

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

757 SCOM123: TITLE 29 POLICY REVISION ADVISORY COMM. 1980



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

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Enclosure

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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 99859

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.

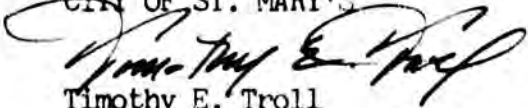
It is not clear whether the exception developed in subsection (e) is free from the requirements of prior appraisal and public auction or sealed bid.

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

WHILE IN JUNEAU
POUCH V

JUNEAU, ALASKA 99811
PHONE 465-3738 OR 3739
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 title 29 committee



CITY OF MC GRATH

P.O. BOX 57 MC GRATH, ALASKA 99627

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, Shakluk 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. Juettner
Robert S. Juettner
City Administrator

8/29/80 Admined Bob I wanted bring to committee → Jan Cooke - Please copy AS 29 Revised Committee with ex-Office + Dept HSS + Fran Ulmer

OFFICE OF THE MUNICIPAL ATTORNEY

KETCHIKAN GATEWAY BOROUGH

AND

CITY OF KETCHIKAN

334 FRONT STREET

P. O. BOX 7300

KETCHIKAN, ALASKA 99901

(907) 225-3111, EX. 327

September 11, 1980

State of Alaska
Legislative Affairs Agency
Pouch Y - State Capitol
Juneau, Alaska 99811

Attn: Tamara Brundt Cook
Legislative Counsel

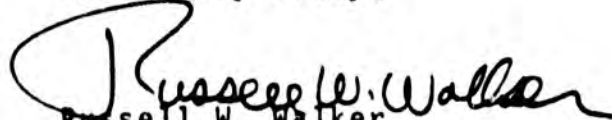
Re: Title 29 Review

Dear Tamara:

Please find enclosed herewith further comments received from the Revenue Collector for the Ketchikan Gateway Borough which we would appreciate being distributed to the committee members and technical staff for consideration incident to the above-referenced review.

Your courtesy and cooperation are very much appreciated.

Yours very truly,


Russell W. Walker
Municipal Attorney

RWW:sf

Enclosure



KETCHIKAN GATEWAY BOROUGH

344 FRONT STREET
KETCHIKAN, ALASKA 99901

TO: Russell Walker, Municipal Attorney
THRU: Marvin Yoder, ^{my} Interim Borough Manager
FROM: M. Westfall, Revenue Collector
RE: Title 29 Review
DATE: September 2, 1980

I have reviewed the material relating to the review of Title 29 and approve and support those portions pertaining to chapter 53 of this title.

A few other changes which might be considered are listed below:

1. Sec. 29.53.025 the classification of boats for purposes of taxation by tonnage should be changed to more realistic amounts.
2. Sec. 29.53.060 include the words having a situs within the taxing district after the word property. Many property owners believe that property not within the taxing district on January 1 of the taxing year is free of tax. Boats and airplanes are commonly removed from the taxing district during the first month of the year to avoid taxation.
3. Sec. 29.53.320 change person to receive redemption monies from clerk to tax collector who has in his/her possession the records of assessment and taxation, applied penalties, interest & costs.



On the Title 29 revision --

Give some thought to suggesting inclusion of a provision somewhere by which some state officer -- governor, CRA commissioner or what have you -- enjoys authority to appoint municipal voters ^{incumbent} to fill elected city or borough offices when the number of/members of city council or borough assembly drops below the number required by law or charter to produce a quorum. For example, if the 5 members of the Juneau assembly are recalled, it may be that the four remaining cannot function as an assembly even to the point of filling a vacancy or calling for an election to fill the vacancy. Other quirks in charter provisions could operate to preclude councils or assemblies from operating if there are "mass" resignations or wholesale removals. It may be a provision that will never be used, but it may be one that should be on the books just in case.....

JC

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 29.23.210

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.

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.)

June 3, 1980

Clara M. Eccles
3005 Willow Street
Anchorage, Alaska 99503

Dear Mrs. Eccles:

Thank you for your letter in which you inquire about the status of SB 154 which would amend Title 29 to include disabled veterans of any age. Many property tax exemption bills were entered into this session of the legislature. In considering these bills, a number of inequities were apparent. For example, if disabled veterans are a group given special exemption, what about the equity question of other disabled people in the state? A major policy question arises when you begin to consider exemptions for special groups of people rather than on a need basis. For these reasons and others, a number of the tax exemption bills will not be moved from the Senate Community and Regional Affairs Committee, which I chair this session.

Because of your interest, I am sending you a copy of a letter I have sent to Dave Walsh, President of the Alaska Municipal League, pointing out some of the above issues, and others that are involved in any consideration of property tax changes. I'm also enclosing a copy of a report done by the Department of Community and Regional Affairs. Mr. Walsh has agreed that the Alaska Municipal League will take a look at the issues raised in consideration of the property tax exemptions and report back to the next session of the legislature. As I have interest in this issue, I would be very happy to have you contact me after the session is over. My Anchorage number is 279-4939.

At the present time a free conference committee is considering an increase in the longevity bonus. Several of the senators are concerned over making any changes to the longevity bonus with the exception of increases in the amount. They feel that amendments to the law might well cause court challenges as to the validity of the longevity bonus. I do feel confident that there will be an adjustment in the amount of the bonus prior to the end of the session.

