It has been suggested that the purpose of this provision is to facilitate the transfer of excess municipal to private ownership, particularly for residential use. If this indeed is the policy behind this subsection, it should be rewritten to exempt transfers for specific purposes regardless of the source of the land. Many municipalities have or will soon receive land from non-State sources (Townsite Trust land, section 14(c)(3) ANCSA land, etc.) which may be equally appropriate for transfer to residential or other private use. It doesn't make much sense to require all the procedural steps of subsection (c) if this land is to be disposed for the same purpose as State land.

The Alaska Supreme Court has recently interpreted sub-section (e) in the case of Libby v. Dillingham. After considering competing interpretations of this paragraph, the court said that municipal land leased to "beneficial new industries" must comply with the procedural requirements of paragraph (c) of the same section. As a result of the Libby decision, communities cannot now negotiate the lease or sale of municipal property to industries which they wish to attract into the community without first engaging into an elaborate competitive bid procedure. This provision should be rewritten to specifically exclude these kinds of transactions from the requirements of paragraph (c).

Many rural communities have expressed the desire to make residential land available to local residents but fear that under present land disposal procedures much of the land would pass to wealthy non-residents who are able to pay a higher price for the land. A new provision should be written which allows for preferences to certain classes of people (e.g. heads of household, non-owners of residential property, etc.) to insure that municipalities have some control over this problem. By listing which classes of preferences are appropriate, guidance would be given to communities so that they would not attempt to exclude classes of people protected by State or Federal law. This is especially important since many communities have expressed an interest in using durational

residency requirements for land disposal preference purposes without realizing that such preferences are clearly unconstitutional. At the time of this memo, the Zobel case has not been decided by the Alaska Supreme Court. The outcome of that case may have broad implications for all classes of preference rights. Therefore, any proposed system of preference rights should be carefully reviewed in light of the final holding in the Zobel case.

One type of preference right deserves particular attention because of the inequities created by the application of section 14 of ANCSA. Section 14 (c)(1) of the Act requires that village corporations reconvey those lands occupied prior to Dec. 18, 1971 as a primary place of residence, primary place of business, subsistence campsite or headquarters for reindeer husbandry. After these claims are satisfied, section 14(c)(3) requires the village corporation to reconvey 1280 acres of land for future expansion to any municipality located in the village or, if no municipality exists, to the State in trust for a future municipality. Unfortunately conveyance of land to the various village corporations has not proceeded in the expeditious manner envisioned by ANCSA. It has been over eight years since the passage of the Act and the process of conveyance is far from complete. As a result community expansion and new development has continued in the traditional fashion from Dec. 18, 1971 to the present. Most of this expansion has occurred with the tacit or express permission of the community. However, the village corporations will not be able to convey title to land occupied after Dec. 18, 1971.

Much of this occupied land will eventually be conveyed to municipalities under section 14(c)(3) and many of these communities have expressed a desire to convey those lands occupied after Dec. 18, 1971 to present occupants. However, there is no provision in Title 29 allowing them to do so. These occupants, many of whom have made expensive improvements such as houses or businesses on the land, will have to compete for the land under the present land disposal provisions of section 29.48.260.

A new sub-section should be added to section 29.48.260 which would permit a municipality, if it so chooses, to grant these occupiers a preference right to acquire land they have substantially improved. Such a provision would avoid the injustice of denying the legitimacy of traditional land practices in rural Alaska and the hardships of forfeiture which will inevitably fall on many families and small businesses.

The following is a tentative draft of a new sub-section designed to implement this policy:

Section 29.48.260(). Notwithstanding the provisions of (c) of this section, the assembly or council may by ordinance establish a formal procedure for the disposal of land received pursuant to

section 14(c)(3) of the Alaska Native Claims Settlement Act (P.L. 92-203, 85 Stat. 638) to any person who substantially improves the land prior to the date on which title is conveyed to the municipality. The amount of land disposed to any person shall not exceed an amount necessary for the reasonable use and enjoyment of the improvements. The ordinance shall require notice of intent to dispose of the land in the manner provided in (c)(2) of this section. Upon written request submitted prior to disposal, the assembly or council shall hold a hearing and issue written findings of fact to resolve disputed claims. The ordinance shall provide a right of appeal to the Superior Court if filed within 60 days of a hearing. Disposal may be without or with consideration not to exceed fair market value of the land prior to improvement. Expenses, if any, for notice appraisal and survey shall be paid by the grantee.

Chapter 78 General Provisions

This chapter contains the "definitions" section of Title 29. This section should be expanded to include the terms specifically mentioned in this memo and any other terms which, upon review and reflection, are susceptible to an ambiguous or technical meaning.

Index

The present index is inadequate. Many topics are not adequately cross referenced or are not mentioned at all. A careful revision and update would be extremely useful.

cc: Veronica Clark

RECEIVED

SEP 09 1980

DEPT. OF COMMUNITY
AND REGIONAL AFFAIRS

OFFICE OF ADMINISTRATION
September 3, 1980



Terry L. Earley
State Assessor
Dept. of Community & Regional Affairs
Division of Local Government Assistance
Pouch B
Juneau, Alaska 99811

Dear Mr. Earley:

The City of Valdez would like to submit a comment with regard to the current plans to revise Alaska Municipal Code - Title 29 as it pertains to property tax - specifically the Senior Citizen Property Exemption program.

During a recent council meeting it was suggested that the age limit to qualify for the Senior Citizen Property Tax Exemption program be reduced to something less than 65 - perhaps 62. Council felt this would be one means by which people who chose to retire earlier than 65 could be benefitted

Thank you for your consideration.

Sincerely,

CITY OF VALDEZ, ALASKA

A handwritten signature in dark ink, appearing to read "Mark Lewis". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Mark Lewis
City Manager

**TITLE 29 REVISION COMMITTEE
Policy Advisory Group Meeting**

Minutes of August 27 & 28 1980

The first meeting of the Policy Advisory Group of the Title 29 Revision Committee was held August 27, 1980 in the Conference Room of the Legislative Information Office, 1024 6th Avenue, Anchorage, Alaska. The meeting was called to order by Billy G. Berrier, Director of the Division of Legal Services at 9:00 am.

Present were: Ted Berns, Terry Cook, Marilyn Dimmick, James Kohler, Gene Moore, Donna Sherby, Jonathan Solomon, Russell W. Walker, Ronald Larson, Senator Arliss Sturgulewski, Senator Bob Mulcahy, Representative Margaret Branson, Representative Charles H. Parr as members of the Policy Group. Also present were Phil Smith and Mr. Palmer McCarter, Ex Officio Members of the Policy Advisory Group. Allan E. Tesche attended representing the Technical Committee. Ted Berns and Russell Walker are also members of the Technical Committee. Mike Walleri of the Tanana Chiefs Conference, Inc., and Glen Svendsen, Administrative Assistant to the Senate Community and Regional Affairs Committee were present. Billy Berrier and Tamara Cook were present representing the Division of Legal Services, Legislative Affairs. Tam Cook explained that Ginny Chitwood from the Alaska Municipal League could not be present but would attend future meetings as an Ex Officio member.

The first order of business was the selection of a chairman for the committee. Nominations were opened and Senator Sturgulewski was nominated by Representative Parr. The nomination was seconded and Senator Sturgulewski was elected Chairman by acclamation.

Mr. Berrier spoke on the role of the Technical Revision Committee and asked for an appointment of a group. A motion to set up a Technical Revision Group was made by Representative Branson. The motion was seconded and carried. The Technical Revision Committee members will be Ted Berns, Richard Garnett, III; John Messenger, Jim Nordale, JoAnne Shanley, Gerald Lee Sharp, Allan Tesche, and Russell Walker.

The Ex Officio members were introduced and there was discussion as to their role. It was agreed that they should sit at the table and take part in the discussion. Palmer McCarter spoke about the role of Community and Regional Affairs. He said that there would be a representative of C&RA at every meeting, either he or Patrick Poland would attend. Mr. McCarter also presented a letter from the Local Boundary commission requesting the statutes regarding Development cities be left in Title 29 but improved. Phil Smith spoke on the concerns of RuralCAP regarding the impact of government on villages and rural areas.

Representative Parr suggested directions for the Policy Committee: 1). greater self determination and latitude for local governments; and 2.) that elected officials should be able to understand Title 29 without the help of attorneys. Senator Sturgulewski agreed that Title 29 needed clarification.

The members present of the Technical Committee met briefly and Ted Berns, as spokesman, gave a report regarding the ideas they discussed. The group recommended that Title 29 be broken down into three sections.

1. The first section to be general provisions applying to all local government.

2. The second section to be delineation of procedures and additional limits on specific forms of government.

3. The third section to be directory provisions to be used unless the local government adopts ordinances of their own.

It was decided that the Technical Committee should attempt to reorganize Title 29 along these lines and present a draft at the next meeting.