Kindest personal regards,

Arliss Sturgulewski
Senator, District 10-H

Enclosure

3005 Willow St.
Anchorage, Ak. 99503
May 14, 1980

Arliss Sturgulewski
Pouch V
Juneau, Ak. 99502

Dear Mrs. Sturgulewski:

I'm interested in SB 154 "Extending property tax exemption to include disabled veterans of any age." How about those of us who are disability. I understand the residents of Kenai already have this but anytime I've mentioned it to Anchorage senators it's always too early or too late in the session. Too me there's no such thing. SB 427 seems to have something similar in mind but wasn't introduced until this year.

I am also interested in what progress has been made in SB 39 Re: length of stay in Ak for eligibility for longevity bonus, and 2d HCSSB-71. In the House HB-15 is of interest to me.

In this area Handicapped and Disabled is quite a different matter and what applies to one doesn't very often include the other.

Thanks for your interest.

Sincerely,

Clara M. Eccles
Clara M. Eccles



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.

Eliminate 3rd class
boroughs -

(1)

Aronson -

Call Bruce Aronson
about recall sec.

Title 29 - Ombudsman's
Office - 4971 -

Jack Chenoweth

Bruce Aronson per call 2/9/80

- 1) Eliminate 3rd class boroughs. No need for them now that we have REAAs. Should assume minimal responsibilities, such as land use planning if borough is established.
- 2) Should be a clear statutory statement as to when city rather than state provides local police services ^{and local funds.} This will never be the reality because state will always do it. - I think it to local police in the state trooper will not work.
- 3) Local control of some cases -
Eliminate all cases of direct support of law enforcement which require minor-subordinate matters municipalities either do or do not handle. Another example is jurisdictional and criminal activities. In police C who is advisory only by statute. May from state to local to state.
- 4) No to emergency
Statute in 2nd of 1970, so that
primary responsibility
relates to 2nd of 1970
- I present

MEMORANDUM
DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

TO: Palmer McCarten *PM*
Director

DATE: November 6, 1980

FILE NO:

TELEPHONE NO:

FROM: Terry Earley *TE*
State Assessor

SUBJECT: School Bond
Guarantee Fund

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

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

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

Attachment

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

Thompson
PM

*OK Blesburg -
Municipal attorney - 101-551212*

772-4425

MEMORANDUM

DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

State of Alaska

TO: The Honorable Jay S. Hammond
Governor

DATE: November 17, 1980

FILE NO:

TELEPHONE NO:

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

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

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

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

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

- Teach Norton -
Assessor - Rupert Brier
in Juneau
- Paul Dillon -

ALAKANUK CITY COUNCIL
ALAKANUK, ALASKA 99554

To Members of the Title 29 Revision Committee; FROM: Terry Cook and
Recommended changes, wording, and questions: Alakanuk City Council.

USING TITLE 29 WORK DRAFT COPY:

page 48-line 14; define and spell out AS44.62.310

page 62-line 22; change (Four affirmative) to A majority number of

page 63-line 20; add (.) but does not change the term of the seat
he was elected to.

page 66-line 29; insert or between ", as"

page 67-line 20; add at the end of the sentence (:) of the city;

page 70-line 29; change (general) to regular

page 71-line 14, 15; recommended to read: a copy of an annual audit if
revenues or expenditures exceed \$ _____ or statement
of annual income and expenditures;

page 71-line 16; add (:) if taxes are assessed or levied;

page 72-line 10; should state by what reasons for "removal from office."

*page 73-line 15; Can a municipality regulate private or co-operative
utility if not owned by the municipality?

page 74-line 23; needs rewording as to how many affirmative votes
are needed to adopt an emergency ordinance.

page 75-line 10; insert after the word "sold" , distributed or made
available to the public.

page 76-line 8; the limits should be raised

page 76-line 10; add after "cost" (.) or at no charge as determined by
assembly or council.

page 77-line 6; add to read: elections by ordinance and

*page 78-line 5; what happens if there are 3 top candidates that are tied
with less than a majority vote? Suggested wording:
two or more

page 78-line 20; add at the end of the sentence (.) and authorize the
results to be certified.

*page 78-line 24; should this read (more) less ?

page 79-line 19; add a new section: 29.30.105 PETITION EXEMPTION. The
governing body may put a question on the ballot
without a petition.

*page 83-line 9; Can "misconduct in office" be defined?

*page 85-line 6--14; if all members are recalled or there is not a quorum
left, how can a special election be called for?

*Denotes a question

CITY OF ALAKANUK
ALAKANUK CITY COUNCIL
ALAKANUK, ALASKA 99554

Page 2

Recommended changes, wording, and questions:

page 90-line 13; add after word "contracts" or make agreements

page 95-line 16; change (duces tecum) to plain English!!!!

page 94-line 4,5; change (spread upon) to _____

page 97-line 11; change (\$25,000) to \$100,000

page 99-line 9; add after word "municipallity" if revenues or expenditures exceed \$

page 99-line 10; add after word "audit" if revenues or expenditures exceed \$ or if less than \$ a
statement of annual income and expenditures.

page 109; Repeal sections 29.39.060 (Sec.29.43.100), 29.39.070 (Sec.29.43.105
and 29.39.080 (Sec.29.43.110).

page 115; Sec.29.42.080 the regulations should be adopted by ordinance so
that the public has a fair hearing in matters that can affect them

page 116-line 26; add after word "street" as long as it is not an
easement across another's private property.

page 122-line 17; change (\$500) to \$5,000 in value.