Mike Walleri, Village Government Specialist, Tanana Chiefs Conference, Inc., spoke, saying he would like a simplification of government.

A list of items pertaining to Title 29 included in the preliminary draft of the Alaska Municipal League 1981 policy statement was handed out. .

Future meeting dates and places were discussed. None were decided upon.

The kinds of things applicable to all municipalities were discussed, such as incorporation, dissolution, boundary changes, classification of government, extraterritorial powers, merger/consolidation, revenue, taxation, bonding, and intergovernmental relations.

Protection of people in service areas who are not represented by local government, such as persons living outside city limits, was discussed.

The meeting recessed at 4:00 pm.

The meeting was called to order the second day at 9:00 am., Chairman Sturgulewski presiding. In addition to the persons present at the first day's meeting, Chris Johnson of House Research and Nels Franklin from near Dillingham were present, and introduced by Chairman Sturgulewski.

Ted Berns gave a recap of the first days meeting.

Terry Cook was appointed repository of ridiculous laws.

Senator Mulcahy spoke on the problem of getting information, drafts, and policy issues to all municipalities within the time constraints. Phil Smith suggested a teleconference and said that he would be presenting material at the Alaska Federation of Natives Convention (23-25 October 1980, in Anchorage). It was decided that the problem of getting materials and information to the public would be an agenda item at the next meeting. Palmer McCarter, Phil Smith, and Ginny Chitwood of the Alaska Municipal League were appointed to a committee to research this problem and make recommendations.

Melissa Fouse was introduced as the new secretary to the Title 29 Revision Committee.

As part of the reorganization of Title 29, there was discussion as to which statutes belonged in which category.

Representative Parr wants a uniform provision on executive session. There was discussion on executive sessions.

The question of retaining present categories of government was raised and discussed. Ted Berns suggested only two classes of boroughs and home rule, pointing out that there are no first class boroughs.

The question of development cities was raised and discussed. Should we retain, restructure, or eliminate development cities?

There was discussion on the third category. If a municipality chooses to follow procedures, should they be required to follow all of them?

Senator Mulcahy's legislation regarding the recognition of village governments was discussed. Copies of HB 192 are to be mailed to committee members.

There was discussion of persons representing committee members being allowed to vote. Mr. Berrier had reservations based on the appointment of the members of the commission according to resolution. It was decided that persons filling in for committee members be allowed to take part in the discussion, but would not be allowed to vote.

The meeting was adjourned at 12:00 pm.

Respectfully submitted,


Melissa Aber Fouse



P.O. BOX 57 MCGRATH, ALASKA 99527
PHONE (907) 524-3825

August 26, 1980

Arliss Sturgulewski, Senator
2957 Sheldon Jackson Street
Anchorage, Alaska 99504

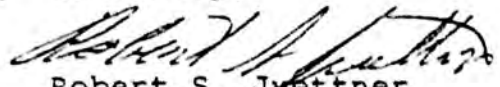
Dear Senator Sturgulewski,

Back at the beginning of the summer, I attended a meeting called by the Division of Community Planning. It was a "loose meeting" in that the agenda was flexible and covered many areas and concerns. Somewhere in the meeting, we touched upon the changes proposed by the Community & Regional Affairs Committees. If I am not mistaken, everyone agreed that the committees were on the right track especially in regards to the establishment of service areas following REAA boundaries.

Well, it seems that those of us living in the "bush" know more about what happens in Juneau than some of the state employees living and working there. For example, the Dept. of Health & Social Services just unveiled a plan whereby the communities of Holy Cross, Anvik, Shageluk and Grayling which are all in the Iditarod Area School District, REAA 11, will now receive their public health nurse services from Bethel. Ms Lois Bergerson decided that those people would be better served from Bethel than McGrath. Was there any local input from those communities? Was any consideration given to the fact that those people are Athabascans and not Yupiks? Did anyone think to explore the logic behind the boundaries of REAA 11? The answer to all three questions is no. However, Ms Bergerson is adamant that the changes will take effect on Sept. 1 irregardless of any protests.

It is my firm hope that when the Legislature convenes in January, that the Community & Regional Affairs Committees will reintroduce the same package of bills.

Sincerely,


Robert S. Jettner
City Administrator

8/29/80 Admin'd Bob I wanted being to Committee → Jan Cooke - Please copy AS 29 Remains Committee with HSS + Dept HSS + from Almon

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
PHONE 485-3730 OR 3730
HOME PHONE 789-7897



HOUSE MAJORITY LEADER
VICE CHAIRMAN JUDICIARY COMMITTEE
MEMBER, RULES COMMITTEE
MEMBER, SPECIAL COMMITTEE
ON SUBSISTENCE

House of Representatives

August 26, 1980

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

Dear Sir:

It has come to my attention that the second class cities and unincorporated village governments in the Bristol Bay Region will experience severe problems in meeting the September 20, 1980 deadline for mailing completed State Revenue Sharing applications to qualify for the \$25,000 minimum entitlement provided for in the new law revising the State Revenue Sharing Program. It has further come to my attention that applications were only recently mailed to general law municipalities and that applications for traditional governing councils have yet to be mailed.

The September 20th time deadline is further compounded by the problem that many of the villages in our region are currently unaware of the provision in the new law which provides state aid to eligible governments recognized under the Alaska Native Claims Settlement Act. Another very real problem is the frequency of mail delivery service, which is sporadic at best, to many of the villages in the more remote areas.

A lot of work on the part of rural legislators went into FCCHB 192 reforming the State Revenue Sharing Program to include state aid to unincorporated governments and the \$25,000 minimum entitlement provision for small rural municipalities with no tax base.

With the September 20th deadline for mailing applications just around the corner, it appears that many local governments that could take advantage of the new State Revenue Sharing program will be unable to do so. I would encourage your department to strongly consider extending the deadline to allow more local governments desperately in need of such monies to have the time to properly complete the application process.

Thank you.

Very sincerely,

Nels A. Anderson, Jr.
Nels A. Anderson, Jr.

cc: Senator George Hohman
Rep. Bill Parker
Sen. Arliss Sturgulewski
Governor Hammond
Commissioner Lee McAnerney, CRA
TUNDRA TIMES
TUNDRA DRUMS

OK
copy to the 29 committee

TO: [The Honorable Lee McAnerney
Commissioner
Department of Community
& Regional Affairs

DATE: August 14, 1980

FILE NO.

TELEPHONE NO.

FROM:

Ernst W. Mueller
Commissioner
Department of Environmental
Conservation

SUBJECT:

Designation of "Village"

Thank you for your letter of August 13 concerning the use of the term "City" rather than "Village" for small rural incorporated communities. A term I find even more offensive is the word "bush" as a substitute for "rural."

I fear, however, that "village" may be with us a long time. AS 46.07.080(2) reads:

"'village' means an unincorporated community which has between 25 and 600 people residing within a two-mile radius, or a second class city." (Emphasis added)

We have tried to encourage the Legislature to revise this language; perhaps we can ask them to replace "village" with a term such as "eligible rural community."

cc: Tim Bergin

RECEIVED
AUG 15 1980
DEPT. OF COMMUNITY
AND REGIONAL AFFAIRS



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.)

*Russ - 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 are problems also*

OFFICE OF THE MUNICIPAL ATTORNEY

KETCHIKAN GATEWAY BOROUGH

AND

CITY OF KETCHIKAN

234 FRONT STREET

P. O. BOX 7300

KETCHIKAN, ALASKA 99901

(907) 225-3111, EX. 327

July 31, 1980

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

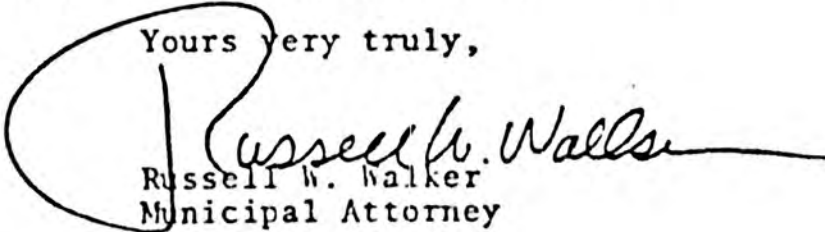
Re: Title 29 Review

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

1. AS 29.48.037 - Extraterritorial Jurisdiction:

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 29.63.060(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.

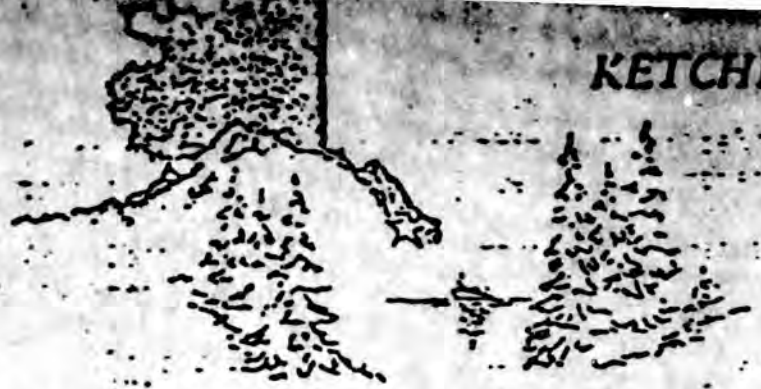
Also, AS 09.55.275 requires plat approval for parcels condemned for public purposes - e.g. city condemnation of the Wingren property for the sewer pump station - but AS 29.33 does not have corresponding language speaking to approval of substandard parcels for public purposes. See Attachment 2.

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.

WT



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

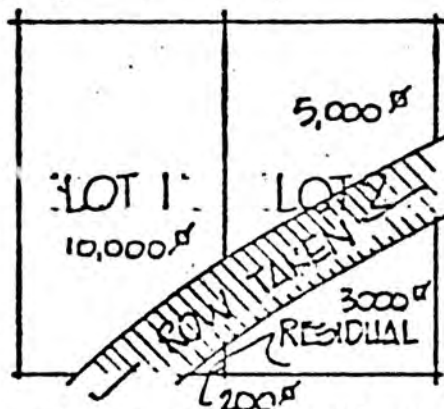
FROM: Bill Jones, Associate Planner

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 ?



Official Business

Alaska State Legislature

House of Representatives

Committee on

Community & Regional Affairs

June 12, 1980

Pouch V
State Capitol
Juneau, Alaska 99811

TO: Mr. Billy Barrier
FROM: Marjorie Gorsuch *md*
RE: FCCSHB947

Being aware that you will be involved in the revision of Title 29, as per the requirements of CSSCR66 which directs the Alaska Legislative Council to review the Municipal Government statutes, I want to call your attention to an area of law, enacted by the Eleventh Legislature as FCCSHB947, which you will want to address during the course of your revision. In the haste of the last days of legislative activity, the following omissions went unnoticed when the Free Conference version of the bill was adopted.

Section 9 AS 29.23.025 (e) 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?

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.

Both the draftsman, Jack Chenoweth, and Ginny Chitwood of the Municipal League which will be involved in the revision of Title 29 are familiar with the problems in the Free Conference law and would be able to answer any questions.

More grist for the Title 29 mill:

Elsie O'Brien (Houston city clerk) to Arliss Sturgulewski

(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.

General observation with respect to Title 29 -- would like greater information within the text of the ^{volume}~~statute~~. (This is probably not possible because of the strict format relating to what may be annotated. However, perhaps CRA Department should receive an amount so that each year, for small cities, a loose-leaf form of Title 29 may be prepared or updated which carries changes in law, applicable commentary, case decisions, AG opinion texts, etc. supplied by the Dept on a quarterly basis. -- The cities could reimburse for the service, or for a portion of it.)

Tanana Chiefs Conference, Inc.

Doyon Building
1st and Hall Streets
Fairbanks, Alaska 99701
Phone (907) 452-8251

RECEIVED
AUG - 5 1980
DEPT. OF COMMUNITY
AND REGIONAL AFFAIRS

August 1, 1980

Ms. Lee McAnerney
Commissioner
Dept. of Community & Regional
Affairs
State of Alaska
Pouch B
Juneau, Alaska 99811

Dear Commissioner McAnerney:

This letter is in response to your June letter requesting comments on the Title 29 Municipal Government Code Revision authorized under Senate Concurrent Resolution No. 66. As indicated by our prior correspondence, we are greatly interested in this area and wish to submit the following comments to be used in the Title 29 revision project.

RECOGNITION OF TRADITIONAL GOVERNMENTS

Local government in rural Alaska is extremely complex. This complexity is primarily due to the vast number of board, commissions, municipal corporations, ANCSA Native Village corporations, town site trusts, recognized entities for municipal trust lands, IRA councils, traditional councils, etc. For sometime TCC has been in favor of local government simplification. The problems of local government should not be addressed through the creation of new boards, commissions, corporate bodies, or new forms of municipal government. Rather, rural local government should be reorganized to utilize existing bodies and enhance those bodies. The introduction of new and novel forms of government may only lead to confusion as rural residents attempt to deal with their local governmental matters.

In connection with this policy of local government simplification, we believe it is important to fulfill the constitutional guarantee that the legislature shall provide for performance of services that it deems necessary or advisable in the unorganized borough and allow for maximum local participation and responsibility. This policy is substantially analogous to the federal policy of self-determination.

To meet these two basic policies, we feel it is necessary that the state of Alaska recognize the traditional governments which currently operate in Alaska. Such recognition will do several things. First, it will allow for the coordination of the funds currently available to local communities from sources other than the state, i.e., BIA, HUD, various CETA programs, etc.

To some degree this issue has already been addressed in the recognition of traditional governments for revenue sharing purposes. We feel, however, that more cooperation is needed between the state and these traditional governmental forms to fully realize maximum local participation and responsibility. To implement this, we favor such legislation as S.B. 565 introduced last session.

By extending such recognition to existing village and community organizations, we believe that rural government will be substantially enhanced. The recognition of such existing bodies will obviate the necessity for the specialized advisory committees, specialized service areas and boards and substantially contribute to local government simplification in the currently unorganized areas of rural Alaska. In addition, such recognition will fulfill the constitutional guarantee of maximum local participation and responsibility.

DECENTRALIZATION OF STATE SERVICES

It is sometimes difficult even for Alaskans to fully comprehend the geographical immenseness of Alaska. An appreciation of the sheer size of Alaska cannot be achieved through casual reference to a map. A full appreciation of Alaska's geographical size can only be appreciated by traversing this great land through conventional transportation systems. To the rural resident, this means being dependent on urban based state service personnel located at various sites throughout the state. Seldom is it possible for the rural resident to contact a state agency locally or even make a single phone call to a single urban government office to solve any problem. The urban Alaskan faces a similar problem in having to rely on state personnel based in other urban centers.

In both the rural and urban contexts, the root problem is the economy of scale. It is simply not economically feasible to establish free standing state agencies at the local level. The administrative cost to establish such programs would be enormous, but the need for decentralized state services is evident. State services should be available in the areas of need. State services should be available at a local level in all localities of the state to the extent that this is feasible. This problem can only be solved through the cooperation of local and state governments to provide maximum local services. This cooperation can be achieved by allowing the local governments to contract for the providing of state services. Basically, this will allow the merger of local and state program administration and allow a maximum amount of direct state financing directed toward program operations. Additionally, it is perceived that such cooperation would make the operation of state programs more responsive to local needs and desires.

It should be remembered, however, that the legislature under this theory will retain ultimate policy decision-making authority. It is only the administration of state and local programs which will be affected. Additionally, it should be recognized that not all state programs can be effectively decentralized, nor is it desirable that all state programs be decentralized. Rather, it is important that those state programs which are technically capable of being decentralized and for which there is a stated need and desire for local program operation should be decentralized through contracting.

LOCAL GOVERNMENT CONSORTIUMS

During the last legislature, several bills were produced out of the interim work of the Senate and House Community and Regional Affairs Joint Local Government Study of 1979. These bills recognized the need for coordinated regional planning.

Last February, TCC submitted comments on this legislation. At that time, we stated that existing local governments should be used as much as possible and that regional concerns can best be addressed through consortiums of existing governments.

Consortiums are advisable for a number of reasons. First, they would be entirely voluntary. The committee hearings fairly indicated strong opposition to "mandatory" regional organization. Second, consortiums could easily coordinate existing programs allowing for current program and plan continuity. Third, a consortium would not create a new independent regional entity and, thus, it would be possible to avoid the type of intergovernmental conflicts which characteristically exist between boroughs and included cities. Finally, the consortium would be governed by a flexible agreement between communities. Such agreements could be flexible enough to address unique regional variations found within each area. In addition, a community's participation would be voluntary, and, therefore, presumably supported by the local community.

The arrangements which we propose are currently authorized under Article X, §13 of the Alaska Constitution which allows local governments to enter into compacts for the joint administration of functions and powers. What is needed is clarification of the permissible scope and impact of these agreements, and new legislation which would allow such consortiums to jointly exercise authority outside of their existing local boundaries.

Conceivably, these consortiums would do three things. First, they would provide for coordinated administration of local governments. By splitting costs and sharing staff, the consortiums could provide a higher quality of service at a reduced cost, where the fragmented governments that now exist cannot operate. Second, the consortiums could address regional concerns, provide a forum for expressing those concerns, and advise state agencies on regional needs and desires.

Third, they would jointly exercise those powers which they agree to jointly exercise outside their current respective boundaries, or within existing boundaries, upon consent of the respective municipal governments.