TO: Technical Group

FROM: Melissa Aber Fouse
Secretary, Title 29 Commission

SUBJECT: SB 582

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

LAA 15

Original sponsor: Rules Committee
by request

Offered: 5/12/80
Referred: Finance

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 582

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 shall certify the final assessment roll.

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

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

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

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

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

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

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

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

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

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

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

1 of a property tax under this section.

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

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

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

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

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

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

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

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

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

29.53.025
MUNICIPAL GOVERNMENT

distribution of previous year assessed values in the state."

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

Editor's note. — Section 1, ch. 13, SLA 1973, provides: "Notwithstanding the provisions of AS 29.53.020(f), for the 1973 assessment year the filing date for application for the exemption granted under AS 29.53.020(e) is extended to March 15, 1973."

Strict construction.

The courts must narrowly construe statutes granting tax exemptions. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

Burden of showing eligibility for exemption. — A taxpayer claiming a tax exemption has the burden of showing that the property is eligible for the exemption. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

Exclusive use for nonprofit religious, etc., purposes must be shown. In order to qualify for an exemption, the taxpayer must show not benefits, but exclusive use for nonprofit religious, charitable, cemetery, hospital or educational purposes. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

When the property in question is used even in part by nonexempt parties for their private business purposes, there can be no exemption. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

Actual use rather than owner's use should be analyzed in determining eligibility for an exemption. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

Office space rented to doctors engaged in private practice. — Office space in a building partially used exclusively for nonprofit hospital purposes, rented to doctors engaged in the private practice of medicine by a nonprofit charitable and religious corporation, was not exempt from taxation. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

While the use of office space by doctor-tenants in conducting their private practices does provide incidental benefits to the adjacent hospital, the office space is not used exclusively for hospital purposes. Greater Anchorage Area Borough v. Sisters of Charity of House of Providence, Sup. Ct. Op. No. 1299 (File No. 2445), 553 P.2d 467 (1976).

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. An exclusion or exemption authorized by this section may not exceed \$10,000 for any one residence.

(b) Municipalities may by ordinance

(1) classify boats and vessels for purposes of taxation and may establish the assessed valuation of boats and vessels on the basis of their registered or certificated net tonnage; a tax based upon a tonnage valuation shall not exceed \$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

Draft change to accommodate Fairbanks.

(C) historic sites, buildings and monuments;

(D) land of a nonprofit organization used for agricultural purposes if rights to subdivide the land are conveyed to the state and the conveyance includes a covenant restricting use of the land to agricultural purposes only; rights conveyed to the state under this subparagraph may be conveyed by the state only in accordance with AS 38.05.069(c).

(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;

(3) a home rule or general law city within an organized borough may, by ordinance, adjust its property tax structure in whole or in part to the property tax structure of the borough, including but not limited to exempting or partially exempting property from taxation.

(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.

(e) Municipalities may by ordinance classify and exempt or partially exempt from taxation privately owned land, wet land and water areas for which a scenic, conservation, or public recreation use easement is granted to a governmental body. To be eligible for a tax exemption, or partial exemption, the easement must be in perpetuity. However, the easement is automatically terminated before an eminent domain taking of fee simple title or less than fee simple title to the property so that the property owner is compensated at a rate which does not reflect the easement grant.

(f) A municipality may by ordinance exempt from taxation all or any part of the increase in assessed value of improvements to real property if an increase in assessed value is directly attributable to alteration of the natural features of the land or new maintenance, repair or renovation of an existing structure and if the alteration, maintenance, repair or renovation, when completed, enhances the exterior appearance or aesthetic quality of the land or structure. No exemption may be allowed under this subsection for the construction of an improvement to a structure if the principal purpose of the improvement is to increase the amount of space for occupancy or nonresidential use within the

structure or for the alteration of land as a consequence of construction activity. An exemption provided in this subsection may continue for up to four years from the date the improvement is completed or from the date of approval for the exemption by the local assessor, whichever is later. ✓

(g) A municipality may by ordinance exempt from taxation all or any part of the increase in assessed value of improvements to a single family dwelling if the principal purpose of the improvement is to increase the amount of space for occupancy. An exemption provided in this subsection may continue for up to two years from the date the improvement is completed or from the date of approval of an application for the exemption by the local assessor, whichever is later. (§ 2 ch 118 SLA 1972; am § 2 ch 1 FSSLA 1973; am § 1 ch 33 SLA 1975; am § 1 ch 111 SLA 1976; am § 1 ch 262 SLA 1976; am § 1 ch 95 SLA 1977)

Effect of amendments. — The 1973 amendment, effective January 1, 1974, added the second sentence of subsection (a).

The 1975 amendment, effective July 1, 1976, added subsection (e).

The first 1976 amendment added paragraph (3) of subsection (c).

The second 1976 amendment, effective June 25, 1976, added paragraph (2)(D) of subsection (b).

The 1977 amendment added subsections (f) and (g).

Sec. 29.53.035. Farm or agricultural lands. (a) Farm use lands included in a farm unit and not dedicated or being used for nonfarm purposes shall be assessed on the basis of full and true value for farm use, and shall not be assessed as if subdivided or used for some other nonfarm purpose. The assessor shall maintain records valuing the farm use land for both full and true value and farm use value. Should the farm use land be sold, leased, or otherwise disposed of for uses incompatible with farm use or be converted to a use incompatible with farm use by the owner, the owner is liable to pay an amount equal to the additional tax at the current mill levy together with eight per cent interest for the preceding seven years, as though the land had not been assessed for farm use purposes. Payment by the owner shall be made to the state to the extent of its reimbursement for revenue loss under (e) of this section for the preceding seven years. The balance of the payment shall be made to the city or borough.

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

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

November 18, 1980

TO: TITLE 29 TECHNICAL AND POLICY COMMITTEES
FROM: ALASKA ASSOCIATION OF MUNICIPAL CLERKS
SUBJECT: TITLE 29 REVISIONS

JoAnne Stanley
V.P.

We respectfully submit the following comments:

1) Sec. 29.30.040. We support the drafted changes as recommended by the Technical Committee, dated October 10, 1980, with the following amendment to (b):

"(b) Voter registration by the municipality may not be required, and a municipality may not alter voter qualification requirements except that a municipality may by ordinance require a person to be a resident of and registered in the precinct, district, or service area in which he votes."

Explanation: Those voting on the issue are residents of the specific area and thus will have to live with the outcome of the election; requiring registration in the precinct, district or service area will hopefully eliminate some of the problems and the time demanded in trying to prove residency; such a procedure will give the Canvass Board clearer direction.

2) Regarding new AS 29.30.110 and .230, the AAMC feels it is within the scope of responsibilities of the clerks to provide an acceptable petition format; however, we object to being burdened with any of the responsibility of composing any type of initiative, referendum or recall statement. We feel that the newly-proposed sections are unclear in this regard and request that clarification of our position be considered.

3) AAMC strong supports the language as proposed in AS 29.30.050 regarding elections which gives the municipalities the option to provide for runoff elections by ordinance.

City of Saxman

P.O. Box 8676

Ketchikan, Alaska 99901

(907) 225-4166

RESOLUTION NO:

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

WHEREAS,

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

WHEREAS,

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

WHEREAS,

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

WHEREAS,

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

WHEREAS,

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

WHEREAS,

THE ANCSA REGIONAL AND VILLAGE CORPORATIONS by 1991 will be a substantial and sizable component of the State's economic base which will be seriously threatened by private non-State interests and entrepreneurship without the ability or accessibility for recognition and mutual and co-operative interaction by the State with Native village and traditional tribal government over jurisdictional and governmental matters.

NOW, THEREFORE, BE IT RESOLVED by:

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

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

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

City of Saxman

P.O. Box 8676

Ketchikan, Alaska 99901

(907) 225-4166

RESOLUTION NO:

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

WHEREAS,

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

WHEREAS,

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

WHEREAS,

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

WHEREAS,

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

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

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

WHEREAS,

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

NOW, THEREFORE, BE IT RESOLVED by:

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

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

RESOLUTION NO:

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

WHEREAS:

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

WHEREAS:

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

WHEREAS:

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

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

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

WHEREAS:

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

WHEREAS:

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

WHEREAS:

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

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

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

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

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



Mailed 27 Oct 80 CITY OF MC GRATH

P.O. BOX 57 MC GRATH, ALASKA 99627
PHONE (907) 524-3825

*See -
Please copy Police meeting
technical com + Mike W.
Thanks Arthur's.*

October 1, 1980

Senator Arliss Sturgulewski
2957 Sheldon Jackson St.
Anchorage, Alaska 99504

Dear Senator Sturgulewski,

I am sorry that I did not have the chance to speak to you or make a presentation at the Title 29 Revision Committee meeting on Monday. An illness in the family made me late and an airplane necessitated my leaving before noon. However, I was very pleased by what I witnessed. The discussions on the transfer of land and planning and zoning were very relevant to what we are presently facing. I heard only a portion of Dr. McGinnis' presentation and it upset me. If the Dept. of Health & Social Services is advocating that the second class cities should assume the responsibility for AFDC and Medicaid payments, they should be taken out and shot! Mike Wallerie was making several good points about what it is to be an Alaskan Native and the relationship between the individual and the rest of the community. The Department's plan would be doomed to failure in several communities around the state. This in turn would have other disastrous consequences for other small, second class cities.

Since I was unable to make my planned presentation, I would like to address my remarks to you. I will only be addressing small, second class cities. First, there are two major influences upon the small second class cities. They are their size and remoteness and the fact that the unorganized borough is over organized. I had hoped that Mike Wallerie would touch on this point but he didn't. The committee must realize that eventhough our communities are small that life is very complex in the "bush". A small second class cities must supply a seven member city council, a board of directors for the local ANSCA corporation, at least one advisory school committee (in many instances there are several standing educational committees such as JOM, Indian Ed. etc for the REAA and, if there is a BIA elementary school another set of committees), several members for the Native Village Council or IRA Council and members for other important local committees as well as representatives to regional organizations such as the regional corporation, regional housing authorities, fishand game advisory commissions, and State boards and committees.