STATE SUPPORT OF LOCAL AUTHORITY

There are a number of disincentives to a rural municipal government which wishes to exercise its municipal authority. For example, a rural community which passes an ordinance, may not be able to enforce it. If a city attempts to enforce its ordinances, it is subject to substantial liability under current tort law. Where a civil plaintiff or criminal defendant often have free legal assistance available, a city has severely limited funding available to enforce its ordinances or defend against civil complaints. If a city loses a civil suit, the resulting judgment could bankrupt the city or substantially incumber future revenues. In this atmosphere, it is impossible to expect a responsible city official to fully exercise the local government functions.

It is important that the state assist rural municipal government if it is to succeed. Many of the problems can be addressed in Title 29 itself. For example, municipal liability can be reduced to acceptable levels by enactment of a rule raising the standard of municipal tort liability for only those official acts involving "wanton and willful" conduct rather than mere negligence alone. Municipal ordinances and regulations can be assimilated into state law to allow state prosecution of local violations. Such assimilation could be dependent upon compliance with a model municipal code enacted by regulation or dependent on approval of the attorney general's office or Department of Community and Regional Affairs. Communities enacting nonapproved regulations and ordinances, however, should still be able to enforce them in the conventional manner.

Initially, such a system seems expensive to implement. It should be noted, however, that the state is expanding its criminal justice presence in rural Alaska. The proposed Bush Justice Corrections Plan would provide the basic infrastructure required by the above model. In light of these developments, the above model is a minor addition to the planned infrastructure.

IMPLEMENTATION OF LOCAL INPUT

Often local governments and state agencies are not coordinated. Most notably, state land disposals have often conflicted with local land use/development plans. State law generally favors local control or at least local input in the organized areas of the state. In the unorganized areas of the state, however, the state agencies seem to dominate. This exists in spite of the constitutional promise of maximized local participation. We, therefore, propose that some mechanism be inserted into law to provide for fuller local participation.

Page 5
August 1, 1980

Three alternatives exist. First, an administrative restraint may be placed on agencies' actions. Specifically, a community or consortium must agree to agency actions/plans affecting the community or consortium. In the absence of such consent, the agency would have to show, in a locally neutral administrative hearing, that the best interest of the state requires such agency action/plan.

A second alternative would be a planning restraint on the agencies. The communities or consortiums would produce regional plans with which the agencies must comply. Without compliance, the agencies would have to get a waiver from the community or consortium or proceed through a local neutral hearing.

Third, a political mechanism could be established. State law could require agencies to have local plans/actions approved by a local hearing officer at a local hearing. This would allow affected communities and consortiums an opportunity to provide input and hopefully influence agency actions in their areas.

We hope that you find the above comments useful, and that these concerns find their way into the planned Title 29 revisions. We will be glad to respond to any questions regarding the above proposals and plan to augment these comments as needed.

Sincerely,

TANANA CHIEFS CONFERENCE, INC.



William C. "Spud" Williams
President

WCW/4877m
113a11

AREAS OF AS 29 (MUNICIPAL CODE) REQUIRING ATTENTION

Dictated 7/29/80 BUT NOT READ

BY GERALD L. SHARP

The use of the word election throughout the code should be examined with the eye to eliminating all those references to "general" election where it was meant to refer to a municipal election. Where a state general election was meant, the word "state" should be added.

AS 29.08.010, 29.13.010 and 100, and 29.78.010(1)(2)(8)

A careful reading of the code indicates that a unified unit of home rule local government is not a municipality. Under these sections, it is not a home rule municipality. If this was the intent, it should be clarified in the definitions. Along this same line, all sections which apply to home rule boroughs and home rule cities should be reviewed to determine whether they should also apply to unified units.

AS 29.08.020

An interpretive guide should be provided for the court so that it does not seize upon this section to revive Dillon's Rule.

AS 29.13.100

The effect of the phrase "acting otherwise than as provided" should be examined to determine whether this phrase means that a home rule municipality may do neither more nor less than is prescribed for home rule municipalities. See the Whitson case.

AS 29.18.130

We should probably address REAA's under this section.

AS 29.18.140(a)(b)

This section implies that a newly incorporated city or borough may succeed a home rule or previously incorporated general law city or borough. Was this meant?

AS 29.18.180

Organizational grants under this section appear to be inadequate.

AS 29.18.330

The resident training and hire preference should be examined for constitutionality.

AS 29.23.060(a)

This section implies that there may be no special meetings if any member is not notified.

AS 29.23.060(d)

Some consideration should be given to reducing the quorum voting requirement by one vote for every two members of the body who are present who do not vote because they either have a conflict of interest or have been excused by the legislative body.

AS 29.23.070

This section seems to provide an unnecessary infringement of the chief administrator's prerogatives in appointing department heads.

AS 29.23.080

This section should be checked to determine whether it tracts with the new procedures on reapportionment as it relates to council appointments and dual seats.

AS 29.23.040 et. seq.

The residency requirements, terms of officers, powers, duties, and the procedures for the changing of terms and qualifications of officers as these relate to the mayor, council, and assembly members should be uniform as between a city and a borough.

AS 29.23.110

Does this require four votes on a procedural motion? This language should parallel the similar provisions for

boroughs and both should be clarified as to whether there is a distinction between procedural and substantive motions.

AS 29.23.310

Reference within this section to repeal Section 100 should be corrected.

AS 29.23.340(d)

Perhaps this section should be clarified to permit the board to set rates.

AS 29.23.360

My question why there appears to be authority for the assembly or council to appoint administrative officers such as the treasurer and chief of police who do not serve the council or the assembly but must respond to the chief administrative officer.

AS 29.23.370

I question whether there may not be a conflict of interest for an attorney to provide legal advice to both the legislative and administrative branches. Perhaps, there should be a specific extension of the authority of the legislative body to retain its own legal counsel. Next, I question whether there isn't a conflict of interest for the clerk to serve two different masters, the legislative body, and the chief administrator.

AS 29.23.395 through .401

This sort of specific legislation ought to be deleted. If some sort of authority of this sort is required, it should be addressed in the general grant of powers.

AS 29.23.470

I question why the manager has no authority to appoint a temporary or interim manager during his own temporary absence.

AS 29.23.480

I suggest that the adoption of an ordinance at the very next meeting after the repeal of a manager plan is expecting

too much of any council or assembly considering the careful deliberation which should be given to the reorganization.

AS 29.23.540

The seriousness of the conflict of interest which exists when an employee of the school board serves on the body which determines the school boards budget but is not lessened in any way by the existence of subsection (c) of this section. This section should be repealed. (Sour grapes on my part, perhaps.) Also, it appears that this section would permit a person working in the grants section of the Department of Community and Regional Affairs to serve on an assembly or a council.

AS 29.28.015

I question why the mayor in a manager type municipality should not be permitted to be a member of the legislative body so long as he does not have the veto power. This seems to be something that should be left to local option.

AS 29.28.030

It is not clear, under this section, how one deals with a person who has been present within the municipality for more than 30 days but who does not register with the state of Alaska until four days before the election. It appears they might be qualified to vote in the municipal election as they will certainly be qualified to vote in the next state election.

AS 29.28.080(a)

This section implies that the initiative ordinance or resolution must be something within the power of the assembly or council and must not fall within the restrictions of Section 60; however, it appears that the assembly or council may reject the initiative only if it is within the restrictions of Section 60. I also believe that this section should be tightened up to make it clear that the initiative process may not be used to take what are essentially administrative actions even though the assembly or council itself may take such actions by ordinance or resolution.

AS 29.28.110

This section establishes an observed public policy and should be modified to parallel the more liberal provisions which we find in our state constitution.

AS 29.28.130

This section should be clarified to indicate whether a re-elected official may be recalled within six months within of his second election.

AS 29.28.140

This section should be changed to make it clear that elected officials may not be recalled for the manner in which they exercised a duty, e.g., the way they vote on a particular issue, but that they can be recalled for having voted on an issue on which they are prohibited from voting. They could be recalled for refusing to vote when they had neither a conflict nor been excused from voting. They could be recalled for failing to file a report required of individual public officials. They could not be recalled for having voted in favor of doing something prescribed by law nor could they be recalled for voting against doing something which is required by law.

AS 29.28.150

Some thought should be given to clarifying this section to require that the name of each elected official appear on a separate petition and not be on the same petition with any other elected official. The statement of the grounds should also be limited to 200 words.

AS 29.28.160

Either the clerk or the assembly or council should be given specific authority to review the petition for more than merely the superficial contents requirements. This determination should also go to whether or not the ground stated, if true, constitute grounds for repeal.

AS 29.28.170

I question why petitioners should have an additional ten days to gather signatures. Why not give them 70 days to begin with or just cut them off at 60. If the petitioners cannot do some of the leg work themselves of determining how many valid signatures they have collected, there seems to be little in public policy to require they be given an additional ten days for their sloppiness or inadequate performance.