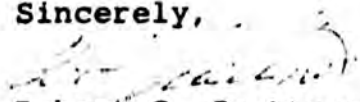
Because of the small population and the over organization of the second class cities, it becomes extremely difficult to find qualified people to fulfill all the positions whether voluntary or for pay. This in turn results in lack of service being

performed or offered by the second, class cities. The fact that there are so many second class cities which are not functioning is an indication that the system needs to be simplified. I would offer the committee two recommendations. First, acknowledge that entity which is functioning most efficiently in the community whether it is an IRA Council, a Native Village Council, a community organization or association whatever. The State would be recognizing these organizations as providers of services. They would not have the power to enact ordinances or police functions. As a recipient of State funds, these organizations would have to assure the State that services are being delivered in a non-discriminatory manner. The new revenue sharing program does this to some extent. The desired result of this course of action would be the demise of second class cities which do not function, and a simplification of life in the "bush". Second, I would recommend the creation of home rule, second class cities. These cities would not be responsible for the local educational program nor would they be required to have a minimum population of 400. This would allow local communities to evolve a form of local government which is more compatible with local conditions. I acknowledge the fact that developing a charter is difficult and time consuming. However, I feel that it would go a long way to bridge the cultural gap in small, second class cities.

Finally, I would ask the committee to look at the relationship of the small second class cities to the executive branch of the State. Article X, Section 6 makes the legislature responsible for providing services to the unorganized borough through a maximum of local participation and responsibility. In fact, it is the executive branch which provides the services but without any local input. The recommendations developed by the C&RA Committees especially the development of service areas along REAA boundaries would simplify things greatly. However, there needs to exist both a means of making local concerns known to the executive branch and a means of recourse for local concerns which are impacted upon by executive branch executive decisions.

I want to thank you for the opportunity to sound off. Furthermore, I apologize for all the typing errors as I ran out of correcting ribbons for my typewriter.

Sincerely,


Robert S. Juettner
City Administrator

Sent
29 OCT 80
MAF



October 21, 1980

Senator Arliss Sturgulewski
Alaska State Senate
2957 Sheldon Jackson St.
Anchorage, AK 99504

Dear Senator Sturgulewski:

I am writing to you in your capacity as a member of the policy advisory group for the rewrite of Title 29. In that regard, several weeks previous the Kodiak City Council directed me to determine the level of interest among the home rule communities located within second class boroughs toward addressing the dual responsibilities of those governments. I have enclosed for your review a copy of the letter received back from the City of Palmer voicing their support for a coalition at the Alaska Municipal League to address these problem areas.

I understand that in your capacity on this advisory group board your input would be balanced by those representatives of boroughs who are also on the panel. However, your background in local government management provides a knowledge of the parameters of the problem we are trying to address.

As Mr. Curtis, Manager of Palmer, indicates in his correspondence, communities such as Anchorage, Juneau and Sitka have within these past several years resolved their dual government relationship problems by unifying. This is of course not the only answer. For many of the smaller communities the problem still remains. We would hope that you will be able to assist us by providing some input to your advisory group relative to our concerns. The communities will be requested to meet during the Alaska Municipal League to formulate specific ideas toward the end of clearly

Senator Arliss Sturgulewski

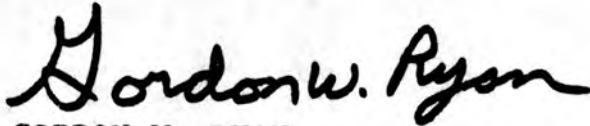
Page 2

October 21, 1980

defining the relationship between home rule cities and second class boroughs. I will keep you advised of the progress of our coalition and wish to offer at this time our appreciation for your concern and interest in our problem.

Respectfully yours,

CITY OF KODIAK

A handwritten signature in cursive script that reads "Gordon W. Ryan". The signature is written in dark ink and is positioned above the printed name and title.

GORDON W. RYAN
City Manager

GWR/yb

Enclosures

cc: Palmer McCarter, Local Government Assistance



CITY OF PALMER

COUNCIL-MANAGER GOVERNMENT
P.O. BOX 1368 • PHONE (907) 745-3271
PALMER, ALASKA 99645

Recd
10/20/80

October 17, 1980

Mr. Gordon W. Ryan
City Manager
City of Kodiak
P.O. Box 1397
Kodiak, Alaska 99615

Dear Gordon,

Your letter of September 17, 1980 was received and presented to the Council at their regular meeting of October 14, 1980. I would like to report that our Council wholeheartedly supports your initiatives in this matter of first class and home rule cities within second class boroughs. We are all aware of the gradual erosion of authority away from cities toward boroughs and will enthusiastically join with you and hopefully the other cities in this endeavor.