AS 29.28.200(c)

If a public official who is the subject of a sufficient recall petition resigns prior to the election, and his name

is removed from the recall ballot, may he then be reappointed to his position by the remaining members prior to the recall election? May he be reappointed after the recall election?

AS 29.28.210

If we permit one petition to contain more than one name, how should the names appear on the ballot, separately so that the voters may express their desires as to each public official individually or should there be a single ballot giving the voters the same choice which the petitioners gave the petition signers, i.e., all or none?

AS 29.28.250

What happens when an entire assembly, city council, or school board are recalled? There should be some mechanism for providing for an interim legislative body.

AS 29.33.010

Some place here, and perhaps other sections, we should deal with the almost impossible antitrust situation which the United States Supreme Court cast upon us in its Lafayette decision.

AS 29.33.050

While the section is drafted so that it uses parallel verbs, I believe the "establishes, maintains, and operates" phrase should be changed to read "and shall establish, maintain, and operate."

AS 29.33.080(e)

Consideration should also be given here to reducing the majority vote requirement where there are two or more members of the commission who are present but do not vote because of a conflict of interest or because they have been excused by the remaining members.

AS 29.33.085(b)

The requirement that the commission present new recommendations on a comprehensive plan every two years should be redrafted so that it does not appear that the continued validity of the zoning ordinance is dependent upon such a review and so that it does not appear that there is any

question as to the validity of an ordinance which is adopted pursuant to a comprehensive plan which has not been reviewed for more than two years. Also, it may not hurt to throw in some sort of language within the planning and zoning article to make it clear that the adoption of any zoning map change is a legislative and discretionary act and is not administrative as some state supreme courts seem to believe.

AS 29.33.110(b)(1)

I strongly suggest that we not make the Board of Adjustment the board which hears appeals from building code enforcement actions. Some municipalities may prefer to place building code enforcement under some other department such as public works. The authority of the Board of Adjustment to hear building code appeals should be optional with the municipality. Also, whether the assembly or council sits as the Board of Adjustment should also be optional with the municipality.

AS 29.33.110(b)(3)

It is not clear what the phrase "which are not contrary to the public interest" modifies, "the zoning ordinance," or "variances from the terms of the zoning ordinance," or "requests....".

AS 29.33.120

It appears that a person may file for a variance or conditional use, be denied that application, and yet proceed with the denied use if they appeal to the Board of Adjustment because the appeal, under the terms of this section, stays any enforcement where imminent peril is not involved.

AS 29.33.130(b)

I question whether the legislature, and more particularly an assembly, has any authority to establish what the court may well consider as a procedural rule relating to establishing the time within which one may file an appeal to the superior court.

AS 29.33.150

It might be wise to indicate in this section that the platting board has authority to require subdivision exactions.

AS 29.33.170(a)(1)

I suggest it be made clear in here that adequate access does not include access over other privately owned land by way of an easement in favor of the applicant. Adequate access consists solely of access by dedicated or publicly owned ways.

AS 29.33.150(b) and AS 29.33.160(c)

These sections need to be revised out of the code.

AS 29.33.190

This section needs to be beefed up by incorporating administrative procedures to prevent the recording of instruments which create unlawful subdivisions.

AS 29.33.200

This section needs to be coordinated with the procedures under the condemnation sections of Title 9 which require the state to submit its property acquisitions in condemnation proceedings to the platting board.

AS 29.33.240

I question why a second class city located outside an organized borough may obtain title to vacated ways if they intend to use the way for some other public purpose, while within an organized borough the property goes to the abutting owner. I also wonder why parks, greenbelts, and other areas which are vacated are split between abutting property owners while the title to a public square vest in a municipality upon vacation.

AS 29.41.010

Perhaps the idea of third class boroughs should be re-examined.

AS 29.48.010

I question the need for such subsections as (1)(2)(3) and (5) as these all seem to relate to internal administrative matters which are clearly within the authority of the municipality. Some of these sound more like delegations of authority to a specific branch within the municipality. Also, I

believe some consideration should be given to whether or not there should be a catch-all grant clause. Also, something should or could be added to this section to clarify the authority of the municipality to establish and enforce liens for the collection of sales taxes. There might also be a section clearly authorizing the municipality to establish both minimum and non-suspendible penalties for violation of municipal ordinances.

AS 29.48.030

This may be the appropriate section to deal with the Lafayette antitrust problems. Under subsection (b), someone to check to determine whether the reference to the Alaska Transportation Commission makes sense in the light of SB 577 (sorry, I do not have the bill with me as I dictate this).

AS 29.48.033

Again, I do not have the 1980 legislation which effected state regulatory authority over cable television, transportation services, and garbage disposal but I believe what the legislature (industry) did should be carefully reviewed.

AS 29.48.050

I question whether there is any justified public policy behind requiring franchises to be granted by ordinance ratified by the voters. This has serious Lafayette antitrust implications. It seems that a public utility ought to be granted a permit so long as they can show public convenience and necessity.

AS 29.48.070, .080, and .090

The idea of a council or assembly sitting through a protracted rate setting hearing is preposterous. Any hearing which the ordinary council or assembly would sit still through could not possibly be adequate to justify a rate. Also, it is beyond me why the rates should be established by ordinance.

AS 29.48.100(b)

Not only are the preceeding utility regulations outmoded, it seems ludicrous to have them apply to home rule municipalities.

AS 29.48.110

AS 29.48.110 should be changed to make it clear that a

municipality may establish more than a single historic district.

AS 29.48.160(b)

If the procedure for regulating utilities and granting franchises has changed, this section should probably also be changed to correspond.

AS 29.48.190(b)

This section seems to imply that a municipality may enter into an obligation to make payments in a future year if it does so by ordinance. If this happens, I think you have a debt which must have first been approved by the voters and be for a capital improvement.

AS 29.48.200

The fine limitation and the imprisonment limitation both need to be raised. In addition, this may be the appropriate place to specifically authorize municipalities to establish both minimum fines and imprisonments and to provide clear authority for municipalities to make certain penalties non-suspendible.

AS 29.48.210

This section is a good example of the need to carefully distinguish between boroughs and cities on the one hand and unified units on the other. In any event, I believe this section should be changed to permit the expenditure of areawide revenues on a non-areawide basis.

AS 29.48.250

Since our supreme court seems to believe that a borough may not require central purchasing to include a school district, this section does not appear to have much, if any need. It should be deleted, as I believe this power is already possessed by a municipality.

AS 29.48.260

I believe the exemption which is set forth in (d) should be expanded to encompass any land which the municipality disposes of.

AS 29.48.270(b)(c)

These two sections do not seem to have anything to do with the catch line nor with the two remaining subsections. I am not sure why (b) is required in the first place unless it is to make the transfer of this one power optional rather than mandatory as required under AS 29.33.260. These two sections should be moved to a section dealing with a general grant of powers or with the transfer of powers.

AS 29.48.310, 320, and 330

Although these three sections seem to be very comprehensive, it appears that our courts prefer a contrary rule. Either we need to strengthen the language in these sections or we need to print up a Miranda Rights Card which we can read to the judge every time we go into court over a municipal powers question.

AS 29.53.010

Again the problem of how this is to apply to unified units of government; also, this section should be changed to permit the use of areawide revenues on a non-areawide basis.

AS 29.53.020(a)(1)

Some place in the code we need to deal with the method of valuing privately held interests in tax exempt property.

AS 29.53.020(a)(3)

A number of problems arise from the lack of definitions of terms such as religious, charitable, educational, and perhaps, hospital, which are used in this section. Also, there is a question which arises relating to when a property which is owned by, for example, a religious organization, becomes exempt; for example, does vacant land become exempt when it is first purchased by an exempt organization, when the organization has an intent to devote it to a particular exempt use, when the organization commences construction of a facility which will be used for the exempt purpose even though during construction it is not being used for the exempt purpose? (b)(2)(B)

AS 29.53.030

This section should be revised to reflect a realistic value for mining claims, particularly in light of the recent rise in the price of gold.

AS 29.53.060

Perhaps this is a section in which the valuation of leasehold and other possessory interest in tax exempt property should be exempt.

AS 29.53.135

This section should be clarified to indicate whether a majority of the number of members of the assembly. Also, either here or someplace else in the code, we should specifically address whether or not the Board of Equalization has the authority to determine whether property is exempt, and, if exempt, how much of the property is exempt if it is not totally devoted to the exempt use.

AS 29.53.150

A question arises as to whether property which goes from exempt property on January 1 of the tax year to non-exempt because of a change of use during the tax year can be put on a supplemental roll and taxed. Also, if it can be, should the taxes be a portion? In addition, something should be placed in the code to provide guidance for dealing with personal property which is in the municipality for only a part of the year.

AS 29.53.180

This section should be changed to reflect a reasonable interest rate and a penalty which is substantially above the interest.