I will not in this letter attempt to get into specifics of problem areas in Title 29 but would like to suggest a formation of the coalition and the outright commitment of the individual cities involved to put some time and effort into this. Apparently the timeframe is extremely short as the Commission must have a document prepared and presented to the Legislature within the first thirty days of the new Legislative session. If the formation takes place at the AML meeting in November at Fairbanks, there will not be many days left. It would seem that if each city would appoint a person of knowledge and experience, i.e. manager, attorney, clerk, to attend one or two general meetings we could pick out specifics for rewrite and the writing of the new legislation and perhaps prepare resolutions for the adoption by the Council of the various communities as back-up and forward these a.s.a.p. to the Policy Advisory group. We would then have to be prepared to have a representative to care for them to defend our positions. This will not be an easy thing.

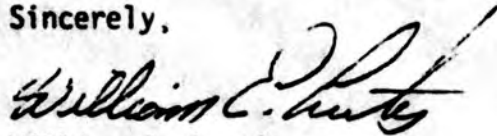
I think our Councils must understand that we have lost most of the support from the population areas, particularly Anchorage, which has half of the votes in the State of Alaska, along with Juneau and Sitka who have solved their problems by unification. This was not done without bitter struggles between their original cities and boroughs. In other words, the problems still exist for the remainder of us and I personally do not feel that unification is the solution to all of the problems. A further point to emphasize is that the Alaska Municipal League is severely watered down with boroughs and unified governments to where we cannot expect much support.

Mr. Gordon W. Ryan
October 17, 1980
Page 2

I will attempt to help expedite our feelings by sending a copy of this letter to each of the cities you have indicated correspondence with in your letter.

Looking forward to seeing you soon, I remain,

Sincerely,



William E. Curtis
City Manager
City of Palmer

WEC/car

cc: City of Ketchikan
City of Fairbanks
City of Kenai
City of Seward
City of North Pole

NANA DEVELOPMENT CORPORATION, INC.

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



November 11, 1980

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

Dear Palmer:

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

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

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



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



Mr. Palmer McCarter

Page 2

November 11, 1980

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

Best regards.

Sincerely,

Don Argetsinger
Vice President

JA/mt

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



City of Kenai, Alaska
CITY OF KENAI
"Oil Capital of Alaska"

P. O. BOX 280 KENAI, ALASKA 99611
TELEPHONE 283 - 7535

November 10, 1980

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

Re: Title 29 Provision

Dear Marilyn:

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

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

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

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

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

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

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

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

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

Sincerely,

Ben

Ben T. Delahay
City Attorney

BTD/md

Enclosures

cc: Ted Berns
Anchorage Municipality Attorney

Russ Walker
Attorney for City of Ketchikan
and Ketchikan Gateway Borough

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

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

Borough may not regulate sale and use of fireworks.—A borough's acquisition of the areawide health function does not give it authority to regulate the sale and use of fireworks. 1965 Op. Att'y Gen., No. 12.

Article 2. Assessment and Collection of Taxes.

Section

30. Assessment and collection

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

Article 3. Education.

Section

50. Education

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

Constitution requires pervasive state authority in field of education.

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

And such authority is not diminished by delegating certain educational functions to local boards.—That the legislature has seen fit to delegate certain educational functions to local boards in order that Alaska schools might be adapted to meet the varying conditions of different local-

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

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

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

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

Effect of amendment. — The 1973 amendment substituted "29.23.520" for "07.25.060" at the end of the fourth sentence. **Legislative committee report.** — For report on ch. 53, SLA 1973 (CSHB 382), see 1973 House Journal, pp. 793, 885.

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

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

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

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

Effect of amendment. — The 1973 amendment substituted "29.48.220" for "07.20.150" at the end of subsection (d). **Legislative committee report.** — For report on ch. 53, SLA 1973 (CSHB 382), see 1973 House Journal, pp. 793, 885.

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

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

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

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

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

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

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

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

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

Applied in *Area Pipe Line Co. v. North Slope Borough*, Superior Court, 4th Jud. Dist., C.A. No. 73-236 and C.A. Nos. 73-294 to 73-306 (1973).

History of public education in Alaska. — See *Rooten v. Alaska State-operated School Sys.*, Sup. Ct. Op. No. 1154 (File No. 2157), 536 P.2d 793 (1975).

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

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

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

Chapter 09. Transportation of Pupils.

Section

10. Transportation of pupils

20. Transportation for nonpublic school students

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. 414 U.S. at 146, 91 S.Ct. at 400, 38 L.Ed.2d at 373.

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

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



KENAI PENINSULA BOROUGH and the
Home Insurance Company, Appellants,

v.

STATE of Alaska, Appellee.
No. 2092.

Supreme Court of Alaska,
March 12, 1975.

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

4. 157 P.2d 622, 632 (Alaska 1967).

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

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

Affirmed.

1. Municipal Corporations $\S$ 54

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

2. Municipal Corporations $\S$ 54

Although state supervised transportation of students insofar as it related to the funding provided by state and state also had certain regulations in effect pertaining to the overall safety of the transportation system, borough in transporting students was not acting as agent for the state in either a compelled or voluntary capacity and state was not required to indemnify borough for settlement made with persons injured in collision with school bus. AS 14-09.010, 29.33.050; Const. art. 7, $\S$ 1.

3. Principal and Agent $\S$ 8

One may become a compelled agent or servant of another.

4. Indemnity $\S$ 15(7)

Principal and Agent $\S$ 23(3)

Fact that department of education regulations in effect at time of collision involving school bus provided that the commissioner "shall" direct school board to enter into contracts for transportation of pupils, whereas subsequent regulations specified that commissioner "may in his discretion" establish contracts, did not show that at time of accident the borough was a compelled agent of the state and that state was

liable to indemnify borough. AS 14.090.010, 29.33.050; Const. art. 7, $\S$ 1.

Kenneth P. Jacobus, Anchorage, for appellants.

Sanford Gibbs, Anchorage, for appellee.

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

OPINION

BOOCHEVER, Justice.

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

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

The Harman case was settled for the sum of \$125,000, and the Home Insurance Company, as insurer of the borough, contributed \$50,000 to that settlement. The Home Insurance Company was then added as a party plaintiff in the declaratory judgment complaint.

In its answer, the state denied that the borough was its agent and raised other defenses. The agency issue, above, was tried

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

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

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

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

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

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

and from the schools within their service area;

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

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

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

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

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

2. Alaska Const. art. VII, § 1.

3. AS 29.33.050.

4. In so arguing, the borough relies on Restatement (Second) of Agency § 224 (1957) which provides:

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

5. 225 App.Div. 426, 8 N.Y.S.2d 103, 105 (1958).

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

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

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

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

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

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

These arguments are true in one degree or another, or in one manner or another, in the public school system of the State. The State determines the qualifications of teachers, and provides for their retirement in part with its own money, and even contributes to their salaries, and the maintenance of the schools, and school property is commonly held by or reverts to the municipality within which the school is located. None of these considerations have been regarded by the courts as a basis

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

7. Restatement (Second) of Agency § 1 (1957) defines "agency" as:

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

The manifestation of consent by one person to another to act on his behalf is a delegation of authority. "Delegation" is defined in Webster's Seventh New Collegiate Dictionary (1971) as "the act of empowering to act for another."

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

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

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

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

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

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

12. We do not consider applicable here the "enterprise" theory espoused in *Fruit v. Schreiner*, 502 P.2d 133, 141 (Alaska 1972) whereby losses to third persons incidental to carrying on an enterprise were held to be a cost of operation and to be borne by the enterprise, with the burden distributed among those benefited by the enterprise. Such a theory could apply with equal force to the borough and the state. Nor do we find pertinent the "relative nature of the work" test utilized in determining whether an injured workman was an independent contractor or an employee in the private industry context of *Ostrem v. Alaska Workmen's Compensation Board*, 511 P.2d 1061 (Alaska 1973).

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

8. *Gonzales v. State*, 29 Cal.App.3d 585, 105 Cal.Rptr. 804 (1972); *Pantess v. Saratoga Springs Authority*, 225 App.Div. 420, 8 N.Y.S.2d 103, 105-06 (1938); see *D. R. Smalley & Sons, Inc. v. United States*, 372 F.2d 505, 178 Ct.Cl. 593 (1967), and *Elen Memorial Park Assoc. v. United States*, 300 F.2d 432 (9th Cir. 1962), which hold that a state is not an agent of the United States in performing functions under the Federal Aid Highways Act, 23 U.S.C. § 101 et seq. (1958).

9. See *Paige v. State*, 269 N.Y. 352, 199 N.E. 617 (1936) (state use of a private institution as a reformatory); see generally *State v. Abbott*, 498 P.2d 712 (Alaska 1972); *Johnson v. State*, 62 Cal.2d 782, 447 P.2d 352 (1968).

10. *Paige v. State*, 269 N.Y. 352, 199 N.E. 617, 618 (1936) (citations omitted).

11. The borough cites *Maltby v. Westchester County*, 267 N.Y. 375, 196 N.E. 295 (1935), but in that case, the question was whether

approved by the Commissioner of Education as a condition for payment by the state, and subcontracts had to provide that the contractors furnish a complete accounting to the state on forms provided by it of all funds received by the contractor for any service. The borough agreed to furnish the state with such information as route maps, bus time and mileage schedules, driver, vehicle and pupil data, etc. as requested. The borough was to administer and supervise the transportation in accordance with the rules and regulations of the Alaska Department of Education.

In accordance with that contract, the borough entered into an agreement with Burton Carver to furnish transportation services for specified routes. The contract was executed on a form provided by the state, entitled Transportation Sub-Contract Form. The agreement was signed by Carver and by the President of the School Board indicating the approval of the board. At no place in the contract is there an indication that the borough was acting on behalf of the state as its agent, although there is provision for amendment by either the borough or the state Commissioner of Education "if in their judgment a reduction in required transportation services or lack of adequate transportation funds so requires". Liability insurance policies secured by the company were required to be filed with the state as a condition for payment of state monies. The transportation regulations of the Department of Education were made a part of the contract.