AS 29.53.415 and .440

Something needs to be added to these sections to take care of the problem created by the Alaska Supreme Court when it ruled that there was no statutory authority for a general law municipality to establish a lead for sales taxes.

AS 29.73.020

This section needs to be divided into two subsections to separate the procedures for home rule and general law municipalities from those for second class municipalities. Presently, there is some question as to whether the last two sentences of the section apply only to second class cities or whether it applies to all municipalities.



Matanuska-Susitna Borough

BOX B, PALMER, ALASKA 99645 • PHONE 745-3246

BOROUGH ATTORNEY'S OFFICE

July 30, 1980

Lee McAnerney, Commissioner
Department of Community & Regional Affairs
State of Alaska
Pouch B
Juneau, Alaska 99811

Dear Commissioner McAnerney:

As you, Phil Smith of Rural CAP and Ginny Chitwood of the Alaska Municipal League recently requested, I am happy to enclose a list of revisions the Legislature and its Policy Committee may wish to consider in connection with revision of AS 29. Let me emphasize this is only a partial list of areas where AS 29 may be improved.

Cordially,

Allan E. Tesche
Allan E. Tesche
Borough Attorney

er

Enclosure

RECEIVED
AUG - 1 1980
DEPT. OF COMMUNITY
AND REGIONAL AFFAIRS

29.08

Although an attempt has been made in this Chapter to classify the various kinds of Alaskan municipalities, more recent amendments to Title 29 and unification of several cities and boroughs have resulted in confusion over definitions of "cities", "boroughs", and "municipalities". It is not clear, for instance, whether the unified Municipality of Anchorage is a city, a borough, or unified municipality or all three forms of government within existing provisions of AS 29.

29.13.100

The Code should contain a uniform system for designating statutes that expressly apply to home rule municipalities and all such statutes should be consistently cross referenced.

29.23.050

The statutory residence requirement prescribed in this section is probably invalid. It is suggested that such residence requirements throughout AS 29 be reduced to a maximum of one year.

29.23.060(d)

Circumstances, other than financial interests, which allow a member to abstain should be better defined.

29.23.080

The procedure for determining vacancies under this section conflicts with the procedure established under AS 29.23.570.

29.23.130(B)

Once again, the three residency requirement in this section should probably be reduced to one year to assure its constitutional validity.

29.23.150 and AS 29.23.470

Both require assembly appointment of an acting borough manager in the absence of or disability of the manager. If these sections address different policy questions, they are unclear; if they do not, one should be eliminated as redundant.

29.23.170

This provision does not specify when a veto becomes effective or specify any time limit for the overriding of the veto. Moreover, it does not indicate what is the status of an ordinance between the time its veto is announced and the time the Assembly first has an opportunity to override the veto. For instance, if the mayor vetoes a line item in the budget, may expenditures be made under that item until the mayor announces the veto at the next regular assembly meeting, or does the veto immediately strike the item until the veto is overridden?

29.23.200

The three year residency requirement here is also probably invalid.

29.23.210

As with the provisions for boroughs, this section should provide more definite standards for abstention on other than conflict of interest grounds.

29.23.250

Another probably invalid three year residency requirement.

29.23.270

This provision has the same ambiguities with regard to the effectiveness of a veto and a veto override as the provision applying to boroughs.

29.23.555

This section has been superceded by AS 39.50.

29.28.070(b)

Reference to "last general election" in this subsection is unclear; considerable confusion has existed in the past over whether the term refers to the last state or municipal election.

29.28.130 et seq

Statutory provisions governing recall contents do not clearly define signature requirements by distinguishing between at large and district forms of representation. AS 29.28070(b) should be redrafted to state required percentages of votes cast for Assemblymen who are elected in districts and who are elected at large.

29.33.070--245

Serious thought should be given to the purpose of the planning, platting and zoning provisions in this code. Should they only prescribe minimum due process standards for rezonings and other land use decisions or should they detail all of the administrative procedures to be followed by local governments in this area. This article presently tries to do little of both and does neither very well.

29.33.190

This section makes it unlawful for any person to sell or attempt to sell land located within a subdivision which has not yet been approved by the borough platting authority and subjects violators to certain criminal sanctions. But AS 29.53.100 requires that the borough assessor assess real property to "the owner of record as shown on the records of the district recorder" even though that person may be the owner of record by virtue of an illegal subdivision in violation of AS 29.33.190. Moreover, AS 29.53.310 allows persons holding security interest in illegally subdivided lands

to obtain release for portions of lots or tracts originally subdivided, even though such lands were illegally subdivided in violation of AS 29.33.190.

29.33.070

It is unclear whether platting powers can be delegated to a second class borough or a city within the borough under this section.

29.33

The current language of this chapter, as it incorporates a traditional definition of zoning and makes zoning along with platting the principal means of land use regulations, is unduly restrictive and should be revised to allow more innovative forms of land use regulation by boroughs and municipalities.

29.33.250

Presumably the transfer required is one from all cities exercising the power rather than from a city.

29.33 and 29.38

Should there be a provision for a borough to exercise a power in some but not all cities (for example in second class cities but not in first class cities)?

29.48.030(b) AS 29.48.035(b) and (c)

These provisions are redundant. The limitations on the powers of second class boroughs should be stated in a more concise fashion in one easily accessible part of the code.

Moreover, AS 29.48.030 and .35, inasmuch as those sections distinguish between "regulation" and provision of "municipal facilities and services", are at the very least confusing and perhaps unnecessary.

Reference to powers granted to second class boroughs to construct and maintain Local Service Roads and Trails under AS 19.30.251 should be made in this section.

Reference to the power granted to local governments to regulate use of public streets, alleys and other public places under AS 42.05.251 should be made in AS 29.48.035 or AS 29.48.020.

29.48.030(a)(12)

The term transportation "system" used in this section should be defined.

29.48.260

Provisions of this section governing disposal of municipal properties should be clarified and revised to reflect increased land values throughout the state, to state who makes determinations of the value of land offered for sale and the date upon which such valuations must be based. Moreover,

the statute should be clarified to either include or exclude rights-of-way or easements from its provisions.

29.58.135

The language regarding the composition of the Board of Equalization is unclear. The statute presently requires "at least that number of members of the assembly over and above the number required for a quorum to transact business"; the statute is unclear when applied to a lay board to whom the equalization function is delegated.

29.53

Should be amended to require payment of all taxes, even those due for more recent assessments on properties whose owners have requested issue of a quitclaim repurchase deed. Present law mandates issue of a quitclaim repurchase deed to the owner of record upon payment of those taxes assessed for the tax year stated in the clerk's deed even though the same property is the subject of other foreclosure proceedings brought in subsequent years. An amendment to AS 29.53 which would require payment of all taxes owing on a parcel before a quitclaim repurchase deed can be issued would eliminate substantial confusion in the minds of taxpayers, and would reduce administrative complexity for borough finance departments presently confronted with multiple foreclosure actions on the same parcels.

29.63.090

The present statute governing service areas does not adequately address the question of whether a service area may be used for exercise of a governmental regulatory power rather than for provision of municipal or services.

8.60.050-100

Regulation of junk yards in this section should be cross-referenced to those sections of Title 29. relating to areawide planning, platting and zoning powers.

9.25.110-120

It is unclear whether public records statutes apply at all to municipal government. If it is the intention of the Legislature to apply the public records laws of AS 9.25.110-120 to cities and boroughs, then those sections should be amended accordingly with an appropriate cross references to Title 29.

City of St. Mary's

P.O. Box 163
ST. MARY'S, ALASKA 99858

July 29, 1980

Department of Community and Regional Affairs
Pouch B
Juneau, Alaska 99811

Re: Recommendations for changes in Title 29
To Title 29 Policy Committee

Gentlemen:

At the request of Mayor Paukan I am submitting the following comments on some of the provisions of Title 29 that the City would like to see changed. The provisions I have commented upon are those that have proved somewhat troublesome during my duration as City Manager. There are no doubt many other provisions that require change.

29.23.570 VACANCIES: This year the City had one councilman leave town without resigning before departure. The City needed to fill the vacancy quickly. None of the provisions of 29.23.570 were helpful. However, 29.23.200 provides that a councilman who ceases to be a city voter immediately forfeits his office. The Council used this provision to justify filling the vacancy immediately. This provision of section 23.200 should be included under section 23.570

29.23.070 and 29.43.040 PLANNING, PLATTING AND ZONING The mandatory language of this section should be permissive. The wisdom of comprehensive plans and complicated zoning requirements are still subject to professional debate and Cities should have the option to develop other methods of control.

29.48.190 BUDGET AND CAPITAL PROGRAM Subsection (c) is unclear with respect to the procedures that must be followed to make transfer and supplemental appropriations. The language providing that no payment may be made except in accordance with appropriations may be troublesome in that it could be interpreted to give the City no leeway with respect to spending except through lengthy procedures to amend the budget. The suggested budget ordinance sent each year to municipalities by Community and Regional Affairs is more flexible and preferable but may not be legal under 29.48.190. This section should be changed to permit transfers without budget amendment if less than 10% or \$10,000 whichever is less of the original appropriation.