The principal, superintendent or teacher in charge of the school unit for which transportation service was provided was designated as the agent of the borough (not the state) for determining arrival or departure time of vehicles, general bus schedules and routing and giving general supervision to the conduct of the transportation operation. The borough had an em-

ployee designated as director of transportation who was to take care of the school district transportation and refer to the state Department of Education only matters requiring interpretation as to what was fundable. The state had nothing to do with the establishment of the bus routes and the times for student pickup. It merely reviewed the designated routes to assure that there was no duplicated mileage. The borough could provide for extended routes at its own expense. The school board would determine which of the proposals submitted for transportation services would be selected and would submit its recommendation to the state's Department for concurrence or rejection. Moreover, the borough had the option of furnishing the transportation by means of its own drivers and vehicles or entering into contracts for that purpose.

[2] We conclude that, while the state did supervise the transportation service insofar as it related to the funding provided by it and also had certain regulations in effect pertaining to the over-all safety of the transportation system,¹⁴ the actual control of the transportation services was undertaken by the borough which, on its own behalf, entered into the contract with Carver.

The situation is closely akin to that existing on the federal-state level discussed in *D. R. Smalley & Sons, Inc. v. United States*.¹⁵ The court in *Smalley* dealt with a suit by a contractor employed by the State of Ohio to work on highway construction projects as part of the Federal-Aid Highway System of interstate highways. For these projects, the United States would reimburse the State of Ohio to the extent of ninety (90) percent of the total cost of the project. The plaintiff's claim was based on the state's wrongful acts and omissions as a result of which the completion of the projects became consid-

14. 4 A.A.C. ch. 1, subch. 10 §§ 100-04 (Reg. 1ster 24 July 1967).

15. 372 F.2d 505, 178 Cl.Ct. 503 (1967), cert. denied, 380 U.S. 835, 88 S.Ct. 45, 19 L.Ed.2d 97 (1967).

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

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

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

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

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

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

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

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

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

16. 372 F.2d 1019, 507.

17. *Id.* (citations omitted).

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

552 P.2d—65

19. Restatement (Second) of Agency § 225 (1957).

20. AS 29.33.050. *Macanley v. Hildebrand*, 491 P.2d 120, 122 (Alaska 1971).

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

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

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

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

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

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

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

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

21. 29 Cal.App.3d 585, 105 Cal.Rptr. 804 (1972).

22. *Id.* at 805, 807 (footnote omitted, citations omitted).

23. The *Gonzales* case was amplified by an uncontradicted declaration in support of the state's motion for summary judgment that the school district owned, operated and controlled the buses used to transport its stu-

dents, and the state did not own, operate or control any of the buses at any time. 29 Cal.App.3d 585, 105 Cal.Rptr. at 806. We have discussed *above* the more difficult question of control involved in the instant case.

24. 4 A.A.C. ch. 1, subch. 10 § 10.0 (Register 14, February 1969).

25. 4 A.A.C. 27,550 (Register 38, July 1974).

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

Affirmed.



James O. ADKINS, Appellant,

v.

Michael LESTER et al., Appellees.

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

v.

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

Nos. 2078, 2113.

Supreme Court of Alaska.

Feb. 3, 1975.

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

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

Petition denied.

Rabinowitz, C. J., did not participate.

Appeal and Error — 1056.1(5)

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

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

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

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

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

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

OPINION ON REHEARING

CONNOR, Justice.

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

"... The jury responded that it found no negligence on the part of appellees but did not respond to the ques-

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HARTIG, RHODES, NORMAN & MAHONEY

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
SUITE 201
717 K STREET
ANCHORAGE, ALASKA 99501
TELEPHONE: (907) 274-3376
TELECOPIER: (907) 277-4392
TELEX: 10901 25-404

KODIAK OFFICE:
202 CENTER AVE. BOX 503
KODIAK, ALASKA 99505
(907) 488-3143
C. WALTER EBELL
MELVIN M. STEPHENS, II

ROBERT L. HARTIG 1928-1980

JAMES B. RHODES
JOHN E. NORMAN
ROBERT J. MAHONEY
BERNARD J. DOUGHERTY
MICHAEL W. SHAFER
ROGER H. SEATY
EDGAR H. LORRE

MICHAEL ROBBINS
WILLIAM W. SHEA
C. WALTER EBELL
SPENCER C. SNEED
MELVIN M. STEPHENS, II
ROBERT C. GRINN

OF COUNSEL:
G. KENT EDWARDS

November 10, 1980

REPLY TO:
Anchorage

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

Re: Proposed Legislative Changes
Our File 844-10

Dear Mr. Ryan:

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

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

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

Gordon Ryan, City Manager
November 10, 1980
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The word that has been underlined in the above section is the word to be added by the change in legislation. The capitalized word in brackets will be deleted.

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

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

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

Add a new section 29.28.145 to read:

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

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

Section 29.28.150 should be modified to provide as follows:

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

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

(2) the date each voter signed the petition.

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

Modify Section 29.28.160 to provide:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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November 10, 1980
Page Seven

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

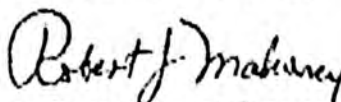
The recommendations proposed above are based in substantial part upon the experience I have had in the City of Kodiak over the past six years. Recommendations as to specific language for changes in the statutes are merely rough proposals and would have to be carefully reviewed and refined if it was determined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

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

Kindest regards.

Very truly yours,

HARTIG, RHODES,
NORMAN & MAHONEY


Robert J. Mahoney

RJM:bad