29.48.220 POST AUDIT The audit requirement is burdensome for the City. As a first class city we are required to provide a certified audit of city finances. Second class cities need only submit certified financial statements prepared by the city bookkeeper. The City obtains little advantage and no tangible benefit from this requirement. The only people who review the audit are from DCRA. The audit requirement should not be tied to city class. Rather, the requirement should depend upon the size of the budget. It is the amount of money the city spends that justifies audits. Financial statements should be sufficient for cities with budgets less than one million

29.48.260 MUNICIPAL PROPERTIES I consider this to be the most troublesome provision in Title 29 for rural communities. Through the Department of Community and Regional Affairs the City has requested an Attorney General's opinion on some of the requirements of this provision and has recently received a Community Legal Assistance Grant to determine the effect the statute has on land disposal in St. Mary's. First the requirement of appraisals on land before disposal are difficult when most rural land is difficult if not impossible to appraise because comparable sales do not exist. Public auctions may cause the price of land to escalate beyond the means of local residents to afford, and may inhibit local residents who do not speak english from participating in auctions. The words "if any" in subsection (c)(3) seem to indicate public auction or sealed bids are optional but this is not clear. Cities should have the option of developing disposal procedures appropriate to its locality. Such procedures should be ratified by the voters.

I can see no reason for subjecting leases of City land to the same requirements that attach to sales of city land. This unduly restricts the City's ability to make land available for new businesses.

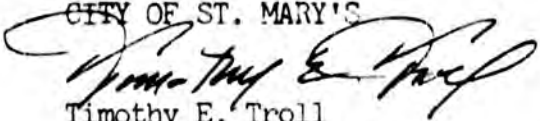
It is not clear whether the exception developed in subsection (e) is free from the requirements of prior appraisal and public auction or sealed bid.

29.68.010 LOCAL BOUNDARY COMMISSION The City recently annexed an adjacent community into its boundary. In order to facilitate the annexation the City wanted to and did make major concessions to the citizens of the adjacent community with respect to a voice in City affairs. Technically what the City has done is not legal because the annexation is not finalized until 45 days after the next legislative session has begun. The delay in time between the decision of the Local Boundary Comm'n. and the legislative disapproval time is unnecessary and can lead to legal complications. Since the legislature has never disapproved a Boundary Commission decision it seems this requirement of submission to the legislature has little utility. A workable alternative might be to preserve a right to appeal a boundary commission decision to the legislature.

I am delighted to see the efforts to review Title 29. I hope it produces some beneficial results. I trust these comments will prove helpful.

Sincerely,

CITY OF ST. MARY'S


Timothy E. Troll
City Manager

RECEIVED
AUG - 4 1980

DEPT. OF COMMUNITY
AND REGIONAL AFFAIRS

Proposed Agenda

The proposed agenda for the meeting is:

1. Introduction of policy advisory group members.
2. Selection of a chairman.
3. Discussion of the role of the technical revision committee.
4. Discussion of the role of proposed ex-officio members representing Community and Regional Affairs, Ruralcap, and the Municipal League.
5. Presentation of proposed items for consideration by staff and ex-officio members.
6. Open discussion.
7. Setting future meeting dates for the policy advisory group.

SUMMARY OF ATTORNEY GENERAL MEMOS AND OPINIONS CONCERNING TITLE 29 - 1972-80

1. AS 29.03.210 - .240 - (M) July 3, 1979
Vacation of a state easement across state-owned land does not constitute "disposal of an interest in land" and strict statutory requirements of notice for disposals of state land are not required. Notice required by due process are fulfilled by the notice procedures set when the state is acting as a platting authority in the unorganized borough and in third class boroughs under AS 40.15.075.
2. AS 29.13.010, 29.53.055 - (O) August 29, 1978
A strict tax-limit ordinance conflicts with state law and is void. An ordinance which, without exception, limits property tax rates would impair the obligation of contracts.
3. AS 29.13.100 - (M) July 10, 1978
Home rule boroughs are not precluded from establishing their own postsecondary educational institution which is independent of the University of Alaska.
4. AS 29.13.100, 29.48.037 - (O) May 5, 1977
Because AS 29.48.037 is identified by AS 29.13.100 as among those provisions which a home rule municipality may not provide to the contrary, it is exclusive and no additional services may be provided or jurisdiction exercised extraterritorially by any municipality. Only the matters provided for in AS 29.48.037 are within a municipality's power and it may not levy an extraterritorial tax. Insofar as revenue sharing is available for providing a service or facility identified in AS 29.48.037, a municipality providing the service or facility extraterritorially should qualify. Ownership of the situs of the facility should have no effect except insofar as a provision on revenue sharing may contemplate ownership as a condition of eligibility. If a municipality operates a park, it makes no difference that it is on federally owned land.
5. AS 29.13.100, 29.53.035 - (O) May 19, 1972
Farm lands must be assessed at their value for farm use only.
6. AS 29.18 - (M) July 27, 1979
The Department of Natural Resources may not grant municipal and ANCSA selections of state land within the capital site at Willow.
7. AS 29.18.180, 29.18.200-.460 - (M) February 22, 1978
Development cities are not entitled to an organization grant, only to land (AS 29.18.420) and to shared revenue (AS 29.18.440).
8. AS 29.18.190 - (M) February 14, 1974
Lands leased for oil and gas are not vacant for municipal selection. Lands classified "resource management" are appropriated and removed from municipal selection.
9. AS 29.18.201 et seq. - (M) May 22, 1979
The Department of Natural Resources should not put land selected by municipalities or by Cook Inlet Regional Corp. into the land disposal bank even though there is insufficient state land available to meet the acreage limits suggested by the letter of intent accompanying the provision creating the land disposal bank.

10. AS 29.18.201 et seq. (M) May 18, 1979
The Department of Natural Resources is obligated to approve and convey leased land which has been selected by a unified municipality prior to July 1, 1979, the effective date of the act changing this obligation.
11. AS 29.18.202 - (M) October 19, 1978
The director of the Division of Lands may use AS 38.053.315 to do substantial equity for municipalities which do not contain "vacant, unappropriated, unreserved general grant land" for purposes of municipal selection. Mental health lands are not "general grant lands" for purposes of municipal selection.
12. AS 29.18.205(e) - (M) December 15, 1978
A nomination of land for selection by a municipality segregates it from homestead appropriation. (Interpretation of the Alaska Homestead Act.)
13. AS 29.28.030 - (M) December 15, 1978
Re-registration in a new municipality is not required before a person may vote in the municipal elections. The statute requires only 30 days residency and registration to vote in state elections.
14. AS 29.18.213(12) - (M) June 20, 1979
Kodiak Borough selections of land classified as timber land on Shutak Island should not be approved. Timber land is not "vacant, unappropriated, unreserved land" unless classified in accordance with an agreement between a municipality and the state providing for state management of municipal land.
15. AS 29.18.340, 29.23.555 - (O) September 27, 1972
A conflict of interest would arise in the event that a state employee who serves as a member of a Development City Council should also have a stock interest in the major development company.
16. AS 29.18.360, .460, 29.33.010(b), .050, .070 - (M) April 6, 1978
A development city, during its development stage, could take over planning and zoning under AS 29.33.080 from the borough, though it need not do so. An organized borough retains full authority over any schools. It is the borough, and not the development city, which must develop and adopt the district coastal management program, however, the development city's plan must be considered by the borough when it develops and adopts the coastal management program.
17. AS 29.23.020 - (M) November 6, 1978
Re-apportionment must occur when the existing apportionment does not meet equal protection (one-man, one-vote) standards. Redistribution of voting power among the existing membership (weighted voting) does not meet re-apportionment requirements for borough assemblies.
18. AS 29.23.020 - (O) February 25, 1974
The municipal code, not AS 14.12.030(a), governs the size of assembly-school boards in third class boroughs. Localities were intended to have broad latitude in determining the composition of their assemblies and the narrow restrictions on size of school boards ought not to be applied where the assembly also serves as school board.

19. AS 29.23.020(a) - (O) February 9, 1973
Inclusion of non-resident military personnel and dependents in the population base for purposes of apportioning representation on a borough assembly is not constitutionally required.
20. AS 29.23.021 - (M) March 21, 1980
Apportionment plan may provide for district-at-large representation absent an attempt to underrepresent a racial or political minority.
21. AS 29.23.021 - (M) March 20, 1980
Weighted or fractional voting is not a constitutionally valid method of reapportionment.
22. AS 29.23.100 - (O) October 31, 1974
School boards must be elected at large rather than from zones.
(Incorrect - see (O) Aug. 29, 1977)
23. AS 29.23.170(a) - (O) May 2, 1977
The mayor may veto the "local source" resolution but he may not exercise an item veto upon it (or the subsequent appropriation) to strike or to reduce any of its items. The item veto is to be used solely on appropriations and may not be used on school budget "items." The "local source" resolution (setting the total amount of local money to be used to finance schools) is not itself an appropriation but rather sets the limit and advises school officials of it. A subsequent enactment makes the appropriation.
24. AS 29.23.310 - (O) August 29, 1977
Borough school board members may be elected from zones, but they must be elected only at-large from zones (while they represent the zone in which they reside, they are responsible to the entire borough electorate).
25. AS 29.28 - (O) June 6, 1977
Inaccuracy of recall petition's allegations is not concern of election officials or the courts and is irrelevant. The only question to be decided is whether or not the charges are sufficiently specific to allege incompetence or misfeasance if they were in fact true.
26. AS 29.28.140, .150(a) - (O) April 12, 1977
Recall petitions must allege specific instance of misconduct, incompetence, or failure to perform prescribed duties. Voters alone determine merits of recall petitions.
26. AS 29.23.010(b), 29.58.340 - (M) January 24, 1980
A power becomes areawide with respect to a borough and any city within it upon the duly authorized transfer of the power from the city to the borough. With respect to a city in the borough which did not transfer the same power, it is not areawide. A city which has transferred a power is not prohibited from exercising that power if the borough failed to do so.
27. AS 29.33.150 - (O) March 24, 1980
State subdivision legislation does not pre-empt local zoning of post-sale private development. A municipality may not disapprove a state subdivision plat, or prevent the sale of lots in that subdivision, based upon the fact that the land is not residentially zoned by the municipality. In the platting process, the municipality may attach

reasonable terms and conditions -- including conditions relating to lot size, configuration and layout. Private buyers of lots within a state subdivision are not immune from local zoning, so, although the zoning ordinance may not be used to prohibit platting of the subdivision, or the subsequent sale of lots, the ordinance does control subsequent private development.

28. AS 29.33.150 - (M) January 21, 1980
A borough cannot require the state to do the following work in relation to a subdivision of state land: 1. define transportation corridors to be utilized for access to subdivisions; 2. analyze defined transportation corridors as to grade and soils to insure the feasibility of borough standard road construction; 3. in all areas in the subdivision proposal where existing grades indicate potential problems, submit proposed road plans and profiles to the satisfaction of the engineering department.
29. AS 29.33.250 - .290, 29.38.020 - .030 - (M) July 26, 1979
While a first class or home rule borough can acquire additional areawide powers merely by transfer from the city, a second class borough can do so only with respect to powers which it has already acquired to be exercised in the area outside cities. That requires an election in most instances.
30. AS 29.33.010(b), .260(b), .290(c) - (M) January 24, 1980
The borough is under a duty to exercise the powers which are transferred to it when it approved the transfer. City ordinances become borough ordinances and the borough has a duty to enforce them until they are repealed or amended by the borough assembly. A city may no longer exercise power transferred to the borough, except that a city may exercise a power which is not being exercised by the borough.
31. AS 29.33.290, .360, .550 - (M) April 20, 1979
A general law municipality may not provide by ordinance for the powers to confirm appointments, suspensions, and discharges of municipal officers and employees to be extended to include more than is prescribed by the Municipal Code.
32. AS 29.33.290, 29.48.030 - (M) February 6, 1979
No authority exists for a borough to divest itself of an areawide power and thereby restore it to a city from which it was previously transferred. Cities may presumably act as agents or contractors of the borough for carrying out its exercise of the power.
33. AS 29.33.290(c) - (O) - March 5, 1973
North Star Borough succeeds to Fairbank's interest in Alaska land notwithstanding statutory conditions on forgiving the loan by the State Bond Committee
34. AS 29.41 - (M) January 6, 1977
Third class boroughs are nothing more than school districts.
35. AS 29.43.020, 29.48.010(7), 29.53.415(a), .440, .450 - (M) January 2, 1980
The limitation placed on a borough's sales tax is three percent. A bed tax on hotel occupants should be considered a sales tax subject to the limitation.

36. AS 29.48.010, .440 - (O) August 14, 1975
A city of any class has the power to levy and collect sales taxes. Sale of utility services is a sale for sales tax purposes. Public utility cooperatives are exempt from all local sales and use taxes however. No local tax upon a utility company can be passed on to utility subscribers outside the local unit of government.
37. AS 29.48.010 - .035, 29.68.440 - (M) September 30, 1976
The Municipality of Anchorage has the power to contract to maintain local roads and trails.
38. AS 29.48.010(4) - July 16, 1975
Powers and functions may be conferred on municipalities by statutes not contained in the Municipal Code. AS 44.47.180-.230 constitute effective law and second class boroughs need not acquire additional powers under AS 29 in order to authorize expenditures of administrative costs required by those sections.
39. AS 29.48.010(11), .210 - (M) May 12, 1975
Boroughs may advance monies from their general funds to their service areas even in the absence of specific statutory authority.
40. AS 29.48.130(a)(5) - (M) October 21, 1977
Implementation of a CETA regulation regarding retirement benefits may require action by Anchorage to fund retirement contributions. Under state law, municipal funds may be used to fund these benefits only if the municipal assembly or council enacts an ordinance to that effect.
41. AS 29.48.200 - (M) July 24, 1979
Municipalities can prescribe mandatory sentencing for OMVI. The maximum for violating any local ordinance is \$500 and 30 days.
42. AS 29.48.260 - (M) August 22, 1979
For the limited purpose of providing certain facilities in rural areas, Regional Housing Authorities may be considered political subdivisions of the state. A municipality may dispose of its property to a political subdivision, so a racially exclusive regional association can receive municipal property for public housing programs.
43. AS 29.53.020, .045 - (M) November 9, 1977
A city may prohibit hunting as a safety measure within city limits, but not for wildlife management purposes.
44. AS 29.53.020(a) - (M) March 7, 1979
No amendment to AS 29.53.020 could modify the definition of taxable property for purposes of the general statewide property tax. The "business inventories" exemption from municipal property taxation will not affect total state revenue.
45. AS 29.53.020(a)(3), .020(c) - (M) April 5, 1973
To remain tax exempt, property may generate income solely for the statutorily expressed purposes. The income derived from property must be from only its use as classroom space under this section.
46. AS 29.53.020(e) - (M) August 17, 1979
By interpretive regulation, a property tax exemption can be limited to comport with legislative intent. The Department of Community and Regional Affairs may define "permanent place of abode" as being

limited to not more than one acre if urban nor more than five acres if rural because the legislature intended to relieve senior citizens from tax burdens on their dwellings, not to create a windfall for holders of vast tracts of land. However, such a regulation must be adopted under the APA to have legal effect.

47. AS 29.53.020(e) - (g), .025 (M) September 17, 1975
State must reimburse municipalities for senior citizen exemptions even though the local tax code also exempts the property from taxation, but the Department of Community and Regional Affairs could adopt interpretive regulations stipulating that payments will be made to a municipality for revenue lost to it for claims only to the extent that senior citizens' exemption exceeds an exemption the senior citizens are eligible for under municipal ordinance.
48. AS 29.53.045, .045(e), .050 - (O) May 16, 1978
The military population should be included in the total when calculating the average per capita assessed valuation in the state.
49. AS 29.53.045, .050 - (M) May 2, 1978
AS 29.53.045(a) gives a municipality a choice as to the methods of taxation, but both methods are subject to the 30 mill limit.
50. AS 29.53.135 - (M) February 10, 1978
The phrase "at least ... over and above the number required for a quorum" means at least one more than a quorum. Since the statute does not set a maximum number, it may be set by ordinance. The phrase "number of members of" refers to the number required for a quorum and does not require an appointed board's membership to include assembly members. (Suggests that this statute be rewritten.)
51. AS 29.53.180(b), .390(b) - (M) December 21, 1979
Municipalities must pay interest on excess tax penalties they have levied. A municipality may initiate refunds on its own motion.
52. AS 29.53.405 - (M) February 1, 1980
Differential tax zones within cities are authorized. Changes in differential tax zones may be made by ordinance without voter approval.
53. AS 29.53.415 - (M) October 6, 1976
A city may impose a tax upon retail sales and limit it to intoxicating liquor, or apply a higher rate to the sale of alcoholic beverages than the sales of other commodities.
53. AS 29.53.415, .440, .450 - (M) August 21, 1973
A municipality may impose a sales tax on the sale of intoxicating liquor.
54. AS 29.63.010, 29.53.010-.020 - (M) April 23, 1974
State property is subject to special assessments by units of local government for improvements which benefit the property.
55. AS 29.63.065 (M) October 24, 1975
The state must reimburse a municipality for special assessments which persons 65 years of age or older are exempt from paying in full at its initial levy, not in installments as allowed in AS 29.63.060